

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable S. Phillip Lenski, Administrative Law Judge

Appellate Case No. 2015-000056
Lower Court Docket No. 11-ALJ-07-0575-CC

Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center
d/b/a Fort Mill Medical Center Respondent,

v.

South Carolina Department of Health and Environmental Control
and The Charlotte-Mecklenburg Hospital Authority, d/b/a Carolinas
Medical Center-Fort Mill Respondents,

Of whom The Charlotte-Mecklenburg Hospital Authority, d/b/a Carolinas
Medical Center-Fort Mill, is Appellant.

APPENDIX – VOLUME III OF IV

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Charlotte-Mecklenburg Hospital
Authority d/b/a Carolinas Healthcare
System and
Presbyterian Healthcare System, d/b/a
Presbyterian Hospital-York, LLC,

Petitioners,

v.

South Carolina Department of Health
and Environmental Control and Amisub
of South Carolina, Inc. d/b/a Piedmont
Healthcare System d/b/a Fort Mill
Medical Center,

Respondents.

Civil Action No. 06-ALJ-07-0713-CC

**PRESBYTERIAN HOSPITAL YORK,
LLC'S MEMORANDUM IN SUPPORT
OF MOTION FOR
SUMMARY JUDGMENT**

Petitioner Presbyterian Hospital York, LLC ("Presbyterian"), by and through its undersigned counsel, hereby submits this memorandum in support of its motion for summary judgment to which this is appended.

SUMMARY JUDGMENT STANDARD OF REVIEW

Summary judgment is proper when it is clear that "there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." *Koester v. Carolina Rental Ctr.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994). In determining whether any triable issue of fact exists, the evidence and inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. *McNair v. Rainsford*, 330 S.C. 332, 341, 499 S.E.2d 488, 493 (Ct. App. 1998). In *Baughman v. AT&T*, 306 S.C. 101, 410 S.E.2d 537 (1991), the South Carolina Supreme Court discussed the moving party's burden to support a summary judgment motion:

Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact. With respect to an issue upon which the nonmoving party bears the burden of proof, this initial responsibility "may be discharged by 'showing'—that is, pointing out to the [trial] court—that there is an absence of evidence to support the nonmoving party's case." The moving party need not "support its motion with affidavits or other similar materials negating the opponent's claim."

Id. at 115, 410 S.E.2d at 545 (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548 (1986)(citations omitted)).

Most recently, in *Catawba Indian Tribe of South Carolina v. State of South Carolina*, our Supreme court held:

A circuit court may properly grant a motion for summary judgment when "the pleadings, Depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP; *Tupper v. Dorchester County*, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997). In determining whether any triable issues of fact exist, the circuit court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. *Manning v. Quinn*, 294 S.C. 383, 385, 365 S.E.2d 24, 25 (1988).

Id., __ S.C. __, 642 S.E.2d 751, 753 (2007)

Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Ellis v. Davidson*, 358 S.C. 509, 595 S.E.2d 817 (Ct. App. 2004); *Tommy L. Griffin Plumbing & Heating v. Jordan, Jones & Goulding*, 351 S.C. 459, 470, 570 S.E.2d 197, 202 (Ct. App. 2002)(granting summary judgment where Plaintiff failed to prove evidence of engineer's negligence); and *Midland Mut. Life Ins. v. Harrell*, 331 S.C. 394, 397-98, 503 S.E.2d 189, 190-91 (Ct. App. 1998).

Finally, the issue of interpretation of a statute is a question of law for the court.

Charleston County Parks & Recreation Comm'n v. Somers, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995) ("The determination of legislative intent is a matter of law.") The Department has erroneously interpreted the S.C. Code Ann. § 44-7-110, et. seq. (2002). The State Certificate of Need and Health Facility Licensure Act (CON Act) and 24A S.C. Code Ann. Reg. 61-15 (Supp. 2006) ("CON Regs.") and the 2004-2005 State Health Plan.

FACTS/BACKGROUND

The following facts are undisputed: The 2004-2005 *South Carolina Health Plan* ("Plan") was adopted by the DHEC Board on October 15, 2004.¹ The Plan showed a general acute hospital bed need (hereinafter referred to as "hospital bed") of 64 additional acute beds for Piedmont Medical Center ("Piedmont"). See Exhibit G, Plan, p. II-14.² Piedmont is owned and operated by Amisub of South Carolina, Inc. ("Amisub"). Exhibit A, Grice deposition, Exhibit 4.³ Amisub is a subsidiary of Tenet Corporation. Piedmont is the only general acute care hospital located in York County. Exhibit G, p. II-14, Plan showing York county hospital.

On November 22, 2004, Fort Mill Medical Center, Inc. filed a certificate of need ("CON") application for the construction of a 64 acute care bed hospital to include one diagnostic cardiac catheterization laboratory, one magnetic resonance imaging ("MRI")

¹ The Plan was effective October 15, 2004 for all but the Open Heart Surgery and the Ambulatory Surgery sections, which sections became effective on January 14, 2005.

² The Plan, pages II-1 through II-19 were marked in pieces as Exhibits 16, 21 and 29 to the Grice Deposition. We have made those pages, which constitute the introduction to the Plan and the General Acute Hospital bed need portions of the Plan as a single exhibit for the convenience of the Court. This Court can and should take judicial notice of the Plan.

³ During the Phase 1 bifurcated discovery, the parties took 8 depositions and engaged in other discovery. The exhibits to those depositions were numbered consecutively and used, as appropriate, in each Deposition. Where a document was identified and marked as an exhibit in a Deposition, we have identified it using the witness it was marked with and citing the marked Deposition exhibit number.

unit and one computed tomography ("CT") scanner to be located at the intersection of SC Highway 160 and Highway 21 Bypass, Fort Mill, South Carolina ("2004 Application") pursuant to the Plan. On January 24, 2005, Fort Mill Medical Center withdrew its 2004 Application without being deemed complete, notice to affected parties being filed in the *State Register* (Exhibit C, Fechtel Deposition, Tr. p. 38, ll 6-16.) or any other party filing a competing application.

On the same day that Fort Mill Medical Center withdrew its 2004 Application, Amisub of South Carolina, d/b/a Fort Mill Medical Center ("FMMC") filed an application to construct and operate a 64 acute bed acute hospital ("January 2005 Application" or "First Application") in York County. Exhibit A, Grice Deposition, Exhibit 8. Notice of filing of the First Application and notice to affected persons that the First Application was deemed complete was published in the *State Register* February 25, 2005. Exhibit A, Grice Deposition, Exhibit 14.

On January 25, 2005, Joel C. Grice⁴ issued a memorandum that sought to clarify any confusion with the Plan to all licensed health care providers in South Carolina and to notify providers that

[i]n order to allow potential CON applicants to participate in the South Carolina health planning process equitably, general hospital bed needs indicated in the current 2004-2005 SC Health Plan will be determined as follows" ... (3) A CON for the net hospital bed need in a county may be requested and approved for any existing hospital located in the county, or for any other entity/applicant, for the development of a new hospital or an addition to an existing hospital within that county.

(Exhibit A, Grice deposition, Ex. 10) ("January 2005 Plan Interpretation") On March 3, 2005, Mr. Grice issued a second memorandum to all licensed health care providers in

⁴ Mr. Grice is the Director of Bureau of Health Facilities and Services Development (Exhibit A, Grice deposition, p. 6, ll. 23-25) and the person responsible for making CON determinations under the CON Act and the person that made the CON decisions in this case. (Exhibit A, Grice deposition, p. 8, ll. 2-10).

the State notifying that the January 2005 Plan Interpretation had been rescinded February 1, 2005 and that the Department would schedule a meeting with the "State Health Planning Committee in the near future in order to seek their recommendations as to the most beneficial method to resolve and clarify any future issues that may occur regarding hospital bed need methodology interpretation." (Exhibit A, Grice deposition, Ex. 11) On May 3, 2005, Mr. Albert Whiteside⁵ sent out a public notice and a Memorandum to the State Health Planning Committee⁶ addressing the "concern about whether or not additional hospital beds could be approved for another potential provider even though the need for beds is calculated based on the utilization of a specific provider in the Planning Area." Exhibit A, Grice Deposition, Exhibit 12. On November 3, 2005, Mr. Whiteside sent a memorandum to the State Health Planning Committee stating that no interim changes would be made in the Plan and that

Certificate of Need (CON) staff should review CON applications for additional general hospital beds and/or facilities utilizing the current bed need methodology of the *2004-2005 South Carolina Health Plan* in conjunction with the Project Review Criteria as outlined in *Regulation No. 61-15, Certification of Need for Health Facilities and Services*, in order to make CON decisions that are in the best interest of the public. (Emphasis added)

Exhibit A, Grice Deposition, Exhibit 13.

On March 11, 2005, Presbyterian filed an application for a CON for a 64 bed acute care hospital in York County to include a MRI unit, a CT scanner, and a diagnostic cardiac catheterization laboratory to be located in Fort Mill, South Carolina. Exhibit A, Grice Deposition, Exhibit 17. Also, on March 11, 2005, the Charlotte-

⁵ Mr. Whiteside is the Director, Division of Planning and Certification of Need for DHEC and is responsible for the development, drafting, public hearing process and final Board approval of the State Health Plans, including the Plan, pursuant to the provisions of S.C. Code Ann. § 44-7-180 (Rev. 2002).

⁶ The State Health Planning Committee is established by S.C. Code § 44-7-180 (Rev. 2002).

Mecklenburg Hospital Authority ("CMHA") and Hospital Partners of America ("HPA") each filed CON applications for a 64-bed acute care hospital to be located in Fort Mill and Lake Wiley, York County, South Carolina. Exhibit A, Grice Deposition, Exhibit 17, pp. 52, l.15 through 53, l. 18. The Plan was in effect when FMMC filed its First Application and Presbyterian, CMHA and HPA filed their respective applications.

On September 23, 2005, notice to affected persons that the Presbyterian, CMHA and HPA applications were deemed complete was published in the *State Register*. On October 7, 2005, FMMC withdrew its January 2005 Application. Exhibit A, Grice deposition, Exhibit 18. Also on October 7, 2005 FMMC submitted another CON application, this time for a 100 bed hospital in York County consisting of the 64 additional bed need identified in the Plan for PMC and a transfer of 36 beds from PMC to FMMC ("October 2005 Application"). Exhibit A, Grice deposition, Exhibit 5. On November 16, 2005, Presbyterian raised the issue with the Department that FMMC was no longer a competing applicant in the review cycle with Presbyterian, CMHA and HPA and was not eligible to have its CON approved in the review cycle. Exhibit A, Grice deposition, Exhibit 6. On October 26, 2005, HPA joined Presbyterian is raising the issue with the Department that FMMC was no longer a competing applicant. Exhibit A, Grice deposition, Exhibit 8. It is DHEC's decision to grant this Second CON Application that is the subject of the instant contested case hearings.

Each of the notices published in the *State Register* for the applications for new hospitals in York County expressly put the public on notice that the application was for York County.

Affecting York County

Construction of a 64 acute care bed hospital to include one diagnostic

cardiac catheterization laboratory, one Magnetic Resonance Imaging (MRI) unit and one Computed Tomography (CT) Scanner to be located in the intersection of SC Highway 160 and Highway 21 Bypass. Amisub of South Carolina, Inc. d/b/a Fort Mill Medical Center
Fort Mill, South Carolina
Project Costs: \$107,158,233

On March 23, 2006, the Department held the project review meeting for the four York County hospital applicants. Exhibit H, Affidavit of M. Elizabeth Crum, Attachment A. On March 27, 2006, the Department extended the review period by sixty (60) days. *Id.* By letters dated May 30, 2006, sent to the applicants via certified mail return receipt requested, Mr. Grice made decisions to approve FMMC's Second CON Application to construct the 100 bed acute care hospital in Fort Mill and to deny the other three applicants⁷ (hereinafter referred to as "Decisions"). Exhibit A, Grice deposition, Exhibits 2 and 3. Presbyterian received the DHEC May 30, 2006 decision to deny its CON application and the May 30, 2006 decision to approve FMMC's October 2005 Application on June 2, 2006.

On June 12, 2006, Presbyterian filed its Requests for Reconsideration of the Decisions ("Reconsideration Requests") with the DHEC staff pursuant to S.C. Code Ann. § 44-7-210(D) (Rev. 2002) and 24A S.C. Code Ann. Reg. 61-15 § 402 (Supp. 2005). Exhibit A, Grice deposition, Exhibit 21, Tab 4, Piedmont p. 0076-0094. Also, on June 12, 2006, CMHA filed its requests for contested case hearings (Docket No. 06-ALJ-07-489 and 490) with the ALC pursuant to S.C. Code Ann. § 44-7-210 (Rev. 2002) challenging DHEC's decision to deny CMHA's application and to approve FMMC's October 2005 Application. The DHEC staff denied Presbyterian's Request for

⁷ HPA did not seek contested case review of the DHEC Staff Decision either to deny HPA or approve FMMC. Instead, by its own admission, HPA contacted the Department of Justice, Anti-Trust Division regarding DHEC's interpretation of the Plan as creating a monopoly.

Reconsideration on July 11, 2006. Exhibit A, Grice deposition, Exhibit 19.

Pursuant to S.C. Code Ann. § 44-1-60 (Supp. 2006), Presbyterian filed a Request for Final Agency Review ("FAR") with the Board of the Department ("Board") on July 25, 2006. Exhibit A, Grice deposition, Exhibit 17. On July 31, 2006 the Board acknowledged the Presbyterian FAR request as Docket 6-RFR-10. *Id.* On August 18, 2006 the United States Department of Justice ("DOJ") sent a letter via FedEx and e-mail to the Clerk of the Board regarding the Decisions requesting "the opportunity to submit a letter addressing the policy implications of interpreting the South Carolina's law to prohibit new competitive entry into hospital markets and believes that the issue merits full discussion at a final review conference." Exhibit A, Grice deposition, Exhibit 19. On August 20, 2006, the Board made a determination not to hear to Presbyterian's FAR and to allow the Department's Decisions to become the final agency decisions. Exhibit H, Affidavit of M. Elizabeth Crum, Attachment B. On August 31, 2006, Presbyterian received written notice from the Board denying Presbyterian's FAR request and pursuant to § 44-1-60(F). *Id.*, Affidavit ¶ 4. The DHEC Decisions regarding the approval of FMMC's Second Application and denial of Presbyterian's Application became the final agency decisions pursuant to § 44-1-60(F). On September 7, 2006, Presbyterian filed its requests for contested case hearings regarding the Decisions to approve FMMC and to deny Presbyterian.

DISCUSSION

1. On May 30, 2006, FMMC was not a competing applicant in the same review cycle with Presbyterian and was not eligible for award and could not be awarded the CON as a competing applicant in the review cycle with Presbyterian, CMHA and HPA.

On October 7, 2005, when FMMC submitted a letter to DHEC withdrawing its

First Application for a 64 bed acute care hospital in York County, it ceased to be a "competing applicant", as defined by the State Certificate of Need and Health Facilities Licensure Act, S.C. Code Ann. §§ 44-7-110, *et seq.* (Rev. 2002) ("CON Act") with Presbyterian. The CON Act defines competing applicant as follows:

(5) "Competing applicants" means two or more persons or health care facilities as defined in this article who apply for Certificates of Need to provide similar services or facilities in the same service area within a time frame as established by departmental regulations and whose applications, if approved, would exceed the need for services or facilities.

S.C. Code Ann. § 44-7-130(5) (2002).

Regulation 61-15 § 103.6 also defines "competing applicant" and sets forth the time frame as required by § 44-7-130(5). This regulation provides that:

An application shall be considered competing if it is received by the Department no later than fifteen (15) days after a Notice of Affected Persons is published in the State Register for one or more applications for similar services and/or facilities in the same service area. All applications received by the Department within fifteen (15) days of publication of the Notice of Affected Persons in the State Register for the first application(s) will be considered to be competing. Any applications received by the Department later than the fifteenth day following publication of the Notice of Affected Persons in the State Register for the first application(s) will not be considered to be competing with the(se) application(s).

(Emphasis added.) 24A S.C. Code Ann. Reg. 61-15 § 103.6 (Supp. 2006)

DHEC is an agency of the State of South Carolina and part of the executive branch of government. As a creature of statute, the Department, its Board and this Court are possessed only with those powers that are specifically delineated in their enabling legislation. See *South Carolina Elec. and Gas Co. v. Public Serv. Comm'n*, 275 S.C. 487, 272 S.E.2d 793 (1980); see also *City of Rock Hill v. S.C. Dep't of Health and Env'tl. Control*, 302 S.C. 161, 394 S.E.2d 327 (1990); *City of Columbia v. Bd. of Health and Env'tl. Control*, 292 S.C. 199, 355 S.E.2d 536, (1987). It is black letter law that an administrative agency "is a creature of statute and its authority is dependent

upon statute." *Brooks v. South Carolina State Bd. of Funeral Service*, 271 S.C. 457, 247 S.E.2d 820, 822 (1978). In a case involving the interpretation of South Carolina law, the federal courts have said that "the general rule of administrative law [is] that a duly promulgated regulation has the force and effect of law and becomes an integral part of the enabling statute." *Pritchett v. Lanier*, 766 F. Supp. 442, 447 (D.S.C. 1991), *aff'd. sub nom Pritchett v. Alford*, 973 F.2d 307 (4th Cir. 1992). In construing statutes, the terms used therein must be taken in their plain and ordinary meaning. *Laird v. Nationwide Ins. Co.*, 243 S.C. 388, 134 S.E.2d 206 (1964); *Citizens for Lee County, Inc. v. Lee County*, 308 S.C. 23, 416 S.E.2d 641 (1992). "When such terms are clear and unambiguous, there is no room for construction and courts are required to apply them according to their literal meaning." *Citizens for Lee County v. Lee County*, 308 S.C. 23, 416 S.E.2d 641, 644 (1992), citing *Gunnells v. American Liberty Ins. Co.*, 251 S.C. 242, 161 S.E.2d 822 (1968).

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *Burns v. State Farm Mut. Auto. Ins. Co.*, 297 S.C. 520, 522, 377 S.E.2d 569, 570 (1989). If a statute's language is plain, unambiguous, and conveys a clear meaning, then "the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992).

Catawba Indian Tribe of South Carolina v. State of South Carolina, __ S.C. __, 642 S.E.2d 751, 754 (2007) *see also*, *S.C. State Ports Auth. v. Jasper County*, 368 S.C. 388, 298, 629 S.E.2d 624, 629 (2006);

Reg. 61-15 § 103.6, in plain and unambiguous terms requires that all applications for similar services in similar service areas that are received within 15 days of the time

notice is published in the *State Register* of the first application shall be competing applicants and any applications received after the 15 day time limit are not competing applicants. "First," as used in § 103.6 starts the time running for all other applicants. In the context or sense of time, "first" is defined as: "Occurring or acting prior to all others; earliest." *The American Heritage Dictionary*, 2nd College Ed., (1985).

It is uncontested that the Piedmont January 2005 Application and the Presbyterian, CMHA and HPA each were for a 64 bed general acute care hospital providing similar services in the same service area. Exhibit A, Grice deposition Tr. p. 49, ll. 23. It is uncontested that the Plan only shows a need for 64 additional beds in York County and that the approval of more than one applicant would exceed the additional bed need stated in the Plan. *Id.* It is also uncontested that FMMC's January 2005 CON Application was the first application filed and deemed complete for the 64 bed need identified for Piedmont in York County. Presbyterian served Requests to Admit on both FMMC and DHEC. Request No. 7 stated: "The FMMC January 2005 CON Application was the first application filed and deemed complete for the 64 bed need identified for Piedmont Medical Center". FMMC and DHEC each admitted the response. See Exhibit H, Affidavit of M. Elizabeth Crum, Attachment D. Mr. Grice and Mrs. Mary Fechtel⁸ both also testified that the FMMC January 2005 Application was the first application in the batch for competing applicants. Exhibit A, Grice deposition Tr. p. 50, ll. 3-16; Exhibit A, Fechtel deposition, Tr. p. 34, ll. 4-9.

Finally, it is uncontested that the publication of Notice of Affected Persons that

⁸ Mrs. Fechtel became Assistant Deputy Commissioner, Health Regulation in September 2006. Exhibit B, Fechtel deposition, Tr. pp. 5, l. 22 through 6, l. 1. Prior to assuming the assistant Deputy Commissioner job, she was the primary reviewer on the York County hospital CON applications. Exhibit B, Fechtel deposition, Tr. pp. 8, l. 25 through 9, l. 5.

the FMMC January 2005 Application started the competing applicant 15 day time cycle for Presbyterian, CMHA and HPA. Mr. Grice and Mrs. Fechtel also testified that the FMMC January 2005 Application was the first application in the batch for competing applicants and that publication of Notice February 25, 2005 started the competing application fifteen (15) day filing cycle. Exhibit A, Grice deposition generally Tr. pp. 49, l. 45 through 51, and specifically Tr. pp. 49, l. 13 through 50, l. 12 and Exhibit 14; Exhibit B, Fechtel deposition, Tr. p. 43, ll. 10-15. In determining to allow FMMC as the first applicant to withdraw and refile after Presbyterian, CMHA and HPA had been deemed complete and notice published in the *State Register* on September 25, 2005, both Mr. Grice and Mrs. Fechtel testified that they relied on 24 S.C. Code Ann. reg. 61-15 § 103.6. Exhibit A, Grice deposition Tr. p. 86, ll. 1-11; Exhibit B, Fechtel deposition, Tr. p. 37, ll. 7-19.

There can be only one first or earliest application to begin a "competing application" fifteen (15) day filing cycle. The language of Reg. 61-15 § 103.6 is clear and unambiguous. Publication of "Notice of Affected Persons" in the *State Register* of first or earliest application filing for a service that in question, here admittedly the 64 acute care hospital beds, starts the fifteen (15) day filing cycle for anyone wanting to compete for the addition 64 beds and all applicants filing for the beds within that fifteen day window are competing. Anyone filing after the fifteen days is not a competing applicant for the 64 beds. Notice of Affected Persons was published in the *State Register* for the FMMC January 2005 Application on February 25, 2005. Exhibit A, Grice deposition, Exhibit 14. Three applicants filed by March 11, 2005, the fifteenth day from publication of the Notice of Affected Persons. On October 6, 2005, FMMC

withdrew its January 2005 Application and was no longer a competing applicant. FMMC's October 2005 Application was filed almost seven (7) months after the March 11, 2005 regulatory deadline for competing applicants to file.

As a matter of law, DHEC exceeded its statutory and regulatory authority by allowing FMMC to file a new application on October 6, 2005 and have it deemed a competing application in a fifteen (15) day filing cycle that was started on February 25, 2005. This Court should remand the matter to DHEC with instructions that FMMC is not a competing applicant in the review cycle with Presbyterian and CMHA and the Department must determine which of the two remaining applicants should be approved for the 64 bed additional need in the Plan.

- 2. The Department's determination that FMMC is the only applicant whose application is consistent with the Plan is erroneous and not in accordance with the intent of the Plan or the State Certificate of Need and Health Facilities Licensure Act, S.C. Code Ann. § 44-7-110, et seq. (Rev. 2002).**

Presbyterian's application is consistent with the Plan's bed need methodology. DHEC's Decisions interpretation of the Plan that FMMC is the only York County CON application that is consistent with the hospital bed need methodology in the Plan is erroneous. The Plan can and should be interpreted to find that Presbyterian's application is consistent with the hospital bed need methodology as specifically outlined in the Plan. DHEC's Decision letters stated:

the proposal submitted for the Fort Mill Medical Centre is the only project of the competing CON applications that is consistent with the hospital bed need methodology as specifically outlined in the 2004-2005 S.C. Health Plan. The aforementioned Plan uses individual facilities as the unit calculation of bed instead of county. Therefore, the bed need for York County, as indicated in the 2004-2005 S.C. Health Plan, is based on Piedmont Medical Center as the planning unit, not York County. The number of beds needed is based on the service area and market share of

Piedmont Medical Center, not the entire medical patient population in York County.

Exhibit A, Grice deposition, Exhibits 2 and 3, Decision Letters page 2 ¶ 4. The effect of this interpretation is to prohibit competition whether it be from in state or out of state, and create a monopoly on behalf of existing acute general hospitals and thwart the legislative purposes of the CON Act.

The legislative purpose behind 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 (Rev. 2002). To carry out the CON Act, DHEC is required to prepare and publish a State Health Plan. *Id.* The CON Act requires that at least once ever two (2) years, the Department, with the advice of the State Health Planning Committee, must prepare a State Health Plan and present it for approval by the Board. S.C. Code Ann. § 44-7-180 (Rev. 2002). The State Health Plan is effective upon approval of the Board. *Id.*

As noted above, It is an uncontested fact that Piedmont is the only hospital in York County and that the same company would own and operate both Piedmont and FMMC. DHEC's monopolistic interpretation of the Plan does not serve the goals of promoting cost containment, guiding the establishment of health facilities and services which will best serve public needs or ensuring that high quality services are provided in the State.

The Plan can and should be interpreted by this Court to carry out the legislative intent of the CON Act. Mr. Grice testified that he interpreted the Plan to mean that that

bed need is calculated only for individual hospital facilities and that the only way another hospital could utilize the facility specific bed need of the hospital generating the need is to "give" the beds to another individual facility. Exhibit A, Grice deposition, Tr. pp. 107, l. 21 through 109, l. 10. Mr. Grice also testified that the Plan calculated bed need based upon the projected population of the entire county and the utilization of the individual hospital. *Id.* In reaching his decision, Mr. Grice relied upon the language of the Plan, particularly the language that states "calculations of bed need are made for individual facilities" (Exhibit A, Grice deposition, Exhibit G, Plan) and "[t]he needs for hospital beds are based on the utilization of individual facilities" (Exhibit A, Grice deposition, and Exhibit G, Plan16, p. II-2, ¶ A).

Regarding the development and interpretation of the Plan and Mr. Grice's application of the General Hospitals section of the Plan⁹ to the Decisions, Mr. Whiteside testified that he was not consulted by Mr. Grice prior to the Decisions. Exhibit C, Whiteside deposition, p. 47, ll. 6-19. Mr. Whiteside testified that it was not the intent, in drafting the Plan, to exclude any applicant from being able to apply for acute hospital bed need identified in the Plan.

Q. Paragraph four. Based on our review of the language in the State Health Plan that identifies beds for individual hospitals, do you believe that any applicant other than Piedmont could have been approved in a way that was consistent with the State Health Plan?

A. Well, if you read the language in the Plan as written, probably not. Now, that may not be the best interpretation of the Plan and it's certainly subject to interpretation and I'm sure that's the reason for all of this discussion anyway. And I know when we developed the Plan, it was never designed to exclude anybody from being able to apply and/or be approved.

Exhibit C, Whiteside deposition, Tr. pp. 114, l. 22 through p. 115, l. 10.

⁹ The "General Hospitals" section of the Plan is found at pp. II-4 through II-19, including the projected need by "facility/county (pp. II-10 through II-19). See Exhibit G.

Mr. Les Shelton is a Program Management Specialist II for the Department and his duties and responsibilities include, among other things, writing the general hospital bed need of the State Health Plans, including the Plan. Mr. Shelton testified that there was never any intent to exclude new providers from applying for and being able to provide hospital bed need generated by an existing facility in a single hospital county.

Q. Was there ever any intent when you drafted the hospital generic -- I'm sorry, the hospital acute bed need to prohibit other hospitals from accessing a generated bed need that was generated by an existing hospital?

A. No, it was not our intent to preclude anyone from applying for beds. We envisioned this more as solving or helping a situation in counties with multiple hospitals where -- we keep going back to McLeod, but one hospital had a need but the other hospitals in the county didn't, so we envisioned it as helping those kind of multi-provider counties.

