

BOARD:
Allen Amaler
Chairman
Mark S. Lutz,
Vice Chairman



Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

BOARD:
R. Kenyon Wells
L. Clarence Batts, Jr.
Ann B. Krol, DDS
John O. Hutto, Sr., MD

OFFICE OF GENERAL COUNSEL

Phone: 803.898.3350 Fax: 803.898.3367

July 10, 2012

RECEIVED

JUL 19 2012

VIA FACSIMILIE AND US MAIL- 734-1499

Brenda F. Shealy, Clerk

Supreme Court
1231 Gervais St.
Columbia, SC 29211

S.C. SUPREME COURT

RE: Withdrawal of Counsel

Dear Brenda,

I, Kristin Pawlowski, attorney of record for South Carolina Department of Health and Environmental Control, hereby withdraw as counsel for the below referenced cases. Please direct all communication to Ashley C. Biggers, also counsel of record for South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201.

Tracking/Case No.	Case Name
2009-134846 2011-193828	Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center, Respondent v. South Carolina Department of Health and Environmental Control, Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Healthcare System, and Carolinas Physicians Network, Inc., Petitioners
2011-202787	MRI at Belfair, LLC v. The South Carolina Department of Health and Environmental Control and Coastal Carolina Medical Center

Sincerely,
Kristin Pawlowski

Kristin Pawlowski

Scanned to both cases

James G. Long III
Member
Admitted in SC

August 12, 2011

RECEIVED

HD AUG 12 2011

VIA HAND DELIVERY

S.C. Supreme Court

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
1231 Gervais Street
Columbia, SC 29201

Re: Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center,
Respondent v. South Carolina Department of Health and
Environmental Control, Charlotte-Mecklenburg Hospital Authority,
d/b/a Carolinas Healthcare System, and Carolinas Physicians Network,
Inc., Petitioners
Case No. 2010-UP-523

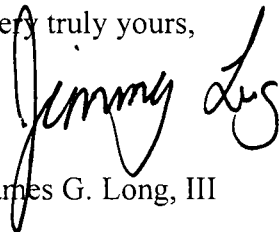
- Charleston
- Charlotte
- Columbia**
- Greensboro
- Greenville
- Hilton Head
- Myrtle Beach
- Raleigh

Dear Mr. Shearouse:

Enclosed for filing are an original and ten (10) copies of Petitioners' Charlotte-Mecklenburg Hospital Authority, d/b/a Carolinas Healthcare System and Carolinas Physicians Network, Inc.'s *Reply to Return to Petition for a Writ of Certiorari and Proof of Service* in the above-referenced case. Please return four (4) sets of clocked copies to me via our courier.

By copy of this letter I am serving counsel of record with the Reply to Return to Petition for a Writ of Certiorari.

Very truly yours,



James G. Long, III

JGL/saw
Enclosures

The Honorable Daniel E. Shearouse
August 12, 2011
Page 2

cc: Travis Dayhuff, Esquire (via hand delivery)
Carlisle Roberts, Jr., Esquire (via hand delivery)
Ashley C. Biggers, Esquire (via hand delivery)
Kristin L. Pawlowski, Esquire (via hand delivery)

BOARD:
Allen Amsler
Chairman
Mark S. Lutz
Vice Chairman
Steven G. Kisner
Secretary



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

BOARD:
R. Kenyon Wells
L. Clarence Batts, Jr.
Ann B. Kirol, DDS
John O. Hutto, Sr., MD

August 12, 2011

RECEIVED

AUG 12 2011

S.C. Supreme Court

VIA HAND DELIVERY

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
1231 Gervais Street
Columbia, South Carolina 29201

Re: *Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center, Respondent v. South Carolina Department of Health and Environmental Control, Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Healthcare System, and Carolinas Physicians Network, Inc., Appellants*
Docket No.: 09-ALJ-07-0098-CC; Case No. 2009134846
Case Tracking No.: 2011-1938328
OGC No. 20839.1

Dear Mr. Shearouse:

Enclosed for filing please find the original and seven (7) copies of South Carolina Department of Health and Environmental Control's *Reply to Return to Petition for a Writ of Certiorari* and *Proof of Service* in the above-referenced matter. Kindly file the enclosed and return a file-stamped copy via our courier.

By copy of this letter, and as evidenced by the *Proof of Service*, I am serving a copy of the same on all counsel of record,

Very truly yours,

Ashley C. Biggers
Chief Counsel for Health Regulation
South Carolina Department of Health and
Environmental Control

ACB/csh
Enclosures as stated

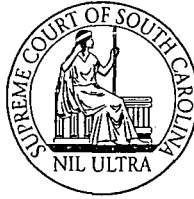
The Honorable Daniel E. Shearouse

August 12, 2011

Page 2

cc: (via Hand Delivery w/Enclosures)
Travis Dayhuff, Esquire
Nelson Mullins Riley & Scarborough, LLP
1320 Main Street, 17th Floor
Columbia, South Carolina 29201

James G. Long III, Esquire
Edward H. Bender, Esquire
Jennifer J. Hollingsworth, Esquire
Nexsen Pruet, LLC
1230 Main Street, Suite 700
Columbia, South Carolina 29201



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

August 4, 2011

Carlisle Roberts, Jr., Esquire
Ashley C. Biggers, Esquire
Kristin Lyn Pawlowski, Esquire
South Carolina Department of
Health & Environmental Control
2600 Bull Street
Columbia, SC 29201

Re: Amisub of SC v. SCDHEC

Dear Counsel:

The following Order has been endorsed on your Motion for Leave to Supplement the Appendix in the above entitled case on appeal.

“Motion denied.

s/ Costa M. Pleicones J.
For the Court

August 4, 2011.”

Please be advised, any reply to the return to the petition for writ of certiorari is due within ten (10) days from the date of this letter.

Very truly yours,

Brenda F. Shealy
CHIEF DEPUTY CLERK

Amisub of SC v. SCDHEC
Page Two
August 4, 2011

DES/lda

cc: James G. Long, III, Esquire
Jennifer J. Hollingsworth, Esquire
Edward H. Bender, Esquire
Travis Dayhuff, Esquire
Holly G. Gillespie, Esquire

RECEIVED

JUN 17 2011

THE STATE OF SOUTH CAROLINA
In the Supreme Court

S.C. Supreme Court

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge

Opinion No. 2010-UP-523 (S.C. Ct. App. Refiled April 25, 2011)

Amisub of South Carolina, Inc. d/b/a Piedmont Medical CenterRespondent,

v.

South Carolina Department of Health and Environmental Control,
Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Healthcare
System and Carolinas Physicians Network, Inc.Petitioners.

MOTION FOR LEAVE TO SUPPLEMENT THE APPENDIX

Pursuant to Rules 212, 240, and 242, SCACR, Petitioner South Carolina Department of Health and Environmental Control (“DHEC” or “Department”) respectfully moves this honorable Court for leave to supplement the Appendix in the above-captioned matter to include the following documents:

1. February 2, 2009 Request for final review conference filed with the Board of Health and Environmental Control (“Board”) by Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center (“Piedmont”) in Docket No. 09-RFR-06;
2. February 9, 2009 Acknowledgment of Request for Final Review and Notice of Procedures issued by the Clerk of the Board in Docket No. 09-RFR-06; and
3. February 11, 2009 response letter filed by Piedmont in Docket No. 09-RFR-06.

[Argument on following page]

BACKGROUND

Charlotte-Mecklenburg Hospital Authority, d/b/a Carolinas Healthcare System's ("CHS") filed an exemption request with the Department for the construction of a medical office building in Fort Mill, South Carolina. On October 26, 2007, the Department approved CHS' request and issued E-07-125. Piedmont challenged the exemption determination. Piedmont's challenge of Department staff's issuance of E-07-125 is the subject of a prior court proceeding separate and distinct from the case presently before the Court.¹

CHS subsequently sold the medical office building that was the subject of E-07-125 to HR of Carolinas, LLC ("HR"). Carolinas Physicians Network, Inc. ("CPN") ultimately leased space within the medical office building from HR and used that space to operate a physician office known as Carolinas Healthcare Urgent Care – Fort Mill ("Center"). CPN did not seek, nor did it receive, an exemption determination from the Department prior to opening the Center.

Piedmont, through its attorney Daniel J. Westbrook, notified the Department of the existence of the Center shortly before it opened in January, 2009. Piedmont believed that CHS had violated the CON Act and Regulation by opening the Center without first seeking a separate determination from the Department. Appellant's counsel asked DHEC to "take immediate steps to require CHS's submission of either a non-applicability

¹ Piedmont filed a request for Board review of E-07-125 in 2007, then filed a request for a contested case hearing challenging the issuance of E-07-125. In 2008, the ALC ruled that Piedmont's challenge was not timely filed, and the case was dismissed. Amisub of South Carolina, Inc. v. S.C. Dep't of Health and Env'tl. Control, 2008 WL 4879672, Docket No. 08-07-0063-CC (S.C. Admin. Law Ct., filed October 3, 2008). Piedmont chose not to appeal the ALC's ruling; therefore, it is the law of the case. Ables v. Gladden, 378 S.C. 558, 664 S.E.2d 442 (2008) (an unappealed ruling becomes the law of the case). As a matter of law, any attempt to challenge E-07-125 at this point is untimely.

request or a CON application.” When DHEC took no action, Appellant’s counsel drafted an affidavit and filed an RFR (hereinafter, “2009-RFR”) contesting DHEC’s inaction. The 2009-RFR is the subject of the matter currently pending before this Court.

The subject line of the 2009 RFR stated “Charlotte-Mecklenburg Hospital Authority, d/b/a Carolinas Healthcare System’s [(“CHS”)] Establishment of an Urgent Care Center in Fort Mill, South Carolina Without First Requesting a Non-Applicability Determination or Certificate of Need.” As made clear from the subject line of the 2009 RFR, the basis for Piedmont’s contention was that CHS failed to request an NAD or CON prior to establishing its Urgent Care Center. Upon receipt of the 2009 RFR, the Clerk of the Board sent an acknowledgment notice to Piedmont after it received the 2009-RFR. In the subject line of the acknowledgment, the Clerk referenced the exemption determination for the medical office building, E-07-125, which was attached as part of Exhibit D to Respondent’s 2009 RFR. The Clerk further noted that the RFR was filed 464 days after the Department mailed E-07-125 to CHS.

Counsel for Piedmont responded to the acknowledgment by letter dated February 11, 2009, clarifying the basis for Piedmont’s 2009-RFR. In his letter on behalf of Piedmont, Mr. Westbrook stated:

The DHEC staff decision for which we are requesting final Board review is not the October 26, 2007 letter to approve exemption E-07-125. As your letter points out, any request for review of that decision would be untimely. The DHEC staff decision for which we seek review is the unwritten decision made in January or February 2009 and communicated to me verbally on January 28, 2009, as described in my affidavit of January 30, 2009 (Exhibit A to our request for final review).

