

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APR 10 2015

SC Court of Appeals

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

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

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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 SCDHEC is the ..... Respondent, and  
Roper St. Francis is the ..... Respondent/Appellant.

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

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

Of Whom SCDHEC is the ..... Respondent, and  
Roper St. Francis is the ..... Respondent/Appellant.

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APR 10 2015

SC Court of Appeals

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

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

v.

South Carolina Department of Health and  
Environmental Control and Trident Medical Center, LLC..... Respondents,  
Of Whom Trident Medical Center, LLC, is the..... Appellant.

**RETURN OF RESPONDENTS-APPELLANTS  
TO PETITION FOR REHEARING  
(CareAlliance Health Services and Roper St. Francis Hospital – Berkeley)**

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*Attorneys for Respondents-Appellants*  
CareAlliance Health Services and Roper  
St. Francis Hospital-Berkeley



## **INTRODUCTION**

At the request of the Court and pursuant to Rule 240(e), SCACR, CareAlliance Health Services and Roper St. Francis Hospital – Berkeley (hereinafter collectively “Roper St. Francis”) submit this response to the Petition for Rehearing filed by Trident Medical Center, LLC (“Trident”). Trident sets forth 10 numbered arguments grouped by Trident into three general issues objecting to the holdings of this Court in the Order issued February 18, 2015. For the reasons set forth herein, Roper St. Francis submits to the Court that the request for rehearing should be denied and the Order affirmed in all respects.

Roper St. Francis objects to and requests that this Court disregard the argumentative matters contained in the “Facts” portion of the Petition and further asks the Court to disregard the overreaching statements made therein as being inappropriate matter for inclusion in the Petition. The Facts of this matter are well known to this Court, having been fully briefed and carefully considered prior to the Court’s Order issued February 18, 2015.



## ARGUMENTS

### I. TRIDENT OFFERS NO NEW ARGUMENT IN SUPPORT OF ITS TORTURED CONSTRUCTION OF THE BED TRANSFER PROVISION.

Trident's first three issues raised in pursuit of rehearing are the overused and oft-repeated "plain English language" challenges made by it throughout these proceedings. Only now, Trident asserts that this Honorable Court has not properly read the "plain English language" of the Bed Transfer Provision and has therefore overlooked or misapprehended the requirements of the Provision. Trident has been and continues to be incorrect in this position.

As this Honorable Court correctly held, "there is no language in [the Bed Transfer Provision] list that either expressly or impliedly *requires* the receiving facility to be in existence when the CON application is submitted." Order, p.14 (emphasis in original). Trident challenges that the Court only engaged in a "narrow and selective reading of the Bed Transfer Provision" when, in fact, this Court engaged in a *thorough* analysis of the *entire* General Hospital Section of the 2008-2009 South Carolina Health Plan in reaching its correct decision. Trident then absurdly, once again, claims that the *plain* language of the Provision "indicate[s]" that the receiving hospital be in existence. Roper St. Francis submits once again that plain language wouldn't 'indicate' – it would state. That Trident asserts an interpretation must be made of what the Bed Transfer Provision *means*, is the best evidence that the Department similarly concluded that fact and a reasonable interpretation ensued, which has been affirmed by the DHEC Board and now upheld at the ALC and on appeal. This argument seeking rehearing is unavailing.

Finally, Trident's argument that the ALC purportedly acknowledged that the Bed Transfer Provision "appears to anticipate the existence of an existing facility" provides



undue weight and significance to the ALC's isolated sentence within numerous findings of fact regarding the Provision. In fact, this Court did consider the ALC's entire Order and properly concluded that the language of the Bed Transfer Provision "certainly *accommodates* those CON applications for the transfer of beds to a receiving facility already in existence at the time the application is submitted." Order, p.14 (emphasis in original). But the Order goes on to expressly acknowledge that the prior existence of the receiving facility is not "expressly or impliedly" required. *See id.* As briefed by Roper St. Francis in its briefing as Appellant, Trident's demand for a strict and narrow interpretation of the Bed Transfer Provision directly contradicts the interpretation Trident requires of the Fifty Bed Rule in the 2004-2005 South Carolina Health Plan to allow for the construction of its new hospital on a vacant field in Moncks Corner. *See e.g.* Roper St. Francis' Reply Br. 2-4.

