

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

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 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.

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(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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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

SC ADMIN. LAW COURT

Trident Medical Center, LLC, d/b/a) Docket No.: 09-ALJ-07-0332-CC
Berkeley Medical Center,)
Petitioner,)

vs.)

South Carolina Department of Health and)
Environmental Control and Roper St.)

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

Francis Hospital-Berkeley,)

Respondents.)

Trident Medical Center, LLC, d/b/a) Docket No.: 09-ALJ-07-0333-CC

Berkeley Regional Medical Center,)

Petitioner,)

vs.)

South Carolina Department of Health and)
Environmental Control,)

Respondent.)

CareAlliance Health Services and Roper) Docket No.: 09-ALJ-07-0336-CC

St. Francis Hospital-Berkeley,)

Petitioners,)

vs.)

South Carolina Department of Health and)
Environmental Control and Trident Medical)

Center, LLC,)

Respondents.)

ORDER DENYING MOTION TO ALTER/AMEND (RECONSIDER)

APPEARANCES:

David B. Summer, Jr., Esq.; William R. Thomas, Esq., and Faye A. Flowers, Esq. for
Trident Medical Center, LLC, d/b/a/ Berkeley Medical Center

Ashley C. Biggers, Esq.; Vito Wicevic, Esq. for the South Carolina Department of Health
and Environmental Control

James G. Long, III, Esq.; Jennifer J. Hollingsworth, Esq. for CareAlliance Health
Services and Roper St. Francis Hospital-Berkeley

This matter came before me at 10:00 AM on Wednesday, October 31, 2012, at the
offices of the South Carolina Administrative Law Court in Columbia, S.C. on Motion of Trident
Medical Center, LLC, d/b/a Berkeley Medical Center (Trident) to Alter/ Amend (Reconsider).
Opposing the motion are the South Carolina Department of Health and Environmental Control

(DHEC) and Roper St. Francis Hospital-Berkeley, Inc. d/b/a Roper St. Francis Hospital-Berkeley and CareAlliance Health Services (Roper).

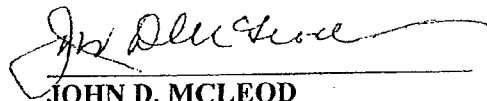
As a threshold matter, Roper asserts that Trident cannot raise, in a Motion to Alter/Amend (Reconsider), arguments that have already been raised and ruled upon. Trident properly asserts the contrary on the authority of Elam v. S.C. Dep't of Transp., 361 S.C. 9, 602 S.E.2d 772 (2004) stating "There is nothing inherently unfair in allowing a party one final chance not only to call the court's attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument. It is inherently unfair to disallow such an opportunity."¹

That, however, as Professor Coleman Karesh would say, becomes academic, given the ruling herein denying the motion.

This Court need not address every argument asserted by Trident nor rule on every nuanced question submitted by Trident. Instead, this Court need only set forth factual findings "sufficiently detailed to enable the reviewing court to determine whether the findings are supported by the evidence and whether the law has been properly applied to those findings." Spartanburg Reg'l Med. Ctr. v. Oncology and Hematology Assocs. of S.C., LLC, 387 S.C. 79, 91, 690 S.E.2d 783, 789 (2010) (citing Abel Commc'ns, Inc. v. S.C. Pub. Serv. Com'n, 290 S.C. 409, 411, 351 S.E.2d 151, 152 (1986)). I believe the existing order complies with that command.

Having heard and considered arguments of counsel for all parties I find and conclude that the existing order must stand and that the motion is therefore denied.

AND IT IS SO ORDERED.



JOHN D. MCLEOD

Administrative Law Judge

November 1, 2012
Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy heretof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 1 day of November 2012

By: Ray P. Syed
Judicial Law Clerk

¹ This proposition is not used by West Publishing Company as a headnote in the reported version of the Elam, id, decision, but it is clearly the position of the South Carolina Supreme Court.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

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

Petitioner,

vs.

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

Respondents.

Docket No.: 09-ALJ-07-0332-CC

FINAL ORDER AND DECISION

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

Petitioner,

vs.

South Carolina Department of Health and
Environmental Control,

Respondent.

Docket No.: 09-ALJ-07-0333-CC

(consolidated)

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

Petitioners,

vs.

South Carolina Department of Health and
Environmental Control and Trident Medical
Center, LLC,

Respondents.

Docket No.: 09-ALJ-07-0336-CC

(consolidated)

FILED

SEP 26 2012

SC ADMIN. LAW COURT

APPEARANCES

David B. Summer, Jr and William R. Thomas	for Petitioner Trident Medical Center
James G. Long, III and Jennifer J. Hollingsworth	for Respondent Roper St. Francis
Ashley C. Biggers and Kristin L. Pawlowski	for Respondent South Carolina Department of Health and Environmental Control

STATEMENT OF THE CASE

The above-captioned matters come before the Court upon the requests of Petitioner/Respondent Trident Medical Center, LLC, d/b/a Berkeley Regional Medical Center ("Trident") and Respondents/Petitioners CareAlliance Health Services and Roper St. Francis Hospital – Berkeley (collectively "Roper St. Francis") for a contested case hearing to review the decision of the Respondent South Carolina Department of Health and Environmental Control ("DHEC" or "Department") to issue Certificates of Need ("CON") to Trident and Roper St. Francis for the establishment of two 50-bed acute care hospitals in Berkeley County, South Carolina. The three separately filed matters were consolidated by Consent Order dated January 7, 2010. Trident challenges the Department's finding that the applications are not competing applications and further asserts that Roper St. Francis' application should not have been approved. Roper St. Francis supports the decision of the Department that the applications were not competing but challenges the approval of Trident's application.

Prior to a hearing on the merits, the parties conducted discovery and this Court heard a number of motions on discovery issues and other pre-trial matters. After timely notice to the parties, a contested case hearing on the merits was held from January 30, 2012, through February 16, 2012, for a total of fourteen days of trial. During the hearing, all three parties presented witnesses and offered exhibits in support of their respective positions. A total of fifteen witnesses testified at the hearing, with an additional six witnesses offered through deposition

designations, and the Court admitted two hundred and seven exhibits in evidence, in addition to receiving three proffers of evidence. The following witnesses were designated as experts in the noted areas of expertise: Richard Baehr in the areas of healthcare planning and finance on behalf of Trident; Mark Richardson in the area of healthcare planning on behalf of Roper St. Francis; Richard Knapp in the area of healthcare finance on behalf of Roper St. Francis; and Michael Ridgeway in the area of travel time studies on behalf of Trident.

Having reviewed all of the documentary evidence and heard the testimonial evidence presented at the hearing, having considered the arguments of the parties made at the hearing, and having followed the applicable law, I find that DHEC properly approved the applications of Trident and Roper St. Francis for the establishment of two 50-bed acute care hospitals in Berkeley County, South Carolina, because the applications are not competing applications as defined by the applicable law and both applications satisfy the State Health Plan, the Project Review Criteria, and the purposes of the Certificate of Need Act.

It cannot be denied that, on its face, Section II(G)(1)(A)(4)(j) of the 2008-2009 State Health Plan (the bed transfer provision) appears to anticipate the existence of an existing facility. However, as will appear within, I have concluded that approval of the Certificate of Need for Roper St. Francis was proper.

FINDINGS OF FACT

Having carefully considered all testimony, exhibits, and arguments presented at the hearing, and taking into account the credibility and accuracy of the evidence, I make the following Findings of Fact by a preponderance of the evidence:

A. The Parties.¹

1. Trident operates as Trident Health System, a for-profit subsidiary of Hospital Corporation of America, and consists of a single licensee doing business as Trident Medical Center, a 296-bed tertiary care facility in Charleston County, South Carolina; Summerville Medical Center, a 94-bed acute care facility in Dorchester County, South Carolina; and Moncks Corner Medical Center, a freestanding emergency department in Berkeley County, South Carolina. (Rardin Trial Tr. 86:16-87:17).

2. Roper St. Francis is a non-profit healthcare system anchored by three inpatient facilities: Roper Hospital, a 316-bed tertiary care facility in Charleston County, South Carolina; Bon Secours St. Francis, a 204-bed acute care facility in Charleston County, South Carolina; and Roper St. Francis Mount Pleasant Hospital, an 85-bed acute care facility in Charleston County, South Carolina. (Joint Ex. #5 at III-16). Roper St. Francis also operates a freestanding Emergency Department and Ambulatory Surgery Facility in Berkeley County and other physician offices and facilities throughout the Lowcountry region of South Carolina, including Berkeley, Dorchester, and Charleston Counties. (Resp. Ex. #15; Pet. Ex. #235; Johnson Trial Tr. 2172:1-2173:25; Bowling Trial Tr. 2471:5-16).

3. DHEC is a state agency charged with, among other things, implementing South Carolina's CON regulatory program, which includes licensing standards for the establishment of acute care hospitals. S.C. Code Ann. § 44-7-140 (Rev. 2002). By statute, DHEC is "the sole agency for control and administration of the granting of [CONs] and licensure of health facilities." *Id.*

¹ For clarity of the record, the trial exhibits referenced herein will be labeled "Pet." for Petitioner/Respondent Trident Medical Center and "Resp." for Respondents/Petitioners Roper St. Francis. The Department shall be referred to as DHEC or the Department. The three parties introduced sixteen joint exhibits.

B. Regulatory Background.

4. This matter arises under the regulatory program by which Certificates of Need are issued by the State of South Carolina for the development of health care facilities and services in this State. The regulatory scheme consists of the State Certification of Need and Health Facility Licensure Act ("CON Act"), S.C. Code Ann. § 44-7-110, *et seq.* (Rev. 2002); the regulations promulgated thereunder, 24A S.C. Code Ann. Regs. 61-15 (2003); and a State Health Plan which is revised at least biannually. The purpose of the CON Act and thus the regulatory program itself are 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 high quality services are provided in health facilities in this State." *See* S.C. Code Ann. § 44-7-120.

5. The primary vehicle by which the CON program is implemented, and its stated goals achieved, is the requirement that a health care provider apply for, and receive, a CON from DHEC prior to undertaking certain major projects or providing certain new services. *See* S.C. Code Ann. §§ 44-7-120, -160. In determining whether to grant or deny an application for a CON, the Department evaluates the proposed project under the review criteria found in the CON regulations and under the policies and standards set forth in the applicable State Health Plan. *See id.* at § 210(C). The project review criteria set forth in Regulation 61-15 include thirty-three separate criteria that fall into five general categories: (1) criteria related to the need for the proposed project; (2) criteria related to the economic considerations of the project; (3) criteria related to the project's impact on the resources of the health care system; (4) criteria related to the suitability of the site of the project; and (5) criteria related to certain special circumstances, such as the project's ability to serve medically underserved groups. *See* 24A S.C. Code Ann.

Regs. 61-15 §§ 801, 802. As required by the CON Act, the State Health Plan contains the following statistics, standards, and findings with regard to the various facilities and services regulated by the CON Act:

(1) an inventory of existing health care facilities, beds, specified health services, and equipment; (2) projections of need for additional health care facilities, beds, health services, and equipment; (3) standards for distribution of health care facilities, beds, specified health services, and equipment including scope of services to be provided, utilization, and occupancy rates, travel time, regionalization, other factors relating to proper placement of services, and proper planning of health care facilities; and (4) a general statement as to the project review criteria considered most important in evaluating Certificate of Need applications for each type of facility, service, and equipment, including a finding as to whether the benefits of improved accessibility to each such type of facility, service, and equipment may outweigh the adverse affects caused by the duplication of any existing facility, service, or equipment.

S.C. Code Ann. § 44-7-180(B).

6. Pursuant to the CON Act, the Department may not issue a CON to an applicant “unless the application complies with the South Carolina Heath Plan, Project Review Criteria, and other regulations.” S.C. Code Ann. § 44-7-210(C); *see also MRI at Belfair, LLC v. S.C. Dept. of Health and Env'tl. Control*, 379 S.C. 1, 9, 664 S.E.2d 471, 475 (holding that compliance with the State Health Plan and the Project Review Criteria were independent requirements for approval of a CON).

C. The Applications Under Review.

7. Trident's application proposes to construct a 50-bed hospital to be located on a separate parcel of vacant land adjacent to its existing Moncks Corner Medical Center in Moncks Corner, South Carolina. (Joint Ex. #1). Trident's application was filed on August 12, 2008, and is governed by the then-effective *2004-2005 State Health Plan*.

8. Roper St. Francis' application proposes to construct a 50-bed hospital to be located in the Carnes Crossroads development of Goose Creek, South Carolina. (Joint Ex. #2).

Roper St. Francis' application was filed on December 9, 2008, and is governed by the then-effective *2008-2009 State Health Plan*.

9. Since the filing of both applications, and the Department's decision to approve both applications on June 26, 2009, the current *2010-2011 State Health Plan* was implemented. The three State Health Plans are Joint Exhibits 3, 4 and 5, respectively.

10. In both the *2004-2005 State Health Plan* and the *2008-2009 State Health Plan*, the section and standards applicable to the establishment of acute care hospitals is found at Chapter II, beginning at pages II-2 in each State Health Plan.

11. Both applicants propose to establish acute care hospitals. (Joint Ex. #1 at 8; Joint Ex. #2 at 5).

12. Hospitals are generally classified as general acute care hospitals or tertiary care hospitals. Acute care hospitals, also referred to as community hospitals, focus on treating patients from the community where the hospital is located for general medical conditions such as surgery, obstetrics, emergency care, and general diseases. (Gallati Trial Tr. 283:3-22; Bowling Trial Tr. 2499:1-6). Tertiary hospitals are larger facilities that treat patients from a larger geographic area and have the ability to treat complex diagnoses and provide specialized medical care and surgery. (Bowling Trial Tr. 2552:20-2553:21). Tertiary care is higher acuity care for complex diagnoses and procedures such as open heart surgery and neurosurgery. (Bowling Trial Tr. 2492:7-14). Patients will often be transferred from a general acute care hospital to a tertiary hospital if the patient's condition worsens or becomes more complex or severe. (Gallati Trial Tr. 283:3-22).

13. I find that each application proposes to establish a community hospital that will only treat non-tertiary, non-specialty patients.

14. I find that the primary ways in which patients present to a general acute care hospital such as those proposed by both applicants are through an emergency department admission and by physician referral. (Baehr Trial Tr. 1537:19-1538:4; Bowling Trial Tr. 3134:5-18).

15. The State Health Plan uses the occupancy of a licensed hospital bed to determine need for hospital services. The CON Act identifies beds as one of the items for the State Health Plan to maintain an inventory, projection, standards, and project review criteria. S.C. Code Ann. § 44-7-180(B). There are two primary justifications to use the occupancy of a hospital bed as the measurement for need. First, it is a rational yardstick to determine when or if to expand an existing hospital as opposed to when and if to construct a new hospital. Use of the bed occupancy approach allows the Department to have flexibility to help guide the establishment of hospitals and maintain quality – two major purposes of the CON Act. (Shelton Trial Tr. 1173:2-1174:22, 1154:8-1155:3). The second reason is that a licensed hospital bed is required for an overnight inpatient stay, which is what makes a hospital unique from other healthcare facilities. (Bowling Trial Tr. 2460:24-2461:11).

16. The utilization of hospital beds needed to reach “capacity” as defined by the State Health Plan increases based on the number of licensed beds approved for the hospital. (Joint Ex. #4 at II-6). Smaller community hospitals like those proposed by these applicants are considered at capacity when occupancy reaches 65%. (*Id.*). Larger hospitals with 175 to 349 beds are considered at capacity with 70% occupancy, and the largest hospitals with more than 350 beds are considered at capacity with 75% occupancy. (*Id.*).

17. Under the 2008-2009 *State Health Plan*, a need for additional beds may be shown for a facility and/or for a service area – meaning, a specific facility may have a need for

additional beds based on its own utilization data or a service area may show a need for additional beds based on the aggregate utilization of all of the beds in the service area. (Joint Ex. #4 at II-7). Regardless of whether a facility or service area has a need or an excess, existing beds can be redistributed through the bed transfer provision set forth in the State Health Plan. (*Id.* at II-9).

18. Trident's application to establish its acute care facility in Moncks Corner proposes to use a facility-specific bed need published in the *2004-2005 State Health Plan* for Trident Medical Center in North Charleston, South Carolina. Under that Plan, Trident Medical Center had a facility-specific need of 17 beds,² which it then sought to increase to 50 beds to allow for the construction of a cost-effective addition pursuant to Section II.G.1(A)(4)(d) of the Health Plan. (Joint Ex. #3 at II-7 and II-17).

19. Roper St. Francis' application to establish its acute care facility in Goose Creek proposes to transfer 50 existing licensed acute care beds from Roper Hospital in Downtown Charleston and place them in the Carnes Crossroads development of Goose Creek, primarily to serve the patients currently traveling downtown to the Charleston Peninsula or West Ashley for healthcare services. (Joint. Ex. #2 at 17). The applicable bed transfer provision in the *2008-2009 State Health Plan* is found at Section II.G.1(A)(4)(j), pages II-9 to II-10. (Joint Ex. #4).

20. An important distinction is made here. Roper St. Francis is not applying to add any additional beds to the Tri-County Service Area. Under the *2008-2009 State Health Plan*, the Tri-County Service Area has an excess of beds. (Joint Ex. #4 at II-19). Under the Plan, Roper St. Francis could not apply to add beds to the Tri-County Service Area and has not done so. (Brandt Trial Tr. 924:20-23). I find that Roper St. Francis' application to establish its Berkeley County hospital is properly made by way of the bed transfer provision in the *2008-2009 State*

² The *2004-2005 State Health Plan* inventory shows a bed need of 42 beds for Trident's North Charleston campus; however, Trident obtained a CON to convert 25 skilled nursing beds to general acute beds prior to these applications under review, leaving only 17 to be added under the Plan. (Baehr Trial Tr. 1205:22-1206:4).

Health Plan because Roper St. Francis proposes to physically relocate existing beds. (Joint Ex. #4 at II-9 to II-10; Shelton Trial Tr. 1142:10-21). In contrast, Trident proposes to relocate future bed need not actual existing licensed beds. (Joint Ex. #3 at II-7; Shelton Trial Tr. 1142:10-1143:24).

21. As 50-bed hospitals, the State Health Plan considers these hospitals “full” at 65% occupancy. The importance of using 65% as opposed to a higher percentage to determine optimal occupancy is that a hospital with fewer licensed beds cannot withstand large fluctuations in capacity like a hospital with a greater number of beds can, thus, greater flexibility is needed in smaller hospitals to handle variations in patient admissions. (Shelton Trial Tr. 1060:6-1061:8; Richardson Trial Tr. 3132:9-3134:4). Capacity varies based on the size of the hospital because the average daily census of a hospital is not consistent and flexibility to admit patients is critical. Hospitals typically have a higher census in the winter months compared to the summer months, and have a higher census during the middle of the week as compared to the weekend. (Baehr Trial Tr. 1570:20-1571:7; Richardson Trial Tr. 3132:15-3133:22; Severance Trial Tr. 2800:22-2802:18). Therefore, I find that hospitals must have flexibility in capacity to handle changes in census.

22. This target occupancy standard for a 50 bed hospital equates to an average daily census of 32.5. (Baehr Trial Tr. 1585:3-7). Average daily census is the average number of patients within the hospital, also explained as the number of heads on a pillow at midnight. (Rardin Trial Tr. 138:12-16; Severance Trial Tr. 2799:22-2800:1). Hospital utilization can also be reported as patient days, representing the total number of days patients were in the hospital during the year. (Shelton Trial Tr. 1057:18-1058:1). The “capacity” average daily census of

32.5 for the proposed hospitals equates to 11,863 patient days ($32.5 \times 365 \text{ days} = 11,863 \text{ patient days}$).

23. Trident projected in its application that by year three, using 100% redirection of Trident-aligned patients, it would experience 12,317 patient days at Berkeley Medical Center, its hospital in Moncks Corner, equating to an average daily census of 33.7 or 67.5% occupancy. (Joint Ex. #1 at 36). Roper St. Francis projected in its application that by year three, using 50% redirection of Roper St. Francis-aligned patients, it would experience 12,775 patient days at the Roper St. Francis hospital in Goose Creek, equating to an average daily census of 35 or 70% occupancy. (Joint Ex. #2 at 30-31).

24. Both applicants presented substantial data showing where their patient base is located and each made projections of utilization at the proposed hospitals after the hospitals were opened and licensed. The data and projections were initially set forth in each application. (Joint Ex. #1 at 23-128; Joint Ex. #2 at 15-38). At trial, each hospital system presented updated data, including utilization from 2007 through the present, and offered updated projections based on updated population information from the 2010 U.S. Census. (Resp. Exs. #36, 38, 53, 59, 82; Pet. Exs. #166, 202).

25. The evidence at trial established that the projected non-tertiary patient days for Berkeley County admissions in 2017 to the Trident system and the Roper St. Francis system are well above the number of patients needed for each applicant's project to be at target occupancy, with the Trident system projected to have 36,418 patient days and the Roper St. Francis system projected to have 16,934 patient days. (Pet. Ex. #221). The applicants both projected their hospitals as effectively full with 70% occupancy, which equates to an average of 35 people in the hospital every day or 12,775 patient days. (Richardson Trial Tr. 3135:3-19). Therefore, I find

that non-tertiary admissions from Berkeley County alone are more than sufficient to sustain both hospitals.

D. The Service Area.

26. The State Health Plan identifies four Inventory Regions for hospitals and each region is further divided into service areas. (*See e.g.* Joint Ex. #4 at II-3 to II-4). Most of the service areas consist of individual counties; however, two service areas combine multiple counties: Orangeburg/Calhoun and Berkeley/Charleston /Dorchester. Under both the *2004-2005 State Health Plan* and the *2008-2009 State Health Plan*, Berkeley County is part of the Tri-County Service Area of Berkeley, Charleston, and Dorchester Counties for purposes of general hospitals and hospital beds. (Joint Ex. #3 at II-3 to II-4, II-17; Joint Ex. #4 at II-2, II-18 to II-20).

27. While the service area is a three-county service area, each applicant projects that the vast majority of the patients at its proposed hospital will be residents of Berkeley County. (Joint Ex. #1 at 24; Joint Ex. #2 at 18). I find that Berkeley County is one of five counties in South Carolina with zero hospital beds. (Resp. Ex. #75). A comparison of Berkeley County to other counties with hospitals show that a substantial number of counties in South Carolina have a much smaller population than Berkeley County and have well over 100 beds. I find that there are eight counties in South Carolina with less than 100,000 in population that have over 100 beds. (Resp. Ex. #75 at 4702). In addition, the following seven counties have substantially more than 100 beds with similar populations to Berkeley County's population of 177,843:

- (a) Florence – 831 beds for 136,885 people
- (b) Sumter – 283 beds for 107,456 people
- (c) Anderson³ – 485 beds for 187,126 people

³Anderson County, an obvious comparison to Berkeley County, has a population of approximately 10,000 people more than Berkeley County but it has 495 hospital beds. Like Berkeley County, it is adjacent to an urban populous county with a substantial number of beds. (Resp. Ex. #75 at 4703, 4705).

- (d) Pickens – 164 beds for 119,224 people
- (e) Aiken – 183 beds for 160,099 people
- (f) Calhoun/Orangeburg – 247 beds for 107,676 people

(Resp. Ex. #75 at 4703).

28. The lack of hospital beds or general acute care services in Berkeley County is especially surprising given the explosive population growth of the county in the last four decades. (Richardson Trial Tr. 3115:4-3116:21; Resp. Ex. #70; Resp. Ex. #75). In 1970, Berkeley County had a population of 56,199. (Resp. Ex. #70 at 683). In the 2010 Census, the population had increased to 177,843. (*Id.*). The communities in Berkeley County, Dorchester County, and Northern Charleston County have likewise grown in population. Nearly half of the growth in Charleston County since 1980 has occurred in the city of North Charleston, which is where Trident Medical Center is located. (Richardson Trial Tr. 3118:1-18). The City of Goose Creek has nearly doubled in population since 1980. (Resp. Ex. #70 at 683).

29. These applications were filed in 2008. (Joint Ex. #1 and #2). The population projections for Berkeley County were based on the 2000 Census and projected a 2010 population of 170,000. (Richardson Trial Tr. 3096:5-3097:7; Baehr Trial Tr. 1237:23-1238:18). The actual 2010 population according to the U.S. Census Bureau was 177,843. (Baehr Trial Tr. 3643:13-14; Resp. Ex. #59). Berkeley's population growth was one of the highest growth rates in the state. This additional population projects to an even greater population in Berkeley County after these facilities are constructed than was projected in the CON applications. (Richardson Trial Tr. 3172:2-18). Based on the substantial population growth in the 2010 Census and the historical growth since 1970, I find that Berkeley's population size is well able to support two 50-bed hospitals.

30. Of the 1,739 existing licensed acute care beds in the Tri-County Service Area, 95% of those beds are located in Charleston County. (Joint Ex. #4 at II-19, Richardson Trial

Tr.3108:17-3110:15; Resp. Ex. #75). Given that under the 2010 U.S. Census data only 53% of the Tri-County Service Area's population lives in Charleston County, I find that there is a significant maldistribution of beds in the service area. (Richardson Trial Tr. 3109:16-3112:1).

31. The proposed locations for each project, Moncks Corner and Goose Creek, are approximately twenty minutes travel time apart. (Ridgeway Trial Tr. 590:10-20). The evidence at trial showed that the two communities are separate and distinct geographies within Berkeley County. (West Trial Tr. 973:16-974:9, 985:3-7; Brandt Trial Tr. 822:8-823:1; Bowling Trial Tr. 2610:11-22). As evidenced by the numerous letters of support gathered by each applicant, both projects have the support of their proposed communities and local community and government leaders. (Joint Ex. #1, Joint Ex. #2).

E. Existing Market Conditions and Proposed Utilization.

32. Trident's project is based on primarily serving the population in Berkeley County around Lake Moultrie. (Joint Ex. #1 at 76; Resp. Ex. #76 at 4714-4715). Trident Health System's inpatient market share in Berkeley County was approximately 53% at the time it filed its application. (Joint Ex. #1 at 23). In constructing its need analysis, Trident performed a zip code analysis of where its patients were likely to originate. (*Id.* at 35-36). Trident projected that its hospital in Moncks Corner would have no impact on the market share of the existing providers. (*Id.*). In other words, Trident assumed that it would not increase its market share after the new hospital opened in Moncks Corner. Further, Trident projects that in the third year of operation it will capture 50% of the Trident-aligned patients in the following 8 zip codes around Lake Moultrie: 29461, 29434, 29431, 29476, 29479, 29468, 29436, and 29469. (Joint Ex. #1 at 76; Resp. Ex. #76 at 4715). It also projects that it will capture 25% of the Trident-aligned patients in two zip codes to the east, 29450 and 29453, and 20% of the Trident-aligned

patients in the zip code to the west, 29483. (*Id.*). Trident estimated its new hospital would only capture either 2% or 1% of the Trident-aligned patients in southern Berkeley County and in Charleston County. (*Id.*). It is important to note that these estimates only project the capture of Trident-aligned patients solely from Trident's future patient base. I find that Trident's analysis is a very conservative estimate of the patient base for the Moncks Corner Hospital. (Brandt Trial Tr. 858:12-20). With only its Trident-aligned patients, Trident estimates that its facility will reach more than 65% occupancy in the third year of operation. (Joint Ex. #1 at 36).

33. The Roper St. Francis project is based primarily on serving patients that are already aligned with and use Roper St. Francis facilities. (Joint Ex. #2 at 24-26). At the time its application was prepared, Roper St. Francis had a 23% market share in Berkeley County based on 2006 discharge data. (*Id.* at 26). Despite the Trident Health System facilities in North Charleston and Summerville being located considerably closer to Berkeley County residents than the Roper St. Francis facilities, 23% of the patients in Berkeley County drive the longer distance to seek treatment at Roper St. Francis hospitals in Charleston County. In constructing its need analysis, Roper St. Francis used the State's population projections and considered the entire Berkeley County area in its analysis. (Joint Ex. #2 at 18; Resp. Ex. #7). Roper St. Francis forecast that one-half of the Roper St. Francis-aligned patient base in Berkeley County would be redirected to the new facility in Goose Creek. (Joint Ex. #2 at 28). Roper St. Francis additionally assumed that it would capture 10% of its volume from non-aligned patients as a result of the construction of its new hospital and that a small percentage of patients would be from outside Berkeley County. (*Id.*). Evidence introduced by Trident at trial shows that Roper St. Francis could fill its proposed facility using less than 70% of the projected patient days for Roper St. Francis-aligned patients from Berkeley County in 2017. (Pet. Ex. #221).

34. I find that the focus by each applicant on serving system-aligned patients is well supported by the evidence and further supports the Department's decision that there is sufficient need for both hospitals. (Brandt Trial Tr. 825:19-826:8).

35. In addition to each hospital system having a substantial market share in Berkeley County, each hospital system has distinct medical staffs. Trident Medical System has a medical staff of over 500 physicians. (Gallati Trial Tr. 437:13-15). Roper St. Francis has a medical staff of over 800 physicians. (Bowling Trial Tr. 2478:9-12). Very few physicians are on both medical staffs and what little overlap exists is in areas of sub-specialties. (Gallati Trial Tr. 437:16-23; Bowling Trial Tr. 2478:21-2479:13). Physician referrals are one of the two main sources for admissions to acute care hospitals. (Bowling Trial Tr. 2479:14-23). Therefore, I find that the separate and distinct medical staffs support the Department's finding that there is a sufficient need for both hospitals.

36. It is undisputed that neither party amended or refiled their applications to address the other applicant's project. While Trident filed its application first, Trident had knowledge of Roper St. Francis' purchase of 66 acres at the Carnes Crossroads location and its plans to construct a hospital at the Carnes Crossroads site. Trident's Vice President of Development testified to Trident's knowledge of Roper St. Francis' plans to build a hospital in Berkeley County as early as 2007. (Rardin Trial Tr. 187:5-8). The internal communications introduced at trial and the timeline of the parties' activities proved that Trident was well aware of Roper St. Francis' plans to build a hospital in Berkeley County. (Resp. Ex. #138; Resp. Ex. #77). I find that the decision of each party not to address the application or plans of the other party is not relevant to any contested issues before the Court and is not a deficiency in either application.

F. The Decisions Under Review.

37. Trident's application was deemed complete on January 9, 2009. (Joint Ex. #1 at 727). Roper St. Francis' application was deemed complete on March 31, 2009. (Joint Ex. #2 at 1107). The Department identified the following project review criteria as the most important criteria for review: compliance with the State Health Plan, community need documentation, distribution (accessibility), financial feasibility, acceptability, adverse effects on other facilities, and distribution.⁴ (Joint Ex. #1 at 726; Joint Ex. #2 at 1107).

38. All parties participated in a project review meeting in Columbia, South Carolina, on May 21, 2009, after the projects were deemed complete. (Brandt Trial Tr. 782:24-783:8). On June 26, 2009, the Department notified both parties of its decision to approve both applications, including its finding that the applications were not competing applications as defined by the CON Regulations. (Joint Ex. #1 at 871; Joint Ex. #2 at 1262).

39. In addition to finding that the applications were not competing, the Department further determined that both applications met the standards and criteria set forth in the applicable State Health Plan, as well as the criteria contained in the CON Regulations. (Joint Ex. #1 at 871-872; Joint Ex. #2 at 1262-1263).

40. The Department conducted a thorough review process for the applications. (Brandt Trial Tr. 747:18-751:17). DHEC staff asked numerous questions of both applicants seeking additional information and held a project review meeting to thoroughly discuss and understand the projects proposed by both parties. (Joint Ex. #1 at 659-661, 714-715, 738-739; Joint Ex. #2 at 1082-1083, 1111-1112). I find that the Department properly reviewed and analyzed both applications.

⁴ "Distribution" is included in Reg. 61-15 in two different contexts. See Criteria for Project Review, S.C. Code Regs 61-15 §§ 802(3) and (22), *Criteria for Project Review*.

41. Under the CON Act and Regulations, when two or more health care entities file applications for similar services or facilities in the same service area in a specified time window, the Department must undertake an analysis to determine whether those applications are competing. Competing applicants are defined as follows:

[T]wo or more . . . health care facilities . . . who apply for Certificates of Need to provide similar services or facilities in the same service area within a time frame as established by departmental regulations and whose applications, if approved, would exceed the need for services or facilities.

S.C. Code Ann. § 44-7-130(5); *see also* 24A S.C. Code Ann. Regs. 61-15 § 103(6).

42. Therefore, to be deemed competing CON applications, the two or more CON applications must satisfy four elements:

- (a) The CON applications must be filed within the time period established by the regulations; and
- (b) The CON applications must be for same or similar services or facilities; and
- (c) The projects must be located in the same service area; and
- (d) The approval of both CON applications must exceed the need for the services or facilities.

See, e.g., Spartanburg Reg'l Med. Ctr. v. Oncology and Hematology Assoc. of S.C., LLC, 387 S.C. 79, 90, 690 S.E.2d 783, 789 (2010).

43. I find that the two CON applications at issue in this case meet the first three elements of the definition of competing applications: *i.e.*, the CON applications were filed within the time period set forth in the Regulations, the CON applications are for the same or similar facilities, and the two proposed facilities will be located in the same service area. (Brandt Trial Tr. 639:10-22). Therefore, the crux of this dispute is whether the approval of both CON applications will exceed the need for the facilities, which is a fact-intensive inquiry dependent upon the evidence submitted by the parties. If Trident as Petitioner fails to establish by a preponderance of the evidence that the approval of both facilities will exceed the need for the

facilities, the CON applications are not competing and both may be approved. *See Spartanburg Reg'l Med. Ctr.*, 387 S.C. at 91, 690 S.E.2d at 789 (finding abundant factual evidence within the record to support the contention that the approval of both applications would not exceed the need for the services). Roper St. Francis and the Department assert that the approval of both applications will not exceed the need. (Bowling Trial Tr. 2547:20-2548:6; Brandt Trial Tr. 824:23-828:9).

44. Beverly Brandt, Chief of the Bureau of Health Facilities and Services Development for DHEC, testified to a number of facts that supported her conclusion that the applications were not competing, including the following:

- (a) Roper St. Francis' bed transfer is not adding beds to the service area;
- (b) The applicants' proposed locations are a good distance apart;
- (c) The applicants each proposed to serve a different community and different geographies of Berkeley County;
- (d) Both applicants proposed to serve primarily their own currently aligned patient bases in Berkeley County;
- (e) That going from zero beds in Berkeley County to 100 beds in Berkeley County is not a dramatic change given the size of Berkeley County compared to the other counties with zero hospital beds; and
- (f) That the population is growing and moving into Berkeley County.

(Brandt Trial Tr. 633:1-6, 824:12-828:9).

45. From the testimony and exhibits taken as a whole and as further explained below, I find that there is abundant factual evidence to support the finding that the approval of both applications will not exceed the need for the facilities in the service area. Therefore, I find that based on a preponderance of the evidence the applications are not competing.

46. As explained and confirmed through testimony and other evidence, I find Roper St. Francis is not adding beds to the existing inventory of licensed beds in the Tri-County Service Area. (Brandt Trial Tr. 646:18-23). Roper St. Francis' project is a repositioning of existing licensed beds within the service area. (Richardson Trial Tr. 3119:19-3120:5). This significant

fact strongly supports my finding that the approval of both applications will not exceed the need in the service area.

47. Moreover, I find that the two proposed projects are located a sufficient distance from each other to support DHEC's decision that the applications are not competing. While Trident argues that the proposed projects are too close to each other and other existing facilities, I find this argument is not persuasive in light of the existing distribution of hospitals in the Tri-County Service Area. (Resp. Ex. #163). Trident Health System's two existing hospitals, Trident Medical Center and Summerville Medical Center, are located approximately six miles from each other. (Gallati Trial Tr. 513:11-16). Roper Downtown and The Medical University of South Carolina are located in the same block of downtown Charleston. (Severance Trial Tr. 2794:8-13). The proposed hospitals will be approximately 12 miles from each other and the average travel time between them is just over 20 minutes. (Ridgeway Trial Tr. 590:10-20; Pet. Ex. #169). I find that the locations of the proposed projects, in light of the existing distribution of hospital beds in the Tri-County Service Area, are appropriate.

48. I find that the geographic size of Berkeley County and the two population centers within Berkeley County support the decision that the approval of both applications will not exceed the need. Berkeley County is one of the largest counties in South Carolina in geographic size. (West Trial Tr. 960:24-961:9). In addition, I find that Berkeley County has two population centers: Moncks Corner in the center of the county and Goose Creek in the southwest. (Richardson Trial Tr. 3391:17-3392:3). Each applicant proposes to locate its hospital in a different population center: Trident in the community of Moncks Corner and Roper St. Francis in the community of Goose Creek. (Resp. Ex. #74).

49. As evidenced by the updated population data provided by the parties, Berkeley County's population as of 2010 according to the U.S. Census has increased to 177,843. (Resp. Ex. #65). The evidence establishes that the population of the Tri-County Service area has nearly doubled since 1970. (*Id.*; Resp. Ex. #70; Richardson Trial Tr. 3115:4-24). In 1970, approximately 26-27% of the service area population was in Berkeley or Dorchester Counties, with the remainder and majority in Charleston County.(Richardson Trial Tr. 3115:25-3116:10). Today, those numbers have changed dramatically, with nearly half the service area population residing in Berkeley or Dorchester Counties. (Richardson Trial Tr. 3116:2-15). I find that this significant movement and increase in population in Berkeley County supports the decision that approval of both applications will not exceed the need for these facilities.

50. Trident contended throughout the trial and in statements to the community that the construction of two hospitals in Berkeley County will result in the financial failure of both hospitals. Mr. Gallati, CEO for Trident Medical Center, testified that it was a prudent business decision not to build in Moncks Corner if both hospitals were approved because of his responsibility to make money for his shareholders. (Gallati Trial Tr. 359:13-360:2). Trident's expert Mr. Baehr submitted to the Department that the approval of both hospitals would result in the financial failure of both. (Joint Ex. #1 at 841). Mr. Baehr's calculation of the alleged loss if both hospitals are approved and constructed is not credible. I find the overwhelming evidence admitted at trial proved that both hospitals are needed and both hospitals in Berkeley County will be financially successful.

51. I find that both applicants are successful hospital systems that can afford the proposed projects. (Rardin Trial Tr. 227:19-228:11; Knapp Trial Tr. 2916:20-2917:6; Resp. Ex. #160; Pet. Ex. #162). Trident's position that both hospitals will financially fail if both are

approved is inconsistent with Trident's financials and its application. Trident's CON application projects a successful hospital in Moncks Corner based on the redirection of Trident-aligned patients primarily residing in Moncks Corner and around Lake Moultrie. (Joint Ex. #1 at 76; Resp. Ex. #76 at 4715). I find that the Roper St. Francis' hospital in Goose Creek will draw patients from the southwestern portion of Berkeley County, an area where Trident projects to draw very few patients to its Moncks Corner hospital. (Resp. Ex. #76 at 4713, 4715). I reject Trident's contention that a hospital in Goose Creek will have a material adverse impact on the utilization at a hospital in Moncks Corner, and I find that the establishment of each hospital will have little effect on the utilization or operations of the other hospital.

52. There was significant testimony about the anticipated profitability of the two projected hospitals. By comparing Trident's actual financials provided in discovery with the pro forma contained in the application, Roper St. Francis' healthcare finance expert, Mr. Knapp, presented compelling evidence that Trident's proposed hospital at Moncks Corner will be more successful than what is set forth in the application. (Resp. Ex. #73). Specifically, Mr. Knapp projected that the actual pre-tax profit for the Moncks Corner hospital would be \$6,672,901 in year three of operation. (Resp. Ex. #73 at 461). I find Mr. Knapp's calculation to be credible and persuasive. His calculations show that the Moncks Corner facility will be financially successful even if the hospital underperforms the projections in the CON application. (*Id.* at 465). Further, the 2010 earnings of Trident in excess of \$92 million dollars gives the Court confidence that the Moncks Corner hospital is financially feasible and will succeed. (Resp. Ex. #160).

53. During the same time period that Trident has publicly contended that Berkeley County can only support one 50-bed hospital, it applied to add 30 beds to its campus at

Summerville Medical Center, which is located in neighboring Dorchester County and is in the same Tri-County Service Area as Berkeley County and Charleston County. (Joint Ex. #9). In the Summerville application, Trident relies on increasing its market share in Dorchester County with the additional beds. (Joint Ex. #9 at 37). Trident's filing of its application to add 30 additional licensed beds in the Tri-County Service Area at Summerville Medical Center is contradictory to its position in these proceedings regarding the need for acute care services in the service area.

54. Roper Mount Pleasant Hospital opened on November 1, 2010. (Bowling Trial Tr. 2511:18-23). Trident contends that the utilization of Roper Mount Pleasant Hospital during the first eight months of its operations shows that the proposed hospital in Goose Creek will not be successful. (Pet. Ex. #163-10). I find that the utilization of a new hospital is initially hindered by many factors such as the time necessary to change physician and patient patterns, accreditation delays, and securing specialized services. (Bowling Trial Tr. 2518:22-2519-10, 2521:1-2523:6; Johnson Trial Tr. 2348:16-2349:14). The initial utilization at Mount Pleasant Hospital offered at trial is too small a sample from which to make a factual finding regarding any potential relationship to the future utilization of the Goose Creek hospital.

55. Trident's expert, Mr. Baehr, projected that the Trident Health System would experience 36,418 patient days for Berkeley County residents in 2017, which equates to an average daily census of 99.8 patients. (Pet. Ex. #221; Richardson Trial Tr. 3145:8-22). Since both applicants agree that full capacity for a 50-bed hospital is an average daily census of 35 patients per day, Trident-aligned patients in Berkeley County alone would support between 140 and 150 beds. (Richardson Trial Tr. 3145:23-3146:19).

56. Trident's project calls for the addition of 50 new beds to the Tri-County Service Area and uses a facility-specific bed need published in the *2004-2005 State Health Plan* to apply for the beds. (Joint Ex. #3 at II-17; Brandt Trial Tr. 756:9-757:4; Rardin Trial Tr. 114:21-115:4). Roper St. Francis' project utilizes the bed transfer provision in the *2008-2009 State Health Plan* to transfer 50 existing licensed beds within the service area from Roper Hospital downtown to Roper St. Francis-Berkeley. (Joint Ex. #4 at II-9 to II-10; Brandt Trial Tr. 787:4-789:24). Based on the applications, projections, and evidence received by the Court, I find by the greater weight of the evidence that both hospitals will be well-utilized and financially successful, and the approval of both hospitals will not exceed the need. I further find that Trident failed to prove by a preponderance of the evidence that the approval of both applications will exceed the need for the facilities. *See, e.g.*, S.C. Code Ann. § 44-7-130(5); *see also* 24A S.C. Code Ann. Regs. 61-15 § 103(6).

G. Bed Transfer Provision.

57. Trident challenges Roper St. Francis' application on the grounds that the State Health Plan does not allow an applicant to transfer beds to establish a hospital. DHEC and Roper St. Francis contend that the bed transfer provision, found on pages II-9 and II-10 of the *2008-2009 State Health Plan*, allows Roper St. Francis to transfer beds to construct Roper St. Francis-Berkeley in Goose Creek. The bed transfer provision allows affiliated hospitals "to transfer beds between themselves in order to serve their patients in a more efficient manner." (Joint Ex. #4 at II-9). Trident contends that the language of the bed transfer provision requires that a bricks and mortar existing facility be the receiving facility under the bed transfer provision. The Department Board has held that the receiving facility need not be an existing facility in order to receive beds under the bed transfer provision. (Joint Ex. #16).

58. The State Health Plan is promulgated by the Department pursuant to the mandate set forth in S.C. Code Ann. § 44-7-180. The rules of statutory construction apply to the interpretation of the meaning of regulations. *Converse Power Corp. v. S.C. Dept. of Health and Env'tl. Control*, 350 S.C. 39, 47-49, 564 S.E.2d 341, 345-47 (Ct. App. 2002)); *see also, MRI at Belfair, LLC v. S.C. Dept. of Health and Env'tl. Control*, 379 S.C. 1, 7, 664 S.E.2d 471, 474 (2008) (applying rules of statutory construction to determine the MRI standards in State Health Plan were not violative of the mandates set forth in the CON Act).

The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible. All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute. The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation.

Marlboro Park Hosp. v. S.C. Dept. of Health and Env'tl. Control, 358 S.C. 573, 578-79, 595 S.E.2d 851, 854 (Ct. App. 2004) (internal citations omitted).

59. The Department, along with the state health planning committee, is statutorily charged with creating the State Health Plan on a biennial basis. The Department, however, is the final arbiter of the plan, without legislative overview. S.C. Code Ann. § 44-7-180. As the agency charged not only with the creation of the State Health Plan but the overall responsibilities for the operation and control of the CON program, it is the Department's intent that prevails in interpreting the meaning of the State Health Plan, including the bed transfer provision. *See* S.C. Code Ann. § 44-7-140; *see also Marlboro Park Hosp.* at 578-79, 595 S.E.2d at 854. *Monroe v. Livingston*, 251 S.C. 214, 217, 161 S.E. 2d 243, 244 (1968) (standing for the proposition that has long applied to administrative construction "... affords no basis for the perpetuation of a patently erroneous application of the statute."). That case involved an action by a poultry farmer to recover sales and use taxes paid.

Monroe, id., does not indicate a “tipping point” after which the rule on deference to agency interpretation no longer applies. Suffice it to say that we are in an entirely different arena here, i.e. one in which the agency interpreting the State Health Plan is the final arbiter of the same at the administrative level and, moreover, is interpreting the same in accord with the overall design of the State Certification of Need and Health Facility Licensure Act, S.C. Code Ann. § 44-7-110, et seq. (Rev. 2002) one of the primary aims of which is to “... guide the establishment of health facilities and services which will best serve public needs. ...”. S.C. Code Ann. § 44-7-120. One would be hard pressed to find that the transfer of existing licensed beds to make them more easily accessible to an existing patient base was other than consummate good sense. And, I find that this rationale applies whether the transfer is across the street or across the county or service area.

60. The word “existing” or a similar iteration is not contained in the language of the bed transfer provision. (Joint Ex #4 at II-9 to II-10). Therefore, I find that the plain language of the Plan does not require that the facility receiving the transfer of beds be an existing facility.

61. The DHEC Board issued an Order on May 8, 2009, interpreting the same bed transfer provision at issue in this case, and specifically held that the bed transfer provision “allows for approval of a CON application for the transfer of licensed general acute care hospital beds to establish a new hospital.” (Joint Ex. #16). The Department staff further testified to a long-standing policy of the Department, applied consistently for a number of years, that allows the construction of new hospitals through the transfer of existing licensed beds from affiliated entities. This policy has been used to create new hospitals in Anderson, Charleston, Georgetown, Greenville and Spartanburg. (Joint Exhibit #16, Page 7, Brandt Trial Tr. 693:20-694:7, 804:22-805:15; Shelton Trial Tr. 1132:16-1134:20). I find that the DHEC Board’s

decision, along with a consistent long-standing interpretation by the Department staff, is the best evidence of the intent of the bed transfer provision in the State Health Plan.⁵

62. Further, I find that as the agency charged by the legislature with the creation of the State Health Plan and the overall responsibility for the operation and control of the CON program, deference to the Department's interpretation and implementation of the Plan's provisions is appropriate. *Murphy v. S.C. Dept. of Health and Envtl. Control*, 396 S.C. 633, 640, 723 S.E.2d 191, 195 (2012); *see also* S.C. Code Ann. § 44-1-60(F)(2).

63. In summary, I find that the language in the 2008-2009 State Health Plan does not require that the receiving facility be an existing facility when the application to transfer beds is made, and that the language allows a facility to transfer beds to establish a new hospital provided the bed transfer criteria are satisfied.

64. The State Health Plan requires that an applicant must obtain a CON and comply with eight criteria identified in the State Health Plan in order to transfer licensed beds. (Joint Ex. #4 at II-9 to II-10). The transfer of existing licensed beds from Roper Downtown to construct a hospital at Carnes Crossroads will not increase the number of beds in the service area; Roper St. Francis has acknowledged in writing that this transfer is a permanent transfer and that Roper St. Francis cannot use this transfer as justification to seek additional beds. (Brandt Trial Tr. 838:1-6; Joint Ex. #2 at 975; Severance Trial Tr. 2823:8-2824:2).

65. The bed transfer criteria require that the receiving facility document with historical and projected utilization the need for the transfer. Trident contends that the criteria requiring historical utilization can only be satisfied if there is an existing facility at the proposed site for the receiving facility. I find that Trident's interpretation is overly narrow. It is clear that

⁵ It is interesting to note that Trident Medical Center transferred existing licensed beds in Charleston County to Dorchester County to create Summerville Medical Center in the early 1990's, which at the time of the transfer Summerville was not an existing hospital. (Shelton Trial Tr. 1144:16-1145:10).

a substantial number of patients in the vicinity of the proposed hospital at Carnes Crossroads currently travel many miles to seek service at Roper St. Francis facilities. (Pet. Ex. #166 at 11-33). The evidence at trial and the documentation in the application show the historical utilization of Roper St. Francis in Berkeley County and the southern part of the County near Goose Creek. (Brandt Trial Tr. 805:24-806:19; Resp. Ex. #53; Resp. Ex. #76 at 4713). Roper St. Francis has demonstrated with adequate documentation that there is a sizeable and growing population in southern Berkeley County that will benefit from additional acute care beds. (Resp. Ex. #76 at 4710-4711; Resp. Ex. #59; Bowling Trial Tr. 2643:19-2644:3; Richardson Trial Tr. 3109:16-3110:9).

66. Prior to filing its application, Roper St. Francis analyzed the impact on Roper Downtown Hospital, located on the Charleston peninsula, after the transfer of 50 beds to Berkeley County was complete. (Resp. Ex. #25). That analysis was prepared prior to the filing of the CON application. Based on this analysis, I find that the 266 beds remaining at Roper Downtown are sufficient to meet the needs of the community that Roper Downtown will serve after construction of the hospital in Berkeley County. (*Id.*; Severance Trial Tr. 2807:1-20). While Roper Downtown has had some days with a census greater than 266, I find that the redistribution of patients to the Carnes Crossroads hospital in Goose Creek will more than offset any impact from the loss of these beds at Roper Downtown.

67. I find that Roper St. Francis' CON application complies with the bed transfer provision in the State Health Plan. I find that as required by the bed transfer provision, Roper Hospital Downtown is the transferring facility and Roper St. Francis-Berkeley is the receiving facility. (Brandt Trial Tr. 805:12-18). Finally, I find that the criteria set forth on page II-10 of the *2008-2009 State Health Plan* have been satisfied by Roper St. Francis.

H. Transfer of Facility Bed Need to Build a New Facility.

68. Roper St. Francis challenges Trident's ability to establish its new acute care facility in Moncks Corner using the facility-specific bed need assigned to Trident Medical Center in the *2004-2005 State Health Plan*. (Joint Ex. #3 at II-7, II-17). The Moncks Corner location for Trident's proposed hospital is vacant land on which Trident holds an option to purchase, but does not currently own. (Resp. Ex. #126).

69. Under the *2004-2005 State Health Plan*, the provision by which Trident seeks to add its 50 beds to the service area is found at Chapter II.G.1(A)(4)(d) and provides as follows:

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.

(Joint Ex. #3 at II-7).

70. The *2008-2009 State Health Plan* section regarding facility-specific bed need was revised to include that the bed need may be used to construct "an economical unit at either the existing hospital site or another site." (Joint Ex. #4 at II-7; Baehr Trial Tr. 3726:5-3727:22).

71. DHEC has interpreted this section to allow hospitals with a facility-specific bed need to use that facility-specific bed need to construct a satellite facility at a different location. (Shelton Trial Tr. 1148:4-1149:6).

72. I find that the Department's interpretation of Chapter II.G.1(A)(4)(d) in the *2004-2005 State Health Plan* to allow the transfer of facility-specific bed need to construct a satellite hospital is reasonable and consistent with the goals, purposes and intent of the CON Act. See S.C. Code Ann. § 44-7-120. I further find that Trident's application complies with Chapter II.G.1(A)(4)(d) in the *2004-2005 State Health Plan*. (Joint Ex. #3 at II-7).

73. The positions taken by Trident in its interpretations of the State Health Plans applicable to these applications have been inconsistent. Trident opposes Roper St. Francis' application, arguing that the "plain language" of the bed transfer provision found at Chapter II.G.1(A)(4)(j) in the *2008-2009 State Health Plan* does not specifically allow a facility to transfer beds to establish a hospital at a new location. (Baehr Trial Tr. 1393:8-25). At the same time, Trident seeks to transfer facility-specific bed need at Trident Medical Center in North Charleston to vacant land to establish a new hospital in Berkeley County, despite the fact that the applicable provision at Chapter II.G.1(A)(4)(d) of the *2004-2005 State Health Plan* is silent about whether facility-specific bed need can be transferred to a new site. (Baehr Trial Tr. 3729:16-3730:10). As a result, Trident criticizes the Department for relying on prior practice to approve Roper St. Francis' application while it relies on prior practice of the Department to request approval of its project.

74. Consistent with my finding as to the bed transfer provision, I find that the Department's previous interpretation of the facility-specific bed need provision allowing for the establishment of a new hospital by transferring facility-specific bed need is entitled to deference from this Court. *See, e.g., Murphy*, 723 S.E.2d at 195; *see also* S.C. Code Ann. § 44-1-60(F)(2).

I. Approvability of Roper St. Francis.

75. Trident asserts that the Department erred in approving Roper St. Francis' project. Specifically, Trident submits through its expert, Mr. Baehr, that Roper St. Francis' application should not have been approved for the following reasons: (1) adverse impact of the project outweighs access improvement; (2) failure to identify the served communities; (3) errors on the financial pro formas resulting in the project's failure to meet the feasibility test by year three; and

(4) lack of acceptability from competing hospitals. (Baehr Trial Tr. 1534:20-1535:25; Pet. Ex. #46).

76. The 2008-2009 *State Health Plan* requires that when evaluating a CON for general hospitals, the Department must equally weigh the benefits of improved accessibility with the adverse effects of duplication. (Joint Ex. #4 at II-11). The Department specifically found that Roper St. Francis' CON "will increase accessibility and availability of services for residents of Berkeley County" and that "there should be minimal impact upon other facilities in the proposed service area." (Joint Ex. #2 at 1263).

77. As to adverse impact, the CON Regulations require adverse impact be evaluated by considering "(a) [t]he impact on the current and projected occupancy rates or use rates of existing facilities and services should be weighed against the increased accessibility offered by the proposed services" and "(b) [t]he staffing of the proposed service should be provided without unnecessarily depleting the staff of existing facilities or services or causing an excessive rise in staffing costs due to increased competition." 24A S.C. Code Ann. Regs. 61-15 § 802(23).

78. The 2007 inpatient market share for Berkeley County was divided primarily among four providers: Trident Health System at 52.3%, Roper St. Francis at 24.1%, MUSC Medical Center at 18.0%, and East Cooper Regional Medical Center at 3.5% – in total accounting for 97.9% of the inpatient discharges in Berkeley County. (Pet. Ex. #231). The 2010 inpatient market share remained relatively stable at 52.0%, 23.6%, 18.1% and 3.6% respectively – in total accounting for 97.3% of the inpatient discharges in Berkeley County. (*See id.*).

79. First, both applicants justified the need for acute care services in Berkeley County in part on the growing population and the increasingly difficult travel conditions for residents having to travel outside the county to obtain inpatient hospital services. Trident's application

states: "As Berkeley and Dorchester Counties continue to grow, it will become progressively less feasible and less fair to expect their residents to make long automobile drives to access routine acute care services at facilities that are distant from their homes." (Joint Ex. #1 at 24). Roper St. Francis submitted testimony explaining that the increased congestion in Charleston and continued growth makes it increasingly difficult for Roper St. Francis' patients to access their healthcare services in downtown Charleston and even in West Ashley. (Bowling Trial Tr. 2477:6-10). Trident's application agrees with this concept, stating that with the vast majority of the Tri-County Service Area beds being located in downtown Charleston, services are not conveniently accessible to Berkeley County residents and are becoming less so as the population moves north and west. (Joint Ex. #1 at 31; Resp. Ex. #75). I find that both of these projects satisfy the need for increased accessibility to inpatient services, which minimizes the adverse impact for the existing providers.

80. In its application, Trident discusses the potential impact of its hospital in Moncks Corner on the existing providers, including the Trident hospitals of Trident Medical Center in North Charleston and Summerville Medical Center in Dorchester County. Trident projects that its proposed hospital in Moncks Corner will reach capacity without having any effect on the market share of any existing provider.(Joint Ex. #1 at 36-37). In other words, Trident's new hospital in Moncks Corner will not cause any patients currently aligned with other providers such as Roper St. Francis or MUSC to switch their alliance to Trident thereby increasing Trident's market share in Berkeley County. (Brandt Trial Tr. 861:2-8). As a result of this lack of shift in market share, Trident states the following about adverse impact in its application:

In some Certificate of Need applications, applicants contend that if total service area growth is sufficient to maintain existing providers at their existing levels of service while at the same time permitting the proposed facility to achieve needed volume, then the issue of adverse impact can be dismissed. The existing

providers will not, under this scenario, experience a material adverse impact. The proposed project [in Moncks Corner] passes an even more rigorous adverse impact test. As shown above, existing providers will maintain their current market shares and they will be able to enjoy the same benefits of service area population growth that they historically have done.

(Joint Ex. #1 at 38-39).

81. Before I address the experts' analysis of lost cases, I note that the vast majority of findings that I have made herein indicate that the 50-bed hospital at Carnes Crossroads in Goose Creek will not cause much, if any, change in market share, and that the adverse impact upon Trident Medical Center and Summerville Medical Center will be minimal. Some of those findings are the following: the substantial growth in population that has occurred in Berkeley County and that is expected to continue; that each applicant has designed its project to serve patients that are already aligned with its system; the Carnes Crossroads hospital in Goose Creek is a small acute care hospital that even if the hospital operates at capacity, it will have little impact on a large system such as Trident; the medical staffs of Trident and Roper St. Francis are separate and loyal to their system of choice; and redirecting a sizeable portion of the Roper St. Francis-aligned patients to Carnes Crossroads in Goose Creek will cause the new hospital to operate at near capacity. *See, e.g., Findings of Fact #23, 25, 28, 32, 33, 34, 35, 49, supra.*

82. At trial, both applicants presented projections of the number of lost cases to be sustained by Trident Health System from the opening of the Roper St. Francis hospital at Carnes Crossroads. Initially, I note that during the review process, Trident's attempt to quantify and justify adverse impact upon its existing facilities was minimal. Trident presented to the Department no estimates of lost cases or financial loss until three days before the Department was to make its decision and the estimates contained little explanation. (Brandt Trial Tr. 867:2-24; Joint Ex. #1 at 900).

83. At trial, Trident presented a calculation of lost cases and the financial impact to Trident Health System from these lost cases to be \$14 million by year three. (Pet. Ex. #46 at 38; Baehr Trial Tr. 1377:2-5). Mr. Baehr's calculated financial loss overstates the impact to Trident because he includes loss from tertiary cases and fails to consider the significant redirection of Roper St. Francis-aligned patients to the hospital in Goose Creek, having told the Department that Roper St. Francis' proposal to redirect patients was "arbitrary" and "speculation." (Baehr Trial Tr. 1501:11-1502:17; Joint Ex. #1 at 902). At the same time, Trident's application projects 100% redirection of Trident-aligned patients to support its proposed Moncks Corner hospital. (Brandt Trial Tr. 869:13-19). This contradiction in position weakens the analysis and is not supported by the evidence, which leads me to find that the redirection of aligned patients is probable for both projects. *See, e.g., Findings of Fact #32, 33 and 34, supra.*

84. I find Mr. Richardson's analysis of the lost cases to Trident to be most persuasive. Mr. Richardson, Roper St. Francis' expert in healthcare planning, testified to a "likely" and "worst case" scenario in testing the impact upon Trident from the Roper St. Francis hospital in Goose Creek. (Resp. Ex. #70). Mr. Richardson testified that the likely scenario, as assumed in the application, is that Trident may lose its proportionate share of Roper St. Francis' small market share gain to equal about 897 discharges; however, this impact is entirely offset by the growth in the Trident system during the same period of time, resulting in no adverse impact. (*See id.*; Richardson Trial Tr. 3219:18-3222:18). For any adverse impact to occur, Trident would have to bear 100% of the small market share shift to Roper St. Francis, meaning MUSC and East Cooper would not be impacted at all by the shift. I find this scenario highly unlikely. I find that even under the worst case scenario set forth by Mr. Richardson, the potential adverse impact

upon Trident does not outweigh the substantial benefit of increased accessibility to Berkeley County residents from the hospital in Goose Creek.

85. Trident elicited substantial testimony about the Roper St. Francis Physician Network. I find that the healthcare industry is changing and many primary care physicians are seeking employment with hospital systems. (Bowling Trial Tr. 2577:21-2578:17; Severance Trial Tr. 2819:10-2821:13). Some of the circumstances driving physicians to seek employment include the desire for younger physicians to work within a system, the cost of mandated technology infrastructure, and declining reimbursement. (Bowling Trial Tr. 2572:22-2574:23). As a result, systems like Trident and Roper St. Francis are employing physicians. (Gallati Trial Tr. 371:17-372:1; Gunn Trial Tr. 2042:23-2043:2; Bowling Trial Tr. 2443:9-16). There was no evidence that the employment of physicians has had a direct impact on the market shares of the existing providers in the service area, which have remained stable. (Pet. Ex. #231). Because both systems seek to employ physicians and each system has a separate and distinct medical staff, any finding regarding impact of the possible future employment of physicians in Berkeley County would be highly speculative and not supported by the evidence received by this Court.

86. Trident offered the expert opinion of Mr. Baehr that Roper St. Francis' CON application was deficient because it used the entire county of Berkeley as its target population rather than use zip code level data. (Baehr Trial Tr. 1233:16-1235:2). Mr. Baehr acknowledged, however, that the Department did not indicate it needed zip code level analysis from Roper St. Francis. (*Id.*) Mr. Baehr also admitted that he has participated in need analyses based on county projections as opposed to zip code level analyses and that use of types of analysis other than zip code may be appropriate. (Baehr Trial Tr. 1638:14-1639:1).

87. Roper St. Francis' expert, Mr. Richardson, testified that the State of South Carolina's population projections only look to county level data as opposed to zip code level data as some private data providers may offer. (Richardson Trial Tr. 3097:12-3099:12). Mr. Richardson further testified that the smaller the geographic area a planner uses when forecasting, the less precise the results will be. (*Id.* at 3194:17-3195:24).

88. The CON Regulations require that an applicant's projections of population changes must be "reasonable and based upon accepted demographic or statistical methodologies" and that the applicant must "use population statistics consistent with those generated by the State Demographer, State Budget and Control Board." 24A S.C. Code Ann. Regs. 61-15 § 801(2)(b). Roper St. Francis used the population data published by the State of South Carolina's very own State Budget and Control Board data for its application. (Joint Ex. #2 at 20-23). I find that Roper St. Francis' CON application is not deficient for failing to use zip code level analysis for its need projections.

89. Trident's expert propounded that errors in the financial pro formas contained in Roper St. Francis' CON application resulted in a failure to meet the year three feasibility standard for the project. (Baehr Trial Tr. 1535:4-16). Despite this statement claiming defect, Mr. Baehr testified that he believed the Roper St. Francis-Berkeley Hospital project is financially feasible. (*Id.* at 1617:16-1618:15).

90. Roper St. Francis' healthcare finance expert, Mr. Rick Knapp, submitted an incremental pro forma which does not include the revenues and expenses associated with the redirected patients. (Knapp Trial Tr. 2907:7-21). Using an incremental, as opposed to full venue, pro forma is a more rigorous financial feasibility analysis because it ignores a sizeable amount of the revenue of the hospital, namely the revenue and expenses associated with the

redirected patients. (Knapp Trial Tr. 2915:16-22). A full venue pro forma captures all revenue and all expenses associated with the facility. (Knapp Trial Tr. 2907:4-2908:3). Trident's pro forma was primarily a full venue pro forma so it considered revenue and expenses of all inpatients, whether or not the patient was redirected from Trident Medical Center or Summerville Medical Center. (Baehr Trial Tr. 1619:1-8). The Department accepted either approach.

91. While there was disputed testimony about Mr. Knapp's calculation of incremental cases, I find that this issue has no effect on whether the Roper St. Francis hospital is financially feasible. I find that the hospital is financially feasible as both experts testified that using a full venue approach, the Carnes Crossroads hospital in Goose Creek is financially feasible. (Baehr Trial Tr. 1617:14-16; Knapp Trial Tr. 2917:7-13).

92. Trident alleges that the Roper St. Francis application is deficient for failing to have documented support from other hospitals. (Baehr Trial Tr. 1535:17-23). The CON Regulations require as evidence of acceptability that the "proposal and applicant should have the support of 'affected persons' (including local providers and the target population)." 24A S.C. Code Ann. 61-15 § 801(4)(1). The criteria further provides that "[w]here documented opposition exists to a proposal, such opposition will be considered along with the application." *Id.* at § 801(4)(b).

93. Roper St. Francis' CON application contained hundreds of letters of support from affected persons, including local physician providers and residents of Berkeley County. (Joint Ex. #2). Trident is the only affected person whose opposition to the Roper St. Francis-Berkeley project has been documented for the Department or the Court. The CON Regulations do not require that an applicant have documented support from hospitals and Trident did not present any

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evidence of documented opposition by any other hospital. (Baehr Trial Tr. 3572:8-22). Therefore, I find that Roper St. Francis satisfies the acceptability criteria as set forth in the CON Regulations.

94. Finally, I find by a preponderance of the evidence that the Roper St. Francis application complies with the *2008-2009 State Health Plan* and Project Review Criteria and that Trident failed to prove by a preponderance of the evidence that the Department erred in finding Roper St. Francis' application complied with the *2008-2009 State Health Plan* and the Project Review Criteria.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude the following as a matter of law:

1. This tribunal has jurisdiction over this contested case pursuant to S.C. Code Ann. § 44-1-60(F) (Supp. 2006) and S.C. Code Ann. §§ 1-23-310 *et seq.* (2002). As a statewide administrative tribunal authorized to hear evidence and adjudicate this contested case, this tribunal is the finder of fact in a contested case challenging the Department's decision on a CON application. *Spartanburg Reg'l Med. Ctr. v. Oncology and Hematology Assoc. of S.C.*, 387 S.C. 79, 89, 690 S.E.2d 783, 788 (2010) (*citing* S.C. Code Ann. § 1-23-600).

2. "On the basis of staff review of the record established by the Department, including but not limited to, the application, comments from affected persons and other persons concerning the application, data, studies, literature, and other information available to the Department, the staff of the Department shall make a proposed decision to grant or deny the Certificate of Need." 24A S.C. Code Ann. Regs. 61-15 § 308(1). DHEC's initial staff decision on a CON application is a proposed decision that becomes a final agency decision unless a request for final review is timely filed by the applicant or by an affected person. S.C. Code Ann.

§ 44-1-60(E) (Supp. 2006). If the Department Board does not hold a final review conference, the staff decision becomes the final agency decision unless an applicant or affected person timely requests a contested case hearing before the Administrative Law Court. *Id.* at § 60(F). For these decisions, each party timely requested a final review conference, which the DHEC Board declined to hold, thereby affirming the staff decisions to approve both CON applications. *See* Pet.'s Req. for Contested Case Proceed'g at Ex. B, filed Aug. 7, 2009; Resp.'s Req. for Contested Case Proceed'g at Ex. C, filed Aug. 7, 2009.

3. Trident and Roper St. Francis timely filed their requests for a contested case hearing regarding DHEC's approval of the two CON applications. *See* 24A S.C. Code Ann. Regs. 61-15 § 403(1) (2003). Because Trident and Roper St. Francis are existing providers of patients in the Tri-County Service Area, they are "affected persons" for the purposes of participating in a contested case related to DHEC's decisions to approve the CONs. *See* S.C. Code Ann. § 44-7-130(1) (Rev. 2002); 24A S.C. Code Ann. Regs. 61-15 § 103(1).

4. Trident and Roper St. Francis each have standing as required to participate in these contested case proceedings. S.C. Code Ann. § 44-7-210(D) (Rev. 2002). "To have standing, one must have a personal stake in the subject matter of the lawsuit. In other words, one must be a real party in interest." *Sea Pines Ass'n for the Prot. of Wildlife, Inc. v. S.C. Dep't of Natural Res.*, 345 S.C. 594, 600, 550 S.E.2d 287, 291 (2001) (citing *Charleston Cnty. Sch. Dist. v. Charleston Cnty. Election Comm'n*, 336 S.C. 174, 519 S.E.2d 567 (1999)). Trident and Roper St. Francis each have a personal stake and interest in the approval or denial of the applications under review and would be substantially prejudiced if unable to challenge or defend the decisions of the Department.

5. In light of Trident's challenge to DHEC's decision to approve both applications, Trident, as the moving party, bears the burden of proof in this contested case to reverse the Department's finding that the applications are not competing and to reverse the approval of the Roper St. Francis CON application. See S.C. Code Ann. § 44-7-210(E) (Rev. 2002); 24A S.C. Code Ann. Regs. 61-15 § 403(1); see also *Leventis v. S.C. Dep't of Health and Env'tl. Control*, 340 S.C. 118, 132-33, 530 S.E.2d 643, 651 (Ct. App. 2000) (holding that the burden of proof in administrative proceedings generally rests upon the party asserting the affirmative of an issue); cf. 2 Am. Jur. 2d *Administrative Law* § 360 (1994). Therefore, Trident must prove by a preponderance of the evidence that the Department erred in approving both applications under the applicable statutes and regulations or that the Department erred in finding that the Roper St. Francis CON application complied with the State Health Plan and Project Review Criteria. See *Anonymous v. State Bd. of Med. Exam'rs*, 329 S.C. 371, 375, 496 S.E.2d 17, 19 (1998) (holding that the standard of proof in an administrative proceeding is generally the preponderance of the evidence); *Nat'l Health Corp. v. S.C. Dept. of Health and Env'tl. Control*, 298 S.C. 373, 379, 380 S.E.2d 841, 844 (Ct. App. 1989) (holding that the preponderance of the evidence standard applies in CON disputes). Similarly, as to Roper St. Francis' challenge to Trident's compliance with the 2004-2005 State Health Plan, Roper St. Francis must prove by a preponderance of the evidence that the Department erred in finding that Trident's application complied with the 2004-2005 State Health Plan.

6. A contested case hearing on a CON application is conducted as a contested case under the Administrative Procedures Act (APA). S.C. Code Ann. § 44-7-210(E) (Rev. 2002). The issues to be considered at the contested case hearing are limited to those presented to or considered by DHEC during the staff review and decision-making process. *Id.*; 24A S.C. Code

Ann. Regs. 61-15 § 403(1). As long as no new issues are considered in these contested case proceedings, any evidence pertinent to the issues considered by DHEC staff may be considered by this tribunal. *Marlboro Park Hosp. v. S.C. Dep't of Health and Envtl. Control*, 358 S.C. 573, 578-79, 595 S.E.2d 851, 854 (Ct. App. 2004).

7. The weight and credibility assigned to evidence presented at the hearing of a matter is within the province of the trier of fact. *See S.C. Cable Television Ass'n v. S. Bell Tel. & Tel. Co.*, 308 S.C. 216, 222, 417 S.E.2d 586, 589 (1992). Furthermore, a trial judge who observes a witness is in the best position to judge the witness's demeanor and veracity and to evaluate the credibility of his testimony. *See, e.g., Woodall v. Woodall*, 322 S.C. 7, 10, 471 S.E.2d 154, 157 (1996); *Wallace v. Milliken & Co.*, 300 S.C. 553, 556, 389 S.E.2d 448, 450 (Ct. App. 1990).

8. Under the South Carolina Rules of Evidence, "[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." Rule 702, SCRE. An expert is granted wide latitude in determining the basis of his or her opinion, and where an expert's testimony is based upon facts sufficient to form an opinion, the trier of fact must weigh its probative value. *Small v. Pioneer Machinery, Inc.*, 329 S.C. 448, 470, 494 S.E.2d 835, 846 (Ct. App. 1997).

9. "[E]xpert testimony is essential in cases which involve a subject of special technical science, skill, or occupation of which the members of the jury or the trial court are not presumed to be specially informed." 32A C.J.S. *Evidence* § 729, at 85 (1996). For example, the South Carolina Supreme Court has held that, in medical malpractice cases, "the plaintiff must use expert testimony . . . unless the subject matter lies within the ambit of common knowledge

and experience, so that no special learning is needed to evaluate the conduct of the defendant.” *Pederson v. Gould*, 288 S.C. 141, 143, 341 S.E.2d 633, 634 (1986).

10. In general, “expert opinion evidence is to be considered or weighed by the triers of the facts like any other testimony or evidence . . . [;] the triers of fact cannot, and are not required to, arbitrarily or lightly disregard, or capriciously reject, the testimony of experts or skilled witnesses, and make an unsupported finding to the contrary of the opinion.” 32A C.J.S. *Evidence* § 727, at 82-83 (1996). However, the trier of fact may give an expert’s testimony the weight he or she determines it deserves. *Florence Cnty. Dep’t of Soc. Servs. v. Ward*, 310 S.C. 69, 72-73, 425 S.E.2d 61, 63 (Ct. App. 1992). Further, the trier of fact may accept the testimony of one expert over that of another. *See S.C. Cable Television Ass’n v. S. Bell Tel. & Tel. Co.*, 308 S.C. 216, 417 S.E.2d 586 (1992).

11. Prior to trial, this Court ruled that in the event that I found that the applications are competing, this matter would be remanded to the Department. *See* Order Granting Resp.’s Mot. Partial Summ. J. dated Feb. 10, 2012. As a result, these applications have not been compared against each other and must be evaluated independently.

12. The “State Certification of Need and Health Facility Licensure Act,” S.C. Code Ann. §§ 44-7-110 *et seq.* (Rev. 2002), requires DHEC to establish a certificate of need program 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 South Carolina. S.C. Code Ann. § 44-7-120. The CON Act was revised by Act 278 effective July 1, 2010; however, those revisions are expressly limited to matters filed on or after the effective date of the legislation and therefore are not applicable to these proceedings filed August 7, 2009.

13. CON applications are reviewed by the Department under the thirty-three project review criteria listed in Section 802 of S.C. Code Ann. Regs. 61-15. The State Health Plan outlines the need for medical facilities and services in the State and compliance with the Plan is one criterion for reviewing projects under the CON program. S.C. Code Ann. Regs. 61-15 § 802(1). While a project does not have to satisfy every project review criteria in order to be approved, no project may be approved unless it is consistent with the State Health Plan. *Id.* at § 801(3). Even if a project complies with the State Health Plan, however, the project may be denied if DHEC determines that the project does not sufficiently meet one or more of the review criteria. *See id.* § 307(1), § 801(3); *see also* S.C. Code Ann. § 44-7-210(C).

14. In conducting this review, DHEC must determine the relative importance of the project review criteria to be used in evaluating the CON application, and the relative importance of these criteria must be tailored to suit the specific project under review. 24A S.C. Code Ann. Regs. 61-15 §§ 304, 801(2). With regard to the instant applications, DHEC determined that the most important project review criteria were: compliance with the State Health Plan (1), community need documentation (2a, 2b, 2c, 2e), distribution (accessibility) (3a, 3b, 3c, 3d, 3e, 3f), financial feasibility (15), acceptability (4a, 4b, 4c), adverse effects on other facilities (23a), and distribution (22). (Joint Ex. #1 at 727; Joint Ex. #2 at 1108).

15. The establishment and expansion of hospitals in South Carolina are subject to review under the State's CON program. S.C. Code Ann. § 44-7-160(1). In each State Health Plan, a hospital is defined as a "facility organized and administered to provide overnight medical or surgical care or nursing care . . . by or under the direction of persons currently licensed to practice medicine, surgery, or osteopathy." (Joint Ex. #4 at II-4). The distinguishing factor for a

hospital is the overnight stay. As a result, the methodology to measure capacity and need is through the use of a licensed hospital bed. (*Id.* at II-6).

16. Trident attempted to elicit testimony at trial to show that the State Health Plan does not have standards for the establishment of new hospitals, which is inconsistent with the statutory mandate for the CON program according to S.C. Code Ann. § 44-7-180(B). As a threshold matter, I find that Trident failed to present this issue to the Department below as required by S.C. Code Ann. § 44-7-210(E) and 24A S.C. Code Ann. Regs. 61-15 § 403(1) and therefore the issue is not properly before the Court.⁶ In the interests of judicial economy, were the issue properly before the Court, I find that the State Health Plan, although it does not have a “step by step” provision for the creation of all possible categories of hospitals, does have standards for the establishment of new hospitals.

17. Both the *2004-2005 State Health Plan* and the *2008-2009 State Health Plan* contain an entire chapter with standards and criteria for General Hospitals. (Joint Ex. #3 at II-4; Joint Ex. #4 at II-4; Shelton Trial Tr. 1118:5-12). In fact, the very first category under “Categories of Facilities and Services: General Medical Facilities and Services” is “General Hospitals.” (*Id.*). The general hospitals section includes an inventory, need methodology and projections, standards for distribution, and a statement as to the project review importance. (*Id.*). I find that Trident’s reference to S.C. Code Ann. § 44-7-180(B) and the allegation that the Plans fail to satisfy the requirements of subsection 180(B)(3) is not supported by the language of the State Health Plan. (Joint Ex. #3 at II-4; Joint Ex. #4 at II-4; Shelton Trial Tr. 1118:5-1122:11; Brandt Trial Tr. 846:16-849:13).

⁶ In addition to its application, Trident presented a thirty-nine page powerpoint presentation at the project review meeting and presented four letters to the Department setting forth its position for approval of its application and opposition to Roper St. Francis-Berkeley’s application. (Joint Ex. #1 at 754-792, 830-855, 856-869, 893-898, 900-903). At no time did Trident contend that the State Health Plan was deficient because it did not include standards for the establishment of a hospital.

18. Under the State Health Plan, the determination of whether additional licensed beds are needed in a service area is based on a methodology set forth in the General Hospitals section of the State Health Plan, referred to as the bed need methodology. (Joint Ex. #4 at II-7). The calculation looks at the individual utilization of each hospital along with the need for beds at each hospital and the service area as a whole,⁷ calculating a sum total bed need or bed excess for each facility and service area. (*Id.*; Shelton Trial Tr. 1054:9-24). The underlying formula is based on historical utilization, projected population, capacity, and occupancy percentage to project the number of future licensed beds needed for each existing facility and service area. (Joint Ex. #4 at II-7). As a result, under the formula, each facility and service area will show either excess licensed beds or a licensed bed need. (*Id.* at II-10 to II-19).

19. The 2008-2009 State Health Plan sets forth minimum requirements before a hospital will be approved, including a 24-hour emergency department, inpatient medical services for both surgical and non-surgical patients, and medical and surgical services for at least six diagnostic categories. (Joint Ex. #4 at II-8). In addition, the State Health Plan provides for redistributing beds through a transfer of beds and for the modernization of facilities. (*Id.* at II-9 to II-10).

20. The bed need methodology and other provisions in the General Hospitals section of the State Health Plan contain the standards and guidelines for the establishment and expansion of hospitals and satisfy the requirements mandated by section 44-7-180(B) of the CON Act.

21. Roper St. Francis' application complies with the bed transfer provision found at Chapter II.G(A)(4)(j) of the 2008-2009 State Health Plan. (Joint Ex. #4 at II-9). It is my finding that Trident's reading of the word "existing" before "receiving facility" is not supported by the

⁷Under the 2004-2005 State Health Plan, bed need was only calculated based on individual facilities, there was no calculation for the service area as a whole. (Joint Ex. #3, II-7). This distinction is not relevant to any disputed issues before the Court.

Department Board's interpretation of the provision, or the DHEC staff's longstanding policy in applying the provision. *See Sloan v. S.C. Bd. of Physical Therapy Examiners*, 370 S.C. 452, 468 636 S.E.2d 598, 606 (2006); Joint Ex. #16; Brandt Trial Tr. 693:20-694:7, 804:4-805:6; Shelton Trial Tr. 1132:16-1134:20. Roper St. Francis adequately documented compliance with all the required criteria to transfer hospital beds which includes the following:

- (a) There will be no increase in the number of beds in the service area as a result of the transfer.
- (b) The historical utilization of Berkeley County residents at Roper St. Francis facilities.
- (c) The benefits of the transfer for Berkeley County residents and the impact, if any, on the health care delivery system of Charleston County as a result of the transfer.
- (d) The acknowledgement by Roper Hospital Downtown of the permanence of the bed transfer.
- (e) The approval by the Board of Directors for Roper St. Francis of the proposed transfer.

(Joint Ex. #3 at II-9 to II-10; Joint Ex. #2).

22. I conclude that the State Health Plan allows Roper St. Francis to transfer licensed beds from Roper Downtown to establish the proposed hospital in Goose Creek and that Trident failed to present evidence sufficient to meet its burden of proving by a preponderance of the evidence that the Department erred in finding that Roper St. Francis' application complies with the *2008-2009 State Health Plan*.

23. Trident's application complies with the *2004-2005 State Health Plan* in that Trident may use the facility-specific bed need reserved to Trident Medical Center under the Plan to establish the 50-bed facility in Moncks Corner. (Joint Ex. #3 at II-7). I conclude that the State Health Plan allows Trident to transfer facility-specific bed need to establish the proposed hospital in Moncks Corner and that Roper St. Francis failed to prove by a preponderance of the

evidence that the Department erred in finding that Trident's application complies with the *2004-2005 State Health Plan*.

24. A determination of "need," for CON purposes, is generally made by considering existing resources in the community along with documentation suggesting how the existing resources are not adequate to meet the needs of the community. *See Spartanburg Reg'l*, 387 S.C. at 85-91, 690 S.E.2d at 786-89 (finding substantial evidence in the record to support lower court's ruling where both applicants presented projections of future cases based on population data and incidence rates for cancer). Beyond this general statement of need, Section 802(2)(e) of Regulation 61-15, which the Department has identified as an important review criteria in this case, requires a CON applicant to provide documentation establishing that "[c]urrent and/or projected utilization . . . [is] sufficient to justify the expansion or implementation of the proposed service."

25. Both parties' experts in healthcare planning agreed that a need exists for general acute care inpatient services in Berkeley County. (Baehr Trial Tr. 1222:15-1223:3; Richardson Trial Tr. 3104:18-3106:16). Further, both experts offered trial exhibits showing that the Berkeley County population and existing market shares of each provider are sufficient to support the 100 beds proposed to be located in Berkeley County. (Pet. Ex. #221; Resp. Ex. #70). Moreover, Trident's project is based on a facility-specific bed need in the *2004-2005 State Health Plan* and Roper St. Francis' project is a transfer of existing licensed service area beds. Thus, there is a net increase of only 50 new licensed beds for the service area which results from Trident's project.

26. Competing applicants are defined as follows:

[T]wo or more . . . health care facilities . . . who apply for Certificates of Need to provide similar services or facilities in the same service area within a time frame

as established by departmental regulations and whose applications, if approved, would exceed the need for services or facilities.

S.C. Code Ann. § 44-7-130(5); *see also* 24A S.C. Code Ann. Regs. 61-15 § 103(6). As the Supreme Court has explained, where abundant factual evidence supports a finding that the approval of two applications would not exceed the need for the facilities or services, the applications are not competing. *See Spartanburg Reg'l Med. Ctr.*, 387 S.C. at 91, 690 S.E.2d at 789.

27. I have found herein that there is abundant evidence and testimony to support that the approval of both applications will not exceed the need for the facilities, and therefore, the applications are not competing as defined by S.C. Code Ann. § 44-7-130(5) and 24A S.C. Code Ann. Regs. 61-15 § 103(6). Further, based on the findings of fact herein, there is need for each proposed hospital and both hospitals will have high utilization and should be financially successful. Accordingly, as to Project Review Criteria #1, each party has satisfied the criteria.

28. As to Project Review Criteria #2, the Court is not persuaded by Trident's argument that Roper St. Francis' use of the State's demographic data and county-level analysis rendered the application deficient for purportedly failing to properly identify the target population, a level of analysis Trident's own expert has used in his past work as a healthcare consultant. *See* 24A S.C. Code Ann. Regs. 61-15 § 802(2). Accordingly, Roper St. Francis' application complies with Project Review Criteria #2. Likewise, Trident's application complies with Project Review Criteria #2.

29. As to Project Review Criteria #3, Trident failed to prove that Roper St. Francis' project unnecessarily duplicates existing services or fails to adequately increase access to health care services. The evidence shows that several of the existing acute care facilities are within short distances from each other, including Trident's two existing inpatient facilities – Trident

Medical Center and Summerville Medical Center. (Resp. Ex. #76). I conclude that the geographic distance between a proposed facility and existing facilities alone is not determinative of unnecessary duplication. As to increased access, the Carnes Crossroad hospital in Goose Creek will significantly decrease travel times for the nearly one-quarter of Berkeley County residents who are Roper St. Francis patients that travel from Berkeley County to downtown Charleston or West Ashley to obtain care. (Bowling Trial Tr. 2476:19-2477:10). Moreover, Mr. Baehr, Trident's expert, documented that both projects would improve access for over 2,000 low income households not presently within seven miles of an existing hospital. (Pet. Ex. #222-001).

30. I find that any duplication of services as proposed by Roper St. Francis is justified and is more than outweighed by the increased access the project offers to a substantial portion of Berkeley County residents. Accordingly, Roper St. Francis' application complies with Project Review Criteria #3. Roper St. Francis did not contend that Trident failed to comply with Project Review Criteria #3.

31. As to Project Review Criteria #4, both projects have more than adequate public support and the lack of documented support of the Roper St. Francis project by other hospitals is not evidence of lack of acceptability. See 24A S.C. Code Ann. Regs. 61-15 § 802(4). Accordingly, both Roper St. Francis' application and Trident's application comply with Project Review Criteria #4.

32. As to Project Review Criteria #15, both parties agreed that both projects are financially feasible. (Baehr Trial Tr. 1617:17-19; Knapp Trial Tr. 2916:20-2917:6). The issues raised regarding the Roper St. Francis incremental pro forma are irrelevant as to whether the Roper St. Francis hospital projects immediate and long-term financial feasibility. Both applicants relied upon reasonable and generally accepted accounting principles. A venue-based

pro forma shows that the Roper St. Francis hospital will have more than sufficient income to be financially feasible. (Knapp Trial Tr. at 2917:7-13). Finally, both applicants are successful and large health systems with substantial revenue and earnings to support a 50-bed hospital. (Resp. Ex. #160, Pet. Ex. #162). Accordingly, Roper St. Francis' application and Trident's application comply with Project Review Criteria #15.

33. As to Project Review Criteria #22, the existing hospital beds in the Tri-County Service Area are clustered in Charleston County and there exists a maldistribution of beds in the service area. Roper St. Francis' application to transfer 50 licensed beds from the Charleston peninsula to Berkeley County, a location with explosive growth, is an appropriate and beneficial distribution of services to the target population. (Resp. Ex. #75, Resp. Ex. #76; Richardson Trial Tr. 3110:16-3111:14). Accordingly, Roper St. Francis' application complies with Project Review Criteria #22. Likewise, Trident's decision to transfer bed need from its hospital in Charleston County north to Moncks Corner complies with Project Review Criteria #22.

34. As to Project Review Criteria #23, Trident submitted evidence and testimony from Mr. Baehr claiming the impact on Trident Health System from the Roper St. Francis-Berkeley hospital would be fourteen million dollars by year three. (Baehr Trial Tr. 1377:2-5). "An 'adverse impact,' for CON purposes, can generally be construed to mean a material decrease in the present or future use or occupancy rates of existing providers for like procedures." *See Marlboro Park Hosp.*, 358 S.C. at 580, 595 S.E.2d at 854; *see also* 24A S.C. Code Ann. Regs. 61-15 § 802(23)(a) (Supp. 2001)). I have rejected the adverse impact analysis from Mr. Baehr as overstating the impact from the Roper St. Francis hospital in Goose Creek. I have found that the adverse impact analysis offered by Roper St. Francis more accurately reflects the likely impact

of the Roper St. Francis hospital on Trident and, therefore, there will be no material adverse impact on Trident as a result of the approval of the applications.

35. Project Review Criteria #23 also speaks to staffing to determine whether an applicant will adversely impact other facilities. See 24A S.C. Code Ann. Regs. 61-15 § 801(23)(b). I find no credible evidence that the approval of the Roper St. Francis project will adversely impact Trident's staffing levels or costs. (Baehr Trial Tr. 1715:10-14). Accordingly, Roper St. Francis' application complies with Project Review Criteria #23.

36. Roper St. Francis did not contend that Trident's proposed hospital in Moncks Corner would have a material adverse impact on Roper St. Francis in regards to lost cases or staffing. Accordingly, Trident's application complies with Project Review Criteria #23.

37. As to Project Review Criteria #31, both applicants clearly showed that their proposed hospital will serve medically underserved groups. (Resp. Ex. #164; Pet. Ex. #222). As explained in this Court's Order Granting Partial Summary Judgment to Roper St. Francis dated February 10, 2012, in light of the Department's determination that the underlying applications are not competing, the Department never compared the applications to determine "which, if any, most fully complies with the requirements, goals, and purposes of this article and the State Health Plan, Project Review Criteria, and the regulations adopted by the department." S.C. Code Ann. § 44-7-210(B); (Brandt Trial Tr. 726:10-24). It is not this Court's role to compare the applications to determine which may be superior to the other in any respect. I find no credible evidence that Roper St. Francis' application does not comply on its own merit with Criteria #31. (Baehr Trial Tr. 1671:15-1672:17). Roper St. Francis provides a substantial amount of indigent care and will continue to do so at this hospital; plus, a substantial number of low income households will have increased access to healthcare as a result of the application. (Resp. Ex.

#164; Pet. Ex. #222; Johnson Trial Tr. 2185:21-2188:7). Accordingly, Roper St. Francis' application complies with Project Review Criteria #31. Likewise, there is no credible evidence that Trident's application does not comply with Project Review Criteria #31.

38. As to the remaining Project Review Criteria, no other criteria were raised as issues in this case and therefore neither party established that either applicant failed to comply with any other Project Review Criteria.

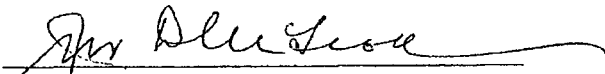
39. In conclusion, the two CON applications are not competing applications and therefore must be evaluated individually on the merits of each. Both applications comply with the applicable State Health Plan, the Project Review Criteria, and the purposes of the CON Act. Accordingly, I hereby affirm the decisions of the Department in approving both applications.

ORDER

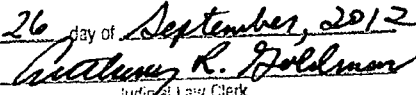
Based upon the foregoing Findings of Fact and Conclusions of Law stated above,
IT IS HEREBY ORDERED that the Department's decision to approve the CON applications filed by Trident Medical Center, LLC, and Roper St. Francis Healthcare for the establishment of two 50-bed acute care hospitals in Berkeley County, South Carolina, is **SUSTAINED**. The Department shall issue a CON to each applicant forthwith.

IT IS SO ORDERED.

September 26, 2012
Columbia, SC


John D. McLeod, Judge
S.C. Administrative Law Court

U.S. DATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 26 day of September, 2012
By: 
Judicial Law Clerk

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

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

Petitioner,

vs.

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

Respondents.

Docket No.: 09-ALJ-07-0332-CC

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

Petitioner,

vs.

South Carolina Department of Health and
Environmental Control,

Respondent.

Docket No.: 09-ALJ-07-0333-CC

(consolidated)

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

Petitioners,

vs.

South Carolina Department of Health and
Environmental Control and Trident Medical
Center, LLC,

Respondents.

Docket No.: 09-ALJ-07-0336-CC

(consolidated)

**ORDER GRANTING CAREALLIANCE HEALTH SERVICES
AND ROPER ST. FRANCIS HOSPITAL-BERKELEY'S
MOTION FOR PARTIAL SUMMARY JUDGMENT**

FILED

FEB 10 2012

SC ADMIN. LAW COURT

This matter was before the Court on January 12, 2012 on the Respondent/Petitioner CareAlliance Health Services and Roper St. Francis Hospital-Berkeley's (collectively "Roper St. Francis") Motion for Partial Summary Judgment. Present and appearing before the Court were counsel for Trident Medical Center, LLC d/b/a Berkeley Medical Center ("Trident"), David B. Summer, Jr., William R. Thomas, and Walter H. Cartin, counsel for Roper St. Francis, James G. Long, III and Jennifer J. Hollingsworth, and counsel for the Respondent South Carolina Department of Health and Environmental Control ("Department"), Ashley C. Biggers.

These proceedings involve two certificate of need ("CON") applications in Berkeley County, South Carolina. Trident filed an application on August 13, 2008 to establish a fifty (50) bed hospital in Moncks Corner in Berkeley County, using seventeen (17) beds that existed as a need for its facility under the *2004-2005 State Health Plan*. Roper St. Francis filed its CON application on December 10, 2008 to transfer fifty (50) existing beds from its Roper Downtown facility in Charleston to establish a hospital at Carnes Crossroads, located in Berkeley County near the community of Goose Creek. DHEC approved both applications on July 26, 2008. These contested case proceedings followed.

In this Motion, Roper St. Francis asks the Court to rule that, as a matter of law, in the event this Court decides that the applications of the parties are competing, thereby reversing the decision of the Department, that the only remedy available is remand to the Department to choose between the applications pursuant to the applicable law. Roper St. Francis asserts that as a matter of law, because the Department never compared the applications to decide which best satisfies the necessary requirements, that this Court cannot be first to make that determination. Additionally, Trident disputes that it bears the burden of proof at trial to show that the Department's decision was in error. The Department joined in Roper St. Francis' Motion.

Summary judgment is appropriate in a case when it is clear that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRPC; *see also, e.g., Brandt v. Gooding*, 368 S.C. 618, 626, 630 S.E.2d 259, 263 (2006). The purpose of summary judgment is to dispose of cases that do not require a fact finder. *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). Partial summary judgment is appropriate where only an issue or part of an issue may be resolved as a matter of law. *See e.g., Choices v. S.C. Dept. of Health and Envtl. Control*, Docket No. 2004-ALJ-07-0313-CC, 2005 WL 1079136 (April 19, 2005).

The State Certification of Need and Health Facility Licensure Act ("CON Act") specifically states that "[t]he initial decision involving the issuance, denial, renewal, suspension, or revocation of permits, licenses, or other action of the department shall be a staff decision." S.C. Code Ann. § 44-1-60(C) (2010). It further provides that in circumstances involving competing CON applications, "the department shall award a Certificate of Need, if appropriate, on the basis of which, if any, most fully complies with the requirements, goals, and purposes of this article and the State Health Plan, Project Review Criteria, and the regulations adopted by the department." S.C. Code Ann. § 44-7-210(B).

DHEC made its decision that the Roper St. Francis and Trident applications were not competing applications. I find that as a result of the determination that the applications were not competing, the Department staff did not compare the applications to determine "which, if any, most fully complies with the requirements, goals, and purposes of this article and the State Health Plan, Project Review Criteria, and the regulations adopted by the department." S.C. Code Ann. § 44-7-210(B). Because there was no Department decision on which application it would approve if the applications were competing, I find that in the event that I conclude that the

applications are competing, this matter will be remanded to the Department for such analysis and decision. *See Charlotte Mecklenburg Hospital Authority d/b/a Carolinas HealthCare System et al. v. S.C. Dep't of Health and Envtl. Control and Fort Mill Medical Center*, 06-ALJ-07-0713-CC (Dec. 9, 2009) (finding applications to be competing and remanding); *Choices, Inc. v. S.C. Dep't of Health and Envtl. Control and Recovery Concepts, LLC*, Docket No. 04-ALJ-07-0313-CC, 2005 WL 1079136 (Apr. 19, 2005) (finding applications were not competing and remanding for evaluation of applications separately).

As to the burden of proof, while both Roper St. Francis and Trident filed requests for contested case proceedings following the Department's decision, I find that Trident has the burden of proving by a preponderance of the evidence that the Department erred in finding these applications are not competing. *See Wando Outpatient Surgery Center, LLC v. S.C. Dept. of Health and Envtl. Control and East Cooper*, 06-ALJ-07-0831-CC (Oct. 15, 2008). In contested cases that involve a decision that two or more CON applications are or are not competing, the petitioner bears the burden of proving by a preponderance of the evidence that the Department decision was not correct. *See Oncology and Hematology Assoc. of S.C. v. S.C. Dept. of Health and Envtl. Control*, 2004 WL3413961 *2 (June 24, 2004).

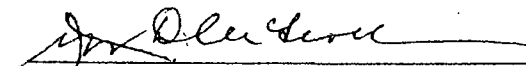
THEREFORE, IT IS HEREBY ORDERED that the Motion for Partial Summary Judgment filed by Roper St. Francis is **GRANTED**.

IT IS SO ORDERED.

February 10, 2012
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 10 day of February, 2012
By: Anthony K. Goldman
Judicial Law Clerk


John D. McLeod, Judge
S.C. Administrative Law Court

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

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

Petitioner,

vs.

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

Respondents.