Attachment 3.

On February 13, 2009, the Clerk of the Board notified Piedmont that it would not conduct a final review conference of the 2009 RFR. Piedmont then filed its request for a contested case hearing with the ALC. This appeal followed.

ARGUMENT

The Department asks this honorable Court for leave to Supplement the Appendix to include the aforementioned documents on the grounds that: (1) the Appendix must be supplemented to correct a clerical error contained in the Record on Appeal, and (2) DHEC's Petition for a Writ of Certiorari is based, in part, on the fact that erroneous findings and conclusions reached in the Court of Appeals' Opinion No-2010-UP-523 are based upon inaccurate facts.

It is not in dispute by any of the parties that the Clerk's reference to E-07-125 was a clerical error and that the basis for the 2009-RFR involved a matter separate and apart from the Department's decision to issue E-07-125. The clerical error was not raised by the Administrative Law Court ("ALC") or any of the counsel of record in the proceedings at the ALC or on appeal because everyone understood the underlying basis for the 2009-RFR; accordingly, amendment to the record seemed a moot point. Notably, Respondent Piedmont did not contest its awareness of this clerical error in its reply to Petitioner's Motion to Supplement the Record, dated May 11, 2011.

It was not until the Court of Appeals issued its opinion that it became known to the Department that the Court was unaware of this universally understood fact. Accordingly, the Department now seeks leave to Supplement the Appendix to ensure the veracity of the Record on Appeal. All of the documents, which the Department seeks to have included in the Appendix are documents which were before the Board and

previously provided to each of the parties. In fact, two of the documents were written and filed by Piedmont's attorney, as part of their 2009-RFR filed with the Board. As such, none of the parties will be prejudiced by the granting of this motion.

Additionally, the Department seeks leave to supplement the Appendix because the documents are necessary to illustrate why the Court of Appeals' findings and conclusions of law are in error. Opinion No. 2010-UP-523 states:

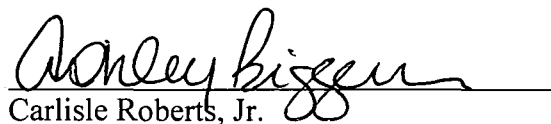
The record indicates that there was a decision by the Department to exempt the Center from review. ... Also, in a letter dated February 13, 2009, from the Department, written to CHS and Piedmont, the Department stated, "[t]he S.C. Board of Health and Environmental Control decided on February 12, 2009, not to conduct a Final Review Conference on the above-referenced matter. Additionally, the subject line of the letter states: 'Docket No. 09-RFR-06-Staff decision dated October 26, 2007 (mailed 1/7/2009) to approve an exemption (E-07-125) for an expenditure by health care facility for a non-medical project.'"

It is evident from the court's opinion that the distinction between E-07-125 and the 2009-RFR was not clear to it. The reference to E-07-125 in a communication is irrelevant to the underlying issue presented to the Court of Appeals. A full understanding of the issues raised and documents presented to the Board is now necessary to correct the Court of Appeals' erroneous finding that Piedmont's contested case challenged the issuance of E-07-125. See Rule 240(c)(3), SCACR ("Where the Record on Appeal or Appendix has not been filed, or where the facts relied upon in support of the motion are not contained in the Record on Appeal or Appendix, the parties shall file affidavits and other documents in support of their position."). Accordingly, the Court should grant the Department's motion to Supplement the Appendix.

The Petition for a Writ of Certiorari, also filed contemporaneously herewith, addresses in more detail the particular ways that the above-referenced documents clarify an error in the Record on Appeal, and the particular ways that this error affects the findings and conclusions reached in the Court of Appeals' Opinion. The Department hereby incorporates by reference the arguments set forth in the Petition for a Writ of Certiorari regarding these documents.

Wherefore the Department respectfully requests leave to supplement the Appendix as described above.

Respectfully submitted,

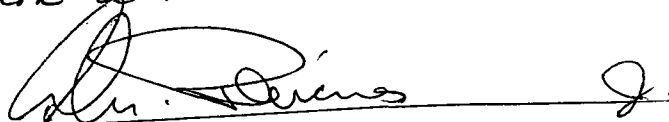


Carlisle Roberts, Jr.
Ashley C. Biggers
Kristin Lyn Pawlowski
South Carolina Department of Health and
Environmental Control
2600 Bull Street
Columbia, South Carolina 29201
(803) 898-3350

Attorneys for Petitioner South Carolina
Department of Health and Environmental
Control

June 17, 2011

Motion denied.



For the Court

August 4, 2011

ATTACHMENT 1

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
1320 Main Street / 17th Floor / Columbia, SC 29201
Tel: 803.799.2000 Fax: 803.255.5164
www.nelsonmullins.com

Daniel J. Westbrook
Tel: 803.255.9456
Fax: 803.255.5164
dan.westbrook@nelsonmullins.com

February 2, 2009

Via Hand Delivery

The Honorable Lisa L. Longshore
Clerk of the Board
S.C. Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

RECEIVED
S.C. DEPT. OF HEALTH
& ENVIRONMENTAL CONTROL
2009 FEB - 2 PM 4: 20
OFFICE OF THE COMMISSIONER
CHIEF OF STAFF
CLERK OF SCDHEC BOARD

RE: Request for Final Board Review
Charlotte-Mecklenburg Hospital Authority, d/b/a Carolinas Healthcare System's
Establishment of an Urgent Care Center in Fort Mill, South Carolina Without First
Requesting a Non-Applicability Determination or Certificate of Need
Our File No. 05946/01513

Dear Ms. 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. Reg. 61-15 (the "Regulation"), and Article I, Section 22 of the South Carolina Constitution, Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center ("Piedmont") requests Final Board Review of DHEC staff's decision to not require Charlotte-Mecklenburg Hospital Authority, d/b/a Carolinas Healthcare System ("Carolinas") to apply for a Non-Applicability Determination ("NAD") or a Certificate of Need ("CON") prior to establishing and opening an urgent care center in Fort Mill, South Carolina in violation of the CON Act and DHEC Regulations. Upon information and belief, Carolinas has already begun operating its urgent care center in Fort Mill, South Carolina. See Affidavit of Daniel J. Westbrook, Esquire, attached hereto as Exhibit A; Carolinas Advertisement attached hereto as Exhibit B.

Piedmont challenges DHEC staff's decision on the grounds that: 1) it violates S.C. Code Ann. § 44-7-160(3) and S.C. Code Ann. Reg. 61-15 § 102(1)(c) which requires a person or health care facility to obtain a CON before undertaking an expenditure on behalf of a health care facility in excess of \$2 million; 2) it violates S.C. Code Ann. Reg. 61-15 § 102(1)(3) which requires an applicant to request a formal determination by the Department of the applicability of CON requirements when any question exists; 3) the exemptions to CON review found in S.C. Code Ann. Reg. § 104 do not apply to Carolinas's construction of an urgent care

09-02-09
20850

The Honorable Lisa L. Longshore
February 2, 2009
Page 2

center; 4) it deprives Piedmont of due process under the South Carolina and United States Constitutions; and 5) the staff's decision was arbitrary, capricious, and an abuse of discretion.

Accordingly, Piedmont respectfully requests the Board to 1) immediately issue a cease and desist order to Carolinas prohibiting any further operation of the urgent care center in Fort Mill, South Carolina until such time as there is a final decision on a NAD request or CON application; and 2) instruct DHEC staff to require Carolinas to submit a NAD request or CON application prior to re-opening an urgent care center in Fort Mill, South Carolina.

Procedural History

On October 17, 2007, Carolinas applied for a CON exemption to construct a 2-story, 40,000 square foot physician office building in Fort Mill, South Carolina. Carolinas claimed its project was exempt from CON review as a non-medical project on behalf of a healthcare facility pursuant to S.C. Code Ann. Reg. 61-15 § 104(2)(f). On October 26, 2007, DHEC granted Carolinas request, exempting its project from CON review as a non-medical project.

On December 20, 2007, Piedmont requested final board review on the basis that construction of this facility was an expenditure by or on behalf of a health care facility in excess of \$2 million for a medical project and thus required CON review. On January 17, 2008, the Board decided not to conduct a final review conference. Subsequently, on February 14, 2008, Piedmont filed a request for a contested case hearing with the Administrative Law Court. Ultimately, the Administrative Law Court dismissed the contested case after it determined that Piedmont untimely filed its request for final board review.

In its original NAD request, Carolinas included urgent care services as a potential practice; however, in a subsequent letter, it acknowledged that it understood that "a separate determination of review would be required prior to any development of urgent care services." See Letter to Sarah C. Harrell from Bennett Thompson attached hereto as Exhibit C. Despite its acknowledgment that it was required to do so, CHS failed to submit a second determination prior to offering urgent care services in its Fort Mill facility.

When Piedmont learned that Carolinas was about to open an urgent care center, it immediately inquired in writing to DHEC staff to determine the staff's position on Carolinas's action. See Letter to Beverly Patterson from Daniel J. Westbrook attached hereto as Exhibit D. As of the date of this filing, no writing from the Department has been received; Beverly Patterson, however, informed Dan Westbrook on January 28 that as of that date the Department had not decided to take any action. See Affidavit of Daniel J. Westbrook, Esquire, attached hereto as Exhibit A.

DHEC Staff's Decision Should be Overturned

According to S.C. Code Ann. Reg. 61-15 § 102(1)(c), a health care facility, like Carolinas, is required to obtain a CON for the following:

An expenditure by or on behalf of a health care facility in excess of \$2,000,000 which, under generally acceptable accounting principles consistently applied, is considered a capital expenditure except those expenditures exempted in Section 104.

Carolinas's urgent care center project is not exempt from CON requirements based on the non-medical project exemption set forth at S.C. Code Ann. Reg. 61-15 § 104(2)(f), the basis upon which Carolinas initial NAD was granted, nor any other exemptions set forth in section 104. The exemption upon which Carolinas NAD was granted encompasses non-medical projects such as "refinancing existing debt, parking garages, laundries, roof replacement, computer systems, telephone systems, and heating and air conditioning systems." S.C. Code Ann. Reg. 61-15 § 104(2)(f).

To apply this exemption to Carolinas urgent care center does violence to the clear language of the regulation. Carolinas built a medical office building, at a cost of approximately \$13.9 million, in Fort Mill, South Carolina. Carolinas intends to use the building for physician offices, in which physicians will provide medical services, including urgent care services. A significant and material percentage of the physicians providing medical services in the proposed medical office building will be employed by Carolinas or a Carolinas affiliate. Even if the non-medical project exemption applied to the construction of the shell of a building, which Piedmont contends it does not, it certainly does not apply to a health care facility, like Carolinas, constructing an urgent care center and offering urgent care services by its own physicians.