Put simply, nothing in Trident's Petition for Rehearing raises an issue or matter overlooked or misapprehended by this Court in the review of the Bed Transfer Provision so as to warrant further review. The arguments made in the Petition are simply regurgitations of the prior briefing by Trident and are not sufficient under the Rules to warrant further review of this Court.

## **II. TRIDENT FAILS TO IDENTIFY ANY COMPELLING REASON TO REJECT THE DEPARTMENT'S INTERPRETATION OF THE BED TRANSFER PROVISION.**

Trident's issues four through six challenge the Court's affirmance of the ALC's deference to the agency interpretation of the Bed Transfer Provision. As this Court properly concluded, no compelling reason exists to overturn the Department's interpretation of its own South Carolina Health Plan. *See Sloan v. S.C. Bd. of Physical Therapy Exam'rs*, 370 S.C. 452, 469, 636 S.E.2d 598, 607 (2006) ("The construction of a



statute by an agency charged with its administration is entitled to the most respectful consideration and should not be overruled absent compelling reasons.”) The well-developed line of cases addressing the deference owed to the agency refers to the Department’s construction of statutes for which it is charged with administering, *i.e.* the CON Act. See S.C. Code Ann. § 44-7-140; *see also Byerly Hosp. v. S.C. State Health and Human Svcs. Fin. Comm’n*, 319 S.C. 225, 229, 460 S.C.2d 383, 385-6 (1995) (“We must affirm if the decision of the agency is supported by substantial evidence, and we may not substitute our judgment for that of the agency upon questions as to which there is room for a difference of intelligent opinion. Moreover, because the Commission has been designated as the single state agency for implementation of Medicaid, great deference must be accorded its interpretations of Medicaid laws and regulations.”) In this instance, the deference is even more appropriate given the construction or interpretation at issue is of the Departments *own document* and not a statute – the South Carolina Health Plan is not a legislatively enacted document, but instead is drafted, approved and promulgated solely by DHEC and its governing Board. S.C. Code Ann. § 44-7-180(B)-(C). There can be no other meaning of the Bed Transfer Provision than the meaning ascribed by the DHEC Board, which addressed and confirmed the construction of the Bed Transfer Provision as applied to allow for the transfer of licensed beds to a new facility.

Other than its status as a disgruntled competitor, Trident cannot show that the Department’s construction of the Bed Transfer Provision was arbitrary or capricious, much less point to a compelling reason warranting reversal of the Department’s construction. Trident submits no evidence or factual allegation to support that the 2008-2009 South Carolina Health Plan was not properly promulgated by the Department, or



that due process was not afforded prior to its enactment. Other than displeasure at the result, Trident cannot articulate an argument to support that the Department's interpretation of the Fifty Bed Rule under the 2004-2005 South Carolina Health Plan supporting its project should be affirmed, but the Department's interpretation of the Bed Transfer Provision under the 2008-2009 South Carolina Health Plan must be rejected. The argument is inconsistent and without merit. Having failed to raise or identify any compelling reason to reject the Department staff's reasonable interpretation of the Bed Transfer Provision, that was since affirmed by the Department Board and the ALC, Trident's Petition for Rehearing should be denied.

