



On March 4, 2015, Providence filed a Motion to Compel discovery. On March 5, 2015, the Court issued an Order denying LMC's Motion to Stay the proceedings in this case. On March 16, 2015, LMC filed a Memorandum in Response to Motion to Compel. In response, on March 20, 2015, Providence filed a Memorandum in Further Support of Motion to Compel. On March 25, 2015, LMC filed a letter in reply to Providence's Memorandum in Further Support of Motion to Compel. On April 8, 2015, the Court held a hearing on Providence's Motion to Compel.

### DISCUSSION

As the Court already found in its Order Denying LMC's Motion to Dismiss, S.C. Code Ann. §§ 44-7-110 et seq. (CON Act) was in effect during the period at issue and applies to LMC's Open Heart Suite project. Also, as the Court found in its Amended Order Granting Partial Summary Judgment, LMC is a "health care facility" pursuant to S.C. Code Ann. § 44-7-130(10) (Supp. 2013); and its Open Heart Suite would be LMC's second open heart surgery operating room, thus expanding on its existing open heart surgery services. The standards and criteria for open heart surgery services is prescribed in the State Health Plan on pages VIII-17 to VIII-21. And as the Court noted in that same Order, DHEC, at the September 3, 2014 hearing, conceded that had its director not issued the June 28, 2013 letter regarding the purported suspension of the CON program, DHEC would have required a CON for the Open Heart Suite because it "would have been an expansion of an existing service that has standards in the State Health Plan." Thus, the only remaining question is whether LMC made a capital expenditure for the Open Heart Suite project. If it did, then a CON would be required pursuant to Section 44-7-160(4) (Supp. 2013).

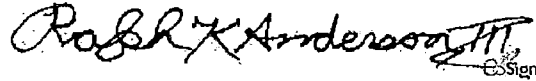
At the April 8, 2015 hearing on Providence's Motion to Compel, counsel for LMC, while preserving other issues for appeal, stipulated that LMC made a capital expenditure for the operation of a second open heart surgery suite. As this resolved any remaining factual dispute in this matter, Providence then moved for summary judgment. "Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed." *Garvin v. Bi-Lo, Inc.*, 343 S.C. 625, 628, 541 S.E.2d 831, 833 (2001). Because LMC stipulated to having made a capital expenditure for the operation of a second open heart surgery suite, summary judgment is appropriate. Because LMC made a capital expenditure, LMC was required to obtain a CON as a matter of law. Therefore, I find

that LMC is required to obtain a CON to expand its open heart surgery services and operate its Open Heart Suite.

**ORDER**

**IT IS THEREFORE ORDERED** that Providence's Motion for Summary Judgment is **GRANTED**.

**AND IT IS SO ORDERED.**

A handwritten signature in black ink that reads "Ralph King Anderson, III". The signature is written in a cursive style. To the right of the signature, there is a small, faint logo that appears to be "eSign".

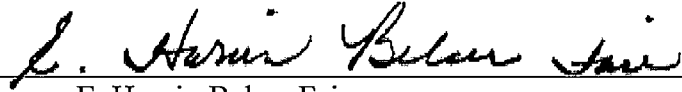
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Ralph King Anderson, III  
Chief Administrative Law Judge

April 29, 2015  
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

A handwritten signature in cursive script that reads "E. Harvin Belser Fair". The signature is written in black ink and is positioned above a horizontal line.

E. Harvin Belser Fair  
Judicial Law Clerk

April 29, 2015  
Columbia, South Carolina