Docket No.: 09-ALJ-07-0332-CC

**ORDER DENYING
PETITIONER/RESPONDENT TRIDENT
MEDICAL CENTER'S MOTION FOR
SUMMARY JUDGMENT**

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

Petitioner,

vs.

South Carolina Department of Health and
Environmental Control,

Respondent.

Docket No.: 09-ALJ-07-0333-CC

(consolidated)

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

Petitioners,

vs.

South Carolina Department of Health and
Environmental Control and Trident Medical
Center, LLC,

Respondents.

Docket No.: 09-ALJ-07-0336-CC

(consolidated)

FILED

JAN 28 2011

SC ADMIN. LAW COURT

This matter was before the Court on January 13, 2011, on Petitioner/Respondent Trident Medical Center's ("Trident") Motion for Summary Judgment. Present and appearing before the Court were counsel for Trident, David B. Summer, Jr., and Walter H. Cartin, counsel for

Respondent/Petitioner CareAlliance Health Services and Roper St. Francis Hospital-Berkeley ("Roper"), James G. Long, III and Jennifer J. Hollingsworth, and counsel for the Respondent South Carolina Department of Health and Environmental Control ("DHEC"), Ashley C. Biggers and Kristin L. Pawlowski.

These proceedings involve two certificate of need ("CON") applications in Berkeley County, South Carolina. Trident filed an application on August 13, 2008 to establish a fifty (50) bed hospital in Moncks Corner in Berkeley County, using seventeen (17) beds that existed as a need for its facility under the *2004-2005 State Health Plan*. Roper filed its CON application on December 10, 2008 to transfer fifty (50) existing beds from its Roper Downtown facility in Charleston to establish a hospital at Carnes Crossroads, located in Berkeley County in the community of Goose Creek. DHEC approved both applications on July 26, 2008. These contested case proceedings followed.

In this Motion, Trident asserts that the two Certificate of Need Applications ("CON") before the Court are competing applications and therefore as a matter of law only one of the two applications can be approved. Trident asks for an Order remanding the applications to DHEC to determine which application best meets the applicable law. DHEC and Roper oppose this Motion and contend that the CON applications are not competing applications. All parties thoroughly briefed the issues before the Court and oral argument was held on the Motion.

The purposes of the State Certification of Need and Health Facility Licensure Act ("CON Act" or "Act") and the regulations promulgated thereunder are "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; S.C. Code Ann. Regs. 61-15 § 101. In order to achieve these purposes, the Act specifically defines those circumstances under which multiple applications for CON must be considered competing. Specifically, "competing applicants" are defined by the Act as "two or more persons or health care facilities as defined in this article who apply for Certificates of Need to provide similar services or facilities in the same service area within a time frame as established by departmental

¹ The *2004-2005 State Health Plan* shows a need of 42 beds for Trident Medical Center; however, Trident obtained a CON to convert 25 skilled nursing beds to acute care beds, thereby reducing the need under the State Health Plan to 17 beds. See *2004-2005 State Health Plan* at II-17.

regulations and whose applications, if approved, would exceed the need for services or facilities.” S.C. Code Ann. § 44-7-130(5). The established time frame is within fifteen days of publication of notice of the first application in the State Register. S.C. Code Ann. Regs. 61-15 § 103(6).

Before two CON applications may be determined to be competing applications, I find the following four elements must be met:

1. The applications must be filed within the time period prescribed in the statute; and
2. The applications must be for similar services or facilities; and
3. The applications must have the same service area; and
4. The approval of both applications must exceed the need for the services or facilities.

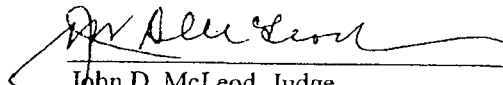
See S.C. Code Ann. § 44-7-130(5); S.C. Code Ann. Regs. 61-15 § 103(6).

I find that in order to determine whether some or all of the elements are met requires the resolution of disputed facts by the Court, and as a result, summary judgment is not appropriate. See *Spartanburg Reg'l Med. Ctr. v. Oncology and Hematology Assoc. of S.C., LLC*, 387 S.C. 79, 690 S.E.2d 783 (2010).

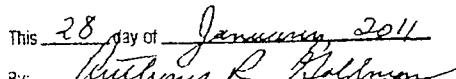
THEREFORE, IT IS HEREBY ORDERED that the Motion for Summary Judgment filed by Trident Medical Center is **DENIED**.

IT IS SO ORDERED.

January 28, 2011
Columbia, South Carolina


John D. McLeod, Judge
S.C. Administrative Law Court

CERTIFICATE OF SERVICE
This is to certify that the undersigned on this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 28 day of January, 2011
By: 
Judicial Law Clerk

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

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

Petitioner,

vs.

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

Respondents.

Docket No.: 09-ALJ-07-0332-CC

FILED

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SC ADMIN. LAW COURT

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

Petitioner,

vs.

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

Respondents.

Docket No.: 09-ALJ-07-0333-CC

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

Petitioners,

vs.

South Carolina Department of Health and
Environmental Control and Trident Medical
Center, LLC d/b/a Berkeley Medical Center,

Respondents.

Docket No.: 09-ALJ-07-0336-CC

CONSENT ORDER OF INTERVENTION AND CONSOLIDATION

All three of the above-captioned contested case proceedings involve two applications for
the construction of acute care hospitals in Berkeley County, South Carolina. On June 26, 2009

Respondent South Carolina Department of Health and Environmental Control ("DHEC" or "Department") issued a decision to grant Petitioner/Respondent Trident Medical Center, LLC d/b/a Berkeley Medical Center ("Trident") a Certificate of Need ("CON") to construct a fifty (50) bed acute care hospital in Moncks Corner, South Carolina ("Trident Project"). Simultaneous with the approval of the Trident Project, on June 26, 2009, DHEC issued a decision to grant Roper St. Francis Hospital-Berkeley, Inc. d/b/a Roper St. Francis Hospital-Berkeley ("Roper") a CON to construct a 50 bed acute care hospital near Goose Creek, South Carolina ("Roper Project").

On August 7, 2009, Trident filed two separate contested case proceedings concerning the decisions of the Department to approve the Roper Project and the Trident Project. In the case captioned Trident Medical Center, LLC, d/b/a Berkeley Medical Center v. South Carolina Department of Health and Environmental Control, Docket No.: 09-ALJ-07-0333-CC, Trident challenged so much of the Department's decision approving Trident's Certificate of Need application as found that the Roper Project and the Trident Project did not involve competing applications. Roper is not a named party in that proceeding.

In the case captioned Trident Medical Center, LLC, d/b/a Berkeley Medical Center v. South Carolina Department of Health and Environmental Control and Roper St. Francis Hospital – Berkeley, Inc., d/b/a Roper St. Francis Hospital – Berkeley, Docket No.: 09-ALJ-07-0332-CC, Trident challenged the Department decision to grant Roper's Certificate of Need Application. Roper is a party in that proceeding. Also on August 7, 2009, Roper filed a contested case proceeding supporting the decisions of DHEC to grant both CON applications in the case captioned CareAlliance Health Services and Roper St. Francis Hospital-Berkeley v. South Carolina Department of Health and Environmental Control and Trident Medical Center, LLC, Docket No.: 09-ALJ-07-0336-CC.

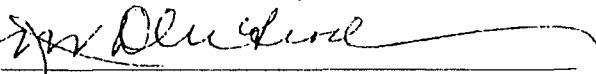
In light of the common issues of law and fact among the above-referenced cases, the parties have requested that the matters be consolidated for discovery and for trial and that Roper be allowed to intervene in Trident Medical Center, LLC, d/b/a Berkeley Medical Center v. South Carolina Department of Health and Environmental Control, Docket No.: 09-ALJ-07-0333-CC in order that all parties are before the Court in each of the proceedings. Under Rule 19(D), RPALC, proceedings may be consolidated where the matters involve the same or substantially similar evidence. Because these proceedings involve the same parties, the same two CON applications, and the same issues regarding competing applications, I find that consolidation of the above-referenced matters for discovery and trial purposes is appropriate and will promote judicial economy to the greatest extent.

Further, under Rule 20, RPALC, intervention in a contested case proceeding is allowed for a person who will be "aggrieved or adversely affected by" a final order, whose interests are not "adequately represented by existing parties" and where intervention will not "unduly prolong" proceedings or otherwise cause prejudice. Given that these matters are appropriate for consolidation for discovery and trial, I find that allowing Roper to intervene as a party respondent in Docket No.: 09-ALJ-07-0333-CC will serve to protect Roper's interests and will not unduly delay or prejudice the other parties.

Therefore, based on the consent of the parties and a review of the file, I find that Roper is entitled to intervene in the case captioned Trident Medical Center, LLC, d/b/a Berkeley Medical Center v. South Carolina Department of Health and Environmental Control, Docket No.: 09-ALJ-07-0333-CC. I further find that the actions entitled Trident Medical Center, LLC, d/b/a Berkeley Medical Center v. South Carolina Department of Health and Environmental Control, Docket No.: 09-ALJ-07-0333-CC, Trident Medical Center, LLC, d/b/a Berkeley Medical Center v. South Carolina Department of Health and Environmental Control and Roper St. Francis

Hospital – Berkeley, Inc., d/b/a Roper St. Francis Hospital – Berkeley, Docket No.: 09-ALJ-07-0332-CC, and CareAlliance Health Services and Roper St. Francis Hospital-Berkeley v. South Carolina Department of Health and Environmental Control and Trident Medical Center, LLC, Docket No.: 09-ALJ-07-0336-CC, are hereby consolidated for both discovery and trial purposes and shall henceforth be captioned as shown in this order.

IT IS SO ORDERED.


John D. McLeod, Judge
S.C. Administrative Law Court

January 7, 2010
Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy herof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 7 day of January, 2010
By Anthony R. Goldman
Judicial Law Clerk

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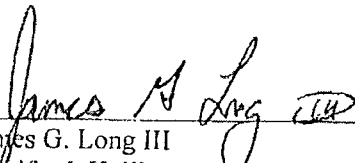
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South Carolina Department of Health
and Environmental Control

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Trident Medical Center, LLC d/b/a)
Berkeley Medical Center,)
)
Petitioner,)
)
vs.)
)
Roper St. Francis Hospital – Berkeley, Inc.)
d/b/a Roper St. Francis Hospital – Berkeley)
and the South Carolina Department of)
Health and Environmental Control,)
)
Respondents.)
_____)

PETITION FOR ADMINISTRATIVE
REVIEW AND REQUEST FOR
CONTESTED CASE HEARING

Pursuant to Rule 11 of the Rules of Procedure of the Administrative Law Court (“RPALC”), Petitioner Trident Medical Center, LLC d/b/a Berkeley Medical Center (“Trident”), by and through its undersigned counsel, petitions the Court for administrative review and reversal of (1) the finding by the South Carolina Department of Health and Environmental Control (“Department”) that Trident and Respondent Roper St. Francis Hospital – Berkeley, Inc. d/b/a Roper St. Francis Hospital – Berkeley (“Roper”) are not competing applicants within the meaning of the State Licensure and Certification of Need Act, S.C. Code Ann. §§44-7-110 *et seq.* (“CON Act”) and the Department’s CON regulations codified at 24A S.C. Code Ann. Reg. 61-15 (“S.C. Reg. 61-15” or “Regulation 61-15”); (2) the Department’s decision to grant a Certificate of Need (“CON”) to Roper for the construction of a new acute care hospital in Goose Creek, South Carolina, through the permanent transfer of beds from Roper Hospital, Inc., *see Exhibit A*; and (3) the decision by the South Carolina Board of Health and Environmental Control (“Board”) to permit the Department’s staff decision to become a final agency decision,

FILED

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SC ADMIN. LAW COURT

see Exhibit B. This Petition for Administrative Review and Request for Contested Case Hearing is based upon the following grounds:

Background and Procedural History

1. The Court has jurisdiction over this matter pursuant to S.C. Const. art. I, § 22; S.C. Code Ann. §§ 1-23-320, 1-23-600(B), 44-1-60(F), and 44-7-210(D); 24A S.C. Code Ann. Regs. 61-15; and Rule 11 of the RPALC.
2. Trident Medical Center, LLC operates the Trident Health System, a family of hospitals and health care facilities serving Berkeley, Charleston, and Dorchester Counties for more than 35 years through Trident Medical Center, a 296-bed tertiary-care hospital located in North Charleston, Charleston County; Summerville Medical Center, a 94-bed acute-care hospital located in Summerville, Dorchester County; and Moncks Corner Medical Center, a freestanding emergency department and outpatient diagnostic center, located in Moncks Corner, Berkeley County.
3. Trident is an “affected person” pursuant to S.C. Reg. 61-15, § 103(1) and has standing to assert its claims in this case.
4. In the early 1970’s, the North Charleston Public Service Commission and Charleston Area Comprehensive Health Planning initiated efforts to establish the North Trident Regional Hospital Committee to explore the feasibility of establishing a hospital facility to serve Berkeley County, Dorchester County and northern Charleston County. The then-existing Berkeley County Hospital and Dorchester County Hospital agreed to close upon the construction of the new hospital. In December 1972, the Department issued a CON for the construction of a 200-bed acute care hospital in northern Charleston County, Trident Medical Center (f/k/a North Trident

Regional Hospital) to serve the North Trident Area of Charleston, *Berkeley* and Dorchester Counties.

5. In 1975, Trident Medical Center was opened and the Berkeley and Dorchester County Hospitals were closed. In 1983, Trident established outpatient and sub-acute care facilities and services in Moncks Corner, Berkeley County, which have expanded to a freestanding emergency department and additional outpatient and sub-acute care facilities and services. Approximately forty-two percent (42%) of Trident Health System's admissions are from patients residing in Berkeley County.

6. The Department's *State Health Plan* generally establishes the planning regions for acute care hospitals on a county-by-county basis. However, the Department historically has recognized certain exceptions to a single-county service area. Since the adoption of the *2001 State Health Plan*, the Department has recognized the Charleston area region of Berkeley, Dorchester and Charleston Counties (the "Tri-County Region") to constitute a single planning region for acute care hospital beds. In adopting both the *2004-2005 State Health Plan* ("*2004-2005 Plan*") and the *2008-2009 State Health Plan* ("*2008-2009 Plan*"), the Department recognized the Tri-County Region as a single planning area for acute care hospital beds.

7. Under both the *2004-2005 Plan* and the *2008-2009 Plan*, existing hospitals are permitted to obtain a CON for the addition of beds based on the *Plan*'s showing of a hospital-specific bed need. If the *Plan* reflects that an existing hospital has a bed need of less than 50, then the hospital can apply for up to 50 new beds to accomplish a cost-effective addition of beds.

8. Under both the *2004-2005 Plan* and the *2008-2009 Plan*, an existing hospital may transfer its licensed beds to an *existing* affiliated hospital upon the satisfaction of certain

requirements and criteria. Neither *Plan* permits an existing hospital with no bed need to transfer its licensed beds to establish a new facility.

9. Under the *2004-2005 Plan*, Trident Medical Center had a 17-bed, facility-specific bed need.¹ On August 13, 2008, Trident filed a CON application with the Department for the construction of Berkeley Regional Medical Center, a new 50-bed acute care hospital with a Magnetic Resonance Imaging (“MRI”) unit and a Computed Tomography (“CT”) scanner, to be located in Moncks Corner, the county seat and geographical center of Berkeley County (“Trident Proposed Project”). Trident proposed to establish the new hospital through its existing 17-bed facility-specific bed need identified for Trident Medical Center in the *2004-2005 Plan*.

10. The *2008-2009 Plan* became effective on September 12, 2008. Under the *2008-2009 Plan*, Roper Hospital, Inc. in downtown peninsular Charleston, South Carolina (“Roper Downtown”) has an *excess* of 6 beds, and Bon Secours St. Francis Xavier Hospital (“Roper West Ashley”) has an *excess* of 17 beds. In addition, under the *2008-2009 Plan*, the Tri-County Region has an aggregate *excess* of 50 beds. However, like the *2004-2005 Plan*, the *2008-2009 Plan* reflects that the only hospitals in the Tri-County Region with a facility-specific bed need are Trident Medical Center and Summerville Medical Center.

11. In response to Trident’s CON application filing, on December 10, 2008, Roper filed a CON application with the Department for the construction of a new 50-bed, acute care hospital with an MRI unit and a CT scanner (“Roper Proposed Project”). Roper proposed to transfer 50 of its existing, licensed beds from Roper Downtown to establish the new hospital. Roper further proposed that the new hospital would be located in Goose Creek in the southern portion of

¹ The *2004-2005 Plan* originally showed a 42-bed need. However, in 2008 Trident Medical Center obtained a CON to convert 25 skilled nursing beds to acute care beds, thus reducing the actual projected bed need to 17 beds. Summerville Medical Center showed a 20-bed need. Therefore, under the *2004-2005 Plan*, the Trident Health System showed an aggregate 37-bed need.

Berkeley County, less than ten miles from Trident Medical Center and less than ten miles from Summerville Medical Center. Thus, with respect to the Trident Proposed Project, Roper proposed to establish similar services and/or facilities in the same service area and in the same county.

12. Both the CON Act and Regulation 61-15 define competing applicants as “two or more persons or health care facilities . . . who apply for Certificates of Need to provide similar services or facilities in the same service area within a time frame as established by departmental regulations and whose applications, if approved, would exceed the need for services or facilities.” S.C. Code Ann. § 44-7-130(5); S.C. Reg. 61-15 § 103(6). The Department’s Regulation 61-15 states that “[a]n application *shall* be considered competing if it is received by the Department no later than fifteen (15) days after a Notice of Affected Persons is published in the State Register for one or more applications for similar services and/or facilities in the same service area.” S.C. Reg. 61-15 § 103(6) (emphasis added).

13. After deeming both CON applications complete, the Department notified Trident that it was extending the time frame for review of Trident’s application. The Department’s sole reason for the extension was that Roper had submitted an application for construction of a hospital that would provide the *same services in the same service area* as Trident’s proposed hospital. See Exhibit C.

14. The Department published a notice to affected persons regarding Trident’s CON application in the February 27, 2009 issue of the *South Carolina State Register*. Thus, Roper’s December 10, 2008 filing of its CON application was timely with respect to the 15-day regulatory period.

15. Roper filed its application for the Proposed Project even though the *2008-2009 Plan* reflects that Roper's hospitals have an inventory of licensed beds that exceed their bed need and even though there exists an excess of hospital beds in the Tri-County Region. Thus, by definition, the Department was required to conclude that the Roper Proposed Project *by itself or in conjunction with the Trident Proposed Project* exceeds the need for hospital beds because there is an aggregate excess of needed beds in the Tri-County Region and because Roper Downtown and Roper West Ashley have an excess of needed beds for those facilities.

16. On June 26, 2009, the Department approved both the Roper Proposed Project and the Trident Proposed Project. See Exhibit A and Exhibit D. The Department stated that "the applications are not competing because the beds used for the Roper St. Francis Hospital – Berkeley project are a permanent bed transfer, not a bed increase; therefore, the bed need will not be exceeded." See Exhibit A.

17. On July 6, 2009, Trident requested that the Board conduct a Final Review Conference and reverse the Department's decision to issue a CON for Roper's Proposed Project. See Exhibit E. On that same day, with respect to its own CON application, Trident also requested that the Board conduct a Final Review Conference solely regarding the Department's finding that Trident and Roper are not competing applicants. See Exhibit F.

18. On July 9, 2009, the Department declined to conduct either of Trident's requested Final Review Conferences. See Exhibit B and Exhibit G.

19. On July 10, 2009, Roper requested that the Board conduct a Final Review Conference of the Department's decision to issue a CON for the construction of the Trident Proposed Project, and if the Department decided that Berkeley County could support only one hospital, to reverse

the Department's decision to issue a CON for the Trident Proposed Project and uphold the Department's decision to issue a CON for Roper's Proposed Project. See Exhibit H.

20. On July 17, 2009, the Board declined Roper's request for a Final Review Conference as well. See Exhibit I.

Grounds for Reversal of the Department's Decision

21. In response to the Board's decision to decline final review and in accordance with S.C. Code Ann. § 44-1-60(F), and reserving its right to raise any and all issues presented to and considered by the Department below, Trident respectfully requests that the Court: (1) reverse the Department's June 26, 2009 finding that Trident and Roper are not competing applicants and (2) reverse the Department's June 26, 2009 decision to issue a CON to Roper for the construction of a 50-bed, acute care hospital in Berkeley County as arbitrary, capricious, and/or affected by other errors of law or fact, based on the following grounds:

a. The Department's finding that Trident and Roper are not competing applicants is arbitrary, capricious, and contrary to the standards and criteria set forth in the *2004-2005 Plan*, the *2008-2009 Plan*, the CON Act, Regulation 61-15, and other applicable law, because the Trident and Roper CON applications, by the Department's own admission, seek to provide similar services and facilities in the same service area, and the applications were filed within the regulatory time limits for Trident and Roper to be considered competing applicants. The Department further erred by concluding that approval of both applications would not exceed the need for hospital beds in the service area based on the rationale that Roper is only moving, not adding, beds to the service area. Because the *2008-2009 Plan* reflects that there is an aggregate excess of beds in the Tri-County Region and that each of Roper's existing hospitals has an excess of beds, by definition, the Department was required to conclude that the Roper

Proposed Project *by itself or in conjunction with the Trident Proposed Project* exceeds the need for hospital beds. Thus, the Department's finding that Roper and Trident were not competing applicants was an error of law.

b. The Department's finding that Trident and Roper are not competing applicants is arbitrary, capricious, and contrary to the standards and criteria set forth in the *2004-2005 Plan*, the *2008-2009 Plan*, the CON Act, Regulation 61-15, and other applicable law, because the data submitted by both Trident and Roper to demonstrate their respective satisfaction of the applicable regulatory project review criteria assumed that only one hospital would be approved. The sole reliable data presented to the Department regarding the results of approving both hospitals demonstrated that if the Trident and Roper Proposed Projects are both constructed, both hospitals will operate at a combined loss of \$59 million for the first three years operation and approximately \$15 million in the third year alone. If both projects are approved, then neither the Roper Proposed project nor the Trident Proposed Project can be financially feasible.

c. The Department erred in not considering and reviewing the Roper Proposed Project and the Trident Proposed Project as competing applications and in not concluding that the Trident Proposed Project, rather than the Roper Proposed Project, should be awarded a Certificate of Need as the project which most fully complies with the requirements, goals, and purposes of the Certificate of Need Program, State Health Plan, project review criteria, and applicable regulations.

d. The Roper Proposed Project is not consistent with the standards and criteria set forth in the *2008-2009 Plan*, the CON Act, Regulation 61-15, and other applicable law, and the Department erred in concluding otherwise, because Roper proposes to establish a new hospital through the transfer of existing licensed beds from Roper Downtown. The *2008-*

2009 Plan allows for the transfer of beds between *existing, affiliated* hospitals; however, nothing in the *State Health Plan* allows an entity to construct an entirely new hospital by transferring beds from an established facility. *See 2008-2009 Plan*, Ch. II, § G(1)(A)(4)(j). Furthermore, because there currently does not exist a receiving facility affiliated with Roper Downtown, the Department could not find, and Roper can never demonstrate, the historical utilization of a non-existent receiving facility by residents of Charleston County, the county giving up the Roper Downtown beds. Alternatively, the Department could not find, and Roper can never demonstrate, why it is in the best interests of Charleston County residents to transfer beds to a non-existent facility in Berkeley County with no historical affinity for them. Finally, because there currently does not exist a receiving facility affiliated with Roper Downtown, the Department could not find, and Roper can never demonstrate, the need for additional capacity at a non-existent receiving facility based on non-existent historical utilization patterns.

e. The Roper Proposed Project is not consistent with the standards and criteria set forth in the *2008-2009 Plan*, the CON Act, Regulation 61-15, and other applicable law, and the Department erred in concluding otherwise, because even if the *2008-2009 Plan* allowed Roper to transfer beds to establish a new hospital, Roper neither adequately explained the impact of transferring the beds on the health care delivery system in Charleston County, the county from which beds are to be taken, nor adequately detailed the negative impacts of the transfer along with the perceived benefits of such a transfer. *See 2008-2009 Plan*, Ch. II, §G(1)(A)(4)(j)(4). The transfer of beds is permanent, and the facility giving up the beds cannot use the loss of those beds to request additional beds in the future. *See id.* §G(1)(A)(4)(j)(6). Roper asserted that it would not use the transfer of beds to justify the approval of additional beds. If allowed to transfer the beds, Roper Hospital would be left with 266 beds. Based on the

projected population growth for Roper Hospital's service area, Roper Hospital's occupancy could exceed more than 90% by 2015. The permanent loss of the beds would create a dangerously high occupancy rate in the very near future for Roper Downtown.

f. The Roper Proposed Project is not consistent with the standards and criteria set forth in the *2008-2009 Plan*, the CON Act, Regulation 61-15, and other applicable law, and the Department erred in concluding otherwise, because there is no identifiable, documented need for the Proposed Project. The *2008-2009 Plan* reflects that both Roper Downtown and Roper West Ashley have an *excess* capacity of beds and that the combined bed need of all of the hospitals in the Tri-County Region show an aggregate excess capacity of beds.² Thus, by definition, there is no identifiable need for the Roper Proposed Project. In addition, all of the residents living within a 7-mile radius of the proposed Roper hospital currently have convenient access to existing hospitals in the Tri-County Region.

g. The Roper Proposed Project is not consistent with the standards and criteria set forth in the *2008-2009 Plan*, the CON Act, Regulation 61-15, and other applicable law, and the Department erred in concluding otherwise, because the Proposed Project is not financially feasible. Roper claims that its Proposed Project will not have any material adverse impact on existing providers and thus assumes that the Proposed Project will not take significant market share from existing providers.³ However, the Roper Proposed Project cannot meet the Department's requirements for financial feasibility without taking significant market share from Trident. Thus, if Roper is correct that it will not take significant market share from Trident, the Roper Proposed Project will not be financially feasible.

² By contrast, under both the *2004-2005 Plan* and the *2008-2009 Plan*, Trident Medical Center and Summerville Medical Center are the only hospitals in the Tri-County Region with facility-specific bed need projections.

³ By contrast, Roper's Application and Project Review materials demonstrate its assumption that it will increase its market share in Berkeley County by 23%.

h. The Roper Proposed Project is not consistent with the standards and criteria set forth in the *2008-2009 Plan*, the CON Act, Regulation 61-15, and other applicable law, and the Department erred in concluding otherwise, because Roper failed to adequately demonstrate that its Proposed Project is financially feasible. The data submitted by Roper to demonstrate financial feasibility assumed that only one hospital would be approved. Because the Department erroneously found that Trident and Roper are not competing applicants, the Department had insufficient information on which to find, and Roper did not adequately demonstrate, that the Roper Proposed Project will be financially feasible if both hospitals are built. The data presented to the Department demonstrated that if the Trident and Roper Proposed Projects are both constructed, both hospitals will operate at a combined loss of \$59 million for the first three years operation and approximately \$15 million in the third year alone.

i. The Roper Proposed Project is not consistent with the standards and criteria set forth in the *2008-2009 Plan*, the CON Act, Regulation 61-15, and other applicable law, and the Department erred in concluding otherwise, because the proposed location of the Roper Proposed Project will not increase accessibility and availability of services for the medically underserved areas and residents of Berkeley County, particularly those residents in the northern and central areas of the county. Roper plans to locate its facility in Goose Creek, a more affluent community in southern Berkeley County, whose residents already have excellent access to existing hospitals. Residents in northern Berkeley County, who comprise roughly one-third of the county population, will be required to drive more than 30 minutes to reach the Roper Proposed Project. Thus, the Roper Proposed Project will not improve access to low-income, elderly, and other medically underserved groups residing in the county, but it will result in the unnecessary duplication of facilities and services.

j. The Roper Proposed Project is not consistent with the standards and criteria set forth in the *2008-2009 Plan*, the CON Act, Regulation 61-15, and other applicable law, and the Department erred in concluding otherwise, because Roper failed to adequately demonstrate acceptability of its proposed hospital. Roper did not receive any support from the other two major hospital systems in the Tri-County Region, the Medical University of South Carolina (MUSC) and East Cooper Regional Medical Center (ECRMC), nor did Roper receive support from the Berkeley County Council or the Berkeley County EMS. Rather, these community members submitted specific written support for the Trident Proposed Project only. Moreover, Roper failed to obtain significant support from physicians actually practicing in Berkeley County.

k. The Roper Proposed Project is not consistent with the standards and criteria set forth in the *2008-2009 Plan*, the CON Act, Regulation 61-15, and other applicable law, and the Department erred in concluding otherwise, because Roper's proposed hospital would result in a material adverse impact to other area providers, including Trident. The entire target population that Roper proposes to serve currently has convenient access to two existing hospitals, Trident Medical Center and Summerville Medical Center. Consistent with its original mission to serve Berkeley County and Trident's long-term investment in that mission, Trident Health System currently has 53% of the market share for acute care services in Berkeley County and approximately 42% of Trident Health System's admissions are from patients residing in Berkeley County. Roper has projected it would claim between 30% and 40% of the market share in Berkeley County, which would result in a substantial decrease in Trident's hospitals' utilization and thus a material adverse impact on Trident's existing facilities.

l. The Roper Proposed Project is not consistent with the standards and criteria set forth in the *2008-2009 Plan*, the CON Act, Regulation 61-15, and other applicable law, and the Department erred in concluding otherwise, because, contrary to the Department's findings, Roper did not consider the distribution of acute care services with respect to its target population or growth in the service area. The Roper Proposed Project is located in Goose Creek, in the southern portion of Berkeley County, which is already well-served by two existing acute care hospitals located less than 10 miles away. Roper's primary service area encompasses a 7-mile radius around Goose Creek. The population in the Goose Creek area is expected to grow by only 929 people over the course of five years. By contrast, Trident's hospital will be centrally located, providing greater access to residents of northern Berkeley County, a medically underserved portion of the county.

m. The Roper Proposed Project is not consistent with the standards and criteria set forth in the *2008-2009 Health Plan*, the CON Act, Regulation 61-15, including Section 501 thereof, and other applicable law, and the Department erred in concluding otherwise, because, contrary to the Department's findings, superior alternatives to the services proposed by the Roper Proposed Project do exist and development of the alternatives is practicable and because patients will not "experience serious problems in terms of costs, availability or accessibility, or such other problems as may be identified by the Department, in obtaining care of the type proposed in the absence of the project." See Exhibit A. As noted above, the residents in the primary service area for Roper's Proposed Project are already well-served by two existing acute care hospitals. Thus, there are no problems with availability or accessibility for the Berkeley County citizens whom Roper intends to serve in that those citizens already have superior existing alternatives to the Roper Proposed Project. In fact, unlike the Trident Proposed

Project, because of its location, the Roper Proposed Project does nothing to alleviate accessibility problems for the medically underserved populations in Berkeley County.

n. The Roper Proposed Project is not consistent with the standards and criteria set forth in the *2008-2009 Plan*, the CON Act, Regulation 61-15, and other applicable law, and the Department erred in concluding otherwise, because Roper failed to adequately demonstrate that the Proposed Project meets all other applicable regulatory project review criteria. The data submitted by Roper to demonstrate its satisfaction of the applicable regulatory project review criteria assumed that only one hospital would be approved. Because the Department erroneously found that Trident and Roper are not competing applicants, the Department had insufficient information on which to find, and Roper did not adequately demonstrate, that the Roper Proposed Project meets the applicable regulatory project review criteria if both hospitals are built.

WHEREFORE, Trident respectfully prays that the Court issue an order reversing the Department's June 26, 2009 finding that Trident and Roper are not competing applicants with respect to the Trident Proposed Project and the Roper Proposed Project. Trident further respectfully requests the Court reverse the Department's June 26, 2009 staff decision to grant Roper a CON for the construction of a 50-bed, acute care hospital in Berkeley County, South Carolina.

Respectfully Submitted,

David B. Summer, Jr. 
David B. Summer, Jr.

Faye A. Flowers
PARKER POE ADAMS & BERNSTEIN, LLP
1201 Main Street, Suite 1450
Post Office Box 1509
Columbia, SC 29202
(803) 255-8000; (803) 255-8017 (fax)
davidsummer@parkerpoe.com
fayeflowers@parkerpoe.com

Attorneys for Petitioner
Trident Medical Center, LLC

Columbia, South Carolina
August 7, 2009

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 7, 2009, s/he served the foregoing
Petition for Administrative Review and Request for Contested Case Hearing on all parties
by causing a copy of the same to be hand-delivered addressed as follows:

The Honorable Lisa Lucas Longshore
Clerk of the Board
South Carolina Department of
Health and Environmental Control
2600 Bull Street
Columbia, South Carolina 29201

Beverly A. Brandt
Chief, Bureau of Health Facilities and Services
South Carolina Department of
Health and Environmental Control
1777 St. Julian Place, Suite 201
Columbia, SC 29204

Nancy S. Layman, Esquire
Ashley C. Biggers, Esquire
South Carolina Department of
Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

James G. Long, III, Esquire
Ralph W. Barbier, Esquire
Nexsen Pruet
1230 Main Street, Suite 700
Columbia, SC 29201



FILED

AUG 07 2009

SC ADMIN. LAW COURT

Exhibit A



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

CERTIFIED MAIL

91 7108 2133 3933 7191 9167

June 26, 2009

Re: Roper St. Francis Hospital - Berkeley
Goose Creek, South Carolina

Ms. Shannon Cantwell, Regulatory Affairs Specialist
Roper St. Francis Healthcare
125 Doughty Street, Suite 760
Charleston, South Carolina 29403

Dear Ms. Cantwell:

The Department has determined that the Roper St. Francis Hospital - Berkeley and the Berkeley Medical Center applications are not competing applications as defined by Regulation 61-15 "Certification of Need for Health Facilities and Services" Section 103.6. The Department has determined the applications are not competing because the beds used for the Roper St. Francis Hospital - Berkeley project are a permanent bed transfer, not a bed increase; therefore, the bed need will not be exceeded. The proposed project basically a re-positioning of currently licensed acute care beds from an area of limited growth to an area of strong growth and will have no impact on the Tri-County's bed count or bed need. Further, the proposal is consistent with general health planning goals of maximizing the usage of existing resources and positioning and re-positioning underutilized resources in areas of strong volume and population growth.

It is the decision of this Department that a Certificate of Need be issued to Roper St. Francis Hospital - Berkeley in Goose Creek, South Carolina for the construction of a new hospital by permanently transferring fifty (50) acute care beds from Roper Hospital to include a multi-slice Computed Tomography (CT) scanner and a 1.5T Magnetic Resonance Imaging (MRI) unit for a total license bed capacity of fifty (50) acute care beds at Roper St. Francis Berkeley and three hundred eighteen (318) total licensed beds at Roper Hospital; the facility will be located on Highway 17A in Goose Creek, South Carolina.

The decision is based on the following:

- I. The application is consistent with Chapter II Section G.1(A)(4)(j) for the General Acute Hospital bed need methodology as stated in the 2008-2009 South Carolina Health Plan.

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

Health Regulation

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RECORD 000085

Ms. Shannon Cantwell

June 26, 2009

Page 2

2. The applicant has adequately demonstrated the need for the project within the application;
3. The project will increase accessibility and availability of services for residents of Berkeley County;
4. The project appears to be financially feasible based upon the information available;
5. The applicant has submitted substantial letters of community and physician support for the project;
6. Upon review and consideration of all materials submitted by affected parties, the Department concludes there should be minimal impact upon other facilities in the proposed service area; and
7. The applicant has considered the distribution of acute care services in relation to the target population and the effect of the project in meeting the growing demands of the service area.

The Department makes the following findings pursuant to Section 501, Regulation No. 61-15, Certification of Need for Health Facilities and Services:

1. The capital and operating costs of the proposal and their potential impact on patient charges are reasonable;
2. Superior alternatives to such services in terms of cost, efficiency, or appropriateness do not exist and that the development of such alternatives is not practicable;
3. In the case of new construction, alternatives to new construction (e.g., modernization or sharing arrangements) have been considered;
4. Patients will experience serious problems in terms of costs, availability or accessibility, or such other problems as may be identified by the Department, in obtaining care of the type proposed in the absence of the project.

The additional finding required by Section 501.5 of Regulation No. 61-15, Certification of Need for Health Facilities and Services is not applicable to this project.

The following appeal procedures are in effect beginning July 1, 2006, pursuant to 2006 Act No. 387:

1. This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision fifteen (15) days after notice of the

Ms. Shannon Cantwell

June 26, 2009

Page 3

decision has been mailed to the applicant or his agent unless a written request for final review is filed with the Department by the applicant or an affected person.

2. An applicant or affected person who wishes to appeal this decision must file a written request for final review with the Clerk of the Board at the following address or by facsimile at 803-898-3323:

Clerk of the Board
SC DHEC
2600 Bull Street
Columbia, SC 29201

3. The request for final review should include the following:
 - a) the grounds on which the Department's decision is challenged and the specific changes sought in the decision;
 - b) a statement of any significant issues or factors the Board should consider in deciding how to handle the matter; and
 - c) a copy of the Department's decision or action under review.
4. In order to be timely, a request for final review must be received by the Clerk of the Board within 15 days after notice of the Department decision has been mailed to the applicant or his agent. If the 15th day occurs on a weekend or State holiday, the request is due to be received by the Clerk of the Board on the next working day. The request for final review must be received by the Clerk of the Board by 5:00 pm on the date it is due.
5. If a timely request for final review is filed with the Clerk of the Board, the Clerk will provide additional information regarding procedures.
6. The Board of Health and Environmental Control has 60 days from the date of receipt of a request for final review to conduct a final review conference. The conference may be conducted by the Board, its designee, or a committee of three members of the Board appointed by the chair.
7. If a final review conference is not conducted within 60 days, the Department decision becomes the final agency decision, and a party may request a contested case hearing before the Administrative Law Court within 30 days after the deadline for the final review conference.

Ms. Shannon Cantwell

June 26, 2009

Page 4

If you have any questions, please feel free to contact us at (803) 545-4200.

Sincerely,

Beverly Brandt

Beverly A. Brandt, Chief
Bureau of Health Facilities and Services Development

cc: Trident Health System
East Cooper Regional Medical Center

Exhibit B

BOARD:

Paul C. Aughtry, III,
Chairman

Edwin H. Cooper, III
Vice Chairman

Steven G. Kisner
Secretary



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

BOARD:

Henry C. Scott

M. David Mitchell, MD

Glenn A. McCall

Coleman F. Buckhouse, MD

S.C. Board of Health and Environmental Control; Telephone (803) 898-3309 Fax: (803) 898-3393

July 14, 2009

RECEIVED

JUL 15 2009

Parker, Poe, Adams
& Bernstein, L.L.P.

U.S. Mail - CERTIFIED - Return Receipt

91 7108 2133 3936 3002 9163

David B. Summer, Jr., Esquire

Parker Poe Adams & Bernstein, LLP

PO Box 1509

Columbia, SC 29202

91 7108 2133 3936 3002 9170

Ralph W. Barbier, Esquire

Nexsen Pruet

PO Drawer 2426

Columbia, SC 29202

Via Interagency Mail Delivery

Nancy S. Layman, Esquire

Ashley C. Biggers, Esquire

SCDHEC - Office of General Counsel

2600 Bull Street

Columbia, SC 29201

RE: **Docket No. 09-RFR-57** - *Decision dated June 26, 2009, to issue a Certificate of Need (CON) to Roper St. Francis Hospital for the construction of new facility by transferring beds from existing facility and determining that Roper St. Francis and Trident Medical Center are not "competing applicants" in the CON process.*

The S.C. Board of Health and Environmental Control decided on July 9, 2009, not to conduct a Final Review Conference on the above-referenced matter.

S.C. Code Section 44-1-60(F) provides, "If a final review conference is not conducted within sixty days, the department decision becomes the final agency decision, and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court, in accordance with the Administrative Procedures Act, within thirty days after the deadline for the final review conference."

1 of 2
SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
2600 Bull Street • Columbia, SC 29201 • Phone (803) 898-3309 • www.scdhec.gov

RECORD 000090

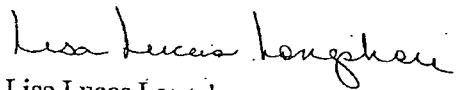
A request for a contested case hearing before the Administrative Law Court (ALC) must be filed in accordance with the Rules of the ALC, including payment of the ALC's filing fee, at the following address:

Clerk's Office
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Suite 224
Columbia, SC 29201

The ALC's Notice of Request for Contested Case Hearing form and the Rules of the ALC can be found at the ALC's website: <http://www.scalc.net>. Further information on filing a request for a contested case hearing before the ALC may be obtained by calling the Clerk's Office at the Administrative Law Court (803-734-0550).

If a party files a request for a contested case hearing with the ALC, the party must serve a copy of the request on DHEC and any other parties at the same time the request is filed with the ALC. A copy of the request for a contested case hearing must be delivered or mailed to DHEC at the address at the top of this memorandum.

Sincerely,



Lisa Lucas Longshore
Clerk

The above information on filing a request for a contested case hearing before the Administrative Law Court is provided as a courtesy; parties before the ALC are responsible for complying with all applicable requirements of the Court.

OCG # 20905

I:\Share\LEGAL\ALL\MATTERS\20905 RFR HR Roper St. Francis Berkeley\rcd.doc

Exhibit C



G. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

RECEIVED

APR 30 2009

Parker, Poe, Adams
& Bernstein, L.L.P.

CERTIFIED MAIL 91 7108 2133 3935 6156 8830

April 28, 2009

Mr. Jim Rardin, Vice President
Trident Health System
9330 Medical Plaza Drive
Charleston, South Carolina 29406

Re: Construction to establish a fifty (50) bed acute care hospital through the transfer of 50 acute care beds from the bed-need generated by Trident Medical Center to include a Magnetic Resonance Imaging (MRI) unit and a Computed Tomography (CT) scanner; the facility will be located adjacent to the current site of the Moncks Corner Medical Center at the intersection of Martin Luther King Drive and Highway 17A; conversion of the existing Moncks Corner Medical Center into a medical office building housing physician offices and clinics
Berkeley Medical Center
Moncks Corner, South Carolina

Dear Mr. Rardin:

This is to advise that this Department's review time frame for the above referenced projects is extended for sixty (60) days or until June 27, 2009. The reason for the extension is that there is another application, which is being reviewed in a later cycle that is requesting approval of similar services in the same service area. Therefore, it is in the best interest of the public that the Department be able to render decisions on these two (2) applications simultaneously. This action is in accordance with Section 305.2b of Regulation No. 61-15, Certification of Need for Health Facilities and Services.

Should there be any questions concerning this, please feel free to contact us at (803) 545-4200.

Sincerely,

Lisa D. Sanders, Health Planning Analyst
Bureau of Health Facilities and Services Development

cc: Andrea Brisbin
David Summer
Ralph Barbier
Shannon Cantwell

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

Health Regulation
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RECORD 000093

Exhibit D



G. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

CERTIFIED MAIL

91 7108 2133 3933 7191 9150

June 26, 2009

Jim Rardin, Vice President
Trident Health System
9330 Medical Plaza Drive
Charleston, South Carolina 29406

Re: Berkeley Medical Center
Moncks Corner, South Carolina

Dear Mr. Rardin:

The Department has determined that the Berkeley Medical Center and the Roper St. Francis Hospital - Berkeley applications are not competing applications as defined by Regulation 61-15 "Certification of Need for Health Facilities and Services" Section 103.6. The Department has determined the applications are not competing because the beds used for the Roper St. Francis Hospital - Berkeley project will be a permanent bed transfer, not a bed increase; therefore, the bed need will not be exceeded. In addition, the benefits of improve accessibility to the citizens of Berkeley County were weighed against any potential duplication of services.

It is the decision of this Department that a Certificate of Need be issued to Berkeley Medical Center in Moncks Corner, South Carolina for the construction to establish a fifty (50) bed acute care hospital through the transfer of 50 acute care beds from the bed need generated by Trident Medical Center to include a Magnetic Resonance Imaging (MRI) unit and a Computed Tomography (CT) scanner; the facility will be located adjacent to the current site of the Moncks Corner Medical Center at the intersection of Martin Luther King Drive and Highway 17A; conversion of the existing Moncks Corner Medical Center into a medical office building housing physician offices and clinics.

The decision is based on the following:

1. The application is consistent with Chapter II Section G.1(A)(4)(d) for General Acute Hospital bed need methodology and the Certificate of Need Standards for Magnetic Resonance Imaging (MRI) services as stated in the 2004-2005 South Carolina Health Plan;

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

Health Regulation

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RECORD 000095

Mr. Jim Rardin

June 26, 2009

Page 2

2. The applicant has adequately demonstrated the need for the project within the application;
3. The project will increase accessibility and availability of services for residents of Berkeley County;
4. The project appears to be financially feasible based upon the information available;
5. The applicant has submitted substantial letters of community and physician support for the project;
6. Upon review and consideration of all materials submitted by affected parties, the Department concludes there should be minimal impact upon other facilities in the proposed service area; and
7. The applicant has considered the distribution of acute care services in relation to the target population and the effect of the project in meeting the growing demands of the service area.

The Department makes the following findings pursuant to Section 501, Regulation No. 61-15, Certification of Need for Health Facilities and Services:

1. The capital and operating costs of the proposal and their potential impact on patient charges are reasonable;
2. Superior alternatives to such services in terms of cost, efficiency, or appropriateness do not exist and that the development of such alternatives is not practicable;
3. In the case of new construction, alternatives to new construction (e.g., modernization or sharing arrangements) have been considered;
4. Patients will experience serious problems in terms of costs, availability or accessibility, or such other problems as may be identified by the Department, in obtaining care of the type proposed in the absence of the project.

The additional finding required by Section 501.5 of Regulation No. 61-15, Certification of Need for Health Facilities and Services is not applicable to this project.

The following appeal procedures are in effect beginning July 1, 2006, pursuant to 2006 Act No. 387:

1. This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision fifteen (15) days after notice of the

Mr. Jim Rardin
June 26, 2009
Page 3

decision has been mailed to the applicant or his agent unless a written request for final review is filed with the Department by the applicant or an affected person.

2. An applicant or affected person who wishes to appeal this decision must file a written request for final review with the Clerk of the Board at the following address or by facsimile at 803-898-3323:

Clerk of the Board
SC DHEC
2600 Bull Street
Columbia, SC 29201

3. The request for final review should include the following:
 - a) the grounds on which the Department's decision is challenged and the specific changes sought in the decision;
 - b) a statement of any significant issues or factors the Board should consider in deciding how to handle the matter; and
 - c) a copy of the Department's decision or action under review.
4. In order to be timely, a request for final review must be received by the Clerk of the Board within 15 days after notice of the Department decision has been mailed to the applicant or his agent. If the 15th day occurs on a weekend or State holiday, the request is due to be received by the Clerk of the Board on the next working day. The request for final review must be received by the Clerk of the Board by 5:00 pm on the date it is due.
5. If a timely request for final review is filed with the Clerk of the Board, the Clerk will provide additional information regarding procedures.
6. The Board of Health and Environmental Control has 60 days from the date of receipt of a request for final review to conduct a final review conference. The conference may be conducted by the Board, its designee, or a committee of three members of the Board appointed by the chair.
7. If a final review conference is not conducted within 60 days, the Department decision becomes the final agency decision, and a party may request a contested case hearing before the Administrative Law Court within 30 days after the deadline for the final review conference.

Mr. Jim Rardin

June 26, 2009

Page 4

If you have any questions, please feel free to contact us at (803) 545-4200.

Sincerely,

Beverly Brandt

Beverly A. Brandt, Chief
Bureau of Health Facilities and Services Development

cc: Roper St. Francis Healthcare
East Cooper Regional Medical Center

Exhibit E



PARKER POE ADAMS & BERNSTEIN LLP

Attorneys and Counselors at Law

David B. Sumner, Jr.

Partner

Telephone: 803.253.8910

Direct Fax: 803.255.8017

davidsumner@parkerpoe.com

1201 Main Street

Suite 1450

P.O. Box 1509

Columbia, SC 29202-1509

Telephone 803.255.8000

Fax 803.255.8017

www.parkerpoe.com

July 6, 2009

Via Hand Delivery

The Honorable Lisa Lucas Longshore

Clerk of the Board

South Carolina Department of

Health and Environmental Control

2600 Bull Street

Columbia, South Carolina 29201

RECEIVED
S.C. DEPT. OF HEALTH
& ENVIRONMENTAL CONTROL
2009 JUL -6 PM 4:45
OFFICE OF THE COMMISSIONER
CHIEF OF STAFF
CLERK OF SCDEHC BOARD

Re: Request for Final Review of the Department's Decision, dated June 26, 2009, to approve Roper St. Francis Healthcare's ("Roper") application for a Certificate of Need ("CON") for the construction of a new hospital to be located on Highway 17A in Goose Creek, South Carolina, by transferring fifty (50) acute care beds from Roper Hospital and to include a multi-slice Computed Tomography ("CT") scanner and a 1.5T Magnetic Resonance Imaging ("MRI") Unit.

Dear Mrs. Longshore:

Pursuant to S.C. Code Ann. § 44-1-60(F), the South Carolina Certification of Need and Health Facility Licensure Act, S.C. Code Ann. § 44-7-110 *et seq.* ("CON Act"), and S.C. Regulation 61-15, Trident Medical Center, LLC ("Trident") hereby submits this Request for Final Review of the South Carolina Department of Health and Environmental Control staff's ("Department" or "Staff") issuance of the above referenced decision ("Decision"), attached hereto as Exhibit A. Based on the grounds set forth below, Trident respectfully requests that the Board reverse the Staff's Decision in its entirety and deny Roper's CON application for the above-referenced project.

Background

On August 13, 2008, Trident filed a CON application for the construction of a fifty (50) bed acute care hospital, including an MRI unit and a CT scanner ("Trident Proposed Project"). The Trident Proposed Project is to be located in Moncks Corner, the county seat and geographical center of Berkeley County, South Carolina. Trident proposed to establish the new hospital through the transfer of its facility-specific bed need at Trident Medical Center as set

CHARLESTON, SC
CHARLOTTE, NC
MYRTLE BEACH, SC
RALEIGH, NC
SPARTANBURG, SC

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Hon. Lisa Lucas Longshore
July 6, 2009
Page 2

forth in the 2004-2005 *South Carolina Health Plan*. Department Staff deemed Trident's Application complete on January 9, 2009, and notice of the commencement of Staff's review cycle was published in the February 27, 2009 issue of the *South Carolina State Register*.

Roper filed its above-referenced CON application on December 10, 2008 ("Roper Proposed Project").¹ The new satellite hospital proposed by Roper is to be located in Goose Creek, a city in southern Berkeley County, and less than ten (10) miles from Trident Medical Center. Roper's Proposed Project will provide the same services in the same service area as Trident's Proposed Project. Staff deemed Roper's Application complete on March 31, 2009, and notice of the commencement of Staff's review cycle was published in the April 24, 2009 issue of the *South Carolina State Register*.

On April 28, 2009, the Department informed Trident that it was extending the time frame for reviewing its application until June 27, 2009. Staff's sole reason cited for the extension was that Roper had applied to provide the same services in the same service area and, therefore, Staff should review both applications simultaneously. See Ltr. from L. Sanders, dated April 28, 2009, attached as Exhibit B. On May 21, 2009, Staff held a Project Review Meeting for both Trident's and Roper's Applications. On June 26, 2009, the date the Department approved Roper's Proposed Project, the Department issued a decision letter also granting Trident's Application. See Ltr. from B. Brandt, attached as Exhibit C.

Grounds for Reversal of Staff's Decision to Grant Roper's Application

Reserving its right to raise any issue presented to or considered by the Department, Trident challenges the Department's action on the grounds that the Staff Decision to approve the Roper Proposed Project undermines every stated purpose of the CON Act, violates the *State Health Plan* standards that the Board has adopted, and further violates the criteria set forth in the Department's CON regulations. For these reasons and based on the grounds set forth below, the Board must reverse the Staff's Decision.

- (1) Staff erred in Finding that Trident and Roper were not "competing applicants" within the meaning of the CON Act and Regulation 61-15.

Staff's finding on this issue is at odds with the fundamental purposes of the Department's CON Program. As explained in a letter to Beverly Brandt, Chief of Bureau of Health Facilities and Services Development for the Department, attached as Exhibit D, Staff was required to conclude as a matter of law that the Trident and Roper CON applications were competing because (1) Trident and Roper are seeking to provide similar facilities and services in the same service area, (2) Roper's Application was filed no later than fifteen days after the Department's Notice of Affected Persons for the Trident Application was published in the *State Register*, and

¹ Roper's Application was filed under the 2008-2009 *South Carolina Health Plan*. Both versions are referenced collectively herein as the *State Health Plan*.

(3) approval of both applications would exceed the need for the facilities and services. Thus, Roper and Trident clearly met the definition of "competing applicants" set forth in S.C. Code Ann. §44-7-130(5) and 24A S.C. Code Ann. Regs. 61-15, § 103(6).

As evidenced in its decision letters for both the Roper Proposed Project and the Trident Proposed Project, Staff limited its evaluation to the sole issue of whether approval of both projects would result in an excess of beds relative to the bed need projected in the *State Health Plan*. Staff then concluded that because Roper's Proposed Project did not result in an increase in the total number of beds in the service area, both Proposed Projects could be approved.

Staff's undemanding analysis failed to evaluate the issue in the context of the overall purposes of CON review. Specifically, the Department appears to have ignored the data presented that demonstrated that approval of both Proposed Projects would undermine the financial viability of both hospitals, resulting in a total combined loss of approximately \$60 million in the first three years of operation alone. *See* Ltr. from R. Baehr, dated May 28, 2009, attached as Exhibit E. Thus, Staff's approvals of both Proposed Projects effectively disqualify them from meeting the financial feasibility requirement needed for CON approval. This is an absurd result and the type of result that the concept of "competing applicants" was intended to prevent. Thus, by dismissing this information and arriving at its findings, Staff failed to execute the Department's mandate to avoid the unnecessary duplication and over-proliferation of inpatient hospital facilities and services in Berkeley County.

In addition, the following constitute grounds for the Board to reverse the Roper Decision:

- (2) Staff erred in finding that the Roper Application is consistent with the *State Health Plan*;
- (3) Staff erred in finding that Roper adequately demonstrated need for the Roper Proposed Project;
- (4) Staff erred in finding that the Roper Proposed Project will increase accessibility and availability of services for residents, including but not limited to medically underserved residents, of Berkeley County;
- (5) Staff erred in finding that the Roper Proposed Project appears to be financially feasible;
- (6) Staff erred in finding that the Roper Proposed Project appears to be financially feasible when Roper's CON application's financial projections assumed that only one hospital would be approved, *see* Exhibit E;
- (7) Staff erred in finding that the Roper application adequately demonstrated acceptability of the Roper Proposed Project;
- (8) Staff erred in finding that the Roper Proposed Project would have minimal impact on other facilities in the proposed service area, *see* Exhibit E;
- (9) Staff erred in finding that the Roper application demonstrated that Roper considered the distribution of acute care services in relation to the target population and the effect of the project in meeting the growing demands of the service area; and
- (10) Staff erred in finding that patients will experience serious problems in terms of costs, availability or accessibility, or such other problems as may be identified by the

Hon. Lisa Lucas Longshore
July 6, 2009
Page 4

Department, in obtaining acute hospital care in the absence of the Roper Proposed Project.

Conclusion

Based upon the foregoing and the record presented to the Department, Trident respectfully requests that the Board reverse the Staff's Decision and deny Roper's Application.

With best regards, I am

Sincerely,

David B. Summer Jr.

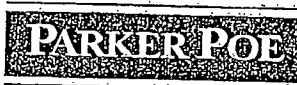
David B. Summer, Jr.

*By JBD
B/permission*

Attachments

cc: Beverly Brandt
Ralph Barbier, Esquire
Stuart M. Andrews, Esquire

Exhibit F



PARKER POE ADAMS & BERNSTEIN LLP

Attorneys and Counselors at Law

David B. Summer, Jr.

Partner

Telephone: 803.253.8910

Direct Fax: 803.255.8017

davidsummer@parkerpoe.com

1201 Main Street

Suite 1450

P.O. Box 1509

Columbia, SC 29202-1509

Telephone 803.255.8000

Fax 803.255.8017

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July 6, 2009

Via Hand Delivery

The Honorable Lisa Lucas Longshore
Clerk of the Board
South Carolina Department of
Health and Environmental Control
2600 Bull Street
Columbia, South Carolina 29201

RECEIVED
S.C. DEPT. OF HEALTH
& ENVIRONMENTAL CONTROL
2009 JUL -6 PM 4:45
OFFICE OF THE COMMISSIONER
CHIEF OF STAFF
CLERK OF SCDEHC BOARD

Re: Request for Final Review of certain findings related to the Department's Decision, dated June 26, 2009, to approve Trident Medical Center's ("Trident") Certificate of Need ("CON") application for the construction of a new hospital through the transfer of fifty (50) acute care beds from the bed need generated by Trident Medical Center, to be located adjacent to the current site of the Moncks Corner Medical Center at the intersection of Martin Luther King Drive and Highway 17A and to include a Computed Tomography ("CT") scanner and a Magnetic Resonance Imaging ("MRI") unit.

Dear Mrs. Longshore:

Pursuant to S.C. Code Ann. § 44-1-60(F), the South Carolina Certification of Need and Health Facility Licensure Act, S.C. Code Ann. § 44-7-110 *et seq.* ("CON Act"), and S.C. Regulation 61-15, Trident Medical Center, LLC ("Trident") submits this Request for Final Review of certain findings made by the South Carolina Department of Health and Environmental Control staff ("Department" or "Staff") in relation to its issuance of the above referenced decision ("Decision"), attached hereto as Exhibit A.

Trident's request for final review is limited solely to that part of Staff's Decision concluding that Trident and Roper St. Francis Hospital ("Roper") were not "competing applicants" within the meaning of S.C. Code Ann. §44-7-130(5) and 24A S.C. Code Ann. Regs. 61-15, § 103(6). Trident does not challenge Staff's correct findings that Trident's Application should be approved. Therefore, Trident respectfully requests that the Board reverse the Staff's

CHARLESTON, SC
CHARLOTTE, NC
MYRTLE BEACH, SC
RALEIGH, NC
SPARTANBURG, SC

PPAB 1581882v2

RECORD 000105

finding as to the competing applicants issue and uphold the Staff's Decision to grant Trident's Application.¹

Background

On August 13, 2008, Trident filed a CON application for the construction of a fifty (50) bed acute care hospital, including an MRI unit and a CT scanner ("Trident Proposed Project"). The Trident Proposed Project is to be located in Moncks Corner, the county seat and geographical center of Berkeley County, South Carolina. Trident proposed to establish the new hospital through the transfer of its facility-specific bed need at Trident Medical Center as set forth in the 2004-2005 *South Carolina Health Plan*. Department Staff deemed Trident's Application complete on January 9, 2009, and notice of the commencement of Staff's review cycle was published in the February 27, 2009 issue of the *South Carolina State Register*.

Roper filed its above-referenced CON application on December 10, 2008 ("Roper Proposed Project").² The new satellite hospital proposed by Roper is to be located in Goose Creek, a city in southern Berkeley County, and less than ten (10) miles from Trident Medical Center. Roper's Proposed Project will provide the same services in the same service area as Trident's Proposed Project. Staff deemed Roper's Application complete on March 31, 2009, and notice of the commencement of Staff's review cycle was published in the April 24, 2009 issue of the *South Carolina State Register*.

On April 28, 2009, the Department informed Trident that it was extending the time frame for reviewing its application until June 27, 2009. Staff's sole reason cited for the extension was that Roper had applied to provide the same services in the same service area and, therefore, Staff should review both applications simultaneously. See Ltr. from L. Sanders, dated April 28, 2009, attached as Exhibit B. On May 21, 2009, Staff held a Project Review Meeting for both Trident's and Roper's Applications. On June 26, 2009, the date the Department approved Trident's Proposed Project, the Department issued a decision letter also granting Roper's CON Application. See Ltr. from B. Brandt, attached as Exhibit C.

Grounds for Reversal of Staff's Refusal to Consider Trident and Roper to be Competing Applicants

Reserving its right to raise any issue presented to or considered by Staff, Trident challenges Staff's finding that Trident and Roper were not "competing applicants" within the

¹ By separate letter dated today, Trident is requesting the Board's final review of Staff's decision to grant Roper's Application. In that request, Trident is seeking the Board's reversal of both the Staff's finding that Trident and Roper are not competing applicants and the Staff's decision to approve Roper's Application.

² Roper's application was filed under the 2008-2009 *South Carolina Health Plan*. Both versions are referenced collectively herein as the *State Health Plan*.

meaning of the CON Act and Regulation 61-15. Staff's finding on this issue is at odds with the fundamental purposes of the Department's CON Program. As explained in a letter to Beverly Brandt, Chief of Bureau of Health Facilities and Services Development for the Department, attached as Exhibit D, Staff was required to conclude as a matter of law that the Trident and Roper CON applications were competing because (1) Trident and Roper are seeking to provide similar facilities and services in the same service area, (2) Roper's Application was filed no later than fifteen days after the Department's Notice of Affected Persons for the Trident Application was published in the *State Register*, and (3) approval of both applications would exceed the need for the facilities and services. Thus, Roper and Trident clearly met the definition of "competing applicants" set forth in S.C. Code Ann. §44-7-130(5) and 24A S.C. Code Ann. Regs. 61-15, § 103(6).

As evidenced in its decision letters for both the Roper Proposed Project and the Trident Proposed Project, Staff limited its evaluation to the sole issue of whether approval of both projects would result in an excess of beds relative to the bed need projected in the *State Health Plan*. Staff then concluded that because Roper's Proposed Project did not result in an increase in the total number of beds in the service area, both Proposed Projects could be approved.

Staff's undemanding analysis failed to evaluate the issue in the context of the overall purposes of CON review. Specifically, the Department appears to have ignored the data presented that demonstrated that approval of both Proposed Projects would undermine the financial viability of both hospitals, resulting in a total combined loss of approximately \$60 million in the first three years of operation alone. See Ltr. from R. Baehr, dated May 28, 2009, attached as Exhibit E. Thus, Staff's approvals of both Proposed Projects effectively disqualify them from meeting the financial feasibility requirement needed for CON approval. This is an absurd result and the type of result that the concept of "competing applicants" was intended to prevent. Thus, by dismissing this information and arriving at its findings, Staff failed to execute the Department's mandate to avoid the unnecessary duplication and over-proliferation of inpatient hospital facilities and services in Berkeley County.

Conclusion

Based upon the foregoing, Trident respectfully requests that the Board reverse the Staff's refusal to consider Trident and Roper to be competing applicants. Trident respectfully requests that the Board consider Roper and Trident's CON applications as competing pursuant to the CON Act and regulations and reverse the Department's decision to grant Roper a CON for its Proposed Project based on the grounds set forth in the aforementioned Request for Final Review submitted by Trident with respect to that decision by the Department.

Honorable. Lisa Lucas Longshore
July 6, 2009
Page 4

With best regards, I am

Sincerely,

David B. Summer, Jr.

David B. Summer, Jr.

*by JRO
w/ permission*

cc: Beverly Brandt
Ralph Barbier, Esquire
Stuart M. Andrews, Esquire

Exhibit G

BOARD:

Paul C. Aughtry, III
Chairman

Edwin H. Cooper, III
Vice Chairman

Steven G. Kisner
Secretary



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

BOARD:

Henry C. Scott

M. David Mitchell, MD

Glenn A. McCall

Coleman F. Buckhouse, MD

S.C. Board of Health and Environmental Control; Telephone (803) 898-3309 Fax: (803) 898-3393

July 14, 2009

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91 7108 2133 3936 3002 9187

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Columbia, SC 29202

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Ralph W. Barbier, Esquire
Nexsen Pruet
PO Drawer 2426
Columbia, SC 29202

Via Interagency Mail Delivery

Nancy S. Layman, Esquire
Ashley C. Biggers, Esquire
SCDHEC - Office of General Counsel
2600 Bull Street
Columbia, SC 29201

RE: **Docket No. 09-RFR-58** - Decision dated June 26, 2009, determining that Roper St. Francis and Trident Medical Center are not "competing applicants" in the CON process.

The S.C. Board of Health and Environmental Control decided on July 9, 2009, not to conduct a Final Review Conference on the above-referenced matter.

S.C. Code Section 44-1-60(F) provides, "If a final review conference is not conducted within sixty days, the department decision becomes the final agency decision, and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court, in accordance with the Administrative Procedures Act, within thirty days after the deadline for the final review conference."

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
2600 Bull Street • Columbia, SC 29201 • Phone: (803) 898-3432 • www.scdhec.gov

RECORD 000110

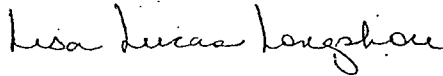
A request for a contested case hearing before the Administrative Law Court (ALC) must be filed in accordance with the Rules of the ALC, including payment of the ALC's filing fee, at the following address:

Clerk's Office
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Suite 224
Columbia, SC 29201

The ALC's Notice of Request for Contested Case Hearing form and the Rules of the ALC can be found at the ALC's website: <http://www.scalc.net>. Further information on filing a request for a contested case hearing before the ALC may be obtained by calling the Clerk's Office at the Administrative Law Court (803-734-0550).

If a party files a request for a contested case hearing with the ALC, the party must serve a copy of the request on DHEC and any other parties at the same time the request is filed with the ALC. A copy of the request for a contested case hearing must be delivered or mailed to DHEC at the address at the top of this memorandum.

Sincerely,



Lisa Lucas Longshore
Clerk

The above information on filing a request for a contested case hearing before the Administrative Law Court is provided as a courtesy; parties before the ALC are responsible for complying with all applicable requirements of the Court.

OCG # 20906

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Exhibit H

NEXSEN|PRUET

Ralph W. Barbier
Member
Admitted in SC

July 10, 2009

VIA HAND DELIVERY

Ms. Lisa Lucas Longshore
Clerk of the Board
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

Re: Request for Final Review of the Department's decision, dated June 26, 2009, to award a Certificate of Need to Trident Medical Center, LLC ("Trident") for the development of Berkeley Medical Center, a 50 bed hospital which Trident proposes to develop in Berkeley County ("Trident Project")

Dear Ms. Longshore:

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach

Pursuant to S.C. Code Ann. § 44-1-60(E) and (F); the South Carolina Certification of Need and Health Facility Licensure Act, S.C. Code Ann. § 44-7-110 *et seq.* (the "CON Act"); and S.C. Code Ann. Regs. 61-15, Roper St. Francis Healthcare, which includes Roper St. Francis Hospital-Berkeley ("Roper"), hereby submits this Request for Final Review of the South Carolina Department of Health and Environmental Control ("Department") staff's decision, dated June 26, 2009, to approve a CON to Trident for the above referenced project. The decision is attached hereto as Exhibit A.

Roper has made it very clear to the Department staff and to the public that it is in full support of both the Trident Project and Roper's proposed 50 bed hospital at Carnes Crossroads in Berkeley County ("Roper Project"). Berkeley County is one of only five counties in South Carolina that currently has no hospital, despite the fact that Berkeley County's current population is approximately 158,140, and is expected to increase to approximately 170,000 residents in the next five years. The other four South Carolina counties that do not have a hospital each have a population of fewer than 22,000.

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F 803.727.1404
E RBarbier@nexsenpruet.com
Nexsen Pruet, LLC
Attorneys and Counselors at Law

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JUL 10 2009

Parker, Poe, Adams
& Bernstein, L.L.P.

Roper believes lengthy and costly litigation over the Department staff's decision to approve both projects is not in the best interest of the citizens of Berkeley County. Roper continues to hold this position and very much wants both hospitals to be developed consistent with the Certificate of Need applications that the Department approved on June 26, 2009. However, on the same day the Department's decision to approve both projects was issued, Trident, through statements to the media, made it very clear that they intend to file an appeal challenging the Department's decision to approve the Roper Project. In fact, this past Monday, July 6, 2009, Trident did file a request for final review asking the Department Board to reverse the Department staff's approval of the Roper Project.

Trident continues to take the position that Berkeley County cannot support two 50 bed hospitals and that only Trident's Project should have been approved by the Department. Apparently, Trident intends to litigate this matter in an effort to block Roper from moving forward with its proposed hospital in Berkeley County, even if that means delaying for years Trident's own proposed project in Moncks Corner. Consequently, Roper is now being put in a position of having to file this request for final review so that should the Department Board or the courts subsequently agree with Trident that Berkeley County can only support one 50 bed hospital, that the Department Board and/or the courts will have the opportunity to select the Roper Project as the project that better meets the needs of Berkeley County. Therefore, should the Department Board determine that Berkeley County can support only one 50 bed hospital, Roper respectfully requests the Department Board reverse the Department staff's decision regarding the Trident Project and deny Trident's request for a Certificate of Need and affirm the decision to issue to Roper a Certificate of Need to build a new hospital at Carnes Crossroads. The grounds for Roper's position that it has the better application are as follows:

1. The Roper Project is located in the population epicenter of Berkeley County, which is expected to have rapid growth during the next five years while the Trident Project is located in a rural area of the county that is not expected to have significant population growth. Therefore, the Roper Project offers greater accessibility.
2. The Trident Project does not provide greater accessibility given that most of the county population lives outside the seven mile radius of the Trident Project site. Further, residents of the more rural areas in northern Berkeley County will have reduced drive times for inpatient hospital services with the development of the Roper Project at Carnes Crossroads and will also continue to have other options from which to choose.
3. Trident intends to add new beds to the service area, beyond what is even called for in the South Carolina Health Plan, while Roper is using existing beds and

simply relocating these existing beds to better serve Roper's existing patient population base in Berkeley County.

4. The Trident Project will adversely impact some of Roper's existing medical services in Moncks Corner, including the ambulatory surgery center, which already has low utilization, and may adversely impact Roper's existing inpatient facilities.

5. Roper, as a community not-for-profit charitable organization, is better able to provide for the medical needs of Berkeley County than is Trident, which is owned and operated by HCA, a for-profit hospital corporation located in Nashville, Tennessee. HCA owns a chain of for-profit hospitals around the country.

6. Trident's application is not consistent with the South Carolina Health Plan, Chapter II G.1(A)(4)(d).

Again, Roper believes that Berkeley County, given its tremendous geographic size and substantial population (2008 population of 158,140 persons), and anticipated significant population growth, can easily support two 50 bed hospitals. In fact, all South Carolina counties that have a population similar to Berkeley County of between 100,000 – 200,000 people, have well in excess of 100 hospitals beds with many counties having two or more hospitals. The following chart summarizes this information:

	<u>2006 Population</u>	<u>Existing Beds</u>
(a) Anderson County (2 hospitals)	173,710	495
(b) Pickens County (2 hospitals)	120,650	164
(c) Lexington County	164,134	384
(d) York County (1 existing hospital and CON approved for 2 nd hospital)	180,410	332
(e) Florence County (4 hospitals)	131,020	831
(f) Sumter County	112,850	283
(g) Aiken County	155,900	183
(h) Beaufort County (2 hospitals)	135,480	262

Source: 2008-2009 South Carolina Health Plan

Ms. Lisa Lucas Longshore, Clerk
July 10, 2009
Page 4

Further, counties with far less population than Berkeley County have well in excess of 100 hospital beds:

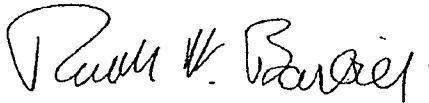
	<u>2006 Population</u>	<u>Existing Beds</u>
(a) Cherokee County	55,390	125
(b) Oconee County	71,850	169
(c) Union County	29,720	143
(d) Greenwood County	69,100	354
(e) Kershaw County	56,020	121
(f) Lancaster County	62,310	217
(g) Darlington County (2 hospitals)	68,220	165
(h) Georgetown County (2 hospitals)	58,970	255
(i) Marion County	36,060	124
(j) Colleton County	40,220	131
(k) Orangeburg County	94,780	247

Source: 2008-2009 South Carolina Health Plan

Roper urges the Department Board to affirm the approval of both the Trident and Roper Projects. However, if the Department Board determines that only one project can be approved, Roper respectfully requests that the Board select the Roper Project.

Thank you for your consideration.

Very truly yours,



Ralph W. Barbier

cc: Beverly Brandt(via hand-delivery)
Lisa Sanders (via hand-delivery)
David Summer, Esq. (via hand-delivery) ✓

Exhibit I

BOARD:
Paul C. Aughtry, III
Chairman
Edwin H. Cooper, III
Vice Chairman
Steven G. Kisner
Secretary



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

BOARD:
Henry C. Scott
M. David Mitchell, MD
Glenn A. McCall
Coleman F. Buckhouse, MD

S.C. Board of Health and Environmental Control; Telephone (803) 898-3309 Fax: (803) 898-3393

July 17, 2009

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Parker, Poe, Adams
& Bernstein, L.L.P.

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Ralph W. Barbier, Esquire
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PO Drawer 2426
Columbia, SC 29202

71 7108 2133 3936 3002 9217

David B. Summer, Jr., Esquire
Parker Poe Adams & Bernstein, LLP
PO Box 1509
Columbia, SC 29202

Via Interagency Mail Delivery

Nancy S. Layman, Esquire
Ashley C. Biggers, Esquire
SCDHEC - Office of General Counsel
2600 Bull Street
Columbia, SC 29201

RE: **Docket No. 09-RFR-58** - Decision dated June 26, 2009, granting a Certificate of Need for a 50 bed hospital in Berkeley County.

The S.C. Board of Health and Environmental Control will not to conduct a Final Review Conference on the above-referenced matter.

S.C. Code Section 44-1-60(F), 2006 Act No. 387, Section 48, provides, "If a final review conference is not conducted within sixty days, the department decision becomes the final agency decision, and an applicant, permittee, licensee; or affected person may request a contested case hearing before the Administrative Law Court, in accordance with the Administrative Procedures Act, within thirty days after the deadline for the final review conference."

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
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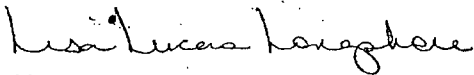
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1205 Pendleton St., Suite 224
Columbia, SC 29201

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Sincerely,



Lisa Lucas Longshore
Clerk

The above information on filing a request for a contested case hearing before the Administrative Law Court is provided as a courtesy; parties before the ALC are responsible for complying with all applicable requirements of the Court.

OCG # 20906

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

- Trident Medical Center, LLC, d/b/a)
Berkeley Medical Center,)
)
Petitioner,)
)
vs.)
)
South Carolina Department of Health and)
Environmental Control,)
)
Respondent.)
)
_____)

PETITION FOR ADMINISTRATIVE
REVIEW AND REQUEST FOR
CONTESTED CASE HEARING

Pursuant to Rule 11 of the Rules of Procedure of the Administrative Law Court ("RPALC"), Petitioner Trident Medical Center, LLC, d/b/a Berkeley Medical Center ("Trident"), by and through its undersigned counsel, petitions the Court for administrative review and reversal of (1) the finding by the South Carolina Department of Health and Environmental Control ("Department") in its June 26, 2009 decision letter that Trident and Roper St. Francis Hospital – Berkeley, Inc., d/b/a Roper St. Francis Hospital – Berkeley ("Roper") are not competing applicants within the meaning of the State Licensure and Certification of Need Act, S.C. Code Ann. §§44-7-110 *et seq.* ("CON Act") and the Department's CON regulations codified at 24A S.C. Code Ann. Reg. 61-15 ("S.C. Reg. 61-15" or "Regulation 61-15"), *see Exhibit A* and (2) only so much of the decision by the South Carolina Board of Health and Environmental Control ("Board") to permit the Department's staff decision to become a final agency decision as concerns the finding that Trident and Roper are not competing applicants within the meaning of the CON Act and Regulation 61-15, *see Exhibit B*. This Petition for

FILED

AUG 07 2009

SC ADMIN. LAW COURT

Administrative Review and Request for Contested Case Hearing is based upon the following grounds:

Background and Procedural History

1. The Court has jurisdiction over this matter pursuant to S.C. Const. art. I, § 22; S.C. Code Ann. §§ 1-23-320, 1-23-600(B), 44-1-60(F), and 44-7-210(D); 24A S.C. Code Ann. Regs. 61-15; and Rule 11 of the RPALC.
2. Trident Medical Center, LLC operates the Trident Health System, a family of hospitals and health care facilities serving Berkeley, Charleston, and Dorchester Counties for more than 35 years through Trident Medical Center, a 296-bed tertiary-care hospital located in North Charleston, Charleston County; Summerville Medical Center, a 94-bed acute-care hospital located in Summerville, Dorchester County; and Moncks Corner Medical Center, a freestanding emergency department and outpatient diagnostic center, located in Moncks Corner, Berkeley County.
3. Trident is an “affected person” pursuant to S.C. Reg. 61-15, § 103(1) and has standing to assert its claims in this case.
4. In the early 1970’s, the North Charleston Public Service Commission and Charleston Area Comprehensive Health Planning initiated efforts to establish the North Trident Regional Hospital Committee to explore the feasibility of establishing a hospital facility to serve Berkeley County, Dorchester County and northern Charleston County. The then-existing Berkeley County Hospital and Dorchester County Hospital agreed to close upon the construction of the new hospital. In December 1972, the Department issued a CON for the construction of a 200-bed acute care hospital in northern Charleston County, Trident Medical Center (f/k/a North Trident

Regional Hospital) to serve the North Trident Area of Charleston, *Berkeley* and Dorchester Counties.

5. In 1975, Trident Medical Center was opened and the Berkeley and Dorchester County Hospitals were closed. In 1983, Trident established outpatient and sub-acute care facilities and services in Moncks Corner, Berkeley County, which have expanded to a freestanding emergency department and additional outpatient and sub-acute care facilities and services. Approximately forty-two percent (42%) of Trident Health System's admissions are from patients residing in Berkeley County.

6. The Department's *State Health Plan* generally establishes the planning regions for acute care hospitals on a county-by-county basis. However, the Department historically has recognized certain exceptions to a single-county service area. Since the adoption of the *2001 State Health Plan*, the Department has recognized the Charleston area region of Berkeley, Dorchester and Charleston Counties (the "Tri-County Region") to constitute a single planning region for acute care hospital beds. In adopting both the *2004-2005 State Health Plan* ("*2004-2005 Plan*") and the *2008-2009 State Health Plan* ("*2008-2009 Plan*"), the Department recognized the Tri-County Region as a single planning area for acute care hospital beds.

7. Under both the *2004-2005 Plan* and the *2008-2009 Plan*, existing hospitals are permitted to obtain a CON for the addition of beds based on the *Plan*'s showing of a hospital-specific bed need. If the *Plan* reflects that an existing hospital has a bed need of less than 50, then the hospital can apply for up to 50 new beds to accomplish a cost-effective addition of beds.

8. Under both the *2004-2005 Plan* and the *2008-2009 Plan*, an existing hospital may transfer its licensed beds to an *existing* affiliated hospital upon the satisfaction of certain

requirements and criteria. Neither *Plan* permits an existing hospital with no bed need to transfer its licensed beds to establish a new facility.

9. Under the *2004-2005 Plan*, Trident Medical Center had a 17-bed, facility-specific bed need.¹ On August 13, 2008, Trident filed a CON application with the Department for the construction of Berkeley Regional Medical Center, a new 50-bed acute care hospital with a Magnetic Resonance Imaging (“MRI”) unit and a Computed Tomography (“CT”) scanner, to be located in Moncks Corner, the county seat and geographical center of Berkeley County (“Trident Proposed Project”). Trident proposed to establish the new hospital through its existing 17-bed facility-specific bed need identified for Trident Medical Center in the *2004-2005 Plan*.

10. The *2008-2009 Plan* became effective on September 12, 2008. Under the *2008-2009 Plan*, Roper Hospital, Inc. in downtown peninsular Charleston, South Carolina (“Roper Downtown”) has an *excess* of 6 beds, and Bon Secours St. Francis Xavier Hospital (“Roper West Ashley”) has an *excess* of 17 beds. In addition, under the *2008-2009 Plan*, the Tri-County Region has an aggregate *excess* of 50 beds. However, like the *2004-2005 Plan*, the *2008-2009 Plan* reflects that the only hospitals in the Tri-County Region with a facility-specific bed need are Trident Medical Center and Summerville Medical Center.

11. In response to Trident’s CON application filing, on December 10, 2008, Roper filed a CON application with the Department for the construction of a new 50-bed, acute care hospital with an MRI unit and a CT scanner (“Roper Proposed Project”). Roper proposed to transfer 50 of its existing, licensed beds from Roper Downtown to establish the new hospital. Roper further proposed that the new hospital would be located in Goose Creek in the southern portion of

¹ The *2004-2005 Plan* originally showed a 42-bed need. However, in 2008 Trident Medical Center obtained a CON to convert 25 skilled nursing beds to acute care beds, thus reducing the actual projected bed need to 17 beds. Summerville Medical Center showed a 20-bed need. Therefore, under the *2004-2005 Plan*, the Trident Health System showed an aggregate 37-bed need.

Berkeley County, less than ten miles from Trident Medical Center and less than ten miles from Summerville Medical Center. Thus, with respect to the Trident Proposed Project, Roper proposed to establish similar services and/or facilities in the same service area and in the same county.

12. Both the CON Act and Regulation 61-15 define competing applicants as “two or more persons or health care facilities . . . who apply for Certificates of Need to provide similar services or facilities in the same service area within a time frame as established by departmental regulations and whose applications, if approved, would exceed the need for services or facilities.” S.C. Code Ann. § 44-7-130(5); S.C. Reg. 61-15 § 103(6). The Department’s Regulation 61-15 states that “[a]n application *shall* be considered competing if it is received by the Department no later than fifteen (15) days after a Notice of Affected Persons is published in the State Register for one or more applications for similar services and/or facilities in the same service area.” S.C. Reg. 61-15 § 103(6) (emphasis added).

13. After deeming both CON applications complete, the Department notified Trident that it was extending the time frame for review of Trident’s application. The Department’s sole reason for the extension was that Roper had submitted an application for construction of a hospital that would provide the *same services in the same service area* as Trident’s proposed hospital. See Exhibit C.

14. The Department published a notice to affected persons regarding Trident’s CON application in the February 27, 2009 issue of the *South Carolina State Register*. Thus, Roper’s December 10, 2008 filing of its CON application was timely with respect to the 15-day regulatory period.

15. Roper filed its application for the Proposed Project even though the *2008-2009 Plan* reflects that Roper's hospitals have an inventory of licensed beds that exceed their bed need and even though there exists an excess of hospital beds in the Tri-County Region. Thus, by definition, the Department was required to conclude that the Roper Proposed Project *by itself or in conjunction with the Trident Proposed Project* exceeds the need for hospital beds because there is an aggregate excess of needed beds in the Tri-County Region and because Roper Downtown and Roper West Ashley have an excess of needed beds for those facilities.
16. On June 26, 2009, the Department approved both the Roper Proposed Project and the Trident Proposed Project. See Exhibit A and Exhibit D. The Department stated that "the applications are not competing because the beds used for the Roper St. Francis Hospital – Berkeley project are a permanent bed transfer, not a bed increase; therefore, the bed need will not be exceeded." See Exhibit A.
17. On July 6, 2009, Trident requested that the Board conduct a Final Review Conference and reverse the Department's decision to issue a CON for Roper's Proposed Project. See Exhibit E. On that same day, with respect to its own CON application, Trident also requested that the Board conduct a Final Review Conference solely regarding the Department's finding that Trident and Roper are not competing applicants. See Exhibit F.
18. On July 9, 2009, the Department declined to conduct either of Trident's requested Final Review Conferences. See Exhibit B and Exhibit G.
19. On July 10, 2009, Roper requested that the Board conduct a Final Review Conference of the Department's decision to issue a CON for the construction of the Trident Proposed Project, and if the Department decided that Berkeley County could support only one hospital, to reverse

the Department's decision to issue a CON for the Trident Proposed Project and uphold the Department's decision to issue a CON for Roper's Proposed Project. See Exhibit H.

20. On July 17, 2009, the Board declined Roper's request for a Final Review Conference as well. See Exhibit I.

Grounds for Reversal of the Department's Decision

21. In response to the Board's decision to decline final review and in accordance with S.C. Code Ann. § 44-1-60(F), and reserving its right to raise any and all issues presented to and considered by the Department below, Trident respectfully requests that the Court reverse the Department's June 26, 2009 finding that Trident and Roper are not competing applicants as arbitrary, capricious, and/or affected by other errors of law or fact, based on the following grounds:

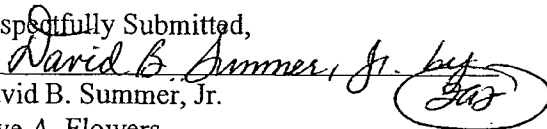
a. The Department's finding that Trident and Roper are not competing applicants is arbitrary, capricious, and contrary to the standards and criteria set forth in the *2004-2005 Plan*, the *2008-2009 Plan*, the CON Act, Regulation 61-15, and other applicable law, because the Trident and Roper CON applications, by the Department's own admission, seek to provide similar services and facilities in the same service area, and the applications were filed within the regulatory time limits for Trident and Roper to be considered competing applicants. The Department further erred by concluding that approval of both applications would not exceed the need for hospital beds in the service area based on the rationale that Roper is only moving, not adding, beds to the service area. Because the *2008-2009 Plan* reflects that there is an aggregate excess of beds in the Tri-County Region and that each of Roper's existing hospitals has an excess of beds, by definition, the Department was required to conclude that the Roper Proposed Project *by itself or in conjunction with the Trident Proposed Project* exceeds the need

for hospital beds. Thus, the Department's finding that Roper and Trident were not competing applicants was an error of law.

b. The Department's finding that Trident and Roper are not competing applicants is arbitrary, capricious, and contrary to the standards and criteria set forth in the *2004-2005 Plan*, the *2008-2009 Plan*, the CON Act, Regulation 61-15, and other applicable law, because the data submitted by both Trident and Roper to demonstrate their respective satisfaction of the applicable regulatory project review criteria assumed that only one hospital would be approved. The sole reliable data presented to the Department regarding the results of approving both hospitals demonstrated that if the Trident and Roper Proposed Projects are both constructed, both hospitals will operate at a combined loss of \$59 million for the first three years operation and approximately \$15 million in the third year alone. If the Roper Proposed Project decision is not reversed and both projects are approved, neither the Roper Proposed Project nor the Trident Proposed Project can be financially feasible.

WHEREFORE, Trident respectfully prays that the Court issue an order reversing the Department's June 26, 2009 finding that Trident and Roper are not competing applicants with respect to the Trident Proposed Project and the Roper Proposed Project.

Respectfully Submitted,


David B. Summer, Jr.
Faye A. Flowers
PARKER POE ADAMS & BERNSTEIN, LLP
1201 Main Street, Suite 1450
Post Office Box 1509
Columbia, SC 29202
(803) 255-8000; (803) 255-8017 (fax)
davidsummer@parkerpoe.com
fayeflowers@parkerpoe.com
Attorneys for Petitioner

Columbia, South Carolina
August 7, 2009

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 7, 2009, s/he served the foregoing **Petition for Administrative Review and Request for Contested Case Hearing** on all parties by causing a copy of the same to be hand delivered addressed as follows:

The Honorable Lisa Lucas Longshore
Clerk of the Board
South Carolina Department of
Health and Environmental Control
2600 Bull Street
Columbia, South Carolina 29201

Beverly A. Brandt
Chief, Bureau of Health Facilities and Services
South Carolina Department of
Health and Environmental Control
1777 St. Julian Place, Suite 201
Columbia, SC 29204

Nancy S. Layman, Esquire
Ashley C. Biggers, Esquire
South Carolina Department of
Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

James G. Long, III, Esquire
Ralph W. Barbier, Esquire
Nexsen Pruet
1230 Main Street, Suite 700
Columbia, SC 29201

Susan U. Amett

FILED

AUG 07 2009

SC ADMIN. LAW COURT

Exhibit A



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

CERTIFIED MAIL

91 7108 2133 3933 7191 9150

June 26, 2009

Jim Rardin, Vice President
Trident Health System
9330 Medical Plaza Drive
Charleston, South Carolina 29406

Re: Berkeley Medical Center
Moncks Corner, South Carolina

Dear Mr. Rardin:

The Department has determined that the Berkeley Medical Center and the Roper St. Francis Hospital - Berkeley applications are not competing applications as defined by Regulation 61-15 "Certification of Need for Health Facilities and Services" Section 103.6. The Department has determined the applications are not competing because the beds used for the Roper St. Francis Hospital - Berkeley project will be a permanent bed transfer, not a bed increase; therefore, the bed need will not be exceeded. In addition, the benefits of improve accessibility to the citizens of Berkeley County were weighed against any potential duplication of services.

It is the decision of this Department that a Certificate of Need be issued to Berkeley Medical Center in Moncks Corner, South Carolina for the construction to establish a fifty (50) bed acute care hospital through the transfer of 50 acute care beds from the bed need generated by Trident Medical Center to include a Magnetic Resonance Imaging (MRI) unit and a Computed Tomography (CT) scanner; the facility will be located adjacent to the current site of the Moncks Corner Medical Center at the intersection of Martin Luther King Drive and Highway 17A; conversion of the existing Moncks Corner Medical Center into a medical office building housing physician offices and clinics.

The decision is based on the following:

1. The application is consistent with Chapter II Section G.1(A)(4)(d) for General Acute Hospital bed need methodology and the Certificate of Need Standards for Magnetic Resonance Imaging (MRI) services as stated in the 2004-2005 South Carolina Health Plan;

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Health Regulation

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RECORD 000130

Mr. Jim Rardin
June 26, 2009
Page 2

2. The applicant has adequately demonstrated the need for the project within the application;
3. The project will increase accessibility and availability of services for residents of Berkeley County;
4. The project appears to be financially feasible based upon the information available;
5. The applicant has submitted substantial letters of community and physician support for the project;
6. Upon review and consideration of all materials submitted by affected parties, the Department concludes there should be minimal impact upon other facilities in the proposed service area; and
7. The applicant has considered the distribution of acute care services in relation to the target population and the effect of the project in meeting the growing demands of the service area.

The Department makes the following findings pursuant to Section 501, Regulation No. 61-15, Certification of Need for Health Facilities and Services:

1. The capital and operating costs of the proposal and their potential impact on patient charges are reasonable;
2. Superior alternatives to such services in terms of cost, efficiency, or appropriateness do not exist and that the development of such alternatives is not practicable;
3. In the case of new construction, alternatives to new construction (e.g., modernization or sharing arrangements) have been considered;
4. Patients will experience serious problems in terms of costs, availability or accessibility, or such other problems as may be identified by the Department, in obtaining care of the type proposed in the absence of the project.

The additional finding required by Section 501.5 of Regulation No. 61-15, Certification of Need for Health Facilities and Services is not applicable to this project.

The following appeal procedures are in effect beginning July 1, 2006, pursuant to 2006 Act No. 387:

1. This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision fifteen (15) days after notice of the

Mr. Jim Rardin
June 26, 2009
Page 3

decision has been mailed to the applicant or his agent unless a written request for final review is filed with the Department by the applicant or an affected person.

2. An applicant or affected person who wishes to appeal this decision must file a written request for final review with the Clerk of the Board at the following address or by facsimile at 803-898-3323:

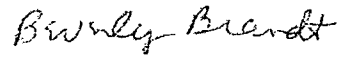
Clerk of the Board
SC DHEC
2600 Bull Street
Columbia, SC 29201

3. The request for final review should include the following:
 - a) the grounds on which the Department's decision is challenged and the specific changes sought in the decision;
 - b) a statement of any significant issues or factors the Board should consider in deciding how to handle the matter; and
 - c) a copy of the Department's decision or action under review.
4. In order to be timely, a request for final review must be received by the Clerk of the Board within 15 days after notice of the Department decision has been mailed to the applicant or his agent. If the 15th day occurs on a weekend or State holiday, the request is due to be received by the Clerk of the Board on the next working day. The request for final review must be received by the Clerk of the Board by 5:00 pm on the date it is due.
5. If a timely request for final review is filed with the Clerk of the Board, the Clerk will provide additional information regarding procedures.
6. The Board of Health and Environmental Control has 60 days from the date of receipt of a request for final review to conduct a final review conference. The conference may be conducted by the Board, its designee, or a committee of three members of the Board appointed by the chair.
7. If a final review conference is not conducted within 60 days, the Department decision becomes the final agency decision, and a party may request a contested case hearing before the Administrative Law Court within 30 days after the deadline for the final review conference.

Mr. Jim Rardin
June 26, 2009
Page 4

If you have any questions, please feel free to contact us at (803) 545-4200.

Sincerely,



Beverly A. Brandt, Chief
Bureau of Health Facilities and Services Development

cc: Roper St. Francis Healthcare
East Cooper Regional Medical Center

Exhibit B

BOARD:

Paul C. Aughtry, III
Chairman

Edwin H. Cooper, III
Vice Chairman

Steven G. Kiser
Secretary



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

BOARD:

Henry C. Scott

M. David Mitchell, MD

Glenn A. McCall

Coleman F. Buckhouse, MD

S.C. Board of Health and Environmental Control; Telephone (803) 898-3309 Fax: (803) 898-3393

July 14, 2009

RECEIVED

JUL 15 2009

U.S. Mail - CERTIFIED - Return Receipt

91 7108 2133 3936 3002 9187

David B. Summer, Jr., Esquire
Parker Poe Adams & Bernstein, LLP
PO Box 1509
Columbia, SC 29202

91 7108 2133 3936 3002 9194

Ralph W. Barbier, Esquire
Nexsen Pruet
PO Drawer 2426
Columbia, SC 29202

Via Interagency Mail Delivery

Nancy S. Layman, Esquire
Ashley C. Biggers, Esquire
SCDHEC - Office of General Counsel
2600 Bull Street
Columbia, SC 29201

RE: **Docket No. 09-RFR-58** - Decision dated June 26, 2009, determining that Roper St. Francis and Trident Medical Center are not "competing applicants" in the CON process.

The S.C. Board of Health and Environmental Control decided on July 9, 2009, not to conduct a Final Review Conference on the above-referenced matter.

S.C. Code Section 44-1-60(F) provides, "If a final review conference is not conducted within sixty days, the department decision becomes the final agency decision, and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court, in accordance with the Administrative Procedures Act, within thirty days after the deadline for the final review conference."

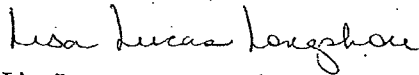
A request for a contested case hearing before the Administrative Law Court (ALC) must be filed in accordance with the Rules of the ALC, including payment of the ALC's filing fee, at the following address:

Clerk's Office
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Suite 224
Columbia, SC 29201

The ALC's Notice of Request for Contested Case Hearing form and the Rules of the ALC can be found at the ALC's website: <http://www.scale.net>. Further information on filing a request for a contested case hearing before the ALC may be obtained by calling the Clerk's Office at the Administrative Law Court (803-734-0550).

If a party files a request for a contested case hearing with the ALC, the party must serve a copy of the request on DHEC and any other parties at the same time the request is filed with the ALC. A copy of the request for a contested case hearing must be delivered or mailed to DHEC at the address at the top of this memorandum.

Sincerely,



Lisa Lucas Longshore
Clerk

The above information on filing a request for a contested case hearing before the Administrative Law Court is provided as a courtesy; parties before the ALC are responsible for complying with all applicable requirements of the Court.

OCG # 20906

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Exhibit C



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

RECEIVED

APR 30 2009

Parker, Poe, Adams
& Bernstein, L.L.P.

CERTIFIED MAIL

91 7108 2133 3935 6156 8830

April 28, 2009

Mr. Jim Rardin, Vice President
Trident Health System
9330 Medical Plaza Drive
Charleston, South Carolina 29406

Re: Construction to establish a fifty (50) bed acute care hospital through the transfer of 50 acute care beds from the bed need generated by Trident Medical Center to include a Magnetic Resonance Imaging (MRI) unit and a Computed Tomography (CT) scanner; the facility will be located adjacent to the current site of the Moncks Corner Medical Center at the intersection of Martin Luther King Drive and Highway 17A; conversion of the existing Moncks Corner Medical Center into a medical office building housing physician offices and clinics
Berkeley Medical Center
Moncks Corner, South Carolina

Dear Mr. Rardin:

This is to advise that this Department's review time frame for the above referenced projects is extended for sixty (60) days or until **June 27, 2009**. The reason for the extension is that there is another application, which is being reviewed in a later cycle that is requesting approval of similar services in the same service area. Therefore, it is in the best interest of the public that the Department be able to render decisions on these two (2) applications simultaneously. This action is in accordance with Section 305.2b of Regulation No. 61-15, Certification of Need for Health Facilities and Services.

Should there be any questions concerning this, please feel free to contact us at (803) 545-4200.