Exhibit F, Shelton Deposition, Tr. p. 47, ll. 7-18.

Moreover, Mr. Whiteside testified that he thought the Presbyterian application was consistent with the bed need methodology in the Plan.

Q. Here you go. Look at that, Mr. Whiteside.

A. The number is 64 and I'm assuming that's the Plan they applied under, the 2004/five.

Q. I think that's in --

A. Yeah. That's what this letter says. So, in my opinion, yeah, they could certainly have applied and they potentially could have been approved.

Exhibit C, Whiteside deposition, Tr., pp. 35, ll. 8-14. Mr. Whiteside testified further:

Under the current bed-need methodology referred to in Exhibit 13, do you believe that any entity could have applied for and potentially been approved for the 64-published beds needed in York County?

A. I think they could have been.

Exhibit C, Whiteside deposition, Tr., pp. 46, l. 25 through p. 47, line 5.

Both Mr. Grice and Mr. Whiteside testified that when the Plan was being drafted, no body even thought about the possibility that there would be a sufficient need for beds for a new hospital in a county and where there was a county with a single hospital, there

was the possibility that a monopoly would be created. Exhibit A, Grice, deposition, Tr. pp. 176, I. 16 through 177, I. 5; Exhibit C, Whiteside deposition, Tr. pp. 114, I. 22 through 115, I. 18; 69, II. 1-18.

Prior to Presbyterian, CMHA and HPA submitting their respective applications for the 64 bed need identified for York County, Mr. Grice issued the January 2005 Plan Interpretation advising licensed health care providers in South Carolina that any applicant could apply for the net hospital bed need in a county for the development of a new hospital. Exhibit A, Grice Deposition, Exhibit 10. The memorandum correctly referred to bed need as "bed need in a county" and stated that a "CON for the net hospital bed need in the county may be requested and approved for any existing hospital located in the county, or got any other entity/applicant, for the development of a new hospital or an addition to an existing hospital within that county." On March 3, 2005, Mr. Grice rescinded his January 2005 Plan Interpretation without declaring that its content was incorrect and stated that as an alternative to the policy the staff will "schedule a meeting of the South Carolina State Health Planning Committee in the near future in order to seek their recommendation as to the most beneficial method to resolve and clarify any future issues that may occur regarding hospital bed need methodology interpretation." Exhibit A, Grice Deposition, Exhibit 11.

On May 3, 2005, Mr. Whiteside sent out a public notice and a Memorandum to the State Health Planning Committee addressing the "concern about whether or not additional hospital beds could be approved for another potential provide even though the need for beds is calculated based on the utilization of a specific provider in the Planning Area." Exhibit A, Grice Deposition, Exhibit 12. The Agenda for the March 31,

2005 Health Planning Committee meeting stated, in relevant part: "Explanation of potential confusion of Hospital bed need section of 2004-2005 South Carolina Health Plan". *Id.* Certainly, these Department memoranda clearly indicate that, as Mr. Whiteside testified, the Plan is open to interpretation.

And was the purpose of the amendment, that you tried to get it approved, to clarify what you intended to begin with?

A. Yeah. I think, if you go back and read it, that's what it says. It's intended to, whatever the verbiage is. Let me see if this is it. (Views document.) Well, it says here, the referenced concern about interpretation of the hospital bed need section of the Plan. And that's the reference.

Q. Okay.

A. And then it goes on and says, this has caused some concern about whether or not additional hospital beds could be approved. So, yeah. We were working on clarifying the Plan.

Q. Did you work on clarifying the Plan because the way it's written and published is ambiguous?

A. I don't know if you can say it's ambiguous or not. It certainly can be confusing.

Q. I think you called it clearly open to interpretation?

A. That's a good answer. Yeah, I would agree with that.

Exhibit B, Whiteside deposition, Tr. pp. 137, l. 7 through 138, l. 4.

While the Plan is not a statute and is not approved by the Legislature as a regulation, no CON may be approved unless it is in compliance with the applicable provisions of the Plan. S.C. Code Ann. § 44-7-210(C); 24A S.C. Code Ann. Reg. 61-15 §307.1. It is appropriate to look to the rules of statutory construction to determine the intent of the Plan. It is black letter law that "[w]here a statute is clear and unambiguous, the terms of the statute must be given their literal meaning." *Medlock v. 1985 Ford F-150 Pick Up*, 308 S.C. 68, 417 S.E.2d 85, 87 (1992), citing *Duke Power Co. v. South Carolina Tax Commission*, 292 S.C. 64, 354 S.E.2d 902 (1987); see also *Gambrell v. Travelers Ins. Cos.*, 280 S.C. 69, 310 S.E.2d 814 (1983). Since, the Plan's bed need methodology provisions are not clear and unambiguous and are clearly open to

interpretation, this Court may and can construe the Plan to comply with the legislative intent of the CON Act and Regs. simply by interpreting the Plan as Mr. Grice did in his January 2005 Plan Interpretation.

In *Hitachi Data Systems Corporation v. Leatherman*, a case involving a statutory interpretation of the South Carolina Code, the Supreme Court of South Carolina found:

[I]n construing statutes, we seek to effectuate legislative intent. The cardinal rule of statutory construction is that words used therein must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand its operations. The language must also be read in a sense which harmonizes with its subject matter and accords with its general purpose.

The interpretation of the Plan must be in harmony with the purpose of the CON Act 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 § 44-7-120 (Rev. 2002). The legislative purpose of the CON Act clearly envisions, encourages and contemplates competition among all types of health care facilities. Guiding the establishment of health facilities and ensuring that high quality services are provided in the State is inconsistent with limiting the provision of additional health facilities and services to existing providers.

Additionally, the CON Act's and Regs'. requirements for granting of CON contemplate and encourage competition between and among applicants in determining which applicant best meets the needs of the public in containing cost, establishing facilities that best meet the public need and in providing the highest quality services. The CON Act itself contains a definition of "competing applicant": "Competing applicants" means two or more persons or health care facilities as defined in this article

who apply for Certificates of Need to provide similar services or facilities in the same service area within a time frame as established by departmental regulations and whose applications, if approved, would exceed the need for services or facilities. S.C. Code Ann. § 44-7-130(5) (Rev. 2002). Certainly, the concept of "competing applicants" is consistent with interpreting the Plan to allow any applicant to be consistent with the hospital bed need methodology showing a 64 bed need in York County and is consistent with Mr. Grice's January 2005 Plan Interpretation.

Among the duties and responsibilities of the Department is the adoption of regulations "in accordance with Article I of the Administrative Procedures Act substantive and procedural regulations ... to carry out the department's licensure and Certificate of Need duties under this article, including regulations to deal with competing applications. (Emphasis added) S.C. Code Ann. § 44-7-150(3) (Rev. 2002). As discussed *supra*, 24A S.C. Code Ann. Reg. 61-15 § 103.6 has been adopted pursuant to the Administrative Procedures Act ("APA") and defines and regulates what and when applications are competing. The CON Act expressly provides for competing applicant situations and sets forth the test the Department must use in determining which competing applicant can be awarded the CON. See S.C. Code Ann. § 44-7-210(C) (Rev. 2002); 24 A Reg. 61-15 § 61-307.2 (Supp. 2006).

Further, the CON Act sets forth the requirements for the content of the State Health Plans and provides in relevant part:

The plan at a minimum must include:

- (1) an inventory of existing health care facilities, beds, specified health services, and equipment;
- (2) projections of need for additional health care facilities, beds, health services, and equipment;

(3) standards for distribution of health care facilities, beds, specified health services, and equipment including scope of services to be provided, utilization, and occupancy rates, travel time, regionalization, other factors relating to the proper placement of services, and proper planning of health care facilities; and

(4) a general statement as to the project review criteria considered most important in evaluating certificate of need applications for each type of facility, service, and equipment, including a finding as to whether the benefits of improved accessibility to each such type of facility, service, and equipment may outweigh the adverse affects caused by the duplication of any existing facility, service or equipment.

The State Health Plan must address and include projections and standards for specified health services and equipment which have a potential to substantially impact health care costs and accessibility.

(Emphasis added). S.C. Code Ann. § 44-7-180(B) (Rev. 2002); See also 24 A S.C. Code Ann. Reg. 61-15 § 106 (Supp. 2006) . While the Plan must contain an inventory of existing health care facilities and beds, it must also contain projections of need for additional health care facilities and beds. No one questions the fact that a general acute care hospital is a health care facility as defined by § 44-7-130(10) (Rev. 2002).

For an interpretation of the Plan to be in harmony with the purposes of the CON Act, it must necessarily be one that factors competition and that does not restrict the use of bed need projections to a single existing health facility such as Piedmont. The Department's interpretation that the bed need calculated for York County is for Piedmont and not the County, in light of the purposes and provisions of the CON Act, leads to an absurd result and defeats the Legislative intent of fostering competition.

It is also well established principal that the interpretation of a statute should be rational and reasonable and not lead to an absurd result. *Bolton v. Doe*, 266 S.C. 344, 223 S.E.2d 187 (1976). See also, *Singletary v. SC Dep't of Education*, 447 S.E.2d 231 (Ct. App.) As our Supreme Court stated in March 2007:

"Furthermore, we reject Respondent's proposed construction of § 27-16-110(G) because such construction would create an absurd result, which the legislature clearly did not intend. See *Kiriakides v. United Artists Communications, Inc.*, 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994) ("However plain the ordinary meaning of the words used in a statute may be, the courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislative intention.... If possible, the court will construe the statute so as to escape the absurdity and carry the intention into effect.") (citing *Stackhouse v. Rowland*, 86 S.C. 419, 422, 68 S.E. 561, 562 (1910))."

Catawba Indian Tribe of South Carolina v. State of South Carolina, __ S.C. __, 642 S.E.2d 751, 755 (2007) An interpretation that completely prohibits competition and restricts the use of new hospital beds to the facility that generated the need, clearly leads to an absurd result in light of the very clear requirement for competition in the CON Act so that the Department can chose the project that fosters cost containment, best meets the public need and offers the highest quality health care. An interpretation that sparks investigation by the U.S. Department of Justice and violates the CON Act, the Commerce Clause of the United States Constitution, and the Equal Protection Clause of the South Carolina and United States,¹⁰ clearly leads to an absurd result.

The Plan can certainly be interpreted to allow the bed need calculated based on the York County population just as Mr. Grice did in his January 2005 Plan Interpretation. The Plan bases the General Acute Hospital bed need methodology (Bed Need Methodology) on several factors, including an analysis including historical utilization of existing hospitals, nationally recognized bed need methodologies and the number of beds (physical characteristics) that hospitals have. Exhibit G, State Health Plan, p. II-6.

As required by § 44-7-180(B), the Plan sets forth the relative importance of the project review criteria. "Community need documentation" is the second listed criterion.

¹⁰ See discussion below.

This criterion is based upon population growth in the community, not individual hospital facility growth. Finally, the Plan contains the projections for "FY 2010 Hospital Need." Exhibit G, pp. II-10 through II-18. The projection is by "Facility/County". *Id.* Under heading York County, the Plan shows a need for 64 beds based upon the utilization at Piedmont, the only hospital in the County. Exhibit G, State Health Plan, p. II-14. While Piedmont was used as the planning unit to determine the bed need, there is absolutely no express prohibition contained in the Plan that restricts the Department from allowing another applicant to fill that need in the County where the unit is located. Mr. Grice's January 2005 Plan Interpretation was correct and should have been and could have been the Department's interpretation of the Plan. This Court should adopt the January 2005 Plan interpretation as it clearly is in harmony with the legislative intent and purposes of the CON Act.

Because the DHEC interpretation of the Plan is erroneous, this matter should be remanded to DHEC for consideration with instruction that Presbyterian's application is consistent with the Plan's bed need methodology. Subject to Presbyterian's contention that FMMC is no longer a competing applicant, this matter should be remanded to DHEC with instructions that Presbyterian's and CMHA's application are consistent with the Plan's bed need methodology to review the applications and determine which one of them best meets the project review criteria. In the event that this Court determines that FMMC is still a competing applicant, then the Department should be instructed to review all three applications.

3. DHEC erred in finding that Presbyterian did not comply with the Plan additional bed need methodology and FMMC did comply.

DHEC's Decision letters found that only the FMMC project was consistent with

the hospital bed need methodology as specifically outlined in the Plan. Exhibit A, Grice deposition, Exhibits 2 and 3, p. 2, ¶ 4. The Decision letters specifically states:

The aforementioned Plan uses individual facilities as the unit calculation of bed instead of county. Therefore, **the bed need for York County, as indicated in the 2004-2005 S.C. Health Plan, is based on Piedmont Medical Center as the planning unit, not York County.** The number of beds needed is based on the service area and market share of Piedmont Medical Center, not the entire medical patient population in York County.

Id. It is uncontested that the individual facility the Plan used "as the unit calculation of bed need" is Piedmont, as the planning unit. Even Mr. David Levitt, the health care consultant that represents FMMC in this matter has acknowledged that the bed need is calculated specifically for Piedmont. Exhibit H, Affidavit of M. Elizabeth Crum, Attachment C, FMMC CON Application, Bates pp. 596-598. Mr. Levitt's letter contains the following points:

- the 64 new acute beds in the Plan is "calculated bed need specifically from Piedmont based upon historical utilization" (p. 596);
- the 64 additional beds FMMC proposes to use are the Piedmont 64 beds "based on the historical utilization at PMC, and expected population growth in York County (p. 597); and
- since the bed need methodology is "based upon institution-specific utilization and market share, ... it is unreasonable and not should health planning to assume that simply because one facility shows a need for acute care beds, that a new facility would be able to utilize the calculated need (p. 598).

Id.

Each of the DHEC witnesses that was deposed on the issue agrees that Piedmont is a separate and distinct licensed facility from FMMC, just as Presbyterian would be a separate and distinct licensed facility from Piedmont. Mr. Grice, the person who rendered the Decisions testified:

Q. Assume for me a minute, Mr. Grice, that in fact the AMISUB Fort Mill

Medical Center hundred bed hospital is built, it would be -- it would have to have a separate hospital license from Piedmont, wouldn't it?

A. Yes. Every hospital is licensed separately.

Q. The thing would be they would have a common ownership?

A. They would. The licensee would be identical just like Greenville Hospital Systems has four or five hospitals separate licensed under the same licensee.

Q. But that the hospital should be separately licensed and would be distinct facilities?

A. That's correct.

Exhibit A, Grice Deposition, Tr. pp. 99, ll. 11 through 100, l. 2. Mr. Grice admits that Piedmont and FMMC are separately licensed and *a fortiori* are distinct facilities.

Mrs. Fechtel, the primary project reviewer for the four applications, testified:

Q. I've just got one very brief clarification. I believe I understood you to say that you were talking about Piedmont's application. In fact, that's an application from Amisub of South Carolina, Inc., doing business as Fort Mill Medical Center, that's at issue here; isn't it?

A. That is correct.

Q. Okay. Amisub South Carolina, Inc. d/b/a Piedmont Medical Center is a separate and distinct licensed health care facility; is it not?

A. Yes, ma'am.

Q. And Amisub, Inc., Fort Mill Medical Center, if it were built, would be a separate and distinct licensed acute care hospital; would it not?

A. I believe it would be, yes.

Exhibit B, Fechtel deposition pp. 60, l. 17 through 61, l. 8.

Mr. Dennis L. Gibbs is the Director of the Department's Division of Health Licensing and, among other things, he is responsible for licensing of hospitals pursuant to 24A S.C. Code Ann. Reg. 61-16 (Supp. 2006). Exhibit D, Gibbs deposition, pp. 5, l. 22 through 6, l. 16. In March 7, 1995 the Department sent a memorandum to health care providers outlining the Department's interpretation of 24A S.C. Code Ann. Reg. 61-16 regarding when hospitals had to be separately licensed even when they had common ownership. Exhibit D, Gibbs Deposition, p. 11, ll. 9-22; Exhibit 36. Mr. Gibbs testified that FMMC would have to be separately licensed from Piedmont.

Q. Wouldn't Fort Mill Medical Center have to have a separate hospital license, Mr. Gibbs?

A. Yes.

Q. Any new hospital that is built in South Carolina, Mr. Gibbs, that is not contiguous to an existing hospital, would it have to have a separate medical staff?

A. Yes.

Exhibit D, Gibbs Deposition, pp. 14, I. 16-23.

The record is uncontested that just as Presbyterian and Piedmont are separate and distinct licensed hospitals and are therefore separate and distinct planning units, FMMC and Piedmont are separate and distinct licensed hospitals and are therefore separate and distinct planning units.

Mr. Whiteside testified that there is no bed need calculation in the Plan for FMCC. Exhibit C, Whiteside deposition, p. 126, II. 18-24. Mr. Whiteside also testified that under the Plan and based upon the Decisions, FMMC and Presbyterian and FMMC should be treated the same regarding the bed need methodology.

Q. Mr. Grice's decision letter states that the bed need is based on Piedmont Medical Center as the individual facility, correct?

A. That's what it says.

Q. Since the bed need is based on Piedmont Medical Center, should Fort Mill Medical Center be treated any differently than Presbyterian?

MR. ANDREWS: Object to the form.

BY MS. KIRK:

A. Not in my opinion.

Exhibit C, Whiteside deposition, pp. 139, I. 17 through 140, I. 1.

FMMC and DHEC argue that because Amisub is the owner or licensee of both facilities, the 64 bed additional need is transferable within the "healthcare system" from Piedmont to FMMC. This argument must fail based upon the language of the Plan. The Plan expressly provides for the transfer of existing beds. Exhibit G, Plan, pp. II-8 through II-9. The 64 beds at issue are the projected additional beds that are needed

based on the bed need methodology in the Plan. Clearly these 64 beds are not existing beds and there is simply no provision in the Plan, under the CON Act or Regs. that allow their transfer and neither DHEC nor FMMC can point to any such authority.

Simply put, if FMMC, as a separately licensed, new hospital facility, complies with the Plan's hospital bed need methodology, so does Presbyterian. Conversely, if Presbyterian or CMHA do not meet the Plan bed need methodology neither does FMMC. If this Court determines that none of the applicants meet the Plan bed methodology, the matter should be remanded to DHEC with such instruction to deny all.

4. **Alternatively, if DHEC correctly interpreted the Plan, then DHEC's award of the CON to FMMC is contrary to law, in excess of the agency's statutory authority and, as applied, is unconstitutional.**

CON Act Violations. If DHEC's interpretation of the Plan which clearly prohibits competition and creates a monopoly is correct, then the Department has exceeded its authority under the CON Act and Regs. and its Decisions to award the CON to FMMC and to deny Presbyterian is in violation of law and the application of the Plan violates the Equal Protection Clause of the South Carolina and United States Constitutions.

As discussed above, DHEC, the Board and the ALC are all agencies of the State of South Carolina and are possessed only with those powers that are specifically delineated or necessarily implied in the CON Act and Regs, the enabling legislation at issue here. See *City of Rock Hill v. S.C. Dep't of Health and Env'tl. Control*, 302 S.C. 161, 394 S.E.2d 327 (1990); *City of Columbia v. Bd. of Health and Env'tl. Control*, 292 S.C. 199, 355 S.E.2d 536 (1987).

The Board does not have the statutory authority to approve a South Carolina Health Plan that violates the CON Act. As discussed at length above, the CON Act clearly envisions competition between applicants to "promote cost containment, . . .

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."

The CON Act requires the "preparation and publication of a State Health Plan." S.C. Code Ann. § 44-1-120 (3). "The plan at a minimum must include:(1) an inventory of existing health care facilities, beds, health services, and equipment; (2) projections of need for additional health care facilities, beds, health services, and equipment." (Emphasis added). S.C. Code Ann. § 44-7-180(B). If the Plan is interpreted to exclude new providers, it does not comply with the requirement of projecting need for "additional health care facilities." Certainly the concept of "competing applicants" or "competing applications" does not encompass "competition" of separately licensed "additional" hospitals owned by the same company. Just as you cannot conspire with yourself, you cannot compete with yourself.

There is absolutely nothing, either expressly or by necessary implication, that authorizes the Board to adopt this Plan to mandate that only an existing hospital or an existing hospital system can access additional bed need to the exclusion of an unrelated entity. Mr. Grice attempted to testify that his interpretation of the Plan did allow competition because an existing hospital could "give" or "transfer" its additional bed need to a competitor. Mr. Grice testified:

Q. Let me rephrase it. With regard to the 64 new hospital beds, given the interpretation under paragraph 4 of the decision letter that the bed need methodology is to the specific institution, how could a new competitor enter the market in York County?

A. Well, certainly you can make the argument that it couldn't. Someone could also make the argument they could, and sometimes --

Q. I want your argument, Mr. Grice, that they could.

A. My argument would be that if for some reason the provider decided

they for whatever reason could not afford, did not want to develop additional beds, they could perhaps have an agreement with another provider to come and build a facility and some way contract and know that the need would be gone, be transferred to someone else.

Here again, that's a creative idea. It's something that is under consideration now with an application under review. So, you know, I think in certain situations that would have been presented to us, you have to do what is really going to benefit the community in the best way. There's no way that a Health Plan can address every situation that can possibly occur.

Exhibit A, Grice deposition, pp. 106, l. 13 to 107, l. 14. Mr. Grice went on to testify:

Q. Under your scenario, if Piedmont Medical Center chose to give away its beds it could do that, and that would create competition?

A. The Plan doesn't go into that detail, but it's certainly an idea.

Exhibit A, Grice deposition, pp. 108, l. 23 to 109, l. 2. Even Mr. Grice recognized that this "competition" concept is not authorized by the Plan. Obviously, if Piedmont "chose to give away its beds", certainly the "give away" would come with a price. Amisub, which owns Piedmont, is owned by Tenet, a publicly traded corporation. Exhibit A, Grice deposition, Exhibit 5. Certainly, Tenet cannot just give away such a valuable asset as 64 beds without some form of compensation, which could include not only money, but also restrictions on the type of services offered. Most importantly, DHEC simply is not authorized to delegate its authority and responsibility to determine which applicant best meets the public need and provides quality care to the public to an entity it regulates.

Neither the CON Act nor Regs. can be read to authorize DHEC to create a monopoly for existing hospitals and to prevent competition to see which applicant can best meet the needs of the public, provide cost containment and provide quality health care. To the extent that DHEC has properly interpreted the Plan, the Plan is in violation of the CON Act and Regs. and DHEC's Decisions are in violation of the CON Act and

Regs. and the Department has exceeded its statutory authority in adapting the Plan. Subject to Presbyterian's contention that FMMC is no longer a competing applicant, this matter should be remanded to DHEC with instructions that the Department and Board amend the Plan to conform to the requirements of the CON Act. Further, the Department should be instructed to review the Presbyterian and CMHA applications under the amended Plan to determine which one of them best meets the project review criteria. In the event that this Court determines that FMMC is still a competing applicant, then the Department should be instructed to review all three applications under the amended Plan.

As applied, the Plan Violated Equal Protection. South Carolina Constitution, Article I, § 3, states that "nor shall any person be denied the equal protection of the laws." Simply put, "no person, or class of persons, shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and under like circumstances." *City of Beaufort v. Holcombe*, 369 S.C. 643, 648, 632 S.E.2d 894, 897 (2006). The CON Act regulates "health care facilities"¹¹ and requires that a health care facility get a CON before it adds new beds or constructs new health care facility. There is no other health facility, or services in the Plan that when there is a demonstrated additional need for the facility, bed, service or equipment, the Plan gives a monopoly only to the existing provider of the facility or service.

If a statutory provision does not involve a suspect classification (race, religion, alienage, etc) or a fundamental right, the question under an equal protection analysis is

¹¹ "Health care facility" means acute care hospitals, psychiatric hospitals, alcohol and substance abuse hospitals, methadone treatment facilities, tuberculosis hospitals, nursing homes, ambulatory surgical facilities, hospice facilities, radiation therapy facilities, rehabilitation facilities, residential treatment facilities for children and adolescents, habilitation centers for mentally retarded persons or persons with related conditions, and any other facility for which Certificate of Need review is required by federal law." S.C. Code Ann. § 44-7-130(10) (Rev. 2002).

whether the legislation is rationally related to a legitimate state purpose. *Hendrix v Taylor*, 353 S.C. 542, 549, 579, S.E.2d, 320, 323 (2002) (citing *Curtis v. State*, 345 S.C. 557, 574, 549 S.E.2d 591, 600 (2001)). This disparate treatment for hospital vis a vis other health care facilities or other bed need methodologies does not pass muster under the Equal Protection Clause.

The requirements of equal protection are satisfied under a rational basis test if (1) the classification bears a reasonable relation to the legislative purpose sought to be effected (2) the members of the class are treated alike under similar circumstances and conditions; and (3) the classification rests on some reasonable basis. *Carl v. South Carolina Jobs-Econ. Dev. Auth.*, 284 S.C. 438, 445, 327 S.E.2d 331, 336 (1984). As opposed to having the classification rest on some reasonable basis, the uncontradicted testimony in the record is that DHEC did not even consider the consequences that its classification would create a monopoly and prevent competition. The doctrine of "unintended consequences" does not form a reasonable basis for the disparate classification.

As a matter of law, the Department's application of the Plan to the Decision, exceeds the Department's authority under the CON Act, is in violation of the CON Act and is in violation of the Equal Protection Clause. The Court should remand this matter to the Department with instructions that the bid need methodology for General Acute Hospitals be amended to conform with the purposes and requirements of the CON Act.

5. **Alternatively, if DHEC correctly interpreted the Plan, then the DHEC Board's adoption of the Plan and application thereof violates the Commerce Clause of the United States Constitution and is unconstitutional as applied to Presbyterian in this case.**

The Constitution grants Congress the power "[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." *U.S. Const. art. I, § 8, cl. 3*. This section is known as the *Commerce Clause*.

Although the Constitution does not in terms limit the power of States to regulate commerce, we have long interpreted the Commerce Clause as an implicit restraint on state authority, even in the absence of a conflicting federal statute. See *Case of the State Freight Tax*, 15 Wall. 232, 279 (1873); *Cooley v. Board of Wardens of Port of Philadelphia ex rel. Soc. for Relief of Distressed Pilots*, 12 How. 299, 318 (1852).

To determine whether a law violates this so-called "dormant" aspect of the Commerce Clause, we first ask whether it discriminates on its face against interstate commerce. *American Trucking Assns., Inc. v. Michigan Pub. Serv. Comm'n*, 545 U. S. 429, 433 (2005); *Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dept. of Natural Resources*, 504 U. S. 353, 359 (1992). In this context, "discrimination" simply means differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter." *Oregon Waste Systems, Inc. v. Department of Environmental Quality of Ore.*, 511 U. S. 93, 99 (1994); *New Energy Co. of Ind. v. Limbach*, 486 U. S. 269, 273 (1988). Discriminatory laws motivated by "simple economic protectionism" are subject to a "virtually per se rule of invalidity." *Philadelphia v. New Jersey*, 437 U. S. 617, 624 (1978), which can only be overcome by a showing that the State has no other means to advance a legitimate local purpose, *Maine v. Taylor*, 477 U. S. 131, 138 (1986).

United Haulers Ass'n, Inc., et al. v. Onedia-Herkimer Solid Waste Management Authority et al. CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT No. 05-1345. Argued January 8, 2007—Decided April 30, 2007. The test in this case is whether or not the Plan as applied by DHEC discriminates against interstate commerce.

In *Walgreen Co. v. Rullan*, the First Circuit Court of Appeals examined a CON restriction that regulates any new pharmacy to obtain a CON which granted an exception to the existing pharmacies and required a rejection of a new pharmacy's request if the area is already "saturated" with existing pharmacies.

