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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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

Case No. 2012-ALJ-07-0090-CC

Grand Strand Regional Medical Center, LLC..... Respondent,

v.

South Carolina Department of Health and Environmental
Control.....Respondent below.

Case No. 2012-ALJ-07-0091-CC

Grand Strand Regional Medical Center, LLC..... Respondent,

v.

South Carolina Department of Health and Environmental Control and
Carolina Regional Cancer Center..... Respondent below.

Of whom Carolina Regional Cancer Center is the Appellant.

**INITIAL BRIEF OF RESPONDENT BELOW SOUTH CAROLINA
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**

Ashley C. Biggers, Esquire
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Respondent South Carolina Department of Health and Environmental Control (“Department”) adopts the Statement of the Case and the Statement of the Case and the Statement of the Facts set forth in the Brief of Appellant Carolina Regional Cancer Center (“CRCC”).

STANDARD OF REVIEW

The Administrative Law Court (“ALC”) conducted a *de novo* review of the Department’s decision to grant CRCC’s Certificate of Need (“CON”) application and to deny Grand Strand Regional Medical Center, LLC’s (“Grand Strand”) CON application. The standard of review on appeal is set forth in S.C. Code Ann. § 1-23-610(B), which provides that this Court may reverse or modify the ALC’s decision if the Appellant’s substantive rights have been prejudiced because the decision is in violation of constitutional or statutory provisions, in excess of the statutory authority of the agency, made upon unlawful procedure, affected by other error of law, clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

ARGUMENT

THE ALC’S DECISION APPROVING CRCC’S AND GRAND STRAND’S CERTIFICATE OF NEED APPLICATIONS DOES NOT NECESSITATE REMAND TO THE DEPARTMENT.¹

The Department determined Grand Strand’s and CRCC’s CON applications for new linear accelerators met the definition of “competing applicants” as set forth in S.C. Code Ann. § 44-7-130(5) because approving both applications would exceed the need for

¹ The Department takes no position on the remaining issues raised on appeal by CRCC.

linear accelerator services in the service area. Based on that conclusion, the Department determined that it could only grant the application it deemed to most fully comply with the South Carolina Health Plan, applicable project review criteria, and the Department's regulations. *See* S.C. Code Ann. § 44-7-210(B).

Upon a *de novo* review, the ALC found that both CON applications could be approved without exceeding the need for linear accelerator services. Therefore, the ALC concluded the applications did not meet the definition of "competing applicants."

CRCC contends the ALC erred by not remanding this matter to the Department for a determination of whether it would approve Grand Strand's application once the ALC concluded that the applications were not competing. The ALC's decision presents no new issue for the Department's determination, however.

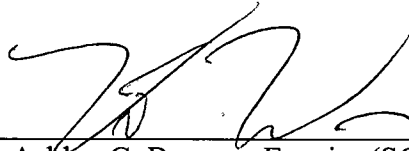
In order to conduct a comparison review of CRCC's and Grand Strand's CON applications, the Department reviewed each application's compliance with the South Carolina Health Plan, relevant project review criteria, and the Department's regulations. The Department's findings as to each application were presented to the ALC. The ALC's finding that the applications are not competing raises no new issue for the Department's consideration.

Had the Department originally determined the applications not to be competing and stopped short of conducting a comparison of the applications, only to have the ALC find the applications to be competing, then remand would be appropriate in order for the Department to conduct a comparison review. That is not the case before this Court, however. No further Department review is required, and remand is unnecessary.

CONCLUSION

For the foregoing reasons, the Department respectfully requests the Court deny CRCC's request that this matter be remanded to the Department.

Respectfully submitted,



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November 5, 2014

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PROOF OF SERVICE

I, Ashley C. Biggers, hereby certify that on November 5, 2014, I caused a copy of
the *Initial Brief of Respondent South Carolina Department of Health and
Environmental Control* to be served on all parties of record via electronic mail and by
United States Mail, First Class, postage prepaid, addressed as follows:

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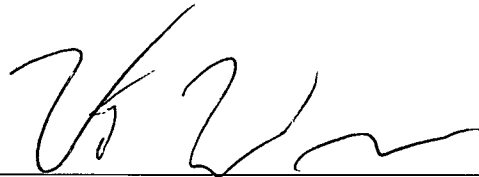
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Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

November 5, 2014

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VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina of Appeals
1015 Sumter Street
Columbia, SC 29201

RE: Appellate Case No.: 2014-000973
Grand Strand Regional Medical Center, LLC v. South Carolina
Department of Health and Environmental Control and Carolina Regional
Cancer Center
OGC# 21336.1

Dear Ms. Kitchings:

Enclosed please find an original and one (1) copy of *Respondent South Carolina Department of Health and Environmental Control's Initial Brief and Proof of Service* in the above-referenced matter to be clocked and filed.

Should you have any questions regarding this matter, please do not hesitate to contact our office. With kindest regards, I am,

Sincerely,

Vito Wicevic

Enclosures

cc: James G. Long, III, Esquire
Jennifer J. Hollingsworth, Esquire
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