Sincerely,

Lisa D. Sanders, Health Planning Analyst
Bureau of Health Facilities and Services Development

cc: Andrea Brisbin
David Summer
Ralph Barbier
Shannon Cantwell

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

Health Regulation

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RECORD 000138

Exhibit D



G. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

CERTIFIED MAIL

91 7108 2133 3433 7191 9167

June 26, 2009

Re: Roper St. Francis Hospital - Berkeley
Goose Creek, South Carolina

Ms. Shannon Cantwell, Regulatory Affairs Specialist
Roper St. Francis Healthcare
125 Doughty Street, Suite 760
Charleston, South Carolina 29403

Dear Ms. Cantwell:

The Department has determined that the Roper St. Francis Hospital - Berkeley and the Berkeley Medical Center applications are not competing applications as defined by Regulation 61-15 "Certification of Need for Health Facilities and Services" Section 103.6. The Department has determined the applications are not competing because the beds used for the Roper St. Francis Hospital - Berkeley project are a permanent bed transfer, not a bed increase; therefore, the bed need will not be exceeded. The proposed project basically a re-positioning of currently licensed acute care beds from an area of limited growth to an area of strong growth and will have no impact on the Tri-County's bed count or bed need. Further, the proposal is consistent with general health planning goals of maximizing the usage of existing resources and positioning and re-positioning underutilized resources in areas of strong volume and population growth.

It is the decision of this Department that a Certificate of Need be issued to Roper St. Francis Hospital - Berkeley in Goose Creek, South Carolina for the construction of a new hospital by permanently transferring fifty (50) acute care beds from Roper Hospital to include a multi-slice Computed Tomography (CT) scanner and a 1.5T Magnetic Resonance Imaging (MRI) unit for a total license bed capacity of fifty (50) acute care beds at Roper St. Francis Berkeley and three hundred eighteen (318) total licensed beds at Roper Hospital; the facility will be located on Highway 17A in Goose Creek, South Carolina

The decision is based on the following:

1. The application is consistent with Chapter II Section G.I(A)(4)(j) for the General Acute Hospital bed need methodology as stated in the 2008-2009 South Carolina Health Plan;

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
Health Regulation

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Ms. Shannon Cantwell

June 26, 2009

Page 2

2. The applicant has adequately demonstrated the need for the project within the application;
3. The project will increase accessibility and availability of services for residents of Berkeley County;
4. The project appears to be financially feasible based upon the information available;
5. The applicant has submitted substantial letters of community and physician support for the project;
6. Upon review and consideration of all materials submitted by affected parties, the Department concludes there should be minimal impact upon other facilities in the proposed service area; and
7. The applicant has considered the distribution of acute care services in relation to the target population and the effect of the project in meeting the growing demands of the service area.

The Department makes the following findings pursuant to Section 501, Regulation No. 61-15, Certification of Need for Health Facilities and Services:

1. The capital and operating costs of the proposal and their potential impact on patient charges are reasonable;
2. Superior alternatives to such services in terms of cost, efficiency, or appropriateness do not exist and that the development of such alternatives is not practicable;
3. In the case of new construction, alternatives to new construction (e.g., modernization or sharing arrangements) have been considered;
4. Patients will experience serious problems in terms of costs, availability or accessibility, or such other problems as may be identified by the Department, in obtaining care of the type proposed in the absence of the project.

The additional finding required by Section 501.5 of Regulation No. 61-15, Certification of Need for Health Facilities and Services is not applicable to this project.

The following appeal procedures are in effect beginning July 1, 2006, pursuant to 2006 Act No. 387:

1. This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision fifteen (15) days after notice of the

Ms. Shamon Cantwell
June 26, 2009
Page 3

decision has been mailed to the applicant or his agent unless a written request for final review is filed with the Department by the applicant or an affected person.

2. An applicant or affected person who wishes to appeal this decision must file a written request for final review with the Clerk of the Board at the following address or by facsimile at 803-898-3323:

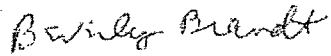
Clerk of the Board
SC DHEC
2600 Bull Street
Columbia, SC 29201

3. The request for final review should include the following:
 - a) the grounds on which the Department's decision is challenged and the specific changes sought in the decision;
 - b) a statement of any significant issues or factors the Board should consider in deciding how to handle the matter; and
 - c) a copy of the Department's decision or action under review.
4. In order to be timely, a request for final review must be received by the Clerk of the Board within 15 days after notice of the Department decision has been mailed to the applicant or his agent. If the 15th day occurs on a weekend or State holiday, the request is due to be received by the Clerk of the Board on the next working day. The request for final review must be received by the Clerk of the Board by 5:00 pm on the date it is due.
5. If a timely request for final review is filed with the Clerk of the Board, the Clerk will provide additional information regarding procedures.
6. The Board of Health and Environmental Control has 60 days from the date of receipt of a request for final review to conduct a final review conference. The conference may be conducted by the Board, its designee, or a committee of three members of the Board appointed by the chair.
7. If a final review conference is not conducted within 60 days, the Department decision becomes the final agency decision, and a party may request a contested case hearing before the Administrative Law Court within 30 days after the deadline for the final review conference.

Ms. Shannon Cantwell
June 26, 2009
Page 4

If you have any questions, please feel free to contact us at (803) 545-4200.

Sincerely,



Beverly A. Brandt, Chief
Bureau of Health Facilities and Services Development

cc: Trident Health System
East Cooper Regional Medical Center

Exhibit E



PARKER POE ADAMS & BERNSTEIN LLP

Attorneys and Counselors at Law

David B. Sumner, Jr.

Partner

Telephone: 803.253.8910

Direct Fax: 803.255.8017

davidsumner@parkerpoe.com

1201 Main Street
Suite 1450
P.O. Box 1509
Columbia, SC 29202-1509
Telephone 803.255.8000
Fax 803.255.8017
www.parkerpoe.com

July 6, 2009

Via Hand Delivery

The Honorable Lisa Lucas Longshore
Clerk of the Board
South Carolina Department of
Health and Environmental Control
2600 Bull Street
Columbia, South Carolina 29201

RECEIVED
S.C. DEPT. OF HEALTH
& ENVIRONMENTAL CONTROL
2009 JUL -6 PM 4:45
OFFICE OF THE COMMISSIONER
CHIEF OF STAFF
CLERK OF SCDEHC BOARD

Re: Request for Final Review of the Department's Decision, dated June 26, 2009, to approve Roper St. Francis Healthcare's ("Roper") application for a Certificate of Need ("CON") for the construction of a new hospital to be located on Highway 17A in Goose Creek, South Carolina, by transferring fifty (50) acute care beds from Roper Hospital and to include a multi-slice Computed Tomography ("CT") scanner and a 1.5T Magnetic Resonance Imaging ("MRI") Unit.

Dear Mrs. Longshore:

Pursuant to S.C. Code Ann. § 44-1-60(F), the South Carolina Certification of Need and Health Facility Licensure Act, S.C. Code Ann. § 44-7-110 *et seq.* ("CON Act"), and S.C. Regulation 61-15, Trident Medical Center, LLC ("Trident") hereby submits this Request for Final Review of the South Carolina Department of Health and Environmental Control staff's ("Department" or "Staff") issuance of the above referenced decision ("Decision"), attached hereto as Exhibit A. Based on the grounds set forth below, Trident respectfully requests that the Board reverse the Staff's Decision in its entirety and deny Roper's CON application for the above-referenced project.

Background

On August 13, 2008, Trident filed a CON application for the construction of a fifty (50) bed acute care hospital, including an MRI unit and a CT scanner ("Trident Proposed Project"). The Trident Proposed Project is to be located in Moncks Corner, the county seat and geographical center of Berkeley County, South Carolina. Trident proposed to establish the new hospital through the transfer of its facility-specific bed need at Trident Medical Center as set

CHARLESTON, SC
CHARLOTTE, NC
MYRTLE BEACH, SC
RALEIGH, NC
SPARTANBURG, SC

PPAB 1581788v2

forth in the 2004-2005 South Carolina Health Plan. Department Staff deemed Trident's Application complete on January 9, 2009, and notice of the commencement of Staff's review cycle was published in the February 27, 2009 issue of the *South Carolina State Register*.

Roper filed its above-referenced CON application on December 10, 2008 ("Roper Proposed Project").¹ The new satellite hospital proposed by Roper is to be located in Goose Creek, a city in southern Berkeley County, and less than ten (10) miles from Trident Medical Center. Roper's Proposed Project will provide the same services in the same service area as Trident's Proposed Project. Staff deemed Roper's Application complete on March 31, 2009, and notice of the commencement of Staff's review cycle was published in the April 24, 2009 issue of the *South Carolina State Register*.

On April 28, 2009, the Department informed Trident that it was extending the time frame for reviewing its application until June 27, 2009. Staff's sole reason cited for the extension was that Roper had applied to provide the same services in the same service area and, therefore, Staff should review both applications simultaneously. See Ltr. from L. Sanders, dated April 28, 2009, attached as Exhibit B. On May 21, 2009, Staff held a Project Review Meeting for both Trident's and Roper's Applications. On June 26, 2009, the date the Department approved Roper's Proposed Project, the Department issued a decision letter also granting Trident's Application. See Ltr. from B. Brandt, attached as Exhibit C.

Grounds for Reversal of Staff's Decision to Grant Roper's Application

Reserving its right to raise any issue presented to or considered by the Department, Trident challenges the Department's action on the grounds that the Staff Decision to approve the Roper Proposed Project undermines every stated purpose of the CON Act, violates the *State Health Plan* standards that the Board has adopted, and further violates the criteria set forth in the Department's CON regulations. For these reasons and based on the grounds set forth below, the Board must reverse the Staff's Decision.

- (1) Staff erred in Finding that Trident and Roper were not "competing applicants" within the meaning of the CON Act and Regulation 61-15.

Staff's finding on this issue is at odds with the fundamental purposes of the Department's CON Program. As explained in a letter to Beverly Brandt, Chief of Bureau of Health Facilities and Services Development for the Department, attached as Exhibit D, Staff was required to conclude as a matter of law that the Trident and Roper CON applications were competing because (1) Trident and Roper are seeking to provide similar facilities and services in the same service area, (2) Roper's Application was filed no later than fifteen days after the Department's Notice of Affected Persons for the Trident Application was published in the *State Register*, and

¹ Roper's Application was filed under the 2008-2009 South Carolina Health Plan. Both versions are referenced collectively herein as the *State Health Plan*.

(3) approval of both applications would exceed the need for the facilities and services. Thus, Roper and Trident clearly met the definition of "competing applicants" set forth in S.C. Code Ann. §44-7-130(5) and 24A S.C. Code Ann. Regs. 61-15, § 103(6).

As evidenced in its decision letters for both the Roper Proposed Project and the Trident Proposed Project, Staff limited its evaluation to the sole issue of whether approval of both projects would result in an excess of beds relative to the bed need projected in the *State Health Plan*. Staff then concluded that because Roper's Proposed Project did not result in an increase in the total number of beds in the service area, both Proposed Projects could be approved.

Staff's undemanding analysis failed to evaluate the issue in the context of the overall purposes of CON review. Specifically, the Department appears to have ignored the data presented that demonstrated that approval of both Proposed Projects would undermine the financial viability of both hospitals, resulting in a total combined loss of approximately \$60 million in the first three years of operation alone. See Ltr. from R. Baehr, dated May 28, 2009, attached as Exhibit E. Thus, Staff's approvals of both Proposed Projects effectively disqualify them from meeting the financial feasibility requirement needed for CON approval. This is an absurd result and the type of result that the concept of "competing applicants" was intended to prevent. Thus, by dismissing this information and arriving at its findings, Staff failed to execute the Department's mandate to avoid the unnecessary duplication and over-proliferation of inpatient hospital facilities and services in Berkeley County.

In addition, the following constitute grounds for the Board to reverse the Roper Decision:

- (2) Staff erred in finding that the Roper Application is consistent with the *State Health Plan*;
- (3) Staff erred in finding that Roper adequately demonstrated need for the Roper Proposed Project;
- (4) Staff erred in finding that the Roper Proposed Project will increase accessibility and availability of services for residents, including but not limited to medically underserved residents, of Berkeley County;
- (5) Staff erred in finding that the Roper Proposed Project appears to be financially feasible;
- (6) Staff erred in finding that the Roper Proposed Project appears to be financially feasible when Roper's CON application's financial projections assumed that only one hospital would be approved, see Exhibit E;
- (7) Staff erred in finding that the Roper application adequately demonstrated acceptability of the Roper Proposed Project;
- (8) Staff erred in finding that the Roper Proposed Project would have minimal impact on other facilities in the proposed service area, see Exhibit E;
- (9) Staff erred in finding that the Roper application demonstrated that Roper considered the distribution of acute care services in relation to the target population and the effect of the project in meeting the growing demands of the service area; and
- (10) Staff erred in finding that patients will experience serious problems in terms of costs, availability or accessibility, or such other problems as may be identified by the

Hon. Lisa Lucas Longshore
July 6, 2009
Page 4

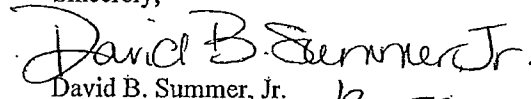
Department, in obtaining acute hospital care in the absence of the Roper Proposed Project.

Conclusion

Based upon the foregoing and the record presented to the Department, Trident respectfully requests that the Board reverse the Staff's Decision and deny Roper's Application.

With best regards, I am

Sincerely,


David B. Summer, Jr.

David B. Summer, Jr.

by JBD
w/ permission

Attachments

cc: Beverly Brandt
Ralph Barbier, Esquire
Stuart M. Andrews, Esquire

Exhibit F



David B. Summer, Jr.

Partner

Telephone: 803.253.8910

Direct Fax: 803.255.8017

davidsummer@parkerpoe.com

Attorneys and Counselors at Law

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Suite 1450
P.O. Box 1509
Columbia, SC 29202-1509
Telephone 803.255.8000
Fax 803.255.8017
www.parkerpoe.com

July 6, 2009

Via Hand Delivery

The Honorable Lisa Lucas Longshore
Clerk of the Board
South Carolina Department of
Health and Environmental Control
2600 Bull Street
Columbia, South Carolina 29201

RECEIVED
S.C. DEPT. OF HEALTH
& ENVIRONMENTAL CONTROL
2009 JUL -6 PM 4:45
OFFICE OF THE COMMISSIONER
CHIEF OF STAFF
CLERK OF SCDEHC BOARD

Re: Request for Final Review of certain findings related to the Department's Decision, dated June 26, 2009, to approve Trident Medical Center's ("Trident") Certificate of Need ("CON") application for the construction of a new hospital through the transfer of fifty (50) acute care beds from the bed need generated by Trident Medical Center, to be located adjacent to the current site of the Moncks Corner Medical Center at the intersection of Martin Luther King Drive and Highway 17A and to include a Computed Tomography ("CT") scanner and a Magnetic Resonance Imaging ("MRI") unit.

Dear Mrs. Longshore:

Pursuant to S.C. Code Ann. § 44-1-60(F), the South Carolina Certification of Need and Health Facility Licensure Act, S.C. Code Ann. § 44-7-110 *et seq.* ("CON Act"), and S.C. Regulation 61-15, Trident Medical Center, LLC ("Trident") submits this Request for Final Review of certain findings made by the South Carolina Department of Health and Environmental Control staff ("Department" or "Staff") in relation to its issuance of the above referenced decision ("Decision"), attached hereto as Exhibit A.

Trident's request for final review is limited solely to that part of Staff's Decision concluding that Trident and Roper St. Francis Hospital ("Roper") were not "competing applicants" within the meaning of S.C. Code Ann. §44-7-130(5) and 24A S.C. Code Ann. Regs. 61-15, § 103(6). Trident does not challenge Staff's correct findings that Trident's Application should be approved. Therefore, Trident respectfully requests that the Board reverse the Staff's

CHARLESTON, SC
CHARLOTTE, NC
MYRTLE BEACH, SC
RALEIGH, NC
SPARTANBURG, SC

PPAB 1581882v2

Honorable. Lisa Lucas Longshore
July 6, 2009
Page 2

finding as to the competing applicants issue and uphold the Staff's Decision to grant Trident's Application.¹

Background

On August 13, 2008, Trident filed a CON application for the construction of a fifty (50) bed acute care hospital, including an MRI unit and a CT scanner ("Trident Proposed Project"). The Trident Proposed Project is to be located in Moncks Corner, the county seat and geographical center of Berkeley County, South Carolina. Trident proposed to establish the new hospital through the transfer of its facility-specific bed need at Trident Medical Center as set forth in the 2004-2005 *South Carolina Health Plan*. Department Staff deemed Trident's Application complete on January 9, 2009, and notice of the commencement of Staff's review cycle was published in the February 27, 2009 issue of the *South Carolina State Register*.

Roper filed its above-referenced CON application on December 10, 2008 ("Roper Proposed Project").² The new satellite hospital proposed by Roper is to be located in Goose Creek, a city in southern Berkeley County, and less than ten (10) miles from Trident Medical Center. Roper's Proposed Project will provide the same services in the same service area as Trident's Proposed Project. Staff deemed Roper's Application complete on March 31, 2009, and notice of the commencement of Staff's review cycle was published in the April 24, 2009 issue of the *South Carolina State Register*.

On April 28, 2009, the Department informed Trident that it was extending the time frame for reviewing its application until June 27, 2009. Staff's sole reason cited for the extension was that Roper had applied to provide the same services in the same service area and, therefore, Staff should review both applications simultaneously. See Ltr. from L. Sanders, dated April 28, 2009, attached as Exhibit B. On May 21, 2009, Staff held a Project Review Meeting for both Trident's and Roper's Applications. On June 26, 2009, the date the Department approved Trident's Proposed Project, the Department issued a decision letter also granting Roper's CON Application. See Ltr. from B. Brandt, attached as Exhibit C.

Grounds for Reversal of Staff's Refusal to Consider Trident and Roper to be Competing Applicants

Reserving its right to raise any issue presented to or considered by Staff, Trident challenges Staff's finding that Trident and Roper were not "competing applicants" within the

¹ By separate letter dated today, Trident is requesting the Board's final review of Staff's decision to grant Roper's Application. In that request, Trident is seeking the Board's reversal of both the Staff's finding that Trident and Roper are not competing applicants and the Staff's decision to approve Roper's Application.

² Roper's application was filed under the 2008-2009 *South Carolina Health Plan*. Both versions are referenced collectively herein as the *State Health Plan*.

Honorable. Lisa Lucas Longshore

July 6, 2009

Page 3

meaning of the CON Act and Regulation 61-15. Staff's finding on this issue is at odds with the fundamental purposes of the Department's CON Program. As explained in a letter to Beverly Brandt, Chief of Bureau of Health Facilities and Services Development for the Department, attached as Exhibit D, Staff was required to conclude as a matter of law that the Trident and Roper CON applications were competing because (1) Trident and Roper are seeking to provide similar facilities and services in the same service area, (2) Roper's Application was filed no later than fifteen days after the Department's Notice of Affected Persons for the Trident Application was published in the *State Register*, and (3) approval of both applications would exceed the need for the facilities and services. Thus, Roper and Trident clearly met the definition of "competing applicants" set forth in S.C. Code Ann. §44-7-130(5) and 24A S.C. Code Ann. Regs. 61-15, § 103(6).

As evidenced in its decision letters for both the Roper Proposed Project and the Trident Proposed Project, Staff limited its evaluation to the sole issue of whether approval of both projects would result in an excess of beds relative to the bed need projected in the *State Health Plan*. Staff then concluded that because Roper's Proposed Project did not result in an increase in the total number of beds in the service area, both Proposed Projects could be approved.

Staff's undemanding analysis failed to evaluate the issue in the context of the overall purposes of CON review. Specifically, the Department appears to have ignored the data presented that demonstrated that approval of both Proposed Projects would undermine the financial viability of both hospitals, resulting in a total combined loss of approximately \$60 million in the first three years of operation alone. See Ltr. from R. Baehr, dated May 28, 2009, attached as Exhibit E. Thus, Staff's approvals of both Proposed Projects effectively disqualify them from meeting the financial feasibility requirement needed for CON approval. This is an absurd result and the type of result that the concept of "competing applicants" was intended to prevent. Thus, by dismissing this information and arriving at its findings, Staff failed to execute the Department's mandate to avoid the unnecessary duplication and over-proliferation of inpatient hospital facilities and services in Berkeley County.

Conclusion

Based upon the foregoing, Trident respectfully requests that the Board reverse the Staff's refusal to consider Trident and Roper to be competing applicants. Trident respectfully requests that the Board consider Roper and Trident's CON applications as competing pursuant to the CON Act and regulations and reverse the Department's decision to grant Roper a CON for its Proposed Project based on the grounds set forth in the aforementioned Request for Final Review submitted by Trident with respect to that decision by the Department.

Honorable. Lisa Lucas Longshore
July 6, 2009
Page 4

With best regards, I am

Sincerely,

David B. Summer, Jr.

David B. Summer, Jr.

*by JRO
w/ permission*

cc: Beverly Brandt
Ralph Barbier, Esquire
Stuart M. Andrews, Esquire

Exhibit G

BOARD:

Paul C. Aughtry, III
Chairman

Edwin H. Cooper, III
Vice Chairman

Steven G. Kisner
Secretary



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

BOARD:

Henry C. Scott

M. David Mitchell, MD

Glenn A. McCall

Coleman F. Buckhouse, MD

S.C. Board of Health and Environmental Control; Telephone (803) 898-3309 Fax: (803) 898-3393

July 14, 2009

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JUL 15 2009

Parker, Poe, Adams
& Bernstein, L.L.P.

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David B. Summer, Jr., Esquire
Parker Poe Adams & Bernstein, LLP
PO Box 1509
Columbia, SC 29202

91 7108 2133 3936 3002 9170

Ralph W. Barbier, Esquire
Nexsen Pruet
PO Drawer 2426
Columbia, SC 29202

Via Interagency Mail Delivery

Nancy S. Layman, Esquire
Ashley C. Biggers, Esquire
SCDHEC - Office of General Counsel
2600 Bull Street
Columbia, SC 29201

RE: **Docket No. 09-RFR-57** - Decision dated June 26, 2009, to issue a Certificate of Need (CON) to Roper St. Francis Hospital for the construction of new facility by transferring beds from existing facility and determining that Roper St. Francis and Trident Medical Center are not "competing applicants" in the CON process.

The S.C. Board of Health and Environmental Control decided on July 9, 2009, not to conduct a Final Review Conference on the above-referenced matter.

S.C. Code Section 44-1-60(F) provides, "If a final review conference is not conducted within sixty days, the department decision becomes the final agency decision, and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court, in accordance with the Administrative Procedures Act, within thirty days after the deadline for the final review conference."

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
2600 Bull Street • Columbia, SC 29201 • Phone: (803) 808-3439 • www.scdhec.com

RECORD 000155

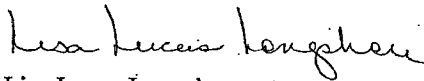
A request for a contested case hearing before the Administrative Law Court (ALC) must be filed in accordance with the Rules of the ALC, including payment of the ALC's filing fee, at the following address:

Clerk's Office
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Suite 224
Columbia, SC 29201

The ALC's Notice of Request for Contested Case Hearing form and the Rules of the ALC can be found at the ALC's website: <http://www.scalc.net>. Further information on filing a request for a contested case hearing before the ALC may be obtained by calling the Clerk's Office at the Administrative Law Court (803-734-0550).

If a party files a request for a contested case hearing with the ALC, the party must serve a copy of the request on DHEC and any other parties at the same time the request is filed with the ALC. A copy of the request for a contested case hearing must be delivered or mailed to DHEC at the address at the top of this memorandum.

Sincerely,



Lisa Lucas Longshore
Clerk

The above information on filing a request for a contested case hearing before the Administrative Law Court is provided as a courtesy; parties before the ALC are responsible for complying with all applicable requirements of the Court.

OCG # 20905

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Exhibit H

NEXSEN|PRUET

Ralph W. Barbier
Member
Admitted in SC

July 10, 2009

VIA HAND DELIVERY

Ms. Lisa Lucas Longshore
Clerk of the Board
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

Re: Request for Final Review of the Department's decision, dated June 26, 2009, to award a Certificate of Need to Trident Medical Center, LLC ("Trident") for the development of Berkeley Medical Center, a 50 bed hospital which Trident proposes to develop in Berkeley County ("Trident Project")

Dear Ms. Longshore:

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach

Pursuant to S.C. Code Ann. § 44-1-60(E) and (F); the South Carolina Certification of Need and Health Facility Licensure Act, S.C. Code Ann. § 44-7-110 *et seq.* (the "CON Act"); and S.C. Code Ann. Regs. 61-15, Roper St. Francis Healthcare, which includes Roper St. Francis Hospital-Berkeley ("Roper"), hereby submits this Request for Final Review of the South Carolina Department of Health and Environmental Control ("Department") staff's decision, dated June 26, 2009, to approve a CON to Trident for the above referenced project. The decision is attached hereto as Exhibit A.

Roper has made it very clear to the Department staff and to the public that it is in full support of both the Trident Project and Roper's proposed 50 bed hospital at Carnes Crossroads in Berkeley County ("Roper Project"). Berkeley County is one of only five counties in South Carolina that currently has no hospital, despite the fact that Berkeley County's current population is approximately 158,140, and is expected to increase to approximately 170,000 residents in the next five years. The other four South Carolina counties that do not have a hospital each have a population of fewer than 22,000.

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www.nexsenpruet.com

T 803.540.2004
F 803.727.1404
E RBarbier@nexsenpruet.com
Nexsen Pruet, LLC
Attorneys and Counselors at Law

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JUL 10 2009

Parker, Poe, Adams
& Bernstein, L.L.P.

RECORD 000158

Ms. Lisa Lucas Longshore, Clerk
July 10, 2009
Page 2

Roper believes lengthy and costly litigation over the Department staff's decision to approve both projects is not in the best interest of the citizens of Berkeley County. Roper continues to hold this position and very much wants both hospitals to be developed consistent with the Certificate of Need applications that the Department approved on June 26, 2009. However, on the same day the Department's decision to approve both projects was issued, Trident, through statements to the media, made it very clear that they intend to file an appeal challenging the Department's decision to approve the Roper Project. In fact, this past Monday, July 6, 2009, Trident did file a request for final review asking the Department Board to reverse the Department staff's approval of the Roper Project.

Trident continues to take the position that Berkeley County cannot support two 50 bed hospitals and that only Trident's Project should have been approved by the Department. Apparently, Trident intends to litigate this matter in an effort to block Roper from moving forward with its proposed hospital in Berkeley County, even if that means delaying for years Trident's own proposed project in Moncks Corner. Consequently, Roper is now being put in a position of having to file this request for final review so that should the Department Board or the courts subsequently agree with Trident that Berkeley County can only support one 50 bed hospital, that the Department Board and/or the courts will have the opportunity to select the Roper Project as the project that better meets the needs of Berkeley County. Therefore, should the Department Board determine that Berkeley County can support only one 50 bed hospital, Roper respectfully requests the Department Board reverse the Department staff's decision regarding the Trident Project and deny Trident's request for a Certificate of Need and affirm the decision to issue to Roper a Certificate of Need to build a new hospital at Carnes Crossroads. The grounds for Roper's position that it has the better application are as follows:

1. The Roper Project is located in the population epicenter of Berkeley County, which is expected to have rapid growth during the next five years while the Trident Project is located in a rural area of the county that is not expected to have significant population growth. Therefore, the Roper Project offers greater accessibility.
2. The Trident Project does not provide greater accessibility given that most of the county population lives outside the seven mile radius of the Trident Project site. Further, residents of the more rural areas in northern Berkeley County will have reduced drive times for inpatient hospital services with the development of the Roper Project at Carnes Crossroads and will also continue to have other options from which to choose.
3. Trident intends to add new beds to the service area, beyond what is even called for in the South Carolina Health Plan, while Roper is using existing beds and

simply relocating these existing beds to better serve Roper's existing patient population base in Berkeley County.

4. The Trident Project will adversely impact some of Roper's existing medical services in Moncks Corner, including the ambulatory surgery center, which already has low utilization, and may adversely impact Roper's existing inpatient facilities.

5. Roper, as a community not-for-profit charitable organization, is better able to provide for the medical needs of Berkeley County than is Trident, which is owned and operated by HCA, a for-profit hospital corporation located in Nashville, Tennessee. HCA owns a chain of for-profit hospitals around the country.

6. Trident's application is not consistent with the South Carolina Health Plan, Chapter II G.1(A)(4)(d).

Again, Roper believes that Berkeley County, given its tremendous geographic size and substantial population (2008 population of 158,140 persons), and anticipated significant population growth, can easily support two 50 bed hospitals. In fact, all South Carolina counties that have a population similar to Berkeley County of between 100,000 – 200,000 people, have well in excess of 100 hospitals beds with many counties having two or more hospitals. The following chart summarizes this information:

	<u>2006 Population</u>	<u>Existing Beds</u>
(a) Anderson County (2 hospitals)	173,710	495
(b) Pickens County (2 hospitals)	120,650	164
(c) Lexington County	164,134	384
(d) York County (1 existing hospital and CON approved for 2 nd hospital)	180,410	332
(e) Florence County (4 hospitals)	131,020	831
(f) Sumter County	112,850	283
(g) Aiken County	155,900	183
(h) Beaufort County (2 hospitals)	135,480	262

Source: 2008-2009 South Carolina Health Plan

Ms. Lisa Lucas Longshore, Clerk
July 10, 2009
Page 4

Further, counties with far less population than Berkeley County have well in excess of 100 hospital beds:

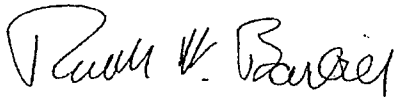
	<u>2006 Population</u>	<u>Existing Beds</u>
(a) Cherokee County	55,390	125
(b) Oconee County	71,850	169
(c) Union County	29,720	143
(d) Greenwood County	69,100	354
(e) Kershaw County	56,020	121
(f) Lancaster County	62,310	217
(g) Darlington County (2 hospitals)	68,220	165
(h) Georgetown County (2 hospitals)	58,970	255
(i) Marion County	36,060	124
(j) Colleton County	40,220	131
(k) Orangeburg County	94,780	247

Source: 2008-2009 South Carolina Health Plan

Roper urges the Department Board to affirm the approval of both the Trident and Roper Projects. However, if the Department Board determines that only one project can be approved, Roper respectfully requests that the Board select the Roper Project.

Thank you for your consideration.

Very truly yours,



Ralph W. Barbier

cc: Beverly Brandt(via hand-delivery)
Lisa Sanders (via hand-delivery)
David Summer, Esq. (via hand-delivery) ✓

Exhibit I

BOARD:
Paul C. Aughtry, III
Chairman
Edwin H. Cooper, III
Vice Chairman
Steven G. Kisner
Secretary



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

BOARD:
Henry C. Scott
M. David Mitchell, MD
Glenn A. McCall
Coleman F. Buckhouse, MD

S.C. Board of Health and Environmental Control; Telephone (803) 898-3309 Fax: (803) 898-3393

July 17, 2009

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Parker, Poe, Adams
& Bernstein, L.L.P.

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91 7108 2133 3936 3002 9200

Ralph W. Barbier, Esquire
Nexsen Pruet
PO Drawer 2426
Columbia, SC 29202

91 7108 2133 3936 3002 9217

David B. Summer, Jr., Esquire
Parker Poe Adams & Bernstein, LLP
PO Box 1509
Columbia, SC 29202

Via Interagency Mail Delivery

Nancy S. Layman, Esquire
Ashley C. Biggers, Esquire
SCDHEC - Office of General Counsel
2600 Bull Street
Columbia, SC 29201

RE: **Docket No. 09-RFR-58** - Decision dated June 26, 2009, granting a Certificate of Need for a 50 bed hospital in Berkeley County.

The S.C. Board of Health and Environmental Control will not to conduct a Final Review Conference on the above-referenced matter.

S.C. Code Section 44-1-60(F), 2006 Act No. 387, Section 48, provides, "If a final review conference is not conducted within sixty days, the department decision becomes the final agency decision, and an applicant, permittee, licensee; or affected person may request a contested case hearing before the Administrative Law Court, in accordance with the Administrative Procedures Act, within thirty days after the deadline for the final review conference."

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
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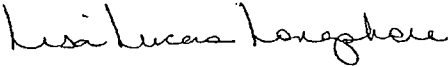
A request for a contested case hearing before the Administrative Law Court (ALC) must be filed in accordance with the Rules of the ALC, including payment of the ALC's filing fee, at the following address:

Clerk's Office
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Suite 224
Columbia, SC 29201

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If a party files a request for a contested case hearing with the ALC, the party must serve a copy of the request on DHEC and any other parties at the same time the request is filed with the ALC. A copy of the request for a contested case hearing must be delivered or mailed to DHEC at the address at the top of this memorandum.

Sincerely,



Lisa Lucas Longshore
Clerk

The above information on filing a request for a contested case hearing before the Administrative Law Court is provided as a courtesy; parties before the ALC are responsible for complying with all applicable requirements of the Court.

OCG # 20906

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

FILED

AUG 07 2009

SC ADMIN. LAW COURT

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

Petitioner,

vs.

Trident Medical Center, LLC regarding its
application to construct Berkeley Medical
Center and South Carolina Department of
Health and Environmental Control,

Respondents.

Docket No.: 09-ALJ-____-____-____

REQUEST FOR CONTESTED CASE
HEARING

Pursuant to South Carolina Code Sections 44-1-60 and 44-7-210 and Rule 11 of the South Carolina Rules of Procedure for the Administrative Law Court, the Petitioner CareAlliance Health Services and Roper St. Francis-Berkeley ("Roper"), by and through its undersigned attorneys, respectfully file this contested case requesting a hearing in the Administrative Law Court regarding the June 26, 2009 decision of the South Carolina Department Health & Environmental Control ("DHEC" or the "Department") to grant Trident Medical Center, LLC ("Trident") a Certificate of Need ("CON") to construct a fifty (50) bed acute care hospital in Berkeley County, South Carolina ("Trident Project"). The Petitioner would show as follows:

1. The Court has jurisdiction over this matter under S.C. Const. Art. I, § 22; S.C. Code Ann. § 1-23-320; § 1-23-600(B); § 44-1-60(F) and § 44-7-210(D); 24A S.C. Code Ann. Regs. 61-15; and Rule 11 RPALC.

2. Roper serves patients in the service area affected by the Trident Project, including patients residing in Berkeley County. Roper currently has pending a Certificate of Need

application to construct an acute care hospital in Goose Creek, South Carolina in Berkeley County ("Roper Project"). This location is in the same County as the proposed Trident Project.

3. Roper is an "affected person" and has standing to assert its claims in this case.

4. By letter dated June 26, 2009, Department staff approved Trident's request for CON to construct an acute care hospital in Moncks Corner, South Carolina. (Attached as **Exhibit A**) By letter dated June 26, 2009, Department Staff approved Roper's request for a CON to construct an acute care hospital in Goose Creek, South Carolina.

5. By letter dated July 6, 2009, Trident filed its Request for a Final Review Conference with the DHEC Board on the Department's decision to approve both Trident's CON application and Roper's CON application. (Attached as **Exhibit B** – excluding exhibits attached to letter.)

6. In its Request for a Final Review Conference, Trident limited its request for final review "solely to that part of Staff's decision concluding that Trident and Roper St. Francis Hospital ('Roper') were not 'competing applicants' within the meaning of S.C. Code Ann. § 44-7-130(5) and 24A S.C. Code Ann Regs. 61-15 § 103(6)." See **Exhibit B**.

7. By letter dated July 14, 2009, the DHEC Board informed Trident of its decision not to conduct a Final Review Conference. (Attached as **Exhibit C**) Trident has indicated publicly that it will file a Request for Contested Case to challenge the decision by the Department.

8. On July 10, 2009, Roper filed its Request for a Final Review Conference with the DHEC Board on the Department's decision to approve Trident's CON application. (Attached as **Exhibit D** – excluding exhibits attached to letter.)

9. By letter dated July 17, 2009, the DHEC Board informed Roper of its decision not to conduct a Final Review. (Attached as **Exhibit E**)

10. Roper agrees with the Department's decision that these CON applications are not "competing applications" and that the Department correctly approved both applications.

11. Roper hereby files this Request for a Contested Case Hearing to protect its legal rights in the event that Trident files a Request for a Contested Case Hearing. Roper expects Trident to assert the position that the applications filed by Trident and Roper are "competing applications" as defined by South Carolina law and, therefore, assert that only one of the two CON applications can be approved by the Department.

12. If this Court concludes that the Trident and Roper CON applications are competing applications, the application that most fully complies with the requirements, goals, and purposes of the Certificate of Need program, State Health Plan, project review criteria, and any regulations developed by the Department is the application to receive the CON. S.C. Code Ann. § 44-7-210(c); 24A S.C. Code Regs. 61-15 § 307(2).

13. If the applications are determined to be competing applications, Roper should be awarded the CON because its application is superior to the Trident application. The grounds to show why Roper's CON application is superior to Trident's CON are set forth in the two CON applications and include but are not limited to the following reasons:

a. The Roper Project is located in the population epicenter of Berkeley County, which is expected to have rapid growth during the next five years, while the Trident Project is located in a rural area of the county that is not expected to have significant population growth. Therefore, the Roper Project offers greater accessibility, a criteria in the determination whether to award a CON.

b. The Trident Project does not provide greater accessibility given that most of the county population lives outside the seven mile radius of the Trident Project site. Further, residents of the more rural areas in northern Berkeley County will have reduced drive times for inpatient hospital services with the development of the Roper Project at Carnes Crossroads in Goose Creek, South Carolina and will also continue to have other options from which to choose.

c. Trident intends to add new beds to the service area, beyond what is even called for in the South Carolina State Health Plan, while Roper is using existing beds and simply relocating these existing beds to better serve Roper's existing patient population base in Berkeley County.

d. The Trident Project will adversely impact some of Roper's existing medical services in Moncks Corner, including the ambulatory surgery center, which already has low utilization, and may adversely impact Roper's existing inpatient facilities.

e. Roper, as a community not-for-profit charitable organization, is better able to provide for the medical needs of Berkeley County than is Trident, which is owned and operated by HCA, a for-profit hospital corporation located in Nashville, Tennessee. HCA owns a chain of for-profit hospitals around the country.

f. Trident's application is not consistent with the South Carolina State Health Plan.

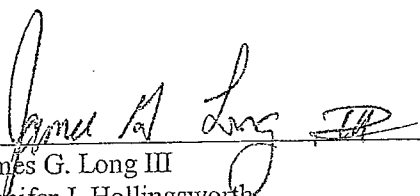
WHEREFORE, having duly set forth the grounds for this contested case, the Petitioner would request that this Court grant it the following relief:

1. Affirm the Department's decision dated June 26, 2009, to award a Certificate of Need to both Roper and Trident for each to construct an acute care hospital in Berkeley County, South Carolina.

2. In the event these Certificate of Need applications are determined to be competing applications and only one Certificate of Need may be awarded, Roper's CON application should be approved and Trident's CON application should be denied.

3. Such other and further relief that this Court may determine is just and proper.

RESPECTFULLY SUBMITTED,


James G. Long III
Jennifer J. Hollingsworth
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202
803.771.8900
jlong@nexsenpruet.com
jhollingsworth@nexsenpruet.com

Attorneys for Petitioner
CareAlliance Health Services and Roper St.
Francis Hospital-Berkeley

August 7, 2009
Columbia, South Carolina

FILED

AUG 07 2009

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

SC ADMIN. LAW COURT

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

Petitioner,

vs.

Trident Medical Center, LLC regarding its
application to construct Berkeley Medical
Center and South Carolina Department of
Health and Environmental Control,

Respondents.

Docket No.: 09-ALJ-____-____-____

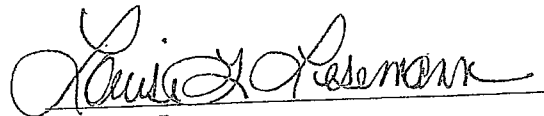
CERTIFICATE OF SERVICE

This is to certify that the foregoing **Request for Contested Case Hearing** has been
served on counsel of record via hand-delivery, addressed as shown below, this 7th day of
August, 2009:

David B. Summer, Esquire
Parker, Poe, Adams & Bernstein, LLP
1201 Main Street, Suite 1450
Columbia, South Carolina 29201

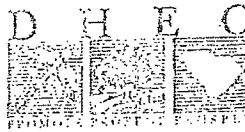
Lisa Lucas Longshore
Clerk, Board of Health and
Environmental Control
South Carolina Department of
Health and Environmental Control
2600 Bull Street
Columbia, South Carolina 29201

Nancy S. Layman, Esquire
South Carolina Department of
Health and Environmental Control
2600 Bull Street
Columbia, South Carolina 29201



Louise F. Lesemann
NEXSEN PRUET, LLC
1230 Main Street, Suite 700
Post Office Drawer 2426 (29202)
Columbia, SC 29201
(803) 771-8900

EXHIBIT A



C. Red Hines, Commissioner

Promoting and protecting the health of the public and the environment

CERTIFIED MAIL

91 7108 2133 3933 7191 9150

June 26, 2009

Jim Rardin, Vice President
Trident Health System
9330 Medical Plaza Drive
Charleston, South Carolina 29406

Re: Berkeley Medical Center
Moncks Corner, South Carolina

Dear Mr. Rardin:

The Department has determined that the Berkeley Medical Center and the Roper St. Francis Hospital - Berkeley applications are not competing applications as defined by Regulation 61-15 "Certification of Need for Health Facilities and Services" Section 103.6. The Department has determined the applications are not competing because the beds used for the Roper St. Francis Hospital - Berkeley project will be a permanent bed transfer, not a bed increase; therefore, the bed need will not be exceeded. In addition, the benefits of improve accessibility to the citizens of Berkeley County were weighed against any potential duplication of services.

It is the decision of this Department that a Certificate of Need be issued to Berkeley Medical Center in Moncks Corner, South Carolina for the construction to establish a fifty (50) bed acute care hospital through the transfer of 50 acute care beds from the bed need generated by Trident Medical Center to include a Magnetic Resonance Imaging (MRI) unit and a Computed Tomography (CT) scanner; the facility will be located adjacent to the current site of the Moncks Corner Medical Center at the intersection of Martin Luther King Drive and Highway 17A; conversion of the existing Moncks Corner Medical Center into a medical office building housing physician offices and clinics.

The decision is based on the following:

1. The application is consistent with Chapter II Section G.1(A)(4)(d) for General Acute Hospital bed need methodology and the Certificate of Need Standards for Magnetic Resonance Imaging (MRI) services as stated in the 2004-2005 South Carolina Health Plan.

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
Health Regulation

2600 Bull Street • Columbia, SC 29201 • www.scdhec.gov

Mr. Jim Rardin
June 26, 2009
Page 2

2. The applicant has adequately demonstrated the need for the project within the application;
3. The project will increase accessibility and availability of services for residents of Berkeley County;
4. The project appears to be financially feasible based upon the information available;
5. The applicant has submitted substantial letters of community and physician support for the project;
6. Upon review and consideration of all materials submitted by affected parties, the Department concludes there should be minimal impact upon other facilities in the proposed service area; and
7. The applicant has considered the distribution of acute care services in relation to the target population and the effect of the project in meeting the growing demands of the service area.

The Department makes the following findings pursuant to Section 501. Regulation No. 61-15. Certification of Need for Health Facilities and Services:

1. The capital and operating costs of the proposal and their potential impact on patient charges are reasonable;
2. Superior alternatives to such services in terms of cost, efficiency, or appropriateness do not exist and that the development of such alternatives is not practicable;
3. In the case of new construction, alternatives to new construction (e.g., modernization or sharing arrangements) have been considered;
4. Patients will experience serious problems in terms of costs, availability or accessibility, or such other problems as may be identified by the Department, in obtaining care of the type proposed in the absence of the project.

The additional finding required by Section 501.5 of Regulation No. 61-15. Certification of Need for Health Facilities and Services is not applicable to this project.

The following appeal procedures are in effect beginning July 1, 2006, pursuant to 2006 Act No. 387:

1. This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision fifteen (15) days after notice of the

Mr. Jim Rardin

June 26, 2009

Page 3

decision has been mailed to the applicant or his agent unless a written request for final review is filed with the Department by the applicant or an affected person.

2. An applicant or affected person who wishes to appeal this decision must file a written request for final review with the Clerk of the Board at the following address or by facsimile at 803-898-3323:

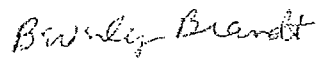
Clerk of the Board
SC DHEC
2600 Bull Street
Columbia, SC 29201

3. The request for final review should include the following:
 - a) the grounds on which the Department's decision is challenged and the specific changes sought in the decision;
 - b) a statement of any significant issues or factors the Board should consider in deciding how to handle the matter; and
 - c) a copy of the Department's decision or action under review.
4. In order to be timely, a request for final review must be received by the Clerk of the Board within 15 days after notice of the Department decision has been mailed to the applicant or his agent. If the 15th day occurs on a weekend or State holiday, the request is due to be received by the Clerk of the Board on the next working day. The request for final review must be received by the Clerk of the Board by 5:00 pm on the date it is due.
5. If a timely request for final review is filed with the Clerk of the Board, the Clerk will provide additional information regarding procedures.
6. The Board of Health and Environmental Control has 60 days from the date of receipt of a request for final review to conduct a final review conference. The conference may be conducted by the Board, its designee, or a committee of three members of the Board appointed by the chair.
7. If a final review conference is not conducted within 60 days, the Department decision becomes the final agency decision, and a party may request a contested case hearing before the Administrative Law Court within 30 days after the deadline for the final review conference.

Mr. Jim Rardin
June 26, 2009
Page 4

If you have any questions, please feel free to contact us at (803) 545-4200.

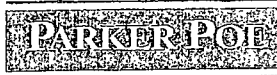
Sincerely,



Beverly A. Brandt, Chief
Bureau of Health Facilities and Services Development

cc: Roper St. Francis Healthcare
East Cooper Regional Medical Center

EXHIBIT B



PARKER POE ADAMS & BERNSTEIN LLP

Attorneys and Counselors at Law

David B. Summer, Jr.

Partner

Telephone: 803.253.8910

Direct Fax: 803.255.8017

daidssummer@parkerpoe.com

1201 Main Street

Suite 1450

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Columbia, SC 29202-1509

Telephone 803.255.8000

Fax 803.255.8017

www.parkerpoe.com

July 6, 2009

Via Hand Delivery

The Honorable Lisa Lucas Longshore

Clerk of the Board

South Carolina Department of

Health and Environmental Control

2600 Bull Street

Columbia, South Carolina 29201

Re: Request for Final Review of certain findings related to the Department's Decision, dated June 26, 2009, to approve Trident Medical Center's ("Trident") Certificate of Need ("CON") application for the construction of a new hospital through the transfer of fifty (50) acute care beds from the bed need generated by Trident Medical Center, to be located adjacent to the current site of the Moncks Corner Medical Center at the intersection of Martin Luther King Drive and Highway 17A and to include a Computed Tomography ("CT") scanner and a Magnetic Resonance Imaging ("MRI") unit.

Dear Mrs. Longshore:

Pursuant to S.C. Code Ann. § 44-1-60(F), the South Carolina Certification of Need and Health Facility Licensure Act, S.C. Code Ann. § 44-7-110 *et seq.* ("CON Act"), and S.C. Regulation 61-15, Trident Medical Center, LLC ("Trident") submits this Request for Final Review of certain findings made by the South Carolina Department of Health and Environmental Control staff ("Department" or "Staff") in relation to its issuance of the above referenced decision ("Decision"), attached hereto as Exhibit A.

Trident's request for final review is limited solely to that part of Staff's Decision concluding that Trident and Roper St. Francis Hospital ("Roper") were not "competing applicants" within the meaning of S.C. Code Ann. §44-7-130(5) and 24A S.C. Code Ann. Regs. 61-15, § 103(6). Trident does not challenge Staff's correct findings that Trident's Application should be approved. Therefore, Trident respectfully requests that the Board reverse the Staff's

CHARLESTON, SC
CHARLOTTE, NC
MYRTLE BEACH, SC
RALEIGH, NC
SPARTANBURG, SC

PPAB 1581882v2

RECORD 000177

finding as to the competing applicants issue and uphold the Staff's Decision to grant Trident's Application.¹

Background

On August 13, 2008, Trident filed a CON application for the construction of a fifty (50) bed acute care hospital, including an MRI unit and a CT scanner ("Trident Proposed Project"). The Trident Proposed Project is to be located in Moncks Corner, the county seat and geographical center of Berkeley County, South Carolina. Trident proposed to establish the new hospital through the transfer of its facility-specific bed need at Trident Medical Center as set forth in the 2004-2005 *South Carolina Health Plan*. Department Staff deemed Trident's Application complete on January 9, 2009, and notice of the commencement of Staff's review cycle was published in the February 27, 2009 issue of the *South Carolina State Register*.

Roper filed its above-referenced CON application on December 10, 2008 ("Roper Proposed Project").² The new satellite hospital proposed by Roper is to be located in Goose Creek, a city in southern Berkeley County, and less than ten (10) miles from Trident Medical Center. Roper's Proposed Project will provide the same services in the same service area as Trident's Proposed Project. Staff deemed Roper's Application complete on March 31, 2009, and notice of the commencement of Staff's review cycle was published in the April 24, 2009 issue of the *South Carolina State Register*.

On April 28, 2009, the Department informed Trident that it was extending the time frame for reviewing its application until June 27, 2009. Staff's sole reason cited for the extension was that Roper had applied to provide the same services in the same service area and, therefore, Staff should review both applications simultaneously. See Ltr. from L. Sanders, dated April 28, 2009, attached as Exhibit B. On May 21, 2009, Staff held a Project Review Meeting for both Trident's and Roper's Applications. On June 26, 2009, the date the Department approved Trident's Proposed Project, the Department issued a decision letter also granting Roper's CON Application. See Ltr. from B. Brandt, attached as Exhibit C.

Grounds for Reversal of Staff's Refusal to Consider Trident and Roper to be Competing Applicants

Reserving its right to raise any issue presented to or considered by Staff, Trident challenges Staff's finding that Trident and Roper were not "competing applicants" within the

¹ By separate letter dated today, Trident is requesting the Board's final review of Staff's decision to grant Roper's Application. In that request, Trident is seeking the Board's reversal of both the Staff's finding that Trident and Roper are not competing applicants and the Staff's decision to approve Roper's Application.

² Roper's application was filed under the 2008-2009 *South Carolina Health Plan*. Both versions are referenced collectively herein as the *State Health Plan*.

meaning of the CON Act and Regulation 61-15. Staff's finding on this issue is at odds with the fundamental purposes of the Department's CON Program. As explained in a letter to Beverly Brandt, Chief of Bureau of Health Facilities and Services Development for the Department, attached as Exhibit D, Staff was required to conclude as a matter of law that the Trident and Roper CON applications were competing because (1) Trident and Roper are seeking to provide similar facilities and services in the same service area, (2) Roper's Application was filed no later than fifteen days after the Department's Notice of Affected Persons for the Trident Application was published in the *State Register*, and (3) approval of both applications would exceed the need for the facilities and services. Thus, Roper and Trident clearly met the definition of "competing applicants" set forth in S.C. Code Ann. §44-7-130(5) and 24A S.C. Code Ann. Regs. 61-15, § 103(6).

As evidenced in its decision letters for both the Roper Proposed Project and the Trident Proposed Project, Staff limited its evaluation to the sole issue of whether approval of both projects would result in an excess of beds relative to the bed need projected in the *State Health Plan*. Staff then concluded that because Roper's Proposed Project did not result in an increase in the total number of beds in the service area, both Proposed Projects could be approved.

Staff's undemanding analysis failed to evaluate the issue in the context of the overall purposes of CON review. Specifically, the Department appears to have ignored the data presented that demonstrated that approval of both Proposed Projects would undermine the financial viability of both hospitals, resulting in a total combined loss of approximately \$60 million in the first three years of operation alone. See Ltr. from R. Baehr, dated May 28, 2009, attached as Exhibit E. Thus, Staff's approvals of both Proposed Projects effectively disqualify them from meeting the financial feasibility requirement needed for CON approval. This is an absurd result and the type of result that the concept of "competing applicants" was intended to prevent. Thus, by dismissing this information and arriving at its findings, Staff failed to execute the Department's mandate to avoid the unnecessary duplication and over-proliferation of inpatient hospital facilities and services in Berkeley County.

Conclusion

Based upon the foregoing, Trident respectfully requests that the Board reverse the Staff's refusal to consider Trident and Roper to be competing applicants. Trident respectfully requests that the Board consider Roper and Trident's CON applications as competing pursuant to the CON Act and regulations and reverse the Department's decision to grant Roper a CON for its Proposed Project based on the grounds set forth in the aforementioned Request for Final Review submitted by Trident with respect to that decision by the Department.

Honorable. Lisa Lucas Longshore
July 6, 2009
Page 4

With best regards, I am

Sincerely,

David B. Summer, Jr.

David B. Summer, Jr.

*by JBO
w/ permission*

cc: Beverly Brandt
Ralph Barbier, Esquire
Stuart M. Andrews, Esquire

EXHIBIT C

BOARD:
Paul C. Aughtry, III
Chairman

Edwin H. Cooper, III
Vice Chairman

Steven G. Kisner
Secretary



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

BOARD:
Henry C. Scott

M. David Mitchell, MD

Glenn A. McCall

Coleman F. Buckhouse, MD

S.C. Board of Health and Environmental Control; Telephone (803) 898-3309 Fax: (803) 898-3393

July 14, 2009

U.S. Mail - CERTIFIED - Return Receipt

91 7108 2133 3936 3002 9187

David B. Summer, Jr., Esquire
Parker Poe Adams & Bernstein, LLP
PO Box 1509
Columbia, SC 29202

91 7108 2133 3936 3002 9194

Ralph W. Barbier, Esquire
Nexsen Pruet
PO Drawer 2426
Columbia, SC 29202

Via Interagency Mail Delivery

Nancy S. Layman, Esquire
Ashley C. Biggers, Esquire
SCDHEC - Office of General Counsel
2600 Bull Street
Columbia, SC 29201

RE: **Docket No. 09-RFR-58 - Decision dated June 26, 2009, determining that Roper St. Francis and Trident Medical Center are not "competing applicants" in the CON process.**

The S.C. Board of Health and Environmental Control decided on July 9, 2009, not to conduct a Final Review Conference on the above-referenced matter.

S.C. Code Section 44-1-60(F) provides, "If a final review conference is not conducted within sixty days, the department decision becomes the final agency decision, and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court, in accordance with the Administrative Procedures Act, within thirty days after the deadline for the final review conference."

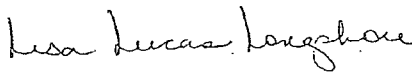
A request for a contested case hearing before the Administrative Law Court (ALC) must be filed in accordance with the Rules of the ALC, including payment of the ALC's filing fee, at the following address:

Clerk's Office
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Suite 224
Columbia, SC 29201

The ALC's Notice of Request for Contested Case Hearing form and the Rules of the ALC can be found at the ALC's website: <http://www.scalc.net>. Further information on filing a request for a contested case hearing before the ALC may be obtained by calling the Clerk's Office at the Administrative Law Court (803-734-0550).

If a party files a request for a contested case hearing with the ALC, the party must serve a copy of the request on DHEC and any other parties at the same time the request is filed with the ALC. A copy of the request for a contested case hearing must be delivered or mailed to DHEC at the address at the top of this memorandum.

Sincerely,



Lisa Lucas Longshore
Clerk

The above information on filing a request for a contested case hearing before the Administrative Law Court is provided as a courtesy; parties before the ALC are responsible for complying with all applicable requirements of the Court.

OCG # 20906

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EXHIBIT D

NEXSEN|PRUET

RECEIVED
S.C. DEPT. OF HEALTH
& ENVIRONMENTAL CONTROL
2009 JUL 10 PM 2:25
OFFICE OF THE COMMISSIONER
CHIEF OF STAFF
CLERK OF SUPERIOR COURT
Ralph W. Barbier
Member
Admitted in 1989

July 10, 2009

VIA HAND DELIVERY

Ms. Lisa Lucas Longshore
Clerk of the Board
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

Re: Request for Final Review of the Department's decision, dated June 26, 2009, to award a Certificate of Need to Trident Medical Center, LLC ("Trident") for the development of Berkeley Medical Center, a 50 bed hospital which Trident proposes to develop in Berkeley County ("Trident Project")

Dear Ms. Longshore:

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach

Pursuant to S.C. Code Ann. § 44-1-60(E) and (F); the South Carolina Certification of Need and Health Facility Licensure Act, S.C. Code Ann. § 44-7-110 *et seq.* (the "CON Act"); and S.C. Code Ann. Regs. 61-15, Roper St. Francis Healthcare, which includes Roper St. Francis Hospital-Berkeley ("Roper"), hereby submits this Request for Final Review of the South Carolina Department of Health and Environmental Control ("Department") staff's decision, dated June 26, 2009, to approve a CON to Trident for the above referenced project. The decision is attached hereto as Exhibit A.

Roper has made it very clear to the Department staff and to the public that it is in full support of both the Trident Project and Roper's proposed 50 bed hospital at Carnes Crossroads in Berkeley County ("Roper Project"). Berkeley County is one of only five counties in South Carolina that currently has no hospital, despite the fact that Berkeley County's current population is approximately 158,140, and is expected to increase to approximately 170,000 residents in the next five years. The other four South Carolina counties that do not have a hospital each have a population of fewer than 22,000.

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www.nexsenpruet.com
T 803.540.2004
F 803.727.1404
ERBarbier@nexsenpruet.com
Nexsen Pruet, LLC
Attorneys and Counselors at Law

Ms. Lisa Lucas Longshore, Clerk
July 10, 2009
Page 2

Roper believes lengthy and costly litigation over the Department staff's decision to approve both projects is not in the best interest of the citizens of Berkeley County. Roper continues to hold this position and very much wants both hospitals to be developed consistent with the Certificate of Need applications that the Department approved on June 26, 2009. However, on the same day the Department's decision to approve both projects was issued, Trident, through statements to the media, made it very clear that they intend to file an appeal challenging the Department's decision to approve the Roper Project. In fact, this past Monday, July 6, 2009, Trident did file a request for final review asking the Department Board to reverse the Department staff's approval of the Roper Project.

Trident continues to take the position that Berkeley County cannot support two 50 bed hospitals and that only Trident's Project should have been approved by the Department. Apparently, Trident intends to litigate this matter in an effort to block Roper from moving forward with its proposed hospital in Berkeley County, even if that means delaying for years Trident's own proposed project in Moncks Corner. Consequently, Roper is now being put in a position of having to file this request for final review so that should the Department Board or the courts subsequently agree with Trident that Berkeley County can only support one 50 bed hospital, that the Department Board and/or the courts will have the opportunity to select the Roper Project as the project that better meets the needs of Berkeley County. Therefore, should the Department Board determine that Berkeley County can support only one 50 bed hospital, Roper respectfully requests the Department Board reverse the Department staff's decision regarding the Trident Project and deny Trident's request for a Certificate of Need and affirm the decision to issue to Roper a Certificate of Need to build a new hospital at Carnes Crossroads. The grounds for Roper's position that it has the better application are as follows:

1. The Roper Project is located in the population epicenter of Berkeley County, which is expected to have rapid growth during the next five years while the Trident Project is located in a rural area of the county that is not expected to have significant population growth. Therefore, the Roper Project offers greater accessibility.
2. The Trident Project does not provide greater accessibility given that most of the county population lives outside the seven mile radius of the Trident Project site. Further, residents of the more rural areas in northern Berkeley County will have reduced drive times for inpatient hospital services with the development of the Roper Project at Carnes Crossroads and will also continue to have other options from which to choose.
3. Trident intends to add new beds to the service area, beyond what is even called for in the South Carolina Health Plan, while Roper is using existing beds and

simply relocating these existing beds to better serve Roper's existing patient population base in Berkeley County.

4. The Trident Project will adversely impact some of Roper's existing medical services in Moncks Corner, including the ambulatory surgery center, which already has low utilization, and may adversely impact Roper's existing inpatient facilities.

5. Roper, as a community not-for-profit charitable organization, is better able to provide for the medical needs of Berkeley County than is Trident, which is owned and operated by HCA, a for-profit hospital corporation located in Nashville, Tennessee. HCA owns a chain of for-profit hospitals around the country.

6. Trident's application is not consistent with the South Carolina Health Plan, Chapter II G.1(A)(4)(d).

Again, Roper believes that Berkeley County, given its tremendous geographic size and substantial population (2008 population of 158,140 persons), and anticipated significant population growth, can easily support two 50 bed hospitals. In fact, all South Carolina counties that have a population similar to Berkeley County of between 100,000 – 200,000 people, have well in excess of 100 hospitals beds with many counties having two or more hospitals. The following chart summarizes this information:

	<u>2006 Population</u>	<u>Existing Beds</u>
(a) Anderson County (2 hospitals)	173,710	495
(b) Pickens County (2 hospitals)	120,650	164
(c) Lexington County	164,134	384
(d) York County (1existing hospital and CON approved for 2 nd hospital)	180,410	332
(e) Florence County (4 hospitals)	131,020	831
(f) Sumter County	112,850	283
(g) Aiken County	155,900	183
(h) Beaufort County (2 hospitals)	135,480	262

Source: 2008-2009 South Carolina Health Plan

Ms. Lisa Lucas Longshore, Clerk
July 10, 2009
Page 4

Further, counties with far less population than Berkeley County have well in excess of 100 hospital beds:

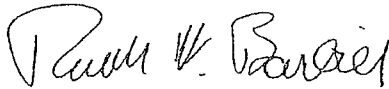
	<u>2006 Population</u>	<u>Existing Beds</u>
(a) Cherokee County	55,390	125
(b) Oconee County	71,850	169
(c) Union County	29,720	143
(d) Greenwood County	69,100	354
(e) Kershaw County	56,020	121
(f) Lancaster County	62,310	217
(g) Darlington County (2 hospitals)	68,220	165
(h) Georgetown County (2 hospitals)	58,970	255
(i) Marion County	36,060	124
(j) Colleton County	40,220	131
(k) Orangeburg County	94,780	247

Source: 2008-2009 South Carolina Health Plan

Roper urges the Department Board to affirm the approval of both the Trident and Roper Projects. However, if the Department Board determines that only one project can be approved, Roper respectfully requests that the Board select the Roper Project.

Thank you for your consideration.

Very truly yours,



Ralph W. Barbier

cc: Beverly Brandt(via hand-delivery)
Lisa Sanders (via hand-delivery)
David Summer, Esq. (via hand-delivery)

EXHIBIT E

BOARD:

Paul C. Aughtry, III
Chairman

Edwin H. Cooper, III
Vice Chairman

Steven G. Kisser
Secretary



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

BOARD:

Henry C. Scott

M. David Mitchell, MD

Glenn A. McCall

Coleman F. Buckhouse, MD

S.C. Board of Health and Environmental Control; Telephone (803) 898-3339 Fax: (803) 898-3393

July 17, 2009

U.S. Mail - CERTIFIED - Return Receipt

91 7108 2133 3436 3002 9200

Ralph W. Barbier, Esquire
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Columbia, SC 29202

91 7108 2133 3436 3002 9217

David B. Summer, Jr., Esquire
Parker Poe Adams & Bernstein, LLP
PO Box 1509
Columbia, SC 29202

Via Interagency Mail Delivery

Nancy S. Layman, Esquire
Ashley C. Biggers, Esquire
SCDHEC - Office of General Counsel
2600 Bull Street
Columbia, SC 29201

RE: *Docket No. 09-RFR-58 - Decision dated June 26, 2009, granting a Certificate of Need for a 50 bed hospital in Berkeley County.*

The S.C. Board of Health and Environmental Control will not to conduct a Final Review Conference on the above-referenced matter.

S.C. Code Section 44-1-60(F), 2006 Act No. 387, Section 48, provides, "If a final review conference is not conducted within sixty days, the department decision becomes the final agency decision, and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court, in accordance with the Administrative Procedures Act, within thirty days after the deadline for the final review conference."

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
2600 Bull Street • Columbia, SC 29201 • Phone: (803) 898-3432 • www.scdhec.gov

RECORD 000190

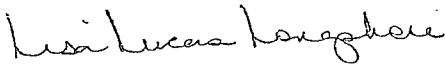
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South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Suite 224
Columbia, SC 29201

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Sincerely,



Lisa Lucas Longshore
Clerk

The above information on filing a request for a contested case hearing before the Administrative Law Court is provided as a courtesy; parties before the ALC are responsible for complying with all applicable requirements of the Court.

OCC # 20906

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

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

Petitioner,

VS.

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

Respondents.

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

**SCDHEC'S MEMORANDUM OF LAW
IN OPPOSITION TO TRIDENT
MEDICAL CENTER'S MOTION FOR
SUMMARY JUDGMENT**

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

Petitioner,

vs.

South Carolina Department of Health and
Environmental Control,

Respondent.

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

CareAlliance Health Services and Roper St.
Francis Hospital – Berkeley,

Petitioners,

VS.

South Carolina Department of Health and
Environmental Control and Trident Medical
Center, LLC d/b/a Berkeley Medical Center,

Respondents.

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

Pursuant to Rules 19(A) and 68, SCRALC, and Rule 56, SCRCP, Respondent South Carolina Department of Health and Environmental Control ("DHEC" or "Department")

respectfully submits this Memorandum in Opposition to Trident Medical Center d/b/a Berkley Medical Center's ("Trident") Motion for Summary Judgment.

FACTS

DHEC is the sole state agency charged with the administration of the State Certificate of Need and Health Facility Licensure Act, S.C. Code Ann. § 44-7-110, et seq. (2002 & Supp. 2009) ("CON Act"). S.C. Code Ann. § 44-7-140 (2002). 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).

The Department, with the advice of the health planning committee, is also tasked with preparing a State Health Plan for use in the administration of the CON Program. S.C. Code Ann. § 44-7-180(B) (2002). The State Health Plan must include an inventory of existing health care facilities, beds, specified services, and equipment; projections of need for additional health care facilities, beds, health services, and equipment; standards for distribution of health care facilities, beds, specified health services, and equipment; and a general statement of the project review criteria considered most important in evaluating CON applications. S.C. Code Ann. § 44-7-180(B) (2002). The State Health Plan is given final approval by the Board before taking effect. S.C. Code Ann. § 44-7-180(C) (2002).

Pursuant to the CON Act, a health care facility is required to obtain a CON from the Department prior to undertaking the construction or establishment of a new health care facility. S.C. Code Ann. § 44-7-160(1) (2002). Section 44-7-210(C) provides that "[t]he Department may not issue a Certificate of Need unless an application complies with the State Health Plan,

Project Review Criteria, and other regulations.” The Department’s decision must be based on the currently approved State Health Plan in effect at the time such application is accepted. 24A S.C. Code Ann. Regs. 61-15 § 504 (Supp. 2009).¹ “The department may not issue a Certificate of Need unless an application complies with the State Health Plan, Project Review Criteria, and other regulations.” S.C. Code Ann. § 44-7-120(C) (2002). “A project does not have to satisfy every criterion in order to be approved, but no project may be approved unless it is consistent with the State Health Plan.” 24 S.C. Code Ann. Regs. 61-15 § 801(3) (Supp. 2009).

On August 13, 2008, Trident submitted a CON application to the Department for the construction of a fifty-bed hospital in Moncks Corner, in Berkeley County. Trident’s application was filed under the 2004-2005 South Carolina Health Plan (“2004-2005 Plan”), which was the Plan in effect at the time of filing. Trident utilized the **bed addition** methodology of the 2004-2005 Plan to **add** fifty (50) new general hospital beds to the Plan’s inventory of beds. See Exhibit A, 2004-2005 Plan at § II(G)(1)(A)(4)(d), p. II-7 (“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.”). The application was deemed complete by the Department on January 9, 2009. Notice to affected parties was published in the State Register on February 27, 2009.

On December 10, 2008, CareAlliance Health Services and Roper St. Francis Hospital – Berkeley (“Roper”) submitted a CON application to the Department for the construction of a fifty-bed hospital in Goose Creek, which is also in Berkeley County. Roper’s application was

¹ The CON Act was amended by 2010 Act No. 278, effective July 1, 2010, to include a new provision allowing, but not requiring, the Department and the ALC to take into consideration any subsequent State Health Plan which is passed after the filing of a CON application. However, that provision is not applicable to this matter, as Act No. 278’s provisions do not apply to cases already pending in court as of June 1, 2010. See 2010 Act No. 278 § 26.

filed under the 2008-2009 South Carolina Health Plan ("2008-2009 Plan"), which was the Plan in effect at the time of the filing of its application. Roper utilized the **bed transfer** methodology of the 2008-2009 Plan to **relocate** fifty (50) existing hospital beds from Charleston to Berkeley, without adding to the Plan's inventory of general hospital beds. See Exhibit B, 2008-2009 Plan at § II(G)(1)(A)(4)(j)(1) and (2), pp. II-9 – II-10 ("... affiliated hospitals may wish to transfer beds between themselves in order to serve their patients in a more efficient manner. ... A transfer or exchange of beds may be approved only if there is no overall increase in the number of beds; ... Such transfers may cross county lines ..."). Roper's application was deemed complete by the Department on April 1, 2009.

On April 28, 2009, the Department notified Trident that it had extended the review time frame for the Trident CON application. The Department stated that due to the receipt of Roper's application, which was being reviewed in a later cycle and which was "requesting approval of similar services in the same service area, ... it is in the best interest of the public that the Department be able to render decisions on these two (2) applications simultaneously." See Exhibit C, Affidavit of Beverly Brandt, at ¶ 3 and at Exhibit 3. Although it determined it appropriate to contemporaneously review and decide upon the merits of the two applications, at no time in the review process did the Department indicate that it considered Trident and Roper to meet the "competing applicants" definition contained in the CON Act and Regulation. Id. at ¶ 3.

The Department held a project review meeting on both applications on May 21, 2009. By two separate decision letters dated June 26, 2009, the Department issued a formal determination that Roper's and Trident's CON applications were not "competing" as defined by the CON Act and Regulation, because "the beds used for the Roper St. Francis Hospital-Berkeley project are a permanent bed transfer, not a bed increase; therefore, the bed need will not

be exceeded.” See Trident Decision Letter, attached as Exhibit 1 to Affidavit of Beverly Brandt; see also Roper Decision Letter, attached as Exhibit 2 to Affidavit of Beverly Brandt. Based upon its review of the two individual applications, the Department ultimately decided to grant both Trident’s and Roper’s CON applications. See Affidavit of Beverly Brandt at ¶ 2.

Trident filed a request for final review with the DHEC Board, challenging the Department’s determination that both applications could be approved without exceeding the need for new hospital beds in Berkeley County.² Roper responded with its own request for Board review, requesting that the Department’s determination that the applications were not competing be upheld.³ The Board declined to conduct a final review conference in the matter. This contested case followed.

STANDARD FOR SUMMARY JUDGMENT

Pursuant to Rule 56, SCRPC, summary judgment should be granted only if “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991). Summary judgment is a drastic remedy which should be cautiously invoked. Id.

In determining whether summary judgment is appropriate, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. Id. at 115, 410 S.E.3d at 545. “Even when there is no dispute as to the

² Trident also asserts additional grounds for reversing the Department’s decision to approve Roper’s CON application, apart from the determination of whether or not the applications are competing such that only one CON may be awarded.

³ As an alternative ground for relief, Roper asks that should the applications be deemed competing and only one CON may be awarded, Roper’s CON application should be approved and Trident’s CON application should be denied.

evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied.” Koester v. Carolina Rental Center, Inc., 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994).

ARGUMENT

The sole issue for determination in Trident’s summary judgment motion is whether Trident’s CON application to add fifty brand new hospital beds to Berkeley County and Roper’s CON application to relocate fifty already-existing beds from one Charleston to Berkeley County constitute “competing applications” for purposes of CON review. Because approval of both will not exceed the State Health Plan’s projection of need for general hospital beds in Berkeley County, and because other issues of fact remain to be determined in this contested case, summary judgment is in appropriate.

1. **Approval of both Trident’s and Roper’s CON applications will not exceed the need projected in the State Health Plan for general hospital beds in Berkeley County.**

“Competing applicants” is defined as “two or more persons or health care facilities ... who apply for certificates of need to provide similar services or facilities in the same service area within a time frame as established by departmental regulations **and whose applications, if approved, would exceed the need for services or facilities.**” S.C. Code Ann. § 44-7-130(5) (2002). (Emphasis added). The determination of whether approval of competing applications would exceed the need for the services is governed by the projection of need set forth in the applicable State Health Plan. See S.C. Code Ann. §§ 44-7-180(B)(2) and 44-7-210(C) (2002); 24A S.C. Code Ann. Regs. 61-15 § 802(1) (Supp. 2009). Since Trident is adding new beds to the existing inventory of general hospital beds, and Roper is transferring existing beds from one location to another without adding to the bed inventory, Trident’s and Roper’s CON applications

will not exceed the State Health Plan's projections of need for general hospital beds in Berkeley County, and Trident and Roper do not meet the statutory definition of "competing applicants."

Trident applied pursuant to the 2004-2005 Plan to **add** new beds in Moncks Corner, based upon the Plan's facility-specific projection of need for an additional forty-two (42) general hospital beds. See Exhibit A, 2004-2005 Plan, at p. II-17. The 2004-2005 Plan allowed Trident to apply for up to fifty (50) hospital beds, even though the Plan specified a need for Trident of only forty-two (42) beds. Id. at § II(G)(1)(A)(4)(d), p. II-7 ("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."). According to the methodology utilized by Trident in its CON application for a Berkeley County hospital – that is, the **addition** of new beds to the area – the 2004-2005 Plan only required Trident to show that it had a positive bed need in order for it to be comply with the State Health Plan's bed need projections. Id. Because the 2004-2005 Plan showed a positive bed need for Trident for forty-two **additional** beds, Trident's CON application complies with the need projections of the 2004-2005 Plan. Granting Trident's CON application will not exceed the State Health Plan's need projections for general hospital beds in Berkeley County.

Roper applied under the 2008-2009 Plan for a **transfer** of fifty (50) of its existing general hospital beds from its downtown Charleston facility to Goose Creek. The 2008-2009 Plan allowed Roper to **transfer** existing hospital beds across the county line from Charleston to Berkeley County, providing that the transfer would not increase Roper's overall number of hospital beds. See Exhibit B, 2008-2009 Plan at § II(G)(1)(A)(4)(j), pp. II-9 – II-10. According to the methodology utilized by Roper in its CON application for a Berkeley County hospital –

that is, the **transfer** of existing beds – the 2008-2009 Plan required Roper to show that it had existing beds in Charleston County that could be transferred, that the beds would be transferred within Roper’s own healthcare system, and that the transfer would not increase Roper’s overall bed count. Id. Because Roper met these requirements, its CON application complies with the bed **transfer** provisions of the 2008-2009 Plan.

The fact that Roper’s overall existing hospital bed inventory results in a showing in the State Health Plan that Roper has six excess beds in the general Berkeley/Charleston/Dorchester Tri-County area, see 2008-2009 Plan at p. II-19, does not preclude Roper from transferring some of its existing beds from Charleston to Berkeley County. The 2008-2009 Plan contemplates that a hospital may not show a need, but that transfer of licensed hospital beds may be justified as to more efficiently allocate health care resources. As stated in the Department’s June 26, 2009 decision letter granting Roper’s CON application, Roper’s project, which is “basically a re-positioning of currently licensed acute care beds from an area of limited growth to an area of strong growth, ... will have no impact on the Tri-County’s bed count or bed need.” See Roper Decision Letter, attached as Exhibit 2 to Affidavit of Beverly Brandt. The Department has approved similar hospital bed transfers from one location to another in the past, even though the State Health Plan indicated that the applying hospital system had an excess of hospital beds. See Exhibit E, Affidavit of Leslie W. Shelton, III, at ¶ 6. The Department affirmed in its answers to Trident’s interrogatories in this matter that it “does not consider the two approved CON applications ‘competing’ because the beds used for the Roper St. Francis Hospital – Berkeley project will be a permanent bed transfer, not a bed increase.” See Exhibit D, DHEC’s Answer to Trident’s Interrogatory No. 6. While Trident “utilized the projected bed need in the 2004-2005 State Health Plan to create a satellite hospital in Berkeley County, ... propos[ing] to add fifty

(50) new beds to the service area,” Roper “was relocating beds, rather than adding more beds to the service area, [and] it was not impacted by the bed need projection in the 2008-2009 State Health Plan.” Id. Since Roper is not adding any new hospital beds, granting Roper’s CON application will not exceed the State Health Plan’s need projections for general hospital beds in Berkeley County.⁴

Granting both Trident’s and Roper’s CON applications, filed under two different State Health Plans using two different methodologies, will not result in exceeding the State Health Plan’s projections of need for additional hospital beds in Berkeley County. Because the bed need will not be exceeded, Trident and Roper are not “competing applications.” Trident’s motion for summary judgment should be denied for this reason.

2. Other questions of fact exist which preclude summary judgment at this stage of the contested case.

Questions of fact exist as to whether Trident and Roper meet the remaining definitional prongs of “competing applications.” Therefore, summary judgment is improper at this stage of the contested case.

In its interrogatory responses to Trident in this case, the Department stated that “[n]either the 2004-2005 State Health Plan nor the 2008-2009 State Health Plan contained language restricting hospital expansion to one new facility at a time in a county/service area.” See Exhibit D. In its decision letter to Roper, the Department stated that Roper’s application is “basically a re-positioning of currently licensed acute care beds from an area of limited growth to an area of strong growth,” and that the “proposal is consistent with general health planning goals of

⁴ Additionally, Roper had to satisfy the requirements of Section II(G)(1)(A)(4)(f) of the 2008-2009 Plan, which requires any new hospital to provide certain services, including: (1) a 24-hour emergency department; (2) inpatient services to both surgical and non-surgical patients; and (3) medical and surgical services within at least 6 of the major diagnostic categories recognized by the Centers for Medicare and Medicaid Services (“CMS”). See 2008-2009 Plan at pp. II-8 through II-9. The 2004-2005 Plan, pursuant to which Trident’s CON application was filed, had no similar requirements. See also Exhibit E, Affidavit of Leslie W. Shelton, III, at ¶ 7.

maximizing the usage of existing resources and positioning and re-positioning underutilized resources in areas of strong volume and population growth.” See Roper Decision Letter, attached as Exhibit 2 to Affidavit of Beverly Brandt.

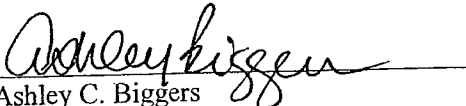
In her Affidavit, Beverly Brandt, who issued the Department’s decision letters approving both CON applications, stated that the Department conducted site visits to the proposed locations for Roper’s and Trident’s proposed Berkeley County hospitals. See Exhibit C, Affidavit of Beverly Brandt, at ¶ 4. Ms. Brandt stated that the Department “considered population and other data in making its determination that the need for services would not be exceeded if both Trident’s and Roper’s CON applications were approved. Id. Additionally, information received during and after the project review meeting from Roper and Trident was reviewed and taken into consideration in determining “that the applications of Trident and Roper were not competing and that both applications could be approved without exceeding the need for facilities or services in the Berkeley/Charleston/Dorchester Tri-County area.” Id. Based upon Ms. Brandt’s affidavit testimony, with attached decision letters, as well as the Department’s answer to Trident’s Interrogatory No. 6, it is clear that many factors were ultimately taken into consideration in determining that Trident’s and Roper’s CON applications did not meet the definition of “competing applicants.”

The pleadings, affidavits, and answers to interrogatories on file in this contested case show that there are genuine issues of material facts, and the parties have yet to depose witnesses to discovery additional information regarding these facts and issues. For these reasons, Trident has failed to meet the burden necessary to establish that it is entitled to judgment as a matter of law. See Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991). Trident’s motion for summary judgment should therefore be denied.

CONCLUSION

For the foregoing reasons, Trident's motion for summary judgment should be denied.

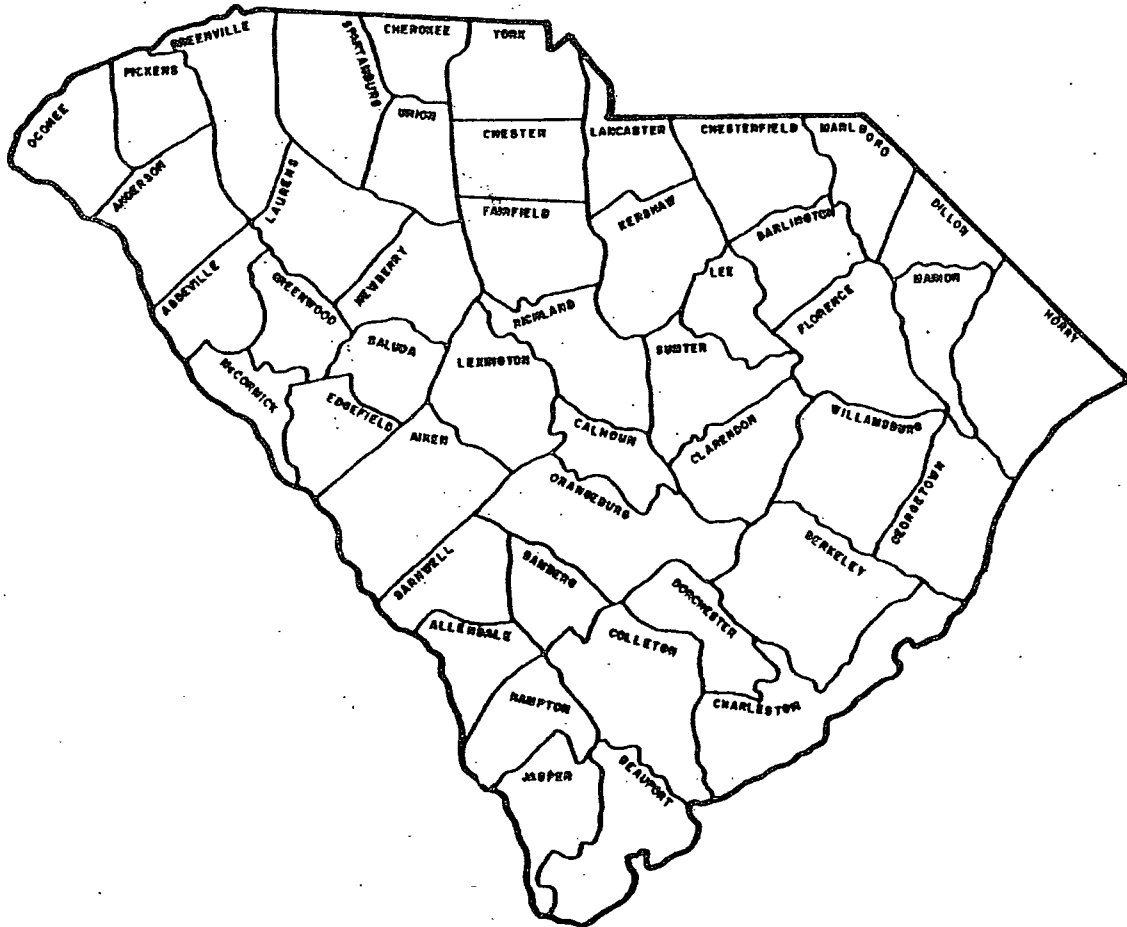
Respectfully submitted,


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December 15, 2010

EXHIBIT A

2004-2005 South Carolina Health Plan



South Carolina State Health Planning Committee

South Carolina Department of Health and Environmental Control

Effective October 15, 2004 for all but the Open Heart Surgery
Section on page II-48, Section (5)A items 1 and 2 and the
Ambulatory Surgery Facility Section
The above two sections became effective on January 14, 2005

CHAPTER II

PLANNING REGIONS AND FACILITY CATEGORIES

A. Inventory Regions and Service Areas:

This State Plan has adopted four regions and one statewide category for the purpose of inventorying health facilities and services as specified in Section C. below. These regions, based on existing geographic, trade and political areas, are a practical method of administration. The Health Service Area (HSA) designations previously used are no longer applicable and have been replaced.

The needs for hospital beds are based on the utilization of individual facilities. Nursing home and home health service needs are projected by county. The needs for acute psychiatric services, alcohol and drug abuse services, comprehensive rehabilitation services, and residential treatment centers for children and adolescents are based on various service areas and utilization methodologies specified herein. Institutions serving a restricted population throughout the state are planned on a statewide basis. The needs for most services (cardiac catheterization, open heart surgery, etc.) are based upon the service standard, which is a combination of utilization criteria and travel time requirements. Each service standard constitutes the service area for that particular service.

Any service area may cross multiple administrative, geographic, trade and/or political boundaries. It is recognized that due to factors which may include availability, accessibility, personal or physician preferences, insurance and managed care contracts or coverage, or other reimbursement issues, patients may seek and receive treatment outside the county or inventory region in which they reside and/or outside of the state. Therefore, service areas may specifically cross inventory regions and/or state boundaries. The need for a service is analyzed by an assessment of existing resources and need in the relevant service area, along with other factors set forth in this Plan and applicable statutes and regulations.

B. Exceptions to Service Area Standards:

It must be recognized that the health care delivery system is in a state of evolution both nationally and in South Carolina. Due to the health reform movement, we are seeing a number of health care facilities consolidating and establishing provider networks in order to better compete for contracts within the new environment. This is particularly important for the smaller, more rural, facilities that run the risk of being bypassed by insurers and health care purchasers looking for the availability of comprehensive health care services for their subscribers.

Given the changing nature of the health care delivery system, affiliated hospitals may sometimes desire to transfer or exchange specific technologies in order to better meet an identified need. Affiliated hospitals are defined as being two or more health care facilities, whether inpatient or outpatient, owned, leased, sponsored, or who have a formal legal relationship with a central organization and whose relationship has been established for reasons other than for transferring beds,

equipment or services. There may be certain instances where such a transfer or exchange of acute services could be accomplished in a cost-effective manner and result in a more efficient allocation of health care resources. This transfer or exchange of services applies to both inpatient and outpatient services; however, such transfers or exchanges could only occur between facilities within the same licensing category. A Certificate of Need would be required to achieve the transfer or exchange of services. In order to evaluate a proposal for the transfer or exchange of any health care technology reviewed under the Certificate of Need program, the following criteria must be applied to it:

- (1) A transfer or exchange of services may be approved only if there is no overall increase in the number or amount of such services;
- (2) Although such transfers may cross county or service area lines, the facilities must be located within the one-way driving time established for the proposed service of each other, as determined by the Department;
- (3) The facility receiving the service must demonstrate the need for the additional capacity based on both historical and projected utilization patterns;
- (4) The applicants must explain the impact of transferring the technology on the health care delivery system of the county and/or service area from which it is to be taken; any negative impacts must be detailed along with the perceived benefits of the proposal;
- (5) The facility giving up the service may not use the loss of such services as justification for a subsequent request for the approval of establishment of such service;
- (6) A written contract or agreement between the governing bodies of the affected facilities approving the transfer or exchange of services must be included in the Certificate of Need process;
- (7) Each facility giving up a service must acknowledge in writing that this exchange is permanent; any further transfers would be subject to this same process.

C. Identification of Inventory Regions:

The inventory regions are designated as follows:

<u>Region</u>	<u>Counties</u>
I	Anderson, Cherokee, Greenville, Oconee, Pickens, Spartanburg, and Union.
II	Abbeville, Chester, Edgefield, Fairfield, Greenwood, Kershaw, Lancaster, Laurens, Lexington, McCormick, Newberry, Richland, Saluda and York.
III	Chesterfield, Clarendon, Darlington, Dillon, Florence, Georgetown, Horry, Lee, Marion, Marlboro, Sumter and Williamsburg.

- IV Aiken, Allendale, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Colleton, Dorchester, Hampton, Jasper and Orangeburg.

D. Estimated State Civilian Population:

This Plan has been developed using the estimated civilian population of 4,136,020 for 2003 and projected population of 4,446,400 for 2010 where these projections were required for calculations. All population data (county, planning area, and statewide) were computed by the State Budget and Control Board, Division of Research and Statistical Services, in cooperation with the U.S. Bureau of Census. The Governor has designated the above agency as the official source of all population data to be used by state agencies.

E. Patient Statistics:

Patient statistics in the Plan are based on the 2003 Fiscal Year for health care facilities.

F. Facility Information and Plan Cut-Off Date:

Only those facilities reviewed under the Certificate of Need program are included in the inventory. The cut-off date for inclusion of information in this Plan was January 14, 2005.

G. Categories of Facilities and Services:

1. General Medical Facilities and Services

(A) General Hospitals

(1) Definitions:

- (a) A "hospital" means a facility organized and administered to provide overnight medical or surgical care or nursing care of illness, injury, or infirmity and may provide obstetrical care, and in which all diagnoses, treatment, or care is administered by or under the direction of persons currently licensed to practice medicine, surgery, or osteopathy.
- (b) "Hospital beds" means a bed for an adult or child patient. Bassinets for the newborn in a maternity unit nursery, beds in labor rooms, recovery rooms, and other beds used exclusively for emergency purposes are not included in this definition.

(2) Bed Capacity is as follows:

- (a) For existing beds, capacity is considered bed space designated exclusively for inpatient care, including space originally designed or remodeled for inpatient beds even though temporarily not used for such purposes. The number of beds counted in

any patient room is the maximum number for which adequate square footage is provided, except that single beds in single rooms have been counted even if the room contained inadequate square footage.

Adequate square footage is defined as:

- 100 square feet in single rooms;
- 80 square feet per bed or pediatric crib in multi-bed rooms;
- 40 square feet per bassinet in pediatric nurseries.

In measuring the square footage of patient rooms for the purpose of determining bed capacity, only the net usable space in the room was considered. Space in toilet rooms, washrooms, closets, vestibules, and corridors were not included.

(b) For facilities constructed under the Certificate of Need program, bed capacity will be as stated in the certificate, regardless of oversize room construction.

(c) For Areas Included:

1. Bed space in all nursing units, including: (1) intensive care unit and (2) minimal or self-care units.
2. Isolation units.
3. Pediatric units, including: (1) pediatric bassinets and (2) incubators located in the pediatric department.
4. Observation units equipped and staffed for overnight use.
5. All space designated for inpatient bed care even if currently closed or assigned to easily convertible, non-patient uses such as administration offices or storage.
6. Space in areas originally designed as solaria, waiting rooms, offices, conference rooms and classrooms that have necessary fixed equipment and are accessible to a nurses' station exclusively staffed for inpatient care.
7. Bed space under construction if planned for immediate completion (not an unfinished "shell" floor).

(d) For Areas Excluded:

1. Newborn nurseries in maternity department.
2. Labor rooms.
3. Recovery rooms.
4. Emergency units.
5. Preparation or anesthesia induction rooms.
6. Rooms used for diagnostic or treatment procedures unless originally designed for patient care.
7. Hospital staff bed areas, including accommodations for on-call staff unless originally designed for patient care.

8. Corridors.
9. Solaria, waiting rooms and such which are not permanently set aside, equipped and staffed exclusively for inpatient bed care.
10. Unfinished space (shell) {an area that is finished except for movable equipment shall not be considered unfinished space}.
11. Psychiatric, substance abuse and comprehensive rehabilitation units of general hospitals are a separate category of bed utilizing the same criteria outlined for general acute beds.

(3) Inventory:

- (a) All licensed general hospitals, as well as Federal facilities, are included in the inventory. Patient days and admissions are as reported by the hospital. The number of patient days listed for the general hospital category does not include days of care rendered in psychiatric units, substance abuse units, or comprehensive rehabilitation units of hospitals. These days of care are shown in the corresponding inventory.
- (b) Total capacity by survey refers to a total designed capacity or maximum number of beds that may be accommodated as determined by an on-site survey. This capacity may exceed the number of beds actually set up and in use. It may also differ from the licensed capacity, which is based on State laws and regulations. Beds have been classified as conforming and nonconforming according to standards of plant evaluation, such as:
 1. Fire-resistivity of each building.
 2. Fire and other safety factors of each building.
 3. Design and structural factors affecting the function of nursing units.
 4. Design and structural factors affecting the function of service departments.

(4) Narrative: General Hospital Beds

The General Acute Hospital bed need methodology is based on analyses including historical utilization; nationally recognized bed need methodologies; and consideration of the physical characteristics of hospitals in the State. Based upon these analyses, a variable occupancy rate methodology was developed, as follows:

0-174 bed hospitals, 65%;
 175-349 bed hospitals, 70%; and
 350+ bed hospitals, 75%.

The population and associated utilization are broken down by age groups. The use rates and projected average daily census are made for the age cohorts of 0-17, 18-64, and 65 and over, recognizing that different population groups have different hospital utilization rates. For some hospitals, different age groups were used based on the data provided by the facility.

It should be noted that, throughout the Plan where the term "hospital bed need" is specified, these figures are actually based upon demand or utilization data for the general acute hospitals. Use of these planning factors is not intended to stem initiative or to suggest that facilities cannot operate at more efficient levels than used in the calculations without additional beds.

The methodology for calculating bed needs is as follows:

- (a) Calculations of bed need are made for individual facilities.
- (b)
 - 1. Multiply the current facility use rate by age cohort by the projected population by age cohort (in thousands) and divide by 365 to obtain a projected average daily census by age cohort.
 - 2. Divide the sum of the age cohort projected facility average daily census by the variable occupancy (.65/.70/.75) to determine the number of beds needed to meet the area's need.
- (c) The number of additional beds needed or excess beds is obtained by subtracting the number of existing beds from the bed need.
- (d) 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.
- (e) In some areas of South Carolina, there is a considerable influx of tourists who are not counted in the permanent population. If an individual hospital in these areas can document and demonstrate the need for additional beds due to non-resident (tourist) population, and seasonal utilization fluctuations due to this population, then the Department may approve some additional beds at the existing hospital based on further analysis.
- (f) Should a hospital request additional beds due to the deletion of services at a Federal facility that results in the immediate impact on the utilization of the hospital, then additional beds may be approved at the affected hospital. The impacted hospital must document this increase in demand and explain why additional beds are needed to accommodate the care of patients previously served at a Federal facility. Based on the analysis of utilization provided by the affected hospital, the Department may approve some additional hospital beds to accommodate this immediate need.
- (g) Because of the low utilization and the low capital cost of converting hospital-based nursing home, psychiatric and/or substance abuse beds to general acute care hospital beds, the following policies may apply:

1. Hospitals that have licensed nursing home beds within the hospital may be allowed to convert these nursing home beds to acute care hospital beds only within the hospital provided the hospital can document an actual need for these additional acute care beds. This will be based on actual utilization using current information. A CON is required for this conversion.
 2. Existing general hospitals that have inpatient psychiatric, rehabilitation, or substance abuse beds may be allowed to convert these specialty beds to acute care hospital beds regardless of the projected need for general acute care hospital beds, provided a Certificate of Need is received.
- (h) 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. A proposal to transfer or exchange hospital beds requires a Certificate of Need and must comply with the following criteria:
1. A transfer or exchange of beds may be approved only if there is no overall increase in the number of beds;
 2. Such transfers may cross county lines; however, the applicants must document with patient origin data the historical utilization of the receiving facility by residents of the county giving up beds;
 3. Should the response to Criterion 2. fail to show a historical precedence of residents of the county transferring the beds utilizing the receiving facility, the applicants must document why it is in the best interest of these residents to transfer the beds to a facility with no historical affinity for them;
 4. The applicants must explain the impact of transferring the beds on the health care delivery system of the county from which the beds are to be taken; any negative impacts must be detailed along with the perceived benefits of such an agreement;
 5. The facility receiving the beds must demonstrate the need for the additional capacity based on both historical and projected utilization patterns;
 6. The facility giving up the beds may not use the loss of these beds as justification for a subsequent request for the approval of additional beds;
 7. A written contract or agreement between the governing bodies of the affected facilities approving the transfer or exchange of beds must be included in the Certificate of Need application;

8. Each facility giving up beds must acknowledge in writing that this exchange is permanent; any further transfers would be subject to this same process.
- (i) Factors to be considered regarding modernization of facilities should include:
 1. Functional arrangement of the facility as it relates to efficient handling of patients and related workloads.
 2. The ability to update medical technology within the existing plant.
 3. Existence of Joint Commission on Accreditation of Healthcare Organizations (JCAHO) deficiencies or "grandfathered" licensure deficiencies.
 4. Cost efficiency of the existing physical plant versus plant revision, etc.
- (j) Each modernization proposal must be evaluated on the basis of merit, cost efficiency, and impact on health delivery and status within the service area.

The following pages depict the calculation of hospital bed need as described earlier.

RELATIVE IMPORTANCE OF PROJECT REVIEW CRITERIA

The following project review criteria are considered to be the most important in evaluating certificate of need applications for this service:

- a. Compliance with the Need Outlined in this Plan;
- b. Community Need Documentation;
- c. Distribution (Accessibility);
- d. Acceptability;
- e. Financial Feasibility;
- f. Cost Containment; and
- g. Adverse Effects on Other Facilities.

General hospital beds are located within approximately thirty (30) minutes travel time for the majority of the residents of the State and current utilization and population growth are factored into the methodology for determining general hospital beds. The benefits of improved accessibility will be equally weighted with the adverse affects of duplication in evaluating Certificate of Need applications for these beds.