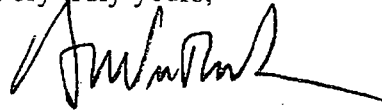
Moreover, Carolinas cannot assume this exemption or any other applied to its urgent care center project. S.C. Code Ann. Reg. 61-15 §102(3) states that "[w]hen any question exists, a potential applicant shall forward a letter requesting a formal determination by the Department as to the applicability of the certificate of need requirements to a particular project." Carolinas concedes through its letter to Ms. Harrell that a question existed as to its urgent care center. See Letter to Sarah C. Harrell from Bennett Thompson attached hereto as Exhibit C. Yet, Carolinas ignored the Regulation and its previous correspondence to DHEC and proceeded with its urgent care project.

The Honorable Lisa L. Longshore
February 2, 2009
Page 4

Conclusion

For reasons unknown, DHEC staff chose to ignore Carolinas flagrant disregard of the Regulation. Based on the reasons set forth above, Piedmont respectfully requests final review of the Staff's decision. Piedmont further respectfully requests that the Board direct Carolinas to immediately cease and desist any further operation of the urgent care center in Fort Mill, South Carolina until such time as there is a final decision on a NAD request or CON application and to instruct DHEC staff to require Carolinas to submit a NAD request or CON application prior to re-opening an urgent care center in Fort Mill, South Carolina.

Very truly yours,



Daniel J. Westbrook

DJW:hgg
Enclosures

cc: Ralph W. Barbier III, Esq.
Beverly Patterson

REQUEST FOR FINAL
REVIEW TO
THE DHEC BOARD

AFFIDAVIT OF
DANIEL J. WESTBROOK

PERSONALLY APPEARED BEFORE ME, Daniel J. Westbrook, who first being duly sworn, deposes and states as follows:

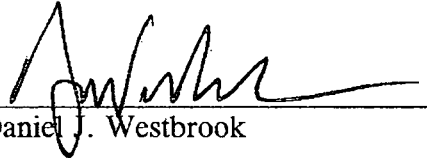
1. I am over the age of 18 and competent to give this sworn testimony. This affidavit is based upon my personal knowledge unless otherwise stated.
2. I am a resident of Richland County, South Carolina, and a partner in the law firm of Nelson Mullins Riley and Scarborough, LLP.
3. Exhibit B to Piedmont's request for final board review is an advertisement that evidences Carolinas intention to open its urgent care center in January 2009.
4. On Monday, January 26, 2009, Holly Gillespie, an associate in my office, called Charlotte-Mecklenburg Hospital Authority, d/b/a Carolinas Healthcare System's ("Carolinas") Ft. Mill urgent care center. Ms. Gillespie informs me that she was told by a Carolinas's employee that answered the telephone that urgent care services currently are being offered at Carolinas's Ft. Mill urgent care center.
5. On Wednesday, January 28, 2009, I spoke with Beverly Patterson, Director of the South Carolina Department of Health and Environmental Control Certificate of Need Program, about Carolina's urgent care center.



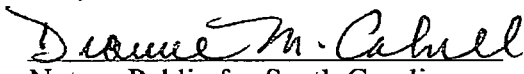
6. Ms. Patterson informed me that as of the date of our telephone conversation, DHEC had not decided to take any action to require Carolinas to apply for a Non-applicability Determination or Certificate of Need for its Ft. Mill urgent care center.

7. As of the date of this affidavit, I have not received a writing from DHEC memorializing its decision to not take any action against Carolinas for the opening of its urgent care center.

FURTHER AFFIANT SAYETH NOT.


Daniel J. Westbrook

SWORN and subscribed to before me
this 30th day of January 2009.


Notary Public for South Carolina
My commission expires: 4-2-2018



For those you hold close, we're getting closer.

Opening January 2009

Fort Mill is a great place to raise your family. And soon, it will be an even healthier place. When CMC-Fort Mill Medical Plaza opens its doors, you'll have the convenience of dedicated healthcare professionals and services all at one new location.

Sanger Clinic

8 a.m. - 5 p.m. Monday - Friday
803-835-0400 or 704-667-3250

Shiland Family Medicine

8 a.m. - 5 p.m. Monday, Wednesday, Friday
9 a.m. - 3 p.m. Tuesday, Thursday
9 a.m. - 1 p.m. Every other Saturday
803-835-0420 or 704-512-2230

Piedmont GYN/OB

8 a.m. - 5 p.m. Monday - Friday
803-835-0134 or 704-512-2230

Fort Mill Pediatric Associates

8:30 a.m. - 4:30 p.m. Monday - Friday
803-802-5900 or 704-667-3320

Urgent Care

8 a.m. - 8 p.m. 7 Days a Week
803-835-0430 or 704-667-3380



CMC-Fort Mill Medical Plaza

Uncompromising Excellence. Commitment to Care.

704 Gold Hill Road, Fort Mill, SC 29715

EXHIBIT

B



Carolinah HealthCare System

James E.S. Hynes
Chairman

Michael C. Tirwater, FACHE
President & CEO

DEC 28 2007

December 19, 2007

Re: E-07-125
Construction of a medical office building
Carolinah Medical Center - Fort Mill Office Plaza
Fort Mill, South Carolina

Sarah C. Harrell
Program Coordinator II
Bureau of Health Facilities and Services Development
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, South Carolina 29201

Dear Ms. Harrell:

In our letter to Joel Grice on October 17, 2007, Carolinah HealthCare System (CHS) requested written concurrence from SC DHEC that the construction of a medical office building in Fort Mill, SC was exempt from certificate of need review. In your letter of October 26, 2007, you provided notification that the project was exempt from review.

We stated in our original request that potential practices to be located in the building include internal medicine, pediatrics, obstetrics/gynecology and urgent care. As a point of clarification, CHS understands that a separate determination of review would be required prior to any development of urgent care services.

If you have any questions or require further information regarding this project, please contact me at 704-446-6525.

Sincerely,

Bennett Thompson, Sr. Management Associate
CHS Management Company

EXHIBIT
C

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
1320 Main Street / 17th Floor / Columbia, SC 29201
Tel: 803.799.2000 Fax: 803.255.5164
www.nelsonmullins.com

Daniel J. Westbrook
Tel: 803.255.9456
Fax: 803.255.5164
dan.westbrook@nelsonmullins.com

EXHIBIT

D

January 16, 2009

VIA E-MAIL AND U.S. MAIL

Beverly Patterson
Division of Planning and Certification of Need
Bureau of Health Facilities &
Services Development
South Carolina Department of Health
and Environmental Control
1777 St. Julian Place, Suite 201
Columbia, SC 29204

RE: Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center, Petitioner, v.
South Carolina Department of Health and Environmental Control and
Charlotte-Mecklenburg Hospital Authority, d/b/a/ Carolinas Healthcare
System, Respondents
Our File No. 05946/01513

Dear Beverly:

I am writing on behalf of Piedmont Medical Center (PMC) as a follow-up to our meeting on January 5. As discussed, it is our understanding that possibly as soon as next week, Carolinas Healthcare System (CHS) intends to open an urgent care center without first obtaining a Certificate of Need or Non-Applicability Determination, contrary to its past written assurance to the Department. See 12/19/07 letter from Bennett Thompson, Sr. to Sallie Harrell (attached).

As you know, the CON Act and Regulation 61-15 requires a person or health care facility to obtain a CON before undertaking an expenditure on behalf of a health care facility in excess of \$2 million. S.C. Code Regs. 61-15 § 102(1)(c). When any question exists, a potential applicant must request a formal determination by the Department of the applicability of CON requirements. *Id.* § 102(3). Although the offices of licensed private practitioners are exempt under section 104(2)(e) of Regulation 61-15, that exemption does not apply to CHS's urgent care center, since, upon information and belief, the physicians who will staff the center are employed by a public health care facility (or its affiliate), which will bill and be reimbursed for the services provided.

Beverly Patterson
January 16, 2009
Page 2

Given CHS's imminent plans to open this urgent care center, we request that the Department take immediate steps to require CHS's submission of either a non-applicability request or a CON application.

Thank you for your attention to this matter.

Very truly yours,



Daniel J. Westbrook

DJW:dmc

cc: Nancy S. Layman, Esq.
Sallie C. Harrell
Christopher J. Ward

Handwritten signature

Carolinas HealthCare System

James E.S. Hynes
Chairman

Alvin M. C. Thurnauer, FACHE
President & CEO

DEC 28 2007

December 19, 2007

Re: E-07-125
Construction of a medical office building
Carolinas Medical Center - Fort Mill Office Plaza
Fort Mill, South Carolina

Sarah C. Harrell
Program Coordinator II
Bureau of Health Facilities and Services Development
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, South Carolina 29201

Dear Ms. Harrell:

In our letter to Joel Grice on October 17, 2007, Carolinas HealthCare System (CHS) requested written concurrence from SC DHSC that the construction of a medical office building in Fort Mill, SC was exempt from certificate of need review. In your letter of October 26, 2007, you provided notification that the project was exempt from review.

We stated in our original request that potential practices to be located in the building include internal medicine, pediatrics, obstetrics/gynecology and urgent care. As a point of clarification, CHS understands that a separate determination of review would be required prior to any development of urgent care services.

If you have any questions or require further information regarding this project, please contact me at 704-446-6525.

Sincerely,

Handwritten signature of Bennett Thompson

Bennett Thompson, Sr. Management Associate
CHS Management Company



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

Certified Mail

October 26, 2007

91 7108 2133 3933 7159 5323

Re: E-07-125
Construction of a medical office building
Carolinas Medical Center – Fort Mill Office Plaza
Fort Mill, South Carolina

Bennett Thompson
Sr. Management Associate
CHS Management Company
PO Box 32861
Charlotte, North Carolina 28232-2861

Dear Mr. Thompson:

Based upon the information contained in your letter dated October 17, 2007, the above referenced project does not require Certificate of Need review because it is an expenditure by a health care facility for a non-medical project. Therefore, the project is exempted from review as stated in Section 104.2.f of Regulation 61-15, Certification of Need for Health Facilities and Services. However, if this proposal should change from the information presented to the Department, this determination is no longer valid.

This determination does not constitute approval for any proposed construction, licensing or certification changes. You should contact the following individuals for information concerning any remaining components: Division of Health Facilities Construction, Mr. Frank Montgomery, (803) 545-4663; Division of Health Licensing, Mr. Dennis Gibbs, (803) 545-4370; Bureau of Certification, Ms. Karen Price, (803) 545-4205.

This exemption is valid for six months from the date of this letter. If this project is not implemented within this time period, you will be required to apply to the Department for another determination. Please notify me when the project is implemented by forwarding a copy of the executed construction contract, building permit, and notice to proceed.