**III. TRIDENT'S NARROW READING OF THE GENERAL HOSPITAL SECTION OF THE SOUTH CAROLINA HEALTH PLAN SHOULD BE REJECTED.**

Trident summarizes points 7 through 9 of its Petition as alleging that the South Carolina Health Plan does not support the reasoning of the Court. Trident cannot deny that Roper St. Francis serves a substantial patient base in Berkeley County, and that every person in Berkeley County requiring inpatient hospital care must travel outside of the County to obtain treatment. Roper St. Francis' project is clearly in furtherance of the purposes of the CON Act as well as the South Carolina Health Plan and the Bed Transfer Provision itself – to establish a facility and services to best meet the public's needs. As the Court noted, the project allows for already licensed beds to be transferred to a large populated area with no access to inpatient hospital beds, to “improve health care access in a medically underserved community.” Order, p.17. The Bed Transfer Provision specifically acknowledges that a hospital may transfer beds “in order to serve their patients in a more efficient manner.” Roper St. Francis' CON Application comports with this plain language of the Bed Transfer Provision and Trident has failed to identify any



matter overlooked or misapprehended by this Court in the Order evaluating the South Carolina Health Plan that warrants rehearing.

#### **IV. THE APPLICATIONS ARE NOT COMPETING APPLICATIONS**

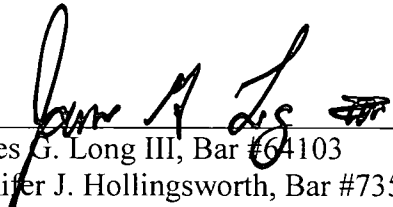
Trident's final argument in support of rehearing is no more than the same argument made on appeal. Trident wrongly asserts that Roper St. Francis was required to show a bed need existed for its project, when in fact the need for the beds had previously been addressed and approved – Roper St. Francis is transferring licensed beds and has no impact on the bed need formula set forth in the South Carolina Health Plan's bed inventory. Trident offers no law in support of its position to obtain rehearing and does no more than disagree with the learned decision of this Court. Having no basis on which to determine that this Court has overlooked or misapprehended any matter before it, the Petition should be denied.



**CONCLUSION**

Roper St. Francis respectfully urges this Court to deny the Petition for Rehearing.

Respectfully submitted,

  
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April 10, 2015  
Columbia, South Carolina



THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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

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

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

v.

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

Of whom South Carolina Department of Health  
and Environmental Control is the ..... Respondent, and

Roper St. Francis Hospital - Berkeley d/b/a Roper  
St. Francis Hospital is the ..... Respondent-Appellant.

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

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

v.

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Of whom South Carolina Department of Health  
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Roper St. Francis Hospital - Berkeley d/b/a Roper  
St. Francis Hospital is the ..... Respondent-Appellant.



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

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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 the ..... Respondent, and

Trident Medical Center, LLC, is the ..... Appellant-Respondent.