FY 2010 HOSPITAL NEED									
FACILITY/COUNTY	AGE CAT	2003 POP	2010 POP	2003 PAT DAYS	PROJ ADC	% OCCU	BED NEED	TO BE EXIST ADDED/OR BEDS (EXCESS)	
REGION I									
ANDERSON CO.									
ANDERSON AREA MEDICAL CTR & WOMEN AND CHILDREN'S HOSPITAL #1	<18	41,470	42,910	3,000	8.51				
	18-64	105,050	111,550	42,097	122.47				
	+65	23,060	25,820	45,734	140.30				
	TOTAL	169,580	180,280	90,923	271.27	0.75	362	495	-133
CHEROKEE CO.									
UPSTATE CAROLINA MEDICAL CTR	<18	13,980	14,770	1,151	3.33				
	18-64	33,390	35,960	7,241	21.37				
	+65	6,520	7,120	7,577	22.67				
	TOTAL	53,890	57,850	15,985	47.37	0.65	73	125	-52
GREENVILLE CO:									
ALLEN BENNETT MEMORIAL	<18	95,940	99,860	141	0.40				
	18-64	249,390	271,400	6,726	20.05				
	+65	45,090	49,950	8,881	26.95				
	TOTAL	390,420	421,210	15,719	47.41	0.65			
GREENVILLE MEMORIAL MED CTR	<18	95,940	99,860	15,612	44.52				
	18-64	249,390	271,400	103,885	309.74				
	+65	45,090	49,950	73,240	222.29				
	TOTAL	390,420	421,210	192,736	576.54	0.75			
ALLEN BENNETT MEM & GREENVILLE MEM MED CTR AND GREENVILL HOSP SYS- PATEWOOD #2	TOTAL						842	840	2
HILLCREST									
	<18	95,940	99,860	54	0.15				
	18-64	249,390	271,400	4,442	13.24				
	+65	45,090	49,950	6,259	19.00				
	TOTAL	390,420	421,210	10,755	32.39	0.65	50	43	7
NORTH GREENVILLE LTAC #3									
	<18	95,940	99,860	-	0.00				
	18-64	249,390	271,400	70	0.21				
	+65	45,090	49,950	163	0.49				
	TOTAL	390,420	421,210	233	0.70	0.65	1	45	-44
SAINT FRANCIS HOSPITAL									
	<64	345,330	371,260	24,841	73.17				
	+65	45,090	49,950	25,241	76.61				
	TOTAL	390,420	421,210	50,082	149.77	0.70			
ST FRANCIS WOMAN'S & FAMILY HOSP									
	<64	345,330	371,260	6,819	20.08				
	+65	45,090	49,950	6,915	20.99				
	TOTAL	390,420	421,210	13,721	41.07	0.65			

FACILITY/COUNTY	AGE CAT	2003 POP	2010 POP	2003 PAT DAYS	PROJ ADC	% OCCU	BED NEED	TO BE EXIST ADDED/OR BEDS (EXCESS)		
SAINT FRANCIS HOSPITAL & ST FRANCIS WOMAN'S & FAMILY HOSP	#4	TOTAL					278	319	-41	
REGENCY HOSPITAL GREENVILLE	#5	<18	95,940	99,860	-	0.00				
		18-64	249,390	271,400	-	0.00				
		+65	45,090	49,950	-	0.00				
		TOTAL	390,420	421,210	-	0.00	0	32	-32	
OCONEE CO										
OCONEE MEMORIAL		<18	15,380	15,910	855	2.42				
		18-64	42,240	45,020	13,968	40.79				
		+65	11,410	14,530	18,011	62.84				
		TOTAL	69,030	75,460	32,867	106.05	0.65	163	160	3
PICKENS CO										
CANNON MEMORIAL		<18	27,690	29,360	75	0.22				
		18-64	74,910	82,880	1,544	4.68				
		+65	13,150	14,910	4,164	12.94				
		TOTAL	115,750	127,150	5,784	17.84	0.65	27	55	-28
PALMETTO BAPTIST MED CTR EASLEY		<18	27,690	29,360	745	2.16				
		18-64	74,910	82,880	8,920	27.04				
		+65	13,150	14,910	8,958	27.83				
		TOTAL	115,750	127,150	18,623	57.03	0.65	88	109	-21
SPARTANBURG CO										
B.J. WORKMAN MEMORIAL		<18	65,080	67,440	77	0.22				
		18-64	164,700	177,670	967	2.86				
		+65	32,130	35,490	1,601	4.85				
		TOTAL	261,910	280,600	2,642	7.92	0.65	12	43	-31
SPART HOSP RESTORATIVE CARE		<18	65,080	67,440	-	0.00				
		18-64	164,700	177,670	5,513	16.29				
		+65	32,130	35,490	17,082	51.69				
		TOTAL	261,910	280,600	22,595	67.99	0.65	105	97	8
MARY BLACK MEMORIAL		<18	65,080	67,440	1,472	4.18				
		18-64	164,700	177,670	11,454	33.85				
		+65	32,130	35,490	11,601	35.11				
		TOTAL	261,910	280,600	24,527	73.14	0.70	104	176	-72
SPARTANBURG REGIONAL MED CTR		<18	65,080	67,440	4,883	13.86				
		18-64	164,700	177,670	63,861	188.74				
		+65	32,130	35,490	56,222	170.14				
		TOTAL	261,910	280,600	125,217	372.75	0.75	497	532	-35
UNION CO										

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FACILITY/COUNTY	FY 2010 HOSPITAL NEED							TO BE	
	AGE CAT	2003 POP	2010 POP	2003 PAT DAYS	PROJ ADC	% OCCU	BED NEED	EXIST BEDS	ADDED/OR (EXCESS)
WALLACE THOMSON	<18	7,090	6,990	738	1.99				
	18-64	17,890	17,440	6,272	16.75				
	+65	4,770	5,000	10,560	30.33				
	TOTAL	29,750	29,430	17,570	49.07	0.65	75	143	-68
REGION II									
ABBEVILLE CO.									
ABBEVILLE CO. MEMORIAL	<18	6,700	6,750	186	0.51				
	18-64	15,940	16,710	1,651	4.74				
	+65	3,840	4,190	2,209	6.60				
	TOTAL	26,480	27,650	4,046	11.86	0.65	18	25	-7
CHESTER CO.									
CHESTER CO. HOSPITAL	<18	9,080	8,910	620	1.67				
	18-64	21,060	21,770	4,133	11.70				
	+65	4,290	4,820	4,640	14.28				
	TOTAL	34,430	35,500	9,393	27.65	0.65	43	82	-39
EDGEFIELD CO.									
EDGEFIELD CO. HOSPITAL #6	<18	5,880	5,840	140	0.38				
	18-64	16,510	18,360	837	2.55				
	+65	2,730	3,200	2,069	6.64				
	TOTAL	25,120	27,400	3,042	9.57	0.65	15	25	-10
FAIRFIELD CO.									
FAIRFIELD MEMORIAL #7	<18	6,170	6,160	68	0.19				
	18-64	14,700	15,440	1,459	4.20				
	+65	3,050	3,300	2,224	6.59				
	TOTAL	23,920	24,900	3,751	10.98	0.65	17	25	-8
GREENWOOD CO									
SELF MEMORIAL HOSPITAL	<18	17,400	17,920	2,129	6.01				
	18-64	41,190	43,630	27,682	80.33				
	+65	9,070	9,620	32,629	94.82				
	TOTAL	67,660	71,170	62,628	181.16	0.70	259	334	-75
KERSHAW CO									
KERSHAW CO. MEMORIAL HOSPITAL	<18	13,760	14,180	1,489	4.20				
	18-64	33,550	36,810	8,775	25.38				
	+65	6,920	7,920	12,647	39.66				
	TOTAL	54,230	58,910	22,911	70.24	0.65	108	121	-13
LANCASTER CO									

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FY 2010 HLT NEED									
FACILITY/COUNTY	AGE CAT	2003 POP	2010 POP	2003 PAT DAYS	PROJ ADC	% OCCU	BED NEED	EXIST BEDS	TO BE ADDED/OR (EXCESS)
SPRINGS MEMORIAL	<18	15,530	15,450	2,114	5.76				
	18-64	38,810	40,540	20,293	58.08				
	+65	7,350	7,970	16,027	47.61				
	TOTAL	61,690	63,960	38,434	111.45	0.65	171	168	3
LAURENS CO									
LAURENS CO. HOSPITAL	<18	17,690	17,720	405	1.11				
	18-64	44,430	48,750	6,333	19.04				
	+65	9,420	10,770	9,443	29.58				
	TOTAL	71,540	77,240	16,197	49.73	0.65	77	76	1
LEXINGTON CO									
LEXINGTON MEDICAL CENTER	<18	35,450	36,961	2,103	6.01				
	18-64	90,687	101,337	42,652	130.58				
	+65	14,653	17,919	39,371	131.91				
	TOTAL	140,790	156,217	84,126	268.49	0.70	384	346	38
NEWBERRY CO									
NEWBERRY CO. MEMORIAL	<18	8,880	8,980	298	0.83				
	18-64	22,640	23,760	4,385	12.61				
	+65	5,330	5,780	7,232	21.49				
	TOTAL	36,850	38,520	11,915	34.92	0.65	54	90	-36
RICHLAND CO									
PALMETTO HEALTH BAPTIST	<18	103,241	105,950	1,919	5.40				
	18-64	268,753	289,794	38,967	115.12				
	+65	40,798	46,361	32,916	102.48				
	TOTAL	412,792	442,105	73,802	222.99	0.75	297	363	-66
PROVIDENCE HOSPITAL	<18	103,241	105,950	70	0.20				
	18-64	268,753	289,794	29,667	87.64				
	+65	40,798	46,361	39,905	124.24				
	TOTAL	412,792	442,105	69,642	212.08	0.70	303	258	45
PROVIDENCE HOSPITAL NORTHEAST	<18	103,241	105,950	74	0.21				
	18-64	268,753	289,794	6,725	19.87				
	+65	40,798	46,361	5,576	17.36				
	TOTAL	412,792	442,105	12,363	37.43	0.65	58	46	12
PALMETTO HEALTH RICHLAND	<18	103,241	105,950	21,430	60.25				
	18-64	268,753	289,794	78,907	233.11				
	+65	40,798	46,361	41,582	129.46				
	TOTAL	412,792	442,105	141,919	422.82	0.75	564	579	-15
INTERMEDICAL HOSPITAL OF SC	<18	103,241	105,950	-	0.00				
	>18	309,551	336,155	9,038	26.89				
	TOTAL	412,792	442,105	9,038	26.89	0.65	41	35	6

FY 2010 HOSPITAL NEED									
FACILITY/COUNTY	AGE CAT.	2003 POP	2010 POP	2003 PAT DAYS	PROJ % ADC OCCU	BED NEED	TO BE EXIST	ADDED/OR BEDS (EXCESS)	
=====									
YORK CO									
PIEDMONT MEDICAL CENTER	<18	44,300	45,910	2,937	8.34				
	18-64	110,120	125,480	36,863	115.08				
	+65	17,670	20,910	33,632	109.04				
	TOTAL	172,090	192,300	73,432	232.46	0.70	332	268	64
REGION III									
CHESTERFIELD CO									
CHESTERFIELD GENERAL	<18	11,270	11,080	785	2.11				
	18-64	26,520	27,570	4,519	12.82				
	+65	5,050	5,620	2,096	6.39				
	TOTAL	42,940	44,270	7,408	19.21	0.65	30	59	-29
CLARENDON CO									
CLARENDON MEMORIAL HOSPITAL	<18	8,180	7,770	578	1.50				
	18-64	19,940	20,670	6,624	18.81				
	+65	4,900	6,210	5,367	18.64				
	TOTAL	33,020	34,650	12,569	38.95	0.65	60	56	4
DARLINGTON CO									
CAROLINA PINES REGIONAL HOSPITAL	<18	17,780	17,560	2,444	6.61				
	18-64	41,750	42,690	15,857	44.42				
	+65	8,200	9,000	13,036	39.20				
	TOTAL	67,730	69,250	31,337	90.23	0.65	139	166	-27
WILSON MEDICAL CENTER	<18	17,780	17,560	3	0.01				
	18-64	41,750	42,690	1,111	3.11				
	+65	8,200	9,000	1,974	5.94				
	TOTAL	67,730	69,250	3,085	9.06	0.65	14	49	-35
DILLON CO									
SAINT EUGENE MEDICAL CENTER	<18	8,590	8,090	1,436	3.71				
	18-64	18,360	18,670	6,628	18.47				
	+65	3,490	3,530	5,758	15.96				
	TOTAL	30,440	30,290	13,809	38.13	0.65	59	79	-20
FLORENCE CO									
CAROLINAS HOSP SYS & WOMEN'S CENTER OF THE CAROLINAS HOSP. SYS. #8	<18	32,740	32,610	1,877	5.12				
	18-64	80,440	84,930	38,123	110.28				
	+65	15,190	16,930	39,818	121.59				
	TOTAL	128,370	134,470	75,244	236.99	0.70	339	282	57
CAROLINAS HOSPITAL SYSTEM LAKE CITY	<18	32,740	32,610	103	0.28				
	18-64	80,440	84,930	1,547	4.47				
	+65	15,190	16,930	2,151	6.57				
	TOTAL	128,370	134,470	3,801	10.91	0.65	17	48	-31

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FY 2010 HOSPITAL NEED

FACILITY/COUNTY	AGE CAT	2003 POP	2010 POP	2003 PAT DAYS	PROJ ADC	% OCCU	BED NEED	TO BE EXIST ADDED/OR BEDS (EXCESS)
MARLBORO PARK	<18	7,400	7,070	716	1.87			
	18-64	17,650	17,030	4,641	12.27			
	+65	3,320	3,340	650	1.79			
	TOTAL	28,370	27,440	6,020	15.93	0.65	25	94 -69
SUMTER CO								
TUOMEY	<18	30,250	31,020	2,095	5.89			
	18-64	66,240	70,420	30,012	87.41			
	+65	12,630	14,680	29,458	93.81			
	TOTAL	109,120	116,120	61,627	187.11	0.70	268	248 20
WILLIAMSBURG CO								
WILLIAMSBURG REG HOSPITAL #10	<18	10,230	9,410	199	0.50			
	18-64	21,930	22,150	2,330	6.45			
	+65	4,890	5,300	2,707	8.04			
	TOTAL	37,050	36,860	5,236	14.99	0.65	23	25 -2
REGION IV								
AIKEN CO.								
AIKEN REGIONAL MEDICAL CTR.	<18	37,520	37,750	897	2.47			
	18-64	92,370	103,080	22,519	68.85			
	+65	19,460	23,110	21,442	69.76			
	TOTAL	149,350	163,940	44,858	141.09	0.65	217	183 34
ALLENDALE CO.								
ALLENDALE CO. HOSPITAL	<18	3,030	3,030	110	0.30			
	18-64	7,050	7,170	827	2.30			
	+65	1,500	1,750	960	3.07			
	TOTAL	11,580	11,950	1,897	5.67	0.65	9	25 -16
BAMBERG CO.								
BAMBERG CO. MEMORIAL	<18	4,210	3,850	98	0.25			
	18-64	9,910	9,560	2,961	7.83			
	+65	2,200	2,340	2,712	7.90			
	TOTAL	16,320	15,750	5,771	15.97	0.65	25	59 -34
BARNWELL CO.								
BARNWELL CO. HOSPITAL	<18	6,390	6,090	411	1.07			
	18-64	14,540	15,820	2,166	6.46			
	+65	3,060	3,490	2,758	8.62			
	TOTAL	23,990	25,400	5,335	16.15	0.65	25	53 -28
BEAUFORT CO.								
BEAUFORT CO. MEMORIAL	<18	28,750	27,740	1,852	4.90			
	18-64	77,320	87,650	20,329	63.14			

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FY 2010 HOSPITAL NEED

FACILITY/COUNTY	AGE CAT	2003 POP	2010 POP	2003 PAT DAYS	PROJ ADC	% OCCU	BED NEED	EXIST BEDS	TO BE ADDED/OR (EXCESS)
COLLETON MEDICAL CENTER	<18	10,520	10,690	626	1.74				
	18-64	23,760	25,190	11,429	33.20				
	+65	4,990	5,730	15,157	47.68				
	TOTAL	39,270	41,610	27,211	82.62	0.65	128	131	-3
HAMPTON CO.									
HAMPTON REGIONAL MEDICAL CTR	<18	5,740	5,490	65	0.17				
	18-64	13,340	14,170	1,618	4.71				
	+65	2,590	3,030	1,940	6.22				
	TOTAL	21,670	22,690	3,627	11.10	0.65	17	68	-51
JASPER CO.									
COASTAL CAROLINA MEDICAL CENTER	<18	5,350	5,050	-	0.00				
	18-64	13,410	15,120	-	0.00				
	+65	2,330	2,830	-	0.00				
	TOTAL	21,090	23,000	-	0.00	0.65	0	31	-31
ORANGEBURG CO.									
REG MED CTR ORANGEBURG-CALHOUN	<18	24,070	23,740	2,065	5.58				
	18-64	56,610	59,090	22,618	64.68				
	+65	12,530	14,050	24,486	75.22				
ORANGEBURG CO.	TOTAL	93,210	96,880	49,169	145.48	0.70	208	247	-39

#1 CON ISSUED TO TRANSFER 72 BEDS FOR NEW HOSPITAL.

#2 BED NEEDS ARE COMBINED FOR THESE HOSPITALS; SINCE, ADDITIONAL BEDS WERE APPROVED FOR TRANSFER AMONG THESE HOSPITALS. 6/30/03

#3 CON ISSUED TO CONVERT N GREENVILLE TO A 45 BED LTC HOSPITAL 4/15/03.

#4 BED NEEDS ARE COMBINED FOR THESE HOSPITALS, SINCE ADDITIONAL BEDS WERE APPROVED FOR TRANSFER AMONG THESE HOSPITALS. 6/30/03

#5 CON ISSUED FOR 32 BED LTACH 5/22/04 SC-04-26

#6 THE HOSPITAL DELICENSED FROM 40 TO 25 BEDS ON 8/31/04 TO BECOME A CRITICAL ACCESS HOSPITAL

#7 THE HOSPITAL DELICENSED FROM 50 TO 25 BEDS ON 8/23/04 TO BECOME A CRITICAL ACCESS HOSPITAL.

#8 DATA AND BED NEEDS ARE COMBINED.

#9 NEEDS ARE COMBINED SINCE CON SC-03-65 TRANSFER 14 BEDS FROM GM TO WACCAMAW. 11/10/03.

AND WACCAMAW ADDED 28 BEDS 4/12/04 SC-04-20.

#10 THE HOSPITAL DELICENSED FROM 78 TO 25 BEDS ON 9/20/04 TO BECOME A CRITICAL ACCESS HOSPITAL

#11 CON ISSUED TO COMBINE THESE TWO FACILITIES SC-09-60 10/14/03.

% OCCUPANCY RATE

SOUTH CAROLINA GENERAL ACUTE BEDS

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	2001	2002	2003		2001	2002	2003
REGION I	58.3	58.7	59.4	REGION III	64.0	63.3	63.6
ANDERSON AREA MED CTR	52.3	52.8	50.3	CHESTERFIELD GENERAL	25.1	31.1	34.4
UPSTATE CAROLINA MED CTR	34.3	31.7	35.0	CLARENDON MEMORIAL	67.0	69.5	61.5
ALLEN BENNETT MEMORIAL	71.1	71.3	74.3	CAROLINA PINES REG MED CTR	65.1	69.4	74.0
GREENVILLE MEM MED CTR	81.6	81.5	83.5	WILSON CLINIC	20.5	19.7	17.2
NORTH GREENVILLE LTAC	--	--	13.0	ST. EUGENE REGIONAL MED CTR	43.8	48.2	47.9
HILLCREST HOSPITAL	43.7	52.7	55.7	CAROLINAS HOSPITAL SYSTEM	60.3	68.3	75.6
ST FRANCIS HOSPITAL	74.7	73.7	66.6	CAROLINAS HOSP LAKE CITY	21.5	19.9	21.7
ST FRANCIS WOMEN'S & FAMILY	59.8	58.4	60.6	MCLEOD REGIONAL MED CTR	92.5	92.0	90.6
OCONEE MEMORIAL	54.8	52.2	56.3	WOMEN'S CTR/CAROLINAS	53.2	37.1	40.9
CANNON MEMORIAL	31.2	27.8	28.8	REGENCY HOSPITAL OF SC	12.8	78.6	90.5
PALMETTO BAPTIST M C EASLEY	51.1	52.8	53.1	GEORGETOWN MEMORIAL	81.0	81.1	68.4
BJ WORKMAN MEMORIAL	17.5	18.0	16.8	WACCAMAW COMMUNITY	--	--	78.6
MARY BLACK MEMORIAL	40.7	40.7	38.2	CONWAY HOSPITAL	63.3	57.3	58.3
SPART HOSP RESTORATIVE CARE	62.4	40.7	63.8	GRAND STRAND REGIONAL	78.6	64.3	62.2
SPARTANBURG REG MED CTR	62.4	65.6	64.5	LORIS COMMUNITY	56.0	49.9	50.2
HOPE HOSPITAL	13.8	11.5	0.0	MARION COUNTY MED CTR	90.6	69.4	76.8
WALLACE THOMSON	32.1	32.2	33.7	MARLBORO PARK	19.2	21.7	17.5
				TUOMEY	67.7	70.7	68.1
				WILLIAMSBURG REGIONAL	9.3	19.6	18.4
REGION II	61.2	63.0	64.8	REGION IV	60.8	62.9	62.2
ABBEVILLE COUNTY	24.0	25.0	21.3	AIKEN REGIONAL MED CTR	70.9	71.1	69.0
CHESTER REGIONAL MED CTR	44.4	37.3	31.4	ALLENDALE COUNTY	14.8	21.0	20.8
EDGEFIELD COUNTY	24.5	19.9	20.8	BAMBERG CO MEMORIAL	27.0	25.2	26.8
FAIRFIELD MEMORIAL	33.9	36.4	31.1	BARNWELL COUNTY	29.6	27.9	27.6
SELF REGIONAL MED CTR	49.5	48.5	51.4	BEAUFORT MEMORIAL	89.3	94.7	84.8
KERSHAW COUNTY MEMORIAL	56.3	53.3	51.9	HILTON HEAD	78.8	60.6	69.1
SPRINGS MEMORIAL	77.1	67.6	78.0	CHARLESTON MEMORIAL	11.9	12.3	13.7
LAURENS COUNTY HOSPITAL	64.0	61.4	58.4	EAST COOPER REG MED CTR	48.0	48.8	57.0
LEXINGTON MEDICAL CTR	71.6	76.2	78.9	MEDICAL UNIVERSITY	72.5	72.2	75.4
NEWBERRY CO MEMORIAL	29.3	34.0	36.3	TRIDENT MEDICAL CTR	77.6	82.4	76.9
INTERMEDICAL HOSPITAL OF SC	72.3	78.5	70.7	KINDRED-HOSP CHARLESTON	39.1	50.9	55.6
PALMETTO HEALTH BAPTIST	55.9	52.7	55.7	SUMMERVILLE MED CTR	61.4	69.3	74.5
PROVIDENCE HOSPITAL	76.9	79.0	83.7	ROPER	63.4	63.9	61.9
PROVIDENCE HOSPITAL NE	74.1	82.6	73.6	BON SECOURS ST FRANCIS X	72.2	75.7	75.0
PALMETTO HEALTH RICHLAND	69.0	68.5	67.2	COLLETON MEDICAL CTR	69.7	61.6	64.3
PIEDMONT MEDICAL CTR	65.2	71.6	75.1	HAMPTON REGIONAL MED CTR	18.4	13.2	14.6
				LOW COUNTRY	0.0	0.0	0.0
				RMC ORANGEBURG/CALHOUN	58.7	58.9	54.5

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EXHIBIT B

CHAPTER II

PLANNING REGIONS AND FACILITY CATEGORIES

- Inventory Regions and Service Areas
- Exceptions to Service Area Standards
- Identification of Inventory Regions
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- Categories of Facilities & Services
 - General Medical Facilities and Services
 - General Hospitals
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 - Long-Term Care Hospitals
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 - Obstetrical Services
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 - Ambulatory Surgical Facility
 - Emergency Hospital Services
 - Trauma Referral System
 - Community Psychiatric Beds
 - Crisis Stabilization Beds
 - Residential Treatment Facilities for Children & Adolescents
 - Alcohol & Drug Abuse Facilities
 - Medical Detoxification
 - Inpatient Treatment
 - Narcotic Treatment Programs
 - Rehabilitation Facilities
 - Long-Term Care Facilities & Services
 - Nursing Facilities
 - Medicaid Nursing Home Permits
 - Mental Retardation Facilities
 - Retirement Community Nursing Homes (Restricted Beds)
 - Hospice Programs
 - Home Health Agencies

CHAPTER II

PLANNING REGIONS AND FACILITY CATEGORIES

A. Inventory Regions and Service Areas:

This State Plan has adopted four regions and one statewide category for the purpose of inventorying health facilities and services as specified in Section C. below. These regions, based on existing geographic, trade and political areas, are a practical method of administration.

The needs for hospital beds are based on the utilization of individual facilities. Nursing home and home health service needs are projected by county. The needs for acute psychiatric services, alcohol and drug abuse services, comprehensive rehabilitation services, and residential treatment centers for children and adolescents are based on various service areas and utilization methodologies specified herein. Institutions serving a restricted population throughout the state are planned on a statewide basis. The needs for most services (cardiac catheterization, open heart surgery, etc.) are based upon the service standard, which is a combination of utilization criteria and travel time requirements. Each service standard constitutes the service area for that particular service.

Any service area may cross multiple administrative, geographic, trade and/or political boundaries. It is recognized that due to factors which may include availability, accessibility, personal or physician preferences, insurance and managed care contracts or coverage, or other reimbursement issues, patients may seek and receive treatment outside the county or inventory region in which they reside and/or outside of the state. Therefore, service areas may specifically cross inventory regions and/or state boundaries. The need for a service is analyzed by an assessment of existing resources and need in the relevant service area, along with other factors set forth in this Plan and applicable statutes and regulations.

B. Exceptions to Service Area Standards:

It must be recognized that the health care delivery system is in a state of evolution both nationally and in South Carolina. Due to the health reform movement, we are seeing a number of health care facilities consolidating and establishing provider networks in order to better compete for contracts within the new environment. This is particularly important for the smaller, more rural, facilities that run the risk of being bypassed by insurers and health care purchasers looking for the availability of comprehensive health care services for their subscribers.

Given the changing nature of the health care delivery system, affiliated hospitals may sometimes desire to transfer or exchange specific technologies in order to better meet an identified need. Affiliated hospitals are defined as being two or more health care facilities, whether inpatient or outpatient, owned, leased, sponsored, or who have a formal legal relationship with a central organization and whose relationship has been established for reasons other than for transferring beds, equipment or services. There may be certain instances where such a transfer or exchange of acute services could be accomplished in a cost-effective manner and result in a more efficient allocation of

health care resources. This transfer or exchange of services applies to both inpatient and outpatient services; however, such transfers or exchanges could only occur between facilities within the same licensing category. A Certificate of Need would be required to achieve the transfer or exchange of services. In order to evaluate a proposal for the transfer or exchange of any health care technology reviewed under the Certificate of Need program, the following criteria must be applied to it:

- (1) A transfer or exchange of services may be approved only if there is no overall increase in the number or amount of such services;
- (2) Although such transfers may cross county or service area lines, the facilities must be located within the one-way driving time established for the proposed service of each other, as determined by the Department;
- (3) The facility receiving the service must demonstrate the need for the additional capacity based on both historical and projected utilization patterns;
- (4) The applicants must explain the impact of transferring the technology on the health care delivery system of the county and/or service area from which it is to be taken; any negative impacts must be detailed along with the perceived benefits of the proposal;
- (5) The facility giving up the service may not use the loss of such services as justification for a subsequent request for the approval of establishment of such service;
- (6) A written contract or agreement between the governing bodies of the affected facilities approving the transfer or exchange of services must be included in the Certificate of Need process;
- (7) Each facility giving up a service must acknowledge in writing that this exchange is permanent; any further transfers would be subject to this same process.

C. Identification of Inventory Regions:

The inventory regions are designated as follows:

<u>Region</u>	<u>Counties</u>
I	Anderson, Cherokee, Greenville, Oconee, Pickens, Spartanburg, and Union.
II	Abbeville, Chester, Edgefield, Fairfield, Greenwood, Kershaw, Lancaster, Laurens, Lexington, McCormick, Newberry, Richland, Saluda and York.
III	Chesterfield, Clarendon, Darlington, Dillon, Florence, Georgetown, Horry, Lee, Marion, Marlboro, Sumter and Williamsburg.

- IV Aiken, Allendale, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Colleton, Dorchester, Hampton, Jasper and Orangeburg.

D. Estimated State Civilian Population:

This Plan has been developed using the estimated civilian population of 4,263,980 for 2006 and projected population of 4,583,130 for 2013 where these projections were required for calculations. All population data (county, planning area, and statewide) were computed by the State Budget and Control Board, Division of Research and Statistical Services, in cooperation with the U.S. Bureau of Census. The Governor has designated the above agency as the official source of all population data to be used by state agencies.

E. Patient Statistics:

Patient statistics in the Plan are based on the 2006 Fiscal Year for health care facilities.

F. Facility Information and Plan Cut-Off Date:

Only those facilities reviewed under the Certificate of Need program are included in the inventory. The cut-off date for inclusion of information in this Plan was September 1, 2008.

G. Categories of Facilities and Services:

1. General Medical Facilities and Services

(A) General Hospitals

(1) Definitions:

(a) A "hospital" means a facility organized and administered to provide overnight medical or surgical care or nursing care of illness, injury, or infirmity and may provide obstetrical care, and in which all diagnoses, treatment, or care is administered by or under the direction of persons currently licensed to practice medicine, surgery, or osteopathy.

(b) "Hospital beds" means a bed for an adult or child patient. Bassinets for the newborn in a maternity unit nursery, beds in labor rooms, recovery rooms, and other beds used exclusively for emergency purposes are not included in this definition.

(2) Bed Capacity is as follows:

(a) For existing beds, capacity is considered bed space designated exclusively for inpatient care, including space originally designed or remodeled for inpatient beds even though temporarily not used for such purposes. The number of beds counted in

any patient room is the maximum number for which adequate square footage is provided, except that single beds in single rooms have been counted even if the room contained inadequate square footage.

Adequate square footage is defined as:

- 100 square feet in single rooms;
- 80 square feet per bed or pediatric crib in multi-bed rooms;
- 40 square feet per bassinet in pediatric nurseries.

In measuring the square footage of patient rooms for the purpose of determining bed capacity, only the net usable space in the room was considered. Space in toilet rooms, washrooms, closets, vestibules, and corridors was not included.

(b) For facilities constructed under the Certificate of Need program, bed capacity will be as stated in the certificate, regardless of oversize room construction.

(c) For Areas Included:

1. Bed space in all nursing units, including: (1) intensive care unit and (2) minimal or self-care units.
2. Isolation units.
3. Pediatric units, including: (1) pediatric bassinets and (2) incubators located in the pediatric department.
4. Observation units equipped and staffed for overnight use.
5. All space designated for inpatient bed care even if currently closed or assigned to easily convertible, non-patient uses such as administration offices or storage.
6. Space in areas originally designed as solaria, waiting rooms, offices, conference rooms and classrooms that have necessary fixed equipment and are accessible to a nurses' station exclusively staffed for inpatient care.
7. Bed space under construction if planned for immediate completion (not an unfinished "shell" floor).

(d) For Areas Excluded:

1. Newborn nurseries in maternity department.
2. Labor rooms.
3. Recovery rooms.
4. Emergency units.
5. Preparation or anesthesia induction rooms.
6. Rooms used for diagnostic or treatment procedures unless originally designed for patient care.
7. Hospital staff bed areas, including accommodations for on-call staff unless originally designed for patient care.

8. Corridors.
9. Solaria, waiting rooms and such which are not permanently set aside, equipped and staffed exclusively for inpatient bed care.
10. Unfinished space (shell) {an area that is finished except for movable equipment shall not be considered unfinished space}.
11. Psychiatric, substance abuse and comprehensive rehabilitation units of general hospitals are a separate category of bed utilizing the same criteria outlined for general acute beds.

(3) Inventory:

- (a) All licensed general hospitals, including Federal facilities, are listed in the inventory. Patient days and admissions are as reported by the hospital. The number of patient days utilized for the general hospital bed need calculations does not include days of care rendered in licensed psychiatric units, substance abuse units, or comprehensive rehabilitation units of hospitals. These days of care are shown in the corresponding inventories for each type of service. In addition, the days of care provided in Long Term Care hospitals are not included in the general bed need calculations.
- (b) Total capacity by survey refers to a total designed capacity or maximum number of beds that may be accommodated as determined by an on-site survey. This capacity may exceed the number of beds actually set up and in use. It may also differ from the licensed capacity, which is based on State laws and regulations. Beds have been classified as conforming and nonconforming according to standards of plant evaluation, such as:
 1. Fire-resistivity of each building.
 2. Fire and other safety factors of each building.
 3. Design and structural factors affecting the function of nursing units.
 4. Design and structural factors affecting the function of service departments.

(4) Narrative: General Hospital Beds

The General Acute Hospital bed need methodology is based on analyses including historical utilization; nationally recognized bed need methodologies; and consideration of the physical characteristics of hospitals in the State. Based upon these analyses, variable occupancy rate factors were developed, as follows:

0-174 bed hospitals, 65%;
175-349 bed hospitals, 70%; and
350+ bed hospitals, 75%.

The population and associated utilization is broken down by age groups. The use rates and projected average daily census are made for the age cohorts of 0-17, 18-64, and 65 and over, recognizing that different population groups have different hospital utilization rates. For some hospitals, different age groups were used based on the data provided by the facility.

It should be noted that, throughout the Plan where the term "hospital bed need" is specified, these figures are actually based upon demand or utilization data for the general acute hospitals. Use of these planning factors is not intended to stem initiative or to suggest that facilities cannot operate at more efficient levels than used in the calculations without additional beds.

The methodology for calculating bed need is as follows:

- (a) Calculations of bed need are made for individual hospitals, because of the differing occupancy factors used for individual facilities, and then summed by county to get the overall county bed need.
- (b)
 1. Multiply the current facility use rate by age cohort by the projected population by age cohort (in thousands) and divide by 365 to obtain a projected average daily census by age cohort.
 2. Divide the sum of the age cohort projected facility average daily census by the variable occupancy (.65/.70/.75) to determine the number of beds needed to meet the area's need.
- (c) The number of additional beds needed or excess beds is obtained by subtracting the number of existing beds from the bed need.
- (d) If a county indicates a surplus of beds, then no additional beds will be approved unless an individual hospital in the county indicates a need for additional beds. Should an individual hospital indicate a need for additional beds, then a maximum of the actual projected bed need or up to 50 additional beds may be approved for that hospital to allow for the construction of an economical unit at either the existing hospital site or another site, if the existing hospital is relocating or has relocated in whole or in part to that site. The hospital requesting the addition must document the need for additional beds beyond those indicated as needed by the methodology stated above, based on historical and projected utilization, as well as projected population growth or other factors demonstrating the need for the proposed beds. Additional beds will only be approved for the specific hospital indicating a need.
- (e) If there is a need for additional hospital beds in the county, then any entity may apply to add these beds within the county, and any entity may be awarded the Certificate of Need for these beds. If the number of beds needed is less than 50, then up to a total of 50 beds could be approved for any entity at any location within the county. An applicant requesting additional beds beyond those indicated as needed by the

methodology stated above, must document the need for additional beds based on historical and projected utilization, floor plan layouts, projected population growth that has not been considered in this Plan or other factors demonstrating the need for the proposed beds. It is up to the applicant to document the need and the potential negative impact on the existing facilities.

(f) No additional hospitals will be approved unless they are a general hospital and will provide:

1. A 24-hour emergency services department, and meet the requirements to be a Level III emergency service as defined in Regulation 61-16 Sec. 613 Emergency Services.
2. Inpatient medical services to both surgical and non-surgical patients, and
3. Medical and surgical services on a daily basis within at least 6 of the major diagnostic categories as recognized by Centers for Medicare and Medicaid Services (CMS), as follows:

- MDC 1: Diseases and disorders of the nervous system
- MDC 2: Diseases and disorders of the eye
- MDC 3: Diseases and disorders of the ear, nose, mouth and throat
- MDC 4: Diseases and disorders of the respiratory system
- MDC 5: Diseases and disorders of the circulatory system
- MDC 6: Diseases and disorders of the digestive system
- MDC 7: Diseases and disorders of the hepatobiliary system and pancreas
- MDC 8: Diseases and disorders of the musculoskeletal system and connective tissue
- MDC 9: Diseases and disorders of the skin, subcutaneous tissue and breast
- MDC 10: Endocrine, nutritional and metabolic diseases and disorders
- MDC 11: Diseases and disorders of the kidney and urinary tract
- MDC 12: Diseases and disorders of the male reproductive system
- MDC 13: Diseases and disorders of the female reproductive system
- MDC 14: Pregnancy, childbirth and the puerperium
- MDC 15: Newborns/other neonates with conditions originating in the prenatal period
- MDC 16: Diseases and disorders of the blood and blood-forming organs and immunological disorders
- MDC 17: Myeloproliferative diseases and disorders and poorly differentiated neoplasms
- MDC 18: Infectious and parasitic diseases
- MDC 19: Mental diseases and disorders
- MDC 20: Alcohol/drug use and alcohol/drug-induced organic mental disorders
- MDC 21: Injury, poisoning and toxic effects of drugs
- MDC 22: Burns

MDC 23: Factors influencing health status and other contact with health services

MDC 24: Multiple significant traumas

MDC 25: Human immunodeficiency virus infections

Any applicant for a new hospital must provide a written commitment that the facility will accept Medicare and Medicaid patients, and that un-reimbursed services for indigent and charity patients are provided at a percentage which meets or exceeds other hospitals in the service area.

- (g) In some areas of South Carolina, there is a considerable influx of tourists who are not counted in the permanent population. If an individual hospital in these areas can document and demonstrate the need for additional beds due to non-resident (tourist) population, and seasonal utilization fluctuations due to this population, then the Department may approve some additional beds at the existing hospital based on further analysis.
- (h) Should a hospital request additional beds due to the deletion of services at a Federal facility that results in the immediate impact on the utilization of the hospital, then additional beds may be approved at the affected hospital. The impacted hospital must document this increase in demand and explain why additional beds are needed to accommodate the care of patients previously served at a Federal facility. Based on the analysis of utilization provided by the affected hospital, the Department may approve some additional hospital beds to accommodate this immediate need.
- (i) Because of the low utilization and the low capital cost of converting hospital-based nursing home, psychiatric and/or substance abuse beds to general acute care hospital beds, the following policies may apply:
 - 1. Hospitals that have licensed nursing home beds within the hospital may be allowed to convert these nursing home beds to acute care hospital beds only within the hospital provided the hospital can document an actual need for these additional acute care beds. This will be based on actual utilization using current information. A CON is required for this conversion.
 - 2. Existing general hospitals that have inpatient psychiatric, rehabilitation, or substance abuse beds may be allowed to convert these specialty beds to acute care hospital beds regardless of the projected need for general acute care hospital beds, provided a Certificate of Need is received.
- (j) 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. A proposal to transfer or exchange hospital beds requires a Certificate of Need and must comply with the following criteria:

1. A transfer or exchange of beds may be approved only if there is no overall increase in the number of beds;
2. Such transfers may cross county lines; however, the applicants must document with patient origin data the historical utilization of the receiving facility by residents of the county giving up beds;
3. Should the response to Criterion 2 fail to show a historical precedence of residents of the county transferring the beds utilizing the receiving facility, the applicants must document why it is in the best interest of these residents to transfer the beds to a facility with no historical affinity for them;
4. The applicants must explain the impact of transferring the beds on the health care delivery system of the county from which the beds are to be taken; any negative impacts must be detailed along with the perceived benefits of such an agreement;
5. The facility receiving the beds must demonstrate the need for the additional capacity based on both historical and projected utilization patterns;
6. The facility giving up the beds may not use the loss of these beds as justification for a subsequent request for the approval of additional beds;
7. A written contract or agreement between the governing bodies of the affected facilities approving the transfer or exchange of beds must be included in the Certificate of Need application;
8. Each facility giving up beds must acknowledge in writing that this exchange is permanent; any further transfers would be subject to this same process.

(k) Factors to be considered regarding modernization of facilities should include:

1. Functional arrangement of the facility as it relates to efficient handling of patients and related workloads.
2. The ability to update medical technology within the existing plant.
3. Existence of The Joint Commission (TJC) deficiencies or "grandfathered" licensure deficiencies.
4. Cost efficiency of the existing physical plant versus plant revision, etc.
5. Private rooms are now considered the industry standard.

- (l) Each modernization proposal must be evaluated on the basis of merit, cost efficiency, and impact on health delivery and status within the service area.

The following pages depict the calculation of hospital bed need as described earlier.

Relative Importance of Project Review Criteria

The following project review criteria are considered to be the most important in evaluating certificate of need applications for this service:

- a. Compliance with the Need Outlined in this Plan;
- b. Community Need Documentation;
- c. Distribution (Accessibility);
- d. Acceptability;
- e. Financial Feasibility;
- f. Cost Containment; and
- g. Adverse Effects on Other Facilities.

General hospital beds are located within approximately thirty (30) minutes travel time for the majority of the residents of the State and current utilization and population growth are factored into the methodology for determining general hospital beds. The benefits of improved accessibility will be equally weighed with the adverse affects of duplication in evaluating Certificate of Need applications for these beds.

FY 2013 HOSPITAL BED NEED									
FACILITY/COUNTY	AGE CAT	2006 POP	2013 POP	2008 PAT DAYS	PROJ AOC	% OCCU	BED NEED	EXIST BEDS	TO BE ADDED/OR (EXCESS)
=====									
REGION I									
ANMED HEALTH MEDICAL CENTER	<18	42,240	43,370	2,734	8				
	18-64	107,660	114,030	41,388	120				
	+65	23,810	27,760	37,111	119				
	TOTAL	173,710	185,160	81,213	246	0.75	329	423	-94
ANMED WOMEN'S & CHILDRENS HOSPITAL	<18	42,240	43,370	318	1				
	18-64	107,660	114,030	4,811	14				
	+65	23,810	27,760	4,101	13				
	TOTAL	173,710	185,160	9,230	28	0.65	44	72	-28
ANDERSON COUNTY TOTAL							373	495	-122
UPSTATE CAROLINA MEDICAL CENTER	<18	14,350	15,050	1,014	3				
	18-64	34,390	37,060	9,024	27				
	+65	6,850	7,650	7,431	23				
	TOTAL	55,390	59,760	17,469	53	0.65	82	125	-43
CHEROKEE COUNTY TOTAL							82	125	-43
ALLEN BENNETT / GREER MEMORIAL HOSP	<18	97,810	100,960	103	0				
	18-64	258,150	280,240	6,796	20				
	+65	46,370	54,180	7,595	24				
	TOTAL	402,330	435,380	14,494	45	0.65			
GREENVILLE MEMORIAL MEDICAL CENTER	<18	97,810	100,960	14,875	42				
	18-64	258,150	280,240	104,127	310				
	+65	46,370	54,180	73,643	236				
	TOTAL	402,330	435,380	192,645	588	0.75			
ALLEN BENNETT/GREER MEMORIAL & #1 GREENVILLE MEMORIAL MEDICAL CTR & GREENVILLE HOSP SYSTEM - PATEWOOD							852	900	-48
HILLCREST MEMORIAL HOSPITAL	<18	97,810	100,960	18	0				
	18-64	258,150	280,240	4,255	13				
	+65	46,370	54,180	5,368	17				
	TOTAL	402,330	435,380	9,639	30	0.65	46	43	3
SAINT FRANCIS - DOWNTOWN	<64	355,960	381,200	25,057	74				
	+65	46,370	54,180	33,404	107				
	TOTAL	402,330	435,380	58,461	180	0.70	258	226	32
SAINT FRANCIS - EASTSIDE	<64	355,960	381,200	10,943	32				
	+65	46,370	54,180	2,727	9				
	TOTAL	402,330	435,380	13,650	41	0.65	63	93	-30
GREENVILLE COUNTY TOTAL							1,219	1,262	-43

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FY 2013 HOSPITAL BED NEED									
FACILITY/COUNTY	AGE CAT.	2006 POP	2013 POP	2006 PAT DAYS	PROJ ADC	% OCCU	BED NEED	EXIST BEDS	TO BE ADDED/OR (EXCESS)
=====									
OCONEE MEMORIAL HOSPITAL	<18	15,690	16,020	789	2				
	18-64	43,570	46,040	18,448	53				
	+65	12,590	16,130	12,825	45				
	TOTAL	71,850	78,190	32,062	101	0.65	155	169	-14
OCONEE COUNTY TOTAL							155	169	-14
=====									
CANNON MEMORIAL HOSPITAL	<18	28,450	30,010	26	0				
	18-64	78,420	85,630	1,948	6				
	+65	13,780	16,330	3,158	10				
	TOTAL	120,650	131,970	5,132	16	0.65	25	55	-30
PALMETTO BAPTIST MED CTR EASLEY	<18	28,450	30,010	395	1				
	18-64	78,420	85,630	7,059	21				
	+65	13,780	16,330	10,647	35				
	TOTAL	120,650	131,970	18,101	57	0.65	87	109	-22
PICKENS COUNTY TOTAL							112	164	-52
=====									
MARY BLACK MEMORIAL	<18	66,570	67,890	1,356	4				
	18-64	170,480	181,970	21,628	63				
	+65	32,990	38,670	8,490	27				
	TOTAL	270,040	288,530	31,474	94	0.70	135	176	-41
SPARTANBURG REG MED CTR & VILLAGE HEALTH CENTRE #2	<18	66,570	67,890	4,108	11				
	18-64	170,480	181,970	67,262	197				
	+65	32,990	38,670	56,993	183				
	TOTAL	270,040	288,530	128,363	391	0.75	522	532	-10
SPARTANBURG COUNTY TOTAL							657	708	-51
=====									
WALLACE THOMSON HOSPITAL	<18	7,080	6,850	372	1				
	18-64	17,770	17,140	5,771	15				
	+65	4,870	5,280	7,630	23				
	TOTAL	29,720	29,370	13,773	39	0.65	60	143	-83
UNION COUNTY TOTAL							60	143	-83
=====									
REGION II									
ABBEVILLE AREA MEDICAL CENTER	<18	6,730	6,810	136	0				
	18-64	16,230	16,890	1,466	4				
	+65	3,920	4,400	1,906	6				
	TOTAL	26,880	28,100	3,508	10	0.65	16	25	-9
ABBEVILLE COUNTY TOTAL							16	25	-9

FY 2013 HOSPITAL BED NEED									
FACILITY/COUNTY	AGE CAT	2006 POP	2013 POP	2006 PAT DAYS	PROJ ADC	% OCCU	BED NEED	EXIST BEDS	TO BE ADDED/OR (EXCESS)
=====									
CHESTER REGIONAL MEDICAL CENTER	<18	9,030	9,000	619	2				
	18-64	21,380	21,910	3,045	9				
	+65	4,350	5,090	3,569	12				
	TOTAL	34,760	36,000	7,263	22	0.65	34	82	-48
CHESTER COUNTY TOTAL							34	82	-48
EDGEFIELD COUNTY HOSPITAL	<18	5,840	5,850	107	0				
	18-64	17,180	19,000	700	2				
	+65	2,850	3,730	1,461	5				
	TOTAL	25,870	28,580	2,268	8	0.65	12	25	-13
EDGEFIELD COUNTY TOTAL							12	25	-13
FAIRFIELD MEMORIAL HOSPITAL	<18	6,220	6,170	69	0				
	18-64	15,110	15,600	1,328	4				
	+65	3,090	3,760	2,062	7				
	TOTAL	24,420	25,530	3,459	11	0.65	17	25	-8
FAIRFIELD COUNTY TOTAL							17	25	-8
SELF REGIONAL HEALTHCARE	<18	17,670	18,080	2,018	6				
	18-64	42,260	44,350	25,259	73				
	+65	9,170	10,310	30,995	95				
	TOTAL	69,100	72,740	58,272	174	0.75	232	354	-122
GREENWOOD COUNTY TOTAL							232	354	-122
KERSHAW COUNTY MEDICAL CENTER	<18	13,980	14,430	1,088	3				
	18-64	34,840	37,940	10,960	33				
	+65	7,200	8,680	13,861	46				
	TOTAL	56,020	61,050	25,909	82	0.65	125	121	4
KERSHAW COUNTY TOTAL							125	121	4
SPRINGS MEMORIAL HOSPITAL	<18	15,530	15,460	1,377	4				
	18-64	39,360	41,030	20,485	59				
	+65	7,420	8,640	13,399	43				
	TOTAL	62,310	65,130	35,261	105	0.70	150	217	-67
LANCASTER COUNTY TOTAL							150	217	-67
LAURENS COUNTY HOSPITAL	<18	17,740	17,700	374	1				
	18-64	45,120	50,300	5,661	17				
	+65	9,790	11,800	6,703	22				
	TOTAL	73,650	79,800	12,738	40	0.65	62	76	-14
LAURENS COUNTY TOTAL							62	76	-14

FACILITY/COUNTY	AGE CAT	2006 POP	2013 POP	2006 PAT DAYS	PROJ ADC	% OCCU	BED NEED	EXIST BEDS	TO BE ADDED/OR (EXCESS)
LEXINGTON MEDICAL CENTER	<18	40,395	41,754	1,755	5				
	18-64	106,186	117,355	49,868	151				
	+65	17,553	22,368	43,975	154				
	TOTAL	164,134	181,477	95,598	309	0.75	413	384	29
LEXINGTON COUNTY TOTAL							413	384	29
NEWBERRY COUNTY MEMORIAL	<18	8,930	9,060	638	2				
	18-64	23,150	23,930	4,636	13				
	+65	5,410	6,300	5,962	19				
	TOTAL	37,490	39,290	11,236	34	0.65	52	90	-38
NEWBERRY COUNTY TOTAL							52	90	-38
PALMETTO HEALTH BAPTIST & PALMETTO HEALTH PARKRIDGE #3	<18	100,415	102,906	2,098	6				
	18-64	266,254	283,965	61,487	180				
	+65	40,717	49,952	16,323	55				
	TOTAL	407,386	436,823	79,908	240	0.75	321	363	-42
PALMETTO HEALTH RICHLAND	<18	100,415	102,906	21,571	61				
	18-64	266,254	283,965	89,169	261				
	+65	40,717	49,952	41,167	138				
	TOTAL	407,386	436,823	151,907	459	0.75	613	579	34
PROVIDENCE HOSPITAL	<18	100,415	102,906	68	0				
	18-64	266,254	283,965	27,058	79				
	+65	40,717	49,952	35,668	123				
	TOTAL	407,386	436,823	63,794	202	0.70	289	258	31
PROVIDENCE HOSPITAL NORTHEAST #4	<18	100,415	102,906	57	0				
	18-64	266,254	283,965	7,485	22				
	+65	40,717	49,952	4,808	16				
	TOTAL	407,386	436,823	12,350	38	0.65	59	84	-25
RICHLAND COUNTY TOTAL							1,282	1,284	-2
PIEDMONT MEDICAL CENTER & FORT MILL MEDICAL CENTER #5	<18	45,170	46,290	2,753	8				
	18-64	116,330	131,570	38,343	119				
	+65	18,910	23,360	29,666	100				
	TOTAL	180,410	201,220	70,762	227	0.70	324	332	-8
YORK COUNTY TOTAL							324	332	-8
REGION III									
CHESTERFIELD GENERAL HOSPITAL	<18	11,220	11,100	560	2				
	18-64	26,940	27,770	4,265	12				
	+65	5,180	6,160	4,222	14				
	TOTAL	43,340	45,030	9,047	26	0.65	40	59	-19
CHESTERFIELD COUNTY TOTAL							40	59	-19

FY 2013 HOSPITAL BED NEED									
FACILITY/COUNTY	AGE CAT	2006 POP	2013 POP	2006 PAT DAYS	PROJ ADC	% OCCU	BED NEED	EXIST BEDS	TO BE ADDED/OR (EXCESS)
=====									
CLARENDON MEMORIAL HOSPITAL	<18	7,990	7,750	492	1				
	18-64	20,230	20,560	7,374	21				
	+65	5,360	7,120	6,194	23				
	TOTAL	33,580	35,430	14,046	44	0.65	68	56	12
CLARENDON COUNTY							68	56	12
CAROLINA PINES REGIONAL #6	<18	17,790	17,330	2,352	6				
	18-64	42,060	42,840	18,834	53				
	+65	8,370	9,910	13,972	45				
	TOTAL	68,220	70,080	35,158	104	0.65	160	116	44
MCLEOD MEDICAL CENTER - DARLINGTON	<18	17,790	17,330	0	0				
	18-64	42,060	42,840	2,048	6				
	+65	8,370	9,910	2,250	7				
	TOTAL	68,220	70,080	4,298	13	0.65	20	49	-29
DARLINGTON COUNTY TOTAL							180	165	15
MCLEOD MEDICAL CENTER - DILLON	<18	8,380	7,940	1,035	3				
	18-64	18,420	18,560	6,923	19				
	+65	3,430	3,840	3,481	11				
	TOTAL	30,230	30,340	11,439	32	0.65	50	79	-29
DILLON COUNTY TOTAL							50	79	-29
CAROLINAS HOSPITAL SYSTEM	<18	32,800	32,760	2,100	6				
	18-64	82,480	85,540	43,551	124				
	+65	15,740	18,850	34,438	113				
	TOTAL	131,020	137,150	80,089	242	0.70	346	310	36
WOMENS CTR CAROLINAS HOSP SYSTEM	0-64	115,280	118,300	3,077	9				
	+65	15,740	18,850	0	0				
	TOTAL	131,020	137,150	3,077	9	0.65	13	20	-7
LAKE CITY COMMUNITY HOSPITAL	<18	32,800	32,760	80	0				
	18-64	82,480	85,540	2,263	6				
	+65	15,740	18,850	1,887	6				
	TOTAL	131,020	137,150	4,230	12	0.65	19	48	-29
MCLEOD REGIONAL MEDICAL CENTER	<18	32,800	32,760	7,888	22				
	18-64	82,480	85,540	61,301	174				
	+65	15,740	18,850	45,124	148				
	TOTAL	131,020	137,150	114,313	344	0.75	458	453	5
FLORENCE COUNTY TOTAL							836	831	5
GEORGETOWN MEMORIAL HOSPITAL	<18	13,160	12,450	1,559	4				
	18-64	35,460	37,240	11,538	33				
	+65	10,350	14,180	19,755	74				
	TOTAL	58,970	63,870	32,852	111	0.65	171	131	40

FY 2013 HOSPITAL BED NEED									
FACILITY/COUNTY	AGE CAT	2006 POP	2013 POP	2006 PAT DAYS	PROJ ADC	% OCCU	BED NEED	EXIST BEDS	TO BE ADDED/OR (EXCESS)
WACCAMAW COMMUNITY HOSPITAL	<18	13,160	12,450	481	1				
	18-64	35,460	37,240	9,190	26				
	+65	10,350	14,180	12,209	46				
	TOTAL	58,970	63,870	21,880	74	0.65	113	124	-11
GEORGETOWN COUNTY TOTAL							284	255	29
CONWAY HOSPITAL	<18	42,940	43,880	1,803	5				
	18-64	140,590	159,960	20,732	65				
	+65	36,950	49,070	15,137	55				
	TOTAL	220,480	252,910	37,596	125	0.70	179	210	-31
GRAND STRAND REGIONAL MEDICAL CTR	<18	42,940	43,880	926	3				
	18-64	140,590	159,960	24,793	77				
	+65	36,950	49,070	31,513	115				
	TOTAL	220,480	252,910	57,232	195	0.70	278	269	9
LORIS COMMUNITY HOSPITAL & SEACOAST MEDICAL CENTER #7	<18	42,940	43,880	558	2				
	18-64	140,590	159,960	7,194	22				
	+65	36,950	49,070	8,887	32				
	TOTAL	220,480	252,910	16,639	56	0.65	87	155	-68
HORRY COUNTY TOTAL							544	634	-90
MARION COUNTY MEDICAL CENTER	<18	9,490	9,080	1,038	3				
	18-64	22,340	22,650	14,234	40				
	+65	4,230	4,920	8,115	26				
	TOTAL	36,060	36,650	23,484	68	0.65	105	124	-19
MARION COUNTY TOTAL							105	124	-19
MARLBORO PARK HOSPITAL	<18	7,300	6,990	311	1				
	18-64	17,480	16,570	2,591	7				
	+65	3,180	3,520	1,622	5				
	TOTAL	27,960	27,080	4,524	12	0.65	19	94	-75
MARLBORO COUNTY TOTAL							19	94	-75
TUOMEY	<18	30,830	31,500	2,083	6				
	18-64	68,550	71,090	32,728	93				
	+65	13,470	15,970	32,392	105				
	TOTAL	112,850	118,560	67,204	204	0.70	292	283	9
SUMTER COUNTY TOTAL							292	283	9
WILLIAMSBURG REGIONAL HOSPITAL	<18	9,900	9,180	81	0				
	18-64	22,040	21,680	1,254	3				
	+65	4,980	5,880	1,647	5				
	TOTAL	36,920	36,740	2,982	9	0.65	14	25	-11
WILLIAMSBURG COUNTY TOTAL							14	25	-11

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RECORD 000241

FY 2013 HOSPITAL BED NEED									
FACILITY/COUNTY	AGE CAT	2006 POP	2013 POP	2006 PAT DAYS	PROJ ADC	% OCCU	BED NEED	EXIST BEDS	TO BE ADDED/OR (EXCESS)
=====									
<u>REGION IV</u>									
AIKEN REGIONAL MEDICAL CENTER	<18	37,800	37,880	512	1				
	18-64	97,280	106,660	21,758	65				
	+65	20,820	25,450	20,168	68				
	TOTAL	155,900	169,990	42,438	134	0.70	192	183	9
<u>AIKEN COUNTY TOTAL</u>							192	183	9
ALLENDALE COUNTY HOSPITAL	<18	3,060	3,020	58	0				
	18-64	7,180	3,740	764	1				
	+65	1,580	9,260	675	11				
	TOTAL	11,820	2,510	1,497	12	0.65	19	25	-6
<u>ALLENDALE COUNTY TOTAL</u>							19	25	-6
BAMBERG COUNTY MEMORIAL HOSPITAL	<18	4,090	3,740	122	0				
	18-64	9,850	9,260	2,870	7				
	+65	2,150	2,510	2,817	9				
	TOTAL	16,090	15,510	5,809	17	0.65	26	59	-33
<u>BAMBERG COUNTY TOTAL</u>							26	59	-33
BARNWELL COUNTY HOSPITAL	<18	6,270	6,050	203	1				
	18-64	15,090	16,090	1,225	4				
	+65	3,200	3,870	1,947	6				
	TOTAL	24,560	26,010	3,375	11	0.65	16	53	-37
<u>BARNWELL COUNTY TOTAL</u>							16	53	-37
BEAUFORT MEMORIAL HOSPITAL	<18	28,400	27,140	1,599	4				
	18-64	81,570	90,940	21,220	65				
	+65	25,510	36,560	17,144	67				
	TOTAL	135,480	154,640	39,963	136	0.65	210	169	41
HILTON HEAD HOSPITAL	<18	28,400	27,140	293	1				
	18-64	81,570	90,940	5,950	18				
	+65	25,510	36,560	11,275	44				
	TOTAL	135,480	154,640	17,518	63	0.65	97	93	4
<u>BEAUFORT COUNTY TOTAL</u>							307	262	45
TRIDENT MEDICAL CENTER	<18	143,670	145,480	1,837	5				
	18-64	377,080	393,320	41,899	120				
	+65	68,150	89,720	33,741	122				
	TOTAL	588,900	628,520	77,477	247	0.70	352	296	56
SUMMERVILLE MEDICAL CENTER	0-64	520,750	538,800	13,621	39				
	+65	68,150	89,720	10,509	38				
	TOTAL	588,900	628,520	24,130	77	0.65	118	94	24

FY 2013 HOSPITAL BED NEED									
FACILITY/COUNTY	AGE CAT	2006 POP	2013 POP	2006 PAT DAYS	PROJ ADC	% OCCU	BED NEED	EXIST BEDS	TO BE ADDED/OR (EXCESS)
=====									
CHARLESTON MEMORIAL HOSPITAL #8	<18	143,670	145,480	75	0				
	18-64	377,080	393,320	4,076	12				
	+65	68,150	89,720	198	7				
	TOTAL	588,900	628,520	4,349	13	0.65			
MUSC MEDICAL CENTER #8	<18	143,670	145,480	24,639	68				
	18-64	377,080	393,320	78,025	223				
	+65	68,150	89,720	26,962	97				
	TOTAL	588,900	628,520	129,626	389	0.75	539	604	-65
ROPER HOSPITAL & ROPER ST FRANCIS MOUNT PLEASANT #9	<18	143,670	145,480	3,503	10				
	18-64	377,080	393,320	37,395	107				
	+65	68,150	89,720	49,831	180				
	TOTAL	588,900	628,520	87,576	296	0.75	395	401	-6
BON SECOURS ST FRANCIS XAVIER	<18	143,670	145,480	617	2				
	18-64	377,080	393,320	23,114	66				
	+65	68,150	89,720	17,432	63				
	TOTAL	588,900	628,520	41,163	131	0.70	187	204	-17
EAST COOPER REGIONAL MEDICAL CTR	<18	143,670	145,480	1,164	3				
	18-64	377,080	393,320	10,439	30				
	+65	68,150	89,720	8,848	32				
	TOTAL	588,900	628,520	19,404	65	0.65	100	140	-40
BERKELEY/CHARLESTON/DORCHESTER TOTAL							1,691	1,739	-48
COLLETON MEDICAL CENTER	<18	10,640	10,850	629	2				
	18-64	24,430	25,470	13,148	38				
	+65	5,150	5,300	13,558	45				
	TOTAL	40,220	42,620	27,335	85	0.65	131	131	0
COLLETON COUNTY TOTAL							131	131	0
HAMPTON REGIONAL MEDICAL CTR	<18	5,650	5,500	70	0				
	18-64	13,680	14,360	1,830	5				
	+65	2,710	3,350	1,932	7				
	TOTAL	22,040	23,210	3,832	12	0.65	18	32	-14
HAMPTON COUNTY TOTAL							18	32	-14
COASTAL CAROLINA MEDICAL CENTER	<18	5,190	4,970	88	0				
	18-64	14,010	15,770	2,032	6				
	+65	2,490	3,240	2,753	10				
	TOTAL	21,690	23,980	4,873	16	0.65	25	31	-6
JASPER COUNTY TOTAL							25	31	-6
REG MED CTR ORANGEBURG-CALHOUN	<18	23,900	23,780	1,619	4				
	18-64	57,830	59,220	27,289	77				
	+65	13,050	15,460	26,137	85				
	TOTAL	94,780	98,460	55,045	166	0.70	237	247	-10
ORANGEBURG/CALHOUN COUNTY TOTAL							237	247	-10

FY 2013 HOSPITAL BED NEED

FACILITY/COUNTY	AGE CAT	2006 POP	2013 POP	2006 PAT DAYS	PROJ ADC	% OCCU	BED NEED	EXIST BEDS	TO BE ADDED/OR (EXCESS)
=====									

- #1 BED NEEDS COMBINED; GHS-PATEWOOD WAS CREATED BY TRANSFERRING BEDS FROM THE EXISTING HOSPITAL 8/25/03.
- #2 BED NEEDS COMBINED; THE NEW HOSPITAL WAS CREATED BY TRANSFERRING BEDS FROM THE EXISTING HOSPITAL 9/9/05.
- #3 BED NEEDS COMBINED; THE NEW HOSPITAL WAS CREATED BY TRANSFERRING BEDS FROM THE EXISTING HOSPITAL; APPEALED.
- #4 CON TO ADD 38 BEDS APPEALED.
- #5 BED NEEDS COMBINED; THE NEW HOSPITAL WAS CREATED BY TRANSFERRING BEDS FROM THE EXISTING HOSPITAL; APPEALED.
- #6 CON FOR 50 BED EXPANSION VOIDED 2/5/07.
- #7 BED NEEDS COMBINED; THE NEW HOSPITAL WAS CREATED BY TRANSFERRING BEDS FROM THE EXISTING HOSPITAL; APPEALED; CON 9/4/07.
- #8 CON ISSUED TO COMBINE THESE TWO FACILITIES 10/14/03.
- #9 BED NEEDS COMBINED; THE NEW HOSPITAL WAS CREATED BY TRANSFERRING BEDS FROM THE EXISTING HOSPITAL 5/31/06.

HOSPITAL OCCUPANCY RATES

	2004	2005	2006		2004	2005	2006
REGION I	58.5	60.1	59.4	REGION III	64.3	66.8	64.2
ANMED HEALTH MEDICAL CENTER	47.6	52.3	52.6	CHESTERFIELD GENERAL HOSPITAL	40.1	36.8	42.0
ANMED HEALTH WOMEN'S & CHILDREN'S	—	28.6	35.1	CLARENDON MEMORIAL HOSPITAL	53.7	64.0	68.7
UPSTATE CAROLINA MEDICAL CENTER	38.0	37.9	38.3	CAROLINA PINES REGIONAL MED CTR	85.2	83.4	83.0
ALLEN BENNETT MEMORIAL HOSPITAL	76.7	73.9	68.5	MCLEOD-DARLINGTON (WILSON MED)	20.5	27.1	24.0
GREENVILLE MEMORIAL MEDICAL CTR	77.8	78.6	74.3	MCLEOD MED CTR - DILLON (ST EUGENE)	55.0	41.0	39.7
HILLCREST MEMORIAL HOSPITAL	63.2	59.8	61.4	CAROLINAS HOSPITAL SYSTEM	74.9	79.5	75.4
SAINT FRANCIS - DOWNTOWN	72.4	64.3	76.3	LAKE CITY COMMUNITY HOSPITAL	30.5	22.7	24.1
SAINT FRANCIS - EASTSIDE	66.9	62.4	54.9	MCLEOD REGIONAL MEDICAL CENTER	89.6	91.4	90.0
OCONEE MEMORIAL HOSPITAL	57.9	57.2	54.9	WOMEN'S CENTER CAROLINAS HOSP	51.8	55.1	42.2
CANNON MEMORIAL HOSPITAL	30.2	28.7	25.6	GEORGETOWN MEMORIAL HOSPITAL	68.9	78.8	68.7
PALMETTO BAPTIST MED CTR EASLEY	53.7	50.7	45.5	WACCAMAW COMMUNITY HOSPITAL	81.2	63.6	73.1
BJ WORKMAN MEMORIAL	11.9	—	—	CONWAY HOSPITAL	59.5	65.0	64.4
MARY BLACK MEMORIAL HOSPITAL	40.2	47.9	49.0	GRAND STRAND REGIONAL MED CTR	61.8	67.1	71.6
SPARTANBURG REGIONAL MEDICAL CTR	64.5	67.8	66.1	LORIS COMMUNITY HOSPITAL	44.4	42.4	43.4
WALLACE THOMSON HOSPITAL	34.0	31.2	26.4	MARION COUNTY MEDICAL CENTER	67.3	62.2	51.9
				MARLBORO PARK HOSPITAL	20.5	16.8	13.2
				TUOMEY	70.0	70.6	74.2
				WILLIAMSBURG REGIONAL HOSPITAL	17.5	44.3	32.7
II-21							
REGION II	63.1	63.7	61.6	REGION IV	60.4	61.0	61.0
ABBEVILLE AREA MEDICAL CENTER	20.6	32.5	38.4	AIKEN REGIONAL MEDICAL CENTER	64.1	66.3	63.5
CHESTER REGIONAL MEDICAL CENTER	31.3	26.4	24.3	ALLENDALE COUNTY HOSPITAL	19.6	21.8	16.4
EDGEFIELD COUNTY HOSPITAL	20.2	27.0	24.9	BAMBERG COUNTY MEMORIAL HOSPITAL	28.1	24.5	27.0
FAIRFIELD MEMORIAL HOSPITAL	23.2	35.3	33.9	BARNWELL COUNTY HOSPITAL	26.5	20.5	17.4
SELF REGIONAL HEALTHCARE	50.9	51.3	45.6	BEAUFORT MEMORIAL HOSPITAL	85.0	73.8	76.2
KERSHAW COUNTY MEDICAL CENTER	55.2	57.5	58.7	HILTON HEAD HOSPITAL	61.0	54.4	51.6
SPRINGS MEMORIAL HOSPITAL	65.6	61.3	54.6	SUMMERVILLE MEDICAL CENTER	74.9	72.9	70.3
LAURENS COUNTY HOSPITAL	61.7	50.7	45.9	BON SECOURS ST FRANCIS XAVIER	78.0	81.5	79.1
LEXINGTON MEDICAL CENTER	87.2	83.8	77.3	CHARLESTON MEMORIAL HOSPITAL	16.9	16.3	12.2
NEWBERRY COUNTY MEMORIAL HOSPITAL	37.0	34.1	34.2	EAST COOPER REGIONAL MED CTR	53.6	57.7	53.2
PALMETTO HEALTH BAPTIST	57.2	60.0	60.3	MUSC MEDICAL CENTER	74.0	76.7	76.2
PALMETTO HEALTH RICHLAND	70.6	71.0	71.9	ROPER HOSPITAL	58.9	59.6	58.0
PROVIDENCE HOSPITAL	74.7	73.6	67.7	TRIDENT MEDICAL CENTER	75.1	75.8	78.3
PROVIDENCE HOSPITAL NORTHEAST	62.8	74.5	73.6	COLLETON MEDICAL CENTER	54.2	55.4	57.2
PIEDMONT MEDICAL CENTER	74.1	73.6	72.3	HAMPTON REGIONAL MEDICAL CENTER	15.2	14.2	15.4
				COASTAL CAROLINA MEDICAL CENTER	28.9	37.4	43.1
				REG MED CTR ORANGEBURG/CALHOUN	53.7	56.0	61.1

NOTE: LTCH HOSPITALS REMOVED FROM 2006 DATA, SO 2006 REGIONAL AVERAGE OCCUPANCY RATES NOT COMPARABLE TO PREVIOUS YEARS

EXHIBIT C

Trident Medical Center d/b/a Berkeley Medical Center,)
)

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

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

Trident Medical Center d/b/a Berkeley
Medical Center,

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

South Carolina Department of Health
and Environmental Control,

**AFFIDAVIT OF
BEVERLY BRANDT**

CareAlliance Health Services and Roper)
St. Francis Hospital-Berkeley,)

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

South Carolina Department of Health)
and Environmental Control and Trident)
Medical Center d/b/a Berkeley Medical)
Center,)

RECORD 000247

1. I am the Chief of the Bureau of Health Facilities and Services Development. I have held this position since February 2008. As part of my job duties, I oversee the Certificate of Need ("CON") Program, including the issuance of Certificates of Need, Non-Applicability Determinations, and Exemption decisions.

2. I issued the June 26, 2009 decision letters on behalf of the Department to approve the CON applications of Trident and Roper, attached hereto as Exhibit 1 and Exhibit 2 to this Affidavit. Trident's and Roper's CON applications which were respectively submitted on August 13, 2008 and December 10, 2008.

3. By letter dated April 28, 2009, a copy of which is attached hereto as Exhibit 3, the Department notified Trident that due to the receipt of Roper's application, which was being reviewed in a later cycle and which was "requesting approval of similar services in the same service area," it was "in the best interest of the public that the Department be able to render decisions on these two (2) applications simultaneously." The Department held a joint project review meeting on Trident's and Roper's CON applications on May 21, 2009. The decision to conduct a simultaneous project review meeting and to issue the decision letters simultaneously was not a result of a finding that the applications were "competing" as defined by the CON Act and Regulation. In the June 26, 2009 decision letters, the Department made a determination that the applications were in fact not competing.

4. The Department made site visits and considered population and other data in making its determination that the need for services would not be exceeded if both Trident's and Roper's CON applications were approved. After a thorough review of this information, as well as Trident's and Roper's respective CON applications, information received during and after the project review meeting and CON staff discussion, the Department determined that the applications of Trident and Roper were not competing and that both applications could be approved without exceeding the need for facilities or services in the Berkeley/Charleston/Dorchester Tri-County area.

FURTHER AFFIANT SAYETH NOT.

Beverly Brandt

Beverly Brandt

SWORN TO BEFORE ME this

15 day of December, 2010

[Signature]
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission expires: 4.28.2013

10
10/10/10
10/10/10
10/10/10

EXHIBIT 1

10/10/10



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

CERTIFIED MAIL

91 7108 2133 3933 7191 9150

June 26, 2009

Jim Rardin, Vice President
Trident Health System
9330 Medical Plaza Drive
Charleston, South Carolina 29406

Re: Berkeley Medical Center
Moncks Corner, South Carolina

Dear Mr. Rardin:

The Department has determined that the Berkeley Medical Center and the Roper St. Francis Hospital - Berkeley applications are not competing applications as defined by Regulation 61-15 "Certification of Need for Health Facilities and Services" Section 103.6. The Department has determined the applications are not competing because the beds used for the Roper St. Francis Hospital - Berkeley project will be a permanent bed transfer, not a bed increase; therefore, the bed need will not be exceeded. In addition, the benefits of improve accessibility to the citizens of Berkeley County were weighed against any potential duplication of services.

It is the decision of this Department that a Certificate of Need be issued to Berkeley Medical Center in Moncks Corner, South Carolina for the construction to establish a fifty (50) bed acute care hospital through the transfer of 50 acute care beds from the bed need generated by Trident Medical Center to include a Magnetic Resonance Imaging (MRI) unit and a Computed Tomography (CT) scanner; the facility will be located adjacent to the current site of the Moncks Corner Medical Center at the intersection of Martin Luther King Drive and Highway 17A; conversion of the existing Moncks Corner Medical Center into a medical office building housing physician offices and clinics.

The decision is based on the following:

1. The application is consistent with Chapter II Section G.1(A)(4)(d) for General Acute Hospital bed need methodology and the Certificate of Need Standards for Magnetic Resonance Imaging (MRI) services as stated in the 2004-2005 South Carolina Health Plan;

000871

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
Health Regulation

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RECORD 000250

Mr. Jim Rardin
June 26, 2009
Page 2

2. The applicant has adequately demonstrated the need for the project within the application;
3. The project will increase accessibility and availability of services for residents of Berkeley County;
4. The project appears to be financially feasible based upon the information available;
5. The applicant has submitted substantial letters of community and physician support for the project;
6. Upon review and consideration of all materials submitted by affected parties, the Department concludes there should be minimal impact upon other facilities in the proposed service area; and
7. The applicant has considered the distribution of acute care services in relation to the target population and the effect of the project in meeting the growing demands of the service area.

The Department makes the following findings pursuant to Section 501, Regulation No. 61-15, Certification of Need for Health Facilities and Services:

1. The capital and operating costs of the proposal and their potential impact on patient charges are reasonable;
2. Superior alternatives to such services in terms of cost, efficiency, or appropriateness do not exist and that the development of such alternatives is not practicable;
3. In the case of new construction, alternatives to new construction (e.g., modernization or sharing arrangements) have been considered;
4. Patients will experience serious problems in terms of costs, availability or accessibility, or such other problems as may be identified by the Department, in obtaining care of the type proposed in the absence of the project.

The additional finding required by Section 501.5 of Regulation No. 61-15, Certification of Need for Health Facilities and Services is not applicable to this project.

The following appeal procedures are in effect beginning July 1, 2006, pursuant to 2006 Act No. 387:

000872

1. This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision fifteen (15) days after notice of the

Mr. Jim Rardin
June 26, 2009
Page 3

decision has been mailed to the applicant or his agent unless a written request for final review is filed with the Department by the applicant or an affected person.

2. An applicant or affected person who wishes to appeal this decision must file a written request for final review with the Clerk of the Board at the following address or by facsimile at 803-898-3323:

Clerk of the Board
SC DHEC
2600 Bull Street
Columbia, SC 29201

3. The request for final review should include the following:
 - a) the grounds on which the Department's decision is challenged and the specific changes sought in the decision;
 - b) a statement of any significant issues or factors the Board should consider in deciding how to handle the matter; and
 - c) a copy of the Department's decision or action under review.
4. In order to be timely, a request for final review must be received by the Clerk of the Board within 15 days after notice of the Department decision has been mailed to the applicant or his agent. If the 15th day occurs on a weekend or State holiday, the request is due to be received by the Clerk of the Board on the next working day. The request for final review must be received by the Clerk of the Board by 5:00 pm on the date it is due.
5. If a timely request for final review is filed with the Clerk of the Board, the Clerk will provide additional information regarding procedures.
6. The Board of Health and Environmental Control has 60 days from the date of receipt of a request for final review to conduct a final review conference. The conference may be conducted by the Board, its designee, or a committee of three members of the Board appointed by the chair.
7. If a final review conference is not conducted within 60 days, the Department decision becomes the final agency decision, and a party may request a contested case hearing before the Administrative Law Court within 30 days after the deadline for the final review conference.

000873

Mr. Jim Rardin
June 26, 2009
Page 4

If you have any questions, please feel free to contact us at (803) 545-4200.

Sincerely,

Beverly Brandt

Beverly A. Brandt, Chief
Bureau of Health Facilities and Services Development

cc: Roper St. Francis Healthcare
East Cooper Regional Medical Center

000874

EXHIBIT 2



G. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

CERTIFIED MAIL

91 7108 2133 3933 7191 9167

June 26, 2009

Re: Roper St. Francis Hospital - Berkeley
Goose Creek, South Carolina

Ms. Shannon Cantwell, Regulatory Affairs Specialist
Roper St. Francis Healthcare
125 Doughty Street, Suite 760
Charleston, South Carolina 29403

Dear Ms. Cantwell:

The Department has determined that the Roper St. Francis Hospital - Berkeley and the Berkeley Medical Center applications are not competing applications as defined by Regulation 61-15 "Certification of Need for Health Facilities and Services" Section 103.6. The Department has determined the applications are not competing because the beds used for the Roper St. Francis Hospital - Berkeley project are a permanent bed transfer, not a bed increase; therefore, the bed need will not be exceeded. The proposed project basically a re-positioning of currently licensed acute care beds from an area of limited growth to an area of strong growth and will have no impact on the Tri-County's bed count or bed need. Further, the proposal is consistent with general health planning goals of maximizing the usage of existing resources and positioning and re-positioning underutilized resources in areas of strong volume and population growth.

It is the decision of this Department that a Certificate of Need be issued to Roper St. Francis Hospital - Berkeley in Goose Creek, South Carolina for the construction of a new hospital by permanently transferring fifty (50) acute care beds from Roper Hospital to include a multi-slice Computed Tomography (CT) scanner and a 1.5T Magnetic Resonance Imaging (MRI) unit for a total license bed capacity of fifty (50) acute care beds at Roper St. Francis Berkeley and three hundred eighteen (318) total licensed beds at Roper Hospital; the facility will be located on Highway 17A in Goose Creek, South Carolina

The decision is based on the following:

1. The application is consistent with Chapter II Section G.1(A)(4)(j) for the General Acute Hospital bed need methodology as stated in the 2008-2009 South Carolina Health Plan;

001262

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

Health Regulation

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RECORD 000255

Ms. Shannon Cantwell

June 26, 2009

Page 2

2. The applicant has adequately demonstrated the need for the project within the application;
3. The project will increase accessibility and availability of services for residents of Berkeley County;
4. The project appears to be financially feasible based upon the information available;
5. The applicant has submitted substantial letters of community and physician support for the project;
6. Upon review and consideration of all materials submitted by affected parties, the Department concludes there should be minimal impact upon other facilities in the proposed service area; and
7. The applicant has considered the distribution of acute care services in relation to the target population and the effect of the project in meeting the growing demands of the service area.

The Department makes the following findings pursuant to Section 501, Regulation No. 61-15, Certification of Need for Health Facilities and Services:

1. The capital and operating costs of the proposal and their potential impact on patient charges are reasonable;
2. Superior alternatives to such services in terms of cost, efficiency, or appropriateness do not exist and that the development of such alternatives is not practicable;
3. In the case of new construction, alternatives to new construction (e.g., modernization or sharing arrangements) have been considered;
4. Patients will experience serious problems in terms of costs, availability or accessibility, or such other problems as may be identified by the Department, in obtaining care of the type proposed in the absence of the project.

The additional finding required by Section 501.5 of Regulation No. 61-15, Certification of Need for Health Facilities and Services is not applicable to this project.

The following appeal procedures are in effect beginning July 1, 2006, pursuant to 2006 Act No. 387:

1. This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision fifteen (15) days after notice of the

001263

decision has been mailed to the applicant or his agent unless a written request for final review is filed with the Department by the applicant or an affected person.

2. An applicant or affected person who wishes to appeal this decision must file a written request for final review with the Clerk of the Board at the following address or by facsimile at 803-898-3323:

Clerk of the Board
SC DHEC
2600 Bull Street
Columbia, SC 29201

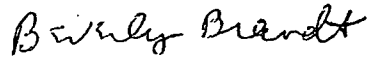
3. The request for final review should include the following:
 - a) the grounds on which the Department's decision is challenged and the specific changes sought in the decision;
 - b) a statement of any significant issues or factors the Board should consider in deciding how to handle the matter; and
 - c) a copy of the Department's decision or action under review.
4. In order to be timely, a request for final review must be received by the Clerk of the Board within 15 days after notice of the Department decision has been mailed to the applicant or his agent. If the 15th day occurs on a weekend or State holiday, the request is due to be received by the Clerk of the Board on the next working day. The request for final review must be received by the Clerk of the Board by 5:00 pm on the date it is due.
5. If a timely request for final review is filed with the Clerk of the Board, the Clerk will provide additional information regarding procedures.
6. The Board of Health and Environmental Control has 60 days from the date of receipt of a request for final review to conduct a final review conference. The conference may be conducted by the Board, its designee, or a committee of three members of the Board appointed by the chair.
7. If a final review conference is not conducted within 60 days, the Department decision becomes the final agency decision, and a party may request a contested case hearing before the Administrative Law Court within 30 days after the deadline for the final review conference.

001264

Ms. Shannon Cantwell
June 26, 2009
Page 4

If you have any questions, please feel free to contact us at (803) 545-4200.

Sincerely,

A handwritten signature in cursive script, reading "Beverly Brandt".

Beverly A. Brandt, Chief
Bureau of Health Facilities and Services Development

cc: Trident Health System
East Cooper Regional Medical Center

001265

RECORD 000258

EXHIBIT 3



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

CERTIFIED MAIL

91 7108 2133 3935 6156 8830

April 28, 2009

Mr. Jim Rardin, Vice President
Trident Health System
9330 Medical Plaza Drive
Charleston, South Carolina 29406

Re: Construction to establish a fifty (50) bed acute care hospital through the transfer of 50 acute care beds from the bed need generated by Trident Medical Center to include a Magnetic Resonance Imaging (MRI) unit and a Computed Tomography (CT) scanner; the facility will be located adjacent to the current site of the Moncks Comer Medical Center at the intersection of Martin Luther King Drive and Highway 17A; conversion of the existing Moncks Corner Medical Center into a medical office building housing physician offices and clinics
Berkeley Medical Center
Moncks Corner, South Carolina

Dear Mr. Rardin:

This is to advise that this Department's review time frame for the above referenced projects is extended for sixty (60) days or until **June 27, 2009**. The reason for the extension is that there is another application, which is being reviewed in a later cycle that is requesting approval of similar services in the same service area. Therefore, it is in the best interest of the public that the Department be able to render decisions on these two (2) applications simultaneously. This action is in accordance with Section 305.2b of Regulation No. 61-15, Certification of Need for Health Facilities and Services.

Should there be any questions concerning this, please feel free to contact us at (803) 545-4200.

Sincerely,

Lisa D. Sanders, Health Planning Analyst
Bureau of Health Facilities and Services Development

cc: Andrea Brisbin
David Summer
Ralph Barbier
Shannon Cantwell

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

Health Regulation

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000740

RECORD 000260

EXHIBIT D

Trident Medical Center d/b/a Berkeley
Medical Center,

Petitioner,

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

**SC DEPARTMENT OF HEALTH AND
ENVIRONMENTAL CONTROL'S ANSWERS
TO TRIDENT MEDICAL CENTER d/b/a
BERKELEY MEDICAL CENTER'S FIRST
SET OF INTERROGATORIES**

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

-v-

Respondent.

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

-V-

Respondents.

RECORD 000262

6/19/2009	Berkeley Co. Delegation	Beverly Brandt, Les Shelton, Lisa Sanders, Fatimah Wilson, Chris Ward, Sallie Harrell, Misty Hallman, Kelly Barrett

6. Please state with specificity all the reasons the Department does not consider the two approved CON applications “competing,” as that term is defined in S.C. Regulation 61-15.

Answer:

The Department does not consider the two approved CON applications “competing” because the beds used for the Roper St. Francis Hospital – Berkeley project will be a permanent bed transfer, not a bed increase. Approving both CON applications will not exceed the projected bed need for the relevant service area.

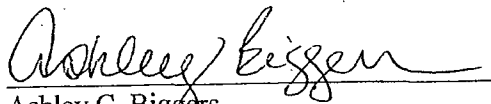
Trident filed its CON application under the 2004-2005 State Health Plan. It utilized the projected bed need in the 2004-2005 State Health Plan to create a satellite hospital in Berkeley County. Trident proposed to add fifty (50) new beds to the service area.

Roper St. Francis, which filed its application under the 2008-2009 State Health Plan, proposed to transfer beds from an existing facility. Because Roper St. Francis was relocating beds, rather than adding more beds to the service area, it was not impacted by the bed need projection in the 2008-2009 State Health Plan.

Neither the 2004-2005 State Health Plan nor the 2008-2009 State Health Plan contained language restricting hospital expansion to one new facility at a time in a county/service area. The bed need for the service area is not exceeded by the approval of both applications. Therefore the applications are not competing, as defined by S.C. Code Ann. § 44-7-130(5).

[signature on following page]

Respectfully submitted,

A handwritten signature in cursive script, reading "Ashley C. Biggers", written over a horizontal line.

Ashley C. Biggers
Chief Counsel for Health Regulation
SC Department of Health and Environmental Control
2600 Bull Street
Columbia, South Carolina 29201
(803) 898-3350

July 16, 2010

EXHIBIT E

Trident Medical Center d/b/a Berkeley
Medical Center,

-v-

Respondents.

Petitioner,

-V-

Respondent.

Petitioners,

-v-

Respondents.

1

1. I have been an employee of the South Carolina Department of Health and Environmental Control (DHEC or Department) since 1987. I have worked in the Bureau of Health Facilities and Services Development, Certificate of Need (CON) Division for the entire time. As a Senior Planner I have helped and continue to help prepare the South Carolina Health Plan ("State Health Plan") for use in the administration of the CON Program. Specifically, I help determine and/or calculate the appropriate inventory for hospitals and beds to be included in the State Health Plan; the projections of need for additional beds; standards for distribution of health care facilities; and the project review criteria considered most important in evaluating CON applications.

2. I have personal and departmental knowledge as to how the CON Division has historically interpreted and applied State Health Plans, in particular criteria for "General Hospitals," (A), including the inventory, the methodology for calculating bed need, and requirements for approval of additional hospitals and/or beds, in the 2004-2005 South Carolina Health Plan and the 2008-2009 South Carolina Health Plan.

3. Trident applied for a CON under the 2004-2005 South Carolina Health Plan to construct a new 50-bed hospital located in Monks Corner, in Berkeley County.

4. There are no prohibitions in the 2004-2005 South Carolina Health Plan against Trident's proposed method of establishing a new hospital to include 50 additional hospital beds. The 2004-2005 South Carolina Health Plan indicated that Trident had a need for 42 additional beds. The 2004-2005 South Carolina Health Plan only required that a hospital have a positive bed need in order to add up to 50 additional beds. The 2004-2005 South Carolina Health Plan did not include any additional standards establishing minimum requirements for the establishment of a new general hospital.

5. Roper applied for a CON under the 2008-2009 South Carolina Health Plan to construct a new hospital located in Goose Creek, in Berkeley County. Roper specifically indicated that its new hospital would include 50 beds all of which would be transferred from its downtown Charleston hospital.

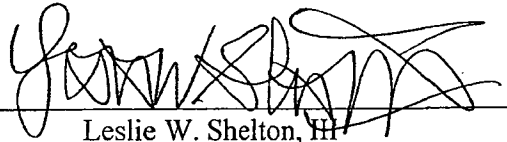
6. There are no prohibitions in the 2008-2009 South Carolina Health Plan against Roper's proposed method of establishing a new hospital through the transfer of beds from its existing facility. The 2008-2009 South Carolina Health Plan provided no requirements or standards that would prevent a hospital with excess beds from transferring beds to a new location. Roper's projected excess of six (6) hospital beds was of no import because Roper only proposed to transfer beds to its new location, not to add additional beds. This is consistent with previous Department CON decisions that allowed hospitals with excess capacity to establish new hospitals. These include Waccamaw Neck Hospital in Georgetown County, Anderson Area Women and Children's Hospital in Anderson County, Village Health Care Center in Spartanburg County, and Palmetto Health Parkridge in Richland County. Standards (d) and (e) of the 2008-2009 South Carolina Health Plan were not relevant to Roper's project because Roper was not requesting that the Department approve the addition of new hospital beds to the service area.

7. The 2008-2009 South Carolina Health Plan contained a new standard (f) requiring that any additional hospital must operate a 24-hour emergency service, offer inpatient medical services to both surgical and non-surgical patients, and daily offer services meeting at least six (6) of the 25 Centers for Medicare and Medicaid Services (CMS) diagnostic categories. A CON application submitted under a previous State Health Plan would not be bound by these requirements.

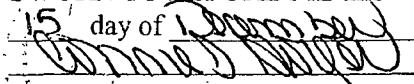
8. There are no need projections for additional hospitals in either the 2004-2005 South Carolina Health Plan or 2008-2009 South Carolina Health Plan. The respective plans only provide projections of need for additional hospital beds.

9. The Department interprets the language of the 2008-2009 South Carolina Health Plan to allow the transfer of licensed beds to establish a new hospital. This is consistent with the Department's interpretation of previous Plans that since 1996 have approved Providence Northeast Hospital in Richland County, Waccamaw Neck Hospital in Georgetown County, Anderson Area Women and Children's Hospital in Anderson County, Village Health Care Center in Spartanburg County, Roper St. Francis Mount Pleasant Hospital in Charleston County, and Palmetto Health Parkridge in Richland County. In addition, transferred beds from an existing hospital were components of the Patewood Hospital and the St. Francis Millennium Hospital, both in Greenville County.

FURTHER AFFIANT SAYETH NOT.


Leslie W. Shelton, III

SWORN TO BEFORE ME this
15 day of November, 2010


NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission expires: April 28, 2013

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Trident Medical Center d/b/a Berkeley
Medical Center,

Petitioner,

-v-

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

Respondents.

)
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) Docket No. 09-ALJ-07-0332-CC
)
)
)

Trident Medical Center d/b/a Berkeley
Medical Center,

Petitioner,

-v-

South Carolina Department of Health
and Environmental Control,

Respondent.

)
)
) Docket No. 09-ALJ-07-0333-CC
)
)
)

CERTIFICATE OF SERVICE

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

Petitioners,

-v-

South Carolina Department of Health
and Environmental Control and Trident
Medical Center d/b/a Berkeley Medical
Center,

Respondents.

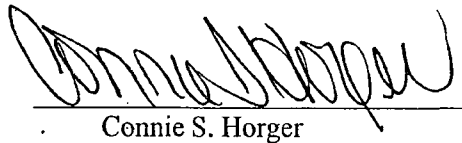
)
)
) Docket No. 09-ALJ-07-0336-CC
)
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)

I hereby certify that I have, on this 15th day of December, 2010, served a copy of
South Carolina Department of Health and Environmental Control's Memorandum of Law in

Opposition of Trident Medical Center, LLC d/b/a Berkeley Medical Center's Motion for Summary Judgment, Affidavit of Beverly Brandt (original is Exhibit C of Memorandum) and Affidavit of Leslie W. Shelton, III (original is Exhibit E of Memorandum) upon all parties and counsel of record in the above-captioned case via hand delivery to the addresses listed below:

James G. Long III, Esquire
Ralph Barbier, Esquire
Jennifer J. Hollingsworth, Esquire
Nexsen Pruet, LLC
1230 Main Street, Suite 700
Columbia, South Carolina 29201

David B. Summer, Jr., Esquire
William R. Thomas, Esquire
Faye A. Flowers, Esquire
Parker, Poe, Adams & Bernstein, LLP
1201 Main Street, Suite 1450
Columbia, South Carolina 29201



Connie S. Horger

December 15, 2010
Columbia, South Carolina

S:\Biggers\3 RELATED ROPER-TRIDENT CASES - 20905 & 20906\CONSOLIDATED\COS DHEC Memo Opp MFSJ due 12.15.10.doc

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Trident Medical Center, LLC d/b/a Berkeley
Medical Center,
Petitioner,
vs.
South Carolina Department of Health and
Environmental Control and Roper St. Francis
Hospital-Berkeley, Inc. d/b/a Roper St. Francis
Hospital-Berkeley,

Respondents.

Docket No.: 09-ALJ-07-0332-CC

Trident Medical Center, LLC d/b/a Berkeley
Medical Center,
Petitioner,
vs.
South Carolina Department of Health and
Environmental Control and Roper St. Francis
Hospital-Berkeley, Inc. d/b/a Roper St. Francis
Hospital-Berkeley,

Respondents.

Docket No.: 09-ALJ-07-0333-CC

CareAlliance Health Services and Roper St.
Francis Hospital-Berkeley,
Petitioners,
vs.

South Carolina Department of Health and
Environmental Control and Trident Medical
Center, LLC d/b/a Berkeley Medical Center,

Respondents.

Docket No.: 09-ALJ-07-0336-CC

**JOINT DEPOSITION DESIGNATION AND COUNTER-DESIGNATION
MASTER LIST**

Trident Medical Center, LLC ("Trident") and CareAlliance Health Services and Roper St. Francis Hospital-Berkeley ("Roper St. Francis"), in accordance with the South Carolina Rules of Evidence and the South Carolina Rules of Civil Procedure, hereby proffer the following Deposition Designation and Counter-Designation Master List, which reflects the agreement of the Parties with regard to the deposition testimony and exhibits referenced herein:

FILED

FEB 21 2012

PPAB 1923830v1

SC ADMIN. LAW COURT

RECORD 000271

I. David Dunlap

Trident's Amended Deposition Designations for David Dunlap

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II. Shannon Cantwell

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IV. John Sullivan

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Trident's Counter-Designations to Roper's Counter-Designations of Brenda Myers

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Roper's Amended Deposition Designations for Jamie Thomas

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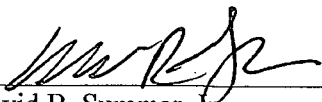
VII. Thomas Davidson

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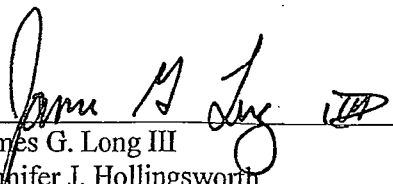
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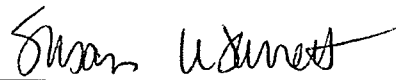
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 21, 2012, s/he served the foregoing **JOINT DEPOSITION DESIGNATION AND COUNTER-DESIGNATION MASTER LIST** on all parties of record as follows:

Via Hand Delivery

Ashley C. Biggers, Esquire
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Columbia, South Carolina

FILED

FEB 21 2012

SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

TRIDENT MEDICAL CENTER, LLC,
D/B/A BERKELEY MEDICAL CENTER,

Petitioner(s),

vs.

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

SOUTH CAROLINA DEPARTMENT OF
HEALTH AND ENVIRONMENTAL CONTROL
AND ROPER ST. FRANCIS HOSPITAL-BERKELEY
D/B/A/ ROPER ST. FRANCIS HOSPITAL,

Respondent(s).

(CAPTION CONTINUED NEXT PAGE.)

D E P O S I T I O N

WITNESS: DAVID L. DUNLAP, FACHE

DATE: Tuesday, October 25, 2011

TIME: 9:30 a.m.