Should you have any questions regarding the above information, please contact me at (803) 545-4200.

Sincerely,

Sarah E. "Sallie" Cheek, MHA
Bureau of Health Facilities and Services Development

ATTACHMENT 2

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

Docket No. 09-RFR-06

BOARD:
Henry C. Scott

M. David Mitchell, MD

Glenn A. McCall

Coleman F. Buckhouse, MD

S.C. Board of Health and Environmental Control
2600 Bull Street, Columbia, SC 29201
Telephone: (803) 898-3309 Fax: (803) 898-3393

**ACKNOWLEDGMENT OF REQUEST FOR FINAL REVIEW
AND NOTICE OF PROCEDURES**

TO: *Piedmont Medical Center, Requestor*
Daniel J. Westbrook, Attorney for Requestor
Carolinas Healthcare System, Grantee
Nancy S. Layman/Ashley C. Biggers, Attorneys for Department

FROM: *Lisa Lucas Longshore, Clerk*

RE: *Docket No. 09-RFR-06 – Staff decision dated October 26, 2007, (mailed 1/7/2009), to approve an exemption (E-07-125) for an expenditure by health care facility for a non-medical project.*

DATE: *February 4, 2009*

A Request for Final Review of the above-referenced decision was filed on February 2, 2009, by Piedmont Medical Center. A copy of the request is attached. Please note that S.C. Code Section 44-1-60(E) states that the Department decision becomes the final agency decision fifteen days after notice of the Department decision has been mailed to the applicant, unless a written request for final review is filed with the Department by the applicant, permittee, licensee, or affected person. According to our records, your Request for Final Review was filed with the Department on February 4, 2009, which was 464 days after the Department decision was mailed to the applicant on October 26, 2007.

PROCEDURES FOR FINAL REVIEW CONFERENCE

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. If a final review conference is scheduled, all parties will be given at least 10 days' written notice of the conference.

Procedures for the final review conference are provided in 2006 Act No. 387, Section 48. The final review conference is not a formal hearing. Final review conferences are open to the public. The burden of proof in a conference is on the Requestor.

During the final review conference, the Department must explain the Department decision and the materials relied upon in the administrative record to support the Department decision. The applicant or affected party shall state the reasons for protesting the Department decision. All parties may provide evidence to support affirming, amending, modifying, or rescinding the Department decision. All parties

may rebut information and arguments presented by other parties. The officials conducting the final review conference may request additional information and may question the applicant or affected party, the Department, and anyone else providing information at the conference.

Any party may request a transcript of the proceedings of the final conference by mailing a request for a transcript to the Clerk of the Board at the above address within 30 days of the date of this memorandum, along with a statement that the party will pay all costs of the transcript.

The parties are encouraged to engage in mediation during the final agency review process. The terms of any mediation, including selection and payment of a mediator, must be agreed to by all parties. Any mediation must be completed in time to allow compliance with statutory time frames unless all parties agree to a waiver of such time limits.

FURTHER APPEAL IF FINAL REVIEW CONFERENCE IS NOT CONDUCTED

If a final review conference is not conducted within 60 days from the date of receipt of a Request for Final Review, the Department decision becomes the final agency decision, and a party may request a contested case hearing before the Administrative Law Court (ALC) within 30 days after the deadline for the final review conference. A request for a contested case hearing before the 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.

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.

OGC # 20839

I:\Share\LEGAL\ALL\MATTERS\20839 RFR HR Carolinas Healthcare System\RFR acknowledgement.doc

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



C. Earl Hunter, Commissioner

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

Promoting and protecting the health of the public and the environment

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

CERTIFICATE OF SERVICE

I, Lisa Lucas Longshore, Clerk, S.C. Board of Health and Environmental Control, with the South Carolina Department of Health and Environmental Control, hereby certify that I have this 4th day of February 2009 served the foregoing *Acknowledgement of Request For Final Review and Notice of Procedures – Docket No. 09-RFR-06* upon all parties and counsel of record by placing a copy of same in an envelope and depositing it in the U.S. Mail, as indicated below, with sufficient postage paid, at the address indicated below:

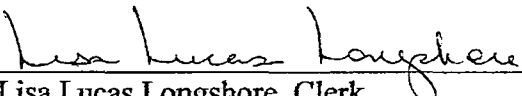
U.S. Mail

Daniel J. Westbrook, Esquire
Nelson Mullins Riley & Scarborough, LLP
Post Office Box 11070
Columbia, SC 29211

Bennett Thompson
Sr. Management Associate
CHS Management Co.
PO Box 32861
Charlotte, NC 28232-2861

Via Interagency Mail Delivery

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



Lisa Lucas Longshore, Clerk

February 4, 2009
Columbia, South Carolina

ATTACHMENT 3

Docket No. 09-RFR-06

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
1320 Main Street / 17th Floor / Columbia, SC 29201
Tel: 803.799.2000 Fax: 803.255.5164
www.nelsonmullins.com

Daniel J. Westbrook
Tel: 803.255.9456
Fax: 803.255.5164
dan.westbrook@nelsonmullins.com

February 11, 2009

Via Hand Delivery

Department of Health and
Environmental Control
ATTN: Lisa Lucas Longshore, Clerk of the Board
Office of the Commissioner
2600 Bull Street
Columbia, SC 29201

RE: Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center, Petitioner, v.
South Carolina Department of Health and Environmental Control and
Charlotte-Mecklenburg Hospital Authority, d/b/a/ Carolinas Healthcare
System, Respondents
Our File No. 05946/01513

Dear Ms. Longshore:

I am writing in response to your letter dated February 4, 2009 regarding my request of February 2, 2009 on behalf of Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center, concerning the new urgent care center opened in Fort Mill by Carolinas Healthcare System (CHS). I am also writing in response to the February 5, 2009 letter of DHEC counsel Nancy S. Layman.

The DHEC staff decision for which we are requesting final Board review is not the October 26, 2007 letter to approve exemption E-07-125. As your letter points out, any request for review of that decision would be untimely.

The DHEC staff decision for which we seek review is the unwritten decision made in January or February 2009 and communicated to me verbally on January 28, 2009, as described in my affidavit of January 30, 2009 (Exhibit A to our request for final review). As set forth in my affidavit and confirmed by Ms. Layman's letter of February 5, DHEC staff decided not to review CHS's urgent care center based on its conclusion that the center was "the offices of a licensed private practitioner." As explained in our final review request, however, CHS's center is not the offices of a licensed private practitioner; rather, it is the offices of physicians employed by an affiliate of CHS, a North Carolina public hospital system. The urgent care

Department of Health and Environmental Control

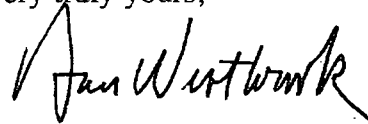
February 11, 2009

Page 2

services are therefore provided by or on behalf of a public health care facility and DHEC staff's decision to not require either a Certificate of Need or a Non-Applicability Determination is erroneous.

As you know, the DHEC Board has 60 days from the receipt of a request for a final review conference to conduct the conference or to decline review. Please clarify whether your letter of February 4, 2009 represents a Board decision to decline review of our request.

Very truly yours,

A handwritten signature in black ink that reads "Daniel J. Westbrook". The signature is written in a cursive style with a large initial "D" and "J".

Daniel J. Westbrook

DJW:dmc
Enclosures

cc: Carlisle Roberts, Jr., Esq.
Nancy S. Layman, Esq.

RECEIVED

JUL - 8 2011

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT **S.C. Supreme Court**

John D. McLeod, Administrative Law Judge

Opinion No. 2010-UP-523 (S.C. Ct. App. Refiled April 25, 2011)

Amisub of South Carolina, Inc., d/b/a Piedmont Medical
Center, Respondent,

v.

South Carolina Department of Health and Environmental
Control, Charlotte-Mecklenburg Hospital Authority,
d/b/a Carolinas Healthcare System, and Carolinas
Physicians Network, Inc., Appellants.

**RETURN TO MOTION FOR LEAVE TO SUPPLEMENT
THE APPENDIX**

Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center ("Piedmont")
offers this return to the Motion for Leave to Supplement the Appendix submitted by the
South Carolina Department of Health and Environmental Control ("DHEC").

BACKGROUND

This case arises from DHEC's decision to allow Charlotte-Mecklenburg
Hospital Authority d/b/a Carolinas Healthcare System and Carolinas Physicians
Network, Inc. ("CHS") to establish an urgent care facility pursuant to an exemption
from Certificate of Need ("CON") requirements provided by statute and regulation to
"the office of a licensed private practitioner." S.C. Code Ann. § 44-7-170(A)(2); 24A
S.C. Code Ann. Regs. 61-15 § 104(2)(e). Piedmont asserted below that an urgent care

center that is, upon information and belief,¹ owned by, operated by, controlled by, has physicians employed by, has its billing done through, and sends all of its profits and referrals to, a Charlotte-based hospital is not a "private" practitioner's office eligible to take advantage of this CON exemption.² Piedmont further asserted that before this *novel* and *factually-dependant* issue could properly be decided there needed to be limited discovery regarding the nature of this facility, its relationship with CHS, and DHEC's interpretation and prior application of the CON exemption in question.³ The Administrative Law Court disagreed, and granted summary judgment in favor of CHS and DHEC. This appeal followed.

On April 25, 2011, the Court of Appeals reversed and remanded this case holding it was an error of law for the Administrative Law Court to resolve this case through summary judgment without affording the opportunity for discovery. *Amisub of S.C. Inc. v. S.C. Dep't of Health and Envtl. Control and Charlotte-Mecklenburg Hosp. Auth.*, Op. No. 2010-UP-523 (S.C. Ct. App. filed April 25, 2011)(attached as Ex. A).⁴ The Court of Appeals also rejected DHEC's claim that there is no jurisdiction to review this agency decision. *Id.*

¹ As there was no discovery permitted below, these facts are asserted upon information and belief.

² Private is defined as "carried on by the individual independently of the usual institutions <a doctor in *private* practice>" <http://www.merriam-webster.com/dictionary/private>. The relevant "usual" institution in this case is a hospital.

³ Piedmont believes that discovery will establish that DHEC's position in this matter -- that urgent care facilities are *ipso facto* exempt from CON review -- does not comport with prior DHEC practice.

⁴ This opinion was preceded by a prior opinion from the Court of Appeals reversing and remanding this case without oral argument, petitions for rehearing by DHEC and CHS, the withdrawal of the prior opinion, and the scheduling of oral arguments.