While the *Commerce Clause*'s text provides only an affirmative grant of power, for over 150 years, the Clause has been interpreted to contain a negative aspect known as the dormant *Commerce Clause*. The dormant *Commerce Clause* doctrine . . . limits the power of states "to erect barriers against interstate trade." Under the dormant *Commerce Clause*, if a state law has either the purpose or effect of significantly favoring in-state commercial interests over out-of-state interests, the law will "routinely" be invalidates "unless the discrimination is demonstrably justified to be a valid factor unrelated to economic protectionism."

Walgreen Co. v. Rullan, 405 F.3d 50, 56-57 (1st Cir Ct App 2005), citations omitted.

The court found this provision to be unconstitutional on dormant Commerce Clause grounds and stated that "certificate of need law which deter[s] competition simply to benefit those entities already operating within a state are not legitimate exercises of state power." *Walgreen Co. v. Rullan*, *Id.* This is consistent with our Fourth Circuit Court of Appeals explanation that "the goal of providing universal service at reasonable rates may well be a legitimate state purpose, but restricting market entry does not serve that purpose." *Medigen of Ky., Inc. v. Pub. Serv. Comm'n of W. Va.*, 985 F.2d 164, 167 (4th Cir. 1993) (invalidating, on dormant Commerce Clause grounds, a statute requiring transporters of medical waste to obtain a certificate of necessity and convenience and authorizing the state agency to deny such certificated if "existing services . . . [are] reasonably efficient and adequate").

The Plan's effective prohibition against any new entry into to the South Carolina hospital market is the exact activity the dormant *Commerce Clause* serves to prohibit. The United States Supreme Court explained that "[t]he central rationale for the rule against discrimination is to prohibit state or municipal laws whose object is local economic protectionism, laws that would excite those jealousies and retaliatory measures the Constitution was designed to prevent." *C & A Carbone v. Town of Clarkstown, NY*, 511 U.S. 383, 390, 114 S. Ct. 1677, 1682 (1994).

Here the Plan places a barrier on any new entry in the South Carolina hospital market. Prohibiting market entry certainly constitutes a barrier erected against Presbyterian. Furthermore, the Plan goes a step further than favoring in-state interest and actually closes the hospital market to out of state interest in favor of the in state existing providers that cannot be justified and serves no use other than economic protectionism for the existing South Carolina hospitals. As stated by the South Carolina Hospital Association ("SCHA") supporting the position that "projected need is unique to the hospital that generated that need and a CON can only be awarded to that hospital," any action regarding the Plan has "significant implications for the hospital industry of South Carolina and all the individual hospitals licensed to provide services within the state." See Exhibit E, Kirby deposition, Exhibit 5. Those significant implications referred to are purely economic and sought to be protected by the existing in state providers as such.

Because the Plan as applied by DHEC violates the dormant *Commerce Clause* and the Plan's application to Presbyterian deprives Presbyterian of its Constitutional Rights, this matter should be remanded to DHEC for consideration under a Plan that does not so violate the dormant *Commerce Clause*.

CONCLUSION

For the above stated reasons, this Court should order as follows:

- 1) The Department's Decisions should be reversed;
- 2) FMMC should be found not to be a competing applicant in the review cycle with Presbyterian and CMHA;

3) The Plan should be interments of the CON Act and in accord and Presbyterian and CMHA should need methodology for General Acute I

4) The matter remanded tions of Presbyterian and CMHA under ti

Alternatively the Court sh

1) FMMC should bed need methodology for General Acute I

2) The Department e)ON Act in adopting the Plan that crea matter should be remanded to the Depted that complies with the provisions of ti

3) The Department aplication violates the South Carolina Equould be remanded to the Department witlies with the provisions of the CON Act; a

4) The Department applied States Commerce Clause and the rent with instructions to have a Plan adopl Act.

barrier on any new entry in the South Carolir entry certainly constitutes a barrier erecte a Plan goes a step further than favoring in-sta l market to out of state interest in favor of tl be justified and serves no use other than South Carolina hospitals. As stated by 'SCHA") supporting the position that "project rated that need and a CON can only be awar g the Plan has "significant implications for th all the individual hospitals licensed to provid it E, Kirby deposition, Exhibit 5. Those uly economic and sought to be protected by tl

plied by DHEC violates the dormant *Commei* Presbyterian deprives Presbyterian of its Co remanded to DHEC for consideration under a *Commerce Clause*.

CONCLUSION

his Court should order as follows:

ons should be reversed;

not to be a competing applicant in the review

Respectfully submitted,

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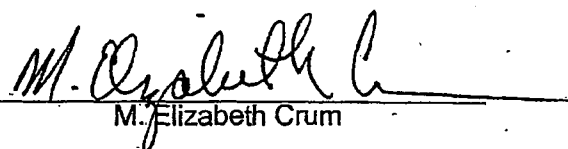
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By: 

M. Elizabeth Crum

Attorney for Presbyterian Hospital—York, LLC

May 18, 2007

Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Charlotte-Mecklenburg Hospital
Authority d/b/a Carolinas Healthcare
System,

Petitioner,

vs.

Case No.: 06-ALJ-07-0489-CC

South Carolina Department of Health
and Environmental Control and Amisub
of South Carolina, Inc. d/b/a Piedmont
Healthcare System d/b/a Fort Mill
Medical Center,

Respondent,

Presbyterian Healthcare System, d/b/a
Presbyterian Hospital-York, LLC,
Intervenor.

Charlotte-Mecklenburg Hospital
Authority d/b/a Carolinas Healthcare
System,

Petitioner,

vs.

Case No.: 06-ALJ-07-0490-CC

South Carolina Department of Health
and Environmental Control,
Respondent,

Amisub of South Carolina, Inc. d/b/a
Piedmont Healthcare System d/b/a
Fort Mill Medical Center and Presbyterian
Healthcare System, d/b/a
Presbyterian Hospital-York, LLC
Intervenors.

JOEL C. GRICE
Thursday, February 15, 2007

COMPUSCRIPTS, INC.
A Full-Service Court-Reporting Agency
Post Office Box 7172
Columbia, SC 29202
803-988-0086

1 Presbyterian Healthcare System, d/b/a
2 Presbyterian York, LLC,

3 Petitioner,

4 vs.

Case No.: 06-ALJ-07-0713-CC

5 South Carolina Department of Health
6 and Environmental Control and Amisub
7 of South Carolina, Inc. d/b/a Piedmont
8 Healthcare System d/b/a Fort Mill
9 Medical Center,

10 Respondent,

11 Charlotte-Mecklenburg Hospital
12 Authority d/b/a Carolinas Healthcare
13 System,

14 Intervenor.

15 Presbyterian Healthcare System, d/b/a
16 Presbyterian York, LLC,

17 Petitioner,

18 vs.

Case No.: 06-ALJ-07-0712-CC

19 South Carolina Department of Health
20 and Environmental Control,

21 Respondent,

22 Amisub of South Carolina, Inc. d/b/a
23 Piedmont Healthcare System d/b/a
24 Fort Mill Medical Center and
25 Charlotte-Mecklenburg Hospital Authority
d/b/a Carolinas Healthcare System,

Intervenors.

1

D E P O S I T I O N

2

WITNESS: JOEL C. GRICE

3

4

DATE: Thursday, February 15, 2007

5

TIME: 10:08 a.m.

6

7

LOCATION: South Carolina Department of
Health and Environmental Control
1777 St. Julian Place
Columbia, South Carolina

8

9

10

TAKEN BY: Attorneys for Presbyterian
Healthcare System, d/b/a
Presbyterian Hospital-York, LLC

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12

REPORTED BY: EILEEN CROSS
Court Reporter

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1 STIPULATION: It is stipulated by and
2 among counsel that this deposition is being taken
3 pursuant to the Administrative Law Court, and that
4 the deponent does not waive the right to read and
5 sign the deposition transcript.

6 -----
7 JOEL C. GRICE, having been duly
8 sworn, testified as follows:

9 EXAMINATION

10 BY MS. CRUM:

11 Q. Mr. Grice, I think we've done this a bit
12 before, but I'm Liz Crum and I'm here representing
13 Presbyterian Hospital-York. I'm going to ask you
14 questions. And if it is less than the model of
15 clarity that I intended it to be, would you let me
16 know and I'll try to rephrase it so that we're on
17 the same wavelength.

18 Okay?

19 A. I will.

20 Q. Thank you, sir. Would you please just
21 give me your name and your brief work history at
22 DHEC.

23 A. My name is Joel C. Grice. I'm currently
24 director of Bureau of Health Facilities and
25 Services Development. I joined the Department in

1 the Certificate of Public Advantage Program.

2 Q. Are you the person who's responsible
3 ultimately for making Certificate of Need
4 decisions in terms of to whom to award or deny
5 CON?

6 A. Yes, I am.

7 Q. In fact, in this particular case did you
8 make the decision to whom to award and to whom to
9 deny?

10 A. Yes, I did.

11 MS. CRUM: Mark that as Exhibit 1,
12 please.

13 (EXH. 1, Consent Scheduling Order on
14 Bifurcated Discovery Issues, was marked for
15 identification.)

16 BY MS. CRUM:

17 Q. Mr. Grice, you understand that in this
18 case the discovery has been bifurcated and that
19 your deposition today is only being taken for the
20 purpose set out in the order of bifurcation that
21 I've given you and marked as Exhibit 1?

22 A. Yes, I do.

23 Q. Would you turn over to page 3 of Exhibit
24 1.

25 A. Okay.

1 Q. But neither it nor the memorandum
2 rescinding it were put in the file?

3 A. No.

4 Q. When I say file, I mean the CON
5 application.

6 A. Right.

7 Q. Let's go back to the November 3, 2005,
8 memorandum. Can you address yourself to the
9 second paragraph starting with "No changes" and
10 just review that for a minute.

11 A. Okay.

12 Q. Did you discuss this memorandum with Mr.
13 Whiteside prior to it going out?

14 A. He drafted it and I did read it before it
15 was mailed out. And, you know, that was basically
16 what the Health Planning Committee recommended.

17 Q. So, as I understand it, the
18 recommendation was to utilize the current bed need
19 methodology for the project review criteria as
20 outlined in Regulation 61-15. Was the project
21 criteria for the York County case or was this just
22 general?

23 A. This is general.

24 Q. Then when it says, "In order to make CON
25 decisions that are in the best interest of the

1 public," if you know, what does that mean?

2 A. Well, I would certainly hope that any of
3 our CON decisions are in the best interest of the
4 public. I think that's just standard language.
5 We use our Health Plan and the criteria the best
6 that we're able to, to make decisions that are in
7 the best interest of the public.

8 Q. Did you discuss that language with Mr.
9 Whiteside as to what he meant by that?

10 A. No. I did not take issue with it.
11 That's, you know, I think that's language that we
12 often use in our program.

13 Q. Mr. Grice, I believe you have the January
14 24 application of AMISUB of South Carolina, Inc.
15 doing business as Fort Mill Medical Center that
16 was filed by the Department -- filed with the
17 Department on January 25, 2005, in front of you,
18 correct?

19 A. Yes.

20 MS. CRUM: Let's take about a five-minute
21 break. I'm going to take some of these pages out
22 and it will speed us up.

23 (A recess was taken at this time.)

24 (EXH. 14, Letter to Mary W. Fechtel from
25 David S. Levitt dated 1/24/05 with Enclosures, was

1 marked for identification.)

2 BY MS. CRUM:

3 Q. Mr. Grice, I've given you a set of
4 documents that we have marked as Exhibit 14. What
5 I'm going to do is go through these and just see
6 if you recognize these. And then I will suggest
7 to you, subject to your confirmation, that these
8 came from the Fort Mill Medical Center January 24,
9 2005, 64-bed CON bed application. If you could
10 just look at that for me, those documents, and
11 confirm that for me.

12 A. I will.

13 MS. CRUM: While you're looking I will
14 simply note that the last two pages are as we
15 received them. They don't have Bates stamps on
16 them.

17 MR. ANDREWS: For clarification, do you
18 mean that they were in the record but just without
19 Bates stamp?

20 MS. CRUM: That's my understanding.
21 That's how we got them.

22 THE WITNESS: Yes. They're all from the
23 file that was originally submitted January 24,
24 2005.

25 BY MS. CRUM:

1 Q. Mr. Grice, could I ask you, the two
2 October 10 letters, the one from Ms. Fechtel to
3 Mr. Charles F. Miller acknowledging the letter
4 withdrawing the application, and the one from Ms.
5 Fechtel to Mr. Linn, October 10 also, regarding
6 the request for public hearing, in the file that
7 you have now, do those have Bates stamped numbers
8 on them?

9 A. No, they don't. They are the last two
10 pages in that file and they're not Bates stamped.

11 Q. Thank you, sir. Mr. Grice, I'm going to
12 ask you a couple of questions about these
13 documents. On January 25, 2005, the Department
14 received a CON application from AMISUB of South
15 Carolina, Inc. to develop a 64-bed acute care
16 hospital in Fort Mill, South Carolina to include
17 one diagnostic cardiac catheterization lab, one
18 magnetic resonance imaging unit, and one computed
19 tomography scanner to be located at the
20 intersection of South Carolina Highway 160 and
21 Highway 21 Bypass, correct?

22 A. That's correct.

23 Q. On January 31, 2005, the Department wrote
24 a letter and acknowledged to Mr. David Levitt, the
25 senior principal with Mitretek Healthcare, that

1 they had withdrawn a previous application,
2 correct?

3 A. Yes.

4 Q. And also advising Mr. Levitt that the
5 Department was reviewing the January -- the
6 application dated January 24 filed by AMISUB, I
7 say January 24, 2005, for completeness, right?

8 A. That's correct.

9 Q. Now, by certified mail February 8, 2005,
10 the January 2005 AMISUB 64-bed application was
11 deemed complete, correct?

12 A. Yes, that's correct.

13 Q. If you would, look at Exhibit 14 Bates
14 stamped 351, 352, 353 through 355. Is that a copy
15 of the State Register whereby the Department
16 notified affected parties that an application
17 first had been received in York County for a
18 64-bed hospital from AMISUB?

19 A. Yes. It's both notification of filing
20 and notification of the affected person.

21 Q. The notification of filing was on page
22 352?

23 A. That's correct, yes.

24 Q. And the notification to affected persons
25 that the parties had been -- I'm sorry, that that

1 application had been deemed complete on page 355?

2 A. That's correct.

3 Q. Now, Mr. Grice, the notification to
4 affected parties that an application has been
5 deemed complete, does that start the 15-day time
6 period for a competing applicant to file an
7 application to be in the same review cycle?

8 A. It starts the deadline, yes, ma'am. A
9 competing applicant can file at any time as long
10 as they file no later than 15 days after
11 notification of affected person of the first
12 application that's in the batch that's received.

13 Q. This application dated January 21, 2005,
14 was the first application in the batch for
15 competing applicants?

16 A. Yes, that's correct.

17 Q. Do you have a copy of the regs with you,
18 Mr. Grice?

19 A. Yes, I do.

20 Q. If you could look for me at Regulation
21 61-15, Section 103, subparagraph 6, I believe it
22 is.

23 Mr. Grice, there were four applications
24 for the hospital -- for a hospital in York County,
25 correct?

1 A. That's correct.

2 Q. Did the Department deem each of those
3 four applicants to be a competing applicant?

4 A. Yes.

5 Q. Why?

6 A. They fell under the definition of
7 competing applications in the regulation which
8 meant you had two or more applicants that were
9 applying for similar services in the same service
10 area where approval of all or more than one would
11 exceed the need.

12 Q. What was the need that would be exceeded
13 in this case?

14 A. For a hospital application we look at the
15 bed number, and the maximum bed need for York
16 County was 64 beds, additional beds -- 64
17 additional beds.

18 Q. In other words, 64 new beds?

19 A. That's correct.

20 Q. When you just told me what a competing
21 applicant was, were you relying on the definition
22 in Section 103.6 of Regulation 61-15?

23 A. Yes I was.

24 (EXH. 15, Newspaper Articles, was marked
25 for identification.)

1 BY MS. CRUM:

2 Q. This is a group of newspaper articles we
3 marked as Exhibit 15. I want to just ask you some
4 questions. The first article, it's Bates page
5 52-R. And 52-R, that means it's from PHY's
6 reconsideration request; is that correct?

7 A. Yes.

8 Q. On Bates page 53-R, which is a
9 continuation of the article from the previous
10 page, if you look at the third column over --

11 A. Okay.

12 Q. -- the first full paragraph beginning
13 with "According to Grice."

14 A. Yes.

15 Q. If you could just read that paragraph,
16 please, sir.

17 A. "According to Grice, other applicants for
18 a Certificate of Need would have to apply before
19 March 12 if they want to challenge Piedmont's
20 presence in Fort Mill."

21 Q. Is that or words to that effect what you
22 told the reporter with regard to other applicants
23 challenging the Fort Mill Medical Center January
24 2005 application?

25 A. I think probably the question had to do

1 with the deadline for competing application, yes,
2 which would be 15 days after the application for
3 the Fort Mill Medical Center was published in the
4 South Carolina State Register.

5 Q. And the 15 days, to the best of your
6 recollection, would have been March the 12th?

7 A. At that time, that's correct.

8 Q. In fact, Presbyterian Hospital-York,
9 Charlotte-Mecklenburg Hospital Authority d/b/a
10 Carolinas Healthcare System, and Hospital Partners
11 of America d/b/a Lake Wylie Medical Center each
12 filed an application on March the 11th, 2005,
13 correct?

14 A. That's correct.

15 Q. And at that time each of them was deemed
16 to be a competing applicant to the Fort Mill
17 Medical Center January application?

18 A. That's correct.

19 Q. Mr. Grice, in the Department's review and
20 in your review of a Certificate of Need
21 application, isn't always the first project review
22 criteria ranked in order of importance the ability
23 to comply with the standards or criteria in the
24 State Plan?

25 A. Yes.

1 Q. At no time did you tell any of the
2 competing applicants that anything but the
3 applications would be reviewed competitively,
4 correct?

5 A. That's correct. That's correct.

6 Q. In reviewing applications competitively
7 that would necessarily mean, would it not, that
8 each would have an equal chance under the State
9 Plan to access those 64 beds?

10 MR. ANDREWS: Object to the form.

11 THE WITNESS: When you review
12 competitively you're looking, as we mentioned
13 earlier, which applicant best meets the important
14 criteria. You can always compare applicants with
15 various criteria, and one may better meet it than
16 another.

17 So they were reviewed competitively, and
18 Piedmont, in the criteria that we picked to be the
19 most important, of the four medical centers in our
20 opinion better met those criteria.

21 BY MS. CRUM:

22 Q. If only Fort Mill Medical Center met the
23 bed need methodology under the Plan, please
24 explain to me how the other three could be
25 competing for beds that they didn't have a right

1 to.

2 A. If you look at the reason in our letter,
3 we reviewed them competitively. We had other
4 reasons that Piedmont met certain criteria better.
5 Piedmont also met the standards of the Plan better
6 than the other applicants.

7 Q. Mr. Grice, our deposition today is
8 limited to the Plan methodology. So I wasn't
9 asking about the others and can't, and if I did I
10 think we would get objections all around the room.
11 I want you to turn to Regulation 61-15, Section
12 103, subparagraph 6.

13 It says, "An application shall be
14 considered competing if it is received by the
15 Department no later than 15 days after a notice of
16 affected persons is published in the State
17 Register for one or more applicants for similar
18 services."

19 Do you remember we talked about that?

20 A. Yes.

21 Q. And the service was the 64 beds?

22 A. Yes -- well, yes. The service was a new
23 health care facility, development of a new health
24 care facility, and then that health care facility
25 had various services within it such as MRI and

1 including the -- specifically met the standards in
2 the Health Plan. So, you know, certainly many
3 other things could have happened in the review
4 process, but this is the way it turned out.

5 So, in my opinion, we don't tell someone
6 up front -- you know, oftentimes applicants will
7 meet with us and might propose a project that is
8 absolutely impossible, and we would tell them
9 that. We don't tell them they can't apply. Many
10 of them don't. But in this situation, you know,
11 the applicants wanted to apply, and we did review
12 them competitively.

13 Q. My question was not whether you told them
14 they couldn't apply, but whether or not you ever
15 told anyone and why you didn't tell anyone that
16 they didn't meet the State Health Plan bed need
17 methodology.

18 MS. LAYMAN: Object to the form.

19 THE WITNESS: They are intelligent people
20 with intelligent attorneys and they're able to
21 read and tell for themselves.

22 BY MS. CRUM:

23 Q. So it is up to us, to the applicants, to
24 interpret the State Health Plan and not up to the
25 Department to interpret the State Health Plan?

1 Q. Let me rephrase. Other than Regulation
2 61-15, Section 103.6, is there any other
3 regulation you are relying on for your
4 determination that AMISUB d/b/a Fort Mill Medical
5 Center, having withdrawn its 64-bed CON
6 application submitted January 25, 2005, can be a
7 competing applicant to the applications filed
8 March 11, 2005?

9 A. No. Because I believe that is the only
10 section in our Regulation 61-15 that relates to
11 the timeline of competing applicants.

12 Q. You also said there have been other cases
13 that you have had a similar situation. Tell me
14 what those cases are, please, sir.

15 A. The one that I remember most recently was
16 ambulatory surgical centers proposed for Lancaster
17 County. We had an applicant -- Springs Memorial
18 Hospital came in first for an ambulatory surgery
19 center to be located in the town of Lancaster. We
20 then had two other applications submit to be
21 competing with Springs that would be located in
22 the Indian Land area of Lancaster County.

23 Springs chose to withdraw and submitted a
24 new application changing its location also to
25 Indian Land and submitted an order to be competing

1 care facilities and services, at best meet public
2 need, ensure there are high quality services
3 provided in facilities, and to try to, I think --
4 I guess there's one more. I can't remember the
5 other one exactly, but it's got -- I guess try to
6 ensure that -- let me look here a second.

7 Prevent unnecessary duplication of health
8 facilities and services is the fourth one. And
9 these are stated in Section 101 of Regulation
10 61-15.

11 Q. Assume for me a minute, Mr. Grice, that
12 in fact the AMISUB Fort Mill Medical Center
13 hundred bed hospital is built, it would be -- it
14 would have to have a separate hospital license
15 from Piedmont, wouldn't it?

16 A. Yes. Every hospital is licensed
17 separately.

18 Q. The thing would be they would have a
19 common ownership?

20 A. They would. The licensee would be
21 identical just like Greenville Hospital Systems
22 has four or five hospitals separate licensed under
23 the same licensee.

24 Q. But that the hospital should be
25 separately licensed and would be distinct

1 facilities?

2 A. That's correct.

3 Q. Let me ask you to look again at 74-R.
4 Not again. I haven't asked you to look at that
5 one yet. It's Exhibit 15, page 74-R.

6 A. Okay.

7 Q. Would it be fair to say that the
8 sentiment in York County was that they wanted
9 competition?

10 MR. ANDREWS: Object to the question.
11 Moving beyond the bounds of the discovery order.

12 MS. CRUM: I'm asking the question -- I
13 think that goes to the intent as to whether or not
14 the CON Act itself envisions competition.

15 MR. ANDREWS: What does that have to do
16 with this case?

17 BY MS. CRUM:

18 Q. Let me address you to the second column,
19 Mr. Grice, the second paragraph, the first full
20 paragraph and the second paragraph. Just read
21 them into the record, please.

22 A. That's the second column?

23 Q. Starting at the right with "Piedmont
24 Medical Center."

25 A. "Piedmont Medical Center has 471 pages of

1 A. I'm sorry. Last sentence in the first
2 paragraph?

3 Q. Yes, sir.

4 A. "Our study identified no state CON law
5 that appeared to be so restrictive as to prohibit
6 new competitors from entering the state."

7 Q. Tell me, Mr. Grice, with the
8 interpretation that you gave in reason 4 to the
9 Plan in this case, how could a competitor enter
10 into York County?

11 A. In my opinion there could be a
12 situation --

13 Q. Let me rephrase it. With regard to the
14 64 new hospital beds, given the interpretation
15 under paragraph 4 of the decision letter that the
16 bed need methodology is to the specific
17 institution, how could a new competitor enter the
18 market in York County?

19 A. Well, certainly you can make the argument
20 that it couldn't. Someone could also make the
21 argument they could, and sometimes --

22 Q. I want your argument, Mr. Grice, that
23 they could.

24 A. My argument would be that if for some
25 reason the provider decided they for whatever

1 reason could not afford, did not want to develop
2 additional beds, they could perhaps have an
3 agreement with another provider to come and build
4 a facility and some way contract and know that the
5 need would be gone, be transferred to someone
6 else.

7 Here again, that's a creative idea. It's
8 something that is under consideration now with an
9 application under review. So, you know, I think
10 in certain situations that would have been
11 presented to us, you have to do what is really
12 going to benefit the community in the best way.
13 There's no way that a Health Plan can address
14 every situation that can possibly occur.

15 Q. Can you look at the decision letter, May
16 31, Exhibit 2, please sir, paragraph 4.

17 A. What number was that?

18 Q. Exhibit 2.

19 A. I got it. The letter to you, Ms. Crum,
20 on Presbyterian.

21 Q. Yes, sir, paragraph 4, page 2. Do you
22 see the last two sentences? It says, "Therefore,
23 the bed need for York County, as indicated in the
24 2004-2005 South Carolina Health Plan, is based on
25 Piedmont Medical Center as the planning unit, not

1 York County."

2 Do you still agree with that statement?

3 A. Yes.

4 Q. So the bed need is for Piedmont Medical
5 Center, correct?

6 A. That is what the Plan based need on, yes.

7 Q. That's what you determined?

8 A. Yes.

9 Q. The next sentence. "The number of beds
10 needed is based on the service area and market
11 share of Piedmont Medical Center, not the entire
12 medical patient population in York County."

13 Is that correct?

14 A. Yes, to a certain extent, because what
15 the bed need formula is based on the utilization
16 of the existing facility, in this case Piedmont
17 Medical Center, and the projected population of
18 the entire county. There may be patients that go
19 to other counties for care. And, of course, their
20 utilization data would not be reflected at
21 Piedmont Medical Center or existing facilities.
22 So, basically, that's correct.

23 Q. Under your scenario, if Piedmont Medical
24 Center chose to give away its beds it could do
25 that, and that would create competition?

1 A. The Plan doesn't go into that detail, but
2 it's certainly an idea.

3 Q. But what the Plan does say, according to
4 your statement here, is that the Plan uses the
5 individual facilities to calculate need, right?

6 A. That's correct.

7 Q. So absent approval from Piedmont Medical
8 Center nobody else could compete for those beds,
9 could they?

10 A. That's correct.

11 Q. Let me ask you one more question about
12 this last sentence here. The State Health Plan,
13 the way bed need methodology has been interpreted
14 in this decision does not take into account the
15 entire medical patient population of York County,
16 does it?

17 A. Yes. That's what it says because it's
18 related to -- many patients may go somewhere else
19 so we don't really know what their utilization
20 would be in another facility. Could be
21 out-of-state.

22 Q. We do know that people have chosen to go
23 out-of-state, don't we, in this particular need
24 competing application scenario?

25 A. Yes.

1 that he thought that was a very creative and
2 reasonable way that we handled that.

3 Q. Would you explain to me what you told Mr.
4 Cooke, to the best of your recollection, why you
5 specifically developed institutional-based need in
6 2003?

7 A. If I recall, what I explained was that in
8 South Carolina we, over time, had hospitals, many
9 of which were part of the Hill Burton development.
10 And as we got into the 1980s we had outpatient
11 services increase in many hospitals, and some of
12 the older ones had excess beds. And some of those
13 relocated and downsized; some did not.