LOCATION: Parker Poe Adams & Bernstein, LLP
200 Meeting Street, Suite 301
Charleston, South Carolina

TAKEN BY: Attorneys for Trident Medical Center

REPORTED BY: HEATHER M. CURLIN
Professional Court Reporter

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Page 2 1 (CAPTION CONTINUED) 2 TRIDENT MEDICAL CENTER, LLC, 3 D/B/A BERKELEY MEDICAL CENTER, 4 5 Petitioner(s), 6 vs. Case No: 09-ALJ-07-0333-CC 7 8 SOUTH CAROLINA DEPARTMENT OF 9 HEALTH AND ENVIRONMENTAL CONTROL, 10 Respondent(s). 11 12 CAREALLIANCE HEALTH SERVICES AND 13 ROPER ST. FRANCIS HOSPITAL-BERKELEY, 14 15 Petitioner(s), 16 vs. Case No: 09-ALJ-07-0336-CC 17 18 SOUTH CAROLINA DEPARTMENT OF 19 HEALTH AND ENVIRONMENTAL CONTROL 20 AND TRIDENT MEDICAL CENTER, LLC, 21 22 Respondent(s). 23 24 25	Page 4 7 DAVID DUNLAP, being first duly sworn, 8 testified as follows: 9 BY MR. THOMAS: 10 Q. Hi, Mr. Dunlap. My name is Will Thomas. 11 I represent Trident Health Systems in this contested 12 case. Would you please state your full name and 13 address for the record. 14 A. Yes. David Lawrence Dunlap. 54 Picard, 15 P-I-C-A-R-D, Way, Charleston, South Carolina.
Page 3 1 APPEARANCES: 2 ATTORNEYS FOR CAREALLIANCE HEALTH SERVICES AND 3 ROPER ST. FRANCIS HOSPITAL-BERKELEY: 4 5 NEXSEN PRUET, LLC 6 BY: JAMES G. LONG, III, ESQUIRE 7 1230 Main Street, Suite 700 8 Charleston, South Carolina 29201 9 803.771.8900 10 jlong@nexsenpruet.com 11 And 12 GREGORY T. EDWARDS 13 Vice President and General Counsel 14 Roper St. Francis Healthcare 15 125 Doughty Street, Suite 720 16 Charleston, SC 29403 17 843.720.8300 18 greg.edwards@rsfh.com 19 20 ATTORNEYS FOR TRIDENT MEDICAL CENTER, LLC, 21 d/b/a BERKELEY MEDICAL CENTER: 22 23 PARKER POE ADAMS & BERNSTEIN, LLP 24 BY: WILLIAM R. THOMAS, ESQUIRE 25 1201 Main Street, Suite 1450 Columbia, South Carolina 29201 803.255.8000 willthomas@parkerpoe.com 19 20 ATTORNEYS FOR SCDHEC (via telephone): 21 ASHLEY BIGGER 22 And Kristin Pawlowski 23 COUNSEL FOR SCDHEC 24 2600 Bull Street 25 Columbia, South Carolina 29201 803.898.3350 biggerac@dhec.sc.gov Also Present: Mr. Jim Rardin (INDEX AT REAR OF TRANSCRIPT)	Page 5

2 (Pages 2 to 5)

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Page 14 16 Q. Okay. Are you familiar with the project 17 review criteria that are set out in the CON acts 18 regulations? 19 A. No. 20 Q. Okay. 21 A. Not -- not specifically. 22 Q. Do you know which project review criteria 23 that the CON that's at issue in this case is being 24 judged on, so to speak? 25 A. No.	Page 16 23 Q. Okay. Did you have any conversations with 24 Mr. -- well, first of all, do you know who Mark 25 Richardson and Rick Knapp are?
Page 15	Page 17 1 A. Yes. 2 Q. Okay. What do you understand their role 3 is in the CON process? 4 A. They're Certificate of Need planning 5 consultants. 6 Q. Did you have any conversations with 7 Mr. Richardson or Mr. Knapp in preparation for your 8 deposition today? 9 A. I have not. 10 Q. Okay. Have you had any conversations with 11 them going all the way back to when they were 12 retained by Roper to work on the Roper CON 13 application? 14 A. Yes. 15 Q. Okay. How many times do you think you 16 spoke with Mr. Richardson or Mr. Knapp? 17 A. Two or three, perhaps. 18 Q. When is the last time you spoke with 19 Mr. Richardson or Mr. Knapp? 20 A. I would say at least a year ago. 21 Q. Okay. Do you recall the substance of any 22 of those conversations that you had with them? 23 A. Not specifically, no. 24 Q. Okay. Did you have any input into their 25 analysis at all?

5 (Pages 14 to 17)

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Page 18	Page 20
1 A. No. 14 Q. Okay. Have you had any conversations with 15 Mr. David Levitt regarding the Berkeley County 16 Hospital case? 17 A. Not -- not that I know of. I don't -- I'm 18 not familiar with that name. 19 Q. Okay. So you're not sure who he is? 20 A. Right. 21 Q. Could you give me your educational history 22 from, pretty much, high school going forward, if you 23 would? 24 A. Sure. Graduated from high school in 25 Memphis, Tennessee, and went to the University of	1 Q. That's it? 2 A. Nothing comes to mind. 3 Q. All right. Now, after you graduated from 4 Trinity with your MHA, let's kind of go forward with 5 your employment history -- 6 A. Okay. 7 Q. -- and if you could, kind of state the 8 year of, you know, your employment, maybe the year 9 you left -- 10 A. Sure. 11 Q. -- and kind of what you did. 12 A. Okay. Part of the graduate education 13 included a year of administrative residency, which I 14 did at the Harris County Hospital District in 15 Houston, Texas, and that would have been in 1968/69. 16 Went from there to Bristol Memorial Hospital in 17 Bristol, Tennessee. I was there from 1969 until 18 1973. And in 1973, I went to HCA, or Hospital 19 Corporation of America, and was with them for 26 20 years. 21 Q. Okay. 22 A. And would you like me to describe that? 23 Q. Yeah, let's go through that as well, if we 24 could. 25 A. My first assignment was in Nashville,
Page 19	Page 21
1 Memphis and graduated with a degree in business 2 administration and went from there to Trinity 3 University, where I obtained a master's degree in 4 healthcare administration. 5 Q. When did you graduate from the University 6 of Memphis? 7 A. 1966. 8 Q. And so when did you get your MHA at 9 Trinity? 10 A. 1969. 11 Q. Is that Trinity in San Antonio, Texas? 12 A. Yes. 13 Q. How did you come to be in San Antonio, or 14 did you just seek Trinity out to get your MHA? 15 A. I was actually working part-time at a 16 hospital in Memphis, and a number of my friends were 17 looking at careers and we -- we researched a number 18 of graduate programs, and that seemed to be one that 19 had -- that offered the best opportunity for me. 20 Q. Okay. Any other certificates or, you 21 know, professional societies that you belong to? 22 A. Yes. I'm a fellow in the American College 23 of Healthcare Executives. 24 Q. Okay. 25 A. And...	1 Tennessee, at Donelson, D-O-N-E-L-S-O-N, Hospital 2 where I was an assistant administrator, and I was 3 there from 1973 to mid-1974. 4 Q. Okay. 5 A. And went from there to Frankfurt, 6 Kentucky, where I was the CEO of King's Daughters 7 Memorial Hospital in Frankfurt, Kentucky, and stayed 8 there for -- let's see what years -- 1974 through 9 1979. 10 Q. Okay. 11 A. And went from there, in 1980, to Parkridge 12 Medical Center in Chattanooga, Tennessee, and I was 13 at Parkridge from 1980 until 1987. And 1980 -- 14 January of 1988, I became the CEO of Presbyterian 15 Hospital in Oklahoma City and stayed in that position 16 until 1996, or '95 or '96, at which time I became 17 president of the Oklahoma division for HCA, or 18 Hospital Corporation of America, and stayed in that 19 position until 2000, at which time my division was 20 made part of a -- of the Denver division. 21 Q. Okay. 22 A. Therefore, my position was, in effect, 23 downsized and eliminated, so I took that opportunity 24 to leave HCA, retire from HCA after 26 years, and 25 that was in 19 -- excuse me -- that was in 2000.

6 (Pages 18 to 21)

Page 22	Page 24
1 Q. Okay. 2 A. And . . . 3 Q. What did you do then? 4 A. Did some consulting for about six months, 5 became a -- we got an invitation to apply for a 6 position with Tenet Healthcare in New Orleans and 7 took a position with them in January of 2001. And it 8 was at Memorial Medical Center, a two-hospital system 9 in New Orleans, and was with Tenet for about two and 10 a half years, at which time I received an invitation 11 to come apply for a position here in Charleston, 12 which I did, and have been here at Roper St. Francis 13 since June of 2003. 14 Q. Okay. And have you always been the CEO of 15 the System since then? 16 A. Yes. 17 Q. Okay. At Memorial Medical Center, did you 18 say you were CEO of that as well? 19 A. Yes. Owned by Tenet Healthcare. 20 Q. Okay. Right. What kind of consulting 21 were you doing during that six-month period? 22 A. This was for some small rural hospitals in 23 Oklahoma that were looking for some management 24 expertise. A friend of mine had a little consulting 25 company that he would go out and do assignments, and	1 Q. Okay. Then you went to Bristol Memorial 2 in Bristol, Tennessee? 3 A. Uh-huh. Where I was assistant 4 administrator. 5 Q. Okay. And how big was that hospital? 6 A. About 400 beds. 7 Q. Was it a not for profit? 8 A. Yes. Community nonprofit. 9 Q. Okay. And what would you have done as 10 assistant administrator during that time? 11 A. I had several departments that reported to 12 me, and I reported to the CEO or the administrator. 13 Q. Okay. And HCA, you went to Donelson 14 Hospital, how big a hospital was that when you went? 15 A. Donelson was about a -- a smaller 16 hospital, I would say about 150 beds in the suburbs 17 of Nashville. 18 Q. Whereabouts in Nashville? I kind of know 19 the area. 20 A. Actually, the community is called 21 Donelson. 22 Q. Okay. 23 A. It's out on the Hermitage on the -- 24 Q. All right. 25 A. -- I think it's the east side of
Page 23	Page 25
1 he and I worked together. 2 Q. What kind of assignments would you do? 3 Give me an example of one. 4 A. Somebody may want to have a construction 5 project, and we would assist them in finding 6 architects and equipment. And that was one project. 7 I recall another had to do with a cardiac research 8 group that was -- that had gotten a grant and needed 9 someone to help administer the grant, so we would go 10 on a consulting basis and serve as their advisor. 11 Just a few odd things here and there. 12 Q. Did you do any CON work while you were a 13 consultant? 14 A. No. 15 Q. Okay. Let's go back to admin resident 16 Harris County Hospital District. 17 A. Okay. 18 Q. Was that for a specific hospital that you 19 worked at? 20 A. Yes. It basically would be the teaching 21 hospitals for the Baylor University Medical Center in 22 Houston. It's public hospitals. 23 Q. Okay. 24 A. I think there were two hospitals in the 25 system.	1 Nashville. 2 Q. I know where that is. 3 Okay. And then Frankfurt, Kentucky, 4 King's Daughters, you were CEO, how big was that 5 hospital? 6 A. Frankfurt was 130 beds. 7 Q. Okay. And that was also an HCA hospital? 8 A. Yes. 9 Q. Okay. How about Parkridge Medical Center, 10 how big was that hospital? 11 A. Parkridge was about 300 and -- 325 beds. 12 Q. Okay. And then you were CEO Presbyterian 13 Hospital in Oklahoma City, how big was that? 14 A. Presbyterian was larger. I would say 15 probably 450 beds. 16 Q. Okay. Was it a system? One hospital? 17 Two hospitals? 18 A. It was a hospital with a number of 19 ancillary services, and it was on the campus of the 20 Oklahoma Health Center. And we went on later to 21 merge Presbyterian with the University Hospital there 22 in Oklahoma City. 23 Q. Tell me about that merger. What was that 24 about? 25 A. It was actually not a merger.

7 (Pages 22 to 25)

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1 Technically, I guess, you can't merge with a state 2 entity. It was a long-term -- it was a 50-year 3 operating agreement that HCA put together with the 4 State of Oklahoma to manage their university teaching 5 hospital and the Children's Hospital in Oklahoma 6 City. 7 Q. Okay. Why would that academic medical 8 center want HCA to manage it? 9 A. They were struggling financially, had a 10 lot of turnover in their management, and I think we 11 brought some financial stability and some operations 12 expertise that they needed to manage that state -- 13 state-owned operation. 14 Q. And did it work out? Was it a successful 15 enterprise? 16 A. Yes, it has been very successful and 17 continues to be a successful part of the HCA Health 18 System today. 19 Q. Okay. And so when you left Presbyterian 20 and became president of the Oklahoma Division for 21 HCA, was that considered a promotion? 22 A. Yes. And that was brought about by HCA 23 acquiring a number of hospitals that were owned by 24 other companies whose names I can't recall right at 25 the moment, but a number of hospitals throughout the	1 you were there during your seven-year tenure? 2 A. Yes. 3 Q. What were they for, if you recall? 4 A. For an expansion of the hospital, a 5 Certificate of Need for CT scanners, additions to the 6 hospital, probably two or three Certificate of Need 7 projects while I was there. 8 Q. Okay. Tell me about the expansion of the 9 hospital. What was that project, if you can recall? 10 A. We basically took the -- we added a floor 11 to the hospital adding about 60 beds, I think, to the 12 hospital. 13 Q. Was that challenged? 14 A. I don't think so. I think -- I don't 15 recall any challenges from any competitors. 16 Q. Okay. What about Kentucky, was that a CON 17 state? 18 A. Kentucky is a CON state, yes. And that 19 was a brand-new replacement hospital for an old 20 King's Daughters Memorial Hospital that was a not for 21 profit, and HCA came in and replaced that old 22 hospital with a new facility. 23 Q. And then they installed you to manage it? 24 A. Yes. 25 Q. Okay. Did you do a good job there?
Page 27	Page 29
1 state. I think there were nine or ten hospitals that 2 were part of that Oklahoma division. 3 Q. So how many hospitals were you managing at 4 that time, or were reporting to you? 5 A. Ten, I would say. 6 Q. Tell me what you did in your capacity as 7 the head of the -- president for the division? 8 A. I would work closely with the CEOs of each 9 of the hospitals, assist them in operational 10 problems. I would review their financial 11 information, quality information, and generally 12 provide a direction for the hospital CEOs that were 13 part of that division. 14 Q. Did you engage in strategic planning at 15 that level? 16 A. Yes. 17 Q. I can't remember. I may have asked. Did 18 you have a number of CON projects -- Oklahoma, was 19 that a CON state? 20 A. It was not. 21 Q. Okay. What about Parkridge in 22 Chattanooga, Tennessee? 23 A. Parkridge was a CON state -- I mean, 24 Tennessee is a CON state. 25 Q. Right. Did you have any CONs filed when	1 A. Yes. I think so. 2 Q. Was one of your top priorities as CEO of 3 that hospital, would it have been delivering high 4 quality healthcare to the residents of that area? 5 A. Yes.

8 (Pages 26 to 29)

Page 30 23 Q. Okay. So it looks like you had -- fair to 24 say that the majority of your career has been spent 25 in for-profit healthcare --	Page 32 1 that matter, what's your number one priority as CEO 2 of these hospitals or health systems? 3 A. Number one priority, that's difficult to 4 say, but I would say to provide a high quality 5 environment where patients can receive the very best 6 care available for a reasonable value for their 7 investment in their healthcare. 8 Q. Has that applied throughout your career? 9 A. Yes. 13 Q. Just for the record, could you describe 14 your duties as CEO of the Roper St. Francis System, 15 and I'll just refer to it sometimes as Roper as well, 16 okay? 17 A. I provide executive oversight to the 18 Health System. I engage in the strategic decisions 19 for the Health System and interact with the board of 20 directors, the community, and the management -- the 21 senior management team of Roper St. Francis 22 Healthcare. 23 Q. Okay. And who is on that senior 24 management team? I think I know most of them, but ... 25 A. Let's see. Let me start with the hospital
Page 31 1 A. Yes. 2 Q. -- centers? About 28 and a half years, 3 give or take? 4 A. Yes. 24 Q. When you were CEO of the hospitals and I 25 guess in Oklahoma and then in Tennessee and now, for	Page 33 1 CEOs. Matt Severance is the CEO at Roper Hospital. 2 Allen Carroll is the CEO at Bon Secours St. Francis 3 Hospital. John Sullivan is CEO of Roper St. Francis 4 Mount Pleasant Hospital. Bret Johnson is our chief 5 financial officer. Greg Edwards is our general 6 counsel. Doug Bowling is our vice president and 7 chief strategy officer, and he also serves as CEO of 8 our physician network. Mark Dickson is our vice 9 president of mission. Going around the table. And 10 Mike Taylor is our chief information officer. And we 11 have other vice presidents reporting to those 12 individuals. I may have omitted someone, but I think 13 there are probably about eight or ten individuals 14 that comprise that senior management team. 15 Q. Okay. How often do you meet with your 16 senior management team? 17 A. Meet at least weekly as a group, and then 18 I meet with them individually every other week, or 19 biweekly. 20 Q. When you say you meet with them 21 individually, you stop by their office or they come 22 see you? 23 A. It's a standing meeting where they visit 24 with me, and then we have an agenda that's based 25 around our five pillars of people, quality, service,

9 (Pages 30 to 33)

Page 34 1 growth, and finance. 2 Q. Okay. When did Roper St. Francis come up 3 with the five pillars? I've seen that before. 4 A. We started this -- what we refer to as our 5 Journey to Excellence in 2005. 6 Q. Okay. And, then, that's based on the five 7 pillars? 8 A. Yes. 9 Q. Okay. Why don't you tell me a little bit 10 about the Journey to Excellence. You said that 11 started in 2005? 12 A. Right. 13 Q. First of all, why did you embark on the 14 Journey to Excellence? 15 A. I think it provided us a way to move our 16 organization forward and, to use the Jim Collins 17 terminology, from good to great. And, basically, it 18 is an evidence-based management techniques and 19 principles that allow us to achieve excellent 20 outcomes for our patients and for our employees and 21 for our physicians. 22 Q. What was -- what was wrong in 2004 that 23 kind of prompted the Journey to Excellence? 24 A. I wouldn't characterize it as anything 25 being wrong. I think we were a very good	Page 36 1 Q. Is the peer group measured by bed size or 2 utilization or what? You tell me. 3 A. Yes, it is. You can slice and dice the 4 data however you'd like to do that, but we try to 5 compare ourselves to similar-sized organizations. 6 Q. Okay. Give me an idea, for the record, 7 what size is Roper St. Francis? 8 A. Well, we can look at ourselves from a net 9 revenue of about 800 million per year, or our bed 10 size of about 550-, 600-bed hospitals. 11 Q. And that's combined with the three 12 hospitals you have now? 13 A. Yes. 14 Q. So which one -- which one does Roper St. 15 Francis look at in terms of the peer group? I mean, 16 does it look at net revenues? Does it look at bed 17 size or? 18 A. I think it depends on the database, but 19 within PRC, Professional Research Corporation, I 20 think they basically do it by bed size. 21 Q. Okay. Bed size for the System, not for 22 individual hospitals, correct? 23 A. Correct. I could be wrong about that, but 24 I believe that's correct.
Page 35 1 organization, but I think we wanted to take ourselves 2 up to the next level. And this was a way for us to 3 be able to move -- and we define excellence as being 4 in the top 10 percent or top decile in the nation as 5 we compare ourselves to the hospitals around the 6 country. So that's our objective, to be in that top 7 decile in terms of quality, financial outcome, 8 people, employee satisfaction, physician 9 satisfaction. 10 Q. What benchmarks do you look to in order to 11 measure yourself to determine whether or not you're 12 in the top 10 percent or that decile? 13 A. We use a number of benchmarks. The most 14 common one is a database that's called Professional 15 Research Corporation. It's an organization that 16 looks at hundreds of similar-sized organizations, 17 different-sized organizations, where we compare 18 ourselves with our peer group and look at our data 19 and our outcomes compared to those other similar 20 hospitals. 21 Q. Okay. And are for profits in that peer 22 group, or are they just not for profits? 23 A. As far as I know, it cuts across all types 24 of hospitals. I think there would be some for profit 25 as well as not-for-profit hospitals there.	Page 37 9 Q. Right. Could you list the five pillars 10 for me again? 11 A. People. And that basically are your 12 employees, your physicians, and your patients; 13 quality; growth; service, which we define as what we 14 do to give back to the community; and finance. Is 15 that five? 16 Q. That's five. 17 A. Okay. 18 Q. Are any of them more important than the 19 others? 20 A. All vitally important, and I think we 21 focus on different ones at different times, but 22 they're all -- you can't have one without the other. 23 You can't be successful, in my opinion, without doing 24 well in all of those. 25 Q. So the idea is to be in that top decile

10 (Pages 34 to 37)

Page 38	Page 40
1 for each one of these pillars? 2 A. That's our -- that's our target. 3 Q. And does PRC, they set out some type of 4 decile metric for each one of these type pillars? 5 A. Yes. 6 Q. Okay. I mean, is that -- is -- are the 7 pillars of growth something driven by PRC? Is it 8 something PRC put out there? Or is it something that 9 Roper St. Francis created and then found benchmarks 10 out in the marketplace kind of to measure itself by? 11 A. Let me go back to the PRC question, if I 12 may? 13 Q. Okay. 14 A. Most of their metrics are around the 15 people pillar. For finance, we would look at a -- 16 you know, a different benchmark. Basically, what PRC 17 does is they are a survey and data and, I guess, a 18 quantitative analysis company, so they're basically 19 monitoring people's level of satisfaction/dissatisfaction, 20 so most of their work is around the people pillar. 21 In finance, we look at how we compare to 22 other A-rated nonprofit hospitals, for example. 23 There are different benchmarks for each of those 24 pillars. 25 Q. What do you look at in terms of the growth	1 Q. Does that include bad debt or ... 2 A. No. 3 Q. Okay. How about the cost of Medicaid? 4 A. I -- 5 Q. Basically, the lost cost of Medicaid. 6 A. I'm not familiar with the detail of that, 7 but I don't believe it includes that. 8 Q. Okay. How about number of hours that your 9 employees dedicate to, say, health and wellness 10 fairs? 11 A. I believe that would be counted, yes. 12 Q. Okay. Are those employees, do you know if 13 they're paid for their time by Roper St. Francis when 14 they go out and do a health and wellness fair? 15 A. I believe that they are. 16 Q. Okay. And that's also good marketing for 17 Roper St. Francis as well, isn't it? 18 A. I think our -- it creates goodwill in the 19 community. 20 Q. Okay. And what does goodwill do for Roper 21 St. Francis? 22 A. It helps our brand, helps our image. 23 Q. Does it help the bottom line at all? You 24 know, financially? 25 A. Would you repeat that question, please?
Page 39	Page 41
1 pillar? What kind of benchmarks for that one? 2 A. Growth, we look at market share, is 3 probably one that comes to mind. 4 Q. How do you know if you're in the top 10 5 percent, kind of against those 3- to 500 different 6 hospitals with respect to market share? 7 A. I don't know that that 10 percent decile 8 would be a measurement we would use in growth. But 9 certainly in people and -- 10 Q. Quality? 11 A. -- quality, finance. 12 Q. How about service, how do you measure -- 13 how does Roper St. Francis measure itself in service? 14 A. Well, a number of ways, but the primary 15 one we look at is what percent of our net revenue 16 we're actually giving back to the community in terms 17 of charity care, other -- other contributions back to 18 the community. And we have set for ourself a 19 benchmark that we measure ourselves against each 20 year. 21 Q. And what percentage are you looking to 22 give back, or is Roper St. Francis? 23 A. Not less than 5 percent. 24 Q. Not less than 5. Okay. 25 A. Or I should say greater than 5.	1 Q. Yeah. Does goodwill help the bottom line 2 in terms of financially? 3 A. I don't -- I don't know. I think it would 4 be difficult to measure that, but I think it 5 certainly -- we all want to make sure that we have a 6 good image in the community, and by having our people 7 engaged in the community, that's important to our 8 success. 9 Q. You don't think goodwill, having a good 10 image, hurts the bottom line, do you? 11 A. No. 12 Q. Okay. If anything, it would help it, 13 correct, if you have a good image in the community? 14 A. I certainly couldn't argue with that. 15 Q. In terms of growth, you mentioned one of 16 the things that Roper looks at is market share. What 17 is the target that Roper St. Francis is interested in 18 achieving in terms of market share? 19 A. This is a growing market, growing 20 population, so I would say that if we're not at least 21 maintaining our market share or adding -- adding 22 services that will do that, that we are, in effect, 23 losing ground. So I'd say sustaining our market 24 share is something that we -- we strive to do. 25 Q. Are you trying to grow it at all? I mean,

11 (Pages 38 to 41).

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1 are there ever discussion --

A. Yes.

3 Q. Okay. I mean, discussions within your
4 senior management team of ways to achieve increases
5 in market share?

6 A. Yes.

15 Q. Well, when you first arrived and you kind
16 of took stock in the market, what did you see in
17 terms of competitors and just kind of the healthcare
18 industry here in the tri-county region?

19 A. I saw a very vibrant, robust, and growing
20 marketplace.

21 Q. What competitors did you see?

22 A. I saw the Medical University of South
23 Carolina. I saw Trident Medical Center, and East
24 Cooper Medical Center.

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1 Q. Okay. And have you been an employee of
2 Carolinas HealthCare System since you arrived?

3 A. Yes.

4 Q. Okay. And do you report to anyone at
5 Carolinas HealthCare System?

6 A. Yes.

7 Q. Who is that?

8 A. Larry Hinsdale.

9 Q. How often do you report to Mr. Hinsdale?

10 A. We have a call every two weeks and may
11 have intermittent conversations and contact in
12 between that.

13 Q. Okay. And tell me about those reports.

14 What type of information do you convey to
15 Mr. Hinsdale?

16 A. Once again, do those generally around the
17 five pillars, but just items of interest and issues
18 that are going on that week or that month that I
19 think it's important to keep him updated on.

20 Q. Do you make financial reports to

21 Mr. Hinsdale?

22 A. We do send our consolidated financial
23 information to an office in Carolinas HealthCare
24 System, and Mr. Hinsdale has access to those.

25 Q. Okay. What about periodic financial

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1 statements?

2 A. Yes.

3 Q. Does he see those as well?

4 A. Yes, we do see those.

5 Q. Unaudited?

6 A. Monthly. We see those monthly.

7 Q. Okay. Does he ever call you and discuss
8 the financials, if it's particularly not a great
9 month?

10 A. We normally cover that in our monthly
11 financial call, so I don't recall him calling me in
12 the interim, but generally it's done when we have our
13 monthly call.

14 Q. Okay. Earlier I asked you about the
15 growth in the market share, and I just want to make
16 sure I get this. You mentioned one of the things to
17 maintain and actually grow market share, is there --
18 you know, is there an actual percentage that -- or
19 goal that Roper is trying to achieve within this
20 primary -- its primary service market?

21 A. No. Not -- no specific percentage.

22 Q. Is there a nonspecific percentage?

23 A. I don't recall it ever being quantified as
24 a percent of market share growth.

25 Q. Okay. Is there, across the board from a

22 Q. Okay. Now, you are -- you are not
23 actually an employee of Roper St. Francis, are you?

24 A. That is correct. I'm an employee of
25 Carolinas HealthCare System.

Page 46 1 service line perspective, some type of benchmark that 2 Roper St. Francis is trying to achieve? For 3 instance, like cardiology, you want to have 70 4 percent of the cardiology market? 5 A. No. No. We don't -- we don't set targets 6 by service line for market share.	Page 48 22 Q. What type of market metrics are you most 23 interested in as part of your job? 24 A. Market metrics. Again, I would go back to 25 those five areas. Again, how are we doing on
Page 47 10 Q. Okay. And even though you're an employee 11 at Carolinas HealthCare System, is it fair to say 12 that, as CEO of Roper St. Francis System, that the 13 buck ultimately stops with you, that you're 14 responsible for everything that goes on in the 15 organization, or is that Mr. Hinsdale? 16 A. Well, in our situation, it's really the 17 Roper St. Francis Healthcare System board that I 18 ultimately report to. 19 Q. Okay. From a day-to-day operations and 20 management? 21 A. Right. That would be me.	Page 49 1 employee, patient, physician perception; how are we 2 looking on our quality metrics, our -- that we report 3 and that we monitor frequently; how we're doing 4 relative to budget, financially. 5 Q. When you say employee, patient, physician 6 perspective, Roper St. Francis now employs a number 7 of physicians, correct? 8 A. Yes. 9 Q. Do you have any idea what that number is, 10 a ballpark? 11 A. Approximately 200. 12 Q. Okay. Are there plans to employ more 13 physicians? 14 A. Yes. 15 Q. What type of physicians is Roper 16 interested in employing? 17 A. About half of our employed physicians are 18 primary care physicians, and the other half are 19 specialists. At this point, we are continuing to 20 look at both primary care and specialty. But I don't 21 know if I could be more specific than that. 22 Q. Is there a particular market you're 23 looking at -- within the tri-county area -- that 24 you're looking at employing more physicians? 25 A. Primarily, what we call our primary

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Page 50 1 service area, which is Charleston, Berkeley, and 2 Dorchester County. 3 Q. Okay. And does Roper St. Francis employ a 4 good number of physicians over in the East Cooper 5 market? 6 A. We do. 7 Q. Do you have any idea what that number is? 8 A. I would guess 15 or 20. 9 Q. You sure it's not more than that? 10 A. It could be.	Page 52 1 standard of care. So having those physicians 2 employed allows us to clearly align our System goals 3 with their -- with the physicians' goals to improve 4 the health of the community and improve our -- the 5 quality of services that we provide. 6 I think the other thing it allows us to do 7 is to maintain and continue to protect our market 8 share. 9 Q. And Roper recently produced a document 10 that indicated that the physician partners -- and it 11 was just a confidential document -- I guess through 12 June of this year was -- lost \$19 million. Does that 13 sound about right? 14 A. We don't use the term "lost." We refer to 15 that as investment. We invest in our nurses; we 16 invest in our pharmacists; we invest in all of our 17 clinicians. And so we look at that as basically 18 investing in that infrastructure that is necessary to 19 support that important part of our organization. 20 Q. Which includes growing market share, 21 correct? 22 A. That would be part of the -- part of the 23 objective, yes.
Page 51 13 Q. Okay. Now, physician partners kind of 14 stand alone, is not a moneymaking entity for the 15 System, is it? 16 A. That's correct. 17 Q. Okay. Why is it important for Roper 18 St. Francis to employ physicians? 19 A. Two reasons come to mind. One is as we 20 look at the future of healthcare and being able to 21 provide that value proposition that I mentioned 22 earlier, I think it's important for us to have our 23 physicians' incentives aligned with the Healthcare 24 System to improve quality, to provide cost-effective 25 services, to improve the systems of care, the	Page 53 16 Q. I've handed you what's been marked as 17 Exhibit 1 to your deposition. Do you recognize this 18 document? 19 A. Yes, I do. 20 Q. Okay. Just for the record, it's 21 Roper-Berkeley 4634 through 4640. And if you would 22 turn -- and Mr. Dunlap, most of these documents we'll 23 look at today will have a Bates number here at the 24 bottom right-hand corner. 25 A. Okay.

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Page 54 1 Q. So if you would turn to the second to the 2 last page, it's 4639. 3 A. Okay. 4 Q. Okay. And this is a year to date -- 5 second part of the page here, the bottom, 6 "Year-to-Date Combining Statement of Operations." 7 Do you see that? 8 A. Yes, I do. 9 Q. Okay. And it's actually for, looks like 10 for each separate, I guess, corporate entity that's 11 under the Roper St. Francis Healthcare umbrella? 12 A. Yes. 13 Q. And so the -- looks like the sixth column 14 over is "Physician Partners." 15 Do you see that? 16 A. Yes. 17 Q. Okay. And you'll see there, at the 18 bottom, revenue over expenses is reflected as a \$19.1 19 million loss, correct? 20 A. Yes, that's correct. 21 Q. All right. And this is through June of 22 2011; is that right? 23 A. Yes. 24 Q. Okay. So does that number there concern 25 you at all?	Page 56
Page 55 1 A. I think it's pretty much on budget, so I 2 think from that perspective I'm not concerned. But I 3 think, as any good hospital operator would always 4 think, we could do better. So I think -- I would 5 have to say we would love to do better than budget. 6 Q. Okay. Is it fair to say, though, that 7 Roper St. Francis is willing to "invest" is the word 8 you used, but to sustain a significant loss in order 9 to employ its physicians? 10 A. Yes.	Page 57 1 Q. Okay. Other than your salaries for that, 2 that I guess are paid by CHS, is there any other 3 management fee that Roper St. Francis pays to CHS? 4 A. Yes. 5 Q. Okay. And what is that called? 6 A. It's basically a management services fee 7 that is part of a management services agreement -- 8 Q. Uh-huh. 9 A. -- that CHS has with Roper St. Francis 10 Healthcare.

15 (Pages 54 to 57)

Page 58	Page 60 1 think we initially anticipated. 2 Q. What was the -- I mean, what was the 3 impetus behind that faster than normal growth? 4 A. I think the biggest emphasis -- or impetus 5 was the acquisition of a large primary care group 6 called Lowcountry Medical Associates of about 65 7 physicians that made a very -- I guess a dramatic 8 increase in our numbers. 9 Q. Did MUSC have anything to do with driving 10 the employment of physicians? 11 A. I don't believe so. I can't link their 12 role to our employment strategy. 13 Q. Not at all? 14 A. I -- I -- that certainly wouldn't be 15 something that would be a top -- top dozen reasons 16 that I could come up with that would be an incentive 17 for us, but ... 18 Q. Can you give me, say, five reasons why 19 Roper decided to employ so many physicians that 20 quickly? 21 A. I think I've already given you those 22 reasons. I'll be glad to restate those top two if 23 you'd like. 24 Q. Okay. 25 A. The primary reason is the integration of
Page 59 11 Q. Okay. Now, most of the physician partners 12 or the employed physicians that Roper has, I guess, 13 acquired through practice acquisitions and that type 14 of thing, that's taken place mainly over the last, 15 what, three years? 16 A. The last three or four years, that's 17 correct. 18 Q. So Roper has gone from basically a handful 19 of employed physicians four years ago to around 200, 20 correct? 21 A. Yes. 22 Q. How would you describe that -- that growth 23 pattern? 24 A. It has been faster than normal. I think 25 we have grown at a rate that's faster than what I	Page 61 1 healthcare. The idea that we are looking at a future 2 where physicians and hospitals need to be very 3 closely aligned. And by aligning their incentives 4 with ours, whether it's quality or service or patient 5 satisfaction or all those other things, that helps us 6 to move together in a coordinated manner with them. 7 And I think as we look at healthcare reform and look 8 at the future, that alignment is going to be 9 critical, and the best way to do that is to have them 10 economically align with the hospital. 11 And I think the second reason I mentioned 12 was to protect and to grow market share. 13 Q. Okay. How are the financial incentives 14 aligned with the physicians when you employ them? 15 A. Let me give you an example. It might be 16 case management length of stay. We have a 17 hospitalist, basically these are full-time physicians 18 that are in the hospital 24/7/365, and they do a very 19 efficient job of managing patients throughout the 20 hospital. And an employment situation is much more 21 likely that they would utilize the hospital-based 22 physicians, the hospital-based hospitals and move 23 those patients through the system efficiently and 24 effectively. 25 I think another has to do with our quality

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Page 62 1 metrics. We were looking at what is called core 2 measures that we report to different outside 3 organizations. We go over those core measures with 4 our employed physicians so that they understand that 5 it's part of their -- part of their duties that they 6 would assist in having the hospital score well on 7 those metrics. 8 Q. Okay. Are they incentivized from a 9 quality standpoint? 10 A. In some cases, they are. I think there's 11 different arrangements that we have, but in some 12 cases, a small percentage of their compensation is 13 based on meeting those quality metrics. 14 Q. Okay. And would you agree that another 15 way from an alignment standpoint is that employed 16 physicians are going to be much more likely to 17 utilize the facilities of their employer? 18 A. Yes. 19 Q. Whether it's for imaging, surgery, and 20 that type of thing; is that correct? 21 A. Yes. 22 Q. Was it important for Roper St. Francis to 23 employ physicians in the East Cooper market in order 24 to make the East Cooper Hospital or eventually make 25 it a financial success?	Page 64 1 think they have been employed even prior to my coming 2 eight and a half years ago. 3 Q. Okay. Is it the same four folks? 4 A. There's been some minor turnover in that 5 group, but, generally, it's that same core group. 6 Q. Do you think that employing physicians 7 increases competition in the healthcare marketplace? 8 A. Never thought about it. I don't -- I 9 don't think it -- I don't know that it makes any 10 difference. But -- so I would say it would probably 11 be a neutral factor. We -- we encourage our 12 physicians to utilize our facilities, but ultimately 13 the doctor makes the decision where the patient ends 14 up going and what services they -- what -- 15 Q. Well, isn't it more than that, though? 16 Isn't it a contractual encouragement that they -- 17 A. Yes. 18 Q. -- use the Roper St. Francis facility? 19 MR. LONG: Objection. 20 A. There is -- there are exceptions and the 21 doctor ultimately -- or the patient ultimately gets 22 to make that decision. 24 Q. Okay. Would you agree with me that in 25 most instances that the patient follows the advice of
Page 63 2 A. The answer is yes. 4 Q. Okay. Now, some -- some hospitals like 5 especially in rural areas, they may have to employ a 6 physician, like a surgeon, simply to have a service, 7 correct? 8 A. Correct. 9 Q. Okay. Does Roper have to employ any 10 physicians in order to have a particular service? 11 A. I -- well, let me see. I would say that 12 would be the case, for example, with our 13 cardiothoracic surgeons. In order to have a 14 consistent group coverage and to be able to provide 15 the level of service, that that would be important to 16 have them employed. 17 Q. Okay. So Roper St. Francis has an 18 employed cardiothoracic group? 19 A. Yes. 20 Q. Do you know how many surgeons there are in 21 that group? 22 A. There are four. 23 Q. Now, Roper St. Francis hasn't always 24 employed cardiothoracic surgeons, correct? 25 A. They were among the earliest employed. I	Page 65 1 the physician as to where to go? 2 A. Yes. 3 Q. Without giving me hard numbers, are you 4 bonused at all or incentivized at all with your 5 compensation in terms of how the Roper St. Francis 6 System does financially? 7 A. Yes. 8 Q. Okay. Do you know if Roper St. Francis 9 has plans to purchase or otherwise acquire physician 10 practices in either Berkeley or Dorchester County if 11 it is permitted to build a new hospital in Berkeley 12 County? 13 A. We have no -- no plans, that I'm aware of. 14 Q. Okay. Would you expect that -- that as 15 was done in East Cooper, that Roper St. Francis would 16 try to increase the physician partners presence in 17 Dorchester and Berkeley County if it builds a 18 hospital in that market? 20 A. I'd say that's possible. 21 BY MR. THOMAS: 22 Q. Is it possible, or is it highly probable? 24 A. I'd say it's probable.

17 (Pages 62 to 65)

1 Q. Okay. Is one of the reasons that -- or
2 one of the benefits of employing a lot of physicians
3 that the System can negotiate better rates with
4 insurers?

5 A. That is -- that would be helpful in
6 negotiations, having physicians at the table or
7 having physicians in the -- in the offering that
8 you're making to the managed care plan.

9 Q. Would you say that there's kind of
10 strength in numbers in terms of if you have 200
11 physicians employed, you can go to BlueCross or maybe
12 some of the other insurers and demand maybe a higher
13 reimbursement structure for those physician services?

14 A. Our managed care negotiations are done by
15 a subsidiary of CHS. It's a group called Managed
16 Health Resources, and I'm not sure what factors they
17 utilize, but I would certainly guess that they use
18 the strength of the System when negotiating
19 healthcare -- I mean with managed care organization.

24 A. Managed Health Resources uses the strength
25 of the entire CHS System when they go and negotiate.

1 Q. Yeah, but the CHS System, the physician
2 partners aren't under the CHS umbrella, are they?

3 A. From a managed care perspective, they do
4 have the authority to negotiate for the partners.

5 Q. Okay. Well, I guess what I'm asking is,
6 in this particular market, Roper has actually been
7 able to leverage the number of physicians that it has
8 in order to increase reimbursements from the
9 insurance companies for physician services, correct?

10 MR. LONG: Objection.

11 A. I would say that would be a helpful factor
12 as MHR negotiates with those managed care plans to
13 state the number of facilities that are present and
14 how many physicians are part of the network.

16 Q. I understand that. I guess my question
17 that I'm asking is hasn't Roper accomplished that?
18 Hasn't Roper actually been able to increase the
19 amount of reimbursement based on the number of
20 physicians that it employs?

21 A. Um --

22 Q. For professional services.

24 A. Once again, I think MHR, on our behalf,
25 has been able to negotiate managed care rates that

1 are -- and by using the number of physicians in our
2 network, that that does assist them in those
3 negotiations, I would -- I would imagine.

4 BY MR. THOMAS:

5 Q. Okay. So are you aware or not aware of
6 whether or not Roper has been able to increase its
7 reimbursement from physician -- excuse me -- from
8 insurance companies for physician services over the
9 last couple of years? And if you don't know, that's
10 fine.

12 A. I'm trying to see how I could state this
13 in a way that doesn't sound like I'm argumentative,
14 but let me just restate it by saying that MHR does
15 utilize the assets that are in the Charleston market
16 when negotiating with managed care plans. And as a
17 result of that, they do use our physicians and our
18 facilities in those negotiations and, yes, we have --
19 we have had successful negotiations with managed care
20 plans utilizing those assets.

21 BY MR. THOMAS:

22 Q. I mean, what -- when you say success with
23 those managed care plans, what do you mean?

24 A. I mean we've been able to get fair and
25 reasonable reimbursement from the managed care plans.

1 Q. Has it been higher than what Roper
2 St. Francis was -- those physicians were able to get
3 when the numbers weren't as high? The employed
4 physicians.

5 A. I'd say in some cases it has been, yes.

6 Q. Okay. Well, why does Roper St. Francis
7 employ physicians outside of the tri-county market?
8 And just for the record, tri-county, Dorchester,
9 Berkeley, and Charleston County.

10 A. The opportunity to expand our services
11 to -- it gives us the opportunity to expand our
12 services to that secondary market to be able to bring
13 in additional patients from those secondary markets
14 outside those three county -- that three-county area.

15 Q. And why is that important to Roper
16 St. Francis to be able to get patients to come in
17 from the secondary market?

18 A. It allows us to achieve that -- that
19 growth pillar, allowing us to continue to grow and be
20 financially and -- successful from a healthcare
21 system perspective.

22 Q. Okay. Can a Roper St. Francis employed
23 physician have privileges at a non-Roper St. Francis
24 affiliated hospital?

25 A. Yes.

Page 70 1 Q. Is that encouraged? 2 A. It's not encouraged, but if it -- if it's 3 important to that physician's practice to be able to 4 have privileges elsewhere, then we allow them to do 5 that. 6 Q. Is there anything within the physician 7 contract -- and I don't know if you have a standard 8 one or not -- but is there anything within the 9 contract itself that says that if the physician 10 leaves the employ of Roper St. Francis or physician 11 partners that he or she will lose their privileges at 12 Roper St. Francis? 13 A. No, not that I -- I don't believe so. 14 Q. Okay. Are you certain about that? 15 A. I would say 90 percent sure of that. 16 Q. Okay. 17 A. There -- no, I was going to say there may 18 be some exceptions in hospital-based doctors, but 19 hospital based being -- 20 Q. Like hospitalists? 21 A. -- like emergency room or something like 22 that, but I don't think that is even present in any 23 of those contracts. 24 Q. Okay. 25 A. I think that privileges are a separate	Page 72
Page 71 1 issue. 2 Q. Okay. Is there a requirement that in 3 order to be employed by Roper St. Francis that the 4 physician must get credentialed at at least one of 5 Roper St. Francis' hospitals? 6 A. I believe so, yes.	Page 73

Page 74 14 Q. Okay. Mr. Dunlap, do you believe that 15 healthcare operates in a free market system? 16 A. Would you define what you mean by "free 17 market"? 18 Q. Yeah. Where there are no price controls 19 or that type of thing. 20 A. Um -- 21 Q. Or generally that the price is set by 22 supply and demand in the market. 23 A. I think it's generally a very regulated 24 market where a number of our payors are the 25 government or some other agency that basically	Page 76 12 Q. When you were out in Oklahoma where there 13 was no CON Act or regulation, did you ever see any 14 overbuilding take place out there? 15 A. We saw a number of entrepreneurs who came 16 in and took the more profitable, more highly 17 remunerated services out of the hospital. 18 Q. Well, the entrepreneurs took the service 19 out of the hospital or they put it across -- a 20 similar service across the street from the hospital, 21 which, therefore, hurt the volumes at the hospital? 22 A. Another way of stating that. 23 Q. Okay. I just want to clarify that. 24 What do you think the purposes are of the 25 South Carolina CON Act?
Page 75 1 dictates the price and we either accept it or we 2 don't accept it. So I think to that extent, it's 3 regulated. 4 I think there is -- there is some free 5 market economics that are there, but I think it 6 would -- I think most -- I would characterize it as a 7 heavily-regulated, fixed price market where providers 8 have to operate within that -- those restrictions. 9 Q. Do you know what the percentage -- what 10 the percentage of government reimbursement Roper 11 St. Francis System receives in terms of net revenue 12 as part of the whole? 13 A. I would say it's well over half. 14 Q. So it's fair to say well over half of 15 Roper St. Francis' revenues are actually generated 16 from services where the price is fixed in some extent 17 by a government agency? 18 A. Correct.	Page 77 1 A. I would say the orderly development and 2 provision of healthcare services in the State of 3 South Carolina. 4 Q. One of the stated purposes is actually the 5 prevention of the unnecessary duplication of 6 services, isn't it? 7 A. If it's not stated, I would say that would 8 be one of the things they would definitely have 9 oversight for.

20 (Pages 74 to 77)

Page 78	Page 80 4 Q. Do you think that the South Carolina CON 5 program is beneficial to healthcare in our state? 6 A. Absolutely. 7 Q. Would you rather it be here than -- be in 8 existence rather -- would you rather the CON program 9 be part of the statutory framework of South 10 Carolina's healthcare system or not? 11 A. Yes. I would much rather have it be part 12 of it. 13 Q. And why is that? 14 A. I think in the absence of that, we see, as 15 was my experience in Oklahoma, the entrepreneurs 16 coming in and stripping out the more profitable 17 services and leaving hospitals, like ours, as the 18 provider of last resort. In effect, hospitals are a 19 collection of a number of departments and entities, 20 some of which lose money and some of which make 21 money. And at the end of the day, we've got to have 22 a margin to be able to allow us to continue to 23 sustain our work. 24 And if you allow people to come in 25 unregulated -- entrepreneurs to come in unregulated
Page 79	Page 81 1 and pull out those profitable services, it leaves the 2 hospital with those unprofitable services and makes 3 it difficult for us to survive. 4 Q. Okay. Would you agree with me that CON is 5 designed in many respects to actually limit 6 competition? 7 A. I think it could be viewed as limiting 8 competition, yes. 9 Q. Is it -- CON, to some degree -- when you 10 get a CON, to some degree, you have a franchise for 11 that particular healthcare service in a given area? 12 A. That could be another way of looking at 13 that. 14 Q. Okay. Now, are you familiar with the 15 South Carolina State Health Plan? 16 A. Generally, yes. 17 Q. Okay. And you're aware that Roper applied 18 for its 50-bed hospital in Carnes Crossroads under 19 the 2008/2009 state health plan, correct? 20 A. I believe that is correct, yes, sir. 21 Q. And I could pull it out if you want me to, 22 but at the end of the day, in that state health plan, 23 Roper's collective facilities had a 23-bed excess, 24 correct, under that 2008/2009 health plan? 25 MR. LONG: Objection.

21 (Pages 78 to 81)

Page 82 1 A. I don't recall that number, but I do 2 remember there was not -- there was not an exhibited 3 need for the -- for additional beds. 4 BY MR. THOMAS: 5 Q. Okay. And I'm not -- you know, my aim is 6 not to try to trick you at all. Just kind of move us 7 along because, obviously, we've got a lot of ground 8 to cover. 9 Roper St. Francis and -- including you 10 and, I guess, Mr. Bowling, as representatives of 11 Roper St. Francis, have represented to -- before the 12 media and the DHEC staff that Berkeley County's, you 13 know, 177,000 people don't have a hospital within the 14 county limits, correct? 15 A. Correct. 16 Q. Okay. But you are aware that Berkeley 17 County is not its own service area for purposes of 18 bed-need planning, correct? 19 A. I'm aware of that, yes. 20 Q. Okay. Where is your understanding of 21 where the majority of those 177,000 residents of 22 Berkeley County live? 23 A. Most -- I think the site of our proposed 24 hospital is in the -- I would say the center of that, 25 around the Goose Creek area.	Page 84 1 A. Would you please restate that? I'm not 2 sure I follow exactly what you're -- 3 BY MR. THOMAS: 4 Q. There's not a facility there extent [sic] 5 in Carnes Crossroads that is there to receive beds at 6 this time from Roper's hospital downtown from where 7 the beds are going to be transferred? 8 MR. LONG: Objection. 9 A. Not at this time. 10 BY MR. THOMAS: 11 Q. What services -- well, let me go back. 12 What would you say the target population 13 is for Roper St. Francis Berkeley, the prosed 14 hospital? 15 A. Target population -- 16 Q. Yeah. 17 A. -- would be the people who live in 18 Berkeley County, primarily those who are within a 19 five- to seven-mile radius of that hospital. 20 Q. Of the proposed location? 21 A. Yes. 22 Q. Okay. Why do you pick five- to seven-mile 23 radius? 24 A. I guess just from a convenience point of 25 view, most people are willing to drive long distances
Page 83 1 Q. Okay. I mean, your site is actually kind 2 of on the northern tip of the Goose Creek city 3 limits, isn't it? 4 A. I believe that's correct, yes, sir. 5 Q. Okay. Are you aware of anything that kind 6 of prevents the free travel between Berkeley County 7 and Dorchester County or Berkeley County and 8 Charleston County? 9 A. No, I'm not. 10 Q. And you're aware that under the state 11 health plan, bed need is calculated by individual 12 facilities, correct, not on a county basis? 13 A. Right, that's correct. 16 Q. And you would agree with me that Carnes 17 Crossroads, at this point, is a green field, as it 18 were. There's not a hospital facility in that 19 location, correct? 20 A. Correct. 21 Q. You would agree with me, then, and I guess 22 as a matter of course, that there's not a receiving 23 facility for the transfer of the beds from downtown 24 Roper to Carnes Crossroads at this time?	Page 85 1 for high-end services. But I think the level that 2 we're proposing is basically a primary level hospital 3 that would serve the people that are -- that find it 4 convenient to use that hospital or currently perhaps 5 are using Roper St. Francis downtown and may find it 6 more convenient to use that facility that's in their 7 neighborhood. 8 Q. Okay. Is that a five- to seven-mile 9 radius, is that something you've used as a CEO or 10 administrator in your other positions prior to coming 11 to Roper St. Francis that a specific type of 12 measurement that you've used before? 13 MR. LONG: Objection. 14 A. I think I've heard our planning 15 consultants use that, and I think that's probably 16 where I've gotten that, from our consultants who use 17 that as a planning tool. 18 BY MR. THOMAS: 19 Q. But have you ever used it before in your 20 experience? 21 A. I don't recall specifically, but it's 22 possible that I could have. 23 Q. Okay. But you just don't remember? 24 A. Don't remember.

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2 Q. Let me ask you this: Do you know that
3 that seven-mile radius that you mentioned earlier
4 actually includes Trident Medical Center? Did you
5 know that?

6 A. I did not.

7 Q. Okay. Are you aware of any patient within
8 the seven-mile radius from Carnes Crossroads that
9 wouldn't have access to inpatient services within a
10 30-minute drive time if -- if Roper's facility in
11 Carnes Crossroads was not built?

12 A. Would you please restate that?

13 Q. Yeah. The seven-mile radius that Carnes
14 Crossroads is, I guess, proposed to serve as kind of
15 a target population -- I think you said five, but I
16 think in the CON application for Roper it's seven.
17 Which of those residents within that radius would not
18 have access to all the services that Roper plans to
19 provide in that location within a 30-minute drive
20 time?

21 A. I would say the people that are at the
22 furthest point from that five-mile circle would be --
23 would be the people that would have to drive the
24 furthest. Could they get there in 30 minutes? Yes,
25 they could probably get to Roper Hospital if they had

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1 an emergency -- maybe not to Roper, but they could
2 certainly -- they could certainly -- you can go a
3 long way in 30 minutes if that's -- if that's your
4 standard.

7 Have you ever driven from Carnes
8 Crossroads to Trident Medical Center?

9 A. No.

23 (Pages 86 to 89)

Page 90 3 Q. Okay. Now, in the CON application, Roper 4 St. Francis indicated that it will increase its 5 market share by 10 percent by virtue of placing the 6 hospital in the Carnes Crossroad location. Do you 7 have any idea how that figure was determined? 8 MR. LONG: Objection. 9 A. I don't. I think it's something that our 10 health planners -- 11 BY MR. THOMAS: 12 Q. Does that sound reason -- go on. I didn't 13 mean to cut you off. 14 A. I think our health planners came forward 15 with that. 16 Q. Do you know how they came forward with it? 17 A. I do not. 18 Q. Okay. Does that sound reasonable? 19 A. Yes, I think it does. 20 Q. Okay. Do you think it could be higher 21 than 10 percent? 22 A. It could be, yes. 23 Q. Okay. Do you know how much higher it 24 could be? 25 A. I don't.	Page 92 1 A. No. 2 Q. Okay. Why not? 3 A. Their response -- Ray Greenberg's response 4 was that he was not -- he felt like we were not 5 supporting MUSC's -- some of their initiatives to the 6 extent that he'd like to have us support those. 7 Q. Okay. Did you find his statement to be 8 true, or did you take issue with it? 9 A. We met with him and discussed that, and I 10 think we ended amicably and moved forward. We have a 11 lot of respect for MUSC and they have their reasons 12 for making decisions, and I take them at their word, 13 and -- 14 Q. Well, what did you understand 15 Mr. Greenberg's reasons to be? Dr. Greenberg, sorry. 16 A. That we were not supporting his nursing 17 scholarships, that we were not supporting medical 18 student scholarships. I don't know if that's 19 something that Trident Medical Center has been doing 20 that we were not doing. And most of the reasons that 21 he articulated were lack of our financial support for 22 some of their initiatives. 23 Q. Was that true? I mean, did they ask 24 for -- did they ask for the financial support and 25 Roper didn't give it?
Page 91 1 Q. But you would agree by virtue of putting a 2 hospital in the primary service area of Trident 3 Medical Center and which reaches into the primary 4 service area of Summerville Medical Center, there's a 5 good chance that those two entities are going to lose 6 market share to Roper St. Francis. Is that a fair 7 statement? 8 A. I think there's a possibility that some 9 patients could come to our facility. Yes. 10 Q. Okay. A lot of those patients could come 11 to the ED if it's actually closer to them than the 12 traditional EDs they may have used in the past. That 13 may be one way that Roper would gain market share, 14 wouldn't it? 15 A. That's possible. 16 Q. Okay. And if Roper increases its 17 physician presence in Berkeley and Dorchester County, 18 that may be another way that the hospital could 19 increase its market share, correct? 20 A. That's also possible, yes. 21 Q. Okay. Was -- did you reach out to MUSC in 22 order to get a letter of support? 23 A. Yes. 24 Q. Okay. Were you able to get that letter of 25 support?	Page 93 1 A. I think partially true. I think in some 2 cases we were supporting them. We do support some 3 nursing scholarships. I think the Medical Society of 4 South Carolina, which is another one of our 5 supporting organizations, does support some of their 6 endeavors. But, again, it was -- he would -- 7 Dr. Greenberg would have to be the judge of whether 8 or not that support is adequate, so . . . 9 Q. Okay. But it was important enough for 10 Roper St. Francis to get that letter of support that 11 it did reach out to Dr. Greenberg, correct? 12 A. It came to our attention that he wrote a 13 letter for Trident, and I thought in the sense of 14 fair play that he ought to do the same for us. So we 15 reached out and asked if he would do that. 16 Q. Okay. Well, did you -- did Roper St. 17 Francis ask for a letter of support from East Cooper 18 Regional Medical Center? 19 A. I don't believe we did. 20 Q. Why not? 21 A. I don't know. 22 Q. Okay. Does Roper St. Francis' project in 23 Carnes Crossroad result in any cost containment for 24 health -- kind of, total healthcare dollars? 25 A. We believe that we are the lowest cost --

Page 94 1 low cost provider for this marketplace. So I think 2 having a Roper St. Francis facility in that market 3 would -- would be cost beneficial. 4 Q. Well, now, Roper's -- to build that 50-bed 5 hospital, the investment is going to be a little bit 6 more than \$100 million, isn't it? 7 A. Yes. 14 Q. Okay. Well, would it not be a better idea 15 to add beds to an existing facility at about a fifth 16 of the cost rather than adding a hundred million 17 dollar facility just for 50 additional beds? 18 MR. LONG: Objection. 19 A. I don't think so. 20 BY MR. THOMAS: 21 Q. Okay. Why not? 22 A. Because ultimately the cost of healthcare 23 is much more than about the cost of the construction. 24 It's about the cost of providing care. And I think 25 as a not-for-profit, lower than market cost provider	Page 96 1 A. I would -- when you say study, have I -- 2 have I seen data that could substantiate that? I 3 believe I have. I believe I have. 4 Q. Where would you see data based on what 5 Trident Medical Center charges managed care 6 companies? How would you have access to that? 7 A. We -- we look at cost reports for 8 competing hospitals. We do analysis of that, and my 9 recollection of that is that we are the lower cost 10 provider. 11 Q. Okay. The lower cost. But do you know if 12 you're a lower -- I mean, from a reimbursement 13 standpoint, do you know if you're getting a lower 14 reimbursement from, say, BlueCross/BlueShield than 15 Trident is for a given service? 16 A. I believe that we are, yes. 17 Q. How do you know that? 18 A. By the data that we look at. 19 Q. Okay. But you haven't seen anything from 20 BlueCross/BlueShield that would substantiate that, 21 have you? 22 A. No, we don't -- we don't have access to 23 their BlueCross reimbursement. 24 Q. Right. That's what I was getting at. 25 Or any other private insurer, correct?
Page 95 1 that ultimately we can provide lower cost healthcare 2 for that population. 3 Q. Okay. So you've studied this -- 4 A. Um -- 5 Q. -- to determine that you're the lowest? 6 A. Yes, I have. 7 Q. Okay. How -- 8 A. I mean, I've seen data that indicates that 9 we are a -- one of the lower cost providers in this 10 marketplace. 11 Q. Okay. Well, in terms of Medicare 12 services, I mean, Trident is going to get the same 13 thing for an open-heart that Roper is going to get, 14 isn't it? 15 A. Generally, yes, those fees are pretty much 16 set by Medicare. 17 Q. Okay. The same would be for any Medicaid 18 patients that y'all would treat, correct? 19 A. Correct. 20 Q. Okay. So are you just saying from a 21 commercial standpoint that Roper St. Francis is able 22 to offer lower cost services which relate -- which 23 translate into a lower cost for the consumer? 24 A. I believe so, yes, sir. 25 Q. And you've studied that data as well?	Page 97 1 A. No. But my belief is that we are the low 2 cost provider. I mean, we look at charge data and, 3 to some extent, the patient's portion is based on the 4 charges, and if it's deductible or copayment, so we 5 think that our charges are less, therefore, our cost 6 to the patient is less. 7 Q. Would you agree that by virtue of placing 8 a nontertiary care hospital in Carnes Crossroads that 9 that's also going to translate into the loss of some 10 tertiary market share from Trident Medical Center? 11 A. I think that's part of our calculation, is 12 that we would take a -- we would be able to take a 13 percent -- I think the 10 percent number that you had 14 mentioned was our calculation that -- our best 15 estimate of what -- whether that would be tertiary or 16 secondary-type care, but I think that's our -- those 17 are our assumptions. 18 Q. Well, wasn't that 10 percent just 19 nontertiary loss in market share -- or gain in market 20 share? Excuse me. 21 A. I'm not clear on that. 22 Q. Okay. 23 A. My recollection was that it was just an 24 average of all services.

25 (Pages 94 to 97)

Page 98 6 Q. Okay. I mean, Roper would expect that 7 some of the folks that come into its ED, the proposed 8 Carnes Crossroads facility, but who needed tertiary 9 care, they're going to most likely be transferred 10 down to Roper downtown, correct? 11 A. Yes. 20 Q. Okay. What about outpatient visits, 21 Trident's -- or Roper's planning to offer a wide 22 array of outpatient services at Carnes Crossroads as 23 well, correct? 24 A. Yes. 25 Q. Have you seen the decrement or adverse	Page 100 1 market share numbers look like, inpatient-wise? 2 A. That data is generally a year and a half, 3 two years' behind. It's tough to -- in South 4 Carolina, it's difficult to get current data. But 5 there's just not a lot of movement in that market 6 share over time. 15 Q. Okay. How would you describe Roper's 16 growth strategy over the last four or five years? 17 Would you say it's kind of status quo? Aggressive? 18 A. I'd say it's -- the term I would use is 19 very appropriate and reasonable. 20 Q. Okay. Is that how you would describe it 21 to people who would want to know? 22 A. Yes. 23 Q. Okay. In terms of Berkeley County -- and 24 I don't know how familiar you are with the 25 demographics there, but what population of Berkeley
Page 99 1 impact analysis on that? 2 A. Not that I recall. 3 Q. Okay. But you would imagine that Trident 4 would also lose a good number of outpatient patients 5 by virtue of a full-service hospital being placed at 6 Carnes Crossroads, wouldn't it? 7 A. That's possible, yes. 8 Q. Okay. Is Roper St. Francis currently the 9 market share leader in the tri-county area? 10 A. I believe that we have the largest market 11 share in the tri-county area, yes. 12 Q. Is that inpatient, outpatient, or 13 combined? Do you know? 14 A. Combined. 15 Q. Is that important for Roper St. Francis to 16 kind of have that distinction? 17 A. Yes, it is. 18 Q. Okay. Is it fair to say that that's the 19 result of an aggressive growth strategy over the past 20 five years? 21 A. There has not been a lot of movement in 22 the last five years. It's pretty -- pretty stable. 23 So I would say, again, it's a growing market, we've 24 maintained our share for the most part and that's ... 25 Q. How about for this year, what do the	Page 101 1 County would you say is -- doesn't have adequate 2 access to basic inpatient services at this time? 3 A. I would say the entire county is without 4 service. I mean, they've got 178,000 people without 5 a hospital, so I would say -- 6 Q. Well, are you saying, then, that the 7 citizens of Goose Creek don't have adequate access to 8 basic inpatient services right now? 9 A. Yes. 10 Q. That's your contention? 11 A. Right. 12 Q. Even the ones that live a mile away from 13 Trident Medical Center, they don't have adequate 14 access to an inpatient facility? 15 A. I would -- I would say, once again, 16 Berkeley County is underserved in terms of its 17 inpatient services. 18 Q. Okay. I want you to think about Berkeley 19 County, I mean, from a demographic standpoint. Are 20 there certain areas of Berkeley County that don't 21 have as good of access as others to basic inpatient 22 services? 23 A. Yes. It depends on where they live within 24 Berkeley County. It's a large county. 25 Q. And which areas have less good access than

26 (Pages 98 to 101)

Page 102 1 the others? 4 Q. Go ahead. 5 A. Those are the furthest away from the 6 existing hospitals. 7 Q. Okay. Do you know, I mean, is that -- the 8 northern area of Berkeley County qualify? 9 A. Yes. The northern or western area would. 10 Q. Okay. What about the eastern area? 11 That's actually kind of pretty vast, isn't it -- 12 A. Yes. 13 Q. -- of Berkeley County? 14 A. I'd say. 15 Q. All right. Would you agree with me that 16 if only one hospital project were chosen by this 17 judge to serve the needs of Berkeley County, that 18 Trident's facility in Moncks Corner would provide 19 better access to the northern and eastern areas of 20 Berkeley County than would Roper's hospital down in 21 Carnes Crossroads? 23 A. I think our site would serve the largest 24 number of the population, but the site that Trident 25 has selected would serve those that are more remote.	Page 104 1 Goose Creek area, and we were going from one location 2 to another and drove by that location. 3 Q. What's the name of that restaurant? 4 A. It's called Larry's Giant Subs. The best 5 subs in town. 6 Q. Okay. That's good enough. I like a good 7 sub. 8 In terms of the multipurpose housing 9 development, okay, that was slated to go, I guess, in 10 that Carnes Crossroads area, there haven't been any 11 houses built in that Carnes Crossroad development to 12 date, have there? 13 A. I'm not sure when you say "any," but I 14 know it's not as many as what they had anticipated. 15 Q. You think there are any houses in that 16 area right now? 17 A. Um -- 18 Q. In the Carnes Crossroads development? 19 A. Carnes Crossroads -- no, you're right. 20 I'm sorry. I was thinking of the bigger geography. 21 As far as I know, there are no homes in the Carnes 22 Crossroads. 23 Q. Okay. Do you know why that development 24 hadn't gotten off the ground? 25 A. I think it's just the general economic
Page 103 1 BY MR. THOMAS: 2 Q. And that have longer drives to inpatient 3 services, correct? 4 A. Yes. 5 Q. Okay. Are you aware -- and if you don't 6 know, that's fine because I think you said you may 7 have glanced through the state health plan prior to, 8 but are you aware of any standards in the state 9 health plan for the actual establishment of a new 10 hospital in a location that doesn't have a hospital? 11 A. I am not. 15 Mr. Dunlap, when's the last time you drove 16 by the property -- to the Carnes Crossroads site? 17 When's the last time you went up there to kind of 18 look at that? 19 A. I'd say within the past three or four 20 months. 21 Q. Okay. Did you go up there specifically to 22 look at the site or for another reason? 23 A. For another reason. 24 Q. What was that reason? 25 A. My son owns a little restaurant in the	Page 105 1 downturn, the fact that homes are not selling as fast 2 as they were several years ago. 3 Q. Do you ever try to look at, like, what the 4 unemployment rate is in Berkeley County or that type 5 of thing just as part of your general duties? 6 A. I do see those numbers from time to time, 7 yes. 8 Q. Okay. Do you know that Berkeley County 9 has the highest unemployment rate in the tri-county 10 area? Are you aware of that? 11 A. I would not dispute that, no. 12 Q. Okay. Are you aware of kind of what the 13 housing starts are done in Berkeley County in the 14 last few years? 15 A. I'm not specifically aware, but my guess 16 is that they have slowed down. 17 Q. Okay. Would you agree that a lot has 18 changed economically since Roper St. Francis -- 19 especially in Berkeley County, since Roper 20 St. Francis and Trident applied for hospitals in 21 Berkeley County? 22 A. Yes, it has slowed down. 23 Q. Do you recall when Roper St. Francis first 24 considered purchasing property in the Carnes 25 Crossroad area?

Page 106 1 A. I think it was in 2005, if I recall. 2 Q. What were the discussions then, if you 3 recall? So that would have been -- you would have 4 been at Roper St. Francis as CEO for two years, 5 right? 6 A. Right. Right. 7 Q. Okay. Is that something that came -- that 8 y'all actively went out -- Roper actively went out 9 and sought, or was that something that was brought to 10 Roper by developers? If you know. 11 A. I don't recall specifically, but I think 12 the first serious conversation I can recall was with 13 a developer at Carnes Crossroads. 14 Q. Do you remember that person's name? 15 A. Matt Sloan. 16 Q. Matt Sloan. I've seen his name before in 17 some documents. Okay. 18 But, I guess, the property was eventually 19 purchased sometime in 2007; is that right? 20 A. Yes. 21 Q. Okay. Why did it take kind of a two-year 22 period from the time the project -- or the 23 discussions took place and took to purchase the land? 24 A. I think we just -- we were -- there was 25 no -- there was no burning rush. I think we were	Page 108 1 Q. What entity actually purchased the Carnes 2 Crossroad property? 3 A. That would be the Medical Society of South 4 Carolina. 5 Q. So Roper St. Francis didn't purchase it 6 and transfer it? 7 A. We may have had an option on the land, but 8 I think -- but I don't think we ever actually held 9 title to it. I could be wrong about that. 10 Q. Okay. And why did the Medical Society of 11 South Carolina purchase the land? 12 A. They are not a -- not an agency that has a 13 bond rating, and in our case having debt on our books 14 affects our -- our debt-to-equity ratios, and we 15 prefer to keep that off of our balance sheet and 16 lease that back from them. So it's advantageous for 17 us to have the Medical Society actually own and hold 18 that land. 19 Q. Okay. But Roper has to pay some type of 20 interest cost or something to the -- 21 A. Right. 22 Q. -- Medical Society, correct? 23 A. That's correct. 24 Q. For the privilege of having -- kind of 25 warehousing that property on the balance sheet of
Page 107 1 just looking at, you know, how Roper St. Francis 2 might have a presence in Berkeley County, and Matt 3 Sloan began to convince us that this was a vision he 4 had, and we felt like that would be an opportunity 5 for us to have a presence in Berkeley County as being 6 part of that development. 7 Q. Have you had any conversations with Matt 8 Sloan in the last year or two asking him when some 9 houses are going to be built in Carnes Crossroads? 10 A. Not that I recall. 11 Q. Okay. Is that something that worries you 12 at all? 13 A. I think it was a member of my staff, I 14 can't remember who that was, but had had some 15 conversation that they -- they were optimistic that 16 the development was about to take off, and they felt 17 like they would be in the next six to twelve months 18 being able to develop homes there, so ... 19 Q. Okay. That's kind of a job of the 20 developer, though, isn't it, kind of full-time job is 21 optimism, isn't it? 22 MR. LONG: Objection. 23 A. That would be -- that would be a good 24 characteristic.	Page 109 1 MSSC? 2 A. Correct. 3 Q. Okay. Do you know how much that is per 4 year? 5 A. I do not. 6 Q. Okay. Is it in the six-figure range, 7 though? 8 A. Yes, I would say it is. It's several 9 thousand dollars a year, but I don't recall what that 10 is. 11 Q. You mean several hundred thousand dollars 12 a year? 13 A. I just don't recall. 14 Q. Okay. Can you explain to me what you 15 thought the original timeline for the development of 16 that property was -- 17 A. Um -- 18 Q. -- of Carnes Crossroads. 19 A. Of Carnes Crossroads, for the development. 20 Our initial plan was to perhaps have a medical office 21 building there to transfer some of the operating 22 rooms that are currently in our Berkeley Medical 23 Center, and I think our plan was to eventually build 24 a hospital somewhere in the 2012, 2014, '15 time 25 frame, but, initially, moving those medical services,

Page 110 1 such as an MOB, medical office building, and 2 ambulatory surgery suites. 3 Q. Was it to build a hospital in 2012, 2014, 4 '15 timeline or actually apply for a hospital within 5 that timeline? 6 A. Probably apply in that 2012 range, and 7 again, I'm estimating the dates. I don't recall 8 exactly. 9 (Exhibit No. 2 was marked.)* 10 BY MR. THOMAS: 11 Q. I've handed you what's been marked as 12 Exhibit 2 to your deposition. 13 A. Uh-huh. 14 Q. And have you seen this document before? 15 A. Yes, I have. 16 Q. Okay. Is this the purchase and sale 17 agreement for the property where the proposed Roper 18 St. Francis Berkeley Hospital would go? 19 A. I believe it is, yes. 20 Q. Okay. And if you look at Roper-Berkeley 21 1209, that would be your signature there, correct? 22 A. Yes. Let's see. Let me get to that page. 23 Yes, it is. Resp. 16 * 24 Q. Okay. July 20, 2007? 25 A. Uh-huh. Yes.	Page 112 1 A. That's right. The developer could -- 2 could bring in other healthcare providers if he chose 3 to do that. 4 Q. Okay. And so the first thing here, under 5 B, "In order to maintain the hospital exclusive, 6 purchaser much satisfy each of the following 7 performance requirements." 8 The first one, I believe, goes along with 9 what you said that within six months of the date of 10 the closing, Roper had to transfer it's existing CON 11 for ambulatory surgery for Moncks Corner to the MOB 12 site, correct? 13 A. Let's see. 14 Q. It's under B, little i, I guess. 15 A. Yeah. We had to submit an application to 16 have that transfer. 17 Q. And Roper actually did that, correct? 18 A. I believe we actually did initiate that, 19 yes. 20 Q. Okay. And then a little 2 there, 21 "purchase documents, construction of the MOB facility 22 by the commencement date below in Paragraph 8F," 23 correct? 24 A. Correct. 25 Q. All right. And let's see here. I think
Page 111 1 Q. All right. Okay. And if you turn to page 2 3 of the actual contract or Roper-Berkeley 1196 -- 3 A. Okay. 4 Q. -- there are deed restrictions to this 5 property, correct? 6 A. Yes. 7 Q. Okay. And what was the purpose of that? 8 A. That was to assure the developer that we 9 were going to build a health facility, and it also 10 allowed us to be sure that the developer is not going 11 to sell or rent space to other healthcare providers 12 at that site. 13 Q. Okay. And if you turn to the next page, 14 page 4 of the actual agreement -- 15 A. Okay. 16 Q. -- this looks like Part B, Roper-Berkeley 17 1197. This actually sets out kind of the timeline, I 18 believe, you were describing earlier, correct? 19 A. Yes. 20 Q. Okay. And if for some reason Roper 21 St. Francis failed to meet the timeline, then I think 22 on the next page, very top, "If the purchaser fails 23 to meet any of the performance requirements, the 24 hospital exclusive shall automatically terminate," 25 correct?	Page 113 1 8F looks like it was -- "The purchaser agrees to 2 complete construction improvements on the MOB site 3 within 18 months of the commencement date." 4 A. Correct. 5 Q. Does that sound about right? 6 A. Yes, sir. 7 Q. Okay. And then little 3, "Purchaser shall 8 file all the necessary documents to apply for a 9 hospital CON for the construction of acute care 10 hospital by the earlier of December 13th, 2015 or the 11 later of six months of the determination of the 12 residential benchmark, as defined below, has been 13 achieved." And it says has been achieved and January 14 1st, 2012, correct? 15 A. Correct. 16 Q. Okay. And the residential benchmark, 17 which is on the next page, looks like the issuance of 18 certificates of occupancy for 1700 residential units 19 within Carnes Crossroads? 20 A. Yes. 21 Q. And we know they haven't -- Carnes 22 Crossroads hasn't met that, correct? 23 A. That's correct. 24 Q. At this point. Okay. So the latest that 25 I read this, because they hadn't -- they hadn't

Page 114	Page 116
1 achieved that, let's say they were absolutely -- you 2 know, Trident didn't apply, Roper didn't apply, under 3 this agreement, Roper would have up to December 31st, 4 2015, to actually apply for a hospital CON for Carnes 5 Crossroads, correct? 6 A. Correct. 7 Q. Okay. Now, I know that we'll talk a 8 little bit about this later, but Roper actually did 9 the CON -- filed a CON for the -- to build -- I guess 10 to move the ASC? 11 A. Right. Ambulatory surgery center. 12 Q. Right. But then decided not to, correct? 13 A. Correct. 14 Q. Okay. Has that affected Roper at all 15 under this contract? 16 A. No. 17 Q. Okay. So it's -- it hadn't lost the 18 exclusives? 19 A. We've not been notified of that. And, 20 again, it's not like the land reverts back. It 21 simply means they can go out and recruit other 22 healthcare providers if they choose to do so. 23 Q. Okay. And you don't know that they've 24 decided to exercise that option at all? 25 A. Not that I'm aware, no.	19 Q. Okay. Could you take me, kind of in a 20 soup-to-nuts fashion, through the process Roper 21 St. Francis would go through in terms of pursuing a 22 high-dollar capital project in terms of, you know, 23 developing it, getting it through to board approval? 24 A. Yes. The -- and we defined that as 25 anything over a million, but certainly something like
Page 115	Page 117
1 Q. Okay. So what happened, then, is Trident 2 then applied, I guess, and Roper became aware of 3 Trident applying for a CON for a hospital in Moncks 4 Corner in August of 2008 and decided to accelerate 5 its plans from this timeline to what it ultimately 6 undertook, correct? 7 A. Yes. 10 Q. Okay. Would you say that you were 11 surprised that Trident filed for a CON application 12 for a new hospital in Moncks Corner? 13 A. Yes. 14 Q. And why were you surprised? 15 A. Just had no indication that they were 16 considering a hospital in that location.	1 a facility or a hospital project would be one that 2 the internal management team would basically develop 3 the concept, would do the analysis of the pro forma, 4 whether or not we felt like it was something that was 5 financially viable. And then once we were satisfied 6 that it was something that we'd like to go forward 7 with, then we would take it to the board of the Roper 8 St. Francis Healthcare System for their -- for their 9 review and their ultimate approval or disapproval. 10 Q. Okay. You mentioned the financial 11 analysis to determine whether or not -- what did you 12 say, it was feasible? 13 A. Viable. Viable or feasible. 14 Q. And what makes for a financially viable 15 project for the System, you know, in kind of one of 16 these higher level, more than a million dollar 17 project? 18 A. We like to see something that can be 19 showing a positive bottom line in three to five 20 years. 21 Q. Okay. Is there any particular ROI that 22 you're looking for, internal rate of return, anything 23 like that? 24 A. You know, we like that -- if we can get 25 15, 20 percent internal rate of return, I think

30 (Pages 114 to 117)

Page 118 1 that's something that would be attractive to us. 2 Q. Okay. In terms of the Carnes Crossroad 3 Hospital, do you recall what the internal rate of 4 return for that project was -- 5 A. I don't -- 6 Q. -- or is? 7 A. -- I don't recall specifically, but I do 8 recall that it was going to be a positive for us in 9 that three- to five-year time frame, but ramping up 10 over time. 11 Q. Okay. In terms of the Carnes Crossroads 12 project, the decision, the best I could kind of 13 determine from the documents, that you found out -- 14 Roper found out about the Trident project on or about 15 August 8th, and the decision was made roughly three 16 weeks later to go ahead and build a hospital at that 17 location. Is that a normal time frame for the 18 development of a project of that nature? 19 A. That would be an accelerated time frame. 20 We definitely felt like we needed to move quickly on 21 that and -- shorter than normal. 22 Q. Is it fair to say that the decision was 23 actually made to apply for the CON before any 24 financials had been developed for that particular 25 project?	Page 120
Page 119 1 A. No. I think they would have been pretty 2 much concurrent. We were doing the financial 3 analysis while trying to make the decision and maybe 4 looking at what our options would be.	Page 121 7 Q. Did you have -- tell me what your kind of 8 role in the development of the CON was for this 9 particular project. 10 A. I was involved in the discussion, the 11 strategy, but not involved in putting any of the 12 documents together -- analysis. 13 Q. Okay. And tell me about the strategy. 14 What are you referring to when you say that? 15 A. Well, I think when we saw that Trident had 16 filed for a Certificate of Need, we wanted to 17 consider what our options would be. We'd already had 18 options on property and had plans down the road to 19 build the hospital, so the question that was posed 20 to -- we posed to ourselves is do we accelerate that 21 and do we move forward with it now or do we sit back 22 and see what unfolds. So ultimately, as you know, we 23 decided to move forward with it. 24 Q. Well, explain the reasons for moving 25 forward with it.

31 (Pages 118 to 121)

1 A. I think we felt like if we hadn't moved
2 forward with it and Trident got a hospital in that
3 area, it would be impossible for us to get one at any
4 time in the future if they were the -- if they were
5 the only hospital that was -- is in the Berkeley
6 County, so . . .

7 Q. Why did -- what was the reasoning, the
8 thinking behind it for it would be impossible for
9 Roper to be able to build a hospital in Carnes
10 Crossroads if Trident Medical Center built a hospital
11 in Moncks Corner?

12 A. Again, you mentioned Mr. Knapp, but I
13 think our consultants and those who are more familiar
14 with the CON process than I am felt like in order for
15 our application to be seen in a timely way, the more
16 quickly we could bring that to the DHEC staff to
17 consider, the better it would be for our probability
18 of being successful.

19 Q. And the idea was simply to transfer the 50
20 beds out to Carnes Crossroads, correct, and to serve
21 a population that Roper had already served, Berkeley
22 County residents, is that it?

23 A. Primarily, yes.

24 Q. So how would that be any different if
25 there is a hospital in Moncks Corner?

1 A. Well, again, the consultants that we were
2 working with advised us that if Trident was
3 successful in getting a hospital, for us to come back
4 at some later time -- six months, two years -- that
5 it might be more difficult for us to get a hospital
6 approved.

7 Q. Why did they say it would be more
8 difficult? What was their reasoning for that?

9 A. I think the term they used was the cycle,
10 to be in the same review cycle with Trident would
11 be -- would be preferable.

12 Q. And wasn't the thought behind that because
13 Roper and the consultants thought that the
14 applications were competing?

16 A. No, I don't think that term was used. I
17 think it was really just a timing thing so that both
18 could be -- even though they're separate markets,
19 that we were looking at the Trident versus ours, the
20 thought would be that we could be on equal footing as
21 Trident as they moved forward with theirs.

6 Q. Okay. Did you have any telephone
7 conversations with anyone at DHEC about Trident's CON
8 application or Roper's CON application during that
9 three-week period?

10 A. I did not.

11 Q. Okay. Did you ever meet with Earl Hunter
12 at DHEC in -- anytime -- at any time during the CON
13 review process for both applications?

14 A. I did not.

15 Q. Did you ever travel up to meet with the
16 DHEC staff at any time during the CON review process?

17 A. I don't think I ever did. No.

18 Q. Okay. So the first time you saw or spoke
19 with anyone at DHEC about the CON was at the project
20 review?

21 A. Yes.

Page 126 3 Q. Okay. Why was the decision to add beds at 4 Carnes Crossroads limited to just 50 beds? 5 A. I think it was really a needs analysis 6 looking at the population and also we wanted to do -- 7 we know that the most likely scenario for success 8 would be to transfer beds from Roper Hospital. Our 9 internal analysis of that showed that we could move 10 50 beds without damaging Roper Hospital's ability to 11 care for its patients. So I think -- so on both 12 ends, one, we felt like 50 was the right number to 13 serve that population, the other 50 being able to 14 remove that from Roper's license would work for us. 21 MR. THOMAS: Let me make this an exhibit 22 here -- Number 3. Pet. 11 * 23 (Exhibit No. 3 was marked.) 24 BY MR. THOMAS: 25 Q. I'm handing you what's been marked as	Page 128 1 northernmost area of Berkeley County, which would be 2 above the lake? 3 A. Yes, I would agree with that. 4 Q. Okay. But you don't know why this still 5 hasn't been changed? 6 A. I do not. 7 Q. Okay. And you would agree that this is 8 not accurate? 10 A. Yes, I would. 12 Q. Okay. You were in your present 13 position -- well, let me ask it this way. Were you 14 in the position of CEO of Roper St. Francis at the 15 time the decision was made to build the 50-bed 16 hospital -- excuse me, the 85-bed hospital in Mount 17 Pleasant? 18 A. Yes, sir, I was. 19 Q. Okay. Do you recall what the primary 20 justification Roper used in the CON application for 21 that new hospital? 22 A. That there was a growing population east 23 of the Cooper and that the existing hospital was not 24 meeting the needs of that community having been there 25 for 20-plus years and had not been recapitalized, and
Page 127 1 Exhibit Number 3 to your deposition. Do you 2 recognize this document? And I'll tell you, it came 3 off of Roper St. Francis' Web site. 4 A. Web site. Yes. I have seen this, yes. 5 Q. Okay. One of the questions I have here, 6 if you look at Number 3 here -- I had deposed 7 Mr. Bowling a couple of weeks ago. Maybe it's three. 8 And on Number 3, it says, "Roper St. Francis plans on 9 building its hospital at Carnes Crossroads. This is 10 right at the center of growth in Berkeley County but 11 far enough away to serve a different population than 12 Trident's hospitals, which is slated to be located in 13 the northernmost area of the county." 14 And I'll represent to you that Mr. Bowling 15 acknowledged that that was a mistake. That, you 16 know, Moncks Corner, where Trident plans to put its 17 hospital, is not located in the northernmost area of 18 the county? 20 BY MR. THOMAS: 21 Q. So my question to you is: Why hasn't this 22 been changed on the Roper Web site? 23 A. I don't know. 24 Q. Do you agree with me that Roper -- I mean, 25 Trident is not going to place its hospital in the	Page 129 1 we felt like Mount Pleasant east of the Cooper 2 needed -- deserved a better hospital to serve their 3 community. 4 Q. Well, I mean, didn't you -- didn't Roper 5 submit an application at a time when it knew East 6 Cooper was about to submit an application for a 7 replacement hospital and to add 40 beds? 8 A. I don't recall the exact time frame there. 9 Q. Okay. You do recall both Roper and East 10 Cooper submitting an application in 2005, correct? 11 A. Yes. 12 Q. Okay. And is it your testimony today that 13 Roper submitted its application at a time when it did 14 not know that East Cooper was about to embark on a 15 \$150 million replacement hospital project? 17 A. We had heard the possibility of that and, 18 frankly, doubted that they were going to move forward 19 with it. 20 BY MR. THOMAS: 21 Q. Okay. But they did move forward with it, 22 correct? 23 A. They did. 24 Q. Okay. And now that 140 beds is about 25 occupied with -- with my understanding of -- about 35

Page 130 1 or 40 people on an average daily census. Is that 2 your understanding? 3 A. That could very well be true. 4 Q. Okay. And Roper's hospital in Mount 5 Pleasant has got an ADC of about -- the latest data 6 I've seen is about nine; is that right? 7 A. It's been ramping up since then. Again, 8 it's a brand-new, baby hospital that will take 9 several years to ramp up its volume. 10 Q. Will it take up to 50 years to ramp up to 11 its volume? 12 A. Hopefully not. 13 Q. I'm curious why Roper waited until 2005 to 14 build in Mount Pleasant because I grew up in Mount 15 Pleasant and, you know, I probably moved there when 16 there were 12,000 people, and when I left there were 17 probably 40,000 people. Why did Roper wait until 18 2005 to build there when the growth had been 19 occurring for the past two decades? 20 A. I just can't speak to previous leadership 21 and administration. But we saw what we felt like was 22 a need there and moved to fill that. 23 Q. A lot of the developments that were slated 24 to actually go out in that 29466 ZIP code, those have 25 stalled, haven't they?	Page 132 1 part of the natural growing cycling in the hospital. 2 Q. Well, you would agree with me that the 3 payor mix in Mount Pleasant is probably better than 4 anyplace else in the tri-county area, isn't it? 5 A. It does have a good payor mix. 6 Q. Do you know of a better one, kind of, from 7 a geographical location tri-county-wise that would be 8 better than Mount Pleasant? 9 A. No, I don't. Perhaps -- perhaps the 10 peninsula, but . . . 11 Q. Well, the peninsula -- peninsula south of 12 Broad, maybe? 13 A. Perhaps. 14 Q. Do you think it would be a good idea for 15 the people living in Moncks Corner, where the nearest 16 hospital is currently 18 miles away, to have a 17 hospital of their own within the city limits? 18 A. Yes. 19 Q. I apologize if I'm repeating myself, but 20 did you read that application that's in front of you 21 now, the Carnes Crossroads application, closely prior 22 to it being submitted? 23 A. No. 24 Q. Okay. Do you know why or are you aware of 25 any discussions of why there's no mention in the CON
Page 131 1 A. Temporarily, yes. 2 Q. Temporarily, but you don't know when 3 they're getting back on track, do you? 4 A. None of us do. But I think if you look at 5 the future of Mount Pleasant, I think you'd -- you'd 6 be unwise to guess that that population is not going 7 to continue to grow. There's nowhere for the 8 population to move except west and north of 9 Charleston. So I think Mount Pleasant would be a 10 viable community for many, many years. 11 Q. That's assuming that the economy gets back 12 in shape to allow the further building of houses, 13 correct? 14 A. Yes. 15 Q. And Mount Pleasant is not immune from the 16 foreclosures that have taken place in the tri-county 17 area, is it? 18 A. Again, that's a -- that's a blip in the 19 time frame that we're looking at. When you build a 20 hospital, it's done on a long time frame. A 25- to 21 50-year horizon. Roper Hospital has been around for 22 160 years, and I'm sure when it was first built, it 23 was -- it struggled for a few years, but that's just	Page 133 1 application itself of Trident Medical Center's 2 project to build in Moncks Corner? 3 A. I do not. 4 Q. Okay. Are you aware that -- and I want to 5 go back to this radius, because it's mentioned in 6 here. Maybe I can find an actual page for you. All 7 right. If you'll go to page -- you'll see a Bates 8 label there and you'll want to go back to the front, 9 page 23. * 10 A. If these pages will separate. 11 Q. Sorry about that. A fresh copy there. 12 A. Maybe that'll help me. 13 Q. That's all right. That's all right. 14 A. Okay, 23. 15 Q. Yes, sir. And if you'll look here on the 16 first full paragraph on page 23 and kind of come down 17 about five -- it looks like sentences. It says, "The 18 use of a seven-mile radius in the CON analysis is 19 important as a seven-mile radius approximates a 20 15-minute travel time parameter for travel to the 21 proposed new hospital." 22 Do you agree with that assumption? 23 A. Yes. 24 Q. Okay. Were you aware that the seven-mile 25 radius -- I'm going to pull this out. Jimmy knows I

Page 134 1 like this exhibit. So I would be remiss if I didn't. 2 MR. THOMAS: Let her mark that real quick. 3 (Exhibit No. 4 was marked.) 4 BY MR. THOMAS: 5 Q. All right. This is just a seven-mile 6 radius map, and I actually created it off some Google 7 Earth Web site using Carnes Crossroads as the center 8 there. Had you ever seen a kind of a rendition of 9 what the seven-mile radius looks like from Carnes 10 Crossroads? 11 A. Yes. 12 Q. Okay. And does this comport with your 13 understanding? 14 A. Yes. 15 Q. Okay. So you would agree that obviously a 16 good portion of the radius actually covers the town 17 of Summerville, correct? 18 A. It does appear to, yes. 19 Q. Okay. And where I've got that blue 20 hospital sign there that's outside of the radius, 21 that's Summerville Medical Center. Is that your 22 understanding about where it is? 23 A. Yes. 24 Q. Okay. And then the other hospital sign, 25 which is within, is Trident Medical Center; do you	Page 136 13 Q. Okay. And you would agree with me that if 14 I were to draw a seven-mile radius from Summerville 15 and Trident, we'd have a Venn -- somewhat of a Venn 16 diagram that would be a heavy overlap into Carnes 17 Crossroads radius, correct? 18 MR. LONG: Objection. 19 A. Yes. 21 Q. Okay. Now, based on health planner's 22 statement here in the CON application that I just 23 read and identified with you on the DHEC record of 24 23* The use of a seven-mile radius in the CON 25 analysis is important as it approximates a 15-minute
Page 135 1 understand that? 2 A. Yes. 3 Q. Okay. So the town of Summerville, 4 Lincolnville, looks like Ladson, and then a good 5 portion of Goose Creek is within the radius, right? 6 A. Yes. 7 Q. Okay. And then is it your understanding 8 that kind of -- if you use kind of Carnes Crossroads 9 as, you know, splitting -- looks like 176 going all 10 the way down kind of splits the radius a little 11 bit -- I mean, it's not perfect, but -- and then 17 12 kind of acts as somewhat of a split, too, as well, 13 doesn't it? 14 A. Yes. 15 Q. All right. Is it your understanding that 16 this area here that's bound by I-26, Jedburg Road, 17 State Road, 17A, North Main Street, that area there 18 is heavily populated? 19 A. It's my understanding that there are -- 20 there's population -- I don't know how heavy it is. 21 I think it's more toward the Goose Creek 22 neighborhoods -- more population, I should say.	Page 137 1 travel time parameter for travel to the proposed new 2 hospital." 3 So based on that statement there, anywhere 4 in this radius, Trident Hospital is within a 5 30-minute travel time, isn't it? 6 MR. LONG: Objection. 7 A. You know, I think -- the way I understand 8 your question -- 9 BY MR. THOMAS: 10 Q. Yeah. 11 A. -- if you were to move that bubble, that 12 seven-mile bubble down to where the center of that is 13 on Trident -- 14 Q. Uh-huh. 15 A. -- that it would go up about half that 16 way, half of the -- half the radius, if I'm following 17 your question. 18 Q. Let me restate it. I might not have 19 stated it very clearly. He says that -- 20 Mr. Richardson, who I understand wrote this, says the 21 use of a seven-mile radius in the analysis is 22 important as the seven-mile radius approximates a 23 15-minute travel time parameter -- 24 A. Okay. 25 Q. -- for travel.

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1 A. Right.

2 Q. So, you know, that means -- the way I read
3 that is that since Trident is within this seven-mile
4 radius, that pretty much anywhere in this circle a
5 patient could get to Trident within 30 minutes?

6 A. It would be at the outer edge of that,
7 yes.

8 Q. Okay. Would you expect -- in looking at
9 the Exhibit 4 here, would you expect that Roper's
10 proposed hospital is going to treat people kind of in
11 the northern portion of the radius?

12 A. Yes, very possibly would.

13 Q. Okay. And you would expect that -- I
14 would imagine that -- you know, that this line is
15 obviously imaginary. I mean, Roper is likely to get
16 patients outside of the radius, correct?

17 A. Correct.

18 Q. Okay. I think you answered this question,
19 but just from a rule-out perspective, did you have
20 anything to do with developing the financial
21 statements in the Roper CON application?

22 A. No.

23 Q. Okay. And you never went over those
24 financial statements with Mr. Knapp, did you?

25 A. No.

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1 Q. Okay. If you would turn in your book
2 there to the Bates page 1178. It's going to be
3 towards the end. Jt. 2 *

4 A. Okay.

5 Q. Okay. And you recall this slide
6 presentation that was made at the project review?

7 A. Yes, I do.

8 Q. Okay. And I think if you look on 1176,
9 you actually introduced some folks or kind of took
10 the lead in this but then introduced some folks
11 throughout the presentation, correct?

12 A. Yes.

13 Q. Okay. Did you review the slide
14 presentation prior to it being presented?

15 A. Yes.

16 Q. Okay. Did you have any input into any
17 particular slides; do you recall?

18 A. I don't recall anything specifically, but
19 I'm -- I would imagine that I did have some input and
20 thoughts.

21 Q. Okay. If you look at the second paragraph
22 on page 1178, "Decision to place inpatient services
23 in Goose Creek rather than Moncks Corner was based on
24 both internal and external market analyses. In both
25 cases, Moncks Corner population and growth would not

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1 support the inpatient volume required to justify the
2 expense."

3 Do you see that?

4 A. Yes.

5 Q. Okay. Did you ever actually see those
6 market analyses?

7 A. I very likely did, but I don't recall
8 specifically looking at those.

9 Q. Okay. Well, what is the expense threshold
10 that would provide Roper the justification to build a
11 hospital in Moncks Corner? What would that need to
12 look like?

13 A. It would have to have the likelihood of
14 producing a positive return on investment over a
15 reasonable period of time.

16 Q. Okay. Is your testimony that the hospital
17 in Moncks Corner cannot achieve a positive net income
18 over a period of time?

19 A. No, that is not my testimony.

20 Q. Okay. Well, why didn't Roper choose
21 Moncks Corner, then, as a location?

22 A. Once again, I think we felt like that the
23 majority of the population was in the site that we
24 picked, and we were trying to put our hospital where
25 we felt like most of the people lived and we'd serve

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1 more people in that area, so . . .

2 Q. Why didn't Roper put its ED in that area?
3 Why did it go all the way to Moncks Corner to put an
4 emergency department up there and other facilities,
5 such as an ASC?

6 A. I don't know. It was --

7 Q. It was before your time?

8 A. -- before my tenure there.

9 Q. Okay. Do you think Trident Medical
10 Center's proposed hospital in Moncks Corner is
11 capable of a positive net income in three to five
12 years of operation?

