



W. Marshall Taylor Jr., Acting Director

Promoting and protecting the health of the public and the environment

March 12, 2015

The Honorable Jenny A. Kitchings
Clerk, SC Court of Appeals
1015 Sumter Street
Columbia, SC 29201

RE: Appellate Case No.: 2012-213506

Dear Ms. Kitchings:

Enclosed please find an original and six (6) copies of *Respondent's Return to Petition for Rehearing 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,

Ashley C. Biggers

Enclosures

cc: James G. Long, III, Esquire
Jennifer J. Hollingsworth, Esquire
Tanya A. Gee, Esquire
David B. Summer, Jr., Esquire
William R. Thomas, Esquire
Faye A. Flowers, Esquire

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Appellate Case No. 2012-213506
Case No. 09-ALJ-07-0332-CC

Trident Medical Center, LLC, d/b/a Berkeley
Medical Center,.....Appellant/Respondent,

v.

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

Of Whom South Carolina Department of Health and
Environmental Control is theRespondent, and

Roper St. Francis is the.....Respondent/Appellant.

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

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

v.

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

Of Whom South Carolina Department of Health and
Environmental Control is theRespondent, and

Roper St. Francis is the.....Respondent/Appellant.

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

Care Alliance Health Services and Roper St. Francis
Hospital Berkeley,.....Respondents/Appellants,

v.

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

Of whom South Carolina Department of Health and Environmental Control is theRespondent, and

Trident Medical Center, LLC is theAppellant/Respondent.

RESPONDENT’S RETURN TO PETITION FOR REHEARING

Pursuant to Rule 240(e), SCACR, Respondent South Carolina Department of Health and Environmental Control (“Department”) hereby submits this return to Appellant/Respondent Trident Medical Center, LLC d/b/a Berkeley Medical Center’s (“Trident”) petition for rehearing. Pursuant to Rule 221(A), SCACR, a petition for rehearing must set forth with particularity the points alleged to have been overlooked or misapprehended by the Court. Trident has not met this bar, and its petition for rehearing should be denied.

Interpretation of the Bed Transfer Provision

The South Carolina Health Plan (“SHP”) contains a rule allowing for the establishment of a new hospital through the transfer of hospital beds from an existing licensed hospital to a new location within the same service area. Trident’s first argument in its petition for rehearing is a challenge to this rule. Trident argued that rules of statutory construction should convince the Court to reject the Department’s interpretation of its own rules in the SHP. The Court properly rejected Trident’s argument, and Trident has presented no grounds justifying reversal of the Court’s opinion.

Courts will defer to an agency’s interpretation unless it is “arbitrary, capricious, or manifestly contrary to the statute.” *Kiawah Development Partners, II, v. S.C. Dep’t of Health and Env’tl. Control*, 411 S.C. 16, 766 S.E.2d. 707 (2014). The DHEC Board interpreted the bed transfer provision to say that the receiving facility need not be an existing facility in order to receive beds. (R. pp. 7519-26). There is no compelling reason to overturn the Board’s

interpretation. Trident's petition for rehearing as to the interpretation of the bed transfer provision in the SHP should be denied.

Competing Applicants

The Court properly considered the definition of "competing applicants" set forth in S.C. Code Ann. §44-7-130(5) (Supp. 2002) and 3 S.C. Code Regs. Ann. 61-15 § 103(6) (Supp. 2014) in determining that Trident's and Roper's applications could both be approved without exceeding the need for hospital beds in the service area. It is undisputed that Trident and Roper both seek to provide similar services in the same service area. It is also undisputed that Trident seeks fill a need documented in the SHP, while Roper seeks to transfer existing beds from one location within the service area to another location in the service area. The addition of the beds at the proposed Trident facility and the relocation of Roper's beds will not, together, exceed the indicated need in the SHP for beds in the service area. The Court properly considered and decided all facts and provisions of law applicable to the determination of "competing applicants." Therefore, Trident's petition for rehearing as to the "competing applicants" issue should be denied.

Conclusion

For the foregoing reasons, the Department respectfully requests that Trident's petition for rehearing.



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

Appellate Case No. 2012-213506

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

v.

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

Of Whom South Carolina Department of Health and
Environmental Control is theRespondent, and

Roper St. Francis is theRespondent/Appellant.

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

v.

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

Of Whom South Carolina Department of Health and
Environmental Control is theRespondent, and

Roper St. Francis is theRespondent/Appellant.

Care Alliance Health Services and Roper
St. Francis Hospital-Berkeley,Respondents/Appellants,

v.

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

Of whom South Carolina Department of Health
And Environmental Control is theRespondents, and


Trident Medical Center, LLC is theAppellant/Respondent.

PROOF OF SERVICE

The undersigned hereby certifies that on March 16, 2015 she has caused a copy of *Respondent's Return to Petition for Rehearing* to be served on all parties of record by Electronic Mail, U.S Mail, First Class, postage prepaid and FED-X Mail by overnight delivery addressed as follows:

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