14 But, basically, the situation we had
15 gotten into with the increase in outpatient
16 utilization was that our inpatient utilization
17 declined like it has in most of the United States.
18 We had some special problems in some counties in
19 South Carolina where, in using the county hospital
20 bed need, that we might have one facility that had
21 empty beds because it was a larger facility that
22 was over-bedded, another facility that perhaps had
23 tertiary services that was bursting at the seams.

24 When you look at the county need it was
25 zero or minus because of that one facility that

1 might, you know, not be fully utilized. It was a
2 real problem because that one facility, people may
3 not choose to go there or didn't have the services
4 that the health consumers needed. And for that
5 reason we saw a situation where we needed to have
6 a way that a hospital that was located in a county
7 where there was no county need needed to be able
8 to add beds.

9 For that reason that's why we really
10 focused on the institutional need situation.
11 Where if the hospital itself -- and some of them
12 weren't generating much over 50 beds, but it was a
13 zero county bed need because their competitors had
14 such low utilization. That's why this had to be
15 done to be able to help those type of facilities.

16 Once that situation was -- for example,
17 in Florence County, where McLeod Regional Medical
18 Center was bursting at the seams and the
19 competitors were not being fully utilized, there
20 was zero or less need. And so this was a way that
21 we were trying to assist those facilities that
22 needed immediate increased bed capacity.

23 We thought that situation now -- what had
24 occurred was that the state was growing in areas
25 and our bed need was increasing, and that it was

1 Q. Let's look at page Roman numeral II-13 of
2 Tab E on Exhibit 21.

3 MR. ANDREWS: Mr. Grice, did you finish
4 your response?

5 MS. CRUM: I thought you had finished. I
6 apologize.

7 THE WITNESS: I lost my thought. That's
8 okay. I'm looking at page II-13.

9 BY MS. CRUM:

10 Q. Let's look at Lexington County. That's a
11 single hospital in the county, right?

12 A. Yes.

13 Q. As we painfully know from a month-long
14 trial.

15 A. Right.

16 Q. Do you believe it was the intent of the
17 State Health Planning Committee and of the Board
18 in doing an institutional need for Lexington
19 Medical Center to prevent, as Mr. Andrews said,
20 Providence from coming in and, for example,
21 applying for a 54-bed hospital in Pelion?

22 MR. ANDREWS: Object to the form.

23 THE WITNESS: I don't think it was
24 something that was given thought. It was highly
25 unlikely. In Lexington County, I think where the

1 majority of the population was sort of an --
2 where an existing hospital would be, and I think
3 that would have been such a small facility it
4 would not have been feasible. I don't think any
5 thought had even been considered that it was
6 either a possibility or practical. That's just my
7 thought.

8 BY MS. CRUM:

9 Q. Mr. Grice, with regard to the 2004-2005
10 Plan, since you have testified repeatedly that the
11 Plan says the bed need is calculated for the
12 individual facilities, then why didn't you issue
13 the CON to the individual incumbent facility,
14 Piedmont?

15 A. The application was for a satellite
16 hospital under the same licensee but a
17 free-standing facility.

18 Q. But a separate licensed hospital?

19 A. Yes, ma'am.

20 Q. You issued your decision letter to
21 Piedmont. You didn't mean to issue it -- did you
22 mean to issue it to -- look at your decision
23 letter, Exhibit 3.

24 A. Yes.

25 MR. ANDREWS: Object to the form if the

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Charlotte-Mecklenburg Hospital
Authority d/b/a Carolinas Healthcare
System,

Petitioner,

vs.

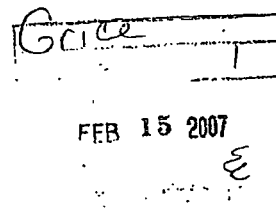
South Carolina Department of Health
and Environmental Control and Amisub
of South Carolina, Inc. d/b/a Piedmont
Healthcare System d/b/a Fort Mill
Medical Center,

Respondent,

Presbyterian Healthcare System, d/b/a
Presbyterian Hospital—York, LLC

Intervenor.

Civil Action No. 06-ALJ-07-0489-CC



Charlotte-Mecklenburg Hospital
Authority d/b/a Carolinas Healthcare
System,

Petitioner,

vs.

South Carolina Department of Health
and Environmental Control,

Respondent,

Amisub of South Carolina, Inc. d/b/a
Piedmont Healthcare System d/b/a Fort
Mill Medical Center and Presbyterian
Healthcare System, d/b/a
Presbyterian Hospital—York, LLC

Intervenors.

Civil Action No. 06-ALJ-07-0490-CC

FILED

JAN - 9 2007

SC ADMIN. LAW COURT

COLUMBIA 871420v1

Presbyterian Healthcare System, d/b/a
Presbyterian York, LLC,

Petitioner,

vs.

South Carolina Department of Health
and Environmental Control and Amisub
of South Carolina, Inc. d/b/a Piedmont
Healthcare System d/b/a Fort Mill
Medical Center,

Respondent,

Charlotte-Mecklenburg Hospital
Authority d/b/a Carolinas Healthcare
System,

Intervenor.

Civil Action No. 06-ALJ-07-0713-CC

Presbyterian Healthcare System, d/b/a
Presbyterian York, LLC,

Petitioner,

vs.

South Carolina Department of Health
and Environmental Control

Respondent,

Amisub of South Carolina, Inc. d/b/a
Piedmont Healthcare System d/b/a Fort
Mill Medical Center and Charlotte-
Mecklenburg Hospital Authority d/b/a
Carolinas Healthcare System,

Intervenors.

Civil Action No. 06-ALJ-07-0712-CC

**CONSENT SCHEDULING ORDER ON
BIFURCATED DISCOVERY ISSUES**

In light of this Court's ruling to consolidate the above listed contested cases for administrative purposes Pursuant to SCRCF 42(a) and with the consent of all parties, the following Consent-Scheduling Order is issued to address and establish the means and timeframe for the conduct and completion of bifurcated discovery in the above-captioned cases. The parties, based upon the circumstances of these cases, have agreed to an expansion of discovery beyond that which is generally allowed under ALC Rule 21. Therefore, it is ordered that:

1. Discovery, at this time, is limited to the following issues:
 - i. The drafting, public hearing process, adoption, application, and meaning of the general acute bed provisions of the Plan;
 - ii. The history of the changes in the general acute bed provisions of the South Carolina State Health Plans' leading up to the Plan provisions;
 - iii. The DHEC staff interpretation of the Plan and the basis thereof; and
 - iv. The DHEC staff decision that after October 7, 2005, FMMC continued to be a competing applicant in the same review cycle as Presbyterian and the basis thereof;
2. Any party may depose any witness listed by any party and shall have the right to take the deposition of any party to this action, provided that the parties shall work together and cooperate to the greatest extent possible to schedule depositions in a convenient and reasonable manner and timeframe, subject to the restraints of Paragraph one (1) above.
 2. Each party is permitted to serve up to twenty (20) interrogatories, including subparts, on any other party, in addition to the standard interrogatories provided by SCRCF 33(b); subject to the restraints of Paragraph one (1) above.
3. All discovery related to the issues listed in Paragraph one (1) above must be completed no later than May 4, 2007 subject to each party's right to subsequently move the Court for an extension if circumstances warrant.

4. Any dispositive motions and supporting memoranda based on the issues listed in Paragraph one (1) above must be filed and served by hand or email on each party no later than May 18, 2007. Any memoranda in opposition to any dispositive motion filed on May 18, 2007 must be filed and served by hand or email on each party no later than June 6, 2007. Any reply to a memoranda in opposition to any dispositive motion filed on June 6, 2007 must be filed and served by hand or email on each party no later than June 13, 2007.

5. A hearing on the motions related to the issues listed in Paragraph one (1) above is scheduled for 10:00 a.m. on June 21, 2007.

6. The foregoing discovery schedule and framework is subject to the right of any party to seek a protective order on any grounds available under Rule 21 of the Rules of Procedure for Administrative Law Court and under Rules 26 – 37, SCRCP.

7. Following this Court ruling on the motions argued at the June 21, 2007 hearing and depending upon this Court's rulings, the parties may enter into a new consent scheduling order if necessary to accommodate complete discovery in these, or any portion of these, contested cases.

AND IT IS SO ORDERED.

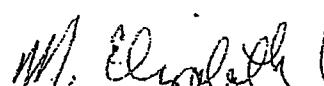
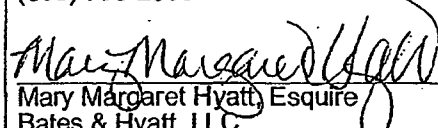
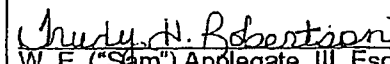

Carolyn C. Matthews
Administrative Law Judge

Columbia, South Carolina

~~December~~, 2006

January 5, 2007

WE CONSENT:

 M. Elizabeth Crum, SC Bar No. 001486 lcrum@mcnair.net Ariail B. Kirk, SC Bar No. 71101 akirk@mcnair.net Kelly M. Jolley, SC Bar No. 725373 kjolley@mcnair.net McNair Law Firm, P.A. Post Office Box 11390 Columbia, South Carolina 29211 (803) 799-9800 Attorneys for Presbyterian Healthcare System, d/b/a Presbyterian Hospital— York, LLC	 Ashley C. Bidders, Esquire Nancy S. Layman, Esquire SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL 2600 Bull Street Columbia, South Carolina 29201 (803) 898-3351 Attorneys for the South Carolina Department of Health and Environmental Control
 Stuart M. Andrews, Jr., Esquire Daniel J. Westbrook, Esquire Jennifer I. Cooke, Esquire NELSON MULLINS RILEY & SCARBOROUGH LLP Post Office Box 11070 Columbia, South Carolina 29211 (803) 799-2000  Mary Margaret Hyatt, Esquire Bates & Hyatt, LLC 3710 Landmark Dr., Suite 340 Columbia, SC 29206 (803) 787-6850 Attorneys for Amisub of South Carolina, INC., d/b/a Fort Mill Medical Center	 W. E. ("Sam") Applegate, III, Esquire Douglas M. Muller, Esquire Trudy H. Robertson, Esquire MOORE & VAN ALLEN, PLLC Post Office Box 22828 Charleston, South Carolina 29243-2828 (843) 579-7000 Attorneys for the Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Healthcare System

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JAN - 9 2007

SC ADMIN. LAW COURT

COLUMBIA 871420v1

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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 18th day of Jan. 2007
By: Amelia F. Rupp
Judicial Law Clerk

Grice

2

JUN 15 2007



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

RECEIVED

JUN 02 2006

McNair Law Firm, P.A.

Certified Mail

May 30, 2006

Re: Presbyterian Healthcare System d/b/a Presbyterian Hospital - York
Fort Mill, South Carolina

M. Elizabeth Crum, Esquire
McNair Law Firm
P.O. Box 11390
Columbia, South Carolina 29211

Dear Ms. Crum:

This is to advise that the Department has reviewed four (4) competing Certificate of Need applications for the addition of general acute care hospital beds to be located in York County, South Carolina as outlined in the 2004-2005 South Carolina Health Plan. The 2004-2005 South Carolina Health Plan allows the Department to approve only sixty-four (64) additional general acute care beds at this time. State statute requires that in the case of competing applications, the Department shall award a Certificate of Need on the basis of the application that more fully complies with the requirements, goals, and purposes of the statute, State Health Plan, Project Review Criteria, and regulations adopted by the Department.

Therefore, it is the decision of this Department that the Certificate of Need application submitted by Presbyterian Healthcare System, Charlotte, North Carolina be denied for the construction of a 64-bed acute care hospital to include a Magnetic Resonance Imaging (MRI) unit, a Computed Tomography (CT) scanner and a diagnostic cardiac catheterization laboratory to be located off of I-77 at Sutton Road in Fort Mill, South Carolina.

The decision is based on the following:

1. After careful and thorough review of each of the four (4) competing Certificate of Need (CON) applications for a new, additional general acute care hospital to be located in York County, Department staff have determined that the Fort Mill Medical Center proposal best demonstrates the compelling, definitive, characteristics to be most beneficial to the current and future citizens of York County during the coming decades. Specifically, the Fort Mill Medical Center, which will function under the same licensee, Amisub of South Carolina, Inc., as Piedmont Medical Center (PMC), must operate within all parameters of an existing contract between PMC and York County. The aforementioned contract

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SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

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PHY RECON EXHIBIT

Ms. Elizabeth Crum
May 30, 2006
Page 2

was amended in recent years, and requires the facility to maintain charges that are consistent with peer group hospitals or be subject to substantial monetary penalties by York County Council. The Contract also requires: establishment of a local governing board and advisory committees for PMC, submission of quarterly financial reports to York County, maintenance of a county-wide EMS with contractually established response times and equipment, maintenance of the urgent care center in western York County, and maintenance of substantial required capital investments by the hospital along with community support through scholarships and donations. This Contract, which no other applicant is bound by, will ensure that charges remain reasonable at both PMC and the proposed new hospital in Fort Mill. The Contract will continue to remain in effect for an additional 39 years.

2. The development of a 100-bed general acute care hospital in York County by Fort Mill Medical Center will result in economies of scale and operating efficiencies that cannot be achieved in smaller facilities, such as the 64-bed facilities proposed by the competing applicants. The initial construction of the larger increment of 100 beds is much more cost effective in that it will alleviate the likely need for follow-up construction for additional beds over a relatively short period of time.
3. The applicant, PMC, has operated an existing hospital in York County for more than two decades and has demonstrated a commitment to the community. The addition of a satellite facility by PMC to serve the Fort Mill area will continue that commitment and will not only enhance the health care delivery system for patients in the Fort Mill area, but benefit York County as a whole.
4. Although each of the four (4) competing CON applications is consistent with standards for both Diagnostic Cardiac Catheterization and Magnetic Resonance Imaging (MRI) services as outlined in the current 2004-2005 S.C. Health Plan, the proposal submitted for the Fort Mill Medical Center is the only project of the competing CON applications that is consistent with the hospital bed need methodology as specifically outlined in the 2004-2005 S.C. Health Plan. The aforementioned Plan uses individual facilities as the unit calculation of bed need instead of the county. Therefore, the bed need for York County, as indicated in the 2004-2005 S.C. Health Plan, is based on Piedmont Medical Center as the planning unit, not York County. The number of beds needed is based on the service area and market share of Piedmont Medical Center, not the entire medical patient population in York County.

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Ms. Elizabeth Crum
May 30, 2006
Page 3

This Proposed Decision becomes the final agency decision ten (10) days after the receipt of this notice unless one of the following occurs:

1. Pursuant to Section 44-7-210 (D)(1) of the amended Code of Laws of South Carolina, 1976, any persons showing "good cause" as defined in Regulation No. 61-15 may request reconsideration of this Department's decision. Such request must be made in writing to this office within ten (10) days from the date of receipt of this notice by an applicant or his agent and must state the specific reasons for such request.
2. Pursuant to Section 44-7-210 (D)(2) of the amended Code of Laws of South Carolina, 1976, an appeal may be submitted by any affected person or the applicant, within a ten (10) day period, from the date of receipt of this notice by an applicant or his agent. Such an appeal may be submitted to the Administrative Law Court (ALC) by complying with the following requirements of the ALC:
 - (a) File a request for a contested case hearing with the Clerk of the Administrative Law Court at the following address within 10 days after receipt of notice of this decision as specified in No. 2 above:

Clerk's Office
South Carolina Administrative Law Court
1205 Pendleton Street, Suite 224
Edgar A. Brown Building
Columbia, South Carolina 29201
(803) 734-0550

The ALC has a Notice of Request for Contested Case Hearing form that may be used, but is not required. The form and the Rules of the ALC can be found at the ALC's website: <http://www.scalc.net>.

A request for a contested case hearing must contain the following information pursuant to ALC Rule 11:

- (1) The name of the party requesting the hearing and the issue(s) for which the hearing is requested;
- (2) The caption or other information sufficient to identify the decision, order, letter, determination, action, or inaction which is subject to the hearing;
- (3) A copy of the written agency decision, order, letter or determination, if any, which gave rise to the request; and

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Ms. Elizabeth Crum
May 30, 2006
Page 4

- (4) The relief requested.
- (b) Submit a filing fee to the Administrative Law Court in the amount of \$250. The filing fee is required by ALC Rule 71.
- (c) Serve a copy of the request for a contested case hearing on DHEC and any other parties at the same time the request is filed with the ALC. A copy of the request for a contested case hearing must be delivered or mailed to DHEC at the following address:

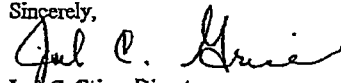
Clerk of the Board
S.C. Department of Health and Environmental Control
2600 Bull Street
Columbia, South Carolina 29201

The above information is provided as a courtesy; parties before the Administrative Law Court are responsible for complying with all applicable requirements of the Court.

A copy of the correspondence must also be forwarded to the Director of the Bureau of Health Facilities and Services Development. Should there be no response within the ten (10) day period, this decision will be final; however, note that the Rules of Procedure for the Administrative Law Court (May 2005) enlarge by five (5) days the time period for service by mail. Therefore, no CON will be issued, nor will the absence of a request for a contested case hearing be confirmed until the expiration of fifteen (15) days.

Should you have any questions, please feel free to contact us at (803) 545-4200.

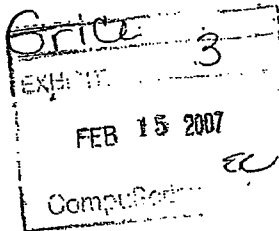
Sincerely,



Joel C. Grice, Director
Bureau of Health Facilities and Services Development

Cc: Mr. David S. Levitt
Mr. Terry Linn, Chief Development Officer
Mr. F. Del Murphy, Jr., Vice-President

000024R



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JUN 02 2006

McNair Law Firm, PA.

C. Ed Hunter, Commissioner
Promoting and protecting the health of the public and the environment.

Certified Mail

May 30, 2006

Re: Piedmont Healthcare System d/b/a Fort Mill Medical Center
Fort Mill, South Carolina

Mr. David S. Levitt
Mitrotek Healthcare - Gill-Balsano
6525 The Corners Parkway
Suite 450
Norcross, Georgia 30092

Dear Mr. Levitt:

This is to advise that the Department has reviewed four (4) competing Certificate of Need applications for the addition of general acute care hospital beds to be located in York County, South Carolina as outlined in the 2004-2005 South Carolina Health Plan. The 2004-2005 South Carolina Health Plan allows the Department to approve only sixty-four (64) additional general acute care beds at this time. State statute requires that in the case of competing applications, the Department shall award a Certificate of Need on the basis of the application that more fully complies with the requirements, goals, and purposes of the statute, State Health Plan, Project Review Criteria, and regulations adopted by the Department.

Therefore, it is the decision of this Department that a Certificate of Need be issued to Piedmont Healthcare System d/b/a Fort Mill Medical Center, Rock Hill, South Carolina for the construction of a 100 bed acute care hospital (including 64 beds shown as needed in the Health Plan in addition to 36 existing beds transferred from Piedmont Medical Center) to include one diagnostic cardiac catheterization laboratory, one Magnetic Resonance Imaging (MRI) unit and a sixty-four slice Computed Tomography (CT) scanner to be located at the intersection of SC Highway 160 and Highway 21 Bypass.

The decision is based on the following:

1. After careful and thorough review of each of the four (4) competing Certificate of Need (CON) applications for a new, additional general acute care hospital to be located in York County, Department staff have determined that the Fort Mill Medical Center proposal best demonstrates the compelling, definitive, characteristics to be most beneficial to the current and future citizens of York

PHY RECON EXHIBIT

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SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

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Mr. David Levitt

May 30, 2006

Page 2

County during the coming decades. Specifically, the Fort Mill Medical Center, which will function under the same licensee, Amisub of South Carolina, Inc., as Piedmont Medical Center (PMC), must operate within all parameters of an existing contract between PMC and York County. The aforementioned contract was amended in recent years, and requires the facility to maintain charges that are consistent with peer group hospitals or be subject to substantial monetary penalties by York County Council. The Contract also requires: establishment of a local governing board and advisory committees for PMC, submission of quarterly financial reports to York County, maintenance of a county-wide EMS with contractually established response times and equipment, maintenance of the urgent care center in western York County, and maintenance of substantial required capital investments by the hospital along with community support through scholarships and donations. This Contract, which no other applicant is bound by, will ensure that charges remain reasonable at both PMC and the proposed new hospital in Fort Mill. The Contract will continue to remain in effect for an additional 39 years.

2. The development of a 100-bed general acute care hospital in York County by Fort Mill Medical Center will result in economies of scale and operating efficiencies that cannot be achieved in smaller facilities, such as the 64-bed facilities proposed by the competing applicants. The initial construction of the larger increment of 100 beds is much more cost effective in that it will alleviate the likely need for follow-up construction for additional beds over a relatively short period of time.
3. The applicant, PMC, has operated an existing hospital in York County for more than two decades and has demonstrated a commitment to the community. The addition of a satellite facility by PMC to serve the Fort Mill area will continue that commitment and will not only enhance the health care delivery system for patients in the Fort Mill area, but benefit York County as a whole.
4. Although each of the four (4) competing CON applications is consistent with standards for both Diagnostic Cardiac Catheterization and Magnetic Resonance Imaging (MRI) services as outlined in the current 2004-2005 S.C. Health Plan, the proposal submitted for the Fort Mill Medical Center is the only project of the competing CON applications that is consistent with the hospital bed need methodology as specifically outlined in the 2004-2005 S.C. Health Plan. The aforementioned Plan uses individual facilities as the unit calculation of bed need instead of the county. Therefore, the bed need for York County, as indicated in the 2004-2005 S.C. Health Plan, is based on Piedmont Medical Center as the planning unit, not York County. The number of beds needed is based on the service area and market share of Piedmont Medical Center, not the entire medical patient population in York County.

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Mr. David Levitt
May 30, 2006
Page 3

The Department makes the following findings pursuant to Section 501, Regulation No. 61-15. Certification of Need for Health Facilities and Services:

1. The capital and operating costs of the proposal and their potential impact on patient charges are reasonable;
2. Superior alternatives to such services in terms of cost, efficiency, or appropriateness do not exist and that the development of such alternatives is not practicable;
3. In the case of new construction, alternatives to new construction have been considered; and
4. Patients will experience serious problems in terms of costs, availability or accessibility, or such other problems as may be identified by the Department, in obtaining care of the type proposed in the absence of the project.

The additional finding required by Section 501.5 of Regulation No. 61-15. Certification of Need for Health Facilities and Services is not applicable to this project.

This Proposed Decision becomes the final agency decision ten (10) days after the receipt of this notice unless one of the following occurs:

1. Pursuant to Section 44-7-210 (D)(1) of the amended Code of Laws of South Carolina, 1976, any persons showing "good cause" as defined in Regulation No. 61-15 may request reconsideration of this Department's decision. Such request must be made in writing to this office within ten (10) days from the date of receipt of this notice by an applicant or his agent and must state the specific reasons for such request.
2. Pursuant to Section 44-7-210 (D)(2) of the amended Code of Laws of South Carolina, 1976, an appeal may be submitted by any affected person or the applicant, within a ten (10) day period, from the date of receipt of this notice by an applicant or his agent. Such an appeal may be submitted to the Administrative Law Court (ALC) by complying with the following requirements of the ALC:
 - (a) File a request for a contested case hearing with the Clerk of the Administrative Law Court at the following address within 10 days after receipt of notice of this decision as specified in No. 2 above:

0000277

Mr. David Levitt
May 30, 2006
Page 4

Clerk's Office
South Carolina Administrative Law Court
1205 Pendleton Street, Suite 224
Edgar A. Brown Building
Columbia, South Carolina 29201
(803) 734-0550

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A request for a contested case hearing must contain the following information pursuant to ALC Rule 11:

- (1) The name of the party requesting the hearing and the issue(s) for which the hearing is requested;
 - (2) The caption or other information sufficient to identify the decision, order, letter, determination, action, or inaction which is subject to the hearing;
 - (3) A copy of the written agency decision, order, letter or determination, if any, which gave rise to the request; and
 - (4) The relief requested.
- (b) Submit a filing fee to the Administrative Law Court in the amount of \$250. The filing fee is required by ALC Rule 71.
- (c) Serve a copy of the request for a contested case hearing on DHEC and any other parties at the same time the request is filed with the ALC. A copy of the request for a contested case hearing must be delivered or mailed to DHEC at the following address:

Clerk of the Board
S.C. Department of Health and Environmental Control
2600 Bull Street
Columbia, South Carolina 29201

The above information is provided as a courtesy; parties before the Administrative Law Court are responsible for complying with all applicable requirements of the Court.

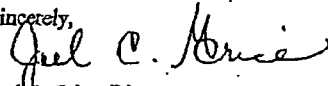
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Mr. David Levitt
May 30, 2006
Page 5

A copy of the correspondence must also be forwarded to the Director of the Bureau of Health Facilities and Services Development. Should there be no response within the ten (10) day period, this decision will be final; however, note that the Rules of Procedure for the Administrative Law Court (May 2005) enlarge by five (5) days the time period for service by mail. Therefore, no CON will be issued, nor will the absence of a request for a contested case hearing be confirmed until the expiration of fifteen (15) days.

Should you have any questions, please feel free to contact us at (803) 545-4200.

Sincerely,



Joel C. Grice, Director
Bureau of Health Facilities and Services Development

CC: Ms. M. Elizabeth Crum, Esquire
Mr. F. Del Murphy, Jr., Vice-President
Mr. Terry Linn, Chief Development Officer

0000297

(8) Provide the following ownership information:

(a) Proposed name of facility;

Response: Fort Mill Medical Center.

(b) Name and address of licensee or prospective licensee. (Note: The licensee is defined as the legal entity who, or whose governing body, has the ultimate responsibility and authority for the conduct of the facility or service; the owner of the business. The licensee must be the entity to whom the Certificate of Need is issued.)

Response: Amisub of South Carolina, Inc.
222 South Herlong Avenue
Rock Hill, SC 29732
(York County)

(c) Complete title of the licensee's governing body.

Response: Amisub of South Carolina, Inc., Board of Directors

(d) Name, title and mailing address of presiding officer of the governing body.

Response: Stephen Bale, M.D.
Chairman of the Board
Amisub of South Carolina, Inc.
222 South Herlong Avenue
Rock Hill, SC 29732

(e) Name and mailing address of all persons and/or legal entities having any ownership interest or owner's equity of the licensee to include a schedule of percent and type ownership claim of each.

Response: Amisub of South Carolina, Inc., is a wholly owned subsidiary of Tenet Medical Systems, Inc. The ultimate parent corporation of Amisub of South Carolina, Inc., is Tenet Healthcare Corporation. The mailing address of Tenet Healthcare Corporation is:

P.O. Box 809088
Dallas, TX 75380-9088

(f) Name and mailing address of all persons and/or legal entities claiming liabilities of the licensee or of the facility or service for which this Certificate of Need is requested to include a schedule of percent and type of claim of each.

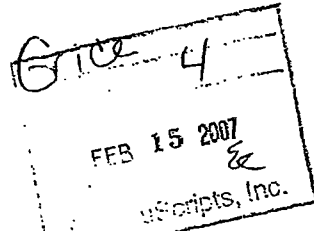
Response: Amisub of South Carolina, Inc., is a wholly owned subsidiary of Tenet Medical Systems, Inc. The ultimate parent corporation of Amisub of South Carolina, Inc., is Tenet Healthcare Corporation. The mailing address of Tenet Healthcare Corporation is:

P.O. Box 809088
Dallas, TX 75380-9088

(g) Provide a listing which identifies all officers of the licensee.

Response: The Officers of Amisub of South Carolina, Inc. are:

President: Charles F. Miller
Vice President: Jay Pennisson



000016

- (h) Is the land and/or building on/in which the proposed facility or service is to be conducted owned by the applicant. ☐ YES ☒ NO If no, provide information on the land and building similar to that required in (b) through (g) above.

