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S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
In the Supreme Court
Case No.: 2015-001225

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

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

Trident Medical Center, LLC, d/b/a
Berkeley Medical Center
....Petitioner,

v.

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

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

Trident Medical Center, LLC, d/b/a
Berkeley Regional Medical Center,
....Petitioner,

v.

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

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

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

V.

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

Of Whom Trident Medical Center, LLC is the
....Petitioner.

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL'S RETURN TO PETITION FOR WRIT OF CERTIORARI

The South Carolina Department of Health and Environmental Control ("Department") offers this return to the petition for writ of certiorari submitted by Trident Medical Center, LLC, d/b/a Berkeley Medical Center ("Trident").

QUESTION PRESENTED

Did the Court of Appeals properly uphold the uniform and historic interpretation of the State Health Plan as applied by the Department and affirmed by the Administrative Law Court ("ALC")?

FACTS

This case is about a disappointed competitor wanting to undermine and destroy a long-settled interpretation of the State Health Plan. Since 1987, the Department has routinely and consistently interpreted and applied the State Health Plan to authorize approval of Certificate of Need ("CON") applications for the construction of new hospitals through the transfer of licensed beds or the transfer of additional institutional

bed need, or a combination of both. The Department has approved as consistent with the State Health Plan the construction of new hospitals in Anderson, Charleston, Georgetown, Greenville, and Spartanburg Counties through the transfer of hospital beds from affiliated entities.

In 2009, when Lexington Medical Center challenged the Department's approval of a CON for the construction of Palmetto Health Baptist Parkridge ("Parkridge") hospital in northwest Richland County through the transfer of existing licensed beds from Palmetto Health Baptist hospital in downtown Columbia to Parkridge, the South Carolina Board of Health and Environmental Control ("Board") issued a Decision determining that the State Health Plan allows for the approval of a CON application for the transfer of licensed general acute care hospital beds to establish a new hospital.

The Department's interpretation of the State Health Plan has been consistent over time and is well known by the regulated community. Trident now seeks to destroy that interpretation in order to prevent competition from Roper St. Francis Hospital – Berkeley so that Trident can become the sole hospital provider in Berkeley County, a county that has no hospital within its borders to serve its residents.

ARGUMENT

As rightly acknowledged by Trident, this case bears none of the hallmarks of a case worthy of review by this Court.[1] It involves no novel questions of law, no substantial constitutional issues, no federal question, and no conflict with a prior decision of this Court. The Court of Appeals gave this case most careful consideration, and affirmed the ALC in a unanimous opinion. Following consideration of Trident's petition

[1] This Court previously denied Roper's and DHEC's petition for certification of Trident's appeal pursuant to Rule 204(b), SCACR, by order dated March 20, 2014.

for rehearing, the Court of Appeals re-filed its opinion with minor changes to references to facts in the record. The Department, the ALC, and the Court of Appeals have consistently upheld the Department's interpretation of the State Health Plan in this case, a document the Department is statutorily charged with preparing and adopting. S.C. Code Ann. § 44-7-180. No special or important reasons exist warranting the grant of certiorari for further review of the Department's interpretation. Rule 242(b), SCACR.

The State Health Plan is neither a statute nor a regulation. It is prepared by Department staff, with the advice of the State Health Planning Committee, and presented to the Board at least once every two years for final revision and adoption. S.C. Code Ann. § 44-7-180. Although not required by statute to be adopted in regulation, the State Health Plan is an enforceable document. *See MRI at Belfair v. S.C. Dep't of Health & Envtl. Control*, 379 S.C. 1, 6, 664 S.E.2d 471, 474 (2008) (holding the standards for MRIs in the State Health Plan did not violate the CON Act, and the Board did not exceed its statutory authority in granting the CON application in light of the State Health Plan's standards); *Cf Spectre, LLC v. S.C. Department of Health & Envtl. Control*, 386 S.C. 357, 373, 688 S.E.2d 844, 852 (2010) (holding the coastal management program, though not adopted through regulation, was enacted in accordance with the specific procedures set forth by the Legislature in Section 48-39-90, and was therefore valid and enforceable). As the agency charged by statute with developing and finally adopting the State Health Plan, the Department is in the best position to interpret the State Health Plan, and is entitled to considerable deference in its interpretation.

The United States Supreme Court's recent opinion in *King v. Burwell*, 576 U.S. ___, (2015), is instructive in this matter. The Court in that case reviewed a challenge to

the Patient Protection and Affordable Care Act ("ACA") by individuals claiming they were not entitled to receive tax credits under the ACA, and therefore were exempt from the Act's coverage requirements, because Virginia's Exchange did not qualify as "an Exchange established by the State under [42 U.S.C. §18031]," since Virginia's Exchange was established by the Federal government. The Court rejected the petitioners' plain language argument. While acknowledging that the "arguments about the plain meaning of Section 36B are strong," the Court held that "[i]n this instance, the context and structure of the Act compel us to depart from what would otherwise be the most natural reading of the pertinent statutory phrase." *Id.* at ____. As noted by the Court, "oftentimes the 'meaning – or ambiguity – of certain words or phrases may only become evident when placed in context.'" *Id.* at ___ (*quoting FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132 (2000)).

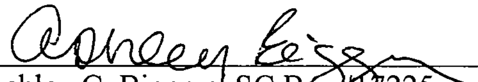
Similarly, the language used in the State Health Plan must be read in context in order to determine its meaning – or ambiguity. The Board, the ALC, and the Court of Appeals reviewed the language of the State Health Plan in its context, and all determined the Department's interpretation to be reasonable and consistent. There is no compelling reason to overturn this well-settled interpretation. *See Kiawah Dev. Partners II v. S.C. Dep't of Health & Envtl. Control*, 411 S.C. 16, 34, 766 S.E.2d 707, 718 (2014) ("As repeatedly stated in our decisions, our deference doctrine provides that courts defer to an administrative agency's interpretations with respect to the statutes entrusted to its administration or its own regulations 'unless there is a compelling reason to differ.'") (citations omitted).

Trident and Roper filed their applications in 2008, and the residents of Berkeley County are still without a hospital. Seven years of review and litigation is long enough. It is time to allow Roper and Trident to build these hospitals to give the residents of Berkeley County access to in-county hospital services.

CONCLUSION

For the foregoing reasons, the Department respectfully requests the Court deny Trident's petition for writ of certiorari.

Respectfully submitted,



Ashley C. Biggers, SC Bar #17225
Vito M. Wicevic, SC Bar #100265
South Carolina Department of Health and
Environmental Control
2600 Bull Street
Columbia, South Carolina 29201
TEL: (803) 898-3350
FAX: (803) 898-3367

Attorneys for Respondent South Carolina Department of Health and Environmental Control

July 6, 2015

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PROOF OF SERVICE

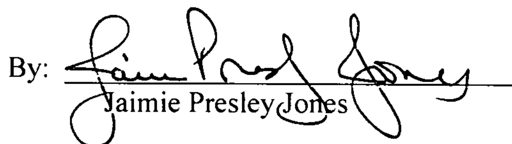
I, Jaimie Presley Jones, with the Office of General Counsel for the South Carolina Department of Health and Environmental Control, do hereby certify that I have on this 6th **day of July, 2015**, served a copy of ***SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL'S RETURN TO PETITION FOR WRIT OF CERTIORARI*** upon all parties and counsel of record in the above-captioned case, via United States Mail, First Class, postage prepaid, addressed as follows:

Parties of Record

James G. Long, III, Esquire
Jennifer J. Hollingsworth, Esquire
Nexsen Pruet, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, SC 29202

David B. Summer, Jr., Esquire
William R. Thomas, Esquire
Faye A. Flowers, Esquire
Parker Poe Adams & Bernstein LLP
1201 Main Street, Suite 1450 (29201)
Post Office Box 1509
Columbia, SC 29202

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

By: 
Jaimie Presley Jones

Date: July 6th, 2015