13 A. Yes, I think it is.

14 Q. And what's your basis for that statement?

15 A. I think it's a growing area. I think it's
16 one that would allow the stand-alone hospital to
17 break even or do better, and I think they're part of
18 the Trident Health System, which would allow the
19 Health System to receive those patients that
20 originate in that area to move into Trident for more
21 complex procedures. So I think it would be an
22 overall positive -- again, I haven't seen their
23 numbers, but just it would be my --

24 Q. Kind of gut instinct?

25 A. -- instinct. It would.

36 (Pages 138 to 141)

Page 142 1 Q. Okay. Are you aware that -- maybe before 2 your time, but I'll still ask you if you're aware of 3 it, that Roper actually promised Moncks Corner a 4 hospital? 5 A. I've heard of that, but that was, again, 6 previous time, previous people involved. 7 Q. Were you ever told that by anyone -- any 8 residents of Berkeley County? 9 A. Yes, I have been told that. 10 Q. Do you remember the names of any of those 11 people? 12 A. No. 13 Q. Were any of them legislators or local 14 government officials? 15 A. Could have been, yes. 16 Q. Okay. But you don't remember any of their 17 names? 18 A. No. 19 Q. Do you remember when these statements were 20 made to you? I mean, obviously from sometime between 21 2003 and today? 22 A. Again, numerous meetings with them over 23 time, but I can't recall exactly when I heard that. 24 And I really didn't place much credence in it. I 25 don't know how someone 20 years ago could possibly	Page 144 11 Q. And so my question is -- and then to the 12 state, to the DHEC staff, it stated that Roper has 13 done a study, internal and external, that shows 14 that -- that the population and growth doesn't 15 support the inpatient volume required to justify the 16 expense. So my question to you is if rope -- you 17 know, if the county can support two hospitals and 18 one's going to go on Carnes Crossroads, where should 19 the second one go in order to justify the expense? 21 A. I think Moncks Corner is probably as good 22 a location as I can think of. 24 Q. Well, let me ask you this. If -- if Roper 25 St. Francis' study and representations is that it
Page 143 1 predict that a hospital would be needed. So -- but I 2 think I heard it and took that for what it was worth 3 and moved on. 8 Q. Were you affiliated with Roper when it 9 closed its doors on the Baker Hospital? 10 A. I was not. 11 Q. Okay. And you realize that Baker was 12 located in one of the poorest neighborhoods in the 13 Charleston area, correct? 14 A. Yes. 15 Q. Do you think people relied on that 16 hospital? 17 A. Some did, yes.	Page 145 1 can't justify the expense, are you going to hold 2 Trident to a higher standard? 4 A. No. I assume they did their analysis 5 before they submitted their CON and felt like there 6 was enough population in that area to support a 7 hospital, otherwise -- I'm not going to speak for 8 them, but I guess they would have located it in 9 another area, so ... 19 Q. That Moncks Corner, you know, does have 20 enough volume to justify the expense of putting a 21 hospital there? 22 MR. LONG: Objection. 23 A. I think it would be a financially -- 24 again, my unsophisticated analysis of this -- I have 25 not looked at it in detail -- of my -- my instincts

Page 146 1 tell me that that hospital will be successful for the 2 Trident Health System, perhaps not if it was the only 3 hospital that they owned in this area, but to be part 4 of their health system, I think it will be a 5 successful financial venture for them. 6 BY MR. THOMAS: 7 Q. Don't you think it would be more 8 successful if it didn't have -- if there wasn't 9 another hospital 12 miles south at Carnes Crossroads 10 that has a seven-mile -- and potentially higher -- 11 reach going into Moncks Corner? 13 A. I really -- 15 Q. Go ahead. 16 A. I really don't think people -- people tend 17 to go toward the population centers for services 18 rather than away from it. I really don't think -- I 19 think they're two separate markets. I just don't 20 think people in Goose Creek would go to Moncks Corner 21 for health services. I think it would -- the 22 hospital would be sustained by the population that's 23 within that radius. 24 Q. Okay. So you think that Carnes 25 Crossroads, that hospital, is in a separate market	Page 148 1 Q. But in the analysis that Roper did for its 2 East Cooper CON application, it's counting on folks 3 from 29464, the population epicenter of Mount 4 Pleasant, driving northeast along 17 to go to its 5 facility, isn't it? Correct? 6 A. Somewhat, yes. 7 Q. Okay. If you'd turn over in the book in 8 front of you there in Roper's DHEC record, page 1182* 9 A. Okay. Jt. 2 * 10 Q. Let me get this right. There's a 11 statement here, it says -- on the third paragraph, it 12 says, "evidenced by the number of patients from 13 Berkeley County that choose Roper St. Francis 14 Healthcare, our construction of a hospital in the 15 area will provide enhanced access this community 16 wants, deserves, and needs." 17 And it talks about this 23,000 emergency 18 department visits, correct? 19 A. Uh-huh, yes. 20 Q. You would agree with me that about 15,000 21 of those visits were actually in Berkeley County? 22 A. Give me one moment, if I could, just read 23 this. 24 Q. Sure. Not a problem. 25 A. Okay. Restate that for me, please.
Page 147 1 than Moncks Corner? 2 A. Yes. 3 Q. That's your testimony? Okay. 4 Now, Roper St. Francis did -- is counting 5 on people in Mount Pleasant driving north away from 6 the population center to go to Roper St. Francis 7 Mount Pleasant, correct? 8 A. Are we counting on people who live north 9 of Mount Pleasant to come down to the hospital? 10 Q. No. People who live in Mount Pleasant in 11 the 29464 ZIP code to drive up to Roper St. Francis 12 Mount Pleasant's facility in 29466, north along 17? 13 A. I'm -- I'm not following your geography. 14 If you don't mind restating that, please. 15 Q. I'm sorry. Okay. So Mount Pleasant is -- 16 basically runs kind -- 17 A. Kind of lateral. 18 Q. -- south to north, but in a -- I guess, an 19 easterly direction? 20 A. Okay. 21 Q. Okay. As you said, I think, earlier 22 it's -- the population is somewhat bound, I mean, the 23 way it's going up because of, I guess, the Wando 24 River and some other geographical breaks there. 25 A. Right.	Page 149 1 Q. Yeah. Roper's presented this graph at the 2 project review meeting that says 23,160 ED visits. 3 And then the statement there in the third paragraph 4 says, you know, look at all the people -- "as 5 evidenced by the number of patients from Berkeley 6 County that choose Roper St. Francis, our 7 construction in the area will provide the enhanced 8 access this community wants, deserves, and needs." 9 A. Yes. 10 Q. Well, I mean, these ED patients, these ED 11 visits here, more than half of those origin -- 12 actually were to Roper St. Francis Berkeley's ED, 13 correct? 14 A. That -- that would be my assumption, yes. 15 Q. Okay. So the folks who went here already 16 had access at least to an ED, they didn't have to 17 drive downtown or to Bon Secours -- for many of these 18 people, correct? 19 A. Again, I'm not familiar enough with the 20 numbers to know if this only represents those coming 21 to the downtown or whether that would be included in 22 the Berkeley numbers as well, but ... 23 Q. Okay. So you don't know? 24 A. I don't. 25 Q. Okay. That's fine. And you would agree

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1 with me that at least the folks that visit the Moncks
2 Corner Roper ED facility, the ones that need to be
3 transferred, the overwhelming majority are
4 transferred 32 miles downtown, correct, to -- or over
5 to Bon Secours, correct?

6 A. Correct.

7 Q. Okay. And you haven't -- you haven't
8 studied Trident's CON application, have you?

9 A. I have not.

10 Q. Okay. Were you involved in the initial
11 decision to move the Moncks Corner Ambulatory Surgery
12 Center from Moncks Corner to Carnes Crossroads?

13 A. Yes.

14 Q. Okay. And that decision was somewhat made
15 because of the exhibit we looked at earlier, correct,
16 the purchase agreement that Roper would agree that
17 put ambulatory surgery center and an MOB --

18 A. Yes, sir.

19 Q. -- at Carnes Crossroads?

20 A. Yes.

21 Q. Why -- explain to me why Roper St. Francis
22 decided not to go through with that.

23 A. We felt that by pursuing those -- the
24 transfer of those three ambulatory surgery suites and
25 then, in addition to that, pursuing a hospital, which

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1 would have four operating rooms, that would be seven
2 ORs in one site, that just did not seem to make
3 economic sense or good health planning sense. That's
4 when we decided to stand down on the move of those
5 ORs to Carnes Crossroads.

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39 (Pages 150 to 153)

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1 aha, now is the time to go build those 30 beds after 2 Roper has gotten their hospital approved. 3 Q. Let me ask you this: You came in as new 4 leadership in 2003 to Roper, correct? 5 A. Correct. 6 Q. Okay. It took you about two years, but 7 then you instituted -- what was the name of the 8 program? 9 A. Journey to Excellence. 10 Q. Journey to Excellence. Okay. Is it your 11 understanding or do you know that the leadership of 12 both Trident Medical Center and Summerville Medical 13 Center changed in about 2008? 14 A. That -- that is -- that is my 15 understanding, yes. 16 Q. Okay. And you think that new leadership 17 might have had some new ideas about what to do? 18 A. Could -- could very well have. 19 Q. Okay. Now, you say that the Summerville 20 expansion uses the same population base as Roper 21 St. Francis. But why does Roper St. Francis care 22 about that when really the thing -- the justification 23 that they gave in the CON application was that you're 24 going to serve the patients that it already serves? 25 A. We think their motives are that they want	1 census, I think that would be a different -- 2 different position, but . . . 3 Q. So if they just were, you know, dishonest 4 and decided not to show where their patient origin 5 comes from, you wouldn't have had any opposition to 6 the project? 7 MR. LONG: Objection. 8 BY MR. THOMAS: 9 Q. I mean, they have to show where their 10 patients come from, correct? 11 A. Sure. 12 Q. Okay. And by virtue of where they're 13 located, some of their patients are going to come 14 from Berkeley County, correct? 15 A. Right. 16 Q. Okay. So the fact that 20 percent of 17 their patients come -- their inpatients come from 18 Berkeley County, that's enough for Roper St. Francis 19 to oppose a 30-bed, on-campus bed expansion? 20 MR. LONG: Objection. 21 A. Yes. 22 BY MR. THOMAS: 23 Q. Okay. Would you be, then, surprised if 24 Roper wanted to do anything on its campus simply 25 because it gets patients from Dorchester that
Page 155	Page 157
1 to have that -- get those 30 beds, and they'll use 2 that to keep us from getting our new hospital 3 approved. So we think -- it's clear to us this is 4 about keeping Roper St. Francis out of their -- out 5 of Berkeley County. 6 Q. Okay. So you think that the decision to 7 build 30 beds, \$26 million project, is simply to keep 8 Roper out of Carnes Crossroads? 9 A. Absolutely. 10 Q. Okay. Any other reasons they might want 11 to do their project? 12 A. I think there's more to it than the beds. 13 I think the facility -- I have not been in it, but 14 I'm told it does need to be renovated and they need 15 to move out -- so I think they're genuine in that 16 they'd like to update the hospital, but we think the 17 bed need is inconsistent -- I'll just put it 18 politely -- inconsistent with their opposition to us. 19 Q. What about their days of 100 percent 20 census, would that have anything to do with needing 21 to expand the number of beds they have? 22 A. If, indeed, they're at 100 percent census, 23 I think that would be an indication. I don't know 24 how often that data point occurs, but I think -- to 25 us, the fact that if they hadn't used Berkeley County	1 Summerville should be able to oppose any CONs for 2 on-campus expansions downtown or at Bon Secours? 3 MR. LONG: Objection. 4 BY MR. THOMAS: 5 Q. Would that be fair? 6 A. I would be surprised at that, yes, because 7 I think the circumstances are different. We've been 8 approved to build a hospital at Carnes Crossroads. 9 Q. Summerville was approved, correct? 10 A. And we feel like until our hospital gets 11 up and running, give us a chance to get our facility 12 open. If they can still justify that need, we'd 13 certainly reconsider that. 14 Q. So you are saying, in fact, that opening a 15 hospital at Carnes Crossroads could affect the 16 utilization at Summerville Medical Center, correct? 17 A. No. I'm just saying give us a chance to 18 get our hospital up and through that first three- to 19 five-year period, and if you still feel like you need 20 those beds, then -- 21 Q. But the reason you're saying that is 22 because you think there's going to be an effect on 23 the utilization of Summerville, correct? 24 MR. LONG: Objection. 25 BY MR. THOMAS:

Page 158 20 Q. Well, I'm just going to ask you and you 21 tell me, do you think Roper's opening a hospital at 22 Carnes Crossroads will affect the utilization at 23 Summerville Medical Center? 24 A. It could very possibly have some -- some 25 effect. I don't think it's going to be significant,	Page 160 1 down at the bottom. Turn to Trident 9127 for me. 2 A. 9127. Let me see. Okay. 3 Q. One second here. If you look at the top 4 here, 2009, I realize you opened in 2011, but 2009 5 was kind of the projected first year of operations 6 according to the CON application, correct? 7 A. Yes. 8 Q. Okay. Do you think that Roper St. Francis 9 is going to be anywhere close to 10,083 patient days 10 at Mount Pleasant this year? 11 A. Let me see. Let me see. Let me do the -- 12 that sounds like an ADC of about 30 a day. No. I 13 think we'll be less than that. 14 Q. Okay. At least through June, according to 15 Exhibit 1, Mount Pleasant Hospital was at 1570 adult 16 patient days, correct? I'm just looking at the -- 17 A. For Mount Pleasant, yes. Okay. 18 Q. So if I annualize that, that would be 19 about 3,140 days, correct? 20 A. That sounds right. 21 Q. Okay. So that would be about a third of 22 what was projected in the CON application for Year 1, 23 a third of the patient days? Do I have that about 24 right? 25 A. Right. And what I'm thinking of is the
Page 159 1 but it could have some de minimis effect. 3 Was Roper expecting higher utilization at 4 its -- inpatient utilization at its Mount Pleasant 5 facility than what it has today in its first year of 6 operation? 7 A. Actually, the census is pretty close to 8 what we had in our Certificate of Need pro forma. I 9 believe our chief financial officer has already -- 10 Q. Go ahead, I'm sorry. 11 A. -- tested the fact that our budget, our 12 first-year budget, was a bit more aggressive than our 13 Certificate of Need pro forma. So it's pretty close 14 to what we had to -- 15 Q. Are you sure about that? 16 A. Am I sure about that it's close to the 17 CON? 18 Q. Well, to the pro forma, the number of 19 patient days? 20 A. That's my -- that's my recollection, yes. 21 Q. Okay. In the pro forma the first year -- 22 I'll hand you a copy of this. I'm going to hand you 23 a copy of the Roper Mount Pleasant CON application. 24 I'm not going to make this an exhibit, though. If 25 you turn over to -- again, it's got Bates numbers	Page 161 1 total revenue number as opposed to patient days being 2 closer to that 30 million in the first full year. 3 But, again, we'll be slightly short of that. But, 4 again, you know, when you open a new hospital, it 5 takes a while to get specialists there and a number 6 of other things. 7 But our outpatient volume has been very 8 strong, our emergency room volume has been strong, 9 inpatients weaker than what we had hoped. So ... 10 Q. Okay. But, I mean, much of the physical 11 plant out there is devoted to an inpatient hospital, 12 correct? 13 A. It's a big part of it, yes. Jt. 8 ✱

Page 166	Page 168 20 MR. THOMAS: Let's mark this as the next 21 exhibit. Would it be 5? 22 (Exhibit No. 5 was marked.) * 23 BY MR. THOMAS: 24 Q. I might have referenced this earlier. I 25 think I did. "The Hospital Wars Battle Moves to Pet. 12 *
Page 167	Page 169 1 Berkeley County." 2 A. Yes, sir. 3 Q. Sounds epic. Do you recall I asked you 4 maybe if you read this article. Did you have an 5 opportunity to read this? 6 A. Yes, I did.

43 (Pages 166 to 169)

Page 170 11 Q. Okay. Now, if you put an emergency room 12 someplace in an area that hadn't traditionally had 13 one, you would agree with me that there is, to some 14 degree, a build-it-and-they-will-come-type situation 15 there, right, because people tend to go to the 16 closest emergency room? 17 A. That's right. That's right. But I 18 wouldn't say the fact that it's there, that they'll 19 go any more frequently. I think they'll -- they'll 20 just find it more convenient to go there, so ...	Page 172 1 like the fifth page of the article, and I just want 2 to look at the one, two -- the third and fourth kind 3 of paragraphs there.* 4 A. Am I on the same page as you? 5 Q. Yes, sir. It's got "Who Pays?" there. If 6 you go to the fourth paragraph -- the third paragraph 7 down, it says, "Dunlap, Roper's CEO, says his Mount 8 Pleasant Hospital's patient base is developing." 9 I just wanted to ask you if this quote is 10 correct. It's got you quoted as saying, "It's a 11 long, slow process -- a 50- or 100-year horizon," he 12 said." 13 Did you say that? 14 A. I did. 15 Q. Okay. And if you go down a couple of more 16 paragraphs, it starts with the word "before." 17 "Before either Roper's Mount Pleasant or its 18 proposed Berkeley one operates at full tilt, they 19 still could be a financial boon by serving as an, 20 quote, entryway into the Roper St. Francis system, 21 unquote, for patients who need advanced, long-term, 22 and costly care," Dunlap said." 23 Is that an accurate paraphrase and quote 24 of what you said? 25 A. Essentially, yes.
Page 171 25 Q. Okay. If you'd turn over to -- it looks	Page 173 1 Q. Okay. Do you know Todd Shuman? 2 A. Yes. 3 Q. I guess he's medical director? 4 A. Uh-huh. 5 Q. Is it your understanding that he made this 6 quote: "Patient with chest pain who goes to Roper 7 Hospitals in metro area's outskirts might be 8 transferred to the downtown hospital, which offers 9 more cardiac services." 10 A. Yes. 11 Q. Okay. And then he said, "They could end 12 up with surgery, rehab, and other follow-up care in 13 the Roper System." 14 A. Uh-huh, yes. 15 Q. Is that an accurate statement? 16 A. Yes, it is.

44 (Pages 170 to 173)

Page 174	Page 176 2 Q. Okay. Let me ask you this: Would you 3 support MUSC building an 85-bed hospital in the West 4 Ashley area? 5 A. No. 6 Q. Okay. Why not? 7 A. It's -- 8 Q. It doesn't -- well, let me back up. 9 Does MUSC see a lot of patients from the 10 West Ashley area? 11 A. I would assume they do, yes. 12 Q. Okay. And so if they just put in a CON 13 application for an 85-bed hospital or a 50-bed 14 hospital for that matter, indicating that they just 15 wanted to serve their patients closer, you know, give 16 them better access rather than having to drive all 17 the way downtown, why wouldn't that be a good idea? 18 A. Well, I think they would have to 19 demonstrate that that area is underserved, and I 20 don't think they could do that with the current 21 location of hospitals in this market. So, you know, 22 to me, if that need was not being met, absolutely, 23 I'll support that. But I think it is being met.
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45 (Pages 174 to 177)

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5 MR. THOMAS: 2424, but it had been
6 designated as confidential -- redesignated, as I
7 understand.

8 BY MR. THOMAS:

9 Q. That's an e-mail from Mr. Bowling to you,
10 April 23rd?

11 A. Yes.

12 Q. Okay. And so would Mr. Bowling typically
13 prepare slides to help you with your presentations?

14 A. Yes.

15 Q. Okay. And if you turn the page, 2425,
16 that's a -- kind of an aerial of the Carnes
17 Crossroads site, correct?

18 A. Yes.

19 Q. And if you can kind of make out -- I think
20 that's a bank on the north -- kind of the north
21 portion there?

22 A. Yes.

23 Q. All right. But at least in terms of
24 houses, there aren't any houses at this point in
25 time, in April of 2007, in this picture, are there?

46 (Pages 178 to 181)

Page 182	Page 184
1 A. Correct. 2 Q. Okay. Do you think it looks much 3 different than this today? 4 A. Not much. I think it does have some 5 streets and curbs, but not much in terms of housing 6 development. 7 Q. All right. Was it important to get the -- 8 if you turn over in that same document, Mr. Dunlap, 9 to 2429 for me. 10 A. Okay. 11 Q. It's "Carnes Crossroads Deal Points." 12 A. Yes. 13 Q. And the third one down, "Restrictions on 14 competitive ventures." 15 Was that an important component of the 16 deal? 17 A. Yes. 18 Q. Okay. And then if you turn to 2430, it 19 says, "Next steps." 20 A. Yes. 21 Q. The third one down, "Identify interested 22 physicians." 23 Does that mean interested physicians in 24 order to place in an MOB there or to send to KPASC? 25 A. I don't recall what that referenced.	
Page 183	Page 185
1 Q. Okay. It says, "Identify the interested 2 physicians, file the relocation CON for the Moncks 3 Corner ASC, syndicate ASC," -- and then the last one, 4 "relocation of an addition of imaging services." 5 What's your understanding of what imaging 6 services were going to be relocated from Moncks 7 Corner? 8 A. You know, at the time I don't think they 9 had an MRI, and -- but I know the thought would be if 10 we had a center there, we'd want a full-service 11 imaging with CT, MRI. 12 Q. Okay. But you think something was going 13 to be relocated from Moncks Corner? 14 A. Possibly. I don't -- I just don't recall 15 that specific piece.	

47 (Pages 182 to 185)

Page 186

Page 188

1 A. I just don't recall if that was something
2 we discussed early on or not.

3 Q. Well, would you have disagreed with her at
4 this time? I mean, you would have read this e-mail,
5 correct?

6 A. Yes.

7 Q. Okay. Would you have disagreed with that
8 statement?

9 A. No.

21 Q. Did you ever see any articles prior to --
22 prior to Roper filing a CON for a new hospital in the
23 Goose Creek area that indicated that the community
24 was crying out for a new hospital in Goose Creek?

25 A. I don't recall seeing that.

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Page 189

1 Q. Okay. Would you turn to Roper-Berkeley
2 2488 for me. *

3 A. Okay.

Pet. 218 *

4 Q. This is an e-mail string. As you know,
5 you start from the bottom and come up to the top.
6 The earliest is at the bottom.

7 A. Okay.

8 Q. It looks like Patricia Criminger sent you,
9 Tuesday, August 12th, an e-mail to you and
10 Mr. Bowling about draft message to our boards
11 regarding the Trident announcement?

12 A. Yes.

13 Q. Okay. Do you kind of remember a flurry of
14 activity occurring after Trident announced its plans
15 to build a hospital in Moncks Corner?

16 A. Yes.

17 Q. Okay. And there is a line here, I guess,
18 it says, "Doug and David, I will reformat this
19 message in letterhead. This is just for your
20 review." It says, "Shannon reminded me to be very
21 careful what we put in print to our board since it
22 could be subpoenaed down the road."

23 So was it kind of the -- kind of even from
24 the early stages of finding out Trident was going to
25 file that litigation was a significant possibility?

48 (Pages 186 to 189)

Page 190	Page 192
	1 provide an important update to the board of 2 directors, plans for Berkeley County, correct? 3 A. Correct. 4 Q. All right. And this is outlining all the 5 significant activities that are currently underway, 6 such as engaging FreemanWhite Architects to design a 7 facility? 8 A. Uh-huh. 9 Q. And then you say, "We are engaging a 10 third-party consultant, Levitt Healthcare Affiliates 11 in Atlanta, to independently verify our needs 12 analysis." 13 Do you see that? 14 A. Yes. 15 Q. Okay. Does that ring a bell as to who 16 David Levitt is, because you said earlier you didn't 17 remember him? 18 A. I -- I don't recall ever meeting with him. 19 In fact, I don't believe we actually ended up 20 engaging them formally, so . . . 21 Q. Okay. Do you recall why? 22 A. I do not. 23 Q. All right. Okay. So it's fair to say 24 that prior to September 2nd, 2008, you hadn't met -- 25 or Roper hadn't engaged Rick Knapp, had they?
Page 191	Page 193
2 Q. Okay. If you turn to Roper-Berkeley 3 000751* for me. 751 is what you're looking for. 4 A. 751. Pet. 82 * 5 Q. Yes, sir. 6 A. Way on back. 7 Q. No, 751. So I think it's going to be 8 closer to the front for you. 9 A. Oh, 751. 10 Q. Yes, sir. 11 A. Okay. I'm getting close. 731. There we 12 go. 13 Q. Okay. Do you recognize this document 14 dated September 2nd, 2008? 15 A. I do, yes. 16 Q. Okay. And this is from you to Roper 17 St. Francis Healthcare Board of Directors, correct? 18 A. Yes. 19 Q. All right. So I think we looked back a 20 little earlier about -- looks like August 8, that was 21 kind of the date that -- that you would have 22 discovered that Roper was -- excuse me, Trident was 23 submitting a CON application, correct? 24 A. Correct. 25 Q. All right. So by September 2nd, you	1 A. I just don't recall. 2 Q. Okay. There's no mention in here of a 3 financial analysis that had been done to determine 4 whether the project was viable or financially 5 feasible, correct? 6 A. Correct. 7 Q. Okay. And are you sure that up till 8 September 2nd, there had been one? 9 A. I'm reasonably sure of that, yes. 10 Q. I'm just going to ask your counsel to 11 produce that if you're aware of it, because I haven't 12 seen that. 13 A. Okay. 14 Q. Thanks. 15 MR. LONG: You've got all the documents. 16 MR. THOMAS: I know, I just haven't seen 17 what he's referring to, and he says he's pretty 18 sure that there was some kind of financial -- 19 MR. LONG: No, he said he thought. 20 MR. THOMAS: Point taken.

49 (Pages 190 to 193)

Page 194 10 MR. THOMAS: Just the press release, 2843. * 11 A. Stick it in here? Pet. 119 * 12 BY MR. THOMAS: 13 Q. You don't have to. Oh, yeah, go ahead and 14 put it in there since that's the exhibit copy. 15 That's probably a good idea. That's just the press 16 release. It's an e-mail from Patricia Criminger to 17 you, among others, dated September 3rd, 2008. It's a 18 press release. 19 A. Yes, sir. 20 Q. Okay. Do you recall this? 21 A. I do. 22 Q. Okay. Do you know -- can you explain why 23 in the press release there was no mention of 24 Trident's plans to build a hospital in Moncks Corner? 25 A. Let me take a moment, if I may, and read	Page 196 1 Hospital Association. 2 Q. Okay. Is he the president or the 3 executive director? 4 A. He is the chief executive 5 officer/president. 6 Q. Now, are you currently the chair of that 7 organization? 8 A. Let me think. I may have been in the 9 rotation to maybe -- let me think. I'm immediate 10 past in '11 -- no -- chair in '10. I think I was on 11 the board but not -- not -- not in the chair rotation 12 at that time. 13 Q. Okay. Do you know when you're going to be 14 chair, or have you already been chair? 15 A. I'm now immediate past. 16 Q. Okay. 17 A. That's the best job to have. 18 Q. That's -- I hear you there. 19 You said, "Hi, Thornton, things could get 20 interesting. Just wanted you to be aware of this 21 recent development." 22 What did you mean by things could get 23 interesting? 24 A. Well, I know the South Carolina Hospital 25 Association cannot and does not take positions on
Page 195 1 this and see. 2 Q. Sure. 3 A. I don't see a reference, and I don't know 4 why Trident would have been included or excluded from 5 that. 6 Q. Okay. I mean, at this point in time, 7 there wasn't a -- at least in this press release, 8 there wasn't a -- an assertion by Roper that both 9 hospitals should be approved, correct? 10 A. Correct. * 11 Q. Turn to Roper-Berkeley 3398 for me. Pet. 133 * 12 A. 3398? 13 Q. Yes, sir. 14 A. It looks like it's missing. 15 Q. Oh, gosh. 16 A. I don't have it. It goes from 3397 to 17 3407. 18 MR. THOMAS: All right. Do you have it? 19 MR. LONG: I've got it. (Tendered.) 20 BY MR. THOMAS: 21 Q. All right. This is an e-mail between you 22 and Thornton Kirby at the top. 23 A. Yes. 24 Q. For the record, who is Thornton Kirby? 25 A. He is the president of the South Carolina	Page 197 1 competitive matters. And just out of courtesy, I was 2 letting him know that things were going to get 3 competitive in terms of the CON in this market and 4 wanted him to hear about this, so just sending it to 5 him as a courtesy. 6 Q. Okay. If you turn the page to 3399, it's 7 a -- just a continuation, looks like, of a story that 8 Molly Parker had done. 9 A. Yes. 10 Q. All right. Tara Boone at RPL Firm -- 11 what's the RPL Firm, if you know? Do you know who 12 Tara Boone is? 13 A. Let me think, here. 14 Q. Turn back -- I'm sorry, Mr. Dunlap, at the 15 top. It's an e-mail that attaches the article. It 16 says from Tara Boone. 17 A. Tara Boone. Tara Boone. Oh, oh, oh, 18 that's our legislative consultant in Columbia that 19 works for us -- Ted Riley. 20 Q. Oh, yeah, yeah. All right. I know those 21 guys. 22 All right. If you'd turn the page over 23 for me. 24 A. Okay. 25 Q. Okay. The second paragraph says, "Today

50 (Pages 194 to 197)

Page 198 1 Dunlap acknowledged that because of Trident's 2 announcement, Roper had accelerated its timeline for 3 filing with DHEC by at least a year," correct? 4 A. Yes. 5 Q. Okay. But it may have even been longer 6 than that. Is that a fair statement? 7 A. Yes. 8 Q. Okay. It says, "If the state agency does 9 not receive two applications from the same planning 10 period, it tends to require that one hospital build 11 out and operate for a full year before allowing 12 another hospital to build nearby," he says." 13 Is that accurate? I mean, was that your 14 understanding? 15 A. That -- that was, yes. 16 Q. Okay. Have you ever been misquoted in a 17 newspaper article before? 18 A. Yes. I've certainly -- taken out of 19 context.	Page 200
Page 199	Page 201

51 (Pages 198 to 201)

Page 202	Page 204 1 Q. I think Mr. Bowling testified that he was 2 surprised that Trident opposed it, didn't he? 3 A. I don't know. I -- I would respectfully 4 disagree with Mr. Bowling if he said that I -- I 5 think we felt like this was going to be -- at least I 6 felt like it was going to be a long, drawn-out 7 process. 8 Q. Why did you have that feeling? What was 9 the basis for that opinion? 10 A. Just felt like that they -- you know, they 11 had a hospital, we had a hospital. I felt like we 12 were more than likely going to be into some long, 13 drawn-out discussions. I can't recall if we had 14 retained counsel at that point or not. But whether I 15 heard it from a consultant or counsel -- 16 Q. Well, don't tell me what you heard from 17 your counsel. 18 A. I felt like it was going to be a long 19 battle.
Page 203 10 Q. Okay. I guess I'm curious. If the 11 application had been approved -- let's say you 12 submitted it in December, correct? 13 A. Yes. 14 Q. All right. If it would have been 15 approved, say, in March or April and Trident didn't 16 oppose DHEC's decision to approve both, would you 17 have actually been years away from starting the 18 project? That implies to me, when I see that, as 19 three to four years away. What did you mean there? 20 MR. LONG: Objection. 21 A. We thought there was a very good 22 likelihood that Trident would oppose this and we 23 would be in a long process of working through the 24 dispute, so that was our assumption. 25 BY MR. THOMAS:	Page 205

52 (Pages 202 to 205)

Page 206	Page 208 1 A. Yes. 2 Q. Okay. Let me ask you this: Why is it so 3 difficult for Roper St. Francis to cover that 4 hospital in Mount Pleasant with 700 physicians 5 representing every medical specialty? 6 A. Many of them are located in -- outside of 7 the Mount Pleasant market. So I think this would 8 include physicians that are -- that have privileges 9 within our health facility, but it's just a little 10 too far to have an office at St. Francis or Roper and 11 also cover Mount Pleasant for acute care services. 12 You almost need a full-time physician in Mount 13 Pleasant. So and that's what we're in the process of 14 doing, is one by one recruiting specialists who would 15 be there full time. 16 Q. Well, let me ask you this: I mean, the 17 hospital took about three years to build, right? 18 A. Right. 19 Q. Okay. Why -- why are you just now getting 20 around to recruiting these folks for that hospital 21 when, you know, the -- you knew that it would be 22 completed in November of 2010? 23 MR. LONG: Objection. 24 BY MR. THOMAS: 25 Q. Why has it taken so long?
Page 207 19 Q. The fourth bullet down says, "More than 20 700 physicians representing every medical specialty." 21 One of the things John Sullivan testified 22 to was that East Cooper's been unable or the Mount 23 Pleasant -- excuse me, Roper Mount Pleasant Hospital 24 has been unable to staff certain specialties for call 25 coverage. Are you aware of that fact?	Page 209 1 A. It's just a difficult, tedious process to 2 get physicians to change their location. And is 3 there enough for one full-time, do they need to be 4 part-time, so I think those are -- as we're learning 5 more about that market. I think one of our incorrect 6 assumptions was that people would be able to office 7 in the downtown area and cover that. But with the 8 traffic flow, that's a 40-minute drive, and it's just 9 not practical for people to round, so . . . I think 10 our assumption was that a lot of this 600 -- or 700 11 physician group would be able to cover that, but that 12 has not borne out to be the case. 13 Q. Will that be a similar issue in Carnes 14 Crossroads? 15 A. I think it will completely be a different 16 market that we'll have to get physicians to set up 17 practice there as well.

Page 210	Page 212
12 Q. Okay. Turn that same -- I think it's the 13 same document of 3441 for me. 14 A. Okay. 15 Q. It's a map there. Do you know where 16 Trident Medical Center is on that map? 17 A. Approximately. 18 Q. Do you see where the -- where it says 19 I-26? 20 A. Yes. 21 Q. The little sign there? 22 A. Uh-huh. 23 Q. If you were to put a star there denoting 24 Trident Medical Center, wouldn't it be directly above 25 that sign?	23 Q. Okay. If you go to Roper-Berkeley 769[*] for Pet. 83[*] 24 me. 25 A. Okay. I'm still this side of the tab,
Page 211	Page 213
1 A. Um -- 2 Q. Or that 26 symbol? 3 A. Yes, it would be right there, right off of 4 26 above the 526 loop there. 5 Q. Well, wouldn't it be above this 26, 6 wouldn't it (indicating)? 7 A. Here? 8 Q. Yes, sir, right above that 26. 9 A. That looks a little far up to me, but ... 10 Q. You think? 11 A. I would have put it -- did a couple of 12 exits past 526. 13 Q. I'm telling you, see where the road -- see 14 where Ladson is? 15 A. Uh-huh. 16 Q. There's a road that goes over to HWY 52? 17 A. Oh, right. Okay. So that's it there, 18 right. 19 Q. Yeah. Okay. Did you realize, then, 20 that's -- in terms of on the map that you're showing 21 folks where Goose Creek has a star, it's actually 22 much closer to Goose Creek than the location for 23 Roper St. Francis Berkeley? 24 A. I did not.	1 right? 2 Q. Yes, sir. We're about to cross over here. 3 A. 769. Okay, so back the other way. 4 Q. Yeah, 769. 5 A. Okay. 6 Q. Is this is the letter, just for the 7 record, of March 7th of 2009, that you would have 8 written to Dr. Greenberg? 9 A. Yes. 10 Q. Okay. And you mentioned a meeting that 11 you had. Who else was at that meeting with you and 12 Dr. Greenberg, if you recall? 13 A. As I recall, it was Dr. Alan Nussbaum. 14 Q. Okay. Who is he? 15 A. He is the -- I believe he was chairman of 16 the board of Roper Hospital at the time and a friend 17 of Greg Greenberg's. 18 Q. So was Mr. -- or Dr. Nussbaum was unable 19 to impress upon Dr. Greenberg the importance of the 20 letter? 21 A. You know, I think the meeting was really 22 more about how do we address some of the questions 23 that Dr. Greenberg posed to me. I think we had 24 accepted the fact that he wasn't going to write the 25 letter and -- but he had pointed out some things that

Page 214 1 he wanted more support on, so we talked about those 2 things. 3 Q. Was there any change as a result of that 4 meeting? Was there any more support by Roper for 5 MUSC's program? 6 A. I think so. I don't recall specifically, 7 but I believe Dr. Nussbaum was also involved in the 8 leadership of the Medical Society of South Carolina. 9 And I believe that they did come in, and one of the 10 things they wanted to do was to have digital copies 11 of some of the Medical Society records for the 12 library, and so I think they did step forward and do 13 some of those things. 14 Q. The Medical Society did? 15 A. I believe so, yes.	Page 216 15 Q. All right. If you'll turn over to 1079* 16 for me, Slide 4. 17 A. Okay. 18 Q. It says -- second bullet there says, "And 19 to construct a not-for-profit, community-based 20 hospital in a county currently lacking inpatient 21 services." 22 A. Right. 23 Q. What is a community-based hospital? What 24 does that mean to you? 25 A. I think it's a -- Pet. 87 *
Page 215 11 Q. Okay. Do you believe that it would be 12 better for Berkeley County to have one larger 13 hospital, centrally located, that maybe would have 14 150 beds or two smaller hospitals with only 50 beds? 15 A. There would probably be more efficiencies 16 of having one -- one hospital.	Page 217 1 Q. I've seen that a lot. 2 A. -- having a hospital that has the 3 voluntary board that lives and works in the 4 community. 5 Q. Okay. Is HCA not a community-based 6 hospital -- or excuse me, Trident Medical Center? 7 A. I wouldn't disagree that they are. 8 Q. Okay. If you'd turn over the page to 1080 9 for me. 10 A. Okay. 11 Q. On that Slide 5 is a second paragraph, 12 says, "In addition, 24 percent of Berkeley County 13 residents that had an inpatient stay in 2007 chose 14 Roper Hospital or Bon Secours St. Francis Hospital 15 despite the travel time, which can take anywhere from 16 20 to 65 minutes." 17 A. Right. 18 Q. I mean, do you know if the patients 19 consciously chose those hospitals, or did they choose 20 a physician who happened to be on the medical staff 21 of those hospitals and they were admitted to those 22 hospitals by virtue of their physician? 23 A. I think it could be either one, either the 24 physician or the hospital preference. 25 Q. And what about the folks that happened

Page 218 1 maybe to be working in downtown or in West Ashley but 2 live in Berkeley County and need emergency services, 3 do you think they chose the hospital or consciously 4 chose not to go to a Trident or a Summerville, or do 5 they go to the closest emergency room to address 6 their needs? 7 A. They very well could have gone through the 8 emergency room and ended up there. 13 Q. Okay. Looks like Slide 18. * This comment 14 here says, "The Carnes Crossroad location is 15 centrally located near Goose Creek and 15 to 20 Pet. 87* 16 minutes from Moncks Corner and Summerville." 17 Do you think Carnes Crossroads is 20 18 minutes from Summerville? 19 A. I think it very -- yes, definitely. 20 Q. You think it's 20 minutes? 21 A. Absolutely. Have you ever driven down 22 that highway into Summerville? 23 Q. I have. Look at your -- look at Dunlap 24 Exhibit 4 for me. It's the map. Okay. 25 Do you think it takes 20 minutes to get	Page 220 1 significant part of Summerville, is 15 to 20 minutes, 2 in my opinion. 3 Q. Well, which part are you talking about? 4 A. Well, much of it. I don't know how to 5 describe it, but let's say to the hospital. 6 Q. Okay. So to the hospital outside of the 7 seven-mile radius, would take 15 to 20 minutes? 8 A. Depending on the traffic and time of day. 9 Q. Okay. But you would agree with me, rush 10 hour is, what, 7:00 to 9:00 and, what, 4:00 to 6:00? 11 A. Sounds about right. 12 Q. Okay. And it says, "The Carnes Crossroads 13 location is centrally located near Goose Creek"; is 14 that right? 15 In this slide, Carnes Crossroads has 16 actually been annexed into Goose Creek, hasn't it? 17 A. I believe it is in Goose Creek, yes. 18 Q. Okay. All right. Turn to Roper-Berkeley 19 3404 for me, if you would. 3404.* 20 A. 3404. I went too far. Let's see. Okay. Pet. 134* 21 Q. Okay. Is this -- do you recall drafting 22 this letter? 23 A. Um -- 24 Q. It looks like a Wednesday, June 24th, 25 2009.
Page 219 1 from Carnes Crossroads to Summerville if you take 2 that Road 17A to North Main Street? 3 A. Depends on where you're going. I bet to 4 the hospital, it probably takes longer than that. 5 Q. It took me 4 minutes to do it one time. 6 A. What time of day was it? 7 Q. Well, I'll tell you this, it wasn't rush 8 hour. But rush hour is only four hours in a 24-hour 9 period, right? 10 A. I would say dis -- respectfully disagree 11 with you. I think it's probably at least 20 minutes. 12 Q. From the town of Summerville, which is 13 about five miles away from Carnes Crossroads, you 14 think that's a 20-minute travel time? 15 A. I think to parts of Summerville and 16 specifically to the hospital in Summerville, and I've 17 made that drive a number of times. My son also has 18 another Larry's Giant Subs in Summerville -- stop 19 there the next time you're in -- and we have made 20 that trips numerous times, and it's a hike. 21 Q. Okay. But this doesn't say Summerville 22 Medical Center, it just says 15 to 20 minutes from 23 Moncks Corner and Summerville. 24 A. Well, you're trying to play on words, and 25 I would just respectfully say that to get to a	Page 221 1 A. 2009, I would say more than likely it was 2 drafted by one of the PR folks with me reviewing 3 that. 4 Q. You would have read it, and you wouldn't 5 have let it go out unless you agree with it, correct? 6 A. Correct. Yes, sir. 7 Q. Okay. If you turn the page over for me, 8 there's a paragraph that starts, "DHEC is 9 responsible." 10 A. Uh-huh. 11 Q. All right. And then it says, "When one 12 considers" -- this is the last sentence -- "When one 13 considers that Beaufort County, which is smaller than 14 Berkeley County, has two successful hospitals 15 totalling more than 250 beds, it seems very clear 16 that Berkeley County could easily support two 17 hospitals and a hundred beds." 18 Do you see that? 19 A. Yes. 20 Q. Okay. Do you know where those two 21 hospitals in Beaufort are located? 22 A. I don't believe there are two hospitals in 23 Beaufort County. It looks like a -- 24 Q. You sure about that? 25 A. -- misprint.

Page 222 1 Q. There's Hilton Head Medical Center. 2 A. Oh, you're right -- excuse me. You're 3 right. 4 Q. Okay. And do you have any idea what the 5 travel time is from Hilton Head Medical Center to 6 Beaufort Memorial Hospital? 7 A. I don't, but it would be a long -- long 8 drive. 9 Q. Okay. And Beaufort County definitely has 10 two separate population centers, doesn't it? 11 A. Yes. 12 Q. And there's some geographical boundaries 13 in there, too, isn't there? 14 A. Yes. 16 And there's a couple documents more within 17 the nonattorneys here -- expert eyes only. Look at 18 3196 for me, if you would. : Pet. 126* 19 A. Okay. 20 Q. And then there's a document, too, it looks 21 like it's from Patricia Criminger to David Dunlap 22 dated June 26, 2009? 23 A. Uh-huh, yes. 24 Q. For -- it says, "Subject, Trident appeal, 25 Roper's response talking points." And it's --	Page 224
Page 223 1 Mr. Gallati is stating that it looks like here in 2 another e-mail from Ms. Criminger that, "DHEC has an 3 obligation to make a tough decision. They opted for 4 an easy but financially not sound solution to resolve 5 these competing applications because both projects 6 cannot be financially successful. We will now be 7 forced to appeal DHEC's decision." 8 And then the response here, do you recall, 9 on the next page Roper-Berkeley 3197, if this was the 10 response that you made? 11 A. Let's see. That does look like our 12 response to that. 13 Q. Okay. And fourth paragraph down says, "We 14 had hoped that Trident would not take steps to turn 15 this into a long, ugly, and expensive legal battle 16 that will only delay both projects and much needed 17 healthcare services for people living and working" -- 18 Do you see that? 19 A. Yes. 20 Q. Okay. While you may have hoped that, but 21 your expectation was that Trident was going to 22 challenge DHEC's decision if they approved both, 23 correct? 24 A. Mine was, yes.	Page 225 1 (A brief break transpired.) 2 (The deposition was continued under a 3 separate restricted record.) 4 * * * * * 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25

Page 294 3 Q. In regards to the Roper St. Francis CON 4 application, your understanding or memory is 5 different from the planners who actually wrote the 6 application, would you defer to the planners -- 7 A. Yes. 8 Q. -- as to what exactly is in the 9 application? 10 A. Yes. 11 Q. And was there ever any time any linkage 12 between the growth and the Physician Partners and the 13 decision to build a hospital in Berkeley? Was there 14 ever a date where you said you had to have so many 15 physicians employed at Berkeley, or were those 16 decisions separate? 17 A. Completely separate.	Page 296 1 CERTIFICATE OF REPORTER 2 3 I, Heather M. Curlin, Professional Court 4 Reporter and Notary Public for the State of South 5 Carolina at Large, do hereby certify: 6 7 That the foregoing deposition was taken 8 before me on the date and at the time and location 9 stated on page 1 of this transcript; that the 10 deponent was duly sworn to testify to the truth, the 11 whole truth and nothing but the truth; that the 12 testimony of the deponent and all objections made at 13 the time of the examination were recorded 14 stenographically by me and were thereafter 15 transcribed; that the foregoing deposition as typed 16 is a true, accurate, and complete record of the 17 testimony of the deponent and of all objections made 18 at the time of the examination to the best of my 19 ability. 20 21 I further certify that I am neither related 22 to nor counsel for any party to the cause pending or 23 interested in the events thereof. 24 25 Witness my hand, I have hereunto affixed my 26 official seal this 28th day of October, 2011, at 27 Charleston, Charleston County, South Carolina. 28 29 Heather M. Curlin 30 Professional Court Reporter 31 Notary Public 32 State of South Carolina at Large 33 My Commission expires: 34 May 27, 2021
Page 295 1 DEPONENT CORRECTION SHEET 2 In Re: Trident Medical Center, LLC vs. SC DHEC, et al. 3 Case Nos: 09-ALJ-07-0332-CC, 09-ALJ-07-0333-CC, 4 09-ALJ-07-0336-CC 5 Deposition of: David L. Dunlap 6 Date Taken: October 25, 2011 7 Taken Before: Heather Curlin 8 9 Having read my deposition, no changes are necessary. 10 Signed: 11 12 Having read my deposition, I make these corrections: 13 Page Line Correction 14 Page Line Correction 15 Page Line Correction 16 Page Line Correction 17 Page Line Correction 18 Page Line Correction 19 Page Line Correction 20 Page Line Correction 21 Page Line Correction 22 Page Line Correction 23 Page Line Correction 24 Page Line Correction 25 Signed:	Page 297 1 INDEX 2 3 Stipulations Page 4 4 EXAMINATION 5 BY MR. THOMAS 4 6 BY MR. LONG 287 7 Signature of Deponent 292, 295 8 Certificate of Reporter 293, 296 9 10 11 12 EXHIBITS 13 Trident Medical Center: 14 1. RSFH Financial Highlights 53 15 2. Purchase and Sale Agreement 110 16 3. RSFH Web Site Excerpt 126 17 4. Seven-Mile Radius Map 134 18 5. Post and Courier Article 168 19 6. David Dunlap Documents Binder 177 20 (Exhibit Number 6 is not attached.) 21 22 23 24 25

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STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

TRIDENT MEDICAL CENTER, LLC,
D/B/A BERKELEY MEDICAL CENTER,

Petitioner(s),

vs.

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

SOUTH CAROLINA DEPARTMENT OF
HEALTH AND ENVIRONMENTAL CONTROL
AND ROPER ST. FRANCIS HOSPITAL-BERKELEY
D/B/A/ ROPER ST. FRANCIS HOSPITAL,

Respondent(s).

(CAPTION CONTINUED NEXT PAGE.)

ATTORNEY/EXPERT EYES ONLY

D E P O S I T I O N

WITNESS: DAVID L. DUNLAP, FACHE

DATE: Tuesday, October 25, 2011

TIME: 9:30 a.m.

LOCATION: Parker Poe Adams & Bernstein, LLP
200 Meeting Street, Suite 301
Charleston, South Carolina

TAKEN BY: Attorneys for Trident Medical Center

REPORTED BY: HEATHER M. CURLIN
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Page 227 1 (CAPTION CONTINUED) 2 TRIDENT MEDICAL CENTER, LLC, D/B/A BERKELEY MEDICAL CENTER, 3 4 Petitioner(s), 5 vs. Case No: 09-ALJ-07-0333-CC 6 SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, 7 Respondent(s). 8 9 CAREALLIANCE HEALTH SERVICES AND ROPER ST. FRANCIS HOSPITAL-BERKELEY, 10 11 Petitioner(s), 12 vs. Case No: 09-ALJ-07-0336-CC 13 SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL AND TRIDENT MEDICAL CENTER, LLC, 14 15 Respondent(s). 16 17 18 19 20 21 22 23 24 25	Page 229 17 Q. Roper-Berkeley 3300 and 3301? * 18 A. Yes. Pet. 130 * 19 Q. All right. And on the Carnes Crossroads, 20 it indicates that, "We are finalizing details of an 21 agreement with the Daniel Island developers to 22 purchase 66 acres at the intersection of 17A and 23 Highway 176." 24 A. Yes. 25 Q. All right. It says, "The new downtown for
Page 228 1 APPEARANCES: 2 ATTORNEYS FOR CAREALLIANCE HEALTH SERVICES AND ROPER ST. FRANCIS HOSPITAL-BERKELEY: 3 4 NEXSEN PRUET, LLC BY: JAMES G. LONG, III, ESQUIRE 1230 Main Street, Suite 700 5 Charleston, South Carolina 29201 803.771.8900 jlong@nexsenpruet.com 6 7 8 ATTORNEYS FOR TRIDENT MEDICAL CENTER, LLC, d/b/a BERKELEY MEDICAL CENTER: 9 10 PARKER POE ADAMS & BERNSTEIN, LLP BY: WILLIAM R. THOMAS, ESQUIRE 1201 Main Street, Suite 1450 11 Columbia, South Carolina 29201 803.255.8000 willthomas@parkerpoe.com 12 13 14 ATTORNEYS FOR SCDHEC (via telephone): 15 ASHLEY BIGGER And Kristin Pawlowski 16 COUNSEL FOR SCDHEC 2600 Bull Street 17 Columbia, South Carolina 29201 803.898.3350 biggerac@dhec.sc.gov 18 19 20 21 22 23 24 25 (INDEX AT REAR OF TRANSCRIPT)	Page 230 1 Goose Creek." 2 What did you mean by that? 3 A. I think that's a term that the developer 4 was using that Goose Creek does not have a, quote, 5 downtown per se, and that the development with the 6 retail center was designed to be sort of a, if you 7 will, a downtown center for -- 8 Q. Okay. 9 A. -- that community. 10 Q. All right. It says, "The initial plans to 11 build a medical office building with a diagnostic 12 imaging center and to relocate the surgery center to 13 Moncks Corner to this location and offer ownership to 14 physicians." It says, "Future hospital site?" 15 Correct? 16 A. Yes. 17 Q. Okay. So at that point in time, the idea 18 of putting a hospital there was somewhat -- it wasn't 19 completely finalized. Is that a fair assessment? 20 A. Correct. 21 Q. Okay. And then at the bottom there, the 22 last sentence says, "We are not required to build a 23 hospital on the site." 24 A. Right.

2 (Pages 227 to 230)

Page 231	Page 233 1 think, pretty much in the -- pretty close to that red 2 tab. I think you're pretty close there. 3 A. All right. Okay. 4 Q. All right. This is a document that was 5 produced by Roper St. Francis. It says, 6 "Presentation to rating agencies and bond insurers, 7 June 2007." 8 A. Yes. 9 Q. Okay. And you were a participant in that, 10 correct? 11 A. Yes. 12 Q. Is this something you go up to Moody's or 13 Standard and Poor's or something like that and make 14 this slide presentation up in New York or something? 15 A. For the past several years, we've been 16 doing it telephonically. 17 Q. Okay. So you send them a copy of the 18 PowerPoint -- 19 A. Yes. 20 Q. -- and go through it with them? Okay. 21 Do you take the lead in the presentation? 22 A. I generally open it up, make the 23 introductions, talk a bit about the mission 24 organization, and then each of the people on the call 25 take a piece of the presentation.
Page 232 24 Q. Okay. All right. Turn over to 25 Roper-Berkeley 1462 for me. I think it will be, I	Page 234 1 Q. Okay. And, obviously, you're not going to 2 put anything in this report that you wouldn't believe 3 to be true or accurate, correct? 4 A. Correct. 5 Q. Okay. If you would turn to Roper-Berkeley 6 1470 within that document, that will be page 9 of the 7 actual document. 8 A. Okay. 9 Q. All right. There's highlights. The third 10 one down, "Market leader in our primary service area 11 with a strong position in terms of market 12 preference," correct? 13 A. Correct. 14 Q. And that's important to Roper St. Francis? 15 A. Yes. 16 Q. Okay. The next bullet, "Primary service 17 areas expected to experience solid growth especially 18 within market segments attractive to Roper 19 St. Francis Hospital." 20 What are the market segments that are 21 attractive to Roper St. Francis Hospital? 22 A. I would say mostly the procedural-based, 23 the surgical procedures, the procedures that are done 24 in an operating room or in a treatment room, and 25 things of that nature.

Page 235 1 Q. Okay. And would that be because those are 2 kind of higher margin segments? 3 A. They are higher margin, but they're 4 also -- I think, fit nicely within our physician 5 medical staff. We have a large number of physicians 6 in Charleston compared to other communities, and it 7 fits nicely within their areas of expertise. 8 Q. Okay. But, generally, you would agree 9 with me that surgical procedures have a higher margin 10 in terms of reimbursement than others? 11 A. Yeah. 12 Q. Okay. Turn to Roper-Berkeley 1478 for me, 13 and that's page 17 of the actual document. 14 A. Okay. 15 Q. It says -- this is the Medical Society 16 business plan. Why is it important to show the 17 rating agencies the Medical Society business plan? 18 A. Well, it's an unusual relationship, as you 19 know, where the Medical Society is a supporting 20 organization of Roper St. Francis. And even though 21 we can't count their assets as part of ours, there's 22 a very close relationship as has already been brought 23 out that they do support our capital, they do 24 purchase land and hold it for us, and this type 25 thing. So looking at them as a related party.	Page 237 1 Q. Okay. Turn to Roper-Berkeley 1490 for me. 2 It's page 29 of the actual document. 3 A. Okay. 4 Q. Go one back, I'm sorry, to 1489. 5 A. Okay. 6 Q. This is -- the slide is stated, "Current 7 maldistribution of healthcare services in tri-county 8 hospital map." 9 A. Yes. 10 Q. This is interesting. Why -- why did Roper 11 go to Mount Pleasant, which had a hundred beds, okay, 12 and those are East Cooper's beds, right? -- 13 A. Right. 14 Q. -- instead of going to Berkeley first that 15 had zero beds? 16 A. I think a lot of that was driven by our 17 board's desire to have a Mount Pleasant strategy. 18 And that would come up frequently in our discussions 19 with the board that they're urging management to make 20 sure that we are represented in that. So that was -- 21 that pushed it up on our priority list. 22 Q. Okay. But, I mean, you would agree there 23 were already 100 beds in East Cooper, but in 24 Berkeley, there was zero, right? 25 A. Right.
Page 236 1 Q. Okay. What is -- do you know what the 2 investment corpus of the Medical Society is today? 3 A. It's in excess of a hundred million. I 4 know it dropped as all of them did in 2008, but I 5 believe it's north of a hundred million. 6 Q. Okay. Could Roper St. Francis achieve its 7 financial goals without the contributions of the 8 Medical Society or the additional funding? 9 A. It would be a challenge. I think we'd 10 have to really scale back on our capital 11 expenditures. So, I guess, possible but with maybe a 12 bit slower pace. 13 Q. Okay. And Roper St. Francis has -- is in 14 a balance sheet recovery plan, correct? 15 A. Right. 16 Q. Okay. And the Medical Society is a large 17 part of that; isn't that right? 18 A. Yes, they are. 19 Q. And part of the reason for that is -- is 20 the heavy capital investment in these two new 21 hospitals of East Cooper and potentially Berkeley, 22 correct? 23 A. The primary reason, I think, is the drop 24 in market value of our portfolio, but also the 25 capital expenditures are also a part of that.	Page 238 1 Q. Okay. But why didn't the board want to, 2 you know, have a Berkeley strategy? 3 A. I think they probably did, but I don't 4 know whether it's just that geographically they heard 5 more about it and maybe it was just more visible, as 6 they moved in and around the town, that Mount 7 Pleasant just seemed to be pushed up on their 8 priority scale. 9 Q. Okay. But Berkeley, of course, had more 10 population than Mount Pleasant or even the East 11 Cooper area had at the time, correct? 12 A. Yes. 13 Q. And this zero on the map is over -- 14 actually over in Moncks Corner, isn't it? 15 A. It looks like it's right in the middle of 16 the lake there. 17 Q. Yeah. All right. And on page 1490, which 18 is the next page. 19 A. Uh-huh. Yes. 20 Q. "Acute care beds per thousand 21 populations," and the city of Greer, Florence, and 22 all these different towns and the number of beds they 23 have. 24 A. Right. 25 Q. It says, "Number of beds per thousand

Page 239 1 population." 2 A. Yes. 3 Q. What is a good ratio? What's -- per 4 thousand population, if you know. 5 A. I don't. I don't know. 6 Q. Okay. Turn to Roper-Berkeley 1493 for me, 7 if you would. 8 A. Okay. 9 Q. This is a demographic snapshot of Mount 10 Pleasant. The average household income here, 11 90,000 -- or 89,256. That's pretty good, isn't it? 12 A. Yes, sir. 13 Q. All right. And on page 33, or 1494 14 Roper-Berkeley, there's a public relations firm that 15 looks like it conducted an independent survey? 16 A. Yes. Yes. 17 Q. "East Cooper residents rank Roper Hospital 18 the highest of all area hospitals for quality of 19 care." 20 Is that right? 21 A. Yes. 22 Q. All right. And "86 believe more 23 healthcare facility choices mean more services and 24 convenience." 25 You're aware that convenience isn't a	Page 241 1 HealthCare System. 2 Q. Okay. I understand. All right. And on 3 1496, which is the financial projections there to the 4 bond rating agency? 5 A. Yes. 6 Q. The projected loss to the bond rating 7 agency that was made was what, in Year 1? 8 A. 3.7 million. 9 Q. Okay. Do you know -- do you know why that 10 was stated at 3.7 million rather than what was stated 11 in the CON application -- 12 A. I do not. 13 Q. -- 7.8 million? 14 A. I do not. 15 Q. Okay. Do you know who developed this pro 16 forma? 17 A. Our finance department, but I don't know 18 who within that would have done that. 19 Q. Okay. And on the next page, on 1497, 20 there's a patient days 11,390, right? 21 A. Yes. 22 Q. And that's even more days than was 23 projected -- I think we looked at this and talked 24 about it, didn't we -- in the CON application for the 25 first year was 10,083, right?
Page 240 1 project review criteria in the state health plan, 2 correct? 3 A. Correct. 4 Q. Okay. Or in the regulations; is that 5 right? 6 A. That would -- that would sound reasonable 7 to me. 8 Q. Okay. On Roper-Berkeley 1495, "Sources 9 and uses," you know, the bond financing, 118 million. 10 And then looks like this is for the Mount Pleasant 11 hospital, correct? 12 A. Correct. 13 Q. Okay. That founding member contribution 14 there, \$25 million? 15 A. Yes. 16 Q. All right. Is that money eventually paid 17 back to the Medical Society? 18 A. No. 19 Q. Okay. That's their investment in the 20 project, then? 21 A. Right. It -- 22 Q. Go ahead. 23 A. It's not only the Medical Society, it's 24 all three founding members, which would be Bon 25 Secours Health System, Medical Society, and Carolinas	Page 242 1 A. Right. 2 Q. Okay. Do you know why these numbers are 3 different? 4 A. I do not. Could have been timing. I'm 5 not sure which report was prepared first. But I 6 don't know the reason. 7 Q. Okay. Well, this report would have 8 been -- looks like it was dated June of 2007. Isn't 9 that right? I think that's what it said. Yeah, June 10 2007? 11 A. Okay. 12 Q. The report to the rating agency. And so 13 the report, the actual CON application, was received 14 by the department June 15th, 2005, right? 15 A. Right. 16 Q. Okay. So whoever did these numbers in the 17 report to the bond rating agency thought that -- 18 thought that Roper St. Francis would actually perform 19 better than what was set forth in the CON 20 application. Is that a fair statement? 21 A. Correct.

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1 Q. Okay. How was Roper able to do that?

2 A. We were -- both of these take on a
3 separate life. CIGNA started out extremely low. It
4 was -- many years ago it was one of those health
5 plans where we actually took all the risks, and in
6 order to get out of that risk contract, which was
7 hemorrhaging millions of dollars, we took a very low
8 long-term -- a ten-year, long-term contract with
9 CIGNA. And finally worked our way out of that.

10 BlueCross, again, a similar history where
11 we were actually "out of network" for BlueCross back
12 in the late '90s, went back in and came in at very
13 low rates. So we were able to negotiate better
14 increases starting from a lower base.

Page 244

Page 246

18 Q. All right. Turn to page 1558* for me.

19 A. Okay.

20 Q. It says, "Managed care."

21 A. Yes.

22 Q. All right. The third bullet, it says,
23 "Recent double-digit increases on two largest
24 contracts," correct?

25 A. Yes.

Pet. 95*

6. (Pages 243 to 246)

Page 247 14 Q. Okay. All right. On Roper-Berkeley 1560* 15 or page 99 of the document, there's a risk over here 16 on the left side, and it says, "Impact mitigated" 17 kind of on the right column, correct? 18 A. Yes. 19 Q. And you see one thing there is "leverage," 20 right? That's another term for debt; is that 21 correct? 22 A. Right. 23 Q. Okay. And so is it -- is Roper really 24 been in kind of a balance sheet recovery going back 25 to 2007?	Page 249 1 remarks, are these remarks correct, in terms of good 2 representation made to the rating agencies? 3 A. I believe they're good -- good summary 4 remarks, yes. Pet. 95*
Page 248 1 A. I don't think we defined it as that back 2 then, but, again, because of our distribution model 3 with our founding members, that capital and money in 4 the bank is a constant priority for us. 5 Q. Okay. But at least for the rating agency, 6 it was described here as a balance sheet recovery 7 initiative? 8 A. Right. Yes. 9 Q. All right. If you'll turn over to 10 Roper-Berkeley 1564 for me or page 103. 11 A. Okay. 12 Q. These are the take-away remarks, correct? 13 A. Yes. 14 Q. All right. Benchmarks, got the growth, 15 demonstrated commitment of quality, financial, 16 through the -- "and through the pursuit of the 17 Journey to Excellence, Roper will remain the top" -- 18 this just kind of touches on the pillars, right? 19 A. Yes. 20 Q. In fact, I think there's actually in this 21 document -- well, I skipped over it. The pillars are 22 actually on 1474, correct, or page 13 of the actual 23 document? 24 A. Yes, they are. 25 Q. Okay. If you go back to take-away	Page 250

7 (Pages 247 to 250)

Page 251 Pet. 136* 6 Q. Okay. Go to Roper-Berkeley 3545* for me. 7 A. Okay. 8 Q. This is an e-mail dated November 20th, 9 2007, from you to Mike Cassells, correct? 10 A. Yes. 11 Q. "Roper St. Francis strategy slides for 12 BSHSI. Mike, we want to use some of the slides that 13 Elizabeth attached except more in-depth for the MSSC 14 presentation. I think they would like to hear about 15 our strategy in critical issues." 16 A. Right. 17 Q. Okay. If you would, turn the page to 18 3546. 19 A. Okay. 20 Q. There's, I guess, five or six bullet 21 points here, strategic position. 22 A. Yes. 23 Q. Market leader, benchmark. Let me ask you 24 this: Are all of these bullet points true today? I 25 mean, is it -- that's still the strategic position of	Page 253 1 Healthcare. 2 Q. Okay. And are these same bullet points 3 true today in terms of the strategic position for 4 Roper St. Francis Healthcare? 5 A. I'd say pretty much. 6 Q. Are there any that aren't? I mean, maybe 7 that's the best way to do it. I'm just trying to 8 rule it out. 9 A. You know, we talked about the word 10 "aggressive" growth strategy earlier. I might -- 11 might say reasonably aggressive, but I think 12 aggressive may be a bit too strong, but . . . I 13 think all the rest of them look -- look pretty good. 14 Q. Okay. Well, how -- I mean, how could you 15 be less aggressive -- how could Roper St. Francis be 16 less aggressive than today? It just opened up a 17 hospital in East Cooper. It's trying to open up 18 another hospital in what's traditionally been 19 Trident's -- where Trident has had a dominant market 20 position. It's employed 200 physicians over the last 21 three or four years. I mean, is there a way it could 22 be more aggressive, the growth strategy? I'm not 23 talking about -- 24 A. You know, within our -- I mean, we could 25 certainly be much more aggressive outside our primary
Page 252 1 Roper St. Francis Healthcare? 2 A. This looks like a presentation that 3 Elizabeth Player put together. 4 Q. Uh-huh. 5 A. And let's see. 6 Q. It says, "Mike, we might want to use some 7 of the slides that Elizabeth attached except more 8 in-depth for the MSSC presentation." 9 A. Right. 10 Q. "I think they would like to hear about our 11 strategy and critical issues." 12 First of all, do you know what this was in 13 response to? 14 A. I do not recall. It looks like a 15 presentation that Elizabeth had put together for -- 16 Q. Bon Secours? 17 A. Bon Secours. Strategy slides for Bon 18 Secours. Bon Secours, as you know, is one of our -- 19 Q. Sure. 20 A. -- founding members, so . . . 21 Q. But are -- 22 A. Looks like Elizabeth's language here. 23 Q. But is the strategic position here, is 24 that for Bon Secours, or is that for the System? 25 A. That would be for Roper St. Francis	Page 254 1 area, you know, getting out and doing arrangements 2 with other health systems, but . . . 3 Q. But within the primary service area, would 4 you agree that Roper has had an aggressive growth 5 strategy for the past four years? 6 A. Yes. I'd say -- I'd say we're very 7 aggressive. 8 Q. Okay. And if you'd turn the page to 9 Roper-Berkeley 3547. 10 A. Okay. 11 Q. This is the SWOT analysis -- strengths, 12 weaknesses, opportunities, and threats, correct? 13 A. Yes. 14 Q. All right. And this is for 2008. In 15 terms of -- look at -- under "Opportunities" -- one, 16 two, three, four, five -- fifth bullet down, "grow 17 service lines but continue ease of access to 18 specialists on medical staff." 19 Do you know what that means? 20 A. You know, I think what that -- I believe 21 there were some issues expressed by our primary care 22 physicians that they were having difficulty getting 23 communication back and forth to our specialists, and 24 that was about the time we were beginning to employ 25 more doctors, so I think it was an opportunity for us

Page 255	Page 257
1 to just improve that communication flow between 2 primary care and specialist. 3 Q. Okay. All right. "Grow service lines but 4 continue ease of access." 5 So make it more -- easier to access 6 specialists on the medical staff? Is that what that 7 means? 8 A. Right. 9 Q. Okay. 10 A. And get the communication flowing back 11 electronically, and ... 12 Q. Okay. And then in terms of the threats in 13 2008, MUSC is the number one, correct -- 14 A. Yes. 15 Q. -- on the list? And is that still true 16 today? 17 A. Um -- 18 Q. Is MUSC the biggest threat to Roper 19 St. Francis from a strategic position? 20 A. I would say they would be among the top 21 competitive threats. 22 Q. What are the other ones? 23 A. Freestanding centers. I think all these 24 other things, declining reimbursements are still -- 25 labor shortage is not the issue that it was. I guess	1 the market leader in the four most common types of 2 cancer, but I think they are -- they are beginning to 3 edge into that with a greater presence with their 4 National Cancer Institute designation. 5 Not so much heart and vascular, but they 6 are doing some things in the stroke area where 7 they've got a terrific statewide stroke network -- 8 Q. Uh-huh. 9 A. -- telemedicine. So that's an area that 10 we see us needing to move forward in that area if we 11 want to be competitive with them. 12 Q. So you see MUSC's, I guess -- what do they 13 call it? The ART Tower, is that what it is? 14 A. Yes. The Ashley River Tower, yeah. 15 Q. That ART Tower was a positive thing for 16 them that helped them out strategically? 17 A. I think that was part of it. I think that 18 and their designation as a National Cancer Institute 19 and some other things. They're a very worthy 20 competitor as -- as is Trident. 21 Q. Okay. And the other critical issues here, 22 employment -- 23 A. Uh-huh. 24 Q. Under medical staff, development; and - 25 Mount Pleasant staff development, correct?
Page 256	Page 258
1 just the future of the unknown with healthcare reform 2 would be another major threat. 3 Q. Okay. So Trident Health System isn't a 4 threat? 5 A. They could be, yes. I would certainly 6 list them among the major -- certainly a major 7 competitor. 8 Q. Are they on any SWOT analysis that you're 9 aware of because they weren't -- in 2008 they weren't 10 listed as a threat, correct? 11 A. Correct. I don't recall whether they're 12 listed on other ones today or not. 13 Q. Okay. If you turn the page to 14 Roper-Berkeley 3548. This is the critical issues. 15 "MUSC opening a new tower and expanding market 16 presence," correct? 17 A. Yes. 18 Q. All right. And how has that -- has that 19 new tower had an impact on Roper's market share? 20 A. They -- they've done well in the new 21 tower, so, yes, I think we've seen some impact on 22 that in a couple of our service lines. So they 23 are -- 24 Q. Which service lines would those be? 25 A. Cancer is one that comes to mind. We're	1 A. Yes. 2 Q. So back in there in 2008, that was on the 3 radar screen that -- needed to develop a medical 4 staff for Mount Pleasant, correct? 5 A. Right. 14 Q. Okay. Turn to Roper-Berkeley 3884 for me, 15 if you would. 16 A. Okay. 17 Q. This is an e-mail from Bret Johnson -- 18 well, first, from Doug Bowling to you and Bret 19 Johnson, correct, about the market shares numbers for 20 2006? And Doug said, "I'm afraid it is not good news 21 across the board. The market share at St. Francis 22 stayed flat instead of offsetting Roper's losses it 23 had in prior years. MUSC was the clear winner, 24 picking up share across all service lines and in all 25 three counties." Then he says this: "They're

Page 259 1 aggressiveness in employing docs and placing them in 2 the community is clearly driving market share." 3 Do you agree with that statement? 4 A. Yes. 5 Q. Okay. And then it says, "This makes their 6 three practice acquisitions this week even more of a 7 concern." 8 So I asked you earlier whether or not 9 MUSC's going out and acquiring a lot of physician 10 practices is somewhat of a driver of Roper doing the 11 same thing. And you said you didn't think so. But 12 after reading this, would you reconsider your answer? 13 A. I think it would certainly -- was 14 certainly a factor, yes. I don't think it was the 15 predominant factor, but I think it was a factor in -- 16 in our desire to have a more integrated health system 17 with our physicians.	Page 261 1 legislative delegation that Roper St. Francis wasn't 2 going to build a hospital in Moncks Corner; is that 3 right? 4 A. Right. 5 Q. Okay. And can you recall what the 6 response was? 7 A. I think it was mixed. I think the -- I 8 think they were encouraged by our Carnes Crossroads 9 interest in developing health services there. I 10 think there are some, for example, the mayor -- Mayor 11 Peagler I think was very interested in having us go 12 to his community, and . . . But -- but, generally, 13 the fact that we were committed to our Berkeley 14 strategy, was -- it wasn't an unpleasant meeting. I 15 think Moncks Corner has wanted a hospital for many 16 years. I think they were disappointed, but at least 17 we're coming to a neighborhood near them. 18 Q. Okay. But the decision had been made long 19 before March 26th, 2008, that Roper wasn't going to 20 build in Moncks Corner, correct? 21 A. I think it's something we went back from 22 time to time and revisited and continue to feel like 23 that a Goose Creek location was more preferable.
Page 260 14 Q. Okay. Go to 3299[*] for me, if you would. 15 A. Okay. 16 Q. All right. This is an e-mail from you to 17 Brenda Myers, Doug Bowling. "Thanks, Brenda. Doug, 18 we need to go through the entire here's why we are 19 not, cannot building a hospital scenario as well as 20 discuss Carnes Crossroads." 21 A. Right. 22 Q. Okay. Do you recall this? 23 A. Yes. 24 Q. Okay. So this would have been the Carnes 25 Crossroads lunch where you were going to tell the	Page 262 Resp. 28[*]

10 (Pages 259 to 262)

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Page 263	Page 265
Page 264	Page 266 23 Q. All right. And do you believe that? I 24 mean, do you believe Todd Gallati when he says 25 they're not going to build a hospital if Roper is 1 approved? 2 A. No. I don't believe Todd is being 3 disingenuous, but I think -- I think the community is 4 going to demand it. I think they'll -- in my 5 opinion, I think they'll succumb to that and fulfill 6 their commitment to build a hospital. I mean, we 7 fully expect there will be a hospital in Moncks 8 Corner. 9 Q. Even though Mr. Gallati has said 10 unreservedly that they would not -- that they will 11 not build a hospital if Roper's approved? 12 A. Well, I don't think he's felt the full 13 wrath of that community, and once -- once that 14 occurs, I think they'll -- I think -- again, this is 15 my opinion, for what it's worth, that they will 16 commit to go ahead and build.

11 (Pages 263 to 266)

Page 267 9 Q. Okay. If you go to 3654*, should be about 10 a few pages to the right. Pet. 143* 11 A. Okay. 12 Q. This is from Bryan Cox to you, 8/12 senior 13 staff minutes. And this is the senior staff meeting 14 that you would have -- what? -- did you say on a 15 weekly basis? 16 A. We do, every Tuesday. 17 Q. All right. So this would have been four 18 days after you found out about Trident Medical 19 Center's plans in Moncks Corner, correct? 20 A. Right. 21 Q. And then if you look at the minutes on 22 Roper-Berkeley 3655, "Discussion about article in 23 8/9/08 issue of the Post and Courier," correct? 24 A. Yes. 25 Q. All right. You can turn the page.	Page 269 1 Q. Okay. 2 A. I don't know if that -- I don't think it 3 was something I said, but I don't know who made that 4 statement, but . . . 5 Q. Okay. What about, see, now, here, Roper 6 St. Francis could educate DHEC on a lack of need for 7 a new hospital in Moncks Corner. Is that not what 8 that says? 9 A. Right. 10 Q. Well, what's the basis of that? 11 A. Well, our analysis had shown that for us, 12 for Roper St. Francis, it didn't work to build a 13 hospital there, so . . . 14 Q. So your analysis showed, for the 15 nonprofit, the expense couldn't -- the volumes 16 couldn't justify the expense, correct? 17 A. Correct. 18 Q. Okay. All right. Let's see here. Go to 19 Roper-Berkeley 3550 for me. 3550* Pet. 137* 20 A. Okay. 21 Q. All right. It's an e-mail from you to 22 Larry Hinsdale, August 25th, 2008, presentation for 23 board. 24 A. Okay. 25 Q. So this is 8/25/2008, I guess, is --
Page 268 1 A. Okay. 2 Q. And it's four bullets. "Roper may 3 consider whether to contest the CON, contesting new 4 hospital may result in negative community reaction. 5 Other affected parties may also appeal. Roper 6 St. Francis could educate DHEC on lack of need for a 7 new hospital in Moncks Corner without formally 8 opposing." 9 All right. The only bullet I don't see on 10 here is file for a new hospital in Carnes Crossroads 11 by Roper. Do you know why that is not on here as an 12 option? 13 A. I don't. These are just -- this is our 14 administrative resident. He's a graduate student. 15 He's just writing down things he thinks he hears 16 people say at this meeting, so . . . 17 Q. You think he would have missed file for a 18 new hundred million dollar hospital on Carnes 19 Crossroads? 20 A. He could have, yes. 21 Q. Okay. Let's talk about these for a 22 second. So these are all the options that were 23 considered. What other affected parties would you 24 have expected to appeal rather than Roper? 25 A. I don't -- I don't recall.	Page 270 1 what? -- 17 days after, I guess, the news broke of 2 Trident wanting to build in Moncks Corner, correct? 3 A. Yes. 4 Q. And Larry is your contact at CHS, right? 5 A. Yes. 6 Q. That's the gentleman that you actually 7 reported to. It says I would like -- "Hi, Larry, I 8 would like to review options we discussed regarding 9 the HCA announcement of a hospital in Berkeley 10 County." 11 Right? 12 A. Right. 13 Q. All right. We've got Trident's 14 application, and you set out various bullet points, 15 what that is. 3553 is a map just showing locations 16 of, I guess, where Roper and Trident's facilities are 17 there, correct? 18 A. Uh-huh. Yes. 19 Q. Okay. And then a -- it looks like a 20 Google Earth. And on 3555, "Possible responses to 21 CON"? 22 A. Yes. 23 Q. Okay. First one is do nothing. The 24 second is file as an affected party in opposition 25 with the intent to appeal, the third is file a

12 (Pages 267 to 270)

Page 271 1 competing application for a new 50-bed hospital at 2 the Carnes Crossroads location, correct? 3 A. Yes. Correct. 4 Q. So at least at this point in time, the 5 idea was -- at least Roper thought that any 6 application that they were filing was competing 7 application. Is that fair to say? 9 A. Well, I don't -- we didn't see it 10 competing in the Certificate of Need sense, but we 11 wanted to get in that same cycle so that they could 12 look at both of those applications simultaneously. 13 BY MR. THOMAS: 14 Q. Okay. But you use the term competing 15 application here, correct? 16 A. Well, where it has lots of definitions, 17 but I think the thought we had there was making sure 18 that it was in that same review cycle. 19 Q. What do you think the legal definition of 20 competing application is in terms of what the state 21 looks at? How is it different? 22 A. I think the state's definition basically 23 talks about serving the same market and making sure 24 there's not an oversupply of resources. And what 25 we're talking about here is we want to be viewed	Page 273
Page 272 1 parallel with the Trident application. 2 Q. But filing in the same cycle, I mean, 3 that's part of the competing application process for 4 the state. You have to actually file within a 5 certain time of the other competing applicant, I 6 guess, being deemed complete, correct? 8 A. I don't know that that's correct, but I 9 knew -- I know that if they were in the same cycle, 10 that they would review both of them with equal 11 weight.	Page 274 3 Q. Isn't inpatient utilization declining 4 nationwide -- 5 A. Yes. 6 Q. -- to some degree? And a lot of that has 7 to do with the average length of stay going down? 8 A. Right. 9 Q. Are there other factors that are 10 determinant? 11 A. Many more procedures we can do on an 12 outpatient basis, keeping the patient in for 23 hours 13 where we used to admit them for several days. 14 Shorter recovery time from anesthesia, moving -- 15 moving them more quickly through that process.

13 (Pages 271 to 274)

Page 275

Page 277

Page 276

Page 278

18 Q. All right. Go to 3292 for me, if you
19 would. 3292.*
20 A. Okay.
21 Q. An e-mail from you to Trisha Rabon (ph)?
22 A. Yes.
23 Q. Who is she?
24 A. She's my administrate assistant.
25 Q. Okay. Dated October 31st, 2008, correct?

Pet. 129 *

14 (Pages 275 to 278)

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Page 279 1 A. Yes. 2 Q. And this is a draft memo to Roper 3 St. Francis Hospital board and senior leaders, and 4 it's regarding Carnes Crossroad operating rooms. And 5 you say in here, this is -- "As we've discussed in 6 previous meetings, we'll file a CON to relocate" -- 7 well, "we filed a CON to relocate three amb/surg 8 operating rooms currently at our Berkeley Medical 9 Center. This is the same site of our newly proposed 10 Berkeley Hospital. After further consideration, we 11 think the location of those ORs might be detrimental 12 to the application for our proposed hospitals, which 13 will have four ORs. Based on that, we've concluded 14 that we should defer the transfer until we allow our 15 hospital application to move through the CON 16 process." 17 Would you agree with me, Mr. Dunlap, based 18 on that, that the plan is to still transfer the three 19 ORs to an ASC once the hospital is approved -- 20 ultimately approved and get the CON? Is that a 21 correct statement? 22 A. No. We have no plans to move those ORs to 23 that site. 24 Q. Well, but you say here, "We have concluded 25 that we should defer the transfer of those three ORs	Page 281 1 Q. -- in which he describes some of the 2 reasons why he's reluctant to support the project -- 3 A. Correct. 4 Q. -- is that fair? 5 A. Correct. Yes. 6 Q. And were these topics discussed at the 7 meeting that you had? If you look on 3566, "support 8 for increasing the number of nursing school 9 faculties, support for scholarships for medical 10 students, support to help digitize the historical 11 records of the Medical Society." 12 A. Yes. 13 Q. All right. Do you know what has been done 14 out of those six things? 15 A. Let's see, I think we are supporting some 16 nursing school scholarships, and I believe the 17 Medical Society is doing a medical student 18 scholarship, and I believe they've also moved forward 19 with digitizing those historical records. And we are 20 working on this emergency department linkage project. 21 We are fully engaged on that today. 22 We are not doing anything on parking, 23 although it's still a big need on that campus. And 24 as far as the shared -- computer facility, that's 25 that data processing center up in the Palmetto
Page 280 1 until we allow our hospital application to move 2 through the CON process." 3 So that doesn't say that we won't transfer 4 the ORs. It says we're going to defer doing that 5 until the hospital application moves through the 6 process, right? 7 A. But I'm saying that we have no -- no 8 intention to move those ambulatory surgery suites to 9 that site. I think you could interpret it the way 10 you've stated, but that was not my intention and it 11 is not my intention today to do that, so . . . 12 Q. Ever? 13 A. I never say never -- or ever, but that is 14 certainly not on our current list of considerations. 18 All right. If you'll turn to 19 Roper-Berkeley 3564 for me.* Pet. 138* 20 A. Okay. 21 Q. All right. And this is an e-mail -- looks 22 like from you to Matt Severance, and the page after 23 that, on 3565, this is the e-mail that Dr. Greenberg 24 wrote to you, correct -- 25 A. Correct.	Page 282 1 Parkway, and we have reached out to them to see if 2 they want to be part of that campus. So it looks 3 like there's some progress on many of these fronts. 4 Q. Do you think -- you have a point here a 5 couple paragraphs down, it talks about "Financial 6 constraints might adversely impact your ability and 7 the Medical Society's ability to partner on any of 8 the requests we have been made." And then it says, 9 "still a lot of time when Roper St. Francis has 10 expanded on both of its existing campuses, is 11 building a new hospital in East Cooper and wants to 12 build a new hospital in Berkeley County, it would 13 appear that a lack of resources is not the principal 14 limiting factor." 15 Doesn't he have a point there? 16 A. I would -- I would respectfully disagree 17 with that because I think we're putting our resources 18 to support the projects that are part of Roper 19 St. Francis and what he was asking for is support of 20 the Medical Society's projects. So -- I'm sorry, the 21 Medical University of South Carolina projects, so . . . 22 Q. But isn't he talking about increasing the 23 nursing school faculty because that would increase 24 more nurses that some would go to Roper St. Francis, 25 support for scholarship for medical students who may

Page 283 1 end up on the medical staff of St. Francis, 2 digitizing the historical records of the Medical 3 Society so that -- in the event a patient came into 4 the MUSC Trauma Center, they may have an electronic 5 medical record. You know, matching support for -- 6 all of these -- none of these are just specific to 7 MUSC, are they? 8 A. Most of them are, I think. But, again, I 9 think it's just a matter of how he views the world 10 versus how we view it. I think it's -- you know, our 11 priorities are slightly different. But as I 12 mentioned, we are moving forward with a number of 13 those six items listed that he had requested that we 14 take a look at. 15 Q. But he still hasn't written a letter of 16 support? 17 A. No.	Page 285 1 know, you write the letter to the editor and then 2 Ms. Criminger writes the support letters but then 3 gets the mayor and Dr. Kunkle to sign off on them? 4 A. I think that's the way she thought it 5 worked. I don't know if it was successful or not. 6 Q. Okay. I mean, aren't Mayor Heitzler and 7 Dr. Kunkle capable of writing their own letters? 8 A. I would -- I would assume that they would 9 be, yes. 10 Q. They're educated men? 11 A. Yes.
Page 284 9 Q. I think the last document we're going to 10 discuss today is 2805.* 11 A. Okay. 12 Q. All right. Just at the top, it says -- 13 there's the letter to the editor that you -- that 14 maybe Ms. Criminger wrote but then you signed off on, 15 correct -- 16 A. Correct. 17 Q. -- down at the bottom? 18 A. Yes. 19 Q. And then at the top here, it says -- it's 20 from Ms. Criminger back to you, June 24, 2009. "As 21 information, we're currently in stealth mode behind 22 the scenes helping Mayor Heitzler and Dr. Kunkle 23 write and submit letters to the editor in response to 24 your commentary in today's papers." 25 So is that kind of how it works? You	Page 286 Pet. 118*

16 (Pages 283 to 286)

Page 287 22 Q. Would you turn to that page 3300, again. 23 It's in the attorneys/expert eyes only section. 24 A. 3300. 25 Q. Right. And 3301?	Page 289 1 Carolina Park was a bit different than it was in 2 Berkeley County and -- with the Mount Pleasant land, 3 if we did not proceed forward with a medical office 4 building, we ended up having to forfeit the land, the 5 right to buy the land, because it was such a prime 6 piece of property there on Highway 17. We basically 7 had to give that back to the developer at some -- I 8 believe some agreed upon price. 9 Whereas in Berkeley County, we didn't 10 forfeit the land, but we simply forfeited the right 11 to be the exclusive healthcare provider. 12 Q. Is that the context of the sentence at the 13 bottom that says, "We're not required to build a 14 hospital at the site"? 15 A. That's right. 16 Q. Compared to Mount Pleasant, you had more 17 of a legal obligation? 18 A. That's exactly right. 19 Q. And in the -- when you bought the 66 20 acres -- when Roper St. Francis and the Medical 21 Society bought the 66 acres in the Berkeley County -- 22 A. Right. 23 Q. -- was the expectation that a hospital 24 would be built at that site? 25 A. Yes.
Page 288 16 Q. This page 3301, this is a report that you 17 would have made to the Medical Society board in April 18 of '07, right? 19 A. Right. 20 Q. What was the background on the Mount 21 Pleasant land acquisition in regards for that 22 hospital; do you recall? Was there a provision about 23 the purchase of that land if the hospital was not 24 built? 25 A. Yes. In Mount Pleasant the land we had at	Page 290 1 Q. Okay. You wouldn't buy 66 acres just for 2 a medical office building, would you? 3 A. Correct.

17 (Pages 287 to 290)

Page 291 1 separate record.) 2 * * * * * 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	Page 293 1 CERTIFICATE OF REPORTER 2 3 I, Heather M. Curlin, Professional Court 4 Reporter and Notary Public for the State of South 5 Carolina at Large, do hereby certify: 6 7 That the foregoing deposition was taken 8 before me on the date and at the time and location 9 stated on page 1 of this transcript; that the 10 deponent was duly sworn to testify to the truth, the 11 whole truth and nothing but the truth; that the 12 testimony of the deponent and all objections made at 13 the time of the examination were recorded 14 stenographically by me and were thereafter 15 transcribed; that the foregoing deposition as typed 16 is a true, accurate, and complete record of the 17 testimony of the deponent and of all objections made 18 at the time of the examination to the best of my 19 ability. 20 21 I further certify that I am neither related 22 to nor counsel for any party to the cause pending or 23 interested in the events thereof. 24 25 Witness my hand, I have hereunto affixed my official seal this 28th day of October, 2011, at Charleston, Charleston County, South Carolina. Heather M. Curlin Professional Court Reporter Notary Public State of South Carolina at Large My Commission expires: May 27, 2021
Page 292 1 DEPONENT CORRECTION SHEET 2 In Re: Trident Medical Center, LLC vs. SC DHEC, et al. 3 Case Nos: 09-ALJ-07-0332-CC, 09-ALJ-07-0333-CC, 4 09-ALJ-07-0336-CC 5 Deposition of: David L. Dunlap 6 Date Taken: October 25, 2011 7 Taken Before: Heather Curlin 8 9 Having read my deposition, no changes are necessary. 10 Signed: 11 12 Having read my deposition, I make these corrections: 13 Page Line Correction 14 Page Line Correction 15 Page Line Correction 16 Page Line Correction 17 Page Line Correction 18 Page Line Correction 19 Page Line Correction 20 Page Line Correction 21 Page Line Correction 22 Page Line Correction 23 Page Line Correction 24 Page Line Correction 25 Signed:	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25

Page 294

3 Q. In regards to the Roper St. Francis CON
4 application, your understanding or memory is
5 different from the planners who actually wrote the
6 application, would you defer to the planners --
7 A. Yes.
8 Q. -- as to what exactly is in the
9 application?
10 A. Yes.
11 Q. And was there ever any time any linkage
12 between the growth and the Physician Partners and the
13 decision to build a hospital in Berkeley? Was there
14 ever a date where you said you had to have so many
15 physicians employed at Berkeley, or were those
16 decisions separate?
17 A. Completely separate.

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1 DEPONENT CORRECTION SHEET
2 In Re: Trident Medical Center, LLC vs. SC DHEC, et al.
3 Case Nos: 09-ALJ-07-0332-CC, 09-ALJ-07-0333-CC,
4 09-ALJ-07-0336-CC
5 Deposition of: David L. Dunlap
6 Date Taken: October 25, 2011
7 Taken Before: Heather Curlin
8
9 Having read my deposition, no changes are necessary.
10 Signed:
11
12 Having read my deposition, I make these corrections:
13 Page Line Correction
14 Page Line Correction
15 Page Line Correction
16 Page Line Correction
17 Page Line Correction
18 Page Line Correction
19 Page Line Correction
20 Page Line Correction
21 Page Line Correction
22 Page Line Correction
23 Page Line Correction
24 Page Line Correction
25 Signed:

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1 CERTIFICATE OF REPORTER
2
3 I, Heather M. Curlin, Professional Court
4 Reporter and Notary Public for the State of South
5 Carolina at Large, do hereby certify:
6
7 That the foregoing deposition was taken
8 before me on the date and at the time and location
9 stated on page 1 of this transcript; that the
10 deponent was duly sworn to testify to the truth, the
11 whole truth and nothing but the truth; that the
12 testimony of the deponent and all objections made at
13 the time of the examination were recorded
14 stenographically by me and were thereafter
15 transcribed; that the foregoing deposition as typed
16 is a true, accurate, and complete record of the
17 testimony of the deponent and of all objections made
18 at the time of the examination to the best of my
19 ability.
20
21 I further certify that I am neither related
22 to nor counsel for any party to the cause pending or
23 interested in the events thereof.
24
25 Witness my hand, I have hereunto affixed my
official seal this 28th day of October, 2011, at
Charleston, Charleston County, South Carolina.

Heather M. Curlin
Professional Court Reporter
Notary Public
State of South Carolina at Large
My Commission expires:
May 27, 2021

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RECORD 000359

Case Name: Trident v. Roper St. Francis Hospital-Berkeley
Transcript: Cantwell, Shannon, dated 02-16-11

Pg: 4 Ln: 7 - 12

Annotation:

4: 7 SHANNON CANTWELL, being first duly
8 sworn, testified as follows:
9 BY MR. SUMMER:
10 Q. Would you state your full name for the
11 record.
12 A. Shannon Jo Cantwell.

Pg: 5 Ln: 17 - Pg: 6 Ln: 5

Annotation:

5:17 Q. Okay. And where did you go to college?
18 A. College of Charleston and University of
19 South Carolina Columbia.
20 Q. Okay. And was there a break in your
21 education or did you just transfer?
22 A. I just transferred.
23 Q. Okay. When did you finish USC?
24 A. Bachelor's degree in '91.
25 Q. Okay. And what is your bachelor's degree
6: 1 in?
2 A. In business.
3 Q. General business administration?
4 A. Business management.
5 Q. Business management, 1991.

Pg: 8 Ln: 6 - Pg: 9 Ln: 6

Annotation:

8: 6 Q. Okay. Where did you go next?
7 A. To the Department of Health and
8 Environmental Control.
9 Q. And when did you start at DHEC?
10 A. 1998.
11 Q. Okay. And what was your first position at
12 DHEC?
13 A. Inspector III.
14 Q. And what did you do as an Inspector III?
15 A. Reviewed Certificate of Need applications.
16 Q. Okay. And how long did you do that?
17 A. Approximately one year.
18 Q. Okay. What was your next position at DHEC?
19 A. Program Coordinator II.
20 Q. Okay. What did a Program Coordinator II do
21 at DHEC?

NPCOLI:2736017.1

RECORD 000360

Case Name: Trident v. Roper St. Francis Hospital-Berkeley
Transcript: Cantwell, Shannon, dated 02-16-11

22 A. I reviewed all of the exemptions from
23 Certificate of Need review. At that time it was
24 300-plus annually.
25 Q. Okay.
9: 1 A. I also reviewed all the final cost reports
2 for Certificate of Need applications.
3 Q. Okay. Same thing as a completion report?
4 A. Yes.
5 Q. And how long did you do that?
6 A. Four years.

Pg: 9 Ln: 7 - 11

Annotation:

9: 7 Q. Okay. And what was your next position?
8 A. Corporate planner at Roper St. Francis
9 Healthcare.
10 Q. When did you start that job?
11 A. Summer 2002.

Pg: 14 Ln: 6 - 13

Annotation:

14: 6 Q. Okay. Let me grab your CV back, please,
7 ma'am.
8 You were a corporate planner for your first
9 year at Roper St. Francis, correct?
10 A. Correct.
11 Q. And what did you do as a corporate planner?
12 A. I worked on Certificate of Need
13 applications. I worked on the monthly score card.

Pg: 21 Ln: 16 - Pg: 22 Ln: 6

Annotation:

21:16 Q. Okay. Your next position with St.
17 Francis -- Roper St. Francis, according to your CV,
18 would be regulatory affairs specialist; is that
19 correct?
20 A. Correct.
21 Q. Okay. So corporate planner and regulatory
22 affairs specialist are the only two positions that
23 you have held at Roper St. Francis?

Case Name: Trident v. Roper St. Francis Hospital-Berkeley
Transcript: Cantwell, Shannon, dated 02-16-11

24 A. Yes.
25 Q. All right. Tell me what you do as a
22: 1 regulatory affairs specialist.
2 A. I do all of the Certificate of Need
3 applications, from drafting through the completion
4 report process. I, during the state legislative
5 session, monitor and track healthcare-related bills,
6 work with our lobbyist.

Pg: 25 Ln: 12 - 17

Annotation:

25:12 Q. We're still looking at what you do in your
13 job as regulatory affairs specialist. We've covered
14 that you draft all CON applications, monitor
15 legislation, you're working on a particular
16 compliance project. What else do you do?
17 A. Those are the three main areas.

Pg: 27 Ln: 11 - Pg: 28 Ln: 12

Annotation:

27:11 Q. And when did you begin reporting to
12 Mr. Bowling?
13 A. I don't recall.
14 Q. Was it in close proximity to when he began
15 with the system?
16 A. It was when Jordi left.
17 Q. Okay. So is it fair to say you've been
18 reporting to Mr. Bowling for several years?
19 A. Yes.
20 Q. Is it fair to say that for all times
21 relevant to this particular Certificate of Need
22 application, i.e., 2007, 2008, 2009, that you've been
23 reporting to Mr. Bowling?
24 A. Yes.
25 Q. Okay. How often do you speak with
28: 1 Mr. Bowling?
2 A. We meet every two weeks.
3 Q. Okay. Do you interact with him at any time
4 in between those biweekly meetings?
5 A. Yes.
6 Q. Okay. Is it -- do you interact via
7 telephone or in person or both?
8 A. Mostly in person.
9 Q. Okay. Would you say that you do that on a
10 daily basis?

Case Name: Trident v. Roper St. Francis Hospital-Berkeley
Transcript: Cantwell, Shannon, dated 02-16-11

11 A. Depends how you want to define "interact."
12 We speak on a daily basis.

Pg: 28 Ln: 13 - 15

Annotation:

28:13 Q. Okay.
14 A. We don't necessarily talk work issues on a
15 daily basis.

Pg: 35 Ln: 17 - Pg: 37 Ln: 17

Annotation:

35:17 Q. All right. For purposes of the Berkeley
18 project, did you do that Certificate of Need
19 application?
20 A. I did.
21 Q. Did you work with Michael Cassells on that
22 project?
23 A. The only thing I recall getting from
24 Michael was a system pro forma.
25 Q. System pro forma. Okay.
36: 1 Anybody -- did you work with anybody else
2 from finance or decision support on the Berkeley
3 County project?
4 A. No. Consultant did the financial piece for
5 the --
6 Q. And what consultant did the financial
7 piece?
8 A. Rick Knapp.
9 Q. And what other consultants did you use
10 besides Mr. Knapp on the project?
11 A. Mark Richardson.
12 Q. Who drafted the need analysis in the
13 Berkeley County project?
14 A. Mark Richardson.
15 Q. Who would have drafted the pro formas for
16 the Berkeley County project?
17 A. Rick Knapp.
18 Q. Where did you get your charge information,
19 for example? Who would have provided that?
20 A. Internally.
21 Q. Internally? Would that have come from
22 Mr. Cassells?
23 A. It would come from either Cassells -- it
24 could have.
25 Q. It could have.

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37: 1 Who else could it have come from?
2 A. I recall asking Wendy Dukes in
3 reimbursement for some -- something for the
4 application.
5 Q. Okay. Did Mr. Knapp interact with only
6 you, or did he also interact with Mr. Cassells and
7 other folks in the finance and decision support
8 departments?
9 A. I believe he interacted with Michael.
10 Q. Okay. Can you recall anyone other than
11 Michael and yourself interacting with Mr. Knapp?
12 A. Not that I'm aware of.
13 Q. How about Mr. Richardson?
14 A. He interacted with myself and Doug.
15 Q. And Doug. Any other system employees that
16 you recall Mr. Richardson interacting with?
17 A. Not that I recall.

Pg: 40 Ln: 6 - 24

Annotation:

40: 6 Q. Okay. Is it fair to say that you were in
7 charge of drafting the Certificate of Need for the
8 Mount Pleasant Hospital?
9 A. It would be fair.
10 Q. Okay. Is it fair to say that you were in
11 charge of drafting the application for the Berkeley
12 Hospital?
13 A. Yes.
14 Q. Okay. Once you develop a draft, who do you
15 send it to for review?
16 A. It depends. In this specific case?
17 Q. Yes. In the Berkeley County case, who did
18 you send it to for review?
19 A. I sent it to Ralph, our attorney.
20 Q. That would be Mr. Barbier?
21 A. Correct.
22 Q. Okay.
23 A. Send it to Doug; Matt Severance, Roper
24 hospital CEO.

Pg: 45 Ln: 21 - 23

Annotation:

45:21 Q. Okay. What planners helped Roper with the
22 Mount Pleasant project?
23 A. Richardson and Knapp.

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Transcript: Cantwell, Shannon, dated 02-16-11

Pg: 46 Ln: 14 - Pg: 47 Ln: 3

Annotation:

46:14 Q. Okay. When did Roper St. Francis decide to
15 relocate the ambulatory surgery center from Moncks
16 Corner to Carnes Crossing?
17 A. My best guess would with shortly before the
18 CON application was filed.
19 Q. Would that have been sometime in 2007?
20 A. I believe 2008.
21 Q. Okay. And do you recall why the decision
22 was made to move?
23 A. To increase utilization of that center.
24 Q. Was it utilization driven or reimbursement
25 driven?
47: 1 A. I don't know.
2 Q. Could have been reimbursement driven?
3 A. Could have.