Both DHEC and CHS petitioned the Court of Appeals for a second rehearing. DHEC also filed a Motion to Supplement the Record on Appeal. DHEC's motion sought to add an affidavit from the Clerk of the DHEC Board to the Record with three documents as attachments to "clarify a clerical error" made by DHEC in a letter that appears in the Record on Appeal. Motion to Supplement the Record on Appeal (attached as Ex. B).

On May 19, 2011, the Court of Appeals denied the petitions for rehearing, and denied DHEC's Motion to Supplement the Record on Appeal. The Court of Appeals denied the Motion to Supplement the Record because DHEC "waited until it filed its second Petition for Rehearing to file a motion to supplement the record on appeal to address information relied upon" by the Court of Appeals, and the affidavit could not properly be added to the Record as it was "matter which was not presented to the lower court or tribunal." Order Denying Petitions for Rehearing and Motion to Supplement Record on Appeal (attached as Ex. C).

On June 17, 2011, DHEC and CHS filed petitions for writ of certiorari. DHEC also filed a Motion for Leave to Supplement the Appendix. The documents that DHEC seeks to add to the appendix are the same documents that were attached to the affidavit from the Clerk of the DHEC Board that DHEC unsuccessfully sought to add to the Record on Appeal. DHEC contends that these documents are needed to challenge the holding of the Court of Appeals that there is jurisdiction to review this case. For the reasons set forth below, DHEC's motion should be denied.

ARGUMENT

I. ADDING DOCUMENTS TO THE APPENDIX IS NOT APPROPRIATE

DHEC offers appellate Rules 212, 240, and 242 in support of this motion. Review of these rules, however, reveals they do not allow documents to be added to the Appendix.

Rule 212 permits motions to add documents to the Record on Appeal. Rule 212, SCACR. This rule does not allow additions to the Appendix. *Id.* Moreover, implicit in Rule 212 is the notion that if documents are to be added to the Record on Appeal, they must be added, by consent or order of the Court, *before the issuance of the opinion. Id.*

Rule 240 permits use of documents outside the Record on Appeal or Appendix in appellate motions. Rule 240(c)(3), SCACR. This rule does not allow new documents to be inserted in the Appendix.

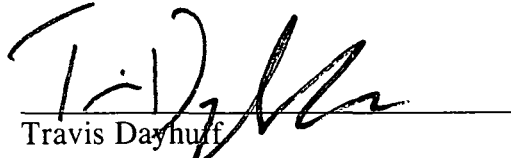
Rule 242 states that the Appendix shall include "[a] copy of the Record on Appeal and brief(s) . . ." Rule 242(e)(1), SCACR. This rule appears to forbid including documents in the Appendix that were not in the Record on Appeal.

Finally, even if there were some mechanism under the appellate rules to add documents to the Appendix, doing so would be inappropriate here as the decision of the Court of Appeals was based upon, and was limited to, the documents in the Record on Appeal. Rule 210(h), SCACR.

II. SUPPLEMENTING THE APPENDIX IS FUTILE

The Court of Appeals held that there was jurisdiction to review this case because "[t]he record indicates that there was a decision by the Department to exempt the Center from review." *Amisub of S.C., Inc.*, at 3. The Court of Appeals supported this holding with multiple references to the Record on Appeal. *Id.* DHEC's desire to add documents to the Appendix to clarify its clerical error would affect only one of the multiple references relied upon by the Court of Appeals for this holding. Supplementing the Appendix would, therefore, be futile, and for this additional reason, DHEC's motion should be denied.

Respectfully submitted,



Travis Dayhuff
Holly G. Gillespie
NELSON MULLINS RILEY & SCARBOROUGH LLP
1320 Main Street, 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for Amisub of South Carolina, Inc.
d/b/a Piedmont Medical Center

July 8, 2011

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

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

Amisub of South Carolina, Inc.,
d/b/a Piedmont Medical Center, Appellant,

v.

South Carolina Department of
Health and Environmental
Control, Charlotte-
Mecklenburg Hospital
Authority, d/b/a Carolinas
Healthcare System, and
Carolinas Physicians Network,
Inc., Respondents.

Appeal From the Administrative Law Court
John D. McLeod, Administrative Law Judge

Opinion No. 2010-UP-523
Submitted December 1, 2010 – Filed December 10, 2010
Withdrawn February 7, 2011
Heard March 23, 2011
Substituted and Refiled April 25, 2011

REVERSED AND REMANDED

EXHIBIT

A

summary judgment motion when Lanham was not able to conduct further discovery to respond to Blue Cross's claim).

Additionally, we disagree with the Department's subject matter jurisdiction argument. The Department sought reconsideration of our initial opinion because it alleged there was no decision rendered by the Department in this matter. The record indicates that there was a decision by the Department to exempt the Center from review. For example, in a letter from CHS to the Department dated December 19, 2007, CHS stated that the Department provided notification that the Center was exempt from CON review. Also, in a letter dated February 13, 2009, from the Department, written to CHS and Piedmont, the Department stated, "[t]he S.C. Board of Health and Environment Control decided on February 12, 2009, not to conduct a Final Review Conference on the above-referenced matter." Additionally, the subject line of the letter states: "Docket No. 09-RFR-06 – Staff decision dated October 26, 2007 (mailed 1/7/2009) to approve an exemption (E-07-125) for an expenditure by health care facility for a non-medical project." (emphasis added). Furthermore, included in the same letter is the following reference to section 44-1-60(F) of the South Carolina Code (Supp. 2010): "[I]f 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 requests . . . a contested case hearing before the Administrative Law Court." (emphasis added).

Therefore, we reverse the judgment and remand to the ALC pursuant to Rule 220(b), SCACR, and the following authorities to allow discovery to be conducted and completed: S.C. Code Ann. § 1-23-610(B)(d) (Supp. 2010) ("The court of appeals may . . . remand the case for further proceedings; or, it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is . . . affected by other error of law"); S.C. Dep't of Consumer Affairs v. Foreclosure Specialists, Inc., 390 S.C. 182, 184, 700 S.E.2d 468, 469 (Ct. App. 2010) (stating an appellate court reviews questions of law in ALC cases

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge

Case No. 09-ALJ-07-0098-CC

Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center Appellant,

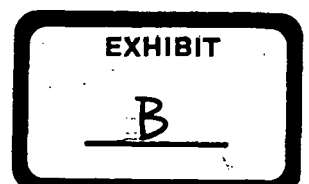
v.

South Carolina Department of Health and Environmental Control,
Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Healthcare
System and Carolinas Physicians Network, Inc. Respondents.

MOTION TO SUPPLEMENT THE RECORD ON APPEAL

Pursuant to Rules 212(b) and 240, SCACR, Respondent South Carolina Department of Health and Environmental Control (“DHEC” or “Department”) respectfully moves this honorable Court for leave to supplement the Record on Appeal in the above-captioned case with the following documents:

1. Affidavit of Lisa L. Longshore;
2. Attachment A to Ms. Longshore’s Affidavit (Request for final review conference filed with the Board of Health and Environmental Control (“Board”) by Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center (“Piedmont”) in Docket No. 09-RFR-06;
3. Attachment B to Ms. Longshore’s Affidavit (Acknowledgment of Request for Final Review and Notice of Procedures issued by the Clerk of the Board in Docket No. 09-RFR-06); and
4. Attachment C to Ms. Longshore’s Affidavit (February 11, 2009 response letter filed by Piedmont in Docket No. 09-RFR-06).



All four documents are attached to the Department's Petition for Rehearing, filed simultaneously herewith.

The grounds for this motion are that the documents identified above contain facts in support of the Department's Petition for Rehearing in this matter. See Rule 221(a), SCACR (A petition for rehearing shall be made in accordance with Rule 240); Rule 240(c)(3), SCACR ("Where the Record on Appeal or Appendix has not been filed, or where the facts relied upon in support of the motion are not contained in the Record on Appeal or Appendix, the parties shall file affidavits and other documents in support of their position.")

The documents are relevant and necessary in order to clarify a clerical error reflected in the Record on Appeal, which the Court relied upon in making findings and reaching conclusions in Opinion No. 2010-UP-523. The clerical error was not in dispute by any of the parties and was not raised by the Administrative Law Court ("ALC") or any of the counsel of record in the proceedings at the ALC, the briefs filed in this appeal, or during oral argument. Therefore there was no need to address the clerical error, and to include the above-identified documents, prior to the Court's issuance of Opinion No. 2010-UP-523.

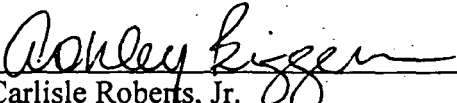
Despite not being raised prior to this point in time, the clerical error, and the documents evidencing that error, are ancillary to the fundamental issue of subject matter jurisdiction. Tatnall v. Gardner, 350 S.C. 135, 564 S.E.2d 377 (Ct. App. 2002) (Subject matter jurisdiction is a fundamental issue and may not be waived by any party; the lack of subject matter jurisdiction may be raised at any time, including for the first time on appeal.).

The Memorandum of Law in Support of Petition for Rehearing, also filed contemporaneously herewith, addresses in more detail the particular ways that the above-referenced documents clarify an error in the Record on Appeal, and the particular ways that this

error affects the findings and conclusions reached in the Court's Opinion. The Department hereby incorporates by reference the arguments set forth in the Memorandum of Law in Support of Petition for Rehearing regarding these documents.

Wherefore the Department respectfully requests leave to file an Appendix to the Record on Appeal, supplementing the Record as requested above.

Respectfully submitted,



Carlisle Roberts, Jr.
Ashley C. Biggers
Kristin Lyn Pawlowski
South Carolina Department of Health and
Environmental Control
2600 Bull Street
Columbia, South Carolina 29201

May 11, 2011

The South Carolina Court of Appeals

Amisub of South Carolina, Inc.,
d/b/a Piedmont Medical Center,

Appellant,

v.

South Carolina Department of Health
and Environmental Control, Charlotte-
Mecklenburg Hospital Authority, d/b/a
Carolinas Healthcare System, and
Carolinas Physicians Network, Inc.,

Respondents.

John D. McLeod, Administrative Law Judge
Administrative Law Court
Case No. 09-ALJ-07-0098-CC

ORDER DENYING PETITIONS FOR REHEARING AND MOTION TO SUPPLEMENT THE RECORD ON APPEAL

PER CURIAM: Respondents have each filed a second Petition for Rehearing following the filing of a substituted opinion on April 25, 2011. In addition, Respondent South Carolina Department of Health and Environmental Control (the Department) filed a motion to supplement the record on appeal with an affidavit of Lisa Longshore. After a careful consideration of the Petitions for Rehearing, the court is unable to discover that any material fact or principle of law has been either overlooked or disregarded as to those issues preserved for our review. The Department has asserted in its second petition that this court has relied on erroneous information in the record. However, the Department waited until it filed its second Petition for Rehearing to file a motion to supplement the record on appeal to address the information relied upon by this court. We find this motion untimely and we have conducted our review based upon that

EXHIBIT

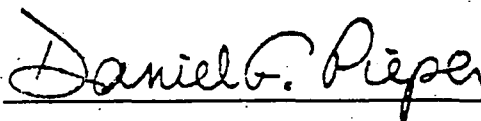
C

information which was available in the record on appeal. See Rule 210(h), SCACR ("Except as provided by Rule 212 and Rule 208(b)(1)(C) and (2), the appellate court will not consider any fact which does not appear in the Record on Appeal."); Rule 210(c), SCACR ("The Record shall not . . . include matter which was not presented to the lower court or tribunal.").

