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In The Supreme Court

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S.C. Supreme Court

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Administrative Law Judge

Opinion No. 4873 (S.C. Ct. App. filed Aug. 17, 2011)

MRI at Belfair, LLC, ..... Petitioner,

v.

South Carolina Department of Health and Environmental  
Control, and Coastal Carolina Medical Center, ..... Respondents.

**COASTAL CAROLINA MEDICAL CENTER'S  
RETURN TO THE PETITION  
FOR WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

1. Did the Court of Appeals correctly apply the substantial evidence rule to affirm the Administrative Law Court's factual findings that the changes to the MRI project are not substantial?
2. Did the Court of Appeals correctly affirm the Administrative Law Court's substantial change analysis?
3. Did the Court of Appeals correctly reject Belfair's burden of proof claim because it was not raised or ruled upon below?
4. Did the Court of Appeals correctly decline to address Belfair's claim that the sale of the hospital voided the MRI project's Certificate of Need?

## STATEMENT OF THE CASE

This matter is before the Court pursuant to the petition filed by MRI at Belfair, LLC ("Belfair") on January 17, 2012, seeking a writ of certiorari to the Court of Appeals. Belfair seeks the reversal of the August 17, 2011 opinion of the Court of Appeals affirming the Final Order of the Administrative Law Court ("ALC") issued on November 24, 2009. The ALC's Final Order found that the changes to Coastal Carolina Medical Center's ("Coastal") MRI project are not substantial under 24A S.C. Code Ann. Regs. 61-15 § 605 and, therefore, the MRI project's Certificate of Need ("CON") is not void.

## STATEMENT OF THE FACTS

### I. CERTIFICATE OF NEED PROGRAM

#### A. Certificates of Need

The State Certification of Need and Health Facility Licensure Act (the "CON Act") regulates the establishment of medical facilities and projects. S.C. Code Ann. §

44-7-110 *et seq.* The purpose of the CON Act is to "promote cost containment, prevent unnecessary duplication of health care facilities and services, guide the establishment of health facilities and services which will best serve public needs, and ensure that high quality services are provided in health facilities in this State." S.C. Code Ann. § 44-7-120. To accomplish this statutory purpose, DHEC approves or denies requests for CONs to establish medical projects. S.C. Code Ann. § 44-7-150.

A CON must be obtained from DHEC before certain medical facilities can be constructed, before certain capital expenditures can be made by health care facilities, and before certain medical equipment can be acquired. S.C. Code Ann. § 44-7-160. To obtain a CON, a would-be provider submits a CON application to DHEC that describes how the proposed project meets the applicable project review criteria. S.C. Code Ann. § 44-7-200(A).

The applicable criteria vary according to the type of medical facility or service proposed, but often includes analysis of the following health care planning concepts: need for the service, adverse impact on existing providers, financial feasibility of the project, cost containment, and whether the project increases accessibility for patients. 24A S.C. Code Ann. Regs. 61-15 § 802. If DHEC finds that the proposed project complies with the project review criteria, which includes compliance with the State Health Plan, DHEC issues a CON for the project. S.C. Code Ann. § 44-7-210.

**B. Changes to proposed CON projects**

A CON is project specific. A CON is "valid only for the project described in the application . . . ." S.C. Code Ann. § 44-7-230(A). However, the CON Act recognizes that proposed projects may change before they are implemented, and allows

that projects can be "modified in accordance with regulations." *Id.* The relevant regulation regarding changes to CON projects provides as follows:

If an applicant amends or alters his project after receipt of a CON, the Department will decide whether or not the amendment is substantial and thereby constitutes a new project.

24A S.C. Code Ann. Regs. 61-15 § 605. If the amendments to a proposed CON project are substantial, the project is considered a "new project," the CON for the project is voided, and the new project must begin the CON approval process anew. R. at 33.<sup>1</sup> On the other hand, if the amendments to the CON project are not substantial, the applicant retains the CON and proceeds with implementation of the project. *Id.*

## **II. FACTUAL AND PROCEDURAL BACKGROUND**

### **A. The parties**

Coastal is a 41-bed hospital in Hardeeville that currently operates, and desires to keep operating, an MRI on its campus. R. at 27. Having an on-campus MRI allows Coastal to provide MRI services to hospital patients when they need it – day or night. R. at 250 & 580. Having an on-campus MRI allows Coastal's patients access to this important diagnostic service without being subjected to ambulance transports that take them away from the hospital's safety net of providers and services. R. at 565.<sup>2</sup>

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<sup>1</sup> This citation and others in this return are to the Record and the briefs filed with the Court of Appeals as Belfair did not include the Record or the briefs in the Appendix. Rule 242(e)(1), SCACR.

<sup>2</sup> Belfair contends that the original MRI project was intended to operate at Coastal 24 hours a day, seven days a week. Appx. at 1, 3, 11, 12. Belfair confuses 24/7 *access* to MRI services with 24/7 *operation* of the MRI. The former was originally intended and ultimately achieved through implementation of the MRI project. The latter is an absurd notion.

Belfair is a free-standing MRI facility in Bluffton. R. at 27. Dr. Albert J. Borelli, Jr., a radiologist, is the owner of Belfair. *Id.* For years Belfair has opposed Coastal having a permanent, on-campus MRI. Belfair's desire to eliminate Coastal's MRI is difficult to understand as Belfair's patient volume far exceeds Coastal's volume, and Belfair's volume has increased even after Coastal began operating in 2006. R. at 31, 270-71 & 1520.

**B. Coastal's MRI project and Belfair's opposition**

In 2004, Coastal requested a CON from DHEC to establish an MRI project on Coastal's hospital campus. R. at 558-88. Coastal's CON application proposed that Coastal would purchase a new 1.5 Tesla General Electric MRI and house it in an addition to be constructed at the hospital. R. at 867. On November 22, 2004, the DHEC staff granted a CON to Coastal for the MRI project. R. at 877-79.

On November 24, 2004, Belfair filed a contested case challenging DHEC's decision to issue a CON to Coastal alleging that the MRI project did not satisfy the project review criteria. R. at 881. On November 10, 2005, the ALC granted partial summary judgment for Coastal and DHEC and determined, after an evidentiary hearing, that a CON for Coastal was appropriate because an on-site MRI was necessary to make MRI services "available" to Coastal's inpatients and emergency patients under the applicable State Health Plan standard. *MRI at Belfair, LLC v. S.C. Dep't of Health and Env'tl. Control and Coastal Carolina Med. Ctr.*, 04-ALJ-07-0399-CC (Nov. 10, 2005).

On July 3, 2006, after the DHEC Board affirmed the ALC's order issuing the CON to Coastal, Belfair appealed the DHEC Board's decision to the Court of Appeals.

As Belfair did not move the ALC or Court of Appeals to stay the decision to grant the CON to Coastal, DHEC issued the CON certificate for the MRI to Coastal on August 3, 2006. R. at 26.

On June 12, 2007, Coastal requested a determination from DHEC that changes Coastal desired to make to the MRI project would not be substantial under Regulation 61-15 § 605. R. at 26 & 1360-72.<sup>3</sup> Coastal proposed to purchase a refurbished 1.5 Tesla General Electric mobile MRI, that Coastal had been temporarily operating pursuant to DHEC approval, and permanently affix it to a location adjacent to the main hospital building, rather than constructing a new addition as originally planned. R. at 26.

On June 22, 2007, DHEC determined that Coastal's proposed changes to the MRI project would not be substantial changes to the MRI project. R. at 26 & 1380.<sup>4</sup> After receiving DHEC's determination, Coastal implemented its amended MRI project. R. at 26.

Coastal purchased a refurbished 1.5 Tesla General Electric MRI housed in a trailer and affixed it to a concrete pad adjacent to the hospital. *Id.* Coastal connected the MRI to the main building with a covered walkway that is approximately 15 yards long. R. at 229, 235 & 1522. The MRI is accessed by stairs or a lift. R. at 27-28 &

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<sup>3</sup> Belfair describes this request as coming "only two months before the expiration of the CON." Pet. at 7. Belfair neglects to mention that DHEC staff routinely grant six-month extensions to holders of CONs to establish their projects. 24A S.C. Code Ann. Regs. 61-15 §§ 601, 602 & 603.

<sup>4</sup> Belfair claims this decision was corrupted by DHEC's pro-hospital bias and dislike of Belfair's CON appeals. Pet. at 10-13. This claim is not supported by the Record. More importantly, the ALC's *de novo* decision and the Court of Appeals' opinion -- not the DHEC staff's decision -- are relevant on appeal. S.C. Code Ann. § 1-23-600(A); *Marlboro Park Hosp. v. S.C. Dep't of Health & Env'tl. Control*, 358 S.C. 573, 577-79, 595 S.E.2d 851, 853-54 (Ct. App. 2004).

1521. While the MRI is not within the main hospital building, it is a fully integrated part of the hospital. R. at 28.

Coastal submitted a final completion report to DHEC for the MRI project on June 26, 2007. R. at 26 & 1381-1416. DHEC reviewed the final completion report and closed its file on the CON on June 27, 2007. R. at 26. On July 1, 2007, Coastal was sold to the current owner of the hospital. R. at 34.

On July 30, 2007, Belfair filed a contested case to challenge DHEC's decision that the changes to the MRI project are not substantial under Regulation 61-15 § 605. R. at 1455-56. Belfair claimed that the MRI project Coastal proposed in 2004 is substantially different than the MRI project Coastal implemented in 2007, and, therefore, Coastal's CON should be voided, and MRI service at the hospital should cease. *Id.* This contested case was assigned civil action number 07-ALJ-07-0389-CC.

On July 14, 2008, the Supreme Court<sup>5</sup> remanded the original case, 04-ALJ-07-0399-CC, to the ALC to permit Belfair the opportunity to put up evidence that the MRI project did not comply with the project review criteria. *MRI at Belfair, LLC v. S.C. Dep't of Health and Envtl. Control*, 379 S.C. 1, 664 S.E.2d 471 (2008). After the remand, the ALC consolidated contested cases 04-ALC-07-0399-CC and 07-ALJ-07-0389-CC. R. at 27.

After appealing to obtain the right to challenge the MRI project's compliance with the project review criteria, Belfair decided that there was no case to be made on the project review criteria after all. On July 9, 2009, upon the motion of Belfair and with the consent of Coastal and DHEC, the ALC dismissed contested case 04-ALJ-07-

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<sup>5</sup> The Supreme Court previously took jurisdiction of this appeal from the Court of Appeals. R. at 27.

0399-CC. *Id.* The remaining case, 07-ALJ-07-0389-CC, proceeded to a hearing before the ALC on August 4-5, 2009 on Belfair's claim that the changes to the MRI project are substantial changes under Regulation 61-15 § 605. R. at 25.

C. The ALC's Final Order

After hearing the evidence offered by the parties at the contested case hearing, the ALC concluded that the amendments to the MRI project are not substantial and, therefore, Coastal's CON is not void. R. at 31, 33 & 34. To reach this conclusion, the ALC considered all the clinical, operational, and safety "differences" between the original and amended project alleged by Belfair, and considered whether the changes to the MRI project substantially changed the project's compliance with the project review criteria. R. at 31 & 33.

1. Clinical, operational, and safety issues

The ALC determined that the MRI units in the original and amended projects are substantially the same. The MRI units are both 1.5 Tesla magnets manufactured by General Electric. R. at 28. Both units are short bore systems with the same diameter patient tubes. *Id.* The MRI units have the same number of channels, similar software, and substantially the same complement of coils. *Id.*

The ALC found that Belfair's allegations regarding differences in minor equipment were either contrary to the evidence or unsupported by the evidence. R. at 28, n. 6. The ALC also found that there was no persuasive evidence offered in support of Belfair's claim that the manner of access to the back of the MRI units "would result in substantial clinical or operational differences between these MRI units." *Id.*

The ALC found that the MRI unit's slightly different gradient strength would not result in a meaningful difference in wait time for patients or image quality. R. at 28-29. The ALC determined that the amended project's lack of MRI-safe monitoring is of no consequence because the original project did not include this equipment. R. at 29. Finally, the ALC rejected Belfair's claims regarding alleged differences related to patient safety. R. at 29-30 (the amended project's code blue procedure, lift, lift opening, and distance from the emergency room do not make it less safe than the proposed project).

## 2. Project review criteria

The ALC made findings that the changes to the project did not substantially change the project's compliance with the project review criteria. The ALC found that compliance with the need criterion did not change because the original project projected to serve, and the amended project did serve, Coastal's inpatients, outpatients, and emergency patients from Jasper County and parts of Beaufort County. R. at 30. The ALC held that geographic accessibility of the MRI project did not change because the project is, after all, still located on the hospital campus. *Id.* Financial accessibility did not change because the MRI project was projected to serve the same variety of payors that the MRI project currently serves. *Id.*

The ALC found that adverse impact did not change as the original project was projected not to harm Belfair, and the data offered at trial established that Coastal's MRI has not harmed Belfair. R. at 31. In fact, even after Coastal's MRI began operating, Belfair's volume continued to increase. *Id.* Recent interviews with physicians in the area, wherein they reaffirmed their support for the MRI project after

the changes, established that there is no change in the project's acceptability. R. at 30. Finally, the ALC found that the lower overall cost of the project had a positive effect upon the project's compliance with the cost containment and financial feasibility criteria, and thus these changes were not substantial. R. at 30-31.

**D. Belfair's appeal and the Court of Appeals' opinion**

Belfair claimed that the ALC's substantial change analysis was erroneous because it considered the project review criteria and allegedly failed to consider the items listed in S.C. Code Ann. § 44-7-230(A). Appx. at 5. Belfair also claimed that the ALC's factual findings regarding the insubstantial nature of the changes to the MRI project were not supported by substantial evidence. Appx. at 9-10. Finally, Belfair claimed, for the first time, that the ALC applied an inappropriate burden of proof in the Final Order. Appx. at 8-9.

The Court of Appeals rejected Belfair's claim that the ALC's substantial change analysis was flawed. Appx. at 5-6. The Court of Appeals affirmed the ALC's factual findings that the changes to Coastal's MRI project are not substantial. Appx. at 9-10. More particularly, the Court of Appeals found that there was substantial evidence supporting the ALC's factual findings that the original project and the amended project are substantially the same clinically and operationally, and that the changes to the MRI project do not substantially change the project's compliance with the relevant project review criteria. *Id.*

Finally, the Court of Appeals held that Belfair's burden of proof claim failed because it was not raised below, and declined to address Belfair's transfer of ownership

claim because disposition of the other claims made this issue unnecessary to address. Appx. at 8-11.

Belfair requested a rehearing by the Court of Appeals' decision, but that request was denied. Thereafter, Belfair filed the instant petition for a writ of certiorari.

## ARGUMENT

### **I. THE COURT OF APPEALS PROPERLY AFFIRMED THE FACTUAL FINDINGS THAT THE CHANGES TO THE MRI PROJECT ARE NOT SUBSTANTIAL**

Belfair contends that the Court of Appeals erred when it affirmed the ALC's factual findings that the changes to the MRI project are not substantial. Pet. at 13-14. The ALC's factual findings are affirmed on appeal if there is substantial evidence in the record to support them. *MRI at Belfair, LLC v. S.C. Dep't of Health & Envtl. Control*, 379 S.C. 1, 6, 664 S.E.2d 471, 474 (2008); *Dorman v. S.C. Dep't of Health & Envtl. Control*, 350 S.C. 159, 165, 565 S.E.2d 119, 122 (Ct. App. 2002).

Belfair's argument regarding the affirmed factual findings ignores the substantial evidence rule and instead relies upon sweeping generalizations and adjectives. The changes to the MRI project are "dramatic." Pet. at 13. Failing to recognize these changes "defies all logic and reason." *Id.* The equipment change is substantial "on its face." Pet. at 14. The changes are "manifestly" substantial. *Id.*

During the *de novo* hearing, the ALC looked behind the generalizations and adjectives offered by Belfair to analyze whether the changes in the MRI project's equipment, location, and costs are substantial in any meaningful way. Appx. at 9-10. The ALC found these changes are not substantial clinically, operationally, from the

perspective of patient safety, or from the perspective of compliance with the project review criteria.<sup>6</sup> *Id.*

When Belfair challenged the ALC's factual findings, the Court of Appeals found that the findings are supported by substantial evidence in the record. *Id.* Because the review of the ALC's findings by the Court of Appeals comports with the substantial evidence rule, the Court of Appeals did not err.<sup>7</sup>

## **II. THE COURT OF APPEALS PROPERLY AFFIRMED THE ALC'S SUBSTANTIAL CHANGE ANALYSIS**

### **A. Use of comparative evidence of compliance with the project review criteria is appropriate**

Belfair claims that the Court of Appeals erred when it affirmed the ALC's consideration of the project review criteria as part of the substantial change analysis. Pet. at 14-18. Belfair's claim of legal error is built around the faulty premise that the ALC applied the project review criteria in the same manner that DHEC applies project review criteria to a new CON project, and thereby excused what would otherwise have been substantial changes to the MRI project. *Id.*

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<sup>6</sup> For example, Belfair alleges that moving the MRI from a place "as close as possible" to a place "as far as possible" from the ER is a substantial change "on its face." Pet. at 14. The ALC made a factual finding that this change "would [not] reduce the standard of care of emergency room patients. . ." Appx. at 10. This finding, like the other challenged findings, is supported by substantial evidence in the record. R. at 232-35 & 279-81.

<sup>7</sup> In this section of the petition, Belfair repeats the allegation that the MRI project changed because it was no longer a "24/7 operation," and adds that DHEC should have inquired about this "change." Pet. at 14. The allegation that the MRI project was originally intended to operate all day, every day is not supported by the Record. More importantly, the ALC's *de novo* decision and the Court of Appeals' review of same -- not what the DHEC staff did or did not do -- are relevant on appeal.

Belfair alleges that the ALC improperly found no substantial change through the artifice of determining the amended MRI project "meets" or "satisfies" the project review criteria or by deeming there to be no substantial change because "the changes would be acceptable if they appeared in a new project application." Pet. at 14-18 Belfair gives this faulty premise the name -- "'secret de facto' CON." Pet. at 18.

The Court of Appeals rejected this claim because, simply put, *the ALC did not do what Belfair says it did*. The Court of Appeals' opinion quotes the operative language from the ALC's Final Order that describes what the ALC actually did with the project review criteria:

[t]his [c]ourt [I]ncluded an analysis of whether the amended project meets those same project review criteria it originally met in substantially the same way.

Appx. at 6 (emphasis in original). The Court of Appeals then held that this language reflected that the ALC had engaged in a "permissible comparison of the original MRI project's compliance with the project review criteria to the amended MRI project's compliance with the same criteria." *Id.* In other words, the Court of Appeals correctly found the ALC did not err because the ALC did not impermissibly *apply* the project review criteria, as Belfair alleges, to approve a new project.<sup>8</sup>

Belfair contends that section 44-7-230(A) forbids consideration of the project review criteria as part of the substantial change analysis. Pet. at 14-18. This claim too is afflicted by the faulty premise. Pet. at 15 (arguing that the project review criteria cannot be considered pursuant to the "other factors as set forth in the application"

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<sup>8</sup> Coastal's final brief provides an example that demonstrates the difference between applying the project review criteria to a new project and using evidence of comparative compliance with the project review criteria in the substantial change analysis. Coastal Final Br. at 12-13.

clause of section 230(A) because that would allow the ALC to improperly determine a new project "meets some CON Project Review Criteria discussed in the Application."). Again, as set forth above, it is abundantly clear that the ALC does not use the project review criteria in the manner Belfair alleges, and thus the Court of Appeals did not err when it affirmed the ALC's use of the criteria.<sup>9</sup>

Moreover, as the Court of Appeals correctly notes, Belfair's claim ignores both the language of section 230(A), and how section 230(A) and section 44-7-200(A) work together. Appx. at 6-7. Section 200(A) requires a CON applicant to address how its proposed project complies with the project review criteria. *Id.* Then, the "other factors as set forth in the application" clause of section 230(A) incorporates the project's compliance with the criteria into the list of items that must remain substantially the same to retain the CON. *Id.* For this additional reason, the Court of Appeals did not err.

**B. Considering whether changes to the MRI project changed the project's compliance with the criteria did not undermine the substantial evidence analysis**

Belfair claims that the Court of Appeals' substantial evidence analysis is flawed because it "hinges on applying the Project Review Criteria." Pet. at 18-19. Belfair is wrong for two reasons.

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<sup>9</sup> In the midst of this argument, Belfair challenges the Court of Appeals' finding that Belfair's dismissal of its original contested case conceded Belfair's claim that the MRI project, as set forth in the CON application, complies with the relevant project review criteria. Pet. at 15-16. The Supreme Court remanded the Belfair's original case back to the ALC to allow this claim to be heard on the merits. Upon Belfair's motion, this case and this claim were dismissed with prejudice. R. at 27. This dismissal resulted in the DHEC decision that the MRI project complied with the project becoming final, and therefore, the Court of Appeals did not err.

First, even if the Court of Appeals' substantial evidence analysis did hinge, or rely solely, upon evidence comparing the original MRI project's compliance with the project review criteria to the amended MRI's project's compliance with the same criteria, this would not be problematic. Exclusive use of this comparative evidence to support the substantial evidence determinations would not be problematic because, as set forth above, consideration of this evidence is appropriate in the substantial change analysis.

Second, review of the opinion reveals, quite plainly, that the Court of Appeals did not rely solely upon comparative evidence of compliance with the project review criteria to support its substantial evidence determination. In fact, nearly all the evidence the Court of Appeals cites to affirm the ALC's factual findings consist of other types of evidence from the Record. Appx. at 9-10. The Court of Appeals relies upon evidence from witnesses, including Dr. Borelli, that the original and implemented MRI projects have virtually identical MRI units with substantially similar scan times and image quality, and that the other changes in the project did not substantially change the project from a clinical, operational, or patient-safety perspective. *Id.* Finally, the Court of Appeals looks to Coastal's original CON application to find substantial evidence that the scope of services, particularly with respect to scanning unstable patients, has not changed. *Id.*

### **III. THE COURT OF APPEALS CORRECTLY DETERMINED THAT BELFAIR'S BURDEN OF PROOF CLAIM WAS NOT PRESERVED**

Belfair claims that the Court of Appeals erred when it held that Belfair's burden of proof claim was not preserved for appellate review. Belfair Pet. at 19-20. The Court

of Appeals found this claim was not preserved because Belfair failed to raise it in Belfair's motion for reconsideration. Appx. at 8-9. Belfair contends it preserved the burden of proof claim by offering its "burden and approach" to the ALC in its opening and closing statements, the testimony it elicited from a DHEC witness, and the proposed order it submitted to the ALC. Pet. at 19-20. Belfair's claim fails for two reasons.

First, this claim could not be preserved in the manner Belfair suggests because the statements, testimony, and submission of the proposed order relied upon by Belfair for preservation occurred *well before* the ALC issued its Final Order that contains the allegedly impermissible burden of proof. Second, review of the sources of purported preservation offered by Belfair reveals nothing that comes remotely close to Belfair actually and specifically raising the burden of proof issue to the ALC, much less obtaining a ruling upon it. Belfair appears to argue some kind of preservation by implication, and that is not how issue preservation works in South Carolina courts. Because Belfair failed to raise this claim, or get it ruled upon by the ALC, the Court of Appeals correctly refused to review it on appeal.

#### **IV. THE COURT OF APPEALS CORRECTLY DECLINED TO ADDRESS BELFAIR'S VOID-FOR-SALE CLAIM**

The sale of an entity holding a CON for a proposed project will void the CON. 24A S.C. Code Ann. Regs. 61-15 § 604. It is undisputed, however, that if the

proposed project is implemented and the CON is closed by DHEC *before the sale*, the project is not affected by the sale. R. at 453-55.<sup>10</sup>

Belfair's void-for-sale claim is based upon the notion that the MRI project could not have been implemented before the July 2007 sale if DHEC had properly decided the substantial change issue in June 2007. Belfair Final Br. at 23. That is, if DHEC had determined that the changes to the MRI project were substantial in June, the MRI project could not have been implemented in June, and then the sale in July would have voided Coastal's CON. *Id.* at 24.

Belfair's void-for-sale claim, therefore, does not succeed unless Belfair's substantial change claim succeeds.<sup>11</sup> As the Court of Appeals correctly found that Belfair's other claims of error are without merit, it was not an error for the Court of Appeal to decline to reach this claim.

### CONCLUSION

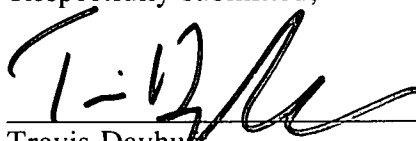
Because the Court of Appeals properly affirmed the ALC's decision and otherwise committed no errors in this case, Coastal requests that Belfair's petition for writ of certiorari be denied.

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<sup>10</sup> If the law were otherwise, the sale of a hospital would result in the loss of all the medical projects obtained through past years' CONs.

<sup>11</sup> This claim is, therefore, superfluous as a finding of substantial change would void the CON for the MRI project regardless of whether that finding was followed by a sale of the hospital.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "T. Dayhue", written over a horizontal line.

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March 16, 2012

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Administrative Law Judge

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Opinion No. 4873 (S.C. Ct. App. filed Aug. 17, 2011)

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MRI at Belfair, LLC, ..... Petitioner,

v.

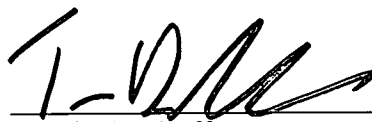
South Carolina Department of Health and Environmental  
Control, and Coastal Carolina Medical Center, ..... Respondents.

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CERTIFICATE OF COUNSEL

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The undersigned certifies that this Return to the Petition for Writ of Certiorari of Coastal Carolina Medical Center complies with South Carolina Supreme Court Order of August 13, 2007.



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Attorneys for Coastal Carolina Medical Center

March 16, 2012

Columbia, South Carolina

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

---

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Administrative Law Judge

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Opinion No. 4873 (S.C. Ct. App. filed Aug. 17, 2011)

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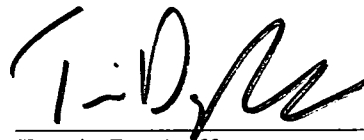
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CERTIFICATE OF COUNSEL

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The undersigned certifies that this Return to the Petition for Writ of Certiorari of Coastal Carolina Medical Center complies with Rule 211(b), SCACR.



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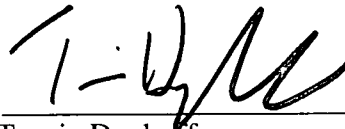
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**PROOF OF SERVICE**

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I certify that I have served Coastal Carolina Medical Center's Return to the Petition for Writ of Certiorari by hand delivery on March 16, 2012, addressed to their attorney of record, to Robert L. Widener, McNair Law Firm, P.A., 1221 Main Street, Ste. 1800, Columbia, SC 29201 and Ashley C. Biggers, Carlisle Roberts, and Kristen Lyn Pawlowski, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201.



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MAR 16 2012

**S.C. Supreme Court**

Columbia, South Carolina