Pg: 47 Ln: 4 - 8

Annotation:

47: 4 Q. Who would know the answer to that question?
5 A. Members of senior management.
6 Q. Well, we've identified Mr. Bowling as a
7 member of senior management, correct?
8 A. He would know the answer.

Pg: 48 Ln: 21 - Pg: 49 Ln: 7

Annotation:

48:21 reimbursement driven. Explain that to me. What was
22 your goal in moving down to Carnes Crossing?
23 A. The goal was to situate it in a better
24 location in terms of population size.
25 Q. So more people means -- more people means
49: 1 more utilization?
2 A. To get more of our physicians to utilize
3 the center.
4 Q. Was there a lack of physician support or
5 utilization at the Moncks Corner location?
6 A. I would say that. Based on their Joint
7 Annual Reports.

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Pg: 55 Ln: 24 - Pg: 56 Ln: 24

Annotation:

55:24 Q. Okay. I'm assuming that when you're
25 putting Certificate of Need applications together,
56: 1 whether or not the system owns physician practices in
2 a given area for a given project has a great deal of
3 relevance regarding utilization, doesn't it?
4 MR. LONG: Objection.
5 THE WITNESS: I can't say that physician
6 practices that we own have ever factored into an
7 application that I've written.
8 BY MR. SUMMER:
9 Q. Who drafts the B11 analysis for your
10 applications?
11 A. In general?
12 Q. In general.
13 A. I do.
14 Q. How about for Mount Pleasant?
15 A. Mark Richardson did.
16 Q. How about for Berkeley County?
17 A. Mark Richardson did it.
18 Q. Would you agree with me that it is very
19 relevant the number of physician practices that are
20 owned by a hospital in an area where a new hospital
21 is proposed to be constructed?
22 A. Physician practice acquisition on behalf of
23 Roper St. Francis, I would describe as in its infancy
24 stages.

Pg: 59 Ln: 23 - Pg: 60 Ln: 6

Annotation:

59:23 Q. Okay. You had described the physician
24 employment as being in its infancy. And it looks to
25 me like there's 73 physician practices described on
60: 1 here; is that correct?
2 A. Correct.
3 Q. Okay. If this is the infancy, how many
4 practices does Roper plan to buy?
5 A. I don't know. By infancy, I meant less
6 than five years we've had it.

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Pg: 60 Ln: 7 - 9

Annotation:

60: 7 Q. Is it fair to say that Roper's actively
8 engaged in acquiring physician practices?
9 A. That would be fair.

Pg: 72 Ln: 8 - 14

Annotation:

72: 8 Q. Okay. Is it fair to say that Trident's
9 filing of an application for the establishment of a
10 hospital in Moncks Corner precipitated Roper
11 St. Francis filing an application for a hospital at
12 Carnes Crossroad?
13 MR. LONG: Objection.
14 THE WITNESS: That would be fair.

Pg: 72 Ln: 16 - 25

Annotation:

72:16 Q. Okay. Prior to Trident filing an
17 application, the only plans for that property that
18 you've identified would be for the relocation of the
19 ambulatory surgery center, correct?
20 A. No. That was the piece I had worked on.
21 Q. Okay. What else?
22 A. We always had plans to put a hospital
23 there.
24 Q. Always?
25 A. Yes.

Pg: 73 Ln: 5 - 13

Annotation:

73: 5 Q. Okay. What's Roper going to do with this
6 emergency department in Moncks Corner if it builds a
7 hospital at Carnes Crossroads?
8 A. To my knowledge, everything currently
9 operating at the Moncks Corner site will remain open.
10 Q. And what if Trident builds a hospital at
11 Moncks Corner, do you have any contingency plans to
12 discontinue services?
13 A. Not that I'm aware of.

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Pg: 75 Ln: 20 - Pg: 76 Ln: 6

Annotation:

75:20 Q. In your personal opinion, why did Roper
21 St. Francis accelerate its plans to build a hospital
22 in Berkeley County?
23 MR. LONG: Objection.
24 THE WITNESS: We wanted to be in the same
25 review cycle as Trident's application.
76: 1 BY MR. SUMMER:
2 Q. Because you'd be a competing application?
3 A. To be reviewed in conjunction with Trident.
4 We didn't know how DHEC would rule on the competing
5 applications situation, but, yes, if they did, that
6 would be the reason.

Pg: 76 Ln: 7 - 12

Annotation:

76: 7 Q. Your assumption was it would be a competing
8 application, wasn't it?
9 MR. LONG: Objection.
10 THE WITNESS: That wasn't my assumption.
11 That was worse-case scenario is we need to be in the
12 same review cycle.

Pg: 86 Ln: 3 - 15

Annotation:

86: 3 Q. Okay. Look back over here at this list of
4 services that you said Mr. Bowling gave to you in B2,
5 which is located on page 5 of the DHEC record. And
6 this is the Roper St. Francis DHEC record.
7 Would you agree with me that virtually all
8 of those services are also in Trident's application?
9 A. Yes.
10 Q. Would you agree with me that these
11 hospitals are for all intents and purposes in terms
12 of bed configuration and services offered identical?
13 A. Very similar.
14 Q. Okay. So you would agree with me that
15 these hospitals duplicate each other, do they not?

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Pg: 86 Ln: 18 - 21

Annotation:

86:18 Q. I didn't ask you if it was unnecessary
19 duplication. I asked you are they duplicative, do
20 they duplicate each other?
21 A. You could characterize it as that.

Pg: 86 Ln: 22 - Pg: 87 Ln: 7

Annotation:

86:22 Q. Okay. You would agree with me that the
23 existence of a hospital at Carnes Crossroads is going
24 to have an adverse impact on Trident Medical Center,
25 correct?
87: 1 MR. LONG: Objection.
2 THE WITNESS: I wouldn't agree.
3 BY MR. SUMMER:
4 Q. Why?
5 A. As outlined in our B11 response, this
6 project is primarily redirection of Roper St. Francis
7 patients to that facility and capture of growth.

Pg: 87 Ln: 15 - Pg: 89 Ln: 16

Annotation:

87:15 Q. Turn to page 31 of the DHEC record.
16 You see adverse impact on existing
17 providers?
18 A. Yes.
19 Q. "Based on the expectation that 60 percent
20 of the new hospital's proposed 2015 patient volume
21 would be repositioning of Roper St. Francis Berkeley
22 County residents to a Berkeley County located
23 facility. The remainder of the patients served will
24 have no material adverse impact on any other existing
25 healthcare provider."
88: 1 Do you see that?
2 A. Yes.
3 Q. Roper has made the assumption that
4 60 percent of patients that are going to be in this
5 hospital, this bright, new, shiny hospital in Carnes
6 Crossroads, are simply going to be patients that
7 would have come downtown, correct?
8 A. Correct.
9 Q. You're not going to be doing cardiology
10 services such as diagnostic catheterizations or

Case Name: Trident v. Roper St. Francis Hospital-Berkeley
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11 therapeutic catheterizations at the Berkeley County
12 facility, are you?
13 A. No.
14 Q. You're not going to be doing open heart
15 surgery there, are you?
16 A. No.
17 Q. You're not going to be doing neurosurgery
18 there, are you?
19 A. No.
20 Q. So we can assume immediately that for a
21 vast array of tertiary care services, there will be
22 no redirection to the facility in Berkeley County,
23 correct?
24 A. Correct.
25 Q. All right. So now we have to assume that
89: 1 if we exclude all tertiary care services, that you
2 will be successful in redirecting enough patients to
3 provide 60 percent occupancy to the facility,
4 correct?
5 A. Yes.
6 Q. Okay. Only physicians can admit to the
7 facility, is that not correct?
8 A. Yes.
9 Q. For instance, I'll use this as an example.
10 Someone comes to the emergency department downtown,
11 they are Berkeley County residents, they come to
12 Roper's ED. And they have pneumonia, and they are
13 going to be admitted to the hospital. It is not your
14 testimony you're going to put them in an ambulance
15 and take them back up to the Carnes Crossroad
16 facility, are you?

Pg: 89 Ln: 18 - 24

Annotation:

89:18 THE WITNESS: It's not my testimony, no.
19 BY MR. SUMMER:
20 Q. You would agree with me that the patient
21 who presents for inpatient services in the ED at
22 Roper downtown is going to be admitted to Roper
23 downtown, are they not?
24 A. I would assume.

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Pg: 90 Ln: 2 - 22

Annotation:

90: 2 Q. Okay. Your answer was you would assume so,
3 correct?
4 A. Correct.
5 Q. Okay. The only way to get those patients
6 to utilize the Carnes Crossroads facility is to have
7 physicians who are willing to admit them there,
8 correct?
9 A. Yes.
10 Q. So your assumption is is that the
11 Charleston-based physicians that you currently either
12 employ or are on your medical staff are also going to
13 admit to and round at Carnes Crossroads, correct?
14 A. Yes.
15 Q. What internal analyses have you or anyone
16 else at Roper performed to determine who those
17 doctors are that are going to maintain privileges at
18 both facilities and round at both facilities?
19 A. I have not seen an internal analysis.
20 Q. Okay. Do you know if one's ever been done?
21 A. I'm sure it has, but I don't know for
22 certainty.

Pg: 91 Ln: 2 - Pg: 93 Ln: 6

Annotation:

91: 2 Q. Okay. Going back to this notion that
3 60 percent of the hospitals' patients are going to
4 come from a redirection of existing patients, you
5 really have no idea how many of those patients Roper
6 will be successful in redirecting, do you?
7 A. I can't say with certainty. I can say the
8 assumption of a 50 percent redirection, I would
9 classify that as conservative.
10 Q. 50 percent. This says 60 percent. Page
11 31. "Based on the expectation that 60 percent of the
12 new hospital's proposed 2015 patient volume would be
13 repositioning."
14 A. The actual calculation is on page 30,
15 references half redirection. 50 percent.
16 Q. Page 30, is that what you said?
17 A. Correct.
18 Q. That assumes that half of the existing
19 volume would be redirected?
20 A. Correct.
21 Q. And that's because what doctors have said
22 they're going to redirect those patients?
23 A. You'd have to read the physician letters of
24 support. I can't name them.
25 Q. It's a guess, isn't it? It's a guess,

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92: 1 correct?
2 A. Yes.
3 Q. Yes. Imagine for me, if you will, the
4 existence of a Roper St. Francis Berkeley facility at
5 Carnes Crossroads. You would agree with me that
6 under federal law, under EMTALA, anyone who presents
7 an emergent position is going to be treated at that
8 facility, isn't it?
9 A. Yes.
10 Q. You will not have any kind of screening
11 procedure to turn patients away if they weren't,
12 quote, unquote, already a Roper patient, will you?
13 A. Can you repeat that?
14 Q. The premise of your application is that
15 60 percent of the patient volume in that inpatient
16 facility are merely going to be redirected Roper
17 patients. You will agree with me on that, right?
18 A. Yes, redirected.
19 Q. You'd also agree with me that you're not
20 going to turn patients away simply because they were
21 not a redirected Roper patient?
22 A. Correct.
23 Q. That anyone who presents to an emergency
24 department in an emergent condition will be treated,
25 correct?
93: 1 A. Yes.
2 Q. That any physician who chooses to use it,
3 whether they were previously affiliated with Trident
4 or Summerville, if they're on your medical staff,
5 you'll take that patient, won't you?
6 A. Yes.

Pg: 93 Ln: 7 - 12

Annotation:

93: 7 Q. You would also agree with me that patients
8 that would have been admitted to Trident or would
9 have been admitted to Summerville that are admitted
10 to Roper St. Francis Berkeley, that the loss of that
11 admission will have an adverse impact on the Trident
12 system, correct?

Pg: 93 Ln: 14 - 15

Annotation:

93:14 THE WITNESS: Patients redirected from
15 Trident will have an impact on Trident.

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Pg: 93 Ln: 17

Annotation:

93:17 Q. An adverse impact, correct?

Pg: 93 Ln: 19

Annotation:

93:19 THE WITNESS: Yes.

Pg: 93 Ln: 24 - Pg: 94 Ln: 2

Annotation:

93:24 Would you also agree with me that you've made no
25 analysis of the financial impact of loss of patients
94: 1 to Trident, have you?
2 A. No.

Pg: 94 Ln: 7 - 14

Annotation:

94: 7 Based upon your knowledge of the
8 marketplace, you would agree with me that all of the
9 services that appear in B2 on page 5 of the Roper
10 St. Francis application, all of those services are
11 currently available at Trident Medical Center, aren't
12 they?
13 A. I don't have knowledge of the services at
14 Trident Medical Center.

Pg: 97 Ln: 12 - Pg: 98 Ln: 17

Annotation:

97:12 Let me ask the question another way. Do
13 you know whether or not Trident Regional Medical
14 Center is within that seven-mile radius that
15 Mr. Richardson describes in his application?
16 A. I don't recall offhand the distances, but I
17 was thinking it was eight miles from our proposed
18 facility to Trident.
19 Q. Okay. But you don't know whether or not
20 Trident's located within the seven-mile radius?
21 A. Not without reading, no.
22 Q. Okay. Do you know whether or not

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23 Summerville Medical Center is located within the
24 seven-mile radius?
25 A. I'm not sure.
98: 1 Q. Okay. You would agree with me that the
2 Carnes Crossroad site is not at the center of
3 Berkeley County, is it?
4 A. It's at the population center.
5 Q. Explain to me what a population center is.
6 Is that another way of saying we're trying to put it
7 where the most people are?
8 A. Yes.
9 Q. Okay. You would agree with me that the
10 geographic center of Berkeley County is not at Carnes
11 Crossroad?
12 A. Correct.
13 Q. Okay. You'd also agree with me that the
14 medically underserved -- underserved populations in
15 places like Moncks Corner, St. Stephens, Bonneau,
16 they are closer to Trident's proposed hospital site
17 than to Carnes Crossroads, aren't they?

Pg: 98 Ln: 19 - Pg: 99 Ln: 4

Annotation:

98:19 THE WITNESS: That's what I recall from
20 your project review presentation.
21 BY MR. SUMMER:
22 Q. Okay. You have no basis to dispute that
23 fact, do you?
24 A. No.
25 Q. Okay. From an access standpoint, you would
99: 1 acknowledge that folks in Bonneau and St. Stephens
2 would have greater access geographically to a
3 hospital in Moncks Corner than they would to a
4 hospital in or at Carnes Crossroads, correct?

Pg: 99 Ln: 6 - 11

Annotation:

99: 6 THE WITNESS: If that facility is closer,
7 it would be a shorter distance for them to drive.
8 BY MR. SUMMER:
9 Q. And that would be, in health planning
10 terms, greater or increased access, correct?
11 A. Yes.

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Pg: 99 Ln: 13 - Pg: 100 Ln: 12

Annotation:

99:13 You've pointed out page 23 to me. You
14 would agree with me that Goose Creek doesn't have a
15 104,000 people in it, does it?
16 A. 2008 population for the seven-mile radius
17 data says that it does.
18 Q. So that's not the city of Goose Creek?
19 A. No.
20 Q. City of Goose Creek doesn't even have
21 40,000 people in it, does it? Or do you know?
22 A. I couldn't say with certainty.
23 Q. Okay. So in other words, in order to get
24 that number of 104,000 to justify a population for a
25 hospital, you've got to go out seven miles around to
100: 1 generate that population of 104,000 people, don't
2 you?
3 A. Again, this wasn't our primary service
4 area..
5 Q. But you agree with me that that's how that
6 number is generated, correct?
7 A. Seven-mile radius, correct.
8 Q. How close is Trident Medical Center to the
9 city limits of Goose Creek, do you know?
10 A. I don't know.
11 Q. Did you know it was less than two miles?
12 A. No.

Pg: 102 Ln: 19 - Pg: 106 Ln: 12

Annotation:

102:19 (PETITIONER'S EXH. 3, Project Review
20 Presentation, ROPER-BERKELEY001078 through 001092,
21 was marked for identification.)
22 BY MR. SUMMER:
23 Q. Let's talk about this document I've just
24 handed to you marked as Petitioner's Number 3. It is
25 Roper Berkeley Bates-stamp 1078 through 1092,
103: 1 correct?
2 A. Yes.
3 Q. Have you ever seen this document before?
4 A. Could be our project review presentation.
5 Q. Well, did you write the project review
6 presentation?
7 A. Yes.
8 Q. Do you remember writing this document?
9 A. I'd have to review every single page to see
10 if it was. What's in the application.
11 Q. Well, we got from your counsel. So take a
12 look at it and tell me if you think this is the
13 document that you authored.

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14 A. This appears to be our project review
15 presentation.
16 Q. All right. So this is a document that you
17 authored, correct?
18 A. I drafted.
19 Q. You wrote it, correct?
20 A. Yes.
21 Q. Thank you.
22 Look over on page 1079 for me.
23 A. Yes.
24 Q. All right. Second paragraph. "The
25 decision to place inpatient services in Goose Creek
104: 1 rather than Moncks Corner was based on both internal
2 and external market analyses."
3 Do you see that sentence?
4 A. Yes.
5 Q. I haven't seen either. What internal
6 analyses did you perform?
7 A. I've seen analyses by other members of our
8 internal team.
9 Q. Okay. Tell me who prepared those analyses.
10 A. Doug Bowling.
11 Q. What do those analyses look like? Are they
12 two pages or twenty pages? Give me an idea of the
13 length of the documents.
14 A. The only one that comes to mind was a
15 PowerPoint presentation.
16 Q. PowerPoint presentation. And it presented
17 an analyses of comparing the location between Moncks
18 Corner and Goose Creek; is that correct?
19 A. Yes.
20 Q. All right. What external market analyses
21 are you aware of comparing the Moncks Corner site to
22 the Carnes Crossroads site?
23 A. Mark Richardson's analysis was an external
24 analysis --
25 Q. Okay.
105: 1 A. -- that justified our 50 beds.
2 Q. Any others?
3 A. That's the one that comes to -- that I'm
4 aware of.
5 Q. That's the one you're aware of. You're not
6 aware of any other analyses, externally, done by any
7 other consultant or any other company?
8 A. No.
9 Q. Are you aware of an analysis done by
10 Mr. Levitt?
11 A. For the hospital project?
12 Q. Yes.
13 A. I'm aware that he went to DHEC, and I did
14 see a one-page document that he prepared.
15 Q. Comparing the two --
16 A. Prepared. I don't think -- no.
17 Q. Comparing the two locations?
18 A. No. It was a need analysis for Berkeley

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19 County and beds.
20 Q. And he presented it to DHEC?
21 A. To the best of my recollection, yes.
22 Q. Regarding this project?
23 A. Yes.
24 Q. Do you know who he met with?
25 A. No.
106: 1 Q. Would you assume that it's Ms. Brandt?
2 A. I would assume her and Lisa.
3 Q. All right. Is there anybody else who met
4 with DHEC regarding a need analysis other than
5 Mr. Richardson, other than Mr. Levitt?
6 A. Not that I'm aware of.
7 Q. Okay. Let's look at the second sentence.
8 "In both cases, Moncks Corner's population and growth
9 would not support the inpatient volume required to
10 justify the expense."
11 See that sentence?
12 A. Yes.

Pg: 106 Ln: 17 - 20

Annotation:

106:17 Q. Basically, you made a decision -- when I
18 say "you," Roper St. Francis made a decision to go to
19 Goose Creek because they could make more money there;
20 is that correct?

Pg: 106 Ln: 22 - 25

Annotation:

106:22 THE WITNESS: They would serve more
23 patients at that facility. That same location.
24 BY MR. SUMMER:
25 Q. So they'd make more money there, correct?

Pg: 107 Ln: 2 - 3

Annotation:

107: 2 THE WITNESS: You would hope that would
3 translate into, yes, more profit.

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Pg: 132 Ln: 12 - 25

Annotation:

132:12 Q. Okay. Was there ever any discussion about
13 doing the 25-bed hospital around your emergency
14 department in Moncks Corner?
15 A. A long time ago, I recall some kind of
16 critical access hospital discussion. And I don't
17 think it met the qualifications. But I couldn't tell
18 you who was involved, where I heard that from.
19 Q. Okay.
20 A. That was years ago.
21 Q. Who would have made that analysis?
22 A. I don't know that it got to the point of
23 analysis. I think there's a set of standards or
24 regulations for critical access hospitals. That
25 particular site didn't meet those tests.

Pg: 133 Ln: 9 - 23

Annotation:

133: 9 Q. Okay. What discussions have you had with
10 anyone at DHEC regarding Summerville's -- Trident
11 Summerville's application for the addition of 30
12 beds?
13 A. Doug, Ralph, and I went to DHEC on another
14 matter and that topic came up. And the discussion
15 centered around the inconsistencies.
16 Q. All right. Do you recall when this meeting
17 was?
18 A. Within the last 30 days.
19 Q. So sometime during 2011?
20 A. Yes.
21 Q. You're assuming that meeting was in
22 January?
23 A. January or February, I'm not sure.

Pg: 135 Ln: 14 - 25

Annotation:

135:14 Q. Okay. How did the topic of the Summerville
15 30-bed project come up when you're there for a cancer
16 center in West Ashley?
17 A. Both would be topics for that meeting.
18 Q. Both would be topics for that meeting.
19 Okay.
20 Who was present besides Ms. Brandt?
21 A. Lisa and Sallie.
22 Q. Lisa Sanders?

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23 A. Lisa Sanders, Sallie Harrell.
24 Q. Sallie Harrell?
25 A. I believe Les Shelton was there.

Pg: 136 Ln: 5 - 17

Annotation:

136: 5 How did the subject of Summerville come up?
6 A. We brought it up.
7 Q. Why?
8 A. Because the bed addition there is -- the
9 position that additional beds are needed at that
10 facility and none are needed for our project is
11 inconsistent.
12 Q. That's your opinion?
13 A. Yes.
14 Q. Okay. You would agree that under the State
15 Health Plan, DHEC says there is a need for beds at
16 Summerville Hospital?
17 A. They do project a need.

Pg: 136 Ln: 19 - 20

Annotation:

136:19 A. Summerville, applied for more than shown as
20 needed.

Pg: 137 Ln: 8 - 17

Annotation:

137: 8 Q. Okay. All right. What's the first
9 question you asked about the project? When I say
10 "you," I mean collectively. I'm talking about the
11 representatives of Roper that were present at the
12 meeting. What was the first question you had
13 regarding the Trident Summerville project?
14 A. The main thing that's excelled in my mind
15 was the developments that you just said are not
16 occurring in Berkeley County were used in the
17 Summerville application to justify additional beds.

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Pg: 137 Ln: 22 - Pg: 138 Ln: 7

Annotation:

137:22 Q. Well, explain to me what you mean by the
23 "lack of developments."
24 A. The lack of development has been asserted
25 that all of these commercial and residential future
138: 1 growth are not occurring now, so Roper Berkeley
2 Hospital is not needed. And that is not -- that's
3 the same argument they're using for their additional
4 beds as well.
5 Q. Okay.
6 A. That these developments are occurring and
7 we need more beds.

Pg: 140 Ln: 8 - 24

Annotation:

140: 8 Q. Did you tell DHEC -- and when I say "you,"
9 I mean did representatives of Roper tell DHEC that
10 Roper will oppose the bed expansion of Summerville?
11 A. I believe we did.
12 Q. And what's the basis of opposing a hospital
13 adding beds that are set forth in the State Health
14 Plan as needed?
15 A. The service area duplicates our facility.
16 Q. Your facility. You're talking about the
17 Carnes Crossroads facility?
18 A. Correct.
19 Q. So you view Summerville as being
20 duplicative of the Carnes Crossroad facility?
21 A. We view the two-bed addition projects that
22 have already been approved by DHEC, should come
23 online before additional beds are approved in the
24 same service area.

Pg: 143 Ln: 20 - Pg: 144 Ln: 19

Annotation:

143:20 The Summerville project was filed in the
21 fall of last year, correct?
22 A. I don't know offhand.
23 Q. Okay. Well, assume for me that it was
24 filed under the 2008-2009 State Health Plan. Under
25 the 2008-2009 State Health Plan, can you tell me what
144: 1 is the bed need for Summerville Medical Center?
2 A. 24.
3 Q. Okay. So according to the plan,
4 Summerville needs 24 beds, correct?

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5 A. Correct.
6 Q. All right. Are you also familiar with the
7 50-bed rule under the plan?
8 A. Yes.
9 Q. Okay. Again, referring to the 2008-2009
10 plan, Roman number II-7, the 50-bed rule allows for
11 an applicant -- if you need to refer to it, you can.
12 But it allows for an applicant to apply for either
13 the actual amount of the bed need or 50 beds,
14 whichever is greater, correct?
15 A. Yes.
16 Q. Okay. So you would agree with me that the
17 Summerville application complies with the State
18 Health Plan, correct?
19 A. Yes.

Pg: 147 Ln: 7 - 18

Annotation:

147: 7 Q. Have you had any other discussions with
8 DHEC staff regarding the Summerville 30-bed project?
9 A. No.
10 Q. Have you discussed that project with
11 Mr. Richardson?
12 A. No.
13 Q. You've had no discussion with
14 Mr. Richardson regarding the Summerville 30-bed
15 project?
16 A. That's what I just said.
17 Q. Did you send him a copy of the application?
18 A. No.

Pg: 155 Ln: 2 - Pg: 157 Ln: 21

Annotation:

155: 2 Q. Turn, if you would, to page 2560, please.
3 Take a minute and tell me if you recall this e-mail
4 exchange.
5 A. I don't recall it.
6 Q. You don't recall it. It appears that this
7 occurred -- this e-mail exchange was from 2007,
8 correct?
9 A. Correct.
10 Q. This would be one full year before Roper
11 applied for a hospital at Carnes Crossroads, correct?
12 A. Correct.
13 Q. It appears that, "Bret --" I'm reading the
14 first paragraph. "-- someone has relayed your
15 request for information relative to Trident Medical
16 Center and the decision to construct the hospital in

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17 Charleston versus Berkeley County. Upon researching
18 the history, it turns out that DHEC guided Trident's
19 location. A fact that may be not lost to some
20 council members."
21 What council members are you referring to
22 there?
23 A. I would guess our Berkeley advisory board.
24 Q. Your Berkeley advisory board? You're not
25 talking about county council?
156: 1 A. It could be.
2 Q. What did you mean by the fact that DHEC had
3 guided Trident's current location?
4 A. I'm not sure.
5 Q. Look at the second bullet point. You
6 obviously got this information from Joel Grice; is
7 that correct?
8 A. Correct.
9 Q. Would you have called him on the telephone?
10 A. Most likely.
11 Q. Okay. It says, "According to Joel Grice,
12 the reasons DHEC issued a CON to Trident Medical
13 Center in 1972 were twofold: For the construction of
14 a replacement hospital, which would now serve both
15 Berkeley and Dorchester counties; and to locate a
16 hospital in North Charleston."
17 Is that what Joel told you?
18 A. Yes.
19 Q. Okay. And Joel Grice is the former
20 director of the CON program?
21 A. Correct.
22 Q. The last bullet point, "If/when the
23 population warrants it, either hospital will have the
24 ability to use an institutional bed need in order to
25 construct a new hospital at Berkeley County."
157: 1 Are you referring to either Trident or
2 Summerville there?
3 A. I imagine I was referring to Roper
4 St. Francis system or Trident Healthcare System.
5 Q. Roper doesn't have any positive bed need
6 anywhere, does it?
7 A. Positive bed need isn't required to do a
8 bed transfer.
9 Q. It's not what I'm asking. "If and when the
10 population warranties it, either hospital will have
11 the ability to use an institutional bed need."
12 You recall we just looked in the State
13 Health Plan and there's an institutional bed need for
14 Summerville to add 24 beds, correct?
15 A. Correct.
16 Q. That's an institutional bed need, correct?
17 A. Roper does not have an institutional bed
18 need, correct.
19 Q. Didn't have one in 2007 and doesn't have
20 one today, does it?
21 A. No.

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Pg: 163 Ln: 1 - 9

Annotation:

163: 1 Q. Look over on page 3110, please, ma'am. You
2 go ahead and look at 3110 and 3111. Were you aware
3 that Roper was paying money to sponsor high school
4 football games?
5 A. I believe this was done in conjunction with
6 our letter writing campaign.
7 Q. So basically you paid 500 bucks at a
8 football game to get letters of support?
9 A. Yes.

Pg: 165 Ln: 25 - Pg: 166 Ln: 3

Annotation:

165:25 Q. Okay. There's no discussion of physician
166: 1 practice acquisitions in your Certificate of Need
2 application, is there?
3 A. No.

Pg: 171 Ln: 13 - Pg: 172 Ln: 1

Annotation:

171:13 Q. The question was asked, with the expanded
14 ED at Carnes Crossroads, was there a concern about a
15 negative impact that would have on your existing ED
16 in Moncks Corner. And you testified, no, they're two
17 separate, distinct markets.
18 MR. LONG: Objection.
19 THE WITNESS: I testified to the best of my
20 recollection, that would have been a discussion. I
21 have seen no internal documents to that effect.
22 BY MR. SUMMER:
23 Q. Okay. Is your testimony still that they're
24 two separate and distinct markets?
25 A. They are two different areas. We consider
172: 1 the entire Berkeley County to be the market.

Pg: 173 Ln: 16 - 19

Annotation:

173:16 Q. Okay. Do you agree with me that most of
17 the time it is the physician who determines where a
18 patient goes to the hospital?
19 A. Yes.

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Pg: 182 Ln: 11 - Pg: 183 Ln: 16

Annotation:

182:11 Q. Okay. Look over on page 343 for me. I'm
12 trying to understand the chart that shows transfer to
13 Mount Pleasant hospital. Do you see that?
14 A. Yes.
15 Q. What is that?
16 A. That is the number of discharges, patient
17 days and average daily census that would be
18 redirected from Roper to the new Mount Pleasant
19 hospital.
20 Q. From Roper downtown?
21 A. Yes.
22 Q. Four?
23 A. Yes.
24 Q. Let me get this right. You project in 2011
25 that there would only be a redirection of four
183: 1 patients on an average daily census basis, in other
2 words, four patients per day would have been downtown
3 are now going to be out at Mount Pleasant; is that
4 what that means?
5 A. That's how I read it.
6 Q. And then in 2012 that number drops to being
7 only three patients per day, correct?
8 A. Correct.
9 Q. And that's an 85-bed hospital, correct?
10 A. Correct.
11 Q. So the rest of those patients are going to
12 come from East Cooper, correct?
13 A. I don't know where the origin would be.
14 Q. They're going to be new patients to your
15 system, correct?
16 A. Correct.

Pg: 183 Ln: 17 - 19

Annotation:

183:17 Q. Whether they came out of East Cooper's hide
18 or MUSC's hide, they're new patients to your system,
19 correct?

Pg: 183 Ln: 21 - Pg: 184 Ln: 8

Annotation:

183:21 BY MR. SUMMER:
22 Q. Correct?
23 A. They are not the ones currently being
24 served. They are new patients.
25 Q. When would this have been -- this would
184: 1 have been Friday, January 16, 2009, correct? That

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2 would have been done about a year ago.
3 A. Correct.
4 Q. Let me get this right. In 2009, as you
5 prepared -- preparing to open the Mount Pleasant
6 hospital, you're only expecting four patients per day
7 in 2011 and three patients per day in 2012 to be
8 redirected from Roper downtown, correct?

Pg: 184 Ln: 19 - Pg: 186 Ln: 20

Annotation:

184:19 A. It's in the application.
20 Q. Let's go back to that DHEC record.
21 Do you have the application in front of
22 you?
23 A. Yes.
24 Q. The CON application? Do you mind turning
25 to page 463 for me. I'll give you the calculator.
185: 1 463.
2 Previously, I believe you testified that
3 the budgets were done by Mr. Knapp, correct?
4 A. The Roper Berkeley budget, correct..
5 Q. That part of the application was completed
6 by Mr. Knapp. So I'm going to turn you to page 463,
7 which is two pages behind Mr. Knapp's certification.
8 You'll see Mr. Knapp's certification on page 461.
9 Right?
10 A. Yes.
11 Q. And then you will see on page 463 general
12 assumptions. Are you with me?
13 A. Yes.
14 Q. Projected days at venue. Venue is the
15 hospital at Carnes Crossroads, correct?
16 A. Where are you looking?
17 Q. Page 463. General assumptions. Roman
18 numeral I, projected days at venue 2013, 2014, 2015.
19 Do you see that?
20 A. Yes.
21 Q. Projected days at venue would be the gross
22 patient days at Carnes Crossroad, correct?
23 A. Yes.
24 Q. Okay. Do me a favor and divide the 2015
25 patient day number, which is 12,775, and divide that.
186: 1 by 365.
2 A. 35.
3 Q. Okay. That would be my ADC, my average
4 daily census for the year 2015, correct?
5 A. Correct.
6 Q. Okay. Now, you will recall that
7 Mr. Richardson stated in his section that 60 percent
8 of those 35 patients are going to come from where?
9 Roper downtown, correct?

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10 A. Redirected.
11 Q. Redirected.
12 A. From the system. All Roper downtown.
13 Q. All Roper downtown. So from Roper
14 downtown, 60 percent of that 35 would be 21 patients,
15 correct? Just take 60 percent of 35.
16 A. Correct.
17 Q. So what we're telling DHEC, when I say
18 "we," what Roper is telling DHEC is that in 2015, 21
19 of those 35 patients are going to be coming from
20 Roper downtown, correct?

Pg: 186 Ln: 22 - Pg: 188 Ln: 11

Annotation:

186:22 BY MR. SUMMER:
23 Q. Look on page 31 -- 31 of the DHEC record.
24 A. Okay.
25 Q. "Based on the expectation that 60 percent
187: 1 of the new hospitals propose 2015 patient volume
2 would be repositioning of Roper St. Francis Berkeley
3 County residents to a Berkeley County located
4 facility."
5 This application contemplates that
6 60 percent of that 35 ADC 2015 is going to be
7 repositioned from Roper downtown, correct?
8 A. It appears so.
9 Q. So that's the 21 patients, you agree with
10 me? 35 times 60 percent is going to be 21 patients
11 per day on average. Right?
12 A. That calculation, yes, was 21.
13 Q. That's what you told DHEC, correct?
14 A. Yes.
15 Q. Okay. Now, let's go back, if you will, to
16 the other binder. You can put the application aside.
17 And go back to page 443. Are you with me?
18 A. Okay.
19 Q. Mr. Cassells is projecting that in the year
20 2011, which we're in right now, you're going to
21 redirect from downtown to Mount Pleasant four
22 patients per day, correct?
23 A. Correct.
24 Q. And he predicts in 2012 you'll be
25 redirecting only 3 patients a day from Roper to
188: 1 downtown?
2 A. From the system, correct.
3 Q. Okay. That's for an 85-bed hospital in
4 Mount Pleasant, correct?
5 A. Yes.
6 Q. Why is it realistic to assume that you
7 think you'll redirect more patients to a 50-bed
8 facility in Berkeley County than you anticipate

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9 redirecting to a much larger population base in
10 Mount Pleasant? Do you understand that's logically
11 inconsistent? Isn't it?

Pg: 188 Ln: 14 - 22

Annotation:

188:14 BY MR. SUMMER:
15 Q. Tell me if anyone has performed this same
16 projection that was done for the Mount Pleasant
17 hospital for the Carnes Crossroads. Have you seen
18 any projection like that for Carnes Crossroads?
19 A. For Carnes Crossroads?
20 Q. I'm not talking about in the CON
21 application.
22 A. Okay. Outside of the CON application, no.

Pg: 201 Ln: 16 - Pg: 202 Ln: 19

Annotation:

201:16 THE WITNESS: Can I make one additional
17 reference? We were doing the calculation of 20
18 average daily census redirected.
19 MR. SUMMER: 21 actually, but go ahead.
20 THE WITNESS: Bates-stamp page 991 outlines
21 the average daily census.
22 BY MR. SUMMER:
23 Q. Bates-stamp 991?
24 A. Redirected patients in 2015 is 13.
25 Q. 991. Where do you see redirected patients?
202: 1 A. The third.
2 Q. Patient volume shift from Roper to Berkeley
3 ADC of 13. So what you're basically telling me,
4 then, is that -- what you're telling me is that
5 Mr. Richardson's statement, if we go back over to
6 page -- wherever it was, adverse impact on page 331
7 and his statement of 60 percent would be from
8 redirected from Roper, that is inaccurate, correct?
9 That is not accurate?
10 A. I wouldn't say that. I would say between
11 the two, they could explain the variance.
12 Q. Between the two who?
13 A. Mark Richardson, who provided this 13 ADC
14 number.
15 Q. Right.
16 A. And the 20 you just --
17 Q. 21.
18 A. -- we based off of the financial
19 calculation.

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Pg: 202 Ln: 23 - **Pg:** 205 Ln: 16

Annotation:

202:23 THE WITNESS: I think the factors of
24 population growth, the factors of 10 percent outside
25 of Berkeley County are somehow reflected in that 20
203: 1 that you're calling a total redirection. But I don't
2 know.
3 BY MR. SUMMER:
4 Q. First of all, take your calculator. You
5 will agree with me that what we read from Mr. Knapp
6 established that the ADC in 2015 is projected to be
7 at the Roper Carnes Crossroad property, the ADC is
8 projected to be 35 in the year 2015, correct?
9 A. What page is that?
10 Q. That would be on page 463. Go to page 463.
11 Are you there?
12 A. No. The DHEC record or my deposition
13 notebook?
14 Q. The DHEC record. The same book you were
15 in. Go to page 463. And, again, you indicated
16 Mr. Knapp prepared these financial assumptions for
17 the Certificate of Need application; is that correct?
18 A. Correct.
19 Q. And on page 463, he has a projected days at
20 venue, which you described as the Carnes Crossroad
21 property is 12,775 days in 2015, correct?
22 A. Correct.
23 Q. All right. If you divide 12,775 by 365,
24 what do you get?
25 A. That was the 20 or 21 average daily census.
204: 1 Q. I don't think so. Try it again.
2 12,775 divided by 365 days gives us an ADC
3 of what? 35, correct?
4 A. I'll trust you on that one.
5 Q. Is that what you get, too?
6 A. No. I didn't get the calculation.
7 Q. If you take 12,775 and divide it by 365,
8 what does that calculator tell you that number is?
9 A. 35.
10 Q. Thank you.
11 Now, so we can assume for purposes of his
12 budgets, Mr. Knapp is assuming that the year 2015
13 he's going to have an ADC of 35 at the Carnes
14 Crossroads hospital, correct?
15 A. Correct.
16 Q. All right. Go back to page 31 of the
17 application, adverse impact on existing providers.
18 Mr. Richardson, who you tell me drafted this section,
19 including page 31 of the application, we've
20 previously established in testimony that
21 Mr. Richardson drafted page 31 of the application,
22 correct?
23 A. Yes.
24 Q. And on the adverse impact on existing

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25 providers, based upon the expectation that 60 percent
205: 1 of the new hospital's proposed inpatient volume would
2 be repositioning of the Roper patients, correct?
3 A. Correct.
4 Q. All right. What is 60 percent of 35?
5 A. I'm not disputing that calculation.
6 Q. Great. So what your testimony is now is
7 that 991 further muddies the water; is that correct?
8 A. No. My testimony is that both of these
9 tick and tie somehow.
10 Q. You just don't know how?
11 A. Correct.
12 Q. Okay. You're assuming that they tick and
13 tie somehow?
14 A. I am.
15 Q. But you don't know, correct?
16 A. Correct.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

TRIDENT MEDICAL CENTER, LLC,
D/B/A BERKELEY MEDICAL CENTER,

Petitioner(s),

vs.

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

SOUTH CAROLINA DEPARTMENT OF
HEALTH AND ENVIRONMENTAL CONTROL
AND ROPER ST. FRANCIS HOSPITAL-BERKELEY
D/B/A ROPER ST. FRANCIS HOSPITAL,

Respondent(s).

(CAPTION CONTINUED NEXT PAGE.)

D E P O S I T I O N

WITNESS: MATT SEVERANCE

DATE: Tuesday, September 20, 2011

TIME: 10:09 a.m.

LOCATION: Parker Poe Adams & Bernstein, LLP
200 Meeting Street, Suite 301
Charleston, South Carolina

TAKEN BY: Attorneys for Trident Medical Center

REPORTED BY: SHERI L. BYERS
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Page 2 1 (CAPTION CONTINUED) 2 TRIDENT MEDICAL CENTER, LLC, D/B/A BERKELEY MEDICAL CENTER, 3 4 Petitioner(s), 5 6 vs. Case No: 09-ALJ-07-0333-CC 7 8 SOUTH CAROLINA DEPARTMENT OF 9 HEALTH AND ENVIRONMENTAL CONTROL, 10 Respondent(s). 11 12 CAREALLIANCE HEALTH SERVICES AND 13 ROPER ST. FRANCIS HOSPITAL-BERKELEY, 14 15 Petitioner(s), 16 17 vs. Case No: 09-ALJ-07-0336-CC 18 19 SOUTH CAROLINA DEPARTMENT OF 20 HEALTH AND ENVIRONMENTAL CONTROL 21 AND TRIDENT MEDICAL CENTER, LLC, 22 23 Respondent(s). 24 25	Page 4 1 STIPULATION: It is stipulated by and between 2 counsel that this deposition is being taken in 3 accordance with the South Carolina Administrative Law 4 Court Rules, and that the deponent reserves the right to 5 read and sign the deposition transcript. 6 7 ----- 8 MATT SEVERANCE, being first duly 9 sworn, testified as follows: 10 EXAMINATION 11 BY MR. THOMAS: 12 Q. Hi, Mr. Severance. Do you mind if I call you 13 Matt? 14 A. That's great. 15 Q. I'm here today to take your deposition. I 16 represent Trident Health Systems in this CON case. I'm 17 trying to find out the facts that you know about the 18 case. All that I ask is that you answer my questions 19 truthfully and to the best of your ability. 20 Do you understand that? 21 A. I understand. 22 Q. All right. Could you state your full name 23 and home address for the record. 24 A. It's Matthew James Severance, 54 Legare 25 Street, Charleston, 29401.
Page 3 1 APPEARANCES: 2 ATTORNEYS FOR CAREALLIANCE HEALTH 3 SERVICES AND ROPER ST. FRANCIS 4 HOSPITAL-BERKELEY: 5 NEXSEN PRUET, LLC 6 BY: JAMES G. LONG, III, ESQUIRE 7 1230 Main Street, Suite 700 8 Columbia, South Carolina 29201 9 jlong@nexsenpruet.com 10 803.771.8900 11 12 ATTORNEYS FOR TRIDENT MEDICAL CENTER, 13 LLC, D/B/A BERKELEY MEDICAL CENTER: 14 15 PARKER POE ADAMS & BERNSTEIN, LLP 16 WILLIAM R. THOMAS, ESQUIRE 17 1201 Main Street, Suite 1450 18 Columbia, South Carolina 29201 19 willthomas@parkerpoe.com 20 803.255.8000 21 22 ATTORNEYS FOR SOUTH CAROLINA DEPARTMENT 23 OF HEALTH AND ENVIRONMENTAL CONTROL: 24 VIA TELEPHONE: 25 SCDHEC OFFICE OF GENERAL COUNSEL BY: ASHLEY C. BIGGERS, ESQUIRE 2600 Bull Street Columbia, South Carolina 29201 biggersac@dhcc.sc.gov 803.898.3432 19 20 21 ALSO PRESENT: 22 DOUG BOWLING 23 24 (INDEX AT REAR OF TRANSCRIPT) 25	Page 5

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Page 6	Page 8 1 employment history and just kind of from a -- if you can 2 recall in a year perspective as best as you remember. 3 A. Yeah, sure. So I did a residency at Roper 4 Hospital. That's, you know, basically where you get to 5 take the didactic stuff that you learned and then apply 6 it in a real-work setting. It's also an opportunity to 7 see how a hospital really operates. And so that -- you 8 know, in that environment you're basically just being 9 exposed to management, medical staff, boards. Just 10 getting your feet underneath you in terms of career 11 perspective. 12 Following that, I was fortunate in that, you 13 know, Roper was in kind of a dynamic time in terms of 14 its history and beginning to develop, and so there was 15 just an opportunity for one more person, although there 16 are several of us now. 17 The guy that was my boss, a guy named Jim 18 Rogers, was the CEO. He was kind enough to give me a 19 significant operational responsibility early on and to 20 change that about every eight months. So my first role, 21 I can't remember the exact title, but basically an 22 operations manager, had five or six departments that, 23 you know, were everything from laundry to food to 24 radiation therapy to, you know, pharmacy. Kind of a 25 hodgepodge of things. And every, you know, about 18
Page 7 9 Q. Just kind of take me through your education 10 through what your last degree was, if you could. 11 A. Sure. I went to Wake, was a business major. 12 Emphasis in business. Went directly from there to 13 University of Florida to a joint degree program. It was 14 a program that offered an MBA and a master's in hospital 15 administration. And so I was there for two years 16 getting those degrees. 17 Part of the master's in hospital 18 administration required a year residency, which I did at 19 Roper Hospital. 20 Q. Okay. 21 A. And that was in 1990. 22 Q. Okay. So you did your residency at Roper in 23 1990? 24 A. I did. 25 Q. Could you take me through kind of your	Page 9 1 months later, he changed the departments that I managed, 2 which for me was great because it gave me a lot of 3 experience. 4 In operations, eventually, sometime in mid 5 '90s, Roper and St. Francis began to work together in an 6 effort -- this was kind of what I would call the dating 7 phase before we merged. I believe the entity was Low 8 Country Health Systems, but I could be wrong. At any 9 rate, we were collaboratively working on ambulatory-type 10 stuff. And I was charged with leading some of that. 11 And that was a lot of development work. This was, you 12 know, developing some outpatient centers and putting 13 physicians in those. 14 It was the era where hospitals were beginning 15 to get into employing doctors, and I did some of that. 16 And then transitioned from there to more of a strategic 17 planning role. I had to develop, manage strategic 18 planning, was a vice president. I did that for a few 19 years, it seems like. 20 And then there was a period of about, I don't 21 know, 14, 15 months where I was asked to be the interim 22 administrator for Roper Hospital. The then CEO of the 23 hospital had separated from the company, and so I did 24 that for a little over a year. And then I opted to take 25 a position up in New York, Lawrence Hospital Center. It

Page 10

1 was a number two position of COO there, and, you know,
2 from a career perspective, it was an opportunity to
3 broaden my exposure to a different environment. And so
4 I was there for three years, great experience. I
5 learned, you know, a lot of things about running
6 hospitals in a different market with different
7 pressures.

8 In 2004, I had the opportunity to interview
9 for the CEO position of Roper Hospital and ultimately
10 got that job and returned to Roper Hospital and have
11 been the CEO at Roper since that time.

Page 12

Page 11

Page 13

16 Q. Who do you report to as CEO?
17 A. I report to David Dunlap.
18 Q. Is that your only report?
19 A. That is.

4 (Pages 10 to 13)

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Page 22	Page 24 1 studying it. 13 You mentioned, I think, a little bit 14 earlier -- let me make sure I get this right -- that you 15 have to understand the goals of the State Health Plan. 16 What are your understanding of the goals of the State 17 Health Plan? 18 A. You know, I believe that the State Health 19 Plan is about deploying healthcare assets in a manner 20 that optimizes the health of the state and to do that in 21 a responsible, fiscally responsible fashion. 22 Q. Okay. I think that's a pretty good 23 definition. In terms of the purposes of the State 24 Health Plan or the CON program, would you agree with me 25 that one of them is cost containment?
Page 23 18 Q. You would agree that real world experience is 19 a plus in terms of being -- 20 A. I do. 21 Q. -- an effective health planner? 22 A. Yes. 23 Q. Working in a hospital or in some form of 24 healthcare? 25 A. Yeah, I would agree. Or at a minimum	Page 25 1 A. One of the purposes of the health plan? 2 Q. Really of the CON program. Not necessarily 3 the State Health Plan. 4 A. Yeah. I would agree with that. 5 Q. Okay. And one of them is also preventing the 6 unnecessary duplication of services, isn't it? 7 A. I would agree with that. 8 Q. I think you may have mentioned this. One is 9 guiding the establishment of health facilities and 10 services which will best serve the public need? 11 A. Right. 12 Q. And the last one is to ensure high quality of 13 healthcare. Does that sound about right? 14 A. That sounds good. 15 Q. Okay. In terms of cost containment, what 16 does that -- what does that term mean to you in terms of 17 health planning? 18 A. I guess the ultimate cost containment would 19 be the healthcare dollar per capita. It would be -- 20 Q. What do you mean by that? 21 A. Dollars spent on healthcare per capita. 22 Q. Per person? 23 A. Per person. 24 Q. Okay. In terms of preventing unnecessary 25 duplication of services, what do you -- what does that

7 (Pages 22 to 25)

Page 26 1 mean to you? 2 A. You know, I believe the intent there is that 3 there's a fundamental difference between healthcare and, 4 say, selling hamburgers. 5 Q. I've heard this before. 6 A. Have you? Okay. 7 Q. From a senator in the well of the Senate. 8 A. He said they are actually identical, right? 9 Q. Right. 10 A. You know, the difference is in healthcare, 11 you know, if you're selling hamburgers, you can compete 12 on price and quality and the consumer is buying the 13 hamburger and is bearing the cost of the product and 14 makes the decision. 15 In healthcare, it's a different scenario. 16 The person making the decision is generally not is the 17 person that's receiving the service. So if I'm getting 18 total knee, the person making the decision as to what 19 knee I'm getting is generally the surgeon. It's not the 20 patient. The person generally paying for the procedure 21 is not the patient, not the person getting the product. 22 It's not even the person making the decision which 23 product to put in. The surgeon is making the decision 24 which product is put in. The person paying it is the 25 health insurance company.	Page 28 1 have unnecessary duplication in that because the market 2 is different and would not drive costs down. Like with 3 hamburgers it does, or airline tickets. When Southwest 4 come to Charleston, price of tickets went down. That 5 doesn't apply in healthcare because you don't have that 6 direct alignment where the person that is making 7 decisions, paying the money, and is bearing the burden 8 of that decision. 9 So it's different. And that's why the CON 10 process, that's the role it plays with respect to cost.
Page 27 1 So there's not this true capitalistic market 2 in healthcare. And because of that, you know, 3 competition doesn't necessarily play out the way it does 4 when you're selling hamburgers. And there's also no -- 5 there's no one saying, "By the way, we're going to give 6 every fifth hamburger away for free." Which is what the 7 Federal Health Policy suggests. That people walking in 8 our emergency room, that, you know, we have to treat 9 them without regard to ability to pay. 10 And so those facts change the dynamics in 11 healthcare, and I think it makes it different than the 12 hamburger joint on the corner. 13 Q. And you would agree with me that healthcare 14 is one of the most regulated industries in the United 15 States? 16 A. I think it's one of the most complex 17 industries in the United States. It's one of the most 18 regulated. And I think -- and your original question 19 was how does this, you know, get to cost? And I realize 20 this is a long answer to that. But, you know, 21 ultimately the CON law seeks to -- I think the CON law 22 realizes that the market is different than the hamburger 23 market and because of that, it puts more structure on 24 duplication of services realizing that those same forces 25 don't apply. And left just up to the market, you might	Page 29

8 (Pages 26 to 29)

Page 30

Page 32

10 Q. Okay. What was -- you said Northwoods ED,
11 and that's in the Northwoods area of -- it's out there
12 on Rivers Avenue; is that right?

13 A. Right.

14 Q. Why did Roper feel the need to put an
15 emergency department up in Northwoods?

16 A. It was a market that, you know, we thought
17 would benefit from emergency services. I can't remember
18 when we did that. It seemed like it was in the mid
19 '90s, maybe. Late '90s.

20 Q. Okay.

21 A. And, you know, it's been a successful project
22 for us.

23 Q. Okay. Does having an ED in those areas, does
24 that help increase inpatient revenue for Roper Hospital,
25 Inc., and Bon Secours Hospital?

Page 31

Page 33

1 A. Some. You know, the fact of the matter with
2 Northwoods ER is that it's got a pretty low admission
3 rate. So it's not a -- I don't know what that rate is,
4 but it's generally taking care of a lower acuity
5 population than a standard emergency room that you would
6 see in a hospital. So there's not a huge downstream
7 impact there. It's also taking care of a significant
8 indigent and unfunded population, which we think is, you
9 know, part of our mission.

10 Q. Okay. Is it also established to increase
11 market share in that area, would that be one reason?

12 . A. Sure.

25 Q. In terms of the Northwoods ED, that was put

Page 34 1 in what would be considered Trident's primary service 2 area, wasn't it? 3 A. You know, it's South Trident, I would say. 4 When we did that, we had Roper North, which was the old 5 Baker Hospital, as part of our system. And, you know, 6 we viewed that as much our market as Trident's market. 7 I don't know that we -- I don't know that I would define 8 that as Trident's market. 9 Q. Okay. But Roper North, that was shut down by 10 Roper, correct? The old Baker hospital in terms of an 11 inpatient facility? 12 A. That was closed. And, you know, of the -- 13 one of the things that we -- that I remember, and, 14 again, I was young in my career, but that I remember 15 being important was the discussion around the ER volume 16 at Roper North and the concern in terms of not wanting 17 to leave that community that relied on that ER, you 18 know, without a facility. And so the Northwoods 19 provided a good vehicle for that. 20 Q. Okay. One of the reasons that Roper North 21 shut down was because it was losing a lot of money; 22 isn't that fair to say? 23 A. I don't know the answer to that. 24 Q. You think it was making money? 25 A. I don't recall.	Page 36
Page 35 1 Q. Okay. And that hospital served a large 2 indigent population, didn't it? 3 A. I would say that it certainly served an 4 indigent population. I don't know if -- I was -- I just 5 was not that involved. I don't know what their payments 6 would have been, but ... 7 Q. Based on your knowledge -- 8 A. Their demographics, I would think would be, 9 you know, not an insignificant indigent population. 10 Q. Okay. What was your involvement with the 11 development of the CON application for the hospital at 12 Carnes Crossroads -- proposed hospital at Carnes 13 Crossroads? 14 A. My primary -- really, my only involvement had 15 to do with assessing the ability for Roper Hospital to 16 provide licensed beds to be redeployed. And my concern 17 was to make certain that that act was not inappropriate 18 for Roper and for our mission and for our services.	Page 37

10 (Pages 34 to 37)

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Page 46	Page 48 21 Q. Would you agree with me that Roper has, in 22 the Tri-County area the last few years, employed an 23 aggressive growth strategy? 24 A. Can you ask that again? I'm not sure. 25 Q. Yeah. Would you agree with me that over the
Page 47	Page 49 1 past few years that the Roper St. Francis system has 2 employed an aggressive growth strategy with respect to 3 its development of healthcare services in the Tri-County 4 area? 5 A. You know, I guess -- I guess the bar would be 6 relative to what? We're growing. And, you know, 7 probably if you took, you know, a snap in time of the 8 last couple of years, it's probably more so than other 9 places because we just opened a new hospital, but step 10 back and take a picture in 20 years. But I think 11 recently, yeah, we've done some projects, brought on a 12 new hospital, brought on the Roper facility. 13 Significant -- I mean, a downtown heart vascular center. 14 Significant capital investment. Really just updating 15 our facilities. 16 I think as it relates to Mount Pleasant, as 17 it relates to the St. Francis Hospital, it has done some 18 expansion to accommodate their growth, so yeah. 19 Q. Would you describe that as an aggressive 20 growth strategy? 21 A. It wouldn't say aggressive. I mean, 22 aggressive, at least in my way of thinking, has kind of 23 a risky connotation to it. I think it's been more of a 24 deliberate, you know, well-thought-out strategy. 25 Q. Okay. So in addition to the

13 (Pages 46 to 49)

Page 50 1 hundred-million-dollar hospital in Mount Pleasant that 2 just opened November of last year, does that sound about 3 right? 4 A. That's correct. 5 Q. Okay. And then another plan to build another 6 hundred-million-dollar-plus hospital in Berkeley County, 7 which, you know, depending on how the litigation goes, 8 that could be open in three or four years in Berkeley 9 County, correct? 10 A. It could. 11 Q. Have you ever heard that term used internally 12 at Roper, "aggressive growth strategy"? 13 A. No, I can't say that I have. 14 Q. Okay. Are you aware of strategic or written 15 strategic or business plan that sets forth the growth 16 strategy in the Tri-County markets? 17 A. You know, we have strategic initiatives, one 18 of which is to develop this Carnes Crossroad hospital. 19 We have lots of strategic initiatives, so, you know, do 20 we have a strategic plan in the form of strategic 21 initiatives, yes. 22 Q. What does that say about Carnes Crossroads? 23 A. It says that we're seeking to put a hospital 24 there. 25 Q. Okay. Does it mention anything about what	Page 52
Page 51 1 the goals of that project are? 2 A. Service the community that lives there, 3 providing options and choice. 4 Q. Would one reason be to increase market share 5 out in the Berkeley County area? 6 A. Yes. 7 Q. Would another reason be to bring additional 8 tertiary care services from Berkeley County down to 9 Roper Hospital, Inc., the hospital you manage? 10 A. I doubt that's in the strategic plan. You 11 know, I think what the plan for that says is here's a 12 community that is significant. It's got -- we have an 13 existing market share that's pretty significant. We've 14 got assets that are currently unutilized downtown. We 15 would like to utilize and service that market where we 16 can give a choice. 17 You know, it's a huge county without a 18 hospital. It's a population that's growing pretty fast, 19 and the concept of utilizing our existing assets, 20 licensed beds to service that population is what that 21 plan really talks to.	Page 53 23 Let me ask you this and just based on your 24 knowledge of the Roper St. Francis system. If Roper 25 does not build the hospital in Carnes Crossroads, is

14 (Pages 50 to 53)

Page 54 1 there any chance that the Roper St. Francis system would 2 fail on a financial basis? 3 A. I don't think so.	Page 56
Page 55 20 Q. Would you agree with me that the physician 21 has a lot to do with where the patient ultimately ends 22 up? 23 A. I think they do. You know, I think patients 24 are having more and more impact on that, but, yeah, 25 physicians drive a significant amount.	Page 57 4 Q. Okay. What do you think is -- would not be 5 considered good access to an inpatient facility? 6 A. You know, I think you get outside of 30 7 minutes, it's significant. Obviously, it depends on 8 lots of things.

15 (Pages 54 to 57)

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4 Do you think people will generally choose to
5 go to the closest emergency department in terms of --
6 that have some kind of secondary or tertiary problem?
7 A. Yeah. I think proximity is probably the
8 biggest driver in terms of where people go to the ER.
9 It's not the only driver, but I think it's about the
10 biggest driver.

Page 82	Page 84 1 Q. Okay. You know, Roper, I think, has made 2 several comments in the press through its agents that 3 Berkeley County could support a lot more than a hundred 4 beds. Do you agree with that statement? 5 A. I do. 6 Q. Okay. In fact, if you turn to -- I wrote it 7 down -- the DHEC record that you've got before you, go 8 to page 1244. You'll see a table there that shows the 9 2006 population of various counties and the existing 10 beds in those counties, correct? Jt. 2 * 11 A. Okay. I got you. 12 Q. And, you know, a lot of these counties have 13 less population than Berkeley does, doesn't it? 14 A. Right. 15 Q. Okay. Do you know how many of these counties 16 have a hospital one mile as the crow flies and maybe 17 four miles as the crow flies from their main population 18 centers? 19 A. I do not. 20 Q. Okay. That would be something important to 21 know in terms of analyzing bed need for a particular 22 service area, correct? 24 THE WITNESS: Yeah. Sure.
Page 83	Page 85

22 (Pages 82 to 85)

24 Q. Okay. If you go back to Exhibit I for me,
25 it's that JAR report I handed you.

Jt. 13 *

23 (Pages 86 to 89)

Page 90	Page 92
1 A. Yeah. 2 Q. It's not going to be in the notebook. 3 A. Sure. 4 Q. Kind of the same area, that utilization. 5 A. Uh-huh. 6 Q. I was looking at the numbers of discharges 7 less rehab. 8 A. Uh-huh. 9 Q. And I saw that from 2009 from 2010, the 10 number of discharges at Roper Hospital went from 14,645 11 to 13,318, which, I guess, is a decrease of 9 percent. 12 A. I'm sorry, let me get with you here. 13 Q. Okay. 14 A. Where are you? 15 Q. It's on the same page, schedule F. 16 A. I'm with you. 17 Q. The discharges right here. 18 A. Right. Okay. 19 Q. Excludes newborns. So you've got for adult 20 medical surgical 13,581 and 12,103, and obstetrical 21 you've got the numbers there. And I didn't count the 22 rehab beds. And I counted on the next page the 23 intensive care, the ICU units, the NICU and the CICU. 24 A. Right. 25 Q. And I came up with the numbers I just read	1 A. Three or four years, five years. 2 Q. Okay. 3 A. And a lot of that is, you know, we look at 4 market share. And I can't quote you that, but market 5 share has been pretty static. You know, a lot of things 6 that hospitals used to count as inpatient discharges, 7 we're still taking care of those patients. It's just 8 they're not called inpatients anymore, they're called 9 observation patients or they're called outpatients. 10 So, you know, it's not that the patient is 11 not in your hospital. I mean, for instance, it's not 12 uncommon to have an observation patient that will be in 13 your hospital three days. A lot of laypeople assume if 14 I was in the hospital more than 24 hours, I'm inpatient. 15 That is not how it works. You're only inpatient if you 16 meet certain criteria that are -- 17 Q. Sure. 18 A. -- defined in terms of what's wrong with you 19 and the intensity of service. So, you know, what we've 20 seen in hospitals in general is we've seen shifts from 21 inpatient status to observation and to outpatient. Some 22 of it is driven by technology, some of it -- a lot of it 23 is driven by payors' desire to pay less. So I think 24 that's -- I would suggest that's the lion's share of 25 what you're seeing there.
Page 91	Page 93
1 into the record, which was 14,645 in '09, and 13,318 in 2 2010. So I was curious what you thought the reason for 3 the 9 percent decrease was from 2009 to 2010? 4 A. You know, I guess I'd want to study that. 5 Q. Is that a question that you all haven't 6 looked into in the organization as of this time? 7 A. I have not personally looked at that. You 8 know, we've had -- we've had a modest decline over the 9 years in discharges. This year they're actually up a 10 little bit. 11 Q. What is Roper on track to do this year, if 12 you know. 13 A. We're budgeted -- you want excluding the -- 14 Q. No rehab. 15 A. Excluding rehab. We're budgeting for, you 16 know, just south of 14,000, so maybe 13-. I want to say 17 it's 13,600 or something like that. That may not be 18 exact. With rehab, it starts to approach 15,000. 19 Q. Okay. Has it been a steady decline in 20 discharges at Roper Hospital, Inc., over the last few 21 years? 22 A. You know, more than anything I would say it's 23 been flat to slightly declining would be my general 24 assessment of it. 25 Q. Going back how far, do you think?	1 Q. Is it fair to say that despite the boom in 2 the population for the Tri-County area over the last 3 half decade, I mean, that doesn't necessarily convert 4 into increased patient days or discharges for 5 facilities, does it? 6 A. What we've seen is growth in adjusted 7 discharges, which is the most common metric that health 8 systems use. And they use that because it captures both 9 inpatient work and outpatient work. And it -- you know, 10 an adjusted discharge is similar to the concept of a 11 widget. It's a unit of service that embodies inpatient 12 and outpatient. We've seen adjusted discharges grow for 13 us. 14 Q. And that's a function of more outpatient 15 work? 16 A. Well, it's a function of there's certainly 17 been a shift from inpatient to outpatient, but I think 18 it -- what's rolled up into all that is changing 19 demographics, population, changing status in terms of 20 inpatient versus observation versus outpatient. So all 21 that -- so I guess what I would want you to hear is the 22 volume of work is increasing. What we call it is 23 changing. 24 Q. Okay. But in terms of the original question 25 I asked in terms of just straight inpatient discharges

1 that Roper's reported, despite the population growth in
2 the last half decade, at least at Roper's downtown
3 facility, the discharges have remained static or have
4 actually decreased, correct?

5 A. That's correct.

6 Q. Okay. How has utilization at Roper Mount
7 Pleasant affected the utilization at Roper Hospital
8 downtown in the last -- I guess we're coming up on 11
9 months?

10 A. Yeah. Yes, we're a year into it almost. You
11 know, we made some budget assumptions in terms of volume
12 that would move -- my recollection is those were
13 consistent with whatever the pro forma was. I would
14 say, you know, we've seen a couple of things. We've
15 seen probably more shift than we budgeted in the
16 outpatient arena and a little bit less on the inpatient
17 side. And having said that, an inpatient piece of their
18 business continues to kind of just slowly increase. And
19 so -- but all in for the first 11 months.

20 It's -- we've been proximal on what I would
21 called adjusted discharges, but we've been light on --
22 the amount of shift has been light relative to what we
23 anticipated on the inpatient side. It's been heavier on
24 the outpatient side.

Page 106

Page 108

- 1 A. Okay.
- 2 Q. Do you recognize this document?
- 3 A. I do.
- 4 Q. Did you create it?
- 5 A. I'm sure I did.

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Page 109

- 24 Q. So if you go to Roper Berkeley 980 for me,
- 25 which would actually be a copy of your CV.

Pet. 86*

28 (Pages 106 to 109)

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4 Q. Do you think there would be any increase in
5 tertiary care services as a result of putting Roper --

6 A. Sure, I do.

7 Q. Okay.

8 A. We're talking about capturing -- I think we
9 talked about this before, that 10 percent market and,
10 you know, with that will come some level of tertiary
11 care.

12 Q. Okay. Turn the page in your resume here.

13 A. Okay.

14 Q. Roper Berkeley 982.* One of the things that
15 you talked about was service line profitability. Is
16 that important to Roper?

Pet. 86*

17 A. Yeah. There's an old saying, "No margin, no
18 mission." So you could -- you have to generate a margin
19 to perpetuate a mission.

20 Q. Okay. And that mission, if that mission is
21 providing high quality care, then having your service
22 lines be profitable is a good thing, correct?

23 A. It is a good thing.

24 Q. Okay. And the one advantage, I guess, that
25 Roper would have over a for-profit hospital is that it

Page 114 1 doesn't have to pay any state or federal income taxes, 2 correct? 3 A. Correct. We do not pay income taxes.	Page 116 1 secondary markets, don't they? 2 A. They do today, sure do. 3 Q. Are those mostly kind of specialists, or do 4 you know? 5 A. I think it's a combination. 6 Q. Is the hope there that some of the 7 specialists will refer some of the higher tertiary 8 patients to Roper downtown for some of the more 9 specialized services? 10 A. Yeah. Some examples of those are we -- we 11 employ some cardiologists in Beaufort, and that is a -- 12 that's an effort that is in partnership with the 13 Beaufort Hospital. In other words, their 14 administration, you know, they don't -- they're a 15 smaller hospital. They have fewer resources. They 16 didn't have the expertise, the skill set, and physician 17 management, and had a community need. 18 We agreed to put some physicians there, help 19 them because it met their community need from a 20 cardiologists. They do the lion's share of their work 21 at the hospital. There's some services that hospital 22 doesn't offer. For the services that hospital doesn't 23 offer, we're able to provide those services. And so it 24 allows us to assist them to meet a market need and helps 25 us support our tertiary infrastructure.
Page 115 11 Q. All right. If you look at this bullet point, 12 it starts with "Established improved relations with 13 hospitals and physicians in CareAlliance secondary 14 market." * 15 What do you consider CareAlliance's secondary 16 market? 17 A. We consider our primary market to be 18 Charleston, Berkeley, Dorchester. Secondary would go to 19 Beaufort, Colleton, Orangeburg, Georgetown. Seems like 20 I'm missing one. But, anyway, the secondary market, I 21 believe, is eight counties in total. 22 Q. Okay. 23 A. Including the Tri-County area. 24 Q. And, in fact, I would imagine that -- well, 25 Roper actually employs physicians in some of those	Page 117 1 Q. Okay. And that may result in high 2 reimbursements from that high level-tertiary care, 3 correct? 4 A. It depends if they're funded or not. 5 Ideally, all in, you do better than not. 6 Q. Okay. 7 A. We have some markets where we have 8 arrangements where funding is not good. Those are more 9 mission oriented. Pet. 86*

30 (Pages 114 to 117)

Page 118 18 Q. In your CV here under director of ambulatory 19 care and system development, fourth bullet point down, 20 you report, "Established a highly successful 21 freestanding emergency room in competitor's primary 22 market." * 23 That's the Northwoods ED in Trident's market, 24 correct? 25 A. That is.	Page 120 Pet. 86 *
Page 119 1 Q. And you felt like that was a pretty good 2 accomplishment in terms of your work history? 3 A. I did.	Page 121

31 (Pages 118 to 121)

Page 134 22 Q. Okay. Who chose -- or did you suggest that 23 this Dennis Harmon be added to the board? 24 A. We had a nominating committee that I 25 participate on that nominated, you know, a number of	Page 136 1 Player to you, Mr. Bowling, Mr. Dunlap, Mr. Carroll. 2 Who is Allen Carroll? 3 A. He's the CEO of St. Francis Hospital. 4 Q. Okay. Who's Mike Cassells? 5 A. He was a decision support person. Ran 6 decision support for us. No longer with the 7 organization. 8 Q. Okay. Okay. And this is an e-mail that 9 attaches slides summarizing Roper's strategic position 10 and direction for inclusion in the BSHSI rating agency 11 presentation. Do you know what BSHSI stands for? 12 A. That's Bon Secours Healthcare System, 13 Incorporated, so that's the -- 14 Q. Like Fitch or something like that? Moody's? 15 A. Well, Bon Secours is the health system that 16 owned St. Francis. 17 Q. I understand that. I'm talking about the 18 rating agency presentation. 19 A. That would be Moody's or Standard & Poor's 20 probably. 21 Q. Okay. 22 A. So Bon Secours corporate, not our St. Francis 23 hospital but Bon Secours corporate. It would appear 24 that they were going through a radius meeting. 25 Q. Okay. And so this is -- is this a document
Page 135 1 people. My memory is when Dennis came on, that we 2 brought on four or five board members. I don't recall 3 who suggested Dennis. 4 Q. Okay. That's fine. 5 A. I just don't. 6 Q. I want to go back just to make sure I've got 7 this clear in my mind. You're not aware of a document 8 that states that -- some kind of master planning 9 document for the Roper organization that states, "Okay, 10 by 2010, we want to open a hospital in Mount Pleasant. 11 By 2013, we want to open a hospital in Goose Creek," 12 anything like that? 13 A. Right. 14 Q. Okay. 15 A. I'm not aware of that. 16 Q. I just wanted to make sure. Turn over to 17 Roper Berkeley 3545 for me. * 18 A. 3545. Pet. 136 * 19 MR. THOMAS: Yeah. It's an e-mail that has 20 an attached document that goes to 3548 -- actually 3549. 21 MR. LONG: Say it again. 22 MR. THOMAS: Yeah. It's Roper Berkeley 3545 23 and it goes to -- looks like 3549. 24 BY MR. THOMAS: 25 Q. This is an e-mail that is sent from Elizabeth	Page 137 1 that you recognize? 2 A. No. But that doesn't mean I haven't seen it. 3 Q. Or you would admit it was sent to you, 4 correct? 5 A. Yeah. 6 Q. Okay. I have some questions about this. Do 7 you know who would have prepared this, this slide? 8 A. It looks like Elizabeth Player and Michael 9 Cassells. That would make sense. 10 Q. Would they have asked for your input or 11 somebody at a pretty high level to get this type of 12 information, about competitors, SWOT analysis and that 13 type of thing? 14 A. You know, that was their job. So they 15 wouldn't necessarily -- you know, they would, I guess, 16 ask my input if they had a question on Roper Hospital. 17 Q. Okay. So you would have received these 18 slides, and if you had any changes, you would have asked 19 that those be made as they requested. "Let me or 20 Michael know if you've got any changes that you would 21 like." 22 A. Yeah. Presumably. I doubt I spent a lot of 23 time on it. 24 Q. Okay. 25 A. I don't get too involved in the bond rating

35 (Pages 134 to 137)

Page 138 1 stuff. 2 Q. Okay. Roper St. Francis isn't going to 3 present anything to a bond rating agency that's not 4 accurate, are they? 5 A. I wouldn't think so. 6 Q. Okay. Let's look at Roper 3546 for me. 7 A. Okay. 8 Q. All right. That last bullet point there, 9 "Aggressive growth strategy." 10 A. Okay. 11 Q. Back in November of '07, Roper had an 12 aggressive growth strategy for its healthcare footprint 13 in the market and perhaps South Carolina, correct? 14 A. That's what we said, yeah. 15 Q. That's what you represented to a bond rating 16 agency, correct? 17 A. That's correct. 18 Q. Okay. Next page, which is 3547, one of the 19 strengths that was set for it was the financial 20 performance, correct? 21 A. Correct. 22 Q. So financial performance as for a for-profit 23 company is also important for a not-for-profit company, 24 isn't it? 25 A. It is.	Page 140
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36 (Pages 138 to 141)

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9 Q. Are you familiar with the project review
10 criteria adverse effect or adverse impact in the DHEC
11 regulations? Is that something that you --

12 A. In the generic sense, I have never looked at
13 adverse impact.

14 Q. Have you ever reviewed or worked with or had
15 to study in your career as to what would constitute
16 adverse impact under the project review criteria?

17 A. No.

18 Q. And have you done that -- have you, as part
19 of this CON process, looked at or analyzed whether the
20 Roper Berkeley hospital at Carnes Crossroads would have
21 an adverse impact on Trident or Summerville? Have you
22 personally done that?

23 A. No. I just have read the CON document, the
24 application document that we submitted.

[illegible]

STATE OF SOUTH CAROLINA

ADMINISTRATIVE, LAW COURT

TRIDENT MEDICAL CENTER, LLC,
D/B/A BERKELEY MEDICAL CENTER,

Petitioner(s),

vs.

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

SOUTH CAROLINA DEPARTMENT OF
HEALTH AND ENVIRONMENTAL CONTROL
AND ROPER ST. FRANCIS HOSPITAL-BERKELEY
D/B/A ROPER ST. FRANCIS HOSPITAL,

Respondent(s).

(CAPTION CONTINUED NEXT PAGE.)

D E P O S I T I O N

WITNESS: JOHN SULLIVAN

DATE: Monday, October 17, 2011

TIME: 10:17 a.m.

LOCATION: Parker Poe Adams & Bernstein, LLP
200 Meeting Street, Suite 301
Charleston, South Carolina

TAKEN BY: Attorneys for Trident Medical Center

REPORTED BY: SHERI L. BYERS
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Page 2 1 (CAPTION CONTINUED) 2 TRIDENT MEDICAL CENTER, LLC, 3 D/B/A BERKELEY MEDICAL CENTER, 4 5 Petitioner(s), 6 7 vs. Case No: 09-ALJ-07-0333-CC 8 9 SOUTH CAROLINA DEPARTMENT OF 10 HEALTH AND ENVIRONMENTAL CONTROL, 11 Respondent(s). 12 13 CAREALLIANCE HEALTH SERVICES AND 14 ROPER ST. FRANCIS HOSPITAL-BERKELEY, 15 16 Petitioner(s), 17 18 vs. Case No: 09-ALJ-07-0336-CC 19 20 SOUTH CAROLINA DEPARTMENT OF 21 HEALTH AND ENVIRONMENTAL CONTROL 22 AND TRIDENT MEDICAL CENTER, LLC, 23 24 Respondent(s). 25	Page 4 7 JOHN SULLIVAN, being first duly 8 sworn, testified as follows: 9 EXAMINATION 10 BY MR. THOMAS: 11 Q. Mr. Sullivan, my name is Will Thomas. I 12 represent Trident Health Systems in this CON litigation. 13 Would you please state your full name and 14 address for the record. 15 A. John Reid Sullivan, 3338 Marion Place, 16 Mount Pleasant, South Carolina.
Page 3 1 APPEARANCES: 2 ATTORNEYS FOR CAREALLIANCE HEALTH 3 SERVICES AND ROPER ST. FRANCIS 4 HOSPITAL-BERKELEY: 5 NEXSEN PRUET, LLC 6 BY: JENNIFER HOLLINGSWORTH, ESQUIRE 7 1230 Main Street, Suite 700 8 Columbia, South Carolina 29201 9 jhollingsworth@nexsenpruet.com 10 803.771.8900 11 12 ATTORNEYS FOR TRIDENT MEDICAL CENTER, 13 LLC, D/B/A BERKELEY MEDICAL CENTER: 14 15 PARKER POE ADAMS & BERNSTEIN, LLP 16 BY: WILLIAM R. THOMAS, ESQUIRE 17 1201 Main Street, Suite 1450 18 Columbia, South Carolina 29201 19 willthomas@parkerpoe.com 20 803.255.8000 21 22 ATTORNEYS FOR SOUTH CAROLINA DEPARTMENT 23 OF HEALTH AND ENVIRONMENTAL CONTROL 24 VIA TELEPHONE: 25 SCDHEC OFFICE OF GENERAL COUNSEL BY: ASHLEY C. BIGGERS, ESQUIRE 2600 Bull Street Columbia, South Carolina 29201 biggerac@dhec.sc.gov 803.898.3432 (INDEX AT REAR OF TRANSCRIPT)	Page 5

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3 Q. Okay. Did you -- other than the documents
4 that you were supplied by legal counsel, did you review
5 anything like the State Health Plan?

6 A. No.

7 Q. How about the South Carolina CON Regulation
8 61-15?

9 A. No.

10 Q. Okay. There's something called the DHEC
11 Record as well, which is not just the CON application,
12 but will have other different kind of writings in there
13 and submissions to the state of South Carolina. Did you
14 happen to review anything in there?

15 A. No.

16 Q. Okay. And did you review any Trident
17 materials that had been produced to Roper so that there
18 would have been e-mails involving Trident, you know,
19 medical system, administrators and that type of thing?

20 A. No.

3 (Pages 6 to 9)

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Page 10	Page 12 16 Q. Can you take me through your employment 17 history, kind of pinpointing -- well, you don't have to 18 pinpoint them, but kind of who you worked for, what you 19 did, and kind of the dates. I don't expect you to nail 20 it all, but kind of up to your present position, if you 21 could. 22 A. '68 went to work for the Department of 23 Finance for the State of Kentucky. '71, I became the 24 controller of Eastern State Hospital in Lexington, 25 Kentucky. 1973, I went to the Hospital Corporation of
Page 11	Page 13 1 America. Those were three different facilities with 2 HCA. 3 And in 1988, January of '88, became the CEO 4 and president of Stanley Memorial Hospital in Albemarle, 5 North Carolina. And in 1995, I became employed by the 6 Carolinas Healthcare System in Charlotte, and I continue 7 to work for them today. 8 Q. So are you employed by Carolinas Healthcare 9 System? 10 A. That's my employer. As you know, they're one 11 of the -- 12 Q. 10 percent owner, right? 13 A. -- founding members of CareAlliance. And so 14 rather than terminate employment with one and initiate 15 employment with the other, there's just an intercompany 16 invoice for the expenses associated with my employment. 17 So I'm still technically employed by CHS, but I work for 18 David here with the Roper St. Francis system.

4 (Pages 10 to 13)

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Page 14	Page 16 1 for, those were for-profit hospitals? 2 A. Yes. 3 Q. Okay. And then was Eastern State Hospital in 4 Kentucky, was that a for-profit or not? 5 A. No. It was a state-owned hospital. 6 Q. State owned. All right. 7 How about Stanley Memorial Hospital? 8 A. A not for profit. 9 Q. Okay. With the HCA hospitals that were for 10 profit, did you -- did that ever affect your ability 11 or -- excuse me, kind of your outlook in terms of 12 delivering the best quality care when you were at those 13 hospitals? 14 A. No.
Page 15 25 Q. Was that -- now the HCA hospitals you worked	Page 17

5 (Pages 14 to 17)

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Page 18	Page 20
Page 19	Page 21 3 Q. Okay. Tell me about, so from 2008, kind of 4 detail up to, you know, your current position now, what 5 you've been doing in the Roper St. Francis system. 6 A. I came as a CEO of Mount Pleasant Hospital. 7 I came just as we were breaking ground in May of 2008. 8 Q. Okay. 9 A. And so I've had the same title since I've 10 been here. 11 Q. And did you have anything to do with the 12 filing of that Mount Pleasant CON? 13 A. No. 20 Q. Okay. Now, there was -- I guess the hospital 21 actually opened in November of last year? 22 A. November of 2010. 23 Q. Okay. Do you remember the exact date? 24 A. November 1st. 25 Q. Okay. So when you came in May of 2008 to

6 (Pages 18 to 21)

Page 22 1 November 1, 2010, what were you doing kind of day to 2 day? 3 A. Just beginning to build relationships in the 4 community, both with physicians and nonphysicians. And 5 along with our facilities people, just watching over the 6 day-to-day activities of the construction of the 7 hospital and getting ready to open. 8 Q. Okay. Where were you kind of physically 9 stationed? 10 A. For -- up until, as I recall, December, I 11 believe, of 2009, I was downtown -- 12 Q. Okay. 13 A. -- in the Roper Medical Office Building, what 14 we call the corporate office. 15 Q. Okay. 16 A. Then I moved out to my present office there 17 on the grounds of the hospital. I think it was in 18 December of 2009. 19 Q. So they had already had that built out there? 20 A. Yes. The MOB was completed about a year 21 before the hospital was complete. 22 Q. Okay. 23 A. Or about a year before it opened. 24 Q. Were physicians starting to go in there? 25 A. In the medical office building?	Page 24 10 Q. Okay. Now, who then does -- who reports to 11 you directly? 12 A. At this point only Brenda Myers at Roper 13 Berkeley. 14 Q. Okay. 15 A. And then our chief nursing officer reports to 16 me.
Page 23 1 Q. Yes. 2 A. No. No. 3 Q. Do you recall when the first -- go ahead. 4 A. I think the first physician group went in 5 maybe -- Charleston ENT, I think they opened in -- gosh, 6 as best as I can recall, late summer of 2010. 10 Q. Okay. Who is then -- who's your direct 11 report? Who do you report to? 12 A. David Dunlap.	Page 25

7 (Pages 22 to 25)

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Page 26	Page 36
Page 27	25 MR. THOMAS: I'm just going to hand you what Page 37 1 we'll mark as Exhibit 1. * 2 (TRIDENT EXH. 1, Welcome to Your Mount 3 Pleasant Hospital Brochure, was marked for 4 identification.) Pet. 19 * 5 BY MR. THOMAS: 6 Q. It's a brochure you may be familiar with. A 7 Roper brochure.

8 (Pages 26 to 37)

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RECORD 000427

Page 38 3 BY MR. THOMAS: 4 Q. All right. So I put before you -- maybe you 5 know this document better than I do, Mr. Sullivan.* 6 A. Generally. 7 Q. Are you familiar with it? Pet. 19* 8 A. Yes. 9 Q. Okay. And I guess what I thought I'd use it 10 for is the -- I guess it's maybe the fifth or sixth page 11 in, it's a map of the -- general map of the East Cooper 12 area here. And it's got various locations of physician 13 practices. And then on the last page it looks like it's 14 a listing of the various practices in the East Cooper 15 area and perhaps even in the -- up in the Murrells Inlet 16 area as well. 17 A. Uh-huh. 18 Q. Okay. And are you familiar with these 19 various practices? 20 A. Yes. 21 Q. Okay. Are all of these practices on the last 22 page here, are those still kind of practices that are 23 lined with Roper or have any of them left? That's what 24 I'm getting at, just to make sure it's an up-to-date 25 list. Take your time, too.	Page 40 1 Q. Okay. And are the locations on the map, do 2 they correspond correctly with the number, as best you 3 can tell on the final page, so that it looks like they 4 identify it by number here? 5 A. It would appear to. 6 Q. One question I have, too, is you see number 7 16 is Roper Mount Pleasant OB/GYN. And that one -- kind 8 of the purple circle appears to be on the campus or near 9 the campus of Roper St. Francis Mount Pleasant Hospital, 10 correct? 11 A. Yes. 12 Q. But there isn't a corresponding, as best I 13 can tell, circle down near the East Cooper hospital 14 anymore? 15 A. I don't see it. 16 Q. Do you think there still is a presence there? 17 A. They still maintain a -- I'm not sure how 18 often they cover the office, but there still is a 19 presence there.
Page 39 1 A. I think these are only those who are 2 Physician Partners, the best that I can tell. 3 Q. Just for the record -- 4 A. I'm sorry, we do have a med share and there 5 are a couple of docs who are partners who have med share 6 space there. And then as I said, Charleston ENT has 7 space there in the building. 8 Q. Okay. And those are two practices that are 9 not on this list? 10 A. Right. 11 Q. Okay. And tell me -- just explain to me what 12 med share is. 13 A. It's a group of -- it's an office space with 14 a number of treatment rooms and related offices that can 15 be rented to those physicians or practices who just want 16 a part-time presence without a full-time presence, so 17 they can rent that space in half-day increments. 18 Q. But do they keep any medical records onsite 19 there or anything like that? 20 A. No. 21 Q. Okay. Other than this list -- well, let me 22 get this straight. Would all of the folks on this list, 23 on the final page of Exhibit 1, are they all employed by 24 Roper St. Francis? 25 A. As near as I can tell.	Page 41 16 Q. Okay. Is part of your job duties, knowing 17 the healthcare market in the East Cooper area fairly 18 well? 19 A. Try to. 20 Q. Okay. And how do you try to do that? 21 A. By talking and watching and listening. 22 Q. Okay. What types of market metrics do you 23 routinely look at as part of your job as CEO? 24 A. Admissions, population, those kinds of 25 things.

9 (Pages 38 to 41)

Page 42	Page 44
1 Q. Would you say admissions and population are 2 the two most important metrics? 3 A. Gosh, there are lots of important metrics. 4 But they would certainly be among those. 5 Q. Well, from an operational standpoint, what do 6 you study on kind of a daily or weekly basis as part of 7 your job as CEO? 8 A. We try to keep up with hospital utilization 9 on a current basis. 10 Q. Okay. And can you tell me what the midnight 11 census was last night at Mount Pleasant -- Roper's 12 Mount Pleasant Hospital? 13 A. This morning was 9. I think last night was 14 11. 15 Q. Okay. And census is generally done on a 16 midnight basis, right? 17 A. We do it twice a day. 18 Q. Okay. 19 A. But the census that is tracked for 20 recordkeeping purposes is midnight census. 21 Q. That's what I meant. Thanks for the 22 clarification. 23 Do you know what the average daily census 24 year to date for the hospital would be not counting 25 newborns?	1 A. We're running about a day and a half. Right 2 at it. Less than budgeted. We budgeted about, I think, 3 4.1, and we're running 2.6, 2.7 year to date. 11 Q. Do you think -- I'll represent to you that in 12 the CON application that was filed by Roper St. Francis 13 for the Mount Pleasant Hospital, I think that the first 14 year of operations projected a \$4 million loss. Do you 15 think that the hospital is going to lose more than 16 \$4 million this year? 17 A. I would say we're tracking probably on 9 to 18 10. 19 Q. Okay. 20 A. Now, of course, probably close to half of 21 that would be depreciations, noncash. 22 Q. Understood. 23 A. But probably tracking on 9 to 10. 24 Q. Okay. Has the budget for the Roper 25 St. Francis Mount Pleasant Hospital been created for
Page 43	Page 45
1 A. I don't have the September numbers yet. They 2 are probably coming out today. 3 Q. Through August? 4 A. I think 11, if I'm not mistaken. August was 5 14. I'm sorry. Yeah, August was 14. Month to date in 6 September, we're running pretty close to that same 7 number. 17 Q. Okay. Do you know what you budgeted for for 18 it to be by year's end? 19 A. The average daily census as budgeted was, as 20 I recall, 27. 21 Q. Do you typically look at the average length 22 of stay as part of your job? 23 A. Uh-huh. 24 Q. Do you know what that's running not counting 25 newborns?	1 2012 yet? 2 A. It hasn't been finalized yet. 3 Q. Okay. Do you know -- do you have any idea 4 what you're going to peg as the expected or the budgeted 5 ADC next year? 6 A. I think we'll probably budget for an 7 increase. 8 Q. Do you know how? 9 A. I'm sure we will to some extent. 10 Q. Okay. An increase over 27? 11 A. An increase over 2011. 12 Q. Over actual? 13 A. Right. 14 Q. That's what I meant. 15 Do you have any idea what that number is at 16 this time? 17 A. No. It has not been determined or it has not 18 been set. So, again, there will be an increase, but 19 what it will be at this point, I couldn't tell you. 20 Q. Okay. 21 A. It hadn't been taken forth for approval. I 22 think that is to be done in December, as I recall. 23 Q. Okay. What do you -- what would you like it 24 to be set at, the ADC for the budget? 25 A. Well, we want to show growth. That's a tough

10 (Pages 42 to 45)

Page 46 1 question to answer. We want to base it on things that 2 are realistic, but I think we'll probably -- with some 3 things that we're looking to get in place in early 2011, 4 we will probably increase that number by 15, 20 percent, 5 I would say. 6 Q. So whatever the actual is, then try to 7 increase it by 15 to 20 percent? 8 A. Yes. There again, understand, that's just 9 nothing but generalization at this point. 10 Q. I understand. 11 What type of things are you looking to get in 12 place in 2011? 13 A. Well, I found that there are some specialty 14 areas that have hampered us up to this point that we 15 will get in place by early 2011. Cardiology, 16 nephrology, pulmonology is pretty well set now. The 17 cardiology would be the biggest area, and that piece 18 will fall in place in early 2011. That's going to make 19 a big difference. 20 Q. You mean in early 2012? 21 A. I'm sorry, 2012, yes. 22 Q. And so what was the problem with those 23 particular specialties and getting those in place? 24 A. Not necessarily a problem. It just takes a 25 while to get the pieces in place. And we have some good Page 47 1 prospects, particularly in cardiology, and I think that 2 will fall in place in early 2012. 3 Q. When you say "good prospects," are you 4 looking to employ additional cardiologists in the 5 market? 6 A. Yeah. 7 Q. Does that go the same with nephrologist and 8 pulmonologists as well? 9 A. Yes. 10 Q. Are these existing? You don't have the tell 11 me the name of the practice, but are they existing 12 physicians in the market, or are you trying to recruit 13 them to the market? 14 A. It could be either.	Page 48 18 Q. Okay. Do you have any idea what Roper 19 St. Francis market share is in the East Cooper area at 20 this time? 21 A. I don't have the most recent numbers, but 22 historically it's been 20 percent, in that range. Page 49

11 (Pages 46 to 49)

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12 Q. Okay. And other than Mr. Dunlap -- I think I
13 may have asked you this question, I apologize -- but do
14 you report -- do you have any responsibilities to report
15 to anyone in Charlotte or in the CHS system?
16 A. No.

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Page 53

3 Q. Okay. When the Mount Pleasant Hospital was
4 initially built, I think it was open in November 2010,
5 are you aware of any directive that went out to the
6 employed physicians that asked them to try to refer as
7 many, you know, appropriate patients to the
8 Mount Pleasant facility that they saw in the East Cooper
9 area?

10 A. I've not seen any such directive.

11 Q. So if there's no directive, they may still
12 feel free to refer down to Roper's hospital downtown or
13 even to Bon Secours, correct?

14 A. Or even to East Cooper.

15 Q. Or to East Cooper.

16 Now, do you know whether or not -- well, you
17 would agree with me a lot of Roper's employed physicians
18 don't have any privileges to East Cooper Regional
19 Medical Center?

20 A. Right.

21 Q. Okay. Can you tell me -- do you know what
22 the final construction costs were for the Roper
23 Mount Pleasant Hospital facility?

24 A. In the range of 160 million.

14 Q. All right. Do you -- is your presence
15 required at the Roper St. Francis system board meetings?

16 A. Yes.

17 Q. So you attend all of those?

18 A. Unless there's some conflict.

12 (Pages 50 to 53)

Page 58	Page 60 1 A. You would, but the utilization was not what 2 you'd like to see it be and not what I think most 3 everybody felt would be the level of utilization at the 4 Carnes Crossroads area. 5 Q. Okay. Of course, there are many ORs 6 available to the citizens of Goose Creek at Trident 7 Medical Center and Summerville Medical Center, correct? 8 A. I'm not familiar with how many ORs are 9 available from those two sites, but I'm sure there are 10 OR services available. 16 Q. Okay. Why not just try to recruit and employ 17 surgeons in the Moncks Corner area that could do cases 18 up at the ASC in Moncks Corner rather than moving it 19 down to Carnes Crossroads? 20 A. For the most part, these kinds of discussions 21 had gone on prior to my beginning to work with Brenda. 22 But I think there were numerous efforts to do that, but 23 due to geography and driving times, the success of those 24 efforts was limited -- 25 Q. Okay.
Page 59 15 Q. Okay. What was your understanding of why the 16 ASC was going to be moved from Moncks Corner down to 17 Carnes Crossroads in the first place? 18 A. That there was greater need, that there would 19 be a greater utilization, a greater need for those 20 assets in the Carnes Crossroads area than in Moncks 21 Corner. 22 Q. Okay. Isn't that kind of the point to put an 23 ASC in Moncks Corner to give people in Moncks Corner and 24 the outlying areas of Berkeley County some access to 25 surgical services?	Page 61 1 A. -- so that the utilization of those three ORs 2 was less than you would hope for. 3 Q. Okay. In terms of -- kind of switching back 4 to the board meetings for the hospital in Carnes 5 Crossroads that you would have attended, do you ever 6 recall any discussion along the lines if the Roper 7 St. Francis doesn't put in an application to build in 8 Carnes Crossroads, you know, after Trident had put in 9 the application for Moncks Corner, if it doesn't do 10 this, that it would never be able to build a hospital in 11 Berkeley County? Do you recall any discussions along 12 those lines? 13 A. I think there was -- I can recall a general 14 discussion that the ability to enter that market later 15 would be compromised. 16 Q. And what's your understanding of why that 17 would be the case? 18 A. That with an existing provider, it would be 19 viewed differently at the CON or DHEC level. But, 20 again, my recollection of those such discussions is very 21 general. 22 Q. Okay. But your understanding of the 23 hospital -- of the plan was that it was from what Roper 24 set forth to the state was that they're just 25 transferring hospital beds, correct?

14 (Pages 58 to 61)

Page 62 1 A. Yes. 2 Q. Okay. And that's what they did at East 3 Cooper, too, right? 4 A. Right. 5 Q. All right. So how would their ability be 6 compromised to just do a bed transfer to serve the 7 patients that they're already serving? 8 A. I'm not sure as to how the -- I can't tell 9 you exactly how the DHEC folks would evaluate that, look 10 at it, assess it, but just -- I guess just generally 11 speaking, the thought would have been with an existing 12 provider there that it could be looked at differently. 13 Q. Okay. So there was some discussion that, 14 "Trident is applying, so we better apply, too." 15 MS. HOLLINGSWORTH: Objection. 16 BY MR. THOMAS: 17 Q. Is that correct? 18 A. Well, again, I think there it was generally 19 understood that in time we did want to enter that market 20 to better serve, particularly the Roper St. Francis 21 patient population that we typically serve from that 22 area. And that with the Trident application, that that 23 could be compromised at some point. 24 Q. Okay. If MUSC were to purchase 30 or 25 40 acres somewhere in the East Cooper area and propose	Page 64 1 we increased our average daily census from August to 2 September to up to 14, so we're seeing it gradually 3 increase. It doesn't happen overnight. It takes time. 4 But, again, to your question, I think the population is 5 being well served today. 6 Q. Do you think it's a -- that it's a 7 progression that could take fifty to a hundred years? 8 A. No. 9 Q. Huh? 10 A. No. I think for the most part within the 11 industry, I don't know that it's written anywhere, but 12 most folks would tell you that it takes about three 13 years for a hospital to break into the black. So we're 14 showing that steady progress, and I think that progress 15 will continue.
Page 63 1 to build a 60- or 70-bed hospital in East Cooper by 2 transferring their beds from downtown to East Cooper, 3 just to serve the patients that they already serve that 4 go downtown, would you be opposed to that type of CON 5 application? 6 A. I couldn't answer that. That's something 7 that would require a lot of discussion and evaluation, 8 and so I couldn't answer that at this point. 9 Q. Do you think there's a need for a third 10 hospital in the East Cooper area? 11 A. Today? 12 Q. Yeah. 13 A. I wouldn't think so today. 14 Q. Why not? 15 A. I think that from all indications that the 16 two that are there are serving that population 17 effectively in terms of the services that we provide, 18 both essentially at that community hospital level. 19 Q. Okay. Would you agree that from an inpatient 20 perspective, the two hospitals that are there today are 21 fairly underutilized in terms of an occupancy rate? 22 A. Today, but that's going to change. 23 Q. When do you think that will change? 24 A. It's changing month to month now. As I said 25 while ago, we picked up just at Mount Pleasant Hospital,	Page 65 2 Q. Are you -- I may have asked you this earlier, 3 but are you familiar with kind of the State Health Plan 4 here in South Carolina? 5 A. Just generally. I know there is one. I must 6 confess I have not read it. 7 Q. Okay. Are you familiar with any of the 8 project review criteria that DHEC looks at in order to 9 study an application? 10 A. No. 11 Q. Let me ask you this, have you heard the term 12 "unnecessary duplication of services" before? 13 A. Yeah. 14 Q. What does that mean to you, just in a general 15 sense? 16 A. At least in the opinion of some, there are 17 enough services available in a given area that 18 additional services are not needed.

15 (Pages 62 to 65)

Page 66	Page 68 11 Q. Let me ask you this, would you as a hospital 12 administrator, if you had a 225-bed inpatient facility, 13 would you worry if your census was averaging, you know, 14 45 or 50? 15 A. It would depend on how long I've been in 16 business. 17 Q. If you had been in business for five years? 18 A. I would like it to be higher. 19 Q. Why would you like it to be higher? 20 A. There's unused capacity there. Everybody 21 likes to see that capacity put to better use. 22 Q. Do you find that quality is in terms of 23 healthcare services delivered as better -- that quality 24 is higher when there's more utilization of a given 25 service?
Page 67	Page 69 1 A. I don't think you can peg it to that. I 2 think you can find busy places who deliver great 3 quality. You can find those that are not so busy 4 that -- where quality could be better. I don't think 5 there's any correlation of the two. 6 Q. What about in kind of high acuity settings, 7 like in ICU, wouldn't you think that quality is somewhat 8 determinative of utilization because the staff that's 9 there and the experience that they're working together 10 and that kind of thing? 11 A. I think the main thing is if you are doing 12 what the staff is trained and experienced in and does 13 well, that's the primary determinant. When you begin to 14 do things that maybe you shouldn't be doing, that's when 15 quality begins to suffer. 16 Q. Well, would you have open heart surgery at a 17 program that does 12 hearts a year or one that does a 18 thousand hearts a year? Which one would you choose? 19 A. I wouldn't have open heart surgery in one 20 that does 12 a year. 21 Q. Okay. So to some degree, utilization is 22 going to determine quality; is that a fair statement? 23 MS. HOLLINGSWORTH: Objection. 24 THE WITNESS: I think utilization and the 25 level of people who are there to provide that care.

16 (Pages 66 to 69)

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Page 70 1 BY MR. THOMAS: 2 Q. Okay. But if they don't have the actual 3 patients in there to provide the care to, would you say 4 that there's -- and I'll use a very general term -- but 5 there's potentially a chance that their skills could get 6 rusty? 7 A. Their skills could get rusty.	Page 72 11 Q. Would you agree with me that the folks who 12 live in Moncks Corner and in the northern areas of 13 Berkeley County don't have quick access to an inpatient 14 facility right now? 15 A. That would be fair. 16 Q. I think I asked you this earlier, but in 17 terms of the Roper Mount Pleasant CON, for that new 18 hospital, you didn't have any input into that document, 19 did you? 20 A. No. 21 Q. Okay. And so you -- that being I think it 22 was submitted in 2005 to DHEC. Did you ever review it 23 before it was submitted? 24 A. No. 25 Q. Okay. Are you aware of the reasons that were
Page 71 5 Q. Okay. I mean, what's your understanding, I 6 mean, do you have a good understanding of the 7 demographics in Berkeley County, where the population is 8 and that type of thing? 9 A. Generally. 10 Q. What's your understanding of where the 11 population of Berkeley County is concentrated? 12 A. More toward the Goose Creek area of the 13 county.	Page 73 1 set forth in the CON application to justify the building 2 of the hospital? 3 A. No. 16 Q. Okay. I'm going to hand you a copy of the 17 Roper Mount Pleasant CON application. I'm very much 18 aware that you didn't have any input into the 19 application, but I think there's just some general 20 questions I wanted to ask. Jt. 8* 21 A. Okay. 22 Q. What you will see, Mr. Sullivan, is a Bates 23 label down at the bottom right-hand corner of the page 24 that Ms. Hollingsworth is pointing out. So it will be 25 Trident, and it will be consecutively numbered pages.

17 (Pages 70 to 73)

Page 74 1 So there's a big number there. Don't worry about that. 2 The little number is where I'd ask you to go. 3 A. Okay. 4 Q. And if you would go to Trident 8336 for me. 5 A. Okay. 6 Q. Kind of top of the page there, but the first 7 paragraph that starts with "Quantitative justification 8 for this project." 9 A. Uh-huh. 10 Q. If you would look at the -- it says, 11 "However, the strategic justification for this project 12 is based on their four bullet points there." 13 And it says, "Providing community based 14 competitive alternative to the one existing for-profit 15 facility located within the Mount Pleasant area." 16 Okay. Do you agree with that? 17 A. I would. 18 Q. Okay. The second one is, "Enhancing access 19 to care for the Roper St. Francis aligned patients 20 living within the Mount Pleasant area who currently 21 travel out of the local area for care." 22 Do you agree with that? 23 A. I would. 24 Q. "Maximizing the usage of underutilized acute 25 care beds at Roper's downtown facility."	Page 76 1 A. I can't relate all of these ZIP codes to 2 communities. But I generally think of the inclusion of 3 the Huger, Cartersville, Jamestown area, also, as a part 4 of that group. 5 Q. All right. I think Huger is actually in 6 here. I don't know if we've got a listing, but I 7 think -- turn over to page 8339 for me because I think 8 there's a map there. That might kind of help us. 9 A. Okay. 10 Q. All right. This is the ZIP code map there, 11 so you've got 29464 and that's Mount Pleasant. 12 A. Right. 13 Q. And then Roper Mount Pleasant Hospital is 14 physically in 29466, right? 15 A. Right. 16 Q. 29482 is Sullivan's Island; 29451 would be 17 the Isle of Palms; and 29429, I think, is the Awendaw 18 ZIP. 19 A. Right. 20 Q. And then 29450, I believe, is the Huger ZIP 21 code. And then 29492 is -- I think that's kind of -- 22 what is that, Daniel Island? 23 A. Maybe Daniel Island. 24 Q. In that area? What about 29458, 25 McClellanville, do you consider that one?
Page 75 1 Do you see that? 2 A. I do. 3 Q. Okay. Do you agree with that? 4 A. I would. 5 Q. And the last one, "Establishing the proposed 6 new facility with no additional licensed bed within 7 Charleston County or the Tri-County region." 8 Do you see that? 9 A. I do. 10 Q. And you agree with that statement? 11 A. I would. 12 Q. And if you go down under proposed service 13 area definition, there's a second paragraph there. And 14 there's one, two, three, four, five, six, seven, eight 15 ZIP codes there. Do you see those? * Jt. 8* 16 A. I do. 17 Q. Okay. Are you familiar enough with these ZIP 18 codes to know if those are the primary service area ZIP 19 codes for your hospital? 20 A. They are. I generally consider the 21 10-ZIP-code area to be our primary service area, but it 22 would include those. 23 Q. What are the other two? 24 A. Gosh, probably -- and I can't -- 25 Q. Is it McClellanville?	Page 77 1 A. I do. 2 Q. Okay. Now, would you agree with me that with 3 the exception of the East Cooper Regional Medical 4 Center, in terms of the closest Roper St. Francis 5 facility prior to the Mount Pleasant Hospital being 6 built, would that be the Roper downtown facility? 7 A. Yes. 8 Q. Okay. And where would you think that from a 9 Roper perspective the patients that were living in 10 Mount Pleasant but going to Roper facilities, where do 11 you think the majority of them went for inpatient 12 services prior to the Mount Pleasant Hospital being 13 built? 14 A. The majority to Roper. Some were going to 15 St. Francis. 16 Q. Okay. 17 A. But the majority to Roper.

18 (Pages 74 to 77)

Page 78 14 Q. Okay. And so in terms of some of the bullet 15 points we read enhancing access to care for the Roper 16 St. Francis aligned patients living within the 17 Mount Pleasant area who currently travel out of the 18 local area for care, let me see if I can find this -- if 19 you go to Trident 8343 for me. * Jt. 8 * 20 A. Okay. 21 Q. There's a series of bullet points there and 22 if you look down, the seventh bullet point starts with, 23 "Two-thirds of the 2011 Roper St. Francis aligned volume 24 forecasted to be generated by a service area population 25 is expected to seek care at a new local Roper	Page 80 1 Roper and Bon Secours did last year and then compare it 2 with this year just to see kind of if there's a 3 difference, correct? 4 A. Right. 5 Q. Okay. And if there's not a realignment that 6 takes place, if there's really no visible -- I mean -- 7 or if you look at the numbers and the numbers say -- 8 let's say Roper did 2,000 last year from the primary 9 service area and 2,000 this year from the primary 10 service area, pretty much whatever is coming to the 11 Roper Mount Pleasant facility is going to be an 12 incremental patient; is that fair to say? 13 A. Say that again. 14 Q. Let's say that Roper did -- for the last five 15 years Roper did 2,000 people for the primary service 16 area of Roper Mount Pleasant Hospital. And then this 17 year, if you look at the numbers, and they did 2,000 18 admissions this year from -- and I'm kind of talking 19 nontertiary. If then East Cooper did, say, a thousand 20 admissions from the primary service area, would your 21 conclusion there be that, well, then these are 22 incremental patients, these are new patients given the 23 trend that you've seen going downtown to Roper for the 24 last few years? 25 A. If the old number was 2,000 and the present
Page 79 1 St. Francis Mount Pleasant Hospital." 2 So the expectation, then, is that if there 3 is -- you know, like I said, there's 2,000 admissions 4 leaving the East Cooper area, then two-thirds of those 5 would not leave, they would stay in Mount Pleasant if a 6 hospital were built there? Is that what that means? 7 A. I think that's what it said. 8 Q. Okay. Do you know if that has been occurring 9 in terms of the primary service area ZIP codes since the 10 Roper Mount Pleasant's been built? Has there been this 11 realignment that's been forecasted here? 12 A. I have not seen any market share numbers to 13 base it on, but -- and I'm not sure if -- I know it says 14 2011 -- 15 Q. Right. 16 A. -- but I'm not sure if this would have been 17 written with the thought in mind being that this is for 18 year one or for year five of operation. 19 Q. Okay. How long do you think a realignment 20 like that would take to go from -- you know, to get up 21 to two-thirds? 22 A. I think we will be there within two to three 23 years. 24 Q. Okay. Now, one way you could check to see if 25 any realignment is taking place is to see kind of what	Page 81 1 number were 2,000 -- 2 Q. Right. 3 A. -- and the East Cooper number were a 4 thousand? 5 Q. Roper Mount Pleasant, yeah. 6 A. I'm sorry. 7 Q. Yeah, that's what I meant. The Roper 8 Mount Pleasant Hospital were a thousand. 9 A. And then what's the conclusion again? 10 Q. Well, no, I'm asking you if that -- if it's 11 fair to think that those thousand patients that go into 12 Roper Mount Pleasant are essentially new patients? 13 A. You could draw that conclusion.

19 (Pages 78 to 81)

Page 82 12 Would you expect that from the 29466 ZIP 13 code, which is where Roper St. Francis is located, that 14 if you put a hospital there, that your admissions 15 from -- I'll say nontertiary care service, that your 16 admissions from that ZIP code, the 29466 ZIP code, 17 admissions from that ZIP code to Roper downtown and 18 Bon Secours for nontertiary services would decrease 19 significantly? 20 A. I would. 21 Q. Okay. 22 A. That's given the fact that I mentioned while 23 ago -- 24 Q. Right. 25 A. -- we have three or four subspecialties that	Page 84 1 month we came in about 93--- right at 950. 2 Q. Okay. 3 A. This month we're tracking pretty close to 4 that, so it's been a little bigger than we thought it 5 would be. 6 Q. How many -- do you have the true emergency, 7 nonemergency breakdown on that? 8 A. No. 9 Q. Do you know what the admissions are, let's 10 say, from that 950 in September, if you had to ballpark 11 a percentage? 12 A. The admission we track is those that would go 13 to our place or to Roper St. Francis. But normally, 14 your percentage of ED visits that will turn into 15 admissions will be anywhere 10 to 11 percent. We're 16 pretty close to that. 17 Q. Okay. 18 A. And about probably 60 percent of our 19 admissions come through the ED. 20 Q. So for the last year, have you not had a 21 cardiologist on call at -- 22 A. No. 23 Q. -- at the hospital? 24 A. If those services are needed emergently, they 25 are transferred downtown.
Page 83 1 should be in place early next year. Those things need 2 to be there in order to cover the potential need for 3 those consults or those surgeries -- for instance, 4 cardiology consults, et cetera. Those things being 5 there, then, yes, my answer would be yes. 6 Q. So just those three. If you get these three 7 in place, you would expect to see -- 8 A. Three or four. I mentioned awhile ago, 9 cardiology, neurology, nephrology, pulmonology. Those 10 four will make a big difference both in medical and 11 surgical patients. That's why I feel very comfortable 12 with the growth pattern that I see. 23 Q. What's the ED utilization been like the last 24 few months in terms of numbers? 25 A. Been a little better than we thought. Last	Page 85 1 Q. Okay. Same with neurosurgery -- 2 A. Yes. 3 Q. -- or neurology? 4 A. Yes. 5 Q. Okay. So no cardiology call? 6 A. No neurology call. 7 Q. What else? 8 A. We have a nephrologist that is available 9 sporadically. So you might -- you say if he's available 10 sporadically, he's not available. There's no nephrology 11 call. 12 Q. I mean, Roper's got a lot of cardiologists on 13 its medical staff, doesn't it? 14 A. Uh-huh. 15 Q. I mean the system. 16 A. Uh-huh. 17 Q. Why can't you get anybody to cover call out 18 there? 19 A. Well, there are two primary groups. When 20 you're looking at the dynamics of those groups and the 21 dynamics of coverage, after-hours coverage, on-call 22 coverage, it's tough to try to cover three hospitals. 23 Because given the time it can take to travel to -- from 24 downtown to Mount Pleasant, it can easily be an hour 25 sometimes. And when you look at drive time and the fact

20 (Pages 82 to 85)

Page 86 1 that that's just dead time for a physician. 2 Q. Right. 3 A. And them being able to, when they're on call, 4 cover three hospitals, you can't do it effectively. 5 Q. So it would be that much harder if you had a 6 fourth hospital, wouldn't it? 9 Q. If it's hard to cover three, it's going to be 10 hard to cover four; isn't that a fair statement? 11 A. That would be another market, and I'm sure 12 they would look at it that way. That's what we're in 13 the process of working out at our place. It will be 14 covered probably early next year. 15 Q. Have all the developments out in the 16 Mount Pleasant area, I mean, have any of them stalled in 17 the East Cooper area? 18 A. Oh, yes. 19 Q. And has that somewhat affected the population 20 growth out in the area? 21 A. I'm sure it has. 22 Q. Okay. Am I correct that Roper St. Francis 23 Mount Pleasant has 15 beds dedicated to women's 24 services? 25 A. That's right.	Page 88 12 Q. Okay. In terms of -- I may have asked you 13 this, and I apologize. 14 A. That's okay. 15 Q. Do you know how many employed physicians 16 there are by Roper in the East Cooper area right now? 17 A. I couldn't tell you exactly. 18 Q. How about a ballpark? 19 A. In a primary care group, I'm saying give or 20 take -- 21 Q. Is that LMA or what used to be known as LMA? 22 A. Well, a part of LMA. LMA was all over the 23 Lowcountry. 24 Q. Okay. 25 A. I'm going to say 25 --
Page 87 1 Q. Okay. So in terms of getting those beds and 2 filling those beds, it was important to employ an OB/GYN 3 group, wasn't it? 4 A. Well, it does not have to be employed. It 5 was important to -- whether by employment or just in 6 terms of staff membership to have availability of those 7 services. They don't have to be employed. 8 Q. Well, but Roper decided to acquire 9 Mount Pleasant OB/GYN and employ those doctors there, 10 correct? 11 A. They were.	Page 89 1 Q. Okay. 2 A. -- primary care. Specialty physicians, 3 probably maybe another 20, 25. 4 Q. Okay. In the East Cooper area that are 5 employed? 6 A. Yes. 7 Q. Okay. All right. And before LMA was 8 acquired by Roper, were they an independent group? I 9 mean, were they an independent practice group in the 10 East Cooper area or were they aligned or owned by 11 another group? 12 A. They were independent. 24 Q. Okay. Do you know why the Carnes Crossroads 25 location was chosen for the hospital in Berkeley County?

21 (Pages 86 to 89)

Page 90 1 A. I can't give you anything other than just my 2 assumption. 3 Q. Which is what? 4 A. That that is the most convenient area to the 5 population of that area for service. 21 Q. Okay. Have you heard about any internal 22 discussions that the volumes, the inpatient volumes in 23 Moncks Corner couldn't justify the expense by Roper of 24 building a hospital in Moncks Corner? 25 A. I have heard of general discussions that it	Page 92 1 Q. We know Roper has publicly supported that two 2 hospitals should be built in Berkeley County. And my 3 question to you is, and based on your attendance at 4 board meetings, and I'm trying to understand why Roper 5 would support two hospitals if it thought that one in 6 the Moncks Corner market wouldn't be financially 7 feasible or that the expense wouldn't justify or that 8 the volumes it would bring in wouldn't justify the 9 expense. 10 MS. HOLLINGSWORTH: Objection. 12 Q. I'm looking for your understanding of why 13 they're on record supporting two. 14 A. I guess maybe two things: One is we would 15 just have to rely on whatever evaluation and assessment 16 that Trident did to make that determination. 17 Q. Okay. 18 A. Maybe they knew something we didn't. 19 Q. Go ahead. 20 A. Secondly, we would not want to put ourselves 21 in a position, I would think, to deprive the citizens in 22 Moncks Corner and those surrounding small towns of an 23 inpatient facility if it were available. I don't think 24 we would want to -- I wouldn't want to, if it were me, 25 to make that decision to deprive them of that service or
Page 91 1 was not the best use of capital resources, at least at 2 that time of discussion, to put an inpatient facility 3 there. 4 Q. Okay. And what was your understanding why it 5 wouldn't be a good use of capital resources? 6 A. That the population was not sufficient to 7 justify it.	Page 93 1 facility. So those two things would come to mind. 9 MS. HOLLINGSWORTH: Objection. 10 THE WITNESS: I don't know what that analysis 11 consisted of. I wouldn't know how to answer the 12 question.

22 (Pages 90 to 93)

Page 98 4 Q. Okay. Is part of your job, Mr. Sullivan, to 5 increase the market share in the East Cooper area for 6 the Roper St. Francis system? Would you consider that 7 to be in your job description? 8 A. We want to make our services available to 9 folks who would like to avail themselves of those 10 services, and so, yes, you could say that. 11 Q. Okay. Well, I mean, is it fair to say that 12 \$160 million was spent there with some expectation that 13 Roper would increase market share in that area? 14 A. That would be fair.	Page 100 9 Q. Okay. Did the acquisition by Roper 10 St. Francis Physician Partners of Lowcountry Medical 11 Associates, do you think that was a positive acquisition 12 in terms of the utilization -- of increasing utilization 13 at Roper St. Francis Mount Pleasant? 15 THE WITNESS: Well, I have no way of knowing 16 because we don't have before and after, so I -- but I 17 see it as a positive thing because they're good 18 physicians and very well respected. Respected in the 19 community by their peers, and they are good people to 20 work with. 21 BY MR. THOMAS: 22 Q. Did Lowcountry Medical Associates approach 23 Roper about being purchased, or was it the other way 24 around? 25 A. I don't know.
Page 99 s	Page 101 1 Q. Okay. They are -- I mean, those physicians, 2 collectively, are one of the largest referral sources to 3 the hospital, correct? 4 A. They would be in that group.

24 (Pages 98 to 101)

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16 Q. And that first page that you're looking at,

17 Roper Berkeley 4279. *

Pct. 158 *

18 A. Okay.

19 Q. This comes from -- these are physician
20 practices acquired by or instituted by Roper St. Francis
21 Physician Network since January 1, 2007, in
22 Mount Pleasant East Cooper area.

23 A. Okay.

24 Q. Is the list complete, or do I need to add

25 anything to it? And I'm kind of looking at this thing,

30 (Pages 122 to 125)

Page 126 1 too. 2 A. I think it's complete. To the best of my 3 knowledge, it's complete. 4 Q. Okay. And let me ask you this, the 5 Mount Pleasant Family Practice and Mount Pleasant 6 Surgical, did those used to be LMA -- part of the LMA? 7 I tell you what, can you go down this list and tell me 8 what used to be LMA practices? 9 A. East Cooper Family Practice and East Cooper 10 Internal Medicine and Mount Pleasant Family Practice, 11 Park West Family Practice, I think that's it. As near 12 as I can tell. 13 Q. Okay. So Park West, Mount Pleasant Family 14 Practice, East Cooper Internal, East Cooper Family 15 Practice? 16 A. Yes. 17 Q. So LMA was all pretty much primary care 18 physicians to begin with? 19 A. Yes. 20 Q. Okay. If you turn to 4284 for me. Pet. 160 * 21 A. Okay. 22 Q. Okay. This also comes from a request for 23 production. Are these numbers accurate in terms of the 24 average daily census since November of 2010? 25 A. I wouldn't have any reason not to accept	Page 128 15 Q. Turn over to 4326 for me. * Pet. 163 * 16 A. Okay. 17 Q. I'm actually interested in 4327, and we got 18 these numbers produced by Roper St. Francis from 2007 to 19 year to date June 2011. And so it shows one column, I 20 believe is, you know, it's going to be 2010, and the 21 other one is going to be year to date June 2011. 22 So the patient days here of 1570, and so with 23 the ALOS, average length of stay, of 2.77. So, again, 24 do you know if that number would include newborns? 25 A. No.
Page 127 1 their being accurate. Going that far back, I don't 2 remember the exact numbers on those months. But it 3 would appear to be. 4 Q. Okay. And so if I took all of these and 5 added them together, 83, and divided by these -- this is 6 a nine-month period, it would be 9.2, correct? Do you 7 have any reason to doubt that? 8 A. No reason to. 9 Q. So you think the month of September is going 10 to show 14? 11 A. Uh-huh. 12 Q. Do you recall what the month of August -- 13 A. I'm sorry. September, yes, I think it's 14 going to be 14. 15 Q. Do you remember what August was? 16 A. It was 11 or 12. 17 Q. Okay. All right. So if I add that, it will 18 be 108 divided by 11. That would bring it up to 9.8 19 through September. The ADC for East Cooper. Is that 20 right? 21 A. I'll take your word for it.	Page 129 1 Q. It actually says excludes normal newborns. 2 Never mind. 3 Okay. So why do you think -- is it simply 4 because of the acuity level that it's so low there? 5 A. Well, I think, as I said, I think we do a 6 great job of getting patients in and out. We start the 7 discharge process early to prepare the patients for 8 discharge. I think we're doing a good job at getting 9 them in and out. But then probably some of it would 10 have to do also with the lack of some of those 11 specialties that I referred to earlier. Probably 12 different things, not just one thing. 13 Q. Okay. What else would it -- I mean, we've 14 got lack of specialties, we've got, you know, a good job 15 of getting the patients in and out. What are some other 16 things that would cause the low average length of stay? 17 A. Case mix index, any of a number of things. 18 Sometimes it's a difference in philosophy of one 19 physician versus another. You can find lots of reasons 20 for differences in length of stay.

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CERTIFICATE OF REPORTER

3 I, Sheri L. Byers, Registered
Professional Reporter and Notary Public for the
State of South Carolina at Large, do hereby certify:

5 That the foregoing deposition was
6 taken before me on the date and at the time and
7 location stated on page 1 of this transcript; that
8 the deponent was duly sworn to testify to the truth,
9 the whole truth and nothing but the truth; that the
10 testimony of the deponent and all objections made at
the time of the examination were recorded
stenographically by me and were thereafter
transcribed; that the foregoing deposition as typed
is a true, accurate and complete record of the
testimony of the deponent and of all objections made
at the time of the examination to the best of my
ability.

12 I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

13 Witness my hand. I have hereunto
14 affixed my official seal this 21st day of October,
2011, at Columbia, Richland County, South Carolina.

Sheri L. Byers,
Registered Professional Reporter,
Notary Public
State of South Carolina at Large
My Commission expires:
January 5, 2014

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SIGNATURE OF DEPONENT

I, the undersigned, JOHN SULLIVAN, do hereby certify that I have read the foregoing deposition and find it to be a true and accurate transcription of my testimony, with the following corrections, if any:

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JOHN SULLIVAN DATE

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STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

TRIDENT MEDICAL CENTER, LLC,
D/B/A BERKELEY MEDICAL CENTER,

Petitioner(s),

vs.

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

SOUTH CAROLINA DEPARTMENT OF
HEALTH AND ENVIRONMENTAL CONTROL
AND ROPER ST. FRANCIS HOSPITAL-BERKELEY
D/B/A ROPER ST. FRANCIS HOSPITAL,

Respondent(s).

(CAPTION CONTINUED NEXT PAGE.)

ATTORNEY/EXPERT EYES ONLY PORTIONS

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Page 29 1 (CAPTION CONTINUED) 2 TRIDENT MEDICAL CENTER, LLC, D/B/A BERKELEY MEDICAL CENTER. 3 4 Petitioner(s), 5 vs. Case No: 09-ALJ-07-0333-CC 6 SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, 7 Respondent(s). 8 CAREALLIANCE HEALTH SERVICES AND ROPER ST. FRANCIS HOSPITAL-BERKELEY. 9 10 Petitioner(s), 11 vs. Case No: 09-ALJ-07-0336-CC 12 SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL AND TRIDENT MEDICAL CENTER, LLC, 13 Respondent(s). 14 15 16 17 18 19 20 21 22 23 24 25	Page 31 7 Q. What practices in the East Cooper area are 8 the largest referral sources to Roper St. Francis 9 Mount Pleasant? 10 A. The group that was known as Lowcountry 11 Medical Associates would be a significant source of 12 patients for Mount Pleasant Hospital. Mount Pleasant 13 OB/GYN. Of course, the LMA group, as they were called, 14 they were spread out all over the area, not just in 15 Mount Pleasant but elsewhere, too. But ... 16 Q. Are all the -- go ahead. I'm sorry. 17 A. We did recruit a general surgeon, and he has 18 been a strong referral source for us. 19 Q. Who is that? 20 A. A young man by the name of Chad Eustis. 21 Q. Chad Eustis? 22 A. E-u-s-t-i-s. So probably those three would 23 most readily come to mind. 24 Q. So the LMA group, that was Lowcountry Medical 25 Associates, was that acquired in 2009 at some point in
Page 30 1 APPEARANCES: 2 ATTORNEYS FOR CAREALLIANCE HEALTH SERVICES AND ROPER ST. FRANCIS 3 HOSPITAL-BERKELEY: 4 NEXSEN PRUET, LLC BY: JENNIFER HOLLINGSWORTH, ESQUIRE 5 1230 Main Street, Suite 700 Columbia, South Carolina 29201 6 jhollingsworth@nxsenpruet.com 803.771.8900 7 8 ATTORNEYS FOR TRIDENT MEDICAL CENTER, LLC, D/B/A BERKELEY MEDICAL CENTER: 9 10 PARKER POE ADAMS & BERNSTEIN, LLP BY: WILLIAM R. THOMAS, ESQUIRE 1201 Main Street, Suite 1450 11 Columbia, South Carolina 29201 willthomas@parkerpoe.com 12 803.255.8000 13 14 ATTORNEYS FOR SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL 15 VIA TELEPHONE: SCDHEC OFFICE OF GENERAL COUNSEL 16 BY: ASHLEY C. BIGGERS, ESQUIRE 2600 Bull Street 17 Columbia, South Carolina 29201 biggersac@dhec.sc.gov 18 803.898.3432 19 20 21 22 23 24 25	Page 32 1 time? 2 A. That would be about right. 3 Q. Okay. And now is that kind of a bunch of 4 different practices now, or is it still kind of -- 5 A. They're different practices. 6 Q. Okay. All right. And Mount Pleasant OB/GYN, 7 they -- do they still have an office across the street 8 from the old East Cooper Regional Medical Center? 9 A. They do, and they maintain a presence there. 10 Q. At that office? 11 A. Yes. 12 Q. Okay. Do you know if any of the physicians 13 in Mount Pleasant OB/GYN still have privileges over at 14 East Cooper Regional Medical Center? 15 A. I think they do. 16 Q. Do you know? 17 A. They do. 18 Q. Okay. Do you know if they're still referring 19 anybody over there? 20 A. They still have some deliveries there, 21 some -- just how much, I'm not sure, but some. 22 Q. Do they account for most of the deliveries at 23 Roper St. Francis Mount Pleasant? 24 A. Yes. 25 Q. Do you have any idea how many deliveries they

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Page 33	Page 35
1 are doing a month over there? You can ballpark it. 2 A. It has gradually increased as the months have 3 gone by. We're probably in the 35 to 40 per month range 4 now. 5 Q. Okay. And it's your understanding those were 6 deliveries that were previously mostly done at East 7 Cooper Regional Medical Center? 8 MS. HOLLINGSWORTH: Objection. 9 THE WITNESS: That would be my assumption. 11 Q. Okay. Is your compensation predicated in any 12 way on how Roper St. Francis Mount Pleasant Hospital 13 does financially? 14 A. To some extent. 15 Q. Okay. Is it -- don't tell me how much it is, 16 but is it the bonus portion of your compensation? 17 A. Yes. 18 Q. Okay. 19 A. It's more predicated on how the system does, 20 but there's a portion that relates to Mount Pleasant. 21 Q. Okay. In terms of Roper St. Francis 22 Mount Pleasant, is it mostly a nontertiary care 23 hospital? 24 A. Yes. 25 Q. Okay. But it does offer some tertiary care	1 A. Oncology, talking about radiation therapy and 2 the higher level oncology services, we don't do that. 3 So I would really question whether we do any tertiary -- 4 typically tertiary kind of services. 5 Q. Okay. Fair enough. Have there been any 6 discussions about adding diagnostic cath out at the 7 hospital? 8 A. Generally about is it something that should 9 be thought of in time. As to exactly when that would 10 take place, it would just depend on the market and when 11 we felt there was a need for it. 22 23 24 25
Page 34	Page 130
1 services; is that right? 2 A. How would you define tertiary? 3 Q. Well, how would you define tertiary? 4 A. Well, the high level services such as 5 cardiology, the neurosciences, we don't get into the 6 higher level aspects of those services. 7 Q. Okay. If you do do any tertiary care, what 8 kind of tertiary care is there? And the reason I ask is 9 I've got documents -- 10 A. Go ahead. 11 Q. I've got documents that were produced to me 12 that actually show tertiary care admissions. They don't 13 really kind of break down what those admissions are by 14 DRG, but they say these are tertiary care. It's not a 15 very long list. 16 A. Again, I guess it would go back to the 17 definition of tertiary. When typically you think of 18 tertiary care in the cardiology services, you're talking 19 about cardiac surgery, cardiac cath work, we don't do 20 that. 21 Q. Right. 22 A. When you're talking about the neurosciences, 23 you're talking about intracranial work, we don't do 24 that. 25 Q. Okay.	

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Page 139 23 Q. Okay. Would you agree with me, Mr. Sullivan, 24 that putting it in Carnes Crossroads really not doing 25 that much in terms of access to the people of northern	Page 141 1 A. That's what this says. 2 Q. Okay. To announce the intent to file a CON, 3 right? 4 A. Right. 5 Q. So from the time that John Wilhoit -- I think 6 that was on -- 7 A. Steve Wilhoit. 8 Q. Steve Wilhoit, thank you. -- on August 9, 9 kind of informed folks of this -- Trident building a 10 hospital in Moncks Corner, and September 2, the decision 11 had been made that Roper St. Francis was going to file 12 for a CON for a new hospital in Carnes Crossroads; is 13 that accurate? 14 A. The way this reads, yes.
Page 140 1 Berkeley County that live in Bonneau and St. Stephen and 2 the other towns around the lake? It's not that much 3 further from Carnes Crossroads to Trident Medical 4 Center, is it? 5 A. I don't know what the exact mileage would be, 6 but I can't disagree that our site would be farther from 7 those folks than the Moncks Corner site. That's 8 obvious. 9 Q. Okay. Were you -- turn to Roper Berkeley 751 10 for me, if you would. 11 A. Okay. 12 Q. This is a press release dated September 2, 13 2008, from Mr. Dunlap. It says, "I would like to 14 provide you with an important update on internal 15 discussions and activity that has taken place since in 16 our executive session last Thursday." 17 Would you have been involved in such an 18 executive session? 19 A. I don't remember it, but probably so. 20 Q. Okay. And so by this -- 21 A. I see my name listed on the third bullet 22 point here, so I'm sure I was. 23 Q. Okay. And so you were charged with meeting 24 with the Roper St. Francis Medical Center advisory 25 board, right?	Page 142

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Page 147	Page 149 20 Q. Okay. Turn over, if you would, to 435* 21 Roper Berkeley 4357 in the Utilization section. Pet. 163* 22 A. Okay. 23 Q. Okay. These are some figures that we 24 received from the folks at Roper. And this, just to 25 kind of give you a context of what it is, it's Total
Page 148	Page 150 1 Inpatient Discharges by ZIP Code by Hospital Year to 2 Date June 2011. It excludes normal newborns, just so 3 you kind of have that. That's the title of the 4 document. 5 And then on 4357, you'll see it actually 6 says, "Roper St. Francis Mount Pleasant Hospital." 7 Okay. 8 And if you go to -- turn over to Roper 9 Berkeley 4359, that will give a total there. So this 10 would be through June, 598, and if I annualize that in a 11 very simple fashion, I just multiply that by two, right? 12 So about 1,196. 13 And did you testify earlier that you thought 14 that -- what did you expect the utilization in terms of 15 inpatients would be by the end of the year? Does that 16 sound about right? 17 A. Total discharges? 18 Q. Yes, sir. 19 A. I wouldn't be surprised. I think it would be 20 between 13- and 1400. 21 Q. 13- and 1400? 22 A. That's a guess. 23 Q. Where did you say you were by the end of 24 August or September, if you know? 25 A. I don't know if I said.

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Page 151 1 Q. Maybe you didn't. 2 A. We would probably be 950 or so. 3 Q. By the end of when? 4 A. Of September. 5 Q. Okay. So 950 by the end of September. 6 If I did an annualization of that, I would 7 take 950, divide it by nine, multiply that number by 12, 8 and that would come up to about 1266? 9 A. Sounds close. I wouldn't be surprised if we 10 were 13 plus, but that's just based on an assumption of 11 the last quarter. And again, we had a nice pickup in 12 September over August. And to this point, October is 13 pretty close to where we were in September. So I think 14 we'll continue to see a pickup in it. 15 Q. Okay. Well, if you go 1300, what did you say 16 the ALOS was running around, 2.8, 2.7, somewhere in 17 there? 18 A. Year to date, we're sub 3. Last month was 19 over 4. 20 Q. Last month was over 4? 21 A. I'm sorry, over 3. 22 Q. Okay. 23 A. I think 3.1 maybe. 24 Q. Okay. So if you had 1300 admissions and you 25 were at an ALOS of 3, that's 3900 patient days divided	Page 153 1 A. Yes. 2 Q. All right. And then that 29450, that's 3 Huger. You referenced that one earlier, is that right? 4 A. I think so. 5 Q. And I think I skipped one. 29492, the 6 Charleston ZIP code there, correct? 7 A. Yes. 8 Q. That's Daniel Island, I think. Okay. 9 Does Roper St. Francis Hospital or Roper 10 St. Francis, the Physician Partners, do they employ any 11 physicians out on Daniel Island, do you know? 12 A. No. 13 Q. I'm a little curious, some of these North 14 Charleston, in the 29406 and -407, what accounts for 15 those referrals, do you think, all the way up kind of -- 16 A. That could be any of a number of things. 17 It's not uncommon for folks to cross ZIP codes. 18 Q. Well, how about all the way from Goose Creek, 19 29445? Why would someone -- 20 A. It could be that orthopedic patients will 21 sometimes travel. It's not uncommon for those folks, if 22 they have a favorite orthopedic surgeon, they'll travel. 23 But who knows? There could be any number of 24 explanations for why some folks would travel some 25 distance. I wouldn't venture a guess as to any one
Page 152 1 by 365, that would be an ADC of about 11. Is that about 2 right? 3 A. I trust your calculator. 4 Q. Okay. It's a lot better than me. That's why 5 I've got to use it. 6 Look at 4358 for me, if you would. 7 A. Okay. 8 Q. And so it looks like, just through the first 9 part of June -- or first part of 2011, first half, it 10 looks like the highest ZIP code kind of patient origin 11 areas, looks like would be -- the highest would be 12 29466, and that's to be expected given that Roper 13 St. Francis is actually located in that ZIP code; is 14 that a fair statement? 15 A. Uh-huh. 16 Q. Okay. And then 29464, which is pretty much 17 coming over the bridge all the way up to about the Isle 18 of Palms connector, isn't it? 19 A. Lower Mount Pleasant. 20 Q. All right. And then it looks like after 21 that, McClellanville had the highest patient origin. 22 Does that sound right? 23 A. Appears to be. 24 Q. Okay. After that Awendaw, which, again, 25 that's the ZIP code directly above 29466, isn't it?	Page 154 1 reason. 2 Q. Right. I mean, there's a lot of different 3 reasons why people might use a hospital that's located 4 away from their home, correct? 5 A. Sure. 6 Q. Okay. All right. In terms of these numbers, 7 do these look right to you? 8 A. I have no reason to -- 9 Q. To doubt? 10 A. -- to question them. 11 Q. So it looks like a full third, and I just did 12 some math here. I mean 598. We've got 181. I divide 13 that by 598. It looks like 30.2 percent came -- of the 14 patients that were seen inpatients at Roper St. Francis 15 Mount Pleasant came right from the ZIP code where Roper 16 St. Francis Mount Pleasant is located. Does that 17 surprise you at all? 18 A. I don't know why it should. 19 Q. Okay. And then 17 percent came from the 20 Mount Pleasant -- or I think you call that lower 21 Mount Pleasant ZIP code. When I grew up in 22 Mount Pleasant, that was the ZIP code. 23 A. That's what I hear. 24 Q. There was no -- where you all are, we kind of 25 referred to as the sticks. Anything out 41 was just

Page 155 1 country. 2 A. That's what I understand. 3 Q. That was good deer hunting area out there. 4 So 47 percent, then, of the patients are 5 pretty much coming from 29466 and 29464. Is that a 6 statistic that surprises you at all? 7 A. I don't know why it should. 8 Q. Okay. Is that something that you would 9 expect given -- 10 A. I think so. 11 Q. Okay. All right. Now, if you turn to Roper 12 Berkeley 4518 for me.✱ 13 A. Okay. Pet. 166 ✱ 14 Q. So this one is Fourth Request for Production, 15 RFP No. 1. It says, "Tertiary specialty inpatient 16 admissions by ZIP code by hospital." 17 And so you see what you got here, you've got 18 Bon Secours, St. Francis, and I think Roper hospital is 19 in here, too. This is one of the things I was asking 20 you about earlier was -- if you turn over to -- it's the 21 very last page in this document, 4526 -- 22 A. Uh-huh. 23 Q. -- through year to date August 20, 2011, 24 there were 230 admissions from Roper St. Francis 25 Mount Pleasant Hospital --	Page 157 1 so to answer your question, it could. 2 Q. Okay. Would you agree with me that most of 3 the referrals from the Roper ED in Mount Pleasant in the 4 29466 ZIP code that end up being tertiary are probably 5 going to go to Roper's hospital downtown? 6 A. I would. 7 Q. Turn back, if you would for me, to 4518. 8 Roper Berkeley 4518. 9 A. Okay. 10 Q. If you look at 29466. Kind of run your hand 11 down here, and it's going to be about the 20th down, but 12 you'll see Mount Pleasant. That's the easiest way to 13 find it. You'll see 29464, and you'll see 29466. Do 14 you see that? Look for Mount Pleasant. I should have 15 probably highlighted this for you. 16 A. Okay. 17 Q. You got it? In fact, if you look at in 2010, 18 Bon Secours got from this ZIP code, 29466, it says there 19 are 27 tertiary specialty inpatient admissions, correct? 20 A. Yes. 21 Q. All right. And year to date August 2011, 22 that's only eight months, they've already gotten 30 from 23 that ZIP code, right? 24 A. Right. 25 Q. Okay. All right. Look at -- go to Roper
Page 156 1 A. Uh-huh. 2 Q. -- for tertiary care. 3 A. Yeah. 4 Q. That's what I was asking you about. I was 5 trying to get an idea of what tertiary level service 6 this might refer to. 7 A. And I couldn't tell you. Not knowing what 8 those diagnoses are, I wouldn't know how to answer you. 9 Q. Okay. All right. Do you think having the 10 Roper St. Francis Mount Pleasant Hospital in 29466 is 11 going to have the effect of increasing or decreasing the 12 number of tertiary care referrals from the East Cooper 13 area to either Roper downtown or Bon Secours in West 14 Ashley? 15 A. Does us being in 29466 increase or decrease 16 the referrals downtown at St. Francis? 17 Q. For tertiary care services. 18 A. It could. 19 Q. And could some of those ways be -- now 20 there's a Roper ER out there, correct? 21 A. If folks are in an emergent condition, 22 they're going to go to the nearest emergency facility. 23 And if they need services that we would provide 24 downtown, then we would quickly refer them downtown. If 25 they needed to go to MUSC, they would go to MUSC. But	Page 158 1 Berkeley 4527. 2 A. Okay. 3 Q. All right. Again, if you go down to 29466 -- 4 A. Yes. 5 Q. -- Mount Pleasant, you'll see 2010 6 Bon Secours, it's Bon Secours. These are nontertiary 7 inpatient admissions by ZIP code. From that 29466, they 8 did 85 in 2010, and then year to date August 2011, 62, 9 right? 10 A. Yes. 11 Q. If I divide 62 by 8, multiply that by 12 to 12 annualize it, I come up with 93. 13 So there's a possibility that even the 14 nontertiary inpatient admissions from 29466 could 15 increase to Bon Secours as a result of the hospital 16 being located in that area, in that ZIP code, correct? 17 A. It could. 21 A. Although there's a difference in 85 and 92 is 22 probably within the range of -- that could happen most 23 any year to year. 24 Q. So it could be by chance? 25 A. Sure. Sure.

Page 163	Page 165 14 Q. Okay. All right. Go to Roper Berkeley 4548 15 for me. 16 A. 48? 17 Q. Yes, sir. 4548. * Pet. 166 * 18 A. Okay. 19 Q. All right. So you got 2010 and the year to 20 date August 2011 -- 21 A. Okay. 22 Q. -- for these various ZIP codes. And, again, 23 29466, that's the -- kind of the lion's share of the 24 admissions and 29464, right? 25 A. Yes, sir.
Page 164	Page 166 1 Q. So those two zip codes. Then go to the next 2 page, Roper 4549 and divide those two, which comes out 3 to 366 and divide it by 798, again, about 46 percent of 4 all the inpatients came from those two ZIP codes. 5 That's not surprising to you, is it? 6 A. No reason for it to be. 7 Q. Right. Right. All right. So I'm looking at 8 4549, that's the number of admissions through 9 August 2011. And then if you turn to the very last 10 page, I think maybe, I might be wrong, but go to Roper 11 Berkeley 4602 for me. 12 A. Okay. 13 Q. All right. So what this is, I'll represent 14 to you, and you can look at it, but the document starts 15 on Roper Berkeley 4564. And it just says it is -- this 16 says nontertiary. Make sure I got this. I think it's a 17 39-page document. Yeah. Nontertiary inpatient patient 18 days by ZIP code by hospital. And appears that -- make 19 sure I got this right. That would be 2161 for Roper 20 Mount Pleasant. Does that look right to you? 2161. 21 That's the nontertiary patient days through August. 22 A. That's what it says. 23 Q. Okay. And then if you look at 4563, those 24 are tertiary patient days, okay, through August. That's 25 597.

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Page 167 1 A. Okay. 2 Q. 2161 plus 597. So that's through August, 3 2,758 patient days. I think I got that right. Does 4 that number sound right basically through August? 5 A. I take what I see here as accurate. No 6 reason for it not to be. 7 Q. Okay. 8 A. You said it came from us, so ... 9 Q. Yes, sir. Yeah. Anything with Roper 10 Berkeley, that's from you all's shop. 11 Now, if I go back to 4549, Roper Berkeley 12 4549, that number was -- I think we said that number is 13 798, and that's nontertiary -- nontertiary admissions. 14 And then I think that tertiary admissions are on 4526, 15 but let me make sure of that. 4526. Yeah. That number 16 is 230. 17 A. Uh-huh. 18 Q. So if I add 230 plus 798. You said uh-huh, 19 you meant yes? 20 A. Yes, I'm sorry. 21 Q. That's okay. 22 1028. All right. So by my count, I've got 23 2,000 -- we said 2,758 patient days. All right. And 24 1,028 admissions through August. All right. But to get 25 the average length of stay, then, I would divide those	Page 169 1 Q. Okay. You said you thought that this month 2 may show 14 -- October might show an ADC of 14? 3 A. Yes. 4 Q. All right. Bear with me one second here. 5 A. September should show 14. 6 Q. You're right. So you thought September was 7 going to show 14? 8 A. Yes. 9 Q. All right. Bear with me one second here. 10 So if you had 11.3 through August, give me 11 90.4. All right. Let's say you did 20, an ADC of 20 12 for the remaining four months, which would be nearly 13 double, that would give you an average daily census of 14 14. Would that be considered for this year a decent ADC 15 if you finished the next -- you know, September or the 16 next three months with 20, an ADC of 20? Would that 17 exceed what the expectations are at this time? 18 A. Well, you always want to do as well as you 19 can, but I wouldn't argue with that. 23 Q. I have a last question for you. Do you think 24 that the economy kind of turning south starting in late 25 2008, and I guess -- well, would you agree that the
Page 168 1 two numbers, 2758 patient days, divided by the number of 2 admissions, right? That would give me the average 3 length of stay. And for that I've got 2.68. Does that 4 sound about right for the ALOS? 5 A. It would appear. 6 Q. Okay. Through August? 7 A. It would appear to be right. 8 Q. All right. And to get our ADC, I take 2758 9 and I divide that by the number of days through August; 10 is that right? 11 A. Yes. 12 Q. But that's a little tricky because you have 13 31 days in January, 28 in February, 30 in March -- 14 excuse me, 31 in March, 30 in April, 31 in May, 30 in 15 June, 31 in July, and 31 in August, right? Okay. I 16 think that's right. I think the record will reflect 17 that. 18 Okay. I come up with 243 days. So I would 19 divide 2,758 patient days, I divide that by 243, I come 20 up with 11.3 as my number of -- my ADC through August. 21 Does that sound about right? 22 A. I take your word for it. 23 Q. All right. But as far as my methodology I 24 just used there, does that seem accurate? 25 A. I don't have any reason to question it.	Page 170 1 economy really hasn't recovered too well from 2008? 2 A. Oh, absolutely. I think it's impacted our 3 projections. 4 Q. Okay. Do you think that the lack of building 5 or the lack of continuation of building in the 6 Mount Pleasant area, particularly in the 29466 ZIP code, 7 has also impacted utilization of the hospital? 8 A. Sure. 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25

Page 171 1 SIGNATURE OF DEPONENT 2 3 I, the undersigned, JOHN SULLIVAN, do hereby 4 certify that I have read the foregoing deposition and 5 find it to be a true and accurate transcription of my 6 testimony, with the following corrections, if any: 7 PAGE LINE CHANGE REASON 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 _____ 24 JOHN SULLIVAN DATE 25	
Page 172 1 CERTIFICATE OF REPORTER 2 3 I, Sheri L. Byers, Registered 4 Professional Reporter and Notary Public for the 5 State of South Carolina at Large, do hereby certify: 6 That the foregoing deposition was 7 taken before me on the date and at the time and 8 location stated on page 1 of this transcript; that 9 the deponent was duly sworn to testify to the truth, 10 the whole truth and nothing but the truth; that the 11 testimony of the deponent and all objections made at 12 the time of the examination were recorded 13 stenographically by me and were thereafter 14 transcribed that the foregoing deposition as typed 15 is a true, accurate and complete record of the 16 testimony of the deponent and of all objections made 17 at the time of the examination to the best of my 18 ability. 19 I further certify that I am neither 20 related to nor counsel for any party to the cause 21 pending or interested in the events thereof. 22 23 Witness my hand, I have hereunto 24 affixed my official seal this 21st day of October, 25 2011, at Columbia, Richland County, South Carolina. 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000	

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

TRIDENT MEDICAL CENTER, LLC,
D/B/A BERKELEY MEDICAL CENTER,

Petitioner(s),

vs.

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

SOUTH CAROLINA DEPARTMENT OF
HEALTH AND ENVIRONMENTAL CONTROL
AND ROPER ST. FRANCIS HOSPITAL-BERKELEY
D/B/A ROPER ST. FRANCIS HOSPITAL,

Respondent(s).

(CAPTION CONTINUED NEXT PAGE.)

D E P O S I T I O N

WITNESS: BRENDA MYERS

DATE: Friday, September 9, 2011

TIME: 10:01 a.m.

LOCATION: Parker Poe Adams & Bernstein, LLP
200 Meeting Street, Suite 301
Charleston, South Carolina

TAKEN BY: Attorneys for Trident Medical Center

REPORTED BY: SHERI L. BYERS
Registered Professional Reporter

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Page 2 1 (CAPTION CONTINUED) 2 TRIDENT MEDICAL CENTER, LLC, 3 D/B/A BERKELEY MEDICAL CENTER, 4 5 Petitioner(s), 6 7 vs. Case No: 09-ALJ-07-0333-CC 8 9 SOUTH CAROLINA DEPARTMENT OF 10 HEALTH AND ENVIRONMENTAL CONTROL, 11 Respondent(s). 12 13 CAREALLIANCE HEALTH SERVICES AND 14 ROPER ST. FRANCIS HOSPITAL-BERKELEY, 15 16 Petitioner(s), 17 18 vs. Case No: 09-ALJ-07-0336-CC 19 20 SOUTH CAROLINA DEPARTMENT OF 21 HEALTH AND ENVIRONMENTAL CONTROL 22 AND TRIDENT MEDICAL CENTER, LLC, 23 24 Respondent(s). 25	Page 4 7 BRENDA MYERS, being first duly 8 sworn, testified as follows: 9 EXAMINATION 10 BY MR. CARTIN: 11 Q. Please state your full name for the record. 12 A. It's Brenda R. Myers.
Page 3 1 APPEARANCES: 2 ATTORNEYS FOR CAREALLIANCE HEALTH 3 SERVICES AND ROPER ST. FRANCIS 4 HOSPITAL-BERKELEY: 5 NEXSEN PRUET, LLC 6 BY: JAMES G. LONG, III, ESQUIRE 7 -AND- JENNIFER HOLLINGSWORTH, ESQUIRE 8 1230 Main Street, Suite 700 9 Columbia, South Carolina 29201 10 jlong@nexsenpruet.com 11 jhollingsworth@nexsenpruet.com 12 13 ATTORNEYS FOR TRIDENT MEDICAL CENTER, 14 LLC, D/B/A BERKELEY MEDICAL CENTER: 15 16 PARKER POE ADAMS & BERNSTEIN, LLP 17 BY: WALTER H. CARTIN, ESQUIRE 18 1201 Main Street, Suite 1450 19 Columbia, South Carolina 29201 20 waltcartin@parkerpoe.com 21 22 23 24 25 ALSO PRESENT: 26 DOUG BOWLING 27 JIM RARDIN 28 29 30 (INDEX AT REAR OF TRANSCRIPT)	Page 5

2 (Pages 2 to 5)

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RECORD 000456

3 Q. All right. Have you lived anywhere since
4 then, or do you still reside in Summerville?
5 A. I live in Goose Creek today.
6 Q. Goose Creek. What year did you move to Goose
7 Creek?
8 A. 1982.
9 Q. Okay. 1982. You have lived there, same
10 house, or have you moved around a little bit?
11 A. I've moved around quite a bit actually, yes.
12 Q. Within the same general Goose Creek area,
13 though?
14 A. Correct.
15 Q. Are you within the city limits or outside?
16 A. I am in the city limits. I've always been in
17 the city limits.

Page 10	Page 12 11 Q. Okay. I want to look at your professional 12 affiliations down there and just highlight a few of 13 them. Says you're a member of the Berkeley County 14 Chamber of Commerce. How many years have you been a 15 member of the Berkeley Chamber? 16 A. About four years. 17 Q. About four years. What kind of activities do 18 you engage in doing that? 19 A. I just participate in their meetings. I do 20 many of their after hours meetings, just the mingling of 21 the business leaders of the community and businesses in 22 the community and go to those types of functions. If 23 they have -- I'm pretty active, so any functions that 24 they have, I try to attend when I can. 25 Q. Is it fair to say you focus on the economics
Page 11	Page 13 1 of Berkeley County about, you know, new industries 2 coming in? 3 A. Of course. Yes. 4 Q. So you have your pulse pretty well on the 5 economic health of Berkeley County, so to speak? 6 A. I try to, yes. 7 Q. You try to. How about this -- the Trident 8 Workforce Investment Board, what is that? 9 A. You know, that is an organization that helps 10 people that are unemployed to get them back into the 11 workforce. So they do training there, they have classes 12 where you can get your GED. You can, you know, go 13 through a series of different classes to prepare you to 14 get back into the workforce. It can retrain you. If 15 you came out of an organization that did manufacturing 16 and now you want to go into business because there's an 17 opening or there's jobs available there, it will train 18 you to get to that business sector and qualify you to go 19 into those types of jobs. 20 Q. I take it from the name that this focuses on 21 the Tri-County area? 22 A. It is. 23 Q. And where -- it seems like that would deal a 24 lot with, you know, unemployment issues, obviously. 25 Where does it seem the unemployment problem is most

4 (Pages 10 to 13)

Page 14 1 acute, at least based on your perception? 2 A. Where it's the most acute, I would say -- 3 you're looking for an industry? 4 Q. No, no, just a county. One of the counties. 5 A. As far as counties go? 6 Q. Uh-huh. 7 A. Berkeley County definitely has opportunity. 8 Our unemployment rate in Berkeley County is up there. 9 Q. Do you know the specific figure? 10 A. Isn't it 10? I believe it's at 10 percent 11 right now, I believe. 12 Q. And that seems consistent with the rest of 13 the state; is that right? 14 A. 10 or 11, yeah. 25 Q. Okay. Baker Hospital, which is on page 976,	Page 16
Page 15 1 what is Baker hospital? I'm not familiar with that. 2 A. Baker Hospital was originally a small 3 community hospital in the North Charleston area. 4 Q. Okay. 5 A. It is no longer in -- it's no longer there 6 physically. It's gone, but Roper Hospital actually 7 purchased that. 8 Q. Okay. What year did Roper purchase that? 9 A. Probably the mid '90s, I would think. 10 Q. It says you were a practice administrator. 11 What kind of activities did you do as the practice 12 administrator? 13 A. Baker Hospital when I was employed there, 14 when they brought me on board having my background in 15 primary care, they had about six primary offices around 16 the Charleston area. And they placed me over those six 17 practices to manage those six practices just because of 18 my experience from primary care.	Page 17

5 (Pages 14 to 17)

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RECORD 000459

Page 18	Page 20 3 Q. Okay. As far as strategic planning, what 4 part do you play in the strategic planning process? 5 A. My role with that is strictly under my roof. 6 It is not a corporate strategic planning. It is 7 definitely more of I work with the managers. All of my 8 departments report up to the service line directors of 9 those, like radiology reports to our hospital radiology 10 director, ER, same thing of all of them. So I work with 11 the managers within my facility to, you know, plan what 12 we're going to do on a day-to-day basis. 13 Q. Are you at a VP level or director level? 14 You're kind of your unique critter out there? 15 A. I really am. I'm just management level. I'm 16 not vice president. I'm not -- you know, my role is an 17 administrator of my one facility. 18 Q. Where is your facility located? 19 A. We are on Stoney Landing Road in Moncks 20 Corner. 21 Q. Okay. And where is Moncks Corner located 22 geographically? Is it the southern portion of Berkeley 23 County? Is it in the western, central, northern portion 24 of Berkeley County? 25 A. It's more the -- if my direction is right, I
Page 19	Page 21 1 think we're in the -- more in the northern end. 2 Q. That's right. I'm going to go ahead, and 3 this is just a simple map. 4 A. Good. That will help. 5 Q. Moncks Corner is in the center of Berkeley 6 County, correct? 7 A. Yes. 8 Q. Okay. And can you put an X and initial by 9 the northernmost portion of Berkeley County? You will 10 see that you got the outline of the county there in red. 11 You can take a second to orient yourself to that map. 12 A. Okay. 13 Q. Whatever you would describe as northern. 14 North is up. 15 A. Well ... 16 Q. On the map. 17 A. So you just want an X in northern part of the 18 county. 19 Q. Sure. And your initials right next to it. 20 That's it. Okay. That was my only question 21 about that one. We may come back to that there in a 22 little bit. 23 Tell me about your facility. 24 A. It's about 50,000 square feet. 25 Q. Okay.

6 (Pages 18 to 21)

Page 22 1 A. We're a 24/7 facility. We are there, always 2 open. We have an emergency room, lab, x-ray, physical 3 therapy within the facility. 4 Q. Okay. Do you have an MRI machine? 5 A. We do. 6 Q. Okay. 7 A. It's a mobile MRI machine. 8 Q. Do you do mammography? 9 A. Digital mammo. Ultrasound, CTs, mammo, 10 digital mammo. 11 Q. And do you have an ambulatory surgery 12 facility there as well? 13 A. We do. 14 Q. How many ORs do you operate? 15 A. Three. 16 Q. Three ORs? 17 A. Correct. 18 Q. And do you have any other one that kind of 19 floats around, any other shelled-in space there that -- 20 A. We have an MOB. 21 Q. An MOB. 22 A. So we have physicians in our MOB. 23 Q. Okay. Do you have any plans to add services 24 to that location? 25 A. No.	Page 24
Page 23 5 Q. But you could. In the past I guess three to 6 four years since you've been the administrator, have you 7 dropped any services? 8 A. We have not. 9 Q. You have not dropped anything? 10 A. Huh-uh. 11 Q. Have you in the past three or four years 12 added machines or services that were not there when you 13 first started? 14 A. We have. We have added the MRI. 15 Q. Okay. Is that a replacement or a new MRI? 16 A. It's new. 17 Q. Okay. 18 A. We have the digital mammo. We have upgraded 19 some equipment. 20 Q. Okay. 21 A. We have added a sleep lab since I have been 22 there.	Page 25

7 (Pages 22 to 25)

Page 26 20 All right. Tell me about your typical 21 patient. Where are they from? You know, and I realize 22 this is a broad generality. You probably get people 23 from New York who are vacationing at the lake who come 24 in. But the majority of your patients, where do they 25 come from?	Page 28 1 may be -- it's called Pineville. How long would it take 2 you to get from Pineville to Moncks Corner? 3 A. I would say probably 20, 25 minutes. 4 Q. 25 minutes. Depending on traffic, of course. 5 A. Yeah. 6 Q. St. Stephens estimate? 7 A. St. Stephens is about probably a 20-minute 8 drive. 9 Q. Okay. How about Cross? 10 A. Cross is probably a little further to get to 11 that, so ... 12 Q. I realize Cross is pretty much an 13 intersection and a post office. 14 A. True.
Page 27 1 A. The majority of our patients are from Moncks 2 Corner. 3 Q. From Moncks Corner. If you were to look on 4 this map in the center, it's broken out by ZIP codes 5 there. When we say "Moncks Corner," are we referring to 6 the 29461, which is right there under the Moncks Corner 7 label area code, kind of the general area we are talking 8 about? 9 A. That would be my largest population, yes, but 10 they do come from the other areas as well. 11 Q. Pinopolis. 12 A. St. Stephens, Bonneau. 13 Q. Pineville. 14 A. Yeah. 15 Q. Have you ever visited any of those cities in 16 the northern portion of Berkeley County? 17 A. Yes. 18 Q. Which ones have you visited? Cross, have you 19 been there? 20 A. Pretty much all of them. 21 Q. Bonneau, St. Stephen. What are some of the 22 other ones? Jamestown in the north? 23 A. Uh-huh. 24 Q. I think the northernmost one may be 25 Jamestown. It's not here on this -- no, excuse me, it	Page 29

8 (Pages 26 to 29)

Page 30 23 Q. All right. Let's go back to Berkeley County. 24 What is your payor mix like for your patients at your 25 emergency room and ambulatory surgery facility? And	Page 32
Page 31 1 just again, I know specific numbers, but just off the 2 top of your head, what percentage are Medicare, what 3 percentage are Medicaid, sub pay? 4 A. The largest percentage is Medicare. We have 5 an awful lot of elderly folks in the community. 6 Q. Okay. Do most of those elderly folks live 7 along the lake or have they been there a long time? 8 A. A lot of them just live there. Families have 9 lived there for a long time. 10 Q. I got you. How about Medicaid? 11 A. We have a fair amount of that as well. 12 Q. Okay. And do you have a lot of private 13 insurance, or do you know what percentage of your folks 14 have private insurance? 15 A. We have about 17 percent. 16 Q. Okay. What percentage is self pay? 17 A. Isn't that what you asked me? I'm sorry. 18 What was the last question you asked me? 19 Q. That was a -- 20 A. Was that private pay? 21 Q. -- private payor. Yes, some sort of private 22 insurance, like Blue Cross Blue Shield or something like 23 that.	Page 33 18 Q. Okay. All right. Let's talk about the 19 economics of the area, and let's focus on Moncks Corner 20 and above. What industries are in that area, big 21 industries? 22 A. Santee Cooper is probably our largest. We 23 have several industrial parks. Bayer is over there not 24 far from us. 25 Q. Okay.

9 (Pages 30 to 33)

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RECORD 000463

Page 34 1 A. Those are probably some of our larger ones. 2 Q. Who are some of the bigger employers in 3 Berkeley County generally? 4 A. Santee Cooper is probably the largest. 5 Q. Probably is largest? 6 A. Yes. The school system. Obviously, the 7 Berkeley County schools is a large employer there. 8 Q. I know there was some talk about maybe a 9 Harris Teeter opening, maybe a distribution center or a 10 Piggly Wiggly distribution center or something like that 11 in southern Berkeley County or maybe in Dorchester? 12 A. I think that's close to Dorchester County, 13 but that's the Piggly Wiggly distribution center and it 14 is up and running now. 15 Q. Okay. When Roper filed its CON application, 16 obviously, the economy was much different. This was 17 pre -- or it was in 2008, right about the time the 18 economy was starting to take a turn. Can you just 19 describe generally the effects of the recession on 20 Berkeley County? And you can feel free to draw from 21 your knowledge being with the Berkeley County Chamber. 22 A. Just living there, you know, of course, we 23 have seen the recession has caused a slowdown of homes 24 that are being built. 25 Q. Okay.	Page 36 1 we have right now in that community. That's where Del 2 Webb is. That's where schools are, a new grocery store. 3 Publix has opened up out there recently. So that
Page 35 1 A. There is not as many people hiring for jobs 2 out in the community right now. So just I think a 3 general slowdown just like anywhere else in the country 4 has faced and the state. 5 Q. I know there were several developments that 6 were mentioned in, you know, CON applications about 7 there were getting ready to be built. I think one was 8 Cane Bay, one was perhaps Del Webb, and Parks at 9 Berkeley. Have any of those actually been built? 10 A. Yes, they have. 11 Q. Okay. 12 A. Del Webb is active. They are building out 13 there. I've actually toured that facility, and there 14 are quite a few homes. There's a lot of construction 15 still today going on out there, so they are growing. 16 Some of the other communities that you 17 mentioned, I would say that there are homes in some of 18 those areas. I'm sure it has not grown as fast as they 19 would have liked it to at this point. But they are 20 still there, the infrastructure is still there as far as 21 the roads and all, it is ready to go, but it's a slower 22 process. 23 Q. At Cane Bay in particular, have they built 24 any of those homes? 25 A. Cane Bay is probably the most populated area	Page 37

10 (Pages 34 to 37)

Page 38	Page 40 1 A. -- you know, based on the injury. 12 Q. Okay. Have you ever transferred a patient to 13 Trident? 14 A. Absolutely.
Page 39 14 Q. Okay. Imagine we can pick, I'll let you pick 15 the scenario where a patient comes in, say, they were 16 boating on the lake and something happens. ER doctor 17 provides the screening examination, stabilizes the best 18 they can, but it is found you need some level of 19 tertiary care. Explain to me the process by which you 20 transfer that patient. 21 A. That patient is transferred truly based on 22 where they choose to go, whether it's personal 23 preference, whether it's insurance driven, or need 24 driven -- 25 Q. Okay.	Page 41

11 (Pages 38 to 41)

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12 (Pages 42 to 45)

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RECORD 000466

7 Q. Not as busy. Is the Moncks Corner, Berkeley
8 Medical Center in Moncks Corner, is it a profitable
9 hospital or is it -- is it profitable?

10 A. It's not always been, no.

11 Q. Okay. And of the years that you have been
12 there, in those years, start in 2007 or let's start in
13 2008 because you probably didn't do a full year in 2007,
14 did you break even in 2008?

15 A. No.

16 Q. 2009?

17 A. Actually, I would tell you that probably in
18 '9, we did not break even. Last year, we were very
19 close.

20 Q. Okay. Very close. This year so far, year to
21 date --

22 A. We are tracking.

23 Q. Year-to-year tracking?

24 A. We are tracking to do a little bit better
25 this year.

13 (Pages 46 to 49)

Page 50	Page 52 4 Looking at the southern part of Berkeley 5 County, we see there's a lot of that yellow there 6 indicating where it is densely populated. How far are 7 folks who live in Goose Creek from Trident Medical 8 Center? And I know Goose Creek is large. Say, pick a 9 spot in town, tell me where that spot is. And say, from 10 your house, how would that -- 11 A. From my house to Trident Medical Center is 12 three miles. 13 Q. Three miles. How long does that drive take 14 you? 15 A. Six minutes, seven minutes. 16 Q. Six minutes. Worse case scenario at rush 17 hour, what might it take you? 18 A. It could take me a half an hour. 23 Q. How far are you from Summerville Medical 24 Center? 25 A. I am 10 to 11 miles.
Page 51	Page 53 1 Q. And drive time translates to? 2 A. 20, 25. 20 minutes or so. 3 Q. Are there any residents of Goose Creek who 4 are not within a ten-minute drive or ten -- yeah, 5 ten-minute drive, 10- to 15-minute drive of Trident 6 Medical Center? 7 MR. LONG: Objection. 8 THE WITNESS: In Goose Creek itself, probably 9 very few. 10 BY MR. CARTIN: 11 Q. Okay. Most are ten minutes away? 12 A. Could be there in ten minutes. 23 Q. All right. Is it fair to say that the 24 residents in this southern part of Berkeley County are 25 already served by Trident Medical Center?

14 (Pages 50 to 53)

Page 54 1 A. They could be. 2 Q. Okay. What do you mean by "they could be"? 3 A. If they choose to go -- 4 Q. Okay. 5 A. -- there, that's available. 6 Q. Is patient choice -- tell me what part 7 patient choice plays in viability of an inpatient 8 hospital. 9 A. I think it's very important, people choosing 10 and having an option of where they go.	Page 56
Page 55 3 Q. They do. All right. Where is the population 4 epicenter of Berkeley County? 6 THE WITNESS: Today, the epicenter would be 7 in the Crowfield around the 176 corridor between 52. 8 BY MR. CARTIN: 9 Q. Is that near Carnes -- what is Crowfield? 10 I'm not as familiar with it as you. 11 A. I'm sorry. 12 Q. That's all right. 13 A. It's between I-26 and 176. So today that's 14 the largest population of residents in all of that 15 community. 16 Q. And how far would someone who lives in, say, 17 the center of that, how far would they be from Trident 18 Medical Center? 19 A. I'm pretty much in the center of that. 20 Q. Six to seven minutes of the population 21 epicenter? 22 A. Right. 23 Q. How far would they be from Carnes Crossroads? 24 A. About the same.	Page 57

15 (Pages 54 to 57)

2 Q. And who made the decision to build the
3 hospital at Carnes Crossroads?

4 A. I do not know.

5 Q. Senior-level leadership?

6 A. Absolutely.

7 Q. And what part did you have in making that
8 decision?

9 A. I played no role in that.

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17 (Pages 62 to 65)

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18 (Pages 66 to 69)

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19 (Pages 70 to 73)

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RECORD 000474

Case Name: Trident v. Roper St. Francis-Berkeley
Transcript: Thomas, Jamie, dated 02-09-11

Pg: 4 Ln: 5 - 11

Annotation:

4: 5 JAMIE THOMAS,
6 having been duly sworn, was examined and testified as
7 follows:
8 EXAMINATION
9 BY MR. LONG, at 12:42 p.m.:
10 Q. Can you state your full name, please?
11 A. James Rogers Thomas.

Pg: 6 Ln: 7 - 25

Annotation:

6: 7 Q. And what is your position?
8 A. I'm termed a division president, the South
9 Atlantic Division president.
10 Q. And what does the South Atlantic Division
11 president do for HCA?
12 A. We have operational and strategic oversight
13 for the hospitals within our division.
14 Q. And what exactly is the South Atlantic
15 Division?
16 A. It encompasses seven hospitals: One in
17 Myrtle Beach, three in the Charleston area, and three in
18 Jacksonville, Florida.
19 Q. Is the Myrtle Beach hospital Grand Strand?
20 A. It is.
21 Q. And what are the three in Charleston?
22 A. You may not include one of them in
23 Charleston, but it's Trident Medical Center, Summerville
24 Medical Center, and then in our terminology in the same
25 area, Colleton Medical Center, which is in Walterboro.

Pg: 36 Ln: 7 - Pg: 37 Ln: 25

Annotation:

36: 7 Q. Tell me about the deterioration of the
8 financial situation in Charleston.
9 A. I really don't know much about it. It's a
10 grapevine rumor that there had been weakening of the --
11 Trident has always been a significant asset for HCA and
12 has a long history. And there had been some erosion of
13 that positioning in the market.
14 Q. Let me ask you about that. Has Trident been
15 one of the most successful hospitals for HCA?
16 A. On what metric? Financially or --
17 Q. Well, that would be one metric.

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Transcript: Thomas, Jamie, dated 02-09-11

18 A. Yeah.
19 Q. You said --
20 A. Which one do you prefer?
21 Q. You said it was a significant asset?
22 A. Significant asset. Significant asset in
23 reputation from its innovations, and I don't -- it just
24 was seen as a, particularly during the Frank DeMarco
25 period, it was seen as a progressive hospital. And I
37: 1 couldn't -- these are just impressions, so it's not
2 backed up by -- I didn't ever have direct connections
3 with it, but it had a very good medical staff, very good
4 managers. It had that type of a reputation.
5 Q. What about financially?
6 A. And financially a strong hospital.
7 Q. Was it one of the strongest hospitals in the
8 HCA system?
9 A. Gosh, my view of the HCA system is so
10 limited. Up until recently my, I mean, my vision of it
11 is in my own division. And so if you took the division
12 I was working in, it clearly historically would have
13 been one of the better, stronger financial hospitals in
14 that division.
15 But HCA is a big company, and it's across
16 the country. And is it in the top 10 percentile? I
17 really don't know. Honestly, I don't have a clue about
18 earnings that are in the other two groups or in --
19 really I don't have that much visibility even into my
20 own group -- in my own Florida hospitals or anything,
21 so --
22 Q. Well, how would you compare Trident to the
23 seven hospitals that are in your division?
24 A. Hospital -- Trident was the strongest
25 financial performer last year of the seven hospitals.

Pg: 50 Ln: 2 - 21

Annotation:

50: 2 Q. Well, if Mr. Gallati wanted to hire a
3 physician, would he go to you first for that physician's
4 services or Mr. Hall?
5 A. No. He wouldn't go to Mr. Hall. He would
6 go first and complete a form, approval form, a concept
7 form, that would come through a computer system. He may
8 not alert me. And it will come up, and then we'll
9 review it.
10 If it's straightforward, I may not -- I may
11 approve it, approval of the concept. Then it goes back
12 to in Physician Services and all -- real estate or
13 whatever -- all the people who are involved. And then
14 they begin to get into the negotiations. But once I
15 sign the approval, then it goes forward.
16 Now, the approval also has, first of all, a

Case Name: Trident v. Roper St. Francis-Berkeley
Transcript: Thomas, Jamie, dated 02-09-11

17 legal signature to do -- you know, the concept and the
18 structure of the deal has to be outlined on the
19 beginning and approved by legal before it ever gets into
20 my system. And either I or my CFO can push forward an
21 approval, concept approval form.

Pg: 54 Ln: 21 - Pg: 55 Ln: 24

Annotation:

54:21 Q. Getting back to the situation with Berkeley
22 and the decision to approve that, what did you -- what
23 planning information and financial feasibility
24 information did you review to make the decision to
25 appeal the approval of these two CON applications?
55: 1 A. I was given access in all of our planning to
2 the general demographics of the area. In our case, the
3 primary areas of Goose Creek and moving up toward the
4 proposed site of the Roper facility, those were primary
5 service areas for our -- for both Trident and
6 Summerville, but particularly Trident.
7 Those were where, if you looked at the draw
8 of patients, there was significant draw out of that
9 area. So we looked at our own utilization, and we
10 looked at general demographics.
11 Q. Let me ask you this. When you --
12 A. But I also relied a great deal on the people
13 around me at that point in time. Jim Rardin was kind of
14 my primary advisor. By then Todd was also a secondary
15 advisor. And then there were other people who were
16 engaged in much more in-depth --
17 The CON process had really -- I think we had
18 gone more deeply into the analysis of utilization trends
19 and so forth. I hadn't personally, but Doug Bayer, I
20 think, the guy who did the CON. There was a
21 conversation with each -- the people who were --
22 particularly those people in giving me my
23 recommendation, I mean, giving me a recommendation on a
24 decision on appeal or not appeal.

Pg: 55 Ln: 25 - Pg: 56 Ln: 21

Annotation:

55:25 Q. After you became the division head of the
56: 1 South Atlantic Division, was there ever a time that you
2 asked anybody to do an analysis for you of what the
3 impact would be to Trident or Summerville if the -- if
4 the Roper Hospital at Carnes Crossroads was approved and
5 came into existence?
6 A. I don't believe so. I think that was, I
7 think that was a part of the CON analysis. I think

Case Name: Trident v. Roper St. Francis-Berkeley
Transcript: Thomas, Jamie, dated 02-09-11

8 that, but I don't know that.
9 Q. Was there ever a time that you've asked
10 anybody to do an analysis for you of what the financial
11 impact to Trident or Summerville would be from approval
12 of a hospital at Carnes Crossroads?
13 A. I don't recall asking someone to do that.
14 Q. Do you recall ever reviewing any sort of
15 analysis that actually made an estimate of what the
16 impact would be either of utilization or financial at
17 any time as the division head that was prepared by
18 somebody else?
19 A. I don't have, I don't have -- if I think
20 about it, I can't, I can't summon up that experience,
21 no.

Pg: 56 Ln: 22 - Pg: 57 Ln: 1

Annotation:

56:22 Q. Did Mr. Rardin recommend to you that you
23 appeal?
24 A. Absolutely.
25 Q. Did Mr. Gallati recommend that you appeal?
57: 1 A. Absolutely.

Pg: 57 Ln: 19 - Pg: 58 Ln: 16

Annotation:

57:19 Q. Do you have authority in your position to
20 commit HCA to a capital expenditure in excess of \$100
21 million?
22 A. No.
23 Q. Who does?
24 A. That limit would probably be -- again, I'm
25 not sure, but I would assume that that level would be --
58: 1 I'm sure that that would be a board decision.
2 Q. And by the big board, what I would call the
3 big board for HCA?
4 A. That's my assumption. There may be a
5 committee within that board. I don't have a direct
6 knowledge of it, but that would be my assumption of that
7 magnitude. It could be the CEO. I honestly -- I'm not,
8 I'm not sure. It could be the CEO of the company, but
9 I'm not --
10 Q. The CEO of HCA?
11 A. The CEO of HCA.
12 Q. And who is that now?
13 A. Richard Bracken.
14 Q. And Mr. Hall, or Chuck Hall, reports to him;
15 right?
16 A. That's correct.

Pg: 70 Ln: 22 - Pg: 71 Ln: 15

Annotation:

70:22 Q. When did you become aware that the HCA and
23 Trident owned a 20-plus-acre tract of land at Cane Bay?
24 You still own it; right?
25 A. Yes. I've never seen it. I don't even know
71: 1 where -- I'm not that familiar with it, but I knew that
2 there was a 20-acre parcel of land that HCA owned. And
3 I knew it in, my guess is, sometime in the first year
4 that I was there and probably in the first six months I
5 was there.
6 Q. What's your plans for that site?
7 A. There are no plans.
8 Q. Is it common for HCA just to own undeveloped
9 real estate with no plans for it?
10 A. Not in my experience.
11 Q. And did you see Mr. Gunn's --
12 A. I've never personally been involved where we
13 owned a parcel of land that's undeveloped.
14 Q. Have you taken any effort to sell it?
15 A. No.

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Pg: 4 Ln: 7 - 11

Annotation:

4: 7 (ROPER EXH. 1, Curriculum Vitae and CON
8 Preparation and Expert Testimony 2002-2011, was marked
9 for identification.)
10 THOMAS DAVIDSON, being first duly
11 sworn, testified as follows:

Pg: 4 Ln: 10 - 15

Annotation:

4:10 THOMAS DAVIDSON, being first duly
11 sworn, testified as follows:
12 EXAMINATION
13 BY MR. LONG:
14 Q. Can you state your full name, please.
15 A. Yes. Thomas Alan Davidson.

Pg: 6 Ln: 21 - Pg: 7 Ln: 24

Annotation:

6:21 Q. All right. This morning you handed me two
22 documents, which I went ahead and combined into one
23 exhibit. Can you tell me what these three pages are,
24 which is Exhibit Number 1?
25 A. The first two pages are my CV, and the third
7: 1 page is a summary of my CON preparation and expert
2 testimony from 2002 to the present.
3 Q. Okay. All right. Let's start with your CV a
4 little bit. Tell me about your educational background.
5 I think it's here on the second page.
6 A. I went to Vanderbilt University,
7 undergraduate and graduate. I've got a B.A. in 1983 and
8 an MBA -- that's backwards. I got a B.A. in 1974 and my
9 MBA in 1983.
10 Q. MBA? Do you have an MHA?
11 A. No.
12 Q. And both are at Vanderbilt?
13 A. Yes.
14 Q. And do you have any other educational
15 degrees?
16 A. No.
17 Q. Or any certificates that you've earned in
18 regards to your career?
19 A. No.
20 Q. Have you ever published anything?
21 A. A couple of articles. They're --
22 What topics?
23 A. Cost accounting and Marketing Senior

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24 Services. I haven't done much lately.

Pg: 10 Ln: 9 - Pg: 12 Ln: 13

Annotation:

10: 9 Q. And then you started Vanderbilt again in
10 1981?
11 A. That's right.
12 Q. Were you a full-time student at Vanderbilt
13 when you were getting your MBA?
14 A. Yes.
15 Q. Then you got your degree, I guess in 1983,
16 you started with Amherst Associates.
17 A. Yes.
18 Q. Tell me what kinds of things you did -- what
19 Amherst Associates is.
20 A. Amherst Associates was a healthcare
21 consulting company. I was employed initially in the
22 Atlanta office and then in the Tampa office. The main
23 areas of practice would be Certificate of Need
24 applications. They developed case mix cost and
25 accounting systems to install in hospitals. And they
11: 1 also did analyses for debt placement, hospital debt
2 placement.
3 Q. What do you mean by "placement"?
4 A. They would write the -- prepare the financial
5 projections in connection with a bond offering.
6 Q. Okay. All right. And were your clients
7 pretty much all hospitals?
8 A. Generally, yes.
9 Q. Was that organization organized where people
10 were -- some people did planning and other people did
11 finance or was it --
12 A. No, I worked in all three areas.
13 Q. Okay. What were the three areas you said you
14 worked in?
15 A. Certificate of Need, the financial analysis
16 with the debt placements, and cost accounting systems.
17 Q. And how big was Amherst Associates when you
18 worked there from '83 to '88?
19 A. I'm not really sure. I think they probably
20 had about a hundred consultants, and I'm not sure how
21 many offices. Maybe eight offices. It's a long time
22 ago.
23 Q. Okay. All right. Why did you leave, then,
24 to go to Ernst & Whinney?
25 A. Ernst & Whinney bought Amherst Associates.
12: 1 Q. Okay. In 1988?
2 A. Yes.
3 Q. And what -- did your position change?
4 A. The scope of the work I did changed a little
5 bit. I wasn't involved in any bond underwritings. I

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6 continued to do mostly cost accounting, Ernst & Whinney.
7 I might have worked on maybe two Certificate of Need
8 applications when I was there. They also did litigation
9 support in connection -- or I worked on a couple of
10 cases in litigation support in connection with an
11 antitrust suit that was brought by a physician against
12 the physician group. But primarily I would have worked
13 on the cost accounting engagements.

Pg: 12 Ln: 19 - 24

Annotation:

12:19 Q. Okay. In 1989, you went out and formed your
20 own company?
21 A. That's right.
22 Q. And moved to Virginia?
23 A. Well, I was in Tampa for about the first --
24 from 1989 until six years ago.

Pg: 13 Ln: 12 - 19

Annotation:

13:12 Q. Okay. All right. Tell me about Thomas
13 Davidson Healthcare Consulting.
14 A. My areas of practice are primarily, again,
15 cost accounting engagements and Certificate of Need.
16 Some planning, but that's a relatively small piece of my
17 portfolio.
18 Q. Who are your clients?
19 A. Generally hospitals and hospices.

Pg: 14 Ln: 3 - Pg: 15 Ln: 5

Annotation:

14: 3 Q. Okay. And how long have you worked with Rich
4 Baehr in a subcontracting capacity?
5 A. I would estimate it -- I mean off and on
6 maybe over a period of 10 or 15 years.
7 Q. Okay. And how did you get to know him?
8 A. Mr. Baehr also worked for Amherst Associates
9 when I did, and so I worked on a project with him that
10 had to do with an ambulatory surgery center case. And
11 it was tried in Orlando. And then subsequently, I guess
12 he was just aware of the fact that I had a consulting
13 practice and from time to time would engage me to assist
14 him in one of his projects.

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15 Q. All right. I see here on your resume that
16 you said you prepared -- you've done the preparation of
17 need and/or financial feasibility analysis for
18 Certificate of Need applications, and then you list all
19 the things. Acute care hospital expansions and et
20 cetera.
21 So typically when you're hired -- let me ask
22 you this. What percentage of your work is in your
23 subcontracting role with Mr. Baehr, with Rich Baehr?
24 A. In recent years maybe 15 percent, 20 percent.
25 Q. Like in the last five years?
15: 1 A. Less. It's been particularly busy in
2 connection with this case or this project. But there
3 were also the Pasco County cases that I worked on. I
4 think those are within the last five years, but I'm not
5 really sure.

Pg: 16 Ln: 1 - 4

Annotation:

16: 1 Q. And you worked on those cases with Mr. Rich
2 Baehr?
3 A. I prepared analyses for him or documents for
4 him.

Pg: 16 Ln: 13 - Pg: 17 Ln: 11

Annotation:

16:13 Q. CONs.
14 All right. Let's talk for a second about the
15 CON cases that -- CON applications that you've worked on
16 that didn't, did not involve those two. Okay. So these
17 are cases you did not work with Mr. Baehr on.
18 A. All right.
19 Q. Okay. Let's talk about that group. All
20 right.
21 Typically, what are you -- have you ever been
22 hired to prepare the entire application?
23 A. Yes.
24 Q. All right. Have you ever done that in South
25 Carolina?
17: 1 A. No.
2 Q. All right. What states have you prepared the
3 entire application for?
4 A. Florida.
5 Q. All right. And was most of your work in
6 Florida before -- in your career?
7 A. Yes.
8 Q. Okay. What other states have you prepared

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9 CON applications besides this one here in
10 South Carolina?
11 A. Georgia.

Pg: 17 Ln: 21 - Pg: 22 Ln: 14

Annotation:

17:21 Q. Okay. And --
22 A. Sir, if I may.
23 Q. Sure.
24 A. Mr. Baehr was also involved in some cases in
25 the Myrtle Beach area. I'm not actually recalling what
18: 1 the services were, but I worked on those with him as
2 well.
3 Q. In Myrtle Beach, South Carolina?
4 A. It was those three -- Horry County, whatever
5 county Myrtle Beach is in. There are three counties up
6 there, Williamsburg.
7 Q. Do you remember what that was about?
8 A. I couldn't swear that I can recall what it
9 was. I think it might have been linear accelerators or
10 some kind of equipment.
11 Q. Okay. And so in your career, have you
12 actually -- in Florida, I assume they have a section of
13 the CON application that's similar to what we call B11,
14 the need analysis?
15 A. Yes.
16 Q. The planning part of that document?
17 A. Yes.
18 Q. So you've written applications and prepared
19 the need analysis?
20 A. Yes.
21 Q. Okay. And you've also prepared the financial
22 analysis?
23 A. Yes.
24 Q. Pro formas?
25 A. (Nods head.)
19: 1 Q. Have you ever done that in a case that was
2 contested?
3 A. Yes.
4 Q. Where it was opposed and went to litigation?
5 A. Yes.
6 Q. Okay. Let's look at your third page of our
7 Exhibit Number 1. All right. Can you tell me what this
8 is.
9 A. This is a summary of cases that I've worked
10 on, CON cases since 2002 and the capacity in which I
11 acted in those cases.
12 Q. Okay. So in the first column, it lists the
13 hospital that you worked for or the system, right?
14 A. Right.
15 Q. And in the second column is the state, and

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16 then the service. All right. So let's just go through
17 a couple of these to make sure that we're -- OHS is
18 what?
19 A. Open heart surgery.
20 Q. Okay. That's a level 3 NICU, right?
21 A. Correct.
22 Q. Is the third one. Hospice, acute beds.
23 Inpatient rehab?
24 A. Yes.
25 Q. All right. Inpatient hospice as not
20: 1 inpatient beds and hospice, but inpatient hospice beds,
2 right?
3 A. Right.
4 Q. Okay. And then over here in the next column,
5 it says CON preparation need or financial and the X
6 marks what you did in regards to that, right?
7 A. Yes, sir.
8 Q. Okay. Can you tell me -- and then expert
9 testimony on -- all right. Now, we'll get to that
10 column in a second.
11 On these applications, can you go through and
12 tell me which one of these applications where you
13 were -- let me back up. Do any of these applications --
14 do any of these clients simply -- you were simply hired
15 to oppose another application?
16 A. Yes.
17 Q. Okay. Can you tell me which ones those were?
18 The ones where you were hired to oppose somebody else.
19 A. Solely to oppose or to be for but also
20 against a competing competitor?
21 Q. Well, let's do all three categories.
22 A. Okay. University Community Hospital, there
23 was another. St. Joseph's was a party to that case.
24 Q. So that involved two applications?
25 A. Right.
21: 1 Q. On the level 3 NICU?
2 A. Yes, sir.
3 Q. All right.
4 A. Wellington Regional, the one where I have a
5 little arrow pointing to, with Universal Health Systems.
6 Q. Right.
7 A. Those were in opposition.
8 Q. So two for Wellington Regional were
9 oppositions?
10 A. No. The second Wellington Regional.
11 Q. For acute beds?
12 A. Yes. I'm sorry. Let me back up. Forget
13 about Wellington Regional.
14 Q. Okay.
15 A. Universal Health Systems, which owns
16 Wellington Regional Medical Center, there were two cases
17 involving a satellite hospital in Palm Beach County,
18 Florida, in which they were opposing that hospital.
19 Q. So they were opposing both?
20 A. Yes.

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21 Q. There were two systems -- two applications
22 for hospitals?
23 A. By the same applicant.
24 Q. Okay. Were they 50-bed hospitals?
25 A. I think they were 80-bed hospitals, but they
22: 1 were small.
2 Q. How close were they?
3 A. To what?
4 Q. Huh?
5 A. To what?
6 Q. Well, to each other.
7 A. No. No. Bethesda Medical Center, which was
8 the applicant, applied to put a hospital in Boynton
9 Beach. They went through the hearing process. It was
10 denied. They filed an application to put in the same
11 hospital in the same place.
12 Q. I got you.
13 A. And that was litigated again. It was two
14 cases.

Pg: 29 Ln: 2 - Pg: 33 Ln: 8

Annotation:

29: 2 Q. Who actually retained you in this matter, the
3 Berkeley County hospital cases?
4 A. Mr. Baehr.
5 Q. Okay. All right. Tell me -- tell me how you
6 were -- what were the circumstances of you being
7 retained?
8 A. Mr. Baehr called me on the telephone and
9 explained that there was an application that was going
10 to be filed and wondered if I would be able to assist
11 him in helping to prepare some of the documents and
12 analyses for him.
13 Q. And when -- do you recall when he called you?
14 A. Not precisely. It would have been a few
15 months before the application was filed.
16 Q. What did he tell you about the applications
17 when he called you? Tell you about the application.
18 A. That it was for an acute hospital.
19 Q. Did he tell you where?
20 A. He may have. I don't recall the conversation
21 in detail.
22 Q. And what were you actually hired -- did he
23 tell you during that conversation what exactly he wanted
24 you to do, or had you guys worked enough with each other
25 where you already knew what he wanted you to do?
30: 1 A. Well, it sort of evolved. I mean, he didn't
2 give me a extensive scope presentation. I think the
3 next step was to meet with the client and review with
4 them what their application was going to be like.
5 Q. Okay. Do you remember the first meeting with

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6 the client?
7 A. I remember the meeting. I don't remember the
8 date.
9 Q. Okay. Tell me about that first meeting. Was
10 it in person or telephone call or what?
11 A. No, it was in person.
12 Q. Okay. And who did you meet with?
13 A. I don't recall everyone. The two people that
14 I remember being there are Mr. Rardin.
15 Q. Okay.
16 A. And Andrea Brisbin, who was their legal
17 counsel.
18 Q. Was a gentleman named Terry Gunn present?
19 A. I don't recall.
20 Q. Do you remember ever meeting Terry Gunn?
21 A. I don't recall. I may have. There were
22 quite a few people at the meeting, but I didn't remember
23 all of them or deal with them all that much.
24 Q. How about other lawyers from Parker Poe,
25 David Summer, Will Thomas, or any of those?
31: 1 A. I believe Mr. Summer I ran into. Maybe not.
2 Q. Where was the meeting?
3 A. It was at Trident Medical Center.
4 Q. At the hospital?
5 A. Yes.
6 Q. And was Mr. Baehr present with you? Was Rich
7 Baehr there?
8 A. I don't believe so.
9 Q. How about Steve Woodford, was he there?
10 A. I believe he was there.
11 Q. How about Karl Gorrell or Ronnie Midgett?
12 A. Not sure.
13 Q. Okay. Was Mr. Baehr -- was anybody on the
14 telephone at the meeting or just people in the room
15 talking?
16 A. I don't recall.
17 Q. When you went to that meeting -- this meeting
18 you went to, do you recall going to in person, where you
19 attended physically, do you recall, was that your first
20 conversation with a client or first conversation with
21 anybody other than Rich Baehr about the application?
22 A. I believe it was.
23 Q. And during that meeting, was there any
24 discussion as to whether the hospital would be located
25 at Moncks Corner or Cane Bay?
32: 1 A. The hospital was going to be located in
2 Moncks Corner.
3 Q. That decision had already been made?
4 A. Yes, I think so.
5 Q. So did anybody ask you to look at the
6 location to determine where it should be located in
7 Berkeley County?
8 A. No.
9 Q. You were just told, "We're going to build a
10 hospital at Moncks Corner and this is the location"?

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11 A. Yes.
12 Q. Okay. Did you ask them any questions as to
13 why they would choose that location?
14 A. I don't recall quizzing them on that, no. I
15 may have. I mean, this was several years ago.
16 Q. All right. Do you have any -- did you talk
17 to them about the issues associated with putting a
18 hospital in Moncks Corner, the advantages and
19 disadvantages?
20 A. We were mostly talking about responsibilities
21 for the application and the analysis of need for it.
22 Q. Okay. Well, had Trident, to your knowledge,
23 done any analysis themselves to determine that there was
24 a need for a hospital in Moncks Corner?
25 A. I don't recall specifically, you know,
33: 1 reviewing any documents about that. I assume they did.
2 Q. Well, in the meeting, were they confident
3 that there was a need for a hospital in Moncks Corner,
4 or were they asking you -- were they in effect saying,
5 "We want you to look at this and tell us whether you
6 think it will work"?
7 A. I think they had made the decision to go with
8 Moncks Corner.

Pg: 35 Ln: 18 - Pg: 36 Ln: 4

Annotation:

35:18 Q. Okay. What were the -- what were you told as
19 to what the purpose of wanting to build a hospital at
20 Moncks Corner was? What was Trident's purpose for
21 applying for the CON?
22 MR. THOMAS: Object to the form.
23 THE WITNESS: Trident's purpose was to expand
24 its service to the residents of Berkeley County who
25 lived in the more distant -- the regions more distant
36: 1 from their existing hospitals.
2 BY MR. LONG:
3 Q. Any other purpose given?
4 A. Not that I recall.

Pg: 36 Ln: 5 - Pg: 37 Ln: 11

Annotation:

36: 5 Q. Okay. And did they tell you why they would
6 want to expand their services in the regions that were
7 more distant to the hospital?
8 A. Generally, they reviewed the fact that
9 Trident Medical Center had been built, more or less, as
10 a resource for the residents of Berkeley County. They

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11 shut down the old county hospital that existed in
12 Berkeley County, and then they built Trident Medical
13 Center in north Charleston County in order to be -- to
14 replace that and healthcare services. And then as the
15 population in Berkeley County began to move or began to
16 develop in other areas, that it was a continuation of
17 that mission to build a hospital in Moncks Corner.
18 Q. Do you think that the population in Moncks
19 Corner has grown since Trident opened its hospital?
20 A. Yes.
21 Q. Do you think that's where -- is that where
22 the population source is or center is in the county?
23 A. It's one of the population centers in the
24 county. The Goose Creek area is the other.
25 Q. Hadn't the Goose Creek areas' population
37: 1 grown dramatically more than the Moncks Corner
2 population in the last 15 to 20 years?
3 A. I think we have some documents on that. I'd
4 want to refer to those before I answer it.
5 Q. You're not sure of the answer?
6 A. Dramatically, there has been growth in both
7 areas.
8 Q. Is one of the reasons you were told that
9 because of the growth in Moncks Corner is one of the
10 reasons they want to put a hospital there?
11 A. Yes.

Pg: 36 Ln: 18 - Pg: 37 Ln: 11

Annotation:

36:18 Q. Do you think that the population in Moncks
19 Corner has grown since Trident opened its hospital?
20 A. Yes.
21 Q. Do you think that's where -- is that where
22 the population source is or center is in the county?
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24 county. The Goose Creek area is the other.
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4 want to refer to those before I answer it.
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6 A. Dramatically, there has been growth in both
7 areas.
8 Q. Is one of the reasons you were told that
9 because of the growth in Moncks Corner is one of the
10 reasons they want to put a hospital there?
11 A. Yes.

Pg: 40 Ln: 18 - 21

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Annotation:

40:18 Q. Since you became a consultant in 1989, this
19 is the first time you prepared a CON and -- CON
20 application for a new hospital, right?
21 A. That's right.

Pg: 41 Ln: 11 - Pg: 42 Ln: 11

Annotation:

41:11 So we're in the Trident CON now. If you
12 would, take a look at -- did you have anything to do
13 with the Part A questionnaire?
14 A. No, I don't think so.
15 Q. Okay. Take a look at question number 2. Did
16 you have anything to do with the drafting of the
17 description of the project?
18 A. I think so, yes.
19 Q. You think you did?
20 What was your role in regarding the drafting
21 of the description that starts on page -- that's another
22 thing about what we're going to do today. It's real
23 important that we refer to the Bates numbers. So like
24 this one we're looking at right here that starts
25 question number 2 is page 8.
42: 1 A. All right.
2 Q. It's not page 6, it's page 8. Do you see the
3 difference?
4 A. Yes.
5 Q. Okay. I just want to make sure we don't make
6 that mistake for the record.
7 All right. So on pages 8, 9 -- 8 and 9 is
8 question number 2, the description. What was -- did you
9 draft this?
10 A. I don't think so, as I read it. I think that
11 this was probably drafted by Parker Poe.

Pg: 82 Ln: 22 - Pg: 83 Ln: 1

Annotation:

82:22 Q. Okay. Take a look -- let's move ahead to --
23 did you have any discussions with Trident in regards to
24 what physicians would be the sources of referrals to the
25 new facility?
83: 1 A. No.

Pg: 190 Ln: 20 - Pg: 191 Ln: 5

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Annotation:

190:20 Q. What states have you been qualified as an
21 expert in by a court of law, Mr. Davidson?
22 MR. LONG: Let's hold for one second before
23 you ask him that. You're not using him as an expert.
24 MR. THOMAS: I haven't designated him as an
25 expert. The documents say what they say.
191: 1 BY MR. THOMAS:
2 Q. All right. Question again.
3 A. Florida and Georgia.
4 Q. What areas were you qualified as an expert?
5 A. Healthcare finance and healthcare planning.

Pg: 193 Ln: 14 - 23

Annotation:

193:14 Q. Okay. Mr. Long asked you many questions
15 where he kind of framed the question as, "You assumed X
16 assumption," or "You assumed Y assumption." Would you
17 agree with me that in actuality, was there any
18 assumption that was not first run by Mr. Baehr prior to
19 the final decision being made in terms of the analysis
20 that you did at his direction?
21 A. Every assumption would have been reviewed and
22 approved by Mr. Baehr before it went into a final
23 document.