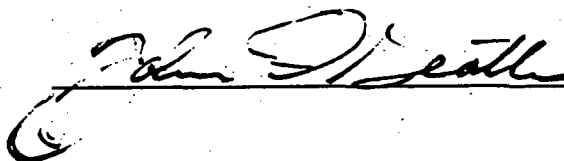
It is, therefore, ordered that the Petitions for Rehearing and the Motion to Supplement the Record on Appeal be denied.



THOMAS, J.



PIEPER, J.



GEATHERS, J.

Columbia, South Carolina

cc: Travis Dayhuff, Esquire
Holly G. Gillespie, Esquire
Carlisle Roberts, Jr., Esquire
Nancy S. Layman, Esquire
Ashley C. Biggers, Esquire
James G. Long, III, Esquire
Edward H. Bender, Esquire

FILED

May 19, 2011

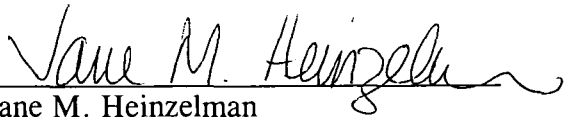
CERTIFICATE OF SERVICE

I, the undersigned administrative assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified to the following address(es):

Pleadings **RETURN TO MOTION FOR LEAVE TO SUPPLEMENT THE APPENDIX**

Counsel Served: **Via Hand Delivery**
James G. Long, III, Esq.
Nexsen Pruet, LLC
1230 Main Street, Suite 700
P. O. Box 2426
Columbia, SC 29202-2426

Via Hand Delivery
Ashley C. Biggers, Esq.
Bureau of Health Facilities & Services Development
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29260


Jane M. Heinzelman
Administrative Assistant

July 8, 2011

RECEIVED

JUL 13 2011

THE STATE OF SOUTH CAROLINA
In the Supreme Court

S.C. Supreme Court

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge

Opinion No. 2010-UP-523 (S.C. Ct. App. Refiled April 25, 2011)

Amisub of South Carolina, Inc. d/b/a Piedmont Medical CenterRespondent,

v.

South Carolina Department of Health and Environmental Control,
Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Healthcare
System and Carolinas Physicians Network, Inc.Petitioners.

**REPLY TO RETURN TO MOTION FOR LEAVE
TO SUPPLEMENT THE APPENDIX**

Petitioner South Carolina Department of Health and Environmental Control (“DHEC” or “Department”) respectfully submits this reply to Respondent Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center’s (“Piedmont”) return to the Department’s motion for leave to supplement the Appendix.

I. SUPPLEMENTING THE APPENDIX IS PERMITTED BY LAW AND APPROPRIATE.

Justice is served by granting the Department’s motion for leave to supplement the Appendix. The purpose of the Department’s motion is to correct a clerical error that will help establish that the Administrative Law Court (“ALC”) lacked subject matter jurisdiction over Piedmont’s contested case filing. Subject matter jurisdiction is a fundamental issue and may be raised at any time, including for the first time on appeal.

Tatnall v. Gardner, 350 S.C. 135, 564 S.E.2d 377 (Ct. App. 2002) “Lack of jurisdiction of the subject matter cannot be waived even by consent and therefore **such lack can and should be taken notice of by this Court *Ex mero motu.***” Harden v. S. Carolina State Highway Dept., 266 S.C. 119, 124, 221 S.E.2d 851, 853 (1976) (emphasis added). See also Anderson v. Anderson, 299 S.C. 110, 115, 382 S.E.2d 897, 900 (1989). Leave to supplement the Appendix in this case is necessary for the preservation of judicial integrity. The Appendix must be supplemented to correct a clerical error upon which a court relied when finding subject matter jurisdiction, a fundamental issue that cannot be waived.

A. RULE 212(B), SCACR, ALLOWS FOR SUPPLEMENTATION OF THE APPENDIX.

Rule 212(b), SCACR, permits a party to supplement the Record on Appeal even after oral argument, upon leave of the appellate court. Contrary to the inference Piedmont draws, Rule 212(b), SCACR, contains no limitation upon when such a motion may be made or granted.

In this instance, there was no reason for the Department to seek supplementation of the Record on Appeal prior to issuance of the Court of Appeals’ April 25, 2011 Opinion because Piedmont never claimed to be seeking review of E-07-125 at any stage of this case. Piedmont in fact sought to clarify the erroneous reference itself shortly after it first noticed the clerical error in the record of its request for a final review conference, as shown in Piedmont’s counsel’s letter to the Clerk of the Board, dated February 11, 2009 (Attachment 3 to the Department’s motion for leave to supplement the Appendix). Prior to April 25, 2011, there was no indication that any of the parties or the ALC believed Piedmont’s contested case to encompass E-07-125. As soon as the Court of

Appeals' reliance upon the erroneous subject line became apparent, the Department attempted to correct it by filing a motion to supplement the Record on Appeal, along with a petition for rehearing, both of which the Court of Appeals denied. The Appendix filed concurrently with the Department's petition for a writ of certiorari contains the Record on Appeal as required by Rule 243(f), SCACR. The Department now seeks leave to supplement the Appendix, which contains the Record on Appeal; such a motion is proper pursuant to Rule 212(b), SCACR. Supplementation of the Appendix is necessary to ensure that the Record speaks the truth.

B. RULE 240(C)(3) ALLOWS FOR SUPPLEMENTING THE APPENDIX.

Rule 240(c)(3), SCACR, permits a party to file documents not contained in the Record on Appeal or the Appendix along with a motion, where the documents contain facts relied upon by the party. The purpose of the Department's motion for leave to supplement the appendix is to correct an erroneous reference to E-07-125 in the subject line of the February 13, 2009 letter from the Clerk of the Board, which the Court of Appeals referenced as evidence of a Department decision in this particular matter. The relief requested by the Department, correction of the clerical error which gave rise to a judicial error, is supported by the documents attached to the Department's motion, and is proper pursuant to Rule 240(c)(3), SCACR.

C. SOUTH CAROLINA CASE LAW SUPPORTS CORRECTION OF CLERICAL ERRORS ON APPEAL WHERE THERE IS NO PREJUDICE TO ANOTHER PARTY.

South Carolina Courts permits the correction of clerical errors in other circumstances, particularly where there is no prejudice to other parties. In Windham v. Sanders, 287 S.C. 170, 337 S.E.2d 205 (1985), the Court provided the appellant an

opportunity to show that a direct appeal was authorized either by court order or by written consent of the parties, even though the transcript of the record did not reflect such authorization. In Moody v. Dickerson, 54 S.C. 526, 32 S.E. 563 (1899), the Court allowed the defendant an opportunity to correct a clerical error in the notice of appeal, where the plaintiff was not prejudiced by the error. The Court of Appeals permitted a similar correction in Charleston Lumber Company, Inc. v. Miller Housing Corporation, 458 S.E.2d 431 (Ct. App. 1995), rejecting the respondent's "effort to take advantage of a mere clerical error by which they were in no way prejudiced or misled." See also Rule 60(a), SCRPC ("Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, leave to correct the mistake must be obtained from the appellate court.").

In this case, the reference to E-07-125 in the subject line of the Clerk of the Board's February 13, 2009 letter is a clerical error that erroneously references a prior Department decision in another unrelated matter dating back to 2007. See Dion v. Ravenel, Eiserhardt Assocs., 316 S.C. 226, 230, 449 S.E.2d 251, 253-54 (Ct. App. 1994) (defining "clerical error" as a "mistake in writing or copying, ... a mistake or omission by a clerk, counsel, judge or printer which is not the result of exercise of judicial function."). Piedmont is in no way prejudiced or misled by the correction of the clerical error. All three documents are part of the record of the request for a final review conference filed with the Board pursuant to S.C. Code Ann. § 44-1-60 (Supp. 2010); two of the three documents are letters written by Piedmont's own counsel, and are therefore party

admissions. Notably, one of Piedmont's letters is Piedmont's counsel's attempt to correct this very clerical error that the Department now seeks leave from this Court to clarify and correct in the Appendix. See Attachment 3 to the Department's motion for leave to supplement the Appendix. Because there is no prejudice to Piedmont, the Department's motion for leave to supplement the Appendix is appropriate and should be granted.

II. SUPPLEMENTING THE APPENDIX IS NOT FUTILE.

Piedmont argues that supplementing the Appendix would be futile because the Court of Appeals made multiple references to the Record on Appeal in support of its holding. Piedmont fails to note that in its opinion the Court of Appeals made reference to only two documents in the Record on Appeal: (1) a letter from CHS to the Department dated December 19, 2007; and (2) a letter dated February 13, 2009 from the Department to CHS and Piedmont. The December 19, 2007 letter is a direct response by CHS to the Department's October 26, 2007 issuance of exemption determination E-07-125, which is not the subject of Piedmont's contested case. The February 13, 2009 letter from the Department contains the erroneous reference to E-07-125 which the Department now seeks leave to correct. The Court of Appeals relied upon these two letters to establish that a Department decision was made. The Department seeks to supplement the Appendix in order to show that Department decision E-07-125 is not a decision contested by Piedmont in this case. Because correction of this clerical error is fundamental to the issue now before this Court on petition for writ of certiorari, supplementation is necessary.

For the foregoing reasons, the Department respectfully requests leave to Supplement the Appendix to correct the clerical error that gave rise to a judicial error regarding the fundamental issue of the lack of subject matter jurisdiction.

Respectfully submitted,



Carlisle Roberts, Jr.
Ashley C. Biggers
Kristin Lyn Pawlowski
South Carolina Department of Health and
Environmental Control
2600 Bull Street
Columbia, South Carolina 29201
(803) 898-3350

Attorneys for Petitioner South Carolina
Department of Health and Environmental
Control

July 13, 2011

RECEIVED

JUL 13 2011

S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge

Opinion No. 2010-UP-523 (S.C. Ct. App. Refiled April 25, 2011)

Amisub of South Carolina, Inc. d/b/a Piedmont Medical CenterRespondent,

v.

South Carolina Department of Health and Environmental Control,
Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Healthcare
System and Carolinas Physicians Network, Inc. Petitioners.