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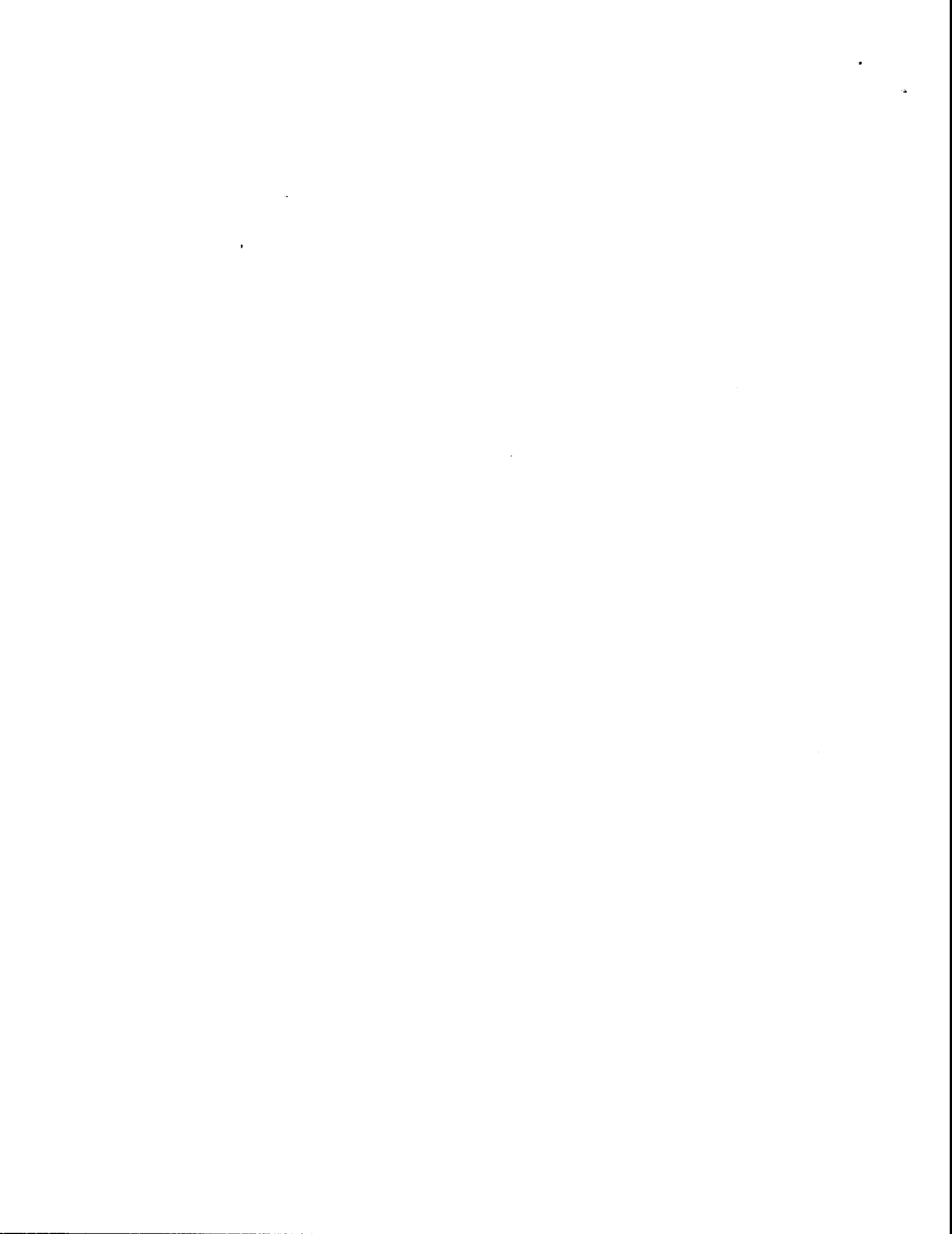
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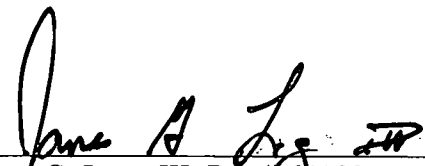
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I, James G. Long III, hereby certify that on April 10, 2015, I caused a copy of Respondents-Appellants CareAlliance Health Services and Roper St. Francis Hospital – Berkeley’s Return to Petition for Rehearing to be served on the following by hand delivery addressed as follows:

David B. Summer, Jr., Esquire  
William R. Thomas, Esquire  
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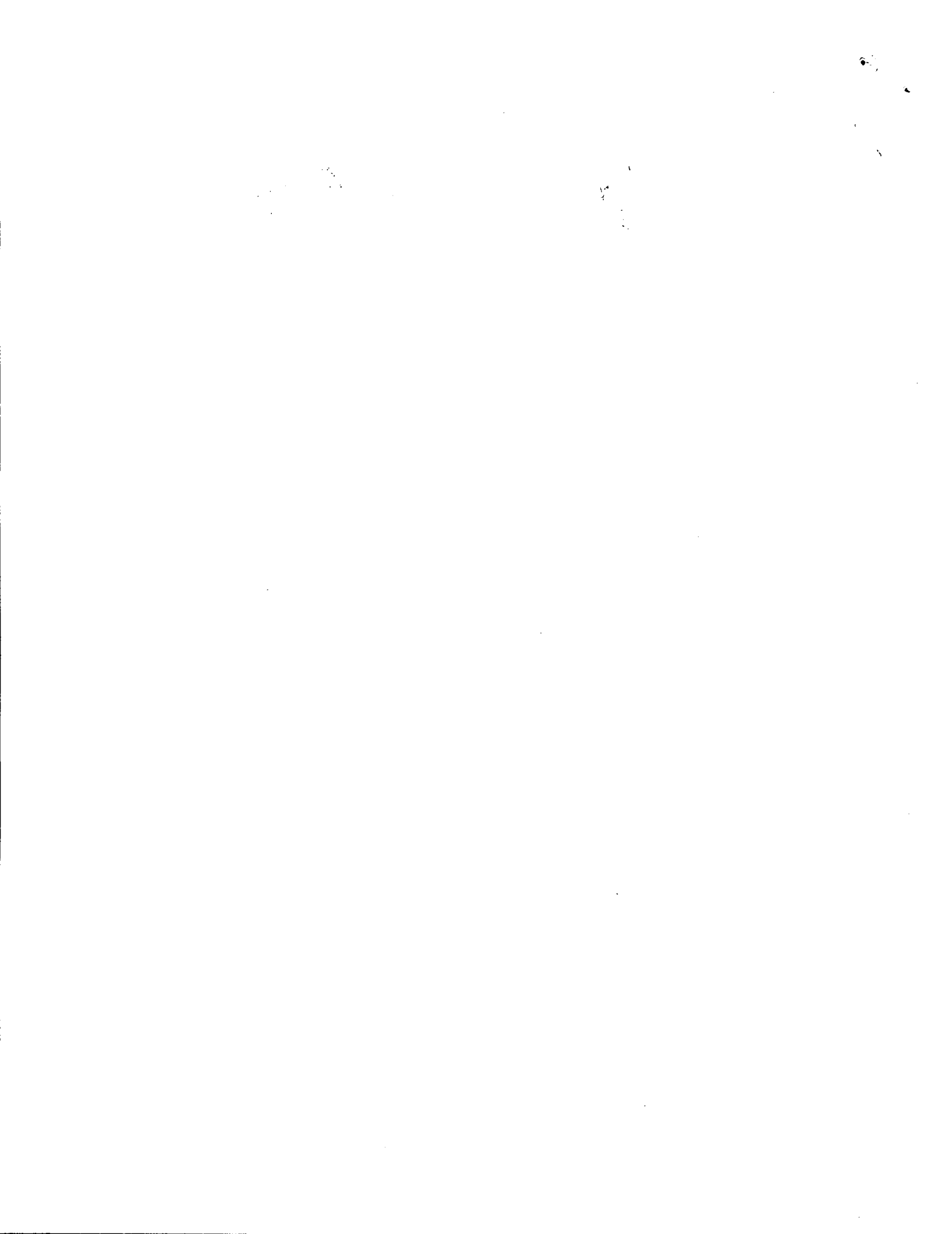




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*Attorneys for Respondents/Appellants*



James G. Long III  
Member  
Admitted in SC

April 10, 2015

**VIA HAND DELIVERY**

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

RECEIVED  
APR 10 2015  
SC Court of Appeals

**Re: Trident Medical Center v. SCDHEC  
Appellate Case No. 2012-213506**

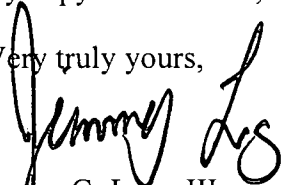
Dear Ms. Kitchings:

Pursuant to the Court's instructions, enclosed please find the original and seven (7) copies of Respondents-Appellants CareAlliance Health Services and Roper St. Francis Hospital – Berkeley's Return to Petition for Rehearing and Proof of Service. Please return a file-stamped copy to me via our courier.

Charleston  
Charlotte

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

Very truly yours,



James G. Long III

Columbia  
Greensboro  
Greenville  
Hilton Head  
Myrtle Beach  
Raleigh

JGL/ect  
Enclosures

cc: David B. Summer, Jr., Esquire (via hand-delivery)  
Faye A. Flowers, Esquire (via hand-delivery)  
William R. Thomas, Esquire (via hand-delivery)  
Ashley C. Biggers, Esquire (via hand-delivery)  
Vito M. Wicevic, Esquire (via hand-delivery)  
W. Marshall Taylor, Jr., Esquire (via hand-delivery)