Response: The site for the proposed Fort Mill Medical Center is under option pending the outcome of the CON process. A letter of intent was signed by Clear Springs-Kingsley, LLC, (Seller) and Amisub of South Carolina, Inc., (Buyer) on January 11, 2005, and is valid for a period of two years. Upon approval of this CON application, the applicant will execute the purchase of the land. A copy of the Letter of Intent to purchase the land is provided in Attachment A.

In addition, the land purchase also includes a land swap of parcels currently owned by Amisub of South Carolina, Inc. The following table details the existing land that will be exchanged, the proposed land that will be purchased, and the owners of each parcel.

Figure 6
Land Purchase and Exchange

Land to be Exchanged:			
	Acres	Per Acre	Total Cost
Parcel I (a)	3.03	\$330,700	\$1,001,360
Parcel II (b)	3.00	\$357,200	\$1,071,600
Parcel III (c)	8.22	\$258,637	\$2,126,000
Subtotal Exchange:	14.25	\$294,705	\$4,198,960
Land to be Purchased by Tenet Fort Mill, Inc.:			
	Acres	Per Acre	Total Cost
Parcel IV (d)	22.75	\$261,300	\$5,944,575
Parcel V (e)	3.00	\$361,300	\$1,083,900
Subtotal Purchase:	25.75	\$272,950	\$7,028,475
TOTAL SITE	40.00	\$280,685.88	\$11,227,435

Notes:

- (a) Purchased by Amisub of South Carolina, Inc., by January 31, 2005, at Baxter site.
(b) Purchased by Amisub of South Carolina, Inc., by January 31, 2006, at Baxter site.
(c) Currently owned by Amisub of South Carolina, Inc., at Baxter site.
(d) Purchased by Amisub of South Carolina, Inc., at Fort Mill site.
(e) Purchased by Tenet-Fort Mill, Inc., at Fort Mill site.

- (i) Has the licensee engaged an entity other than an employee of the licensee to manage or operate the facility or service? ☐ YES ☒ NO If yes, provide information similar to that required in (b) through (g) above.

Response: Not applicable. The facility will be owned and operated by the applicant/licensee, Amisub of South Carolina, Inc., which is an affiliate of Tenet Healthcare Corporation.

000017

- (j) Is there any agreement, contract, option, understanding, intent or other arrangement that will effect a change in any of the information requested and/or provided in (b) through (g) above. ☐ YES ☒ NO If yes, provide information similar to that required in (b) through (g) above.

Response: Not applicable. There is no agreement, contract, option, understanding, intent or other arrangement that will effect a change in any of the information requested in parts (b) through (g) above.

- (k) Provide a complete listing of all existing licensed health care facilities and/or services and Certificates of Need in which the proposed licensee currently has an ownership interest, to include names and addresses of each facility or service. In the cases of Certificates of Need for undeveloped facilities and services, provide the name, address, and telephone number of a contact person representing the authority which issued the Certificate of Need.

Response: Amisub of South Carolina, Inc., currently operates Piedmont Medical Center and will own and operate the Fort Mill Medical Center. Piedmont Medical Center is an equity owner with HEALTHSOUTH Corporation of Piedmont HEALTHSOUTH Rehabilitation, LLC, 1795 Frank Gaston Boulevard, Rock Hill, S.C. Piedmont Medical Center is also an equity owner with Carolinas Physician Network, Inc., of Piedmont/Carolinas Radiation Therapy, LLC, which provides radiation therapy services as Rock Hill Radiation Therapy Center at 228 South Herlong Avenue, Rock Hill, S.C.

- (l) Should the licensee be a subsidiary corporation, provide a diagram of the licensee's relationship to the parent corporation and list the name and address of the parent corporation as well as the corporation which has ultimate control. In addition, please provide the name and mailing address of all persons and/or legal entities having ownership interest of 5 percent or more or any person with any agreement, contract, option, arrangement, or intent to acquire ownership interest of 5 percent or more, of all corporations in the corporate organizational structure which have ultimate control of the licensee.

Response: An organizational chart illustrating the relationship between Amisub of South Carolina, Inc., Tenet South Carolina, Inc., and Tenet Healthcare Corporation is provided as Attachment F.

000018

(8) Provide the following ownership information:

Grice
5
FEB 15 2007

(a) Proposed name of facility;

Response: Fort Mill Medical Center.

(b) Name and address of licensee or prospective licensee. (Note: The licensee is defined as the legal entity who, or whose governing body, has the ultimate responsibility and authority for the conduct of the facility or service; the owner of the business. The licensee must be the entity to whom the Certificate of Need is issued.)

Response: Amisub of South Carolina, Inc.
222 South Herlong Avenue
Rock Hill, SC 29732
(York County)

(c) Complete title of the licensee's governing body.

Response: Amisub of South Carolina, Inc., Board of Directors

(d) Name, title and mailing address of presiding officer of the governing body.

Response: Stephen Bale, M.D.
Chairman of the Board
Amisub of South Carolina, Inc.
222 South Herlong Avenue
Rock Hill, SC 29732

(e) Name and mailing address of all persons and/or legal entities having any ownership interest or owner's equity of the licensee to include a schedule of percent and type ownership claim of each.

Response: Amisub of South Carolina, Inc. is a wholly owned subsidiary of Tenet Medical Systems, Inc. The ultimate parent corporation of Amisub of South Carolina, Inc. is Tenet Healthcare Corporation. The mailing address of Tenet Healthcare Corporation is:

P.O. Box 809088
Dallas, TX 75380-9088

(f) Name and mailing address of all persons and/or legal entities claiming liabilities of the licensee or of the facility or service for which this Certificate of Need is requested to include a schedule of percent and type of claim of each.

Response: Amisub of South Carolina, Inc. is a wholly owned subsidiary of Tenet Medical Systems, Inc. The ultimate parent corporation of Amisub of South Carolina, Inc. is Tenet Healthcare Corporation. The mailing address of Tenet Healthcare Corporation is:

P.O. Box 809088
Dallas, TX 75380-9088

(g) Provide a listing which identifies all officers of the licensee.

Response: The Officers of Amisub of South Carolina, Inc. are:

President: Charles F. Miller

Vice President: Jay Pennisson

000018

- (h) Is the land and/or building on/in which the proposed facility or service is to be conducted owned by the applicant. ☐ YES ☒ NO If no, provide information on the land and building similar to that required in (b) through (g) above.

Response: The site for the proposed Fort Mill Medical Center is under option pending the outcome of the CON process. A letter of intent was signed by Clear Springs-Kingsley, LLC, (Seller) and Amisub of South Carolina, Inc., (Buyer) on October 7, 2004, and is valid for a period of two years. Upon approval of this CON application, the applicant will execute the purchase of the land. A copy of the Letter of Intent to purchase the land is provided in Attachment A.

In addition, the land purchase also includes a land swap of parcels currently owned by Amisub of South Carolina, Inc. The following table details the existing land that will be exchanged, the proposed land that will be purchased, and the owners of each parcel.

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Land to be Purchased for Fort Mill Medical Center:			
	Acres	Per Acre	Total Cost
Parcel IV (d)	22.75	\$261,300	\$5,944,575
Parcel V (e)	3.00	\$361,300	\$1,083,900
Subtotal Purchase:	25.75	\$272,950	\$7,028,475
TOTAL SITE	40.00	\$280,685.88	\$11,227,435

Notes:

- (a) Purchased by Amisub of South Carolina, Inc., on January 31, 2005, at Baxter site.
 (b) Purchased by Amisub of South Carolina, Inc., by January 31, 2006, at Baxter site.
 (c) Currently owned by Amisub of South Carolina, Inc., at Baxter site.
 (d) Purchased by Amisub of South Carolina, Inc., at Fort Mill site.
 (e) Purchased by Amisub of South Carolina, at Fort Mill site.

- (i) Has the licensee engaged an entity other than an employee of the licensee to manage or operate the facility or service? ☐ YES ☒ NO If yes, provide information similar to that required in (b) through (g) above.

Response: Not applicable. The facility will be owned and operated by the applicant/licensee, Amisub of South Carolina, Inc., which is an affiliate of Tenet Healthcare Corporation.

000019

- (j) Is there any agreement, contract, option, understanding, intent or other arrangement that will effect a change in any of the information requested and/or provided in (b) through (g) above. ☐ YES ☒ NO If yes, provide information similar to that required in (b) through (g) above.

Response: Not applicable. There is no agreement, contract, option, understanding, intent or other arrangement that will effect a change in any of the information requested in parts (b) through (g) above.

- (k) Provide a complete listing of all existing licensed health care facilities and/or services and Certificates of Need in which the proposed licensee currently has an ownership interest, to include names and addresses of each facility or service. In the cases of Certificates of Need for undeveloped facilities and services, provide the name, address, and telephone number of a contact person representing the authority which issued the Certificate of Need.

Response: Amisub of South Carolina, Inc., currently operates Piedmont Medical Center and will own and operate the Fort Mill Medical Center. Piedmont Medical Center is an equity owner with HEALTHSOUTH Corporation of Piedmont HEALTHSOUTH Rehabilitation, LLC, 1795 Frank Gaston Boulevard, Rock Hill, S.C. Piedmont Medical Center is also an equity owner with Carolinas Physician Network, Inc., of Piedmont/Carolinas Radiation Therapy, LLC, which provides radiation therapy services as Rock Hill Radiation Therapy Center at 228 South Herlong Avenue, Rock Hill, S.C.

- (l) Should the licensee be a subsidiary corporation, provide a diagram of the licensee's relationship to the parent corporation and list the name and address of the parent corporation as well as the corporation which has ultimate control. In addition, please provide the name and mailing address of all persons and/or legal entities having ownership interest of 5 percent or more or any person with any agreement, contract, option, arrangement, or intent to acquire ownership interest of 5 percent or more, of all corporations in the corporate organizational structure which have ultimate control of the licensee.

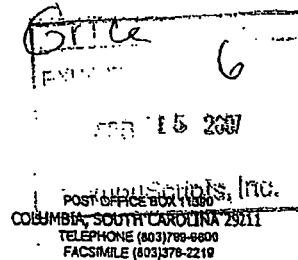
Response: An organizational chart illustrating the relationship between Amisub of South Carolina, Inc., Tenet South Carolina, Inc., and Tenet Healthcare Corporation is provided as Attachment F.

000020

McNAIR LAW FIRM, P.A.
ATTORNEYS AND COUNSELORS AT LAW

M. BIZANTH CHAM
bzm@mcnair.net
BANK OF AMERICA TOWER
1301 GERVAS STREET, 11TH FLOOR
COLUMBIA, SOUTH CAROLINA 29201

www.mcnair.net



October 26, 2005

VIA HAND DELIVERY

Joel C. Grice, Director
Bureau of Health Facilities
& Services Development
1777 St. Julian Place
Heritage Bldg., Suite 200
Columbia, SC 29204

Re: October 7, 2005 Withdrawal of Amisub of South Carolina, Inc. d/b/a Fort Mill Medical Center CON application for the construction of a 64 acute care bed hospital to include one diagnostic cardiac catheterization laboratory, one Magnetic Resonance Imaging (MRI) unit and one Computed Tomography (CT) scanner to be located at the intersection of SC Highway 160 and Highway 21 Bypass, Fort Mill, South Carolina and filing of a new application by Amisub of South Carolina, Inc. d/b/a Fort Mill Medical Center CON application for the construction of a 100 acute care bed hospital to include one diagnostic cardiac catheterization laboratory, one Magnetic Resonance Imaging (MRI) unit and one Computed Tomography (CT) scanner to be located at the intersection of SC Highway 160 and Highway 21 Bypass, Fort Mill, South Carolina

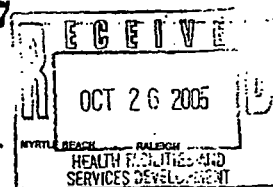
Dear Mr. Grice:

On October 7, 2005¹, Amisub of South Carolina, Inc. d/b/a Fort Mill Medical Center ("FMMC") submitted a letter to the Department of Health and Environmental Control ("DHEC" or "Department") withdrawing its above referenced application for a 64 bed hospital. FMMC is no longer a "competing applicant", as defined by the State Certificate of Need and Health Facilities Licensure Act, S.C. Code Ann. §§ 44-7-110, *et seq.* (2002) ("CON Act") with Presbyterian Hospital York ("PHY"). The CON Act defines competing applicant as follows:

(5) "Competing applicants" means two or more persons or health care facilities as defined in this article who apply for Certificates of Need to provide similar services or facilities in the same service area within a time

¹ On the same day, FMMC submitted a new application for a 100 bed hospital.

ANDERSON • CHARLESTON • CHARLOTTE • COLUMBIA • GEORGETOWN • GREENVILLE • HILTON HEAD ISLAND •
COLUMBIA 840406v1



McNAIR LAW FIRM, P.A.
ATTORNEYS AND COUNSELORS AT LAW

frame as established by departmental regulations and whose applications, if approved, would exceed the need for services or facilities.

S.C. Code Ann. § 44-7-130(5) (2002).

Regulation 61-15 § 103.6 defines "competing applicant" and sets forth the time frame as required by § 44-7-130(5). This regulation provides that:

An application shall be considered competing if it is received by the Department no later than fifteen (15) days after a Notice of Affected Persons is published in the State Register for one or more applications for similar services and/or facilities in the same service area. All applications received by the Department within fifteen (15) days of publication of the Notice of Affected Persons in the State Register for the first application(s) will be considered to be competing. Any applications received by the Department later than the fifteenth day following publication of the Notice of Affected Persons in the State Register for the first application(s) will not be considered to be competing with the(se) application(s).

(Emphasis added.)

On November 22, 2004, FMMC filed its first application for a 64 bed acute hospital ("November 2004 Application"). Notice of this filing was published in the *State Register* December 25, 2004. No other applicants filed applications to construct a hospital in York County prior to the time that FMMC withdrew its November 2004 application on January 24, 2005. On the same day that it withdrew the November 2004 application, Fort Mill filed another application for a 64 bed acute care hospital ("January 2005 Application"). Notice of filing and notice to affected persons was published in the *State Register* February 25, 2005². On March 11, 2005, PHY filed a CON application to construct a 64 bed acute care hospital to include a Magnetic Resonance Imaging (MRI) unit, a Computed Tomography (CT) scanner, and a diagnostic cardiac catheterization laboratory to be located in Fort Mill, South Carolina. The South Carolina 2004-2005 State Health Plan ("Plan") only provides a bed need of 64 for York County. PHY filed its application within the fifteen (15) day time frame set forth in 24A S.C. Code Ann. Reg. 61-15 § 103.6 and became a competing applicant with FMMC.

² The *State Register* provided:

Construction of a 64 acute care bed hospital to include one diagnostic cardiac catheterization laboratory, one Magnetic Resonance Imaging (MRI) unit and one Computed Tomography (CT) scanner to be located at the intersection of SC Highway 160 and Highway 21 Bypass.
Amisub of South Carolina, Inc. d/b/a Fort Mill Medical Center
Fort Mill, South Carolina
Project Cost: \$107,158,233

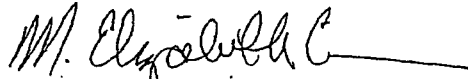
000428

McNAIR LAW FIRM, P.A.
ATTORNEYS AND COUNSELLORS AT LAW

It is unquestioned that FMMC's January 2005 application was the first applicant to file for the 64 beds identified in the Plan for which "notice to affected persons" was published in the *State Register*. Thus, FMMC started the competing applicant cycle. There can be only one FIRST application to begin any "competing application" review cycle. FMMC being the first applicant cannot now restart the review cycle by withdrawing and making the second applicant(s) the first applicant.

FMMC is no longer a competing applicant with PHY. On behalf of PHY, we request that the Department continue the review process for the three remaining competing applicants seeking a CON to meet the 64 bed need for York County identified in the Plan. We would appreciate a written response to this request at your earliest convenience. If you have any questions regarding this matter, please do not hesitate to contact me.

Yours very truly,


M. Elizabeth Drum

Cc: Fred Hargett
Judy Cullison
Lawrence U. McGee, Esquire
Carlyle Roberts, Esquire
Nancy S. Layman, Esquire

000429

COLUMBIA 840406v1

BOARD:
Elizabeth M. Hagood
Chairman
Mark E. Kent
Vice Chairman
L. M. Blackmon
Secretary

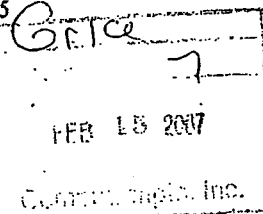


C. Rad Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

BOARD:
Edwin H. Cooper, III
Carl L. Bazzell
Steven G. Kinser
Coleman R. Buckhous, MD

November 10, 2005



M. Elizabeth Crum, Esquire
McNair Law Firm, P.A.
Post Office Box 11380
Columbia, South Carolina 29211

RE: October 7, 2005 Withdrawal of Amisub of South Carolina, Inc. d/b/a Fort Mill Medical Center CON application for the construction of a 64 acute care bed hospital to include one diagnostic cardiac catheterization laboratory, one Magnetic Resonance Imaging (MRI) unit and one Computed Tomography (CT) scanner to be located at the intersection of SC Highway 160 and Highway 21 Bypass, Fort Mill, South Carolina and filing of a new application by Amisub of South Carolina, Inc. d/b/a Fort Mill Medical Center CON application for the construction of a 100 acute care bed hospital to include one diagnostic cardiac catheterization laboratory, one Magnetic Resonance Imaging (MRI) unit and one Computed Tomography (CT) scanner to be located at the intersection of SC Highway 160 and Highway 21 Bypass, Fort Mill, South Carolina

Dear Liz:

In response to your hand-delivered October 26, 2005 correspondence to Joel Grice and myself, described below is the Department's application of Regulation 61-15 § 103.6 to the matter above.

Fort Mill Medical Center's (FMMC) application was the first to be published in the State Register in January 2005 for the 64 beds identified in the 2004 -2005 South Carolina Health Plan (SHP). Thereafter, FMMC made a decision to withdraw.

In a situation like this, it is the Department's position that the remaining applicant(s) succeed the one that has withdrawn and now automatically become the first applicant(s) in the competitive review process. Any other entity now has 15 days from the date the succeeding applicant(s) were published in a subsequent State Register. In this particular case, no one else applied except FMMC, which re-applied with another CON application to include the needed 64 beds plus additional beds. FMMC continues to meet the definition of "competing applicant" as defined in R. 61-15 § 103.6 since it submitted an application within 15 days of the prior applicants.

000432

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
2600 Bull Street • Columbia, SC 29201 • Phone: (803) 898-3432 • www.scdhec.gov

Should you have any additional questions, please call me at (803) 898-3353.

Very truly yours,



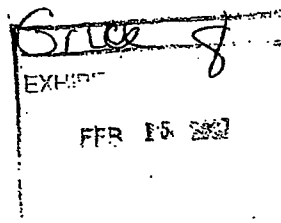
Nancy S. Layman
Chief Attorney for Health Regulation

Copy:
Joel C. Grice, Director,
Bureau of Health Facilities and Services
Development

000433

WILLOUGHBY & HOEFER, P.A.

ATTORNEYS & COUNSELORS AT LAW
1022 CALHOUN STREET (SUITE 302)
P.O. BOX 8416
COLUMBIA, SOUTH CAROLINA 29202-8416



MITCHELL M. WILLOUGHBY
JOHN M.S. HOEFER
ELIZABETH ZECK*
PAIGE J. GOSSETT
RANDOLPH R. LOWELL
K. CHAD BURGESS
NOAH M. HICKS II**
M. McMULLEN TAYLOR

November 16, 2005

AREA CODE 803
TELEPHONE 252-3300
TELECOPIER 256-8062

*ALSO ADMITTED IN TX
**ALSO ADMITTED IN VA

VIA HAND DELIVERY

Mr. Joel Grice
Certificate of Need Division
South Carolina Department of Health and Environmental Control
1777 Saint Julian Place
Columbia, SC 29204

RE: CON Applications for Hospital in York County

Dear Mr. Grice:

On October 6, 2005, Amisub of South Carolina, Inc. d/b/a Fort Mill Medical Center ("FMMC") submitted a letter to the Department of Health and Environmental Control ("DHHC" or "Department") withdrawing its application for a certificate of need to construct a 64-bed hospital in York County, South Carolina. FMMC is no longer a "competing applicant" as defined by the State Certificate of Need and Health Facilities Licensure Act, S.C. Code Ann. §§ 44-7-10 et. seq. (2002) ("CON Act") with Hospital Partners of America, Inc. ("HPA").

The CON Act defines "competing applicant" as follows:

"Competing applicants" means two or more persons or health care facilities as defined in this article who apply for Certificates of Need to provide similar services or facilities in the same service area within a time frame as established by departmental regulations and whose applications, if approved, would exceed the need for services or facilities.

S.C. Code Ann. § 44-7-130(5) (2002).

Regulation 61-15 § 103.6 defines "competing applicant" and sets forth the time frame as required by § 44-7-130(5). This regulation provides:

000435

(Continued...)

An application shall be considered competing if it is received by the Department no later than fifteen (15) days after a Notice of Affected Persons is published in the State Register for one or more applications for similar services and/or facilities in the same service area. All applications received by the Department within fifteen (15) days of publication of the Notice of Affected Persons in the State Register for the first application(s) will be considered to be competing. Any applications received by the Department later than the fifteenth day following publication of the notice of Affected Persons in the State Register for the first application(s) will not be considered to be competing with the(se) application(s).

(Emphasis added.)

On November 22, 2004, FMMC filed its first application for a 64 bed acute hospital ("November 2004 Application"). Notice of this filing was published in the *State Register* December 24, 2004. No other applicants filed applications to construct a hospital in York County prior to the time that FMMC withdrew its November 2004 application on January 24, 2005. On the same day that it withdrew the November 2004 application, Fort Mill filed another application for a 64 bed acute care hospital ("January 2005 Application"). Notice of filing and notice to affected persons was published in the *State Register* February 25, 2005. On March 11, 2005, Hospital Partners filed a CON application to construct a 64 bed acute care hospital and 12 skilled nursing home beds with provisions for a Magnetic Resonance Imaging (MRI) unit, a Computed Tomography (CT) scanner, and a Linear Accelerator to be located near Fort Mill, South Carolina. Subsequently, on April 5, 2005, Hospital Partners amended its application to include a diagnostic cardiac catheterization laboratory. The South Carolina 2004-2005 State Health Plan ("Plan") only provides a bed need of 64 in York County. Hospital Partners filed its application within the fifteen (15) day time frame set forth in 24A S.C. Code Ann. Reg. 61-15 § 103.6 and became a competing applicant with FMMC.

It is unquestioned that FMMC's January 2005 application was the first applicant to file for the 64 beds identified in the Plan for which "notice to affected persons" was published by the *State Register*. Thus, FMMC started the competing applicant cycle.¹ There can be only one FIRST application to begin any "competing application" review cycle. FMMC being the first applicant

¹In fact, the notice that appeared in the *State Register* on February 25, 2005 specifically stated that "affected persons are hereby notified that *the review cycle has begun* for the following project(s)," including FMMC's January 2005 application. S.C. Reg., Feb. 25, 2005 (emphasis added). Consequently, since FMMC has withdrawn its January 2005 application, its October 6 application cannot be considered in any stage of the review cycle for the three competing applications for the 64 beds identified in the State Health Plan as being needed in York County, including but not limited to any public hearing that may be held.

000436

(Continued...)

Mr. Joel C. Grice
November 16, 2005
Page 3

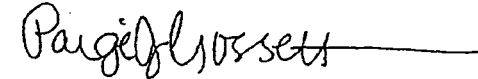
cannot now restart the review cycle by withdrawing and making the second applicant(s) the first applicant.

FMMC is no longer a competing applicant with Hospital Partners. On behalf of Hospital Partners, we request that the Department continue the review process for the three remaining competing applicants seeking a CON to meet the 64 bed need for York County identified in the Plan.

We would appreciate a written response to this request at your earliest convenience. If you have any questions regarding this matter, please do not hesitate to contact me.

Very truly yours,

WILLOUGHBY & HOEFER, P.A.


Paige J. Gossett

PJG/msp

cc: Nancy S. Layman, Esquire
Mr. Terry Linn
(Via U.S. Mail)

000437

Mr. Joel C. Grice
November 16, 2005
Page 4

bcc: M. Elizabeth Crum
(Via U.S. Mail)

000438

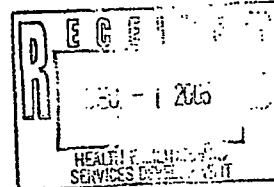
Grice 9
11 15 2007

Hospital Partners OF AMERICA

November 29, 2005

VIA FACSIMILE (803-545-4579) AND U.S. MAIL

Mr. Joel Grice
Certificate of Need Division
Department of Health and Environmental Control
1777 Saint Julian Place
Columbia, SC 29204



RE: Request for Public Hearing

Dear Mr. Grice:

Pursuant to S.C. Code Ann. § 44-7-210(B) and S.C. Code Regs. 61-15 § 306, both individually as a citizen of York County and on behalf of Lake Wylie Regional Medical Center, LLC, I request that the Department of Health and Environmental Control hold a public hearing regarding the application filed on October 6, 2005, of Amisub of South Carolina, Inc. d/b/a Fort Mill Medical Center ("FMMC") for a certificate of need to construct a 100-bed hospital in York County. Notwithstanding the objections set forth in a letter dated November 16, 2005 from Hospital Partner's counsel Paige Gossett, it is our information and belief that the Department has decided to process and review FMMC's CON application as a competing application to those submitted by Lake Wylie Regional Medical Center, LLC, a subsidiary of Hospital Partners of America, Inc. ("Hospital Partners"); Carolinas HealthCare System; and Presbyterian Hospital York, LLC on March 11, 2005. If the Department in fact has decided to consider FMMC's application as a competing application to these mentioned above, then we respectfully request that the Department hold one public hearing to address all the applications at one time.

As previously stated in Ms. Gossett's letter to you dated November 16, 2005, Hospital Partners continues to believe that FMMC should not be considered to be a competing applicant to Hospital Partners. Therefore, in making this request for a public hearing on FMMC's application, we respectfully reserve the positions advanced in Ms. Gossett's letter and reserve all rights to contest the Department's review of FMMC's application as a competing application.

Please advise me when such public hearing is scheduled. If I can be of any assistance or if you have any questions, please do not hesitate to contact me.

000439

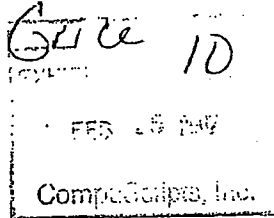
Sincerely,


Terry H. Linn

2320 Cascade Pointe Boulevard, Suite 310, Charlotte, North Carolina 28208
Tel 704-424-6800 / Fax 704-423-8895 / www.hospitalpartners.com



2600 Bull Street
Columbia, SC 29201-1708



January 25, 2005

MEMORANDUM

To: Licensed Health Care Providers

From: Joel C. Grice, Director *Joel C. Grice*
Bureau of Health Facilities and Services Development

Re: Departmental Policy Interpretation Relative to Determination of General Hospital Bed Need as Indicated in the 2004-2005 South Carolina Health Plan

The continued growth of outpatient hospital services during the past decade has resulted in minimal need for additional general acute care hospital beds in South Carolina. As a result, the South Carolina Health Planning Committee (Committee) and the South Carolina Board of Health and Environmental Control Board (Board) supported a planning policy, initiated by approval of the 1999 SC Health Plan (SHP), that allowed any individual hospital with a small positive bed need projection of less than fifty (50) acute care beds to submit a Certificate of Need (CON) application for a maximum of fifty (50) additional beds. The rationale for the foregoing is to develop a cost effective hospital addition. Any hospital projecting a need of more than fifty (50) additional beds could apply and receive approval for the specific projected need calculated in the SHP for that hospital. This policy was beneficial to many hospitals, including those located in counties with multiple hospitals, where the net hospital bed need could show little or no net hospital bed need for the County. As a result, neither the 2003 nor the Draft 2004-2005 SHP specified any county bed need for hospital beds, but rather a specific projected bed need for each hospital in the state. Upon approval of the 2004-2005 SHP, the Committee recommended, with Board approval, that all bed needs be updated, using the most recent utilization data prior to the printing of the current SHP. Due to substantial population growth and greater hospital utilization in several South Carolina counties, some hospital projected bed need calculations increased, including some hospital needs increasing above fifty (50) beds.

In order to allow potential CON applicants to participate in the South Carolina health planning process equitably, general hospital bed needs indicated in the current 2004-2005 SC Health Plan will be determined as follows:

- (1) Should an individual hospital show a positive bed need calculation of less than 50 additional beds, it may apply and receive CON approval for a maximum of 50 additional beds.
- (2) Any hospital projecting a need of more than fifty (50) additional beds may apply and receive approval for the specific projected need calculated in the SHP for that hospital.
- (3) A CON for the net hospital bed need in a county may be requested and approved for any existing hospital located in the county, or for any other entity/applicant, for the development of a new hospital or an addition to an existing hospital within that county.

Should there be any questions concerning this memorandum, please contact me at (803) 545-4200.

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL



2600 Bull Street
Columbia, SC 29201-1708

Grice 11

MAR 15 2007

March 3, 2005

MEMORANDUM

TO: Licensed Health Care Providers

FROM: Joel C. Grice, Director
Bureau of Health Facilities and Services Development

RE: Notice of Rescission of Departmental Policy Interpretation dated January 25, 2005, relative to Determination of General Hospital Bed Need as indicated in the 2004-2005 South Carolina Health Plan.

This is to advise that a decision was made on February 1, 2005, to rescind the Departmental Policy Interpretation issued by this Office on January 25, 2005. The aforementioned decision to rescind the policy was determined after further study and discussion relating to hospital bed need planning issues with the Department's Office of General Counsel. As an alternative to such a policy at this time, the staff of the Department's Division of Planning and Certification of Need will schedule a meeting of the South Carolina State Health Planning Committee in the near future in order to seek their recommendations as to the most beneficial method to resolve and clarify any future issues that may occur regarding hospital bed need methodology interpretation.

Should there be any questions concerning this action, please feel free to contact me at (803) 545-4200.

EXHIBIT

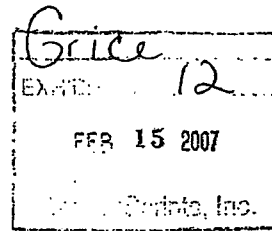
11

RECEIVED

MAR 07 2005

Willoughby & Hofer, P.A.

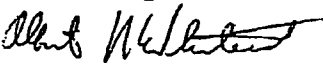
SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL



MEMORANDUM

Date: May 3, 2005

To: State Health Planning Committee Members

From: 
Albert N. Whiteside, Director
Division of Planning and Certification of Need

Re: Public Hearings about the hospital bed need section of the Plan.

As you may recall, the State Health Planning Committee met on March 11, 2005 to discuss the language pertaining to the need for additional hospital beds that is calculated by specific facility in the 2004-2005 South Carolina Health Plan. The Committee decided that public hearings would be appropriate to receive input from interested parties on the general hospital bed need section only, pages II-4 through II-19 of the Plan.

This section of the Plan has caused some concern about whether or not additional hospital beds could be approved for another potential provider even though the need for beds is calculated based on the utilization of a specific provider in the Planning Area.

I am attaching a copy of the Public Notice announcing the date, time and place of the public hearings. If possible, please attend the hearing closest to you. I am also attaching the appropriate pages from the Plan.

If you have any questions, please let me know at 803-545-4200 or e-mail at: Whitesan@dhec.sc.gov

DHEC FOIA 2/13/07 001236

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

PUBLIC NOTICE

The South Carolina State Health Planning Committee will hold public hearings on the general hospital bed need section, pages II-4 through II-19, of the 2004-2005 South Carolina Health Plan at the following times and locations:

Monday, May 23, 2005, 11:00 a.m. until 12:00 noon, second floor conference room of the Heritage Building, 1777 St. Julian Place, Columbia, South Carolina;

Tuesday, May 24, 2005, 11:00 a.m. until 12:00 noon, Greenville County Council Chambers, 301 University Ridge, County Square, Greenville, South Carolina;

Wednesday, May 25, 2005, 11:00 a.m. until 12:00 noon, Florence Health Department Auditorium, 145 East Cheves Street, Florence, South Carolina;

Thursday, May 26, 2005, 11:00 a.m. until 12:00 noon, City of North Charleston Council Chambers, 4900 LaCross Road, North Charleston, South Carolina;

The State Health Planning Committee is soliciting comments on the general hospital bed need section of the Plan and prefers to receive these comments in writing so all members of the State Health Planning Committee can review them.

Written comments will be received through May 27, 2005. The Plan is available for public review at the South Carolina Department of Health and Environmental Control, 1777 St. Julian Place, Suite 201, Columbia, SC, the State Library, 1500 Senate Street, Columbia, SC and all State Depository Libraries.

Comments on this section of the Plan may be presented at the public hearings or submitted to the S.C. State Health Planning Committee, S.C. Department of Health and Environmental Control, Division of Planning and Certification of Need, 2600 Bull St., Columbia, SC 29201 through May 27, 2005. The FAX number is 803-545-4579. For additional information, call (803) 545-4200.

DHEC FOIA 2/13/07 001237

AGENDA

SOUTH CAROLINA HEALTH PLANNING COMMITTEE

March 31, 2005

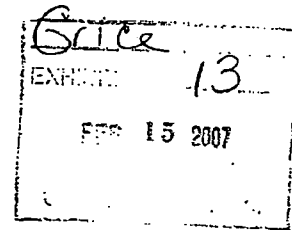
2:00 pm
2ND FLOOR CONFERENCE ROOM
1777 ST. JULIAN PLACE
HERITAGE BUILDING
COLUMBIA, SC

- I WELCOME - Dr. Gerald Wilson
- II EXPLANATION OF POTENTIAL CONFUSION OF HOSPITAL BED NEED
SECTION OF 2004-2005 SOUTH CAROLINA HEALTH PLAN - Joel
Grice, Director, Bureau of Health Facilities and Services
- III DISCUSSION
- IV STATE HEALTH PLANNING COMMITTEE RECOMMENDATIONS
- V ADJOURN

DHEC FOIA 2/13/07 001238



C. Earl Hunter, Commissioner
Promoting and protecting the health of the public and the environment.



MEMORANDUM

Date: November 3, 2005

To: State Health Planning Committee Members

From: *Albert N. Whiteside*
Albert N. Whiteside, Director
Division of Planning and Certification of Need

Re: Consensus Recommendation of the Planning Committee as a result of the mailed staff recommendation

After receiving the mailed recommendations from the State Health Planning Committee members, the Committee voted for the following:

No changes should be made to the 2004-2005 South Carolina Health Plan. Certificate of Need (CON) staff should review CON applications for additional general hospital beds and/or facilities utilizing the current bed need methodology of the 2004-2005 South Carolina Health Plan in conjunction with the Project Review Criteria as outlined in Regulation No. 61-15, *Certification of Need for Health Facilities and Services*, in order to make CON decisions that are in the best interest of the public. In addition, the staff will review this section of the Plan in detail to recommend any modifications for future considerations by the South Carolina State Health Planning Committee as the new calculations and bed need section of the Draft Plan are formulated during the coming year.

As we stated, staff will be revising the Plan during the coming year and hopefully be able to reach a consensus after the Public Hearing process on the best planning approach to follow statewide.

If you have any questions, please let me know at 803-545-4200 or by e-mail at whitesan@dhec.sc.gov

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

Health Regulation

2600 Bull Street • Columbia, SC 29201 • www.scdhsc.gov DHEC FOIA 2/13/07 001244



**Corporate Headquarters &
Washington Area Office**

F610
3150 Fairview Park Drive
Falls Church, VA 22042
Tel: 703.610.1500
Fax: 703.610.2453

Georgia

Mitretek Healthcare -
Gill/Balsano
6525 The Corners Parkway
Suite 450
Norcross, GA 30092
Tel: 404.231.4422
Fax: 404.231.4423

Mitretek Healthcare -
Jennings Ryan & Kolb
17 Executive Park Drive
Suite 500
Atlanta, GA 30329
Tel: 404.634.7162

Illinois

Mitretek Healthcare -
Jennings Ryan & Kolb
211 East Ontario
Suite 1550
Chicago, IL 60611
Tel: 312.751.8800

Maryland

Baltimore Area Office
F640
3150 Fairview Park Drive
Falls Church, VA 22042
Tel: 703.610.1500

Massachusetts

Boston Area Office
1050 Waltham Street
Suite 500
Lexington, MA 02421
Tel: 781.853.5656

Mitretek Healthcare -
Jennings Ryan & Kolb
80 Capital Drive
West Springfield, MA 01089
Tel: 413.732.3366

Texas

Austin Area Office
5838 Balcones Drive
Austin, TX 78731
Tel: 512.342.8815

<http://www.mitretek.org/ahc>
www.mitretek.org/healthcare
healthcare.mitretek.org

January 24, 2005

Ms. Mary W. Fechtel
Program Coordinator II
Division of Planning and Certification of Need
2600 Bull Street
Columbia, SC 29201-1708

RE: Construction of a 64-bed acute care hospital to include one diagnostic cardiac catheterization laboratory, one Magnetic Resonance Imaging (MRI) unit, and one Computed Tomography (CT) Scanner to be located at the intersection of SC Highway 160 and Highway 21 Bypass

Dear Ms. Fechtel:

By this letter, we request to withdraw the previously submitted CON application for the development of a 64-bed acute care hospital in Fort Mill, S.C.

Also enclosed is an original and one copy of a new CON application for your consideration. I believe all the required information is included with this document. Please feel free to contact me if you have any questions or need other information.

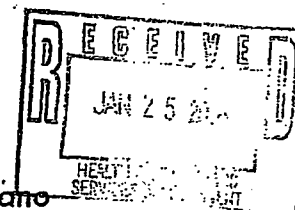
Sincerely,

David S. Levitt
Senior Principal

Enclosures

c: Charles F. Miller
President and CEO
AMISUB of South Carolina, Inc.

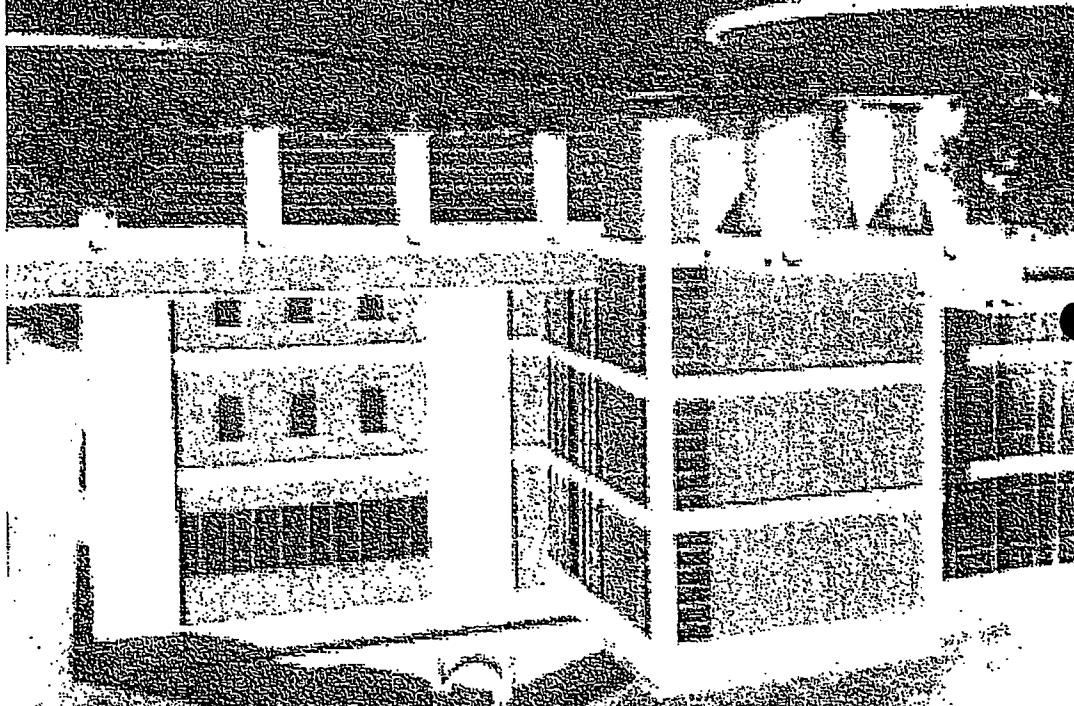
000001



Mitretek Healthcare - Gill/Balsano
Strategy and Innovation in the Public Interest

CERTIFICATE OF NEED APPLICATION
for CONSTRUCTION OF A NEW HOSPITAL

000002



AMISUB OF SOUTH CAROLINA, INC.
d/b/a FORT MILL MEDICAL CENTER



Central Northeast-
Southern States

Stephen E. Corbell
Senior Vice President, Operations
tel: 636-537-7951
fax: 636-537-7918
Steve.corbell@tenethealth.com

January 11, 2005

Joel Grice
Director, Bureau of Health
Facilities & Services Development
SC Department of Health
& Environmental Control
2600 Bull Street
Columbia, SC 29201

RE: Certificate of Need Application by Amisub of South Carolina, Inc./Tenet Healthcare Corporation - 64 Bed Hospital - Fort Mill, SC

Dear Mr. Grice:

This letter certifies that in consideration of Amisub of South Carolina, Inc.(PMC), filing the Certificate of Need Application described above, Tenet Healthcare Corporation, ultimate parent corporation of PMC, makes the commitment to provide the necessary funding for the purpose of construction this project, which is not expected to exceed \$108 million.

Tenet Healthcare Corporation will fund this project utilizing a mix of debt and cash flow from operations as part of its overall capital investment budget. Tenet Healthcare Corporation has sufficient resources to fully fund the expenditures described in this application along with its other ongoing obligations. As of September 30, 2004, Tenet Healthcare Corporation had \$1.323 billion in cash and cash equivalents, and approximately \$12.126 billion in total assets. In addition, Tenet Healthcare Corporation has significant lines of credit available to undertake projects such as this.

In addition to its commitment for the capital expenditures for this project, Tenet Healthcare Corporation hereby commits to provide working capital as necessary for this project.

Sincerely,

Steve Corbell
Senior Vice President
Southern States / Central NE Region
Tenet Healthcare Corporation

000135

Tenet Central Northeast-Southern States • St. Louis Office
15450 S. Outer 40 Drive • Chesterfield, MO 63017 • Tel 636.537.7950 • Fax 636.537.7919 • www.tenethealth.com



2600 Bull Street
Columbia, SC 29201-1708

January 31, 2005

Re: Construction of a 64 bed acute care bed hospital to include one diagnostic cardiac catheterization laboratory, one Magnetic Resonance Imaging (MRI) unit and one Computed Tomography Imaging (CT) unit to be located at the intersection of SC Highway 160 and Highway 21 Bypass
Fort Mill Medical Center
Fort Mill, South Carolina

Mr. David S. Levitt, Senior Principal
Mitretek Health Care - Gill Balsano
6525 The Corners Parkway, Suite 500
Atlanta, GA 30092

Dear Mr. Levitt:

This is to acknowledge receipt of your letter dated January 24, 2005, requesting to withdraw the application for the above referenced project which was being reviewed under the 2003 S.C. Health Plan. This office also received your new Certificate of Need application on January 24, 2005, which will be referenced as the previous application. Please be advised that the Department is currently reviewing the new application for completeness under the 2004-2005 S.C. Health Plan, and you will be notified of its status in the near future.

If this office can be of further service to you, or if you have any questions concerning the above, please feel free to contact us at (803)545-4200.

Sincerely,

Mary W. Fechtel
Division of Planning and Certification of Need

000332

cc: Mr. Donald B. Meyer
Mr. David Summer
Mr. Paul W. Arrington
Mr. Randolph R. Lowell

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL



2600 Bull Street
Columbia, SC 29201-1708

Certified Mail

February 8, 2005

Re: Construction of a 64 acute care bed hospital to include one diagnostic cardiac catheterization laboratory, one Magnetic Resonance Imaging (MRI) unit and one Computed Tomography (CT) scanner to be located at the intersection of SC Highway 160 and Highway 21 Bypass.
Fort Mill Medical Center
Fort Mill, South Carolina

Mr. Charles F. Miller, President and CEO
AMISUB of South Carolina, Inc. d/b/a Piedmont Medical Center
222 South Herlong Avenue
Rock Hill, South Carolina 29732

Dear Mr. Miller:

This is to notify you that the above referenced project has been determined to be complete for purposes of review by the Office of Certification of Need. Enclosed is an invoice for the required Certificate of Need application fee.

The Department will notify affected persons, which begins the review period, only after the appropriate application fee is paid by valid check made payable to the S.C. Department of Health and Environmental Control. Should the application fee not be received within 15 days from receipt of the Department's invoice by the applicant, the Certificate of Need application will be considered withdrawn.

Should the application fee be received within 15 days, a proposed decision will be made by this Department within 60 days from the date of notification of affected persons unless a public hearing is held. In cases where a public hearing is conducted, the Department will render a proposed decision within 60 days from the date of such public hearing.

In accordance with Section 304 of Regulation No. 61-15, Certification of Need for Health Facilities and Services, the following project review criteria are considered more important in the review of this application. These criteria are ranked according to their relative importance with the most important being listed first. All other relevant criteria will be given equal importance.

000339

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

Mr. Charles F. Miller
February 8, 2005
Page 2

1. Compliance with the State Health Plan - 1
2. Community Need Documentation - 2a, 2b, 2c, 2d, 2e
Distribution (Accessibility) - 3a, 3b, 3c, 3d, 3e, 3f, 3g
3. Projected Revenues/Expenses - 6a, 6b, 7
Net Income/Financial Feasibility - 9, 15
4. Acceptability - 4a, 4b, 4c
Record of the Applicant - 13a, 13b, 13d
5. Efficiency - 17
Distribution - 22
6. Adverse Effects on Other Facilities - 23a

If you wish to provide any information regarding the relative importance of the project review criteria, you must provide written comments within thirty (30) days of your receipt of this letter. However, any supplementary information relative to your application will be accepted until a proposed decision is made regarding this project by Department staff.

Should you require further information, please contact me at (803) 545-4200.

Sincerely,

Sallie Check for

Mary W. Fechtel
Division of Planning and Certification of Need

Enclosure: Invoice

cc: Mr. Stuart M. Andrews
Mr. Paul W. Arrington
Mr. Randolph R. Lowell
Mr. Donald B. Meyer
Mr. David B. Summer

000340

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

In accordance with Section 44-7-200(C), Code of Laws of South Carolina, the public is hereby notified that a Certificate of Need application has been accepted for filing and publication February 25, 2005, for the following project(s). After the application is deemed complete, affected persons will be notified that the review cycle has begun. For further information, please contact Mr. Albert N. Whiteside, Director, Division of Planning and Certification of Need, 2600 Bull St., Columbia, SC 29201 at (803) 545-4200.

Affecting Aiken County

Establish an outpatient narcotic treatment program (Methadone Treatment Center) to be located at 1740 Jefferson Davis Highway, Graniteville, South Carolina 29829.

Aiken Treatment Associates
Graniteville, South Carolina
Project Cost: \$202,000

Affecting Charleston County

Establishment of an Ambulatory Surgery Center (ASC) with three (3) licensed endoscopy rooms for gastrointestinal procedures, only.

Elms Endoscopy Center, LLC
North Charleston, South Carolina
Project Cost: \$1,271,482

Affecting Florence County

Licensure of 48 additional general acute care beds by conversion of 48 observation beds in space previously approved by CON SC-04-10 resulting in a total licensed bed capacity of 310 general acute care beds.

Carolinas Hospital System
Florence, South Carolina
Project cost: \$-0-

Affecting Horry County

Construction for the addition of sixty (60) nursing home beds that do not participate in the Medicaid (Title XIX) Program for a total of one hundred forty eight (148) nursing home beds.

NHC HealthCare/Garden City, LLC
Murrells Inlet, South Carolina
Project Cost: \$5,433,500

000351

Affecting Lexington County

Transfer of the Computed Tomography (CT) scanner at Lexington Medical Center Irmo to Lexington Medical Center Chapin and the replacement of the CT at Lexington Medical Center Irmo with a new Philips Brilliance 16-slice CT scanner.

Lexington Medical Center Irmo

Columbia, South Carolina

Project Cost: \$1,152,478

Upfit of shelved space to the existing Outpatient Surgery Center of Lexington Medical Center Lexington for the addition of one (1) operating room (OR) for a total of four (4) operating rooms (ORs) and one (1) licensed endoscopy room.

The Outpatient Surgery Center of Lexington Medical Center Lexington

Lexington, South Carolina

Project cost: \$512,659

Construction for the addition of 32 psychiatric beds for a total of 71 psychiatric, 27 substance abuse, and 20 RTF beds.

Three Rivers Behavioral Health

West Columbia, South Carolina

Project Cost: \$2,386,800

Affecting York County

Construction of a 64 acute care bed hospital to include one diagnostic cardiac catheterization laboratory, one Magnetic Resonance Imaging (MRI) unit and one Computed Tomography (CT) Scanner to be located at the intersection of SC Highway 160 and Highway 21 Bypass.

Amisub of South Carolina, Inc. d/b/a Fort Mill Medical Center

Fort Mill, South Carolina

Project Cost: \$107,158,233

000352

In accordance with S.C. DHEC Regulation 61-15, the public and affected persons are hereby notified that the review cycle has begun for the following project(s) and a proposed decision will be made within 60 days beginning February 25, 2005. "Affected persons" have 30 days from the above date to submit comments or requests for a public hearing to Mr. Albert N. Whiteside, Director, Division of Planning and Certification of Need, 2600 Bull Street, Columbia, S.C. 29201. For further information call (803) 545-4200.

Affecting Charleston County

Renovation to convert an existing procedure room to an operating room for a total of five (5) operating rooms (ORs).
Roper West Ashley Surgery Center
Charleston, South Carolina
Project Cost: \$148,164

Affecting Greenville County

Construction for the establishment of a 30-bed inpatient hospice facility.
Hospice Home of Greenville
Greenville, South Carolina
Project Cost: \$7,956,643

Affecting Horry County

Construction for the addition of sixty (60) nursing home beds that do not participate in the Medicaid (Title XIX) Program for a total of one hundred forty eight (148) nursing home beds.
NHC HealthCare/Garden City, LLC
Murrells Inlet, South Carolina
Project Cost: \$5,433,500

Affecting Horry County

Conversion of an equipment room to an operating room (OR) for a total of three (3) operating rooms (ORs).
Carolina Regional Surgery Center d/b/a
Grande Dunes Surgery Center
Myrtle Beach, South Carolina
Project Cost: \$651,253

000353

Affecting Kershaw County

Construction to replace the existing single-slice Computed Tomography (CT) scanner with a multi-slice CT scanner.

Kershaw County Medical Center
Camden, South Carolina
Project Cost: \$2,545,004

Affecting Lexington County

Transfer of the Computed Tomography (CT) scanner at Lexington Medical Center Irmo to Lexington Medical Center Chapin and the replacement of the CT at Lexington Medical Center Irmo with a new Philips Brilliance 16-slice CT scanner.

Lexington Medical Center Irmo
Columbia, South Carolina
Project Cost: 1,152,478

Upfit of shelved space to the existing Outpatient Surgery Center of Lexington Medical Center Lexington for the addition of one (1) operating room (OR) for a total of four (4) operating rooms (ORs) and one (1) licensed endoscopy room.

The Outpatient Surgery Center of Lexington Medical Center Lexington
Lexington, South Carolina
Project Cost: \$512,659

Construction of Ambulatory Surgery Center with two (2) operating rooms (ORs).
Moore Orthopaedic Clinic Outpatient Surgery Center, LLC
West Columbia, South Carolina
Project Cost: \$6,338,106

Construction for the addition of 32 psychiatric beds for a total of 71 psychiatric, 27 substance abuse, and 20 RTF beds.

Three Rivers Behavioral Health
West Columbia, South Carolina
Project Cost: \$2,386,800

Affecting Richland County

Construction of a new 84 acute care bed hospital by transferring 84 acute care beds from Palmetto Health Baptist resulting in a total licensed capacity of 279 acute care beds and 104 psychiatric beds at Palmetto Health Baptist (downtown campus) and 84 acute care beds at Palmetto Health Baptist Parkridge.

Palmetto Health Baptist Parkridge
Columbia, South Carolina
Project Cost: \$140,393,928

000354

Affecting York County

Construction of a 64 acute care bed hospital to include one diagnostic cardiac catheterization laboratory, one Magnetic Resonance Imaging (MRI) unit and one Computed Tomography (CT) scanner to be located at the intersection of SC Highway 160 and Highway 21 Bypass.

Amisub of South Carolina, Inc. d/b/a Fort Mill Medical Center

Fort Mill, South Carolina

Project Cost: \$107,158,233

000355

BOARD:
Elizabeth M. Hagood
Chairman

Mark B. Kent
Vice Chairman

Michael Blackmon
Secretary



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

BOARD:
Edwin H. Cooper, III

Carl L. Brazell

Steven G. Kistner

Coleman R. Buckhouse, MD

October 10, 2005

Re: Construction of a 60 bed acute care bed hospital to include one diagnostic cardiac catheterization laboratory, one Magnetic Resonance Imaging (MRI) unit and one Computed Tomography Imaging (CT) unit to be located at the intersection of SC Highway 160 and Highway 21 Bypass
Fort Mill Medical Center
Fort Mill, South Carolina

Mr. Charles F. Miller, President and CEO
Piedmont Healthcare System
277 South Herlong Avenue
Rock Hill, South Carolina 29730

Dear Mr. Miller:

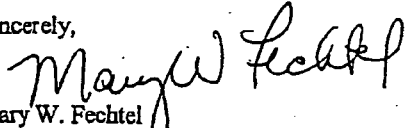
This is to acknowledge receipt of your letter dated October 5, 2005, requesting to withdraw the application for the above referenced project which was being reviewed under the 2003 S.C. Health Plan. This office also received your new Certificate of Need application on October 6, 2005, which will be referenced as follows:

Construction of a 100 bed acute care bed hospital to include one diagnostic cardiac catheterization laboratory, one Magnetic Resonance Imaging (MRI) unit and a sixty-four (64) slice Computed Tomography Imaging (CT) unit to be located at the intersection of SC Highway 160 and Highway 21 Bypass
Fort Mill Medical Center
Fort Mill, South Carolina

Please be advised that the Department is currently reviewing the new application for completeness under the 2004-2005 S.C. Health Plan, and you will be notified of its status in the near future.

If this office can be of further service to you, or if you have any questions concerning the above, please feel free to contact us at (803)545-4200.

Sincerely,


Mary W. Fechtel
Division of Planning and Certification of Need

cc: Mr. David S. Levitt
Ms. Elizabeth M. Crum
Mr. F. Del Murphy
Mr. Terry H. Linn

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
2600 Bull Street • Columbia, SC 29201 • Phone (803) 888-3437 • Fax (803) 888-3438

BOARD:
Elizabeth M. Hagood
Chairman

Mark B. Kent
Vice Chairman

Michael Blackmon
Secretary



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

BOARD:
Edwin H. Cooper, III

Carl L. Brazel

Steven G. Kimer

Coleman R. Backhouse, MD

October 10, 2005

Re: York County Certificate of Need applications for a new hospital in York County

Mr. Terry H. Linn, Chief Development Officer
Hospital Partners of America
2320 Cascade Pointe Blvd.
Charlotte, North Carolina 28208

Dear Mr. Linn:

This is to acknowledge receipt of your letter dated September 26, 2005, requesting a public hearing on three Certificate of Need applications: Lake Wylie Regional Medical Center, Presbyterian Hospital-York, and Carolinas Medical Center-Fort Mill. The Department also previously received your letter dated March 24, 2005 requesting a public hearing on Fort Mill Medical Center. The Department delayed the public hearing request for Fort Mill Medical Center until such time all four (4) applicants could be heard at one public hearing.

On October 6, 2005 the Department received a letter from Mr. Charles Miller, CEO of Piedmont Medical Center, who filed the Certificate of Need application for Fort Mill Medical Center, requesting that the Fort Mill Medical Center application for 64 acute care beds be withdrawn and that an application was being submitted for a 100 acute care bed facility in its place. The Department acknowledged this request on October 10, 2005.

Due to the above circumstances, the Department will hold in abeyance your public hearing request dated September 26, 2005 for three (3) York County applicants until such time the new Fort Mill Medical Center application is deemed complete and a public hearing held on all four (4) applications.

If you have any questions concerning the above, please feel free to contact us at (803)545-4200.

Sincerely,

Mary W. Fechtel
Division of Planning and Certification of Need

cc: Mr. David S. Levitt
Ms. Elizabeth M. Crum
Mr. F. Del Murphy
Mr. Terry H. Linn

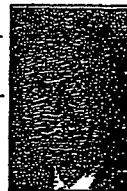
SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
2600 Bull Street • Columbia, SC 29201 • Phone (803) 808-2427 • Fax (803) 808-2428

Hospital plan sparks opposition

Mac Banks
mbanks@fortmilltimes.com

FORT MILL TOWNSHIP — Citing consumer costs and other complaints, Fort Mill's state House Rep. Ralph Norman has pulled his support for a Tenet-owned hospital in Fort Mill.

The hospital, proposed by Piedmont Medical Center's parent company, Tenet Healthcare Corp., would be located at the corner of Hwy. 160 West and Hwy. 21. The \$107 million, 64-bed hospital would be located on 40 acres that now feature a peach orchard. The hospital would have 228,600 square feet and could be open by the fall of 2008 if plans proceed.



Ralph Norman

Originally backing the idea, Norman said he supports a hospital in Fort Mill. However, he said, he has reservations over the prices at Piedmont's area facilities and wonders if another operator could offer the same level of services at a more reasonable cost.

"It's not so much that Tenet doesn't get it," Norman said. "I urge BHEC (the Department of Health and Environmental Control) to consider all applicants. I think Fort Mill should have competition."

See HOSPITAL—Back page

000052R

PHY RECON EXHIBIT

4

PHY RECON 000001

HOSPITAL: *Norman withdraws his support*

from page 1A

"It is for the best interest of Fort Mill," Norman said.

DHEC is in the process of looking at Tenet's application and was originally scheduled to make a decision about it sometime this summer. Tenet has 78 hospitals in 13 states.

Norman said he believes there will be three other hospitals in the Charlotte metro area that will apply to DHEC for a certificate of need within the coming weeks to build a hospital in Fort Mill. Norman wouldn't say which hospitals are particularly interested.

At press time, no other competing hospital applications were filed.

Norman is also planning on talking with local doctors regarding Piedmont building a hospital in Fort Mill.

"I want some input from the physicians," he said. "They need to say who the provider will be."

A former chairman and board

member for Piedmont Medical Center, Norman said, "I've always had an issue with Piedmont's pricing. The people deserve the most competitive rates. I think it is right for the people."

Charles Miller, CEO of Piedmont, said he isn't worried about Norman not supporting the company's plans for the hospital.

"It is his view and he is entitled to it," Miller said. "He is entitled to express his opinion. We have a lot of support for this project in the community."

Joel Grice, director of DHEC's Bureau of Health Facilities, said the review process for Piedmont's application should take about four months. If other hospitals apply to build in Fort Mill, that could push the decision back, he said.

"We have to make our decision based on who would best serve the area," Grice said.

Miller said he isn't surprised that opposition for the hospital would occur. Despite the opposi-

tion, Miller said, he doesn't expect that Tenet's application will be held up by DHEC. Norman said he thinks challenging it could delay the project until the end of the year, especially if other applicants become involved.

According to Grice, other applicants for a certificate of need would have to apply before March 12 if they want to challenge Piedmont's presence in Fort Mill.

The hospital is set to be built on land that Piedmont would buy from Clear Springs Development, the builders of Baxter Village.

Piedmont is already affiliated with the Piedmont Urgent Care Center, located in Baxter. The company made a commitment to develop a medical park there, but after the hospital was proposed, Clear Springs said it would not hold Piedmont to those earlier plans.

Clear Springs' officials declined to comment about Norman withdrawing his support and the impact that could have on the plan.

000053R

PHY RECON 000002

Public, not politics, is key factor

Hospital choice will be guided by how well it benefits residents

By NICHOLE MONROE BELL
Staff Writer

Last week, the Observer asked readers to send us their questions about the competition to build a hospital in Fort Mill.

Four hospital companies are vying for permission to build, but only one will be selected by the S.C. Department of Health and Environmental Control. The decision is expected by spring, Bryan Bridges of Tega Cay wanted to know how the agency makes such a difficult decision. His questions are answered by Joel Grice, the agency's director of the Bureau of Health Facilities and Services Development. His comments are edited for brevity and clarity.

Q. In advertisements for the hospital companies, I keep seeing Joel Grice's name as the contact person at DHEC. Is he making this decision by himself?

No, I'm ultimately responsible for signing the letter awarding permission to one company. But I'm part of a 10-member committee of DHEC employees that makes the decision. The committee includes the agency's director of health licensing, the director of bureau certification and the director of health facility construction. It's not done in isolation where it's just one person going on a tangent. We all look at the applications and communicate with each other.

Q. DHEC says it's taking input from the public. But shouldn't this be put to a popular vote to give them an idea which one York County residents want?

State law isn't structured that way. We have regulations that are approved by the legislature that we must comply with, and those regulations have certain criteria. We have to make a decision that complies with all that, and it would

Have any questions?

Do you have a question about a recent article in the Observer?

Drop us a line about the hospital build at Fort Mill. Contact Nicole Monroe Bell at (704) 377-8611 or nbell@charlotteobserver.com.

be very difficult to be done by a popular vote.

Q. How do you figure out which one is best qualified to serve the residents of York County?

Each one of these companies has probably met the basic criteria outlined in the state's health plan. In a competitive situation, we have to select the one that best meets those criteria. We look at community need, public support, financial feasibility and the record of the applicant. We're interested also in the cost to patients. Patient charges should be reasonable. Quality of service is also a factor. We

SEE HOSPITAL 17

000054B

PHY RECON 000003

Public will be key factor in choice

Hospital from IV

also look at whether the state has ever cited them with any deficiencies or complaints.

Q. How do we know (DHEC staff) won't be swayed by political interests and personal connections?

I can give my personal assurance on that. Many of us have been with DHEC for 30 years or more, and the people we've met have always told us that they felt we were very careful in our reviews and very sincere. Our focus is on what's in the best interest of the public. And if there's advertising going on up there, we don't even see it. (Their offices are in Columbia.) Many of us have worked here most of our lives, and our reputations are important to us. In a situation like this, where it's very competitive, we consider everything very carefully and make a decision that we can stand behind if it's appealed in court.

000055A

PHY RECON 000004

Herald Rock Hill

early
Feb
2005

PROPOSED FORT MILL FACILITY

State may open new hospital to bidding

PMC pricing needs healthy
competition, lawmakers say

By Sula Pettibon
The Herald

Piedmont Medical Center's reputation for high rates is eroding support for its pursuit of a 64-bed hospital in Fort Mill and prompting legislators to ask that others be allowed to compete.

State Rep. Ralph Norman, R-Rock Hill, pulled back a previous endorsement because he says PMC's prices are too high, and state Rep. Gary Simrill, R-Rock Hill, is encouraging the Department of Health and Environmental Control to open the process.

At least one company plans to apply to build a physician-owned hospital in the area, and two more have made inquiries.

"We need checks and balances, and the only way to have checks and balances is to have competition," said Norman, who even as a legislator has no voice in DHEC's decisions. "I'm after quality health care and the most competitive rates."

Charles Miller, Piedmont's president and chief executive officer, said he has lowered prices and is disappointed Norman didn't get more information before withdrawing his support.

He said Piedmont expected competition when it announced in October plans to build a \$107 million hospital on 40 acres at the corner of S.C. 160 and U.S. 21 Bypass in the fast-growing Fort Mill area. The company first must obtain a certificate of need from DHEC, which earlier said PMC had the rights to utilizing the beds. DHEC has been examining its policy since January to see if others could compete.



Ralph
Norman



Charles
Miller

See HOSPITAL • 6A

000056B

PHY RECON 000005

Hospital

from 1A

Companies have until March 11 to apply for the certificate. A decision could come in two months; the process could take longer if there's a public hearing and appeals.

'We admitted it was an issue'

Last fall, Norman, who also represents Fort Mill and Tega Cay, signed a letter endorsing PMC's plan to build the satellite hospital. But he changed his mind, saying that for years PMC violated its contract with the county by having the highest rates among a 10-hospital peer group.

He is gathering information about the hospital's finances and sent a one-question survey to about 230 doctors asking who they want to build the Fort Mill hospital.

"Doctors have some real issues with Piedmont," said Norman, who served on the hospital board in the 1990s. "They feel they've been slighted and not listened to."

Miller and his vice president of business development began meeting with doctors recently after the hospital received a 79.7 percent grade on its own doctor satisfaction survey, he said. The 50 to 60 doctors they've seen so far support PMC's Fort Mill project, he said.

However, he said he expects mixed support from the medical community.

As for the rates, Miller said internal data indicates their prices are no longer the highest and he expects their rates to be as low as sixth or seventh when new federal figures are released in the spring.

The county has been focused on the rates since 2003 when it was reported hospital prices were the highest for three consecutive years. The county now requires the hospital to submit quarterly reports and will fine PMC \$100,000 a month when prices are the highest.

PMC froze its prices in 2001 and hired a consultant to get rates in line, Miller said. Data shows their average rates for 19 of 24 procedures have dropped, some 20 percent to 30 percent.

"We admitted it was an issue," he said. "We made a commitment to address it, and we addressed it."

County attorney Melvin McKee said the hospital's latest quarterly report shows PMC's average gross charge is \$26,670, which is below 2003 charges at Richland Memorial in Columbia and Provi-

"I think we owe it to the people who pay the bills to get the best service and the best price."

State Rep. Ralph Norman, R-Rock Hill

dence Hospital and Carolinas Medical Center in Charlotte.

The county continues to monitor prices and is waiting for the federal figures, he said.

Norman said competition will help keep prices low.

"I think we owe it to the people who pay the bills to get the best service and the best price," he said.

'Competition is healthy'

Hospital Partners of America, which is based in Charlotte and owns two hospitals in Texas and one in California, is eyeing two 20-acre sites in the Fort Mill area, one off S.C. 160 and the other on Gold Hill Road, said Terry Linn, chief development officer.

The for-profit company plans to spend between \$65 million and \$75 million to build its physician-owned hospital, he said. The hospital could be designed to expand to 150 beds.

Linn said the company will continue with the project even if doctors don't buy in.

He said their decision to compete for the certificate came quickly and was prompted by DHEC saying other applications would be considered.

"We don't have the authority to say no one else can apply," said Joel Grice, director of bureau health facilities and services at DHEC.

The state health plan designates beds by institutional, rather than county, needs. In this case, Grice said an argument can be made the 64 beds identified in the plan are a community need for two reasons: It's more than 50 beds and there's only one hospital in the county.

While DHEC plans to review and clarify how needs are designated, that won't affect this case. Grice said the agency will review all applications and make the best decision. He anticipates questions raised about its policy could cause any decision to be appealed to the S.C. Administrative Law Court.

"If we get competition, I don't want DHEC to be criticized for not doing its job," Grice said.

Miller admits that he has ag-

gressively fought competition to protect his market.

"Am I interested in having competitors in my market? Absolutely not," he said. "The best way to keep competition out is to be better."

He points out the \$120 million the hospital's parent company, Tenet Healthcare Corp., has spent improving the Rock Hill hospital. They plan to open March 1 an \$8 million cardiac catheterization lab and are considering adding 10 rooms to the emergency department, he said.

"I don't think you have to have a competitor across the street to do the right thing," he said. "We have done very well by this community."

Western York County critics

Slate Rep. Herb Kirch, D-Clover, disagrees, saying the hospital hasn't adequately served western York County, which has been asking for 24-hour health care. He's written DHEC to oppose PMC locating in Fort Mill.

"I'm not overly fond of them, to be honest," he said.

York County Council member Buddy Motz said Piedmont has been a good corporate citizen but he's not impressed with its parent company, which has been plagued by ongoing problems.

The Texas-based Tenet reported third-quarter losses of \$70 million and this week, jurors began deliberation in a four-month trial accusing doctors of taking illegal kickbacks at a Tenet hospital. Last year, it settled a claim that one of its California hospitals conducted unnecessary heart surgeries.

The company, known for its aggressive business practices, is regaining financial stability by selling 27 of its hospitals.

PMC has done everything the county has asked it to do, Motz said. Still, he agrees competition would be good.

"If they (Piedmont) would come to me, and they haven't, asking if I would endorse them in Fort Mill, I would say no," Motz said. "Competition is healthy."

0000570
Sula Pettibon at 329-4033
spettibon@heraldonline.com
Business Editor Ellen Bradway
contributed to this report.



Terry Linn

PHY RECON 000006

Hospital race hits crucial stretch

Fort Mill facility likely won't open for years

By Jason Foster
The Herald

No matter what happens in the race to build a hospital in Fort Mill, the doors aren't likely to open anytime soon.

Although a decision from the S.C. Department of Health and Environmental Control

INSIDE

Details on Thursday's meetings in Columbia and Fort Mill • 8A

Why? It's just the nature of the process, they say.

More than a year of letter writing, newspaper ads and campaigning by the four companies comes to a conclusion of sorts Thursday in Columbia when the applicants will make their case before DHEC during a project review meeting.

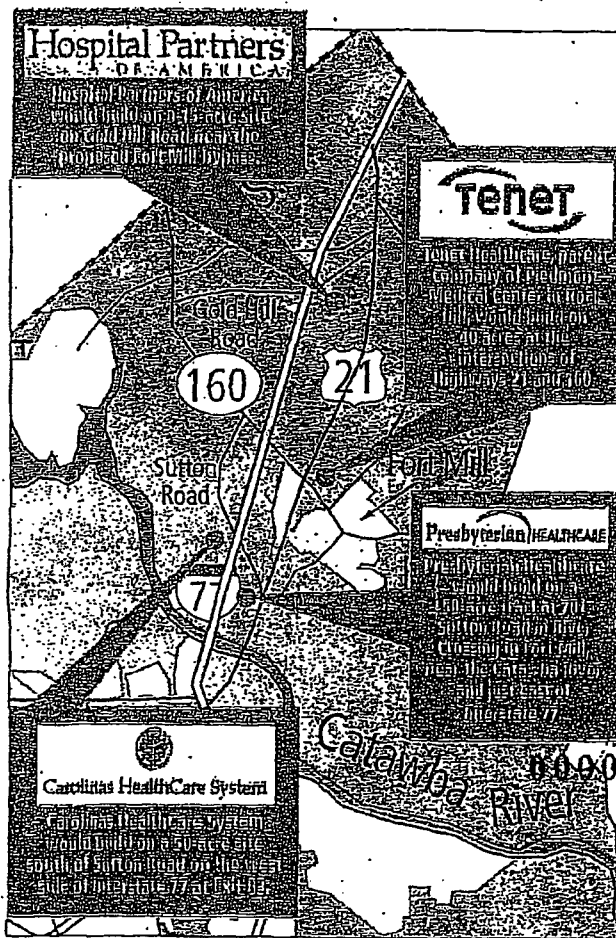
Another forum that day in Fort Mill, sponsored by the Fort Mill Times, will give the public another chance to listen and offer comments, which will then be sent to DHEC for review.

Experts agree DHEC's decision is almost certain to be appealed by at least one of the three losing applicants. And whichever company is on the losing end of an appeal is likely to sue.

Such actions are typical in the "certificate of need process," experts say.

"This will drag on for years," said Dave Burda, editor of Modern

See HOSPITAL • 8A



PHY RECON 000019

Hospital from 1A

Healthcare magazine, which covers the hospital industry. "You're really looking at maybe five to 10 years before something's fully functional."

Piedmont Medical Center, Carolinas HealthCare System, Presbyterian Healthcare and Hospital Partners of America have been involved in an intense battle to get the state's OK to build a hospital in the fast-growing Fort Mill area, now home to more than 30,000 residents and expected to have more than 120,000 residents by 2025.

A second York County hospital is needed because of the population explosion, they say, but also because too many York County residents near the state line choose to go to Charlotte for their health needs.

With a DHEC decision in sight, the race may seem to be winding down. But this could be only the beginning.

A long process

The time it's taken to get to this point is normal for certificate of need cases, experts say. Following DHEC's decision on who gets to build and any appeals or lawsuits, the winning company still likely will need two or three years for construction. By any measure, it's not a quick process.

But state health officials say the certificate of need process is needed to ensure quality health care. Without the system, proponents say, communities could see lots of specialty clinics and hospitals pop up, offering services that could be found elsewhere and creating "a lot of duplication, a lot of unneeded services," said Jim Walker, vice president of the S.C. Hospital Association.

"The more services that are available out there, then the more providers are competing for a limited supply of well-trained health care professionals," Walker said.

That can translate into weaker overall health care, he said.

"Yes, there can be a decrease in

Thursday's meetings

Project review meeting, 9 a.m. to 1 p.m., Columbia — Carolinas HealthCare System, Hospital Partners of America, Piedmont Medical Center and Presbyterian Healthcare will give 30-minute presentations on their proposals to state regulators.

The 10-member Department of Health and Environmental Control panel will get to ask questions for 15 minutes after each presentation.

At the end of the meeting, the panel will have an hour to ask any remaining questions about the applications.

The project review will be held in the Peoples Auditorium at DHEC's main

office at 2500 Blvd. S. in Columbia. The public can attend but will not be permitted to comment.

Public meeting, 6 to 9 p.m., Fort Mill — All the hospital companies have committed to participate in a public meeting from 6 to 9 p.m. at the Fort Mill High School auditorium, where they will present their proposals and answer questions from the public.

One hour will be devoted to comments and questions.

The comments collected at the forum will be submitted to DHEC for consideration in the decision-making process.

"This will drag on for years. You're really looking at maybe five to 10 years before something's fully functional."

—Dave Burda, editor of Modern Healthcare Magazine, on when the proposed hospital in Fort Mill could be operational

quality," Walker said. "Nationally, there's been a lot of research done that shows there is a clear correlation between volume of procedures done and the quality of care."

But opponents of the certificate of need process argue the system is anti-business and hurts competition.

"It's usually a war between consultants and attorneys," said Burda, editor of Modern Healthcare magazine, which is editorially opposed to the process.

Nationwide, though, 37 states use the certificate of need system, according to the American Health Planning Association's Web site. States that have abolished the system have stayed that way, while states that use the system now are finding ways to make it better.

In South Carolina, for example, a

bill making its way through the General Assembly is aimed in part at speeding up the process and allowing projects of \$5 million or less to proceed without having to get state approval.

This would reserve the process for larger, higher-impact projects.

For now, though, the bill is in committee and, "It doesn't look right now like it's moving anywhere," Walker said.

What to expect Thursday

This week's project review meeting in Columbia looks to put the four applicants under the most intense scrutiny they've seen since this process began as they present their proposals verbally for the first time to state regulators. A 10-member DHEC panel will hear a 30-minute presentation from each

company, then have 15 minutes to ask questions after each. At the end of the meeting, the panel will have an hour to ask any remaining questions about the applications.

There are times where it can get very heated, but most of the time it's just good open debate," Walker said.

Hospital officials will draw numbers for the order of presenting and will not be allowed to comment on anything said by the other companies. They have until April 7 to submit follow-up comments in writing to DHEC.

The public meeting Thursday night in Fort Mill will serve as a forum for more public input, one element DHEC will study when making its decision.

"It's not the most important," said Joel Grice of DHEC, the man who makes the decision on who builds the new hospital. "We're looking at a number of criteria."

DHEC already has received around 1,300 letters about the four proposals, and Thursday's input session will supplement that, Grice said.

After the project review meeting in Columbia, DHEC may take up to 60 days to make a decision. But it probably won't take that long, Grice said. Most likely, he said, the decision will come by the end of April.

So four companies, each waiting to do the same thing, head into this week knowing their case must be compelling. The process has lasted more than a year so far, and after Thursday, the wait will only continue.

Who builds and how long it takes are the two unknowns.

At this point, Grice said, it's still anybody's game.

"I think any one of these applications is approvable," he said.

Jason Foster • 329-4066
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PHY RECON 000020

Presbyterian Healthcare leads in letters

Residents sending support for preferred new hospital to DHEC

By Julie Graham
The Herald

COLUMBIA — Public support of who should build York County's second hospital is leaning toward Presbyterian Healthcare, which has two 5-inch binders full of favorable letters.

Residents have sent more than 1,260 pages of letters telling state regulators which of the four health care providers should, or should not, build a hospital in the fast-growing Fort Mill area.

Of the letters submitted directly to the state Department of Health and Environmental Control, Presbyterian Healthcare, which is based in Minneapolis, has the most letters. Presbyterian Hospital Fort Mill.

"We've gotten a lot about Presbyterian," said Joel Grice of DHEC. "People go across state lines for health care. That shows Presbyterian has a lot of citizens who have found their services beneficial in them."

Letters cite pleasant personal experiences with its hospitals in Mecklenburg County, a cutting and professional staff and its plans to build a 24-hour urgent care center in western York County, says at Presbyterian, and the quality of care and doctors at the Fort Mill site. "I hope you go with Presbyterian," wrote one letter. "I hope you go with Presbyterian."

The letters, reviewed by The Herald this week, will be considered by DHEC in its decision.

Some people hand-wrote their choice on monogrammed notecards. Others used the final lettering available to type their opin-

ion. There were some scribbles on notecards and lots of signatures on form letters.

Presbyterian Medical Center had 471 pages of letters, though more than half were form letters, which are 12 pages long.

That's the trend, Grice said. "The public has expressed they want another provider."

The reasons for not liking the Trist-owned hospital varied from pricing to care to a lack of competition.

"Along with many of my neighbors in our local community, we take our families to Presbyterian," Robert Pappas of Fort Mill wrote. "We feel that Presbyterian is a first-class medical center and that it provides quality and patient satisfaction."

Pricing and dropping Aetna health insurance were two major reasons why residents wrote to oppose PMHC. Both issues have been resolved.

After years of having the highest prices in the region, the hospital lowered its rates by 11 percent, according to the latest Medicare data released last fall. And after nearly two years, PMHC will again accept Aetna health insurance, according to Pappas.

The hospital also has support for PMHC for more than 25 years.

"Bledmont Medical built and named an urgent care center in western York County when there was no one else that would do it," wrote Ken Cushman of York in a letter dated April 29. "Quality services with con-

What's in the mailbox?

Here are excerpts from some of the letters written to DHEC about the hospitals.

"I'm going to build a hospital in the Fort Mill area. There are a few lines in everyone's life when you desperately need a helping hand. When it comes to health care, here in Rock Hill we rely on Piedmont Medical Center."

— Stephen R. Ellsworth of Rock Hill, May 2, 2005
"I ask you to make it a shorter day by awarding the right to build the York County facility to Carolina Healthcare System."

— Lucille L. Vann of Fort Mill, April 7, 2005
"Much is made of the property taxes that Trist will pay but won't be paid by the non-profit applicants. Any thinking person realizes that Trist will mark up these taxes and add them to the cost of services provided. It will be outrageous if Trist is allowed to expand its monopoly on hospital services for York County."

— John Roberts of Lake Wylie, Oct. 31, 2005
"Give us a choice. Competition is what creates better business."

— DeLano R. Cawthorne of Rock Hill, April 13, 2005
"All these about Piedmont Presbyterian or maybe Carolina Medical Center and nothing about the second hospital in the York County area. We're looking into some of the other hospitals. I have decided that it may be good to have someone new, someone that we have not heard about that will come into our county and bring a real change in health care. They offer a doctor's service, hospital, something that is long gone from today's reality."

— Ken Dever of Fort Mill, July 27, 2005
"As a former employee of Piedmont and a current employee of Presbyterian, I can state without question that Presbyterian is where I want my family to go when in need of a hospital facility."

— Anne Black of Fort Mill, undated
"Send a signed letter with your address to:

Mr. Joel C. Grice, Director
Bureau of Health Facilities and Services Development
S.C. Department of Health and Environmental Control
2600 Red St.
Columbia, SC 29201

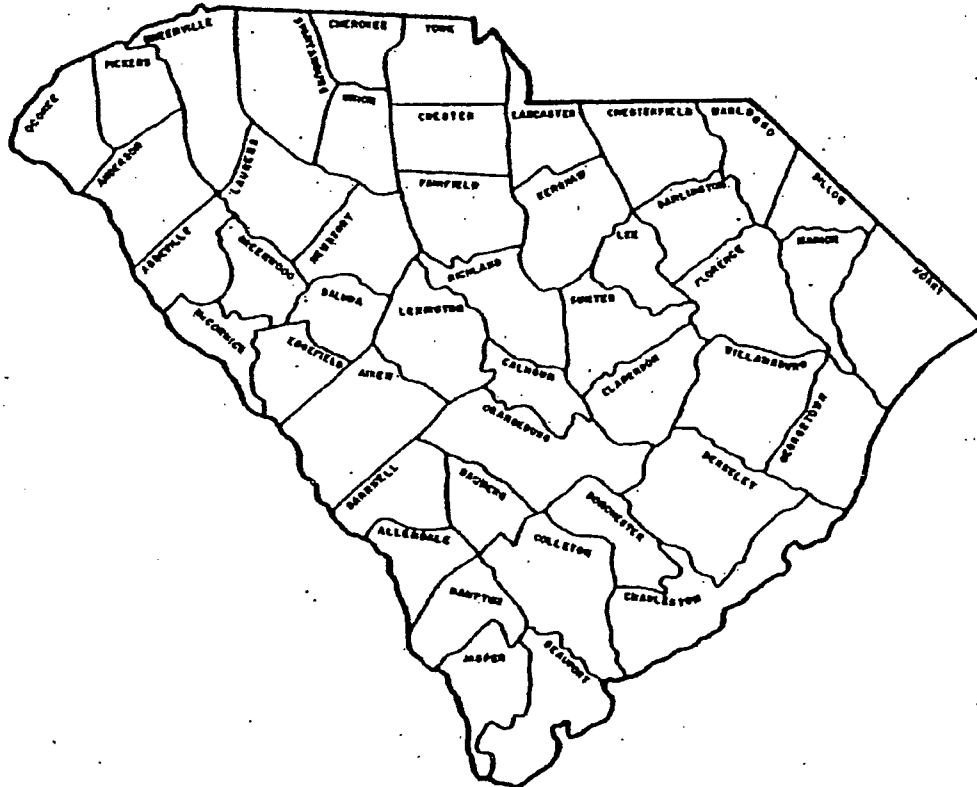
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PHY RECON 000023

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Grice *16*
FEB 13 2007
C. J. Scripts, INC.

2004-2005 South Carolina Health Plan



South Carolina State Health Planning Committee.

South Carolina Department of Health and Environmental Control

Effective October 15, 2004 for all but the Open Heart Surgery
Section on page II-48, Section (5)A items 1 and 2 and the
Ambulatory Surgery Facility Section
The above two sections became effective on January 14, 2005

Piedmont - 0046

CHAPTER II

PLANNING REGIONS AND FACILITY CATEGORIES

A. Inventory Regions and Service Areas:

This State Plan has adopted four regions and one statewide category for the purpose of inventorying health facilities and services as specified in Section C. below. These regions, based on existing geographic, trade and political areas, are a practical method of administration. The Health Service Area (HSA) designations previously used are no longer applicable and have been replaced.

The needs for hospital beds are based on the utilization of individual facilities. Nursing home and home health service needs are projected by county. The needs for acute psychiatric services, alcohol and drug abuse services, comprehensive rehabilitation services, and residential treatment centers for children and adolescents are based on various service areas and utilization methodologies specified herein. Institutions serving a restricted population throughout the state are planned on a statewide basis. The needs for most services (cardiac catheterization, open heart surgery, etc.) are based upon the service standard, which is a combination of utilization criteria and travel time requirements. Each service standard constitutes the service area for that particular service.

Any service area may cross multiple administrative, geographic, trade and/or political boundaries. It is recognized that due to factors which may include availability, accessibility, personal or physician preferences, insurance and managed care contracts or coverage, or other reimbursement issues, patients may seek and receive treatment outside the county or inventory region in which they reside and/or outside of the state. Therefore, service areas may specifically cross inventory regions and/or state boundaries. The need for a service is analyzed by an assessment of existing resources and need in the relevant service area, along with other factors set forth in this Plan and applicable statutes and regulations.

B. Exceptions to Service Area Standards:

It must be recognized that the health care delivery system is in a state of evolution both nationally and in South Carolina. Due to the health reform movement, we are seeing a number of health care facilities consolidating and establishing provider networks in order to better compete for contracts within the new environment. This is particularly important for the smaller, more rural, facilities that run the risk of being bypassed by insurers and health care purchasers looking for the availability of comprehensive health care services for their subscribers.

Given the changing nature of the health care delivery system, affiliated hospitals may sometimes desire to transfer or exchange specific technologies in order to better meet an identified need. Affiliated hospitals are defined as being two or more health care facilities, whether inpatient or outpatient, owned, leased, sponsored, or who have a formal legal relationship with a central organization and whose relationship has been established for reasons other than for transferring beds,

It should be noted that, throughout the Plan where the term "hospital bed need" is specified, these figures are actually based upon demand or utilization data for the general acute hospitals. Use of these planning factors is not intended to stem initiative or to suggest that facilities cannot operate at more efficient levels than used in the calculations without additional beds.

The methodology for calculating bed needs is as follows:

- (a) Calculations of bed need are made for individual facilities.
- (b)
 - 1. Multiply the current facility use rate by age cohort by the projected population by age cohort (in thousands) and divide by 365 to obtain a projected average daily census by age cohort.
 - 2. Divide the sum of the age cohort projected facility average daily census by the variable occupancy (.65/.70/.75) to determine the number of beds needed to meet the area's need.
- (c) The number of additional beds needed or excess beds is obtained by subtracting the number of existing beds from the bed need.
- (d) Should there be a need shown for additional beds for a hospital, then an increase may be approved. In order to provide for a cost-effective addition, up to the greater of 50 beds or the actual projected number of additional beds may be approved, provided the hospital can document and demonstrate the need for additional beds.
- (e) In some areas of South Carolina, there is a considerable influx of tourists who are not counted in the permanent population. If an individual hospital in these areas can document and demonstrate the need for additional beds due to non-resident (tourist) population, and seasonal utilization fluctuations due to this population, then the Department may approve some additional beds at the existing hospital based on further analysis.
- (f) Should a hospital request additional beds due to the deletion of services at a Federal facility that results in the immediate impact on the utilization of the hospital, then additional beds may be approved at the affected hospital. The impacted hospital must document this increase in demand and explain why additional beds are needed to accommodate the care of patients previously served at a Federal facility. Based on the analysis of utilization provided by the affected hospital, the Department may approve some additional hospital beds to accommodate this immediate need.
- (g) Because of the low utilization and the low capital cost of converting hospital-based nursing home, psychiatric and/or substance abuse beds to general acute care hospital beds, the following policies may apply:

FY 2010 HOSPITAL NEED									
FACILITY/COUNTY	AGE CAT	2003 POP	2010 POP	2003 PAT DAYS	PROJ % ADC OCCU	BED NEED	TO BE EXIST ADDED/OR BEDS (EXCESS)		
REGION I									
ANDERSON CO.									
ANDERSON AREA MEDICAL CTR & WOMEN AND CHILDREN'S HOSPITAL #1	<18	41,470	42,310	3,000	8.51				
	18-64	105,050	111,650	42,087	122.47				
	+65	23,080	25,820	46,734	140.30				
	TOTAL	169,500	180,280	90,923	271.27	0.76	362	486	-133
CHEROKEE CO.									
UPSTATE CAROLINA MEDICAL CTR	<18	13,980	14,770	1,151	3.33				
	18-64	33,390	35,880	7,241	21.37				
	+65	6,520	7,120	7,577	22.87				
	TOTAL	53,890	57,850	15,969	47.37	0.65	73	125	-52
GREENVILLE CO.									
ALLEN BENNETT MEMORIAL	<18	95,940	99,860	141	0.40				
	18-64	249,390	271,400	8,728	20.05				
	+65	45,090	49,950	6,861	26.95				
	TOTAL	390,420	421,210	15,719	47.41	0.65			
GREENVILLE MEMORIAL MED CTR	<18	95,940	99,860	16,612	44.52				
	18-64	249,390	271,400	103,885	308.74				
	+65	45,090	49,950	73,240	222.29				
	TOTAL	390,420	421,210	192,736	576.54	0.75			
ALLEN BENNETT MEM & GREENVILLE MEM MED CTR AND GREENVILL HOSP SYS- PATEWOOD #2	TOTAL						642	840	2
HILLCREST									
	<18	95,940	99,860	54	0.15				
	18-64	249,390	271,400	4,442	13.24				
	+65	45,090	49,950	6,259	19.00				
	TOTAL	390,420	421,210	10,755	32.39	0.65	50	43	7
NORTH GREENVILLE LTAC #3									
	<18	95,940	99,860	-	0.00				
	18-64	249,390	271,400	70	0.21				
	+65	45,090	49,950	183	0.49				
	TOTAL	390,420	421,210	233	0.70	0.65	1	45	-44
SAINT FRANCIS HOSPITAL									
	<64	345,330	371,260	24,841	73.17				
	+65	45,090	49,950	25,241	76.61				
	TOTAL	390,420	421,210	50,082	149.77	0.70			
ST FRANCIS WOMAN'S & FAMILY HOSP									
	<64	345,330	371,260	6,819	20.08				
	+65	45,090	49,950	6,915	20.99				
	TOTAL	390,420	421,210	13,721	41.07	0.65			

FACILITY/COUNTY	AGE CAT	2003 POP	2010 POP	2003 PAT DAYS	PROJ % ADD OCCU	BED NEED	FY 2010 HOSPITAL NEED	
							EXIST BEDS	TO BE ADDED/OR EXCESS
SAINT FRANCIS HOSPITAL & ST FRANCIS WOMAN'S & FAMILY HOSP	#4	TOTAL				278	319	-41
REGENCY HOSPITAL GREENVILLE	#5	<18 95,940	99,860	-	0.00			
		18-64 249,390	271,400	-	0.00			
		+65 45,090	49,950	-	0.00			
		TOTAL 390,420	421,210	-	0.00	0	32	-32
OCONEE CO								
OCONEE MEMORIAL		<18 15,380	15,910	855	2.42			
		18-64 42,240	45,020	13,955	40.79			
		+65 11,410	14,830	18,011	82.84			
		TOTAL 69,030	75,480	32,867	108.05	0.65	163	160
PICKENS CO								
CANNON MEMORIAL		<18 27,690	29,380	75	0.22			
		18-64 74,910	82,560	1,544	4.68			
		+65 13,150	14,910	4,194	12.94			
		TOTAL 115,750	127,150	5,794	17.84	0.65	27	55
PALMETTO BAPTIST MED CTR EASLEY		<18 27,690	29,380	745	2.16			
		18-64 74,910	82,560	8,920	27.04			
		+65 13,150	14,910	8,958	27.83			
		TOTAL 115,750	127,150	18,623	57.03	0.65	58	109
SPARTANBURG CO								
B.J. WORKMAN MEMORIAL		<18 85,080	87,440	77	0.22			
		18-64 184,700	177,870	967	2.86			
		+65 32,130	35,490	1,801	4.85			
		TOTAL 261,910	260,800	2,642	7.92	0.65	12	43
SPART HOSP RESTORATIVE CARE		<18 85,080	87,440	-	0.00			
		18-64 184,700	177,870	5,513	16.28			
		+65 32,130	35,490	17,082	51.69			
		TOTAL 261,910	260,800	22,695	67.99	0.65	105	97
MARY BLACK MEMORIAL		<18 85,080	87,440	1,472	4.18			
		18-64 184,700	177,870	11,454	33.85			
		+65 32,130	35,490	11,601	35.11			
		TOTAL 261,910	260,800	24,527	73.14	0.70	104	178
SPARTANBURG REGIONAL MED CTR		<18 85,080	87,440	4,883	13.88			
		18-64 184,700	177,870	83,861	188.74			
		+65 32,130	35,490	56,222	170.14			
		TOTAL 261,910	260,800	125,217	372.75	0.75	497	532
UNION CO								

FY 2010 HOSPITAL NEED									
FACILITY/COUNTY	AGE CAT	2003 POP	2010 POP	2003 PAT DAYS	PROJ % ADG OCCU	BED NEED	EXIST BEDS	TO BE ADDED/OR (EXCESS)	
SPRINGS MEMORIAL									
	<18	15,530	15,450	2,114	5.76				
	18-64	35,610	40,540	20,293	56.08				
	+65	7,350	7,970	16,027	47.81				
	TOTAL	61,690	63,960	38,434	111.45	0.65	171	166	3
LAURENS CO									
LAURENS CO. HOSPITAL									
	<18	17,690	17,720	405	1.11				
	18-64	44,430	48,750	6,333	19.04				
	+65	9,420	10,770	9,443	29.58				
	TOTAL	71,540	77,240	16,197	49.73	0.65	77	76	1
LEXINGTON CD									
LEXINGTON MEDICAL CENTER									
	<18	35,450	36,961	2,103	6.01				
	18-64	90,887	101,337	42,852	130.58				
	+65	14,853	17,919	38,371	131.91				
	TOTAL	140,790	156,217	84,126	268.49	0.70	364	346	38
NEWBERRY CO									
NEWBERRY CO. MEMORIAL									
	<18	8,880	8,960	298	0.83				
	18-64	22,640	23,780	4,388	12.81				
	+65	5,330	5,780	7,232	21.49				
	TOTAL	36,850	38,520	11,915	34.92	0.65	54	90	-38
RICHLAND CO									
PALMETTO HEALTH BAPTIST									
	<18	103,241	105,950	1,919	5.40				
	18-64	286,753	289,794	38,967	115.12				
	+65	40,798	46,381	32,916	102.48				
	TOTAL	412,792	442,105	73,802	222.99	0.75	297	363	-66
PROVIDENCE HOSPITAL									
	<18	103,241	105,950	70	0.20				
	18-64	286,753	289,794	29,667	87.64				
	+65	40,798	46,381	39,906	124.24				
	TOTAL	412,792	442,105	69,642	212.08	0.70	303	256	45
PROVIDENCE HOSPITAL NORTHEAST									
	<18	103,241	105,950	74	0.21				
	18-64	286,753	289,794	8,725	19.87				
	+65	40,798	46,381	5,576	17.36				
	TOTAL	412,792	442,105	12,363	37.43	0.65	66	46	12
PALMETTO HEALTH RICHLAND									
	<18	103,241	105,950	21,430	60.28				
	18-64	286,753	289,794	76,907	233.11				
	+65	40,798	46,381	41,582	128.46				
	TOTAL	412,792	442,105	141,919	422.82	0.75	584	579	+16
INTERMEDICAL HOSPITAL OF SC									
	<18	103,241	105,950	-	0.00				
	+18	309,551	336,155	9,038	28.89				
	TOTAL	412,792	442,105	9,038	28.89	0.65	41	35	6

FY 2010 HOSPITAL NEED									
FACILITY/COUNTY	AGE CAT	2003 POP	2010 POP	2003 PAT DAYS	PROJ % ADC OCCU	BED NEED	EXIST BEDS	TO BE ADDED/REDUCED (EXCESS)	
YORK CO									
PIEDMONT MEDICAL CENTER	<18	44,300	45,910	2,837	8.34				
	18-64	110,120	125,440	38,883	116.08				
	+65	17,870	20,810	33,832	109.04				
	TOTAL	172,090	192,300	75,432	232.46	0.70	332	268	64
REGION III									
CHESTERFIELD CO									
CHESTERFIELD GENERAL	<18	11,270	11,080	785	2.11				
	18-64	26,820	27,570	4,519	12.82				
	+65	5,050	5,620	2,088	8.39				
	TOTAL	42,940	44,270	7,408	19.21	0.65	30	59	-29
CLARENDON CO									
CLARENDON MEMORIAL HOSPITAL	<18	8,180	7,770	578	1.50				
	18-64	19,340	20,870	6,524	18.81				
	+65	4,900	6,210	5,387	18.64				
	TOTAL	33,020	34,650	12,569	38.95	0.65	60	56	4
DARLINGTON CO									
CAROLINA PINES REGIONAL HOSPITAL	<18	17,780	17,580	2,444	5.61				
	18-64	41,760	42,880	15,857	44.42				
	+65	8,200	9,000	13,038	39.20				
	TOTAL	67,730	69,250	31,337	90.23	0.65	139	168	-27
WILSON MEDICAL CENTER									
	<18	17,780	17,580	3	0.01				
	18-64	41,760	42,880	1,111	3.11				
	+65	8,200	9,000	1,974	5.94				
	TOTAL	67,730	69,250	3,085	9.06	0.65	14	49	-35
DILLON CO									
SAINT EUGENE MEDICAL CENTER	<18	8,590	8,090	1,436	3.71				
	18-64	16,380	16,870	8,628	18.47				
	+65	3,480	3,630	5,758	15.98				
	TOTAL	30,440	30,290	13,809	38.13	0.65	59	78	-20
FLORENCE CO									
CAROLINAS HOSP SYS & WOMEN'S CENTER OF THE CAROLINAS HOSP. SYS.	<18	32,740	32,810	1,877	5.12				
	18-64	80,440	84,930	38,123	110.28				
	+65	18,190	18,930	38,818	121.69				
	TOTAL	128,370	134,470	75,244	236.99	0.70	338	282	57
CAROLINAS HOSPITAL SYSTEM LAKE CITY									
	<18	32,740	32,810	103	0.28				
	18-64	80,440	84,930	1,647	4.47				
	+65	18,190	18,930	2,181	6.57				
	TOTAL	128,370	134,470	3,801	10.91	0.66	17	46	-31

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Piedmont - 0053

[illegible]

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Piedmont - 0055

FACILITY/COUNTY	FY 2010 HOSPITAL NEED						TO BE		
	AGE CAT	2003 POP	2010 POP	2003 PAT DAYS	PROJ ADG OCCU	%	BED NEED	EXIST	ADDED/OR BEDS (EXCESS)
MARLBORO PARK	<18	7,400	7,070	716	1.87				
	18-64	17,850	17,030	4,641	12.27				
	+65	3,320	3,340	850	1.79				
	TOTAL	28,570	27,440	6,020	15.93	0.66	25	94	-69
SUMTER CO									
TUOMEY	<18	30,260	31,020	2,095	5.89				
	18-64	89,240	70,420	30,012	87.41				
	+65	12,830	14,880	29,458	93.81				
	TOTAL	109,120	116,120	61,627	187.11	0.70	268	248	20
WILLIAMSBURG CO									
WILLIAMSBURG REG HOSPITAL #10	<18	10,230	9,410	199	0.60				
	18-64	21,930	22,160	2,330	8.46				
	+65	4,690	5,300	2,707	8.04				
	TOTAL	37,050	36,860	5,236	14.99	0.65	23	25	-2
REGION IV									
AIKEN CO.									
AIKEN REGIONAL MEDICAL CTR.	<18	37,620	37,760	897	2.47				
	18-64	82,370	103,080	22,519	66.65				
	+65	19,480	23,110	21,442	69.78				
	TOTAL	149,390	163,940	44,856	141.08	0.66	217	183	34
ALLENDALE CO.									
ALLENDALE CO. HOSPITAL	<18	3,030	3,030	110	0.30				
	18-64	7,050	7,170	827	2.30				
	+65	1,800	1,760	960	3.07				
	TOTAL	11,880	11,960	1,897	5.67	0.65	9	25	-16
BAMBERG CO.									
BAMBERG CO. MEMORIAL	<18	4,210	3,950	98	0.25				
	18-64	9,910	9,560	2,881	7.83				
	+65	2,200	2,340	2,712	7.80				
	TOTAL	16,320	15,760	5,771	15.97	0.65	25	59	-34
BARNWELL CO.									
BARNWELL CO. HOSPITAL	<18	6,390	6,090	411	1.07				
	18-64	14,540	16,820	2,166	6.46				
	+65	3,060	3,490	2,768	8.52				
	TOTAL	23,990	26,400	5,335	16.16	0.65	25	63	-28
BEAUFORT CO.									
BEAUFORT CO. MEMORIAL	<18	25,760	27,740	1,852	4.90				
	18-64	77,320	67,650	20,329	63.14				

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Piedmont - 0057

FACILITY/COUNTY	FY 2010 HOSPITAL NEED							TO BE	
	AGE CAT	2003 POP	2010 POP	2003 PAT DAYS	PROJ ADD OCCU	%	BED NEED	EXIST BEDS	ADDED/OR (EXCESS)
COLLETON MEDICAL CENTER									
	<18	10,820	10,890	628	1.74				
	18-64	23,760	25,190	11,429	33.20				
	+65	4,990	5,730	15,157	47.88				
	TOTAL	39,270	41,810	27,211	82.82	0.65	128	131	-3
HAMPTON CO.									
HAMPTON REGIONAL MEDICAL CTR									
	<18	8,740	5,480	85	0.17				
	18-64	13,340	14,170	1,818	4.71				
	+65	2,590	3,030	1,940	6.22				
	TOTAL	21,670	22,680	3,627	11.10	0.65	17	68	-61
JASPER CO.									
COASTAL CAROLINA MEDICAL CENTER									
	<18	5,350	5,050	-	0.00				
	18-64	13,410	15,120	-	0.00				
	+65	2,330	2,830	-	0.00				
	TOTAL	21,090	23,000	-	0.00	0.65	0	31	-31
ORANGEBURG CO.									
REG MED CTR ORANGEBURG-CALHOUN									
	<18	24,070	23,740	2,085	5.58				
	18-64	56,810	59,090	22,818	64.88				
	+65	12,530	14,050	24,486	78.22				
	TOTAL	93,210	96,880	49,169	145.48	0.70	208	247	-39
ORANGEBURG CO.									

- #1 CON ISSUED TO TRANSFER 72 BEDS FOR NEW HOSPITAL.
 #2 BED NEEDS ARE COMBINED FOR THESE HOSPITALS; SINCE, ADDITIONAL BEDS WERE APPROVED FOR TRANSFER AMONG THESE HOSPITALS. 8/30/03
 #3 CON ISSUED TO CONVERT N GREENVILLE TO A 45 BED LTC HOSPITAL 4/15/03.
 #4 BED NEEDS ARE COMBINED FOR THESE HOSPITALS, SINCE ADDITIONAL BEDS WERE APPROVED FOR TRANSFER AMONG THESE HOSPITALS. 6/30/03
 #5 CON ISSUED FOR 32 BED LTACH 8/22/04 SC-04-28.
 #6 THE HOSPITAL DELICENSED FROM 40 TO 25 BEDS ON 8/31/04 TO BECOME A CRITICAL ACCESS HOSPITAL
 #7 THE HOSPITAL DELICENSED FROM 50 TO 25 BEDS ON 8/23/04 TO BECOME A CRITICAL ACCESS HOSPITAL
 #8 DATA AND BED NEEDS ARE COMBINED.
 #9 NEEDS ARE COMBINED SINCE CON SC-03-65 TRANSFER 14 BEDS FROM OM TO WACCAMAW. 11/10/03.
 AND WACCAMAW ADDED 28 BEDS 4/12/04 SC-04-20.
 #10 THE HOSPITAL DELICENSED FROM 78 TO 25 BEDS ON 8/20/04 TO BECOME A CRITICAL ACCESS HOSPITAL
 #11 CON ISSUED TO COMBINE THESE TWO FACILITIES SC-08-80 10/14/03.

SOUTH CAROLINA GENERAL ACUTE BEDS

% OCCUPANCY RATE

	2001	2002	2003		2001	2002	2003
REGION I	58.3	58.7	59.4	REGION III	64.0	63.3	63.6
ANDERSON AREA MED CTR	52.3	52.8	50.3	CHESTERFIELD GENERAL	25.1	31.1	34.4
UPSTATE CAROLINA MED CTR	34.3	31.7	35.0	CLARENDON MEMORIAL	67.0	69.5	81.5
ALLEN BENNETT MEMORIAL	71.1	71.3	74.3	CAROLINA PINES REG MED CTR	65.1	69.4	74.0
GREENVILLE MEM MED CTR	81.6	81.6	83.5	WILSON CLINIC	20.5	19.7	17.2
NORTH GREENVILLE LTAC	-	-	13.0	ST. EUGENE REGIONAL MED CTR	43.8	48.2	47.9
HILLCREST HOSPITAL	43.7	52.7	55.7	CAROLINAS HOSPITAL SYSTEM	60.3	68.3	75.6
ST FRANCIS HOSPITAL	74.7	73.7	66.6	CAROLINAS HOSP LAKE CITY	21.5	18.9	21.7
ST FRANCIS WOMEN'S & FAMILY	59.8	58.4	60.8	MCLEOD REGIONAL MED CTR	92.5	92.0	90.6
OCCONEE MEMORIAL	54.8	52.2	56.3	WOMEN'S CTR/CAROLINAS	53.2	37.1	40.9
CANNON MEMORIAL	31.2	27.8	28.8	REGENCY HOSPITAL OF SC	12.8	78.8	90.5
PALMETTO BAPTIST M C EASLEY	51.1	52.8	53.1	GEORGETOWN MEMORIAL	81.0	81.1	68.4
BJ WORKMAN MEMORIAL	17.5	18.0	18.8	WACCAMAW COMMUNITY	-	-	78.8
MARY BLACK MEMORIAL	40.7	40.7	38.2	CONWAY HOSPITAL	63.3	67.3	68.3
SPART HOSP RESTORATIVE CARE	62.4	40.7	63.8	GRAND STRAND REGIONAL	78.6	64.3	62.2
SPARTANBURG REG MED CTR	62.4	65.6	64.5	LORIS COMMUNITY	56.0	49.9	50.2
HOPE HOSPITAL	13.8	11.5	0.0	MARION COUNTY MED CTR	90.6	69.4	78.8
WALLACE THOMSON	32.1	32.2	33.7	MARLBORO PARK	19.2	21.7	17.5
				TUOMEY	57.7	70.7	68.1
				WILLIAMSBURG REGIONAL	9.3	19.5	18.4
REGION II	61.2	63.0	64.8	REGION IV	60.8	62.8	62.2
ABBEVILLE COUNTY	24.0	25.0	21.3	AIKEN REGIONAL MED CTR	70.9	71.1	89.0
CHESTER REGIONAL MED CTR	44.4	37.3	31.4	ALLENDALE COUNTY	14.8	21.0	20.8
EDGEFIELD COUNTY	24.6	19.9	20.8	BAMBERG CO MEMORIAL	27.0	25.2	26.8
FAIRFIELD MEMORIAL	33.9	36.4	31.1	BARNWELL COUNTY	29.8	27.9	27.8
SELF REGIONAL MED CTR	49.5	48.5	51.4	BEAUFORT MEMORIAL	89.3	94.7	84.8
KERSHAW COUNTY MEMORIAL	56.3	53.3	51.9	HILTON HEAD	78.8	60.6	69.1
SPRINGS MEMORIAL	77.1	67.8	78.0	CHARLESTON MEMORIAL	11.9	12.3	13.7
LAURENS COUNTY HOSPITAL	64.0	61.4	58.4	EAST COOPER REG MED CTR	48.0	48.8	57.0
LEXINGTON MEDICAL CTR	71.6	76.2	78.9	MEDICAL UNIVERSITY	72.5	72.2	75.4
NEWBERRY CO MEMORIAL	29.3	34.0	36.3	TRIDENT MEDICAL CTR	77.8	82.4	76.9
INTERMEDICAL HOSPITAL OF SC	72.3	78.5	70.7	KINDRED-HOSP CHARLESTON	39.1	50.9	55.8
PALMETTO HEALTH BAPTIST	55.9	82.7	56.7	SUMMERVILLE MED CTR	61.4	69.3	74.5
PROVIDENCE HOSPITAL	76.9	79.0	83.7	ROPER	63.4	63.9	61.9
PROVIDENCE HOSPITAL NE	74.1	82.5	73.6	BON SECOURS ST FRANCIS X	72.2	75.7	75.0
PALMETTO HEALTH RICHLAND	69.0	68.5	67.2	COLLETON MEDICAL CTR	69.7	61.6	64.3
PIEDMONT MEDICAL CTR	65.2	71.6	75.1	HAMPTON REGIONAL MED CTR	18.4	13.2	14.6
				LOW COUNTRY	0.0	0.0	0.0
				RMC ORANGEBURG/CALHOUN	58.7	68.9	54.5

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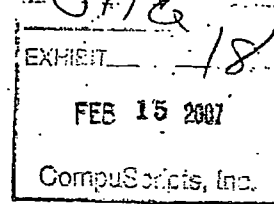
Board docket No. 06-RFR-10

- DHEC staff issued CON to Piedmont Healthcare System/Amisub/Fort Mill Medical Center/Tenet – May 30, 2006
- DHEC staff denied CON for:
 - Presbyterian Hospital – York
 - Carolina's Health Care System
 - Hospital Partners of America
- Carolina's Health Care System filed appeal with ALC - June 12
- Presbyterian Hospital – York filed request for reconsideration with DHEC staff – June 12
- DHEC staff denied request for reconsideration – July 11
- Presbyterian Hospital – York filed RFR with Board - July 25
- Carolina's filed motion to participate in FRC before Board
- Presbyterian Hospital – York opposed Carolina's participation
- DOJ sent letter requesting 30 days to talk with staff concerning antitrust issues and submit letter – Aug. 18
(30 days = Sept. 18; Board meeting is Sept. 14)
- Presbyterian sent letter agreeing with DOJ's concerns
- Piedmont sent letter disagreeing with DOJ's concerns
- SC Hospital Association sent letter disagreeing with DOJ's concerns and requesting to participate in FRC

Piedmont Medical Center

222 South Herlong Avenue
Rock Hill, SC 29732
tel: 803-329-1234
www.piedmontmedicalcenter.com

October 5, 2005



Ms. Mary W. Fechtel
Division of Planning and Certification of Need
1777 St. Julian Place
Columbia, SC 29204

RE: Construction of a 100-bed acute care hospital to include one diagnostic cardiac catheterization laboratory, one Magnