

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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

Appellate Case No. 2014-000973  
Case No. 2012-ALJ-07-0090-CC

**RECEIVED**

DEC 05 2014

**SC Court of Appeals**

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..... Respondents below,

Of whom Carolina Regional Cancer Center is the.....Appellant.

**REPLY BRIEF OF APPELLANT CAROLINA REGIONAL CANCER CENTER  
TO INITIAL BRIEF OF RESPONDENT SOUTH CAROLINA DEPARTMENT  
OF HEALTH AND ENVIRONMENTAL CONTROL**

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James G. Long III  
Jennifer J. Hollingsworth  
Tanya A. Gee  
NEXSEN PRUET, LLC  
1230 Main Street, Suite 700 (29201)  
Post Office Drawer 2426  
Columbia, SC 29202  
803.771.8900

E. Wade Mullins III  
BRUNER POWELL  
1735 St. Julian Place, Suite 200  
P.O. Box 61110 (29260-1110)  
Columbia, SC 29204

Attorneys for Appellant  
Carolina Regional Cancer Center

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## **STATEMENT OF THE CASE**

The Respondent South Carolina Department of Health and Environmental Control (“DHEC” or “Department”) filed an Initial Brief on November 4, 2014. The Appellants Carolina Regional Cancer Center, LLC (“CRCC”) files this Reply to the Response.

## **ARGUMENT**

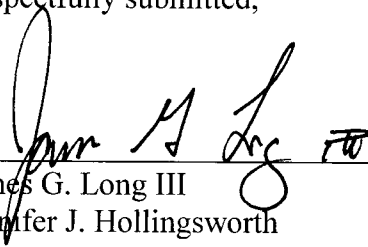
The Department asserts in its Initial Brief that the Administrative Law Court’s (“ALC”) Amended Final Order and Decision does not necessitate remand to the Department as argued by CRCC in its Initial Brief at Section II. Despite this assertion, the Department makes no reference to any evidence in the Record in support. In fact, the Department fails to even acknowledge the argument with supporting authority and citation made by CRCC in its Initial Brief. Other than the unsupported statement of counsel, there is no evidence that DHEC ever determined that the application of Grand Strand Regional Medical Center, LLC (“Grand Strand”) was independently approvable. In fact, the evidence as argued by CRCC reflects obvious hesitation and uncertainty about the Grand Strand project, including its potential adverse impact on CRCC. As fully argued at Pages 21-22 of the Initial Brief, the evidence shows the Department believed Grand Strand understated the impact it would have on CRCC, did not increase geographic access for patients, and would have an adverse impact on existing providers in the service area. (Joint Ex. #1 000668-000670) At no point in her testimony did the Department’s witness, Ms. Brandt, testify that Grand Strand’s application complied with the project review criteria or could have been approved. In fact, the Department’s Initial Brief wholly ignores the substantial evidence in the Record showing that Grand Strand’s application does not satisfy the Project Review Criteria, violates the purposes of the CON Act, and should not have been approved by the ALC. S.C. Code Ann. §§ 44-7-120,

210(C); 24AS.C. Code Ann. Regs. 61-15 §§ 801, 802. The Department, and the ALC by extension, may not issue a CON to an applicant “unless the application complies with the South Carolina Health Plan, Project Review Criteria, and other regulations.” S.C. Code Ann. § 44-7-210(B); *see also MRI at Belfair, LLC v. S.C. Dept. of Health and Env'tl. Control*, 379 S.C.2, 9, 664 S.E.2d 471, 475 (2008).

**CONCLUSION**

For the reasons stated, this Court should reverse the decision of the ALC to issue a Certificate of Need to Grand Strand or, in the alternative, remand the issue of the approvability of the Grand Strand application to the Department.

Respectfully submitted,



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James G. Long III  
Jennifer J. Hollingsworth  
Tanya A. Gee  
NEXSEN PRUET, LLC  
1230 Main Street, Suite 700 (29201)  
Post Office Drawer 2426  
Columbia, SC 29202  
803.771.8900

E. Wade Mullins III  
BRUNER POWELL  
1735 St. Julian Place, Suite 200  
P.O. Box 61110 (29260-1110)  
Columbia, SC 29204  
Attorneys for Appellant  
Carolina Regional Cancer Center

December 5, 2014

**James G. Long III**  
Member  
Admitted in SC

December 5, 2014

**VIA HAND DELIVERY**

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

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**SC Court of Appeals**

**Re: *Grand Strand v. DHEC (Carolina Regional Cancer Center)***  
***Appellate Case Tracking # 2014-000973***

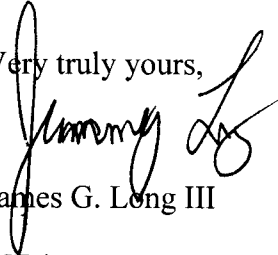
Dear Ms. Kitchings:

Enclosed for filing please find the original and seven (7) copies of each of the following documents: Reply Brief of Appellant Carolina Regional Cancer Center to Initial Brief of Respondent Grand Strand Regional Medical Center, Reply Brief of Appellant Carolina Regional Cancer Center to Initial Brief of Respondent South Carolina Department of Health and Environmental Control, and Supplemental Designation of Matter of Carolina Regional Cancer Center in the above-referenced matter. Please file the originals and return the clocked copies to me via our courier.

By copy of this letter, I am hereby serving copies of the same on opposing counsel.

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

The Honorable Jenny Abbot Kitchings  
December 5, 2014  
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Very truly yours,  


James G. Long III

JGL/ect  
Enclosures

cc: William R. Thomas, Esquire (via Hand Delivery)  
Walter H. Cartin, Esquire (via Hand Delivery)  
Amber B. Carter, Esquire (via Hand Delivery)  
Ashley C. Biggers, Esquire (via Hand Delivery)  
Vito M. Wicevic, Esquire (via Hand Delivery)