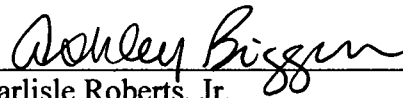
PROOF OF SERVICE

I, Ashley C. Biggers, do hereby certify that I have on this date served one (1) copy of *Petitioner South Carolina Department of Health and Environmental Control's Reply to the Return of the Motion for Leave to Supplement the Appendix* in the above-referenced matter upon all counsel of record in this action by causing said copy to be deposited with the United States Postal Service, first class postage prepaid and affixed thereto, and addressed as follows:

Travis Dayhuff, Esquire
Holly G. Gillespie, Esquire
Nelson Mullins Riley & Scarborough, LLP
1320 Main Street, 17th Floor
Columbia, South Carolina 29201

James G. Long III, Esquire
Edward H. Bender, Esquire
Jennifer J. Hollingsworth, Esquire
Nexsen Pruet, LLC
1230 Main Street, Suite 700
Columbia, South Carolina 29201

[Signature page follows]



Carlisle Roberts, Jr.

Ashley C. Biggers

Kristin Lyn Pawlowski

South Carolina Department of Health and
Environmental Control

2600 Bull Street

Columbia, South Carolina 29201

TEL: (803) 898-3350 FAX: (803) 898-3367

Attorneys for Respondent South Carolina

Department of Health and Environmental Control

July 13, 2011

Columbia, South Carolina

BOARD:
Allen Amsler
Chairman
Mark S. Lutz
Vice Chairman
Steven G. Kisner
Secretary



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

BOARD:
R. Kenyon Wells
L. Clarence Batts, Jr.
Ann B. Kirol, DDS
John O. Hutto, Sr., MD

July 13, 2011

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JUL 13 2011

S.C. Supreme Court

VIA HAND DELIVERY

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
1231 Gervais Street
Columbia, South Carolina 29201

Re: *Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center, Respondent v. South Carolina Department of Health and Environmental Control, Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Healthcare System, and Carolinas Physicians Network, Inc., Appellants*
Docket No.: 09-ALJ-07-0098-CC; Case No. 2009134846
Case Tracking No.: 2011-1938328
OGC No. 20839.1

Dear Mr. Shearouse:

Enclosed for filing please find the original and seven (7) copies of *South Carolina Department of Health and Environmental Control's Reply to the Return to Motion for Leave to Supplement the Appendix and Proof of Service* in the above-referenced matter. Kindly file the enclosed and return a file-stamped copy via our courier.

By copy of this letter, and as evidenced by the *Proof of Service*, I am serving a copy of the same on all counsel of record,

Very truly yours,

Ashley C. Biggers
Chief Counsel for Health Regulation
South Carolina Department of Health and
Environmental Control

ACB/csh
Enclosures as stated

cc: (via USPS & Electronic Mail w/Enclosures)
Travis Dayhuff, Esquire
Holly G. Gillespie, Esquire
Nelson Mullins Riley & Scarborough, LLP
1320 Main Street, 17th Floor
Columbia, South Carolina 29201

James G. Long III, Esquire
Edward H. Bender, Esquire
Jennifer J. Hollingsworth, Esquire
Nexsen Pruet, LLC
1230 Main Street, Suite 700
Columbia, South Carolina 29201

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
1320 Main Street / 17th Floor / Columbia, SC 29201
Tel: 803.799.2000 Fax: 803.256.7500
www.nelsonmullins.com

Travis Dayhuff
Tel: 803.255.9525
Fax: 803.255.5506
travis.dayhuff@nelsonmullins.com

July 28, 2011

Hand Delivered

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
1231 Gervais Street
Columbia, SC 29211

RECEIVED

JUL 28 2011

S.C. Supreme Court

RE: Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center v. South Carolina
Department of Health and Environmental Control, et al.
Docket No. 09-ALJ-07-0098-CC; Case No. 2009134846
Case Tracking No. 2011-1938328
Our File No. 05946/01513

Dear Mr. Shearouse:

Enclosed for filing in the above-referenced matter are the original and seven copies of Return to Petitions for Writ of Certiorari. We would ask that you file the original and return a clocked-in copy to us.

By copy of this letter to counsel of record, we are serving them with a copy of this document.

Very truly yours,



Travis Dayhuff

TD:jmh

Enclosures

cc: James G. Long, III
Jennifer J. Hollingsworth
Edward H. Bender
Ashley C. Biggers
Carlisle Roberts, Jr.
Kristen Lyn Pawlowski

The Supreme Court of South Carolina

Amisub of South Carolina, Inc.,
d/b/a Piedmont Medical Center, Respondent,

v.

South Carolina Department of
Health and Environmental
Control and Charlotte-
Mecklenburg Hospital
Authority d/b/a Carolinas
Healthcare System and
Carolinas Physicians Network,
Inc., Petitioners.

The Honorable John McLeod
Richland County
Trial Court Case No. 2009-AL-07-0098

ORDER

For good cause having been shown, the time for serving and filing the Return to the Petition for Writ of Certiorari in the above entitled matter is hereby extended until July 28, 2011.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY *Aronda J. Shealy*
Chief Deputy Clerk

Columbia, South Carolina

July 15, 2011

cc: Carlisle Roberts, Jr., Esquire
Ashley C. Biggers, Esquire
Kristin Lyn Pawlowski, Esquire
James G. Long, III, Esquire
Jennifer J. Hollingsworth, Esquire
Edward H. Bender, Esquire
Travis Dayhuff, Esquire
Holly G. Gillespie, Esquire

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT 15 2011

John D. McLeod, Administrative Law Judge

S.C. Supreme Court

Opinion No. 2010-UP-523 (S.C. Ct. App. Refiled April 25, 2011)

Amisub of South Carolina, Inc. d/b/a Piedmont Medical
Center, Respondent,

v.

South Carolina Department of Health and
Environmental Control, Charlotte-Mecklenburg
Hospital Authority d/b/a Carolinas Healthcare System
and Carolinas Physicians Network, Inc.
Petitioners.
~~Appellants.~~

MOTION TO EXTEND TIME

Pursuant to Rules 240(a) and 263, SCACR, Respondent Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center ("Piedmont") respectfully moves the Court for a 10-day extension of time to file Piedmont's Return to the Petitions for Writ of Certiorari filed by Respondents South Carolina Department of Health and Environmental Control ("DHEC"), Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Healthcare System, and Carolinas Physicians Network, Inc. (collectively "CHS").

Piedmont's Return is currently due on July 18, 2010. Due to counsel's workload, Piedmont needs an additional ten (10) days to file its Return. Piedmont respectfully requests that the Court permit Piedmont to file its Return on July 28, 2011.

Counsel for DHEC and CHS kindly consented to this request for an extension.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

Travis Dayhuff
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for Amisub of South Carolina, Inc. d/b/a
Piedmont Medical Center

Columbia, South Carolina

July 15, 2011

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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

Opinion No. 2010-UP-523 (S.C. Ct. App. Refiled April 25, 2011)

Amisub of South Carolina, Inc. d/b/a Piedmont Medical
Center,

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Respondent,
JUL 15 2011

v.

South Carolina Department of Health and
Environmental Control, Charlotte-Mecklenburg
Hospital Authority d/b/a Carolinas Healthcare System
and Carolinas Physicians Network, Inc.

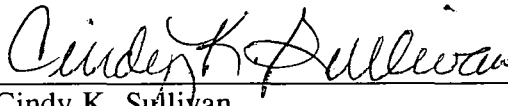
S.C. Supreme Court
Appellants.

CERTIFICATE OF SERVICE

I, the undersigned administrative assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center, do hereby certify that I have served all counsel in this action with a copy of a **MOTION TO EXTEND TIME** hereinbelow specified to the following address(es):

James G. Long, III, Esq.
Nexsen Pruet, LLC
1230 Main Street, Suite 700
Post Office Box 2426
Columbia, SC 29202-2426

Ashley C. Biggers, Esq.
Bureau of Health Facilities & Services Development
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29260


Cindy K. Sullivan
Administrative Assistant

July 15, 2011

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
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1320 Main Street / 17th Floor / Columbia, SC 29201
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Travis Dayhuff
Tel: 803.255.9525
Fax: 803.255.5506
travis.dayhuff@nelsonmullins.com

July 15, 2011

Hand Delivered

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
1231 Gervais Street
Columbia, SC 29211

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JUL 15 2011

S.C. Supreme Court

RE: Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center v. South Carolina
Department of Health and Environmental Control, et al.
Docket No. 09-ALJ-07-0098-CC; Case No. 2009134846
Case Tracking No. 2011-1938328
Our File No. 05946/01513

Dear Mr. Shearouse:

Enclosed for filing in the above-referenced matter are the original and seven copies of the Motion to Extend Time along with our firm's check to cover the filing fee. We would ask that you file the original and return a clocked-in copy to us.

By copy of this letter to counsel of record, we are serving them with a copy of this document.

Very truly yours,



Travis Dayhuff

TD:cks

Enclosures

cc: James G. Long, III
Jennifer J. Hollingsworth
Edward H. Bender
Ashley C. Biggers
Carlisle Roberts, Jr.
Kristen Lyn Pawlowski

check # 671190
\$25.00

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
1320 Main Street / 17th Floor / Columbia, SC 29201
Tel: 803.799.2000 Fax: 803.256.7500
www.nelsonmullins.com

Travis Dayhuff
Tel: 803.255.9525
Fax: 803.255.5506
travis.dayhuff@nelsonmullins.com

July 8, 2011

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JUL - 8 2011

S.C. Supreme Court

Via Hand Delivery

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
1231 Gervais Street
Columbia, SC 29211

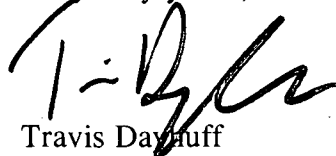
RE: Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center v. South Carolina
Department of Health and Environmental Control, et al.
Docket No. 09-ALJ-07-0098-CC; Case No. 2009134846
Case Tracking No. 2011-1938328
Our File No. 05946/01513

Dear Mr. Shearouse:

Enclosed for filing are the original and seven copies of the Return to Motion for Leave to Supplement the Appendix in the above-referenced case. We would ask that you file the original and return a clocked-in copy to us.

By copy of this letter to counsel of record, we are serving them with a copy of this motion.

Very truly yours,



Travis Dayhuff

TD:jmh
Enclosures

The Honorable Daniel E. Shearouse
July 8, 2011
Page 2

cc: James G. Long, III
Jennifer J. Hollingsworth
Edward H. Bender
Ashley C. Biggers
Carlisle Roberts, Jr.
Kristen Lyn Pawlowski

The Supreme Court of South Carolina

Amisub of South Carolina, Inc.,
d/b/a Piedmont Medical Center, Respondent,

v.

