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SC Court of Appeals

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

Grand Strand Regional Medical Center, LLCRespondent,
v.

South Carolina Department of Health and
Environmental Control.....Respondent below.

Case No. 2012-ALJ-07-0091-CC

Grand Strand Regional Medical Center, LLCRespondent,
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 BRIEF OF RESPONDENT SOUTH CAROLINA DEPARTMENT OF
HEALTH AND ENVIRONMENTAL CONTROL**

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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

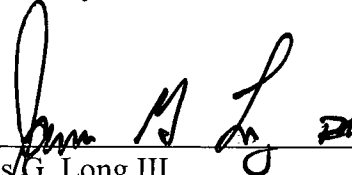
The Department asserts in its Initial Brief that the Administrative Law Court’s (“ALC”) Amended Final Order and Decision does not necessitate remand to the Department as argued by CRCC in its Initial Brief at Section II. Despite this assertion, the Department makes no reference to any evidence in the 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. (R. pp. 3295-3297). 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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February 4, 2015

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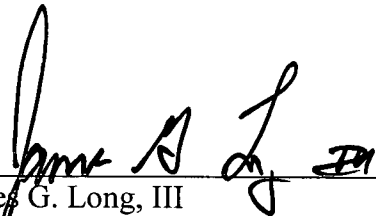
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CERTIFICATE OF COUNSEL

The undersigned certifies that the *Reply Brief of Appellant Carolina Regional Cancer Center to Initial Brief of Respondent South Carolina Department of Health and Environmental Control* complies with Rule 211(b), SCAR.



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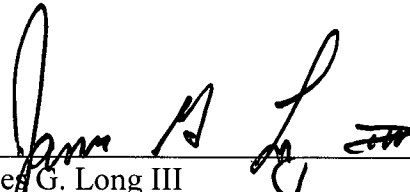
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PROOF OF SERVICE

I, James G. Long, III, hereby certify that on February 4, 2015, I caused a copy of the *Reply Brief of Appellant Carolina Regional Cancer Center to Initial Brief of Respondent South Carolina Department of Health and Environmental Control* to be served on all parties of record via hand-delivery, addressed as follows:

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