South Carolina Department of
Health and Environmental
Control and Charlotte-
Mecklenburg Hospital
Authority d/b/a Carolinas
Healthcare System and
Carolinas Physicians Network,
Inc., Petitioners.

The Honorable John McLeod
Richland County
Trial Court Case No. 2009-AL-07-0098

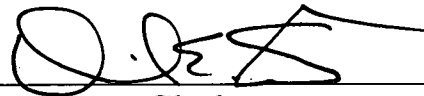
ORDER

For good cause having been shown, the time for serving and filing the
Return to Motion to Supplement the Appendix in the above entitled matter is
hereby extended until July 8, 2011.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

July 4, 2014

cc: Carlisle Roberts, Jr., Esquire
Ashley C. Biggers, Esquire
Kristin Lyn Pawlowski, Esquire
James G. Long, III, Esquire
Jennifer J. Hollingsworth, Esquire
Edward H. Bender, Esquire
Travis Dayhuff, Esquire
Holly G. Gillespie, Esquire
The Honorable Tanya Gee

RECEIVED

THE STATE OF SOUTH CAROLINA
In The Supreme Court

JUN 30 2011

S.C. Supreme Court

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge

Opinion No. 2010-UP-523 (S.C. Ct. App. Refiled April 25, 2011)

Amisub of South Carolina, Inc. d/b/a Piedmont Medical
Center, Respondent,

v.

South Carolina Department of Health and
Environmental Control, Charlotte-Mecklenburg
Hospital Authority d/b/a Carolinas Healthcare System
and Carolinas Physicians Network, Inc. Appellants.

MOTION TO EXTEND TIME

Pursuant to Rules 240(e) and 263, SCACR, Respondent Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center ("Piedmont") respectfully moves the Court for an extension of time to file a return to the South Carolina Department of Health and Environmental Control's ("DHEC") Motion for Leave to Supplement the Appendix ("Motion to Supplement").

On June 17, 2011, Piedmont received DHEC's Petition for Writ of Certiorari and DHEC's Motion to Supplement. Counsel for Piedmont inadvertently overlooked the fact that the Petition for Cert was accompanied by the Motion to Supplement, and therefore failed to timely file a return.

Pursuant to Rule 240(e), SCACR, Piedmont's return to DHEC's Motion to Supplement was due on June 27, 2011. Therefore, Piedmont respectfully requests that the Court permit Piedmont to file its return to the Motion to Supplement on July 8, 2011. Counsel for DHEC kindly consented to this motion.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

Travis Dayhuff
Holly G. Gillespie
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for Amisub of South Carolina, Inc. d/b/a
Piedmont Medical Center

Columbia, South Carolina

June 30, 2011

CERTIFICATE OF SERVICE

I, the undersigned administrative assistant of the law offices of Nelson Mullins Riley & Scarborough, L.L.P., attorneys for Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by depositing a copy via United States Postal Service to the following address(es):

Pleadings: **MOTION TO EXTEND TIME**

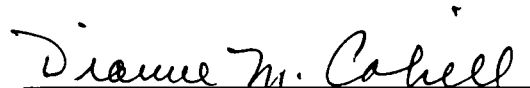
Counsel Served: **Via E-Mail and U.S. Mail**
James G. Long, III, Esq.
Nexsen Pruet, LLC
1230 Main Street, Suite 700
P. O. Box 2426
Columbia, SC 29202-2426

Via E-Mail and U.S. Mail
Ashley C. Biggers, Esq.
Bureau of Health Facilities & Services Development
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29260

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JUN 30 2011

S.C. Supreme Court


Dianne M. Cahill
Administrative Assistant

June 30, 2011

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP

Attorneys and Counselors at Law
1320 Main Street / 17th Floor / Columbia, SC 29201
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www.nelsonmullins.com

Travis Dayhuff
Tel: 803.255.9525
Fax: 803.255.5506
travis.dayhuff@nelsonmullins.com

June 30, 2011

RECEIVED

JUN 30 2011

S.C. Supreme Court

Via Hand Delivery

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
c/o Linda Allen
Post Office Box 11330
1231 Gervais Street
Columbia, SC 29211

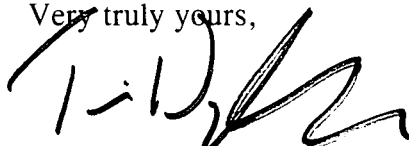
RE: Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center v. South Carolina
Department of Health and Environmental Control, et al.
Docket No. 09-ALJ-07-0098-CC; Case No. 2009134846
Case Tracking No. 2011-1938328
Our File No. 05946/01513

Dear Mr. Shearouse:

Enclosed for filing are the original and seven copies of a Motion to Extend Time in the above-referenced case. We would ask that you file the original and return a clocked-in copy to us.

By copy of this letter to counsel of record, we are serving them with a copy of this motion.

Very truly yours,



Travis Dayhuff

TD:dmc
Enclosures

Check # 670115
\$25.00



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

June 20, 2011

James G. Long, III, Esquire
Jennifer J. Hollingsworth, Esquire
Edward H. Bender, Esquire
Nexsen Pruet, LLC
P.O. Drawer 2426
Columbia, SC 29202


Re: Amisub of SC v. SCDHEC
Case Tracking No. 2011-193828

Dear Counsel:

This office has received your Petition for Writ of Certiorari and Joint Appendix in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence relating to this matter.

I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,



CLERK

Amisub of SC v. SCDHEC

Page Two

June 20, 2011

DES/lda

Enclosure

cc: Carlisle Roberts, Jr., Esquire
Ashley C. Biggers, Esquire
Kristin Lyn Pawlowski, Esquire
Travis Dayhuff, Esquire
Holly G. Gillespie, Esquire
The Honorable Tanya Gee

BOARD:
Allen Amsler
Chairman
Mark S. Lutz
Vice Chairman
Steven G. Kisner
Secretary



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

BOARD:
R. Kenyon Wells
L. Clarence Batts, Jr.
Ann B. Kirol, DDS
John O. Hutto, Sr., MD

June 17, 2011

VIA HAND DELIVERY

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
1231 Gervais Street
Columbia, South Carolina 29201

RECEIVED

JUN 17 2011

S.C. Supreme Court

Re: Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center, Respondent v. South Carolina Department of Health and Environmental Control, Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Healthcare System, and Carolinas Physicians Network, Inc., Petitioners

Docket No.: 09-ALJ-07-0098-CC

Case Tracking No.: 2009134846

Dear Mr. Shearouse:

Enclosed for filing please find the original and seven (7) copies of Petitioner South Carolina Department of Health and Environmental Control's *Petition for a Writ of Certiorari, Motion for Leave to Supplement the Appendix*, and *Proof of Service* in the above-referenced matter. Kindly file the enclosed and return a file-stamped copy of each via our courier.

The *Petitioners' Joint Appendix* is being filed separately this same date by Petitioners Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Healthcare System and Carolinas Physicians Network, Inc.

By copy of this letter, and as evidenced by the *Proof of Service*, I am serving a copy of the same on all counsel of record, and filing a copy of the *Petition for a Writ of Certiorari* with the South Carolina Court of Appeals.

Very truly yours,

Ashley C. Biggers
Chief Counsel for Health Regulation
South Carolina Department of Health and
Environmental Control

ACB/csh
Enclosures as stated

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

Office of General Counsel

Columbia Office • 2600 Bull Street • Columbia, SC 29201 • Phone: (803) 898-3350 • Fax: (803) 898-3367 • www.scdhec.gov

The Honorable Daniel E. Shearouse
June 17, 2011
Page 2

cc: (via Hand Delivery w/Enclosures)

The Honorable Tanya A. Gee
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Travis Dayhuff, Esquire
Holly G. Gillespie, Esquire
Nelson Mullins Riley & Scarborough, LLP
1320 Main Street, 17th Floor
Columbia, South Carolina 29201

James G. Long III, Esquire
Edward H. Bender, Esquire
Nexsen Pruet, LLC
1230 Main Street, Suite 700
Columbia, South Carolina 29201

James G. Long III
Member
Admitted in SC

June 17, 2011

RECEIVED

JUN 17 2011

VIA HAND DELIVERY

S.C. Supreme Court

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
1231 Gervais Street
Columbia, SC 29201

Re: Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center, Respondent v. South Carolina Department of Health and Environmental Control, Charlotte-Mecklenburg Hospital Authority, d/b/a Carolinas Healthcare System, and Carolinas Physicians Network, Inc., Petitioners
Case No. 2010-UP-523

- Charleston
- Charlotte
- Columbia**
- Greensboro
- Greenville
- Hilton Head
- Myrtle Beach
- Raleigh

Dear Mr. Shearouse:

Enclosed for filing are an original and ten (10) copies of Petitioners' Charlotte-Mecklenburg Hospital Authority, d/b/a Carolinas Healthcare System and Carolinas Physicians Network, Inc.'s *Petition for a Writ of Certiorari* and *Proof of Service* in the above-referenced case. A check for \$100.00 for the filing fee is enclosed. Please return four (4) sets of clocked copies to me via our courier.

Also enclosed are an original and five (5) copies of Petitioners' Charlotte-Mecklenburg Hospital Authority, d/b/a Carolinas Healthcare System, Carolinas Physicians Network, Inc., and South Carolina Department of Health and Environmental Control's *Petitioners' Joint Appendix* and *Proof of Service*. Please return four (4) sets of clocked copies to me via our courier.

1230 Main Street
Suite 700 (29201)
PO Drawer 2426
Columbia, SC 29202
www.nexsenpruet.com

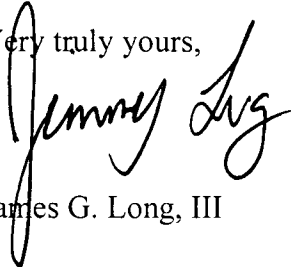
T 803.253.8224
F 803.727.1460
E JLong@nexsenpruet.com
Nexsen Pruet, LLC
Attorneys and Counselors at Law

check # 361019
\$100.00

The Honorable Daniel E. Shearouse
June 17, 2011
Page 2

By copy of this letter I am serving counsel of record with the Petition for a Writ of Certiorari and Petitioners' Joint Appendix.

Very truly yours,

A handwritten signature in black ink, appearing to read "James G. Long, III". The signature is written in a cursive style with a large, prominent initial "J".

James G. Long, III

JGL/saw
Enclosures

cc: Travis Dayhuff, Esquire (via hand delivery)
Holly G. Gillespie, Esquire (via hand delivery)
Carlisle Roberts, Jr., Esquire (via hand delivery)
Ashley C. Biggers, Esquire (via hand delivery)
Kristin L. Pawlowski, Esquire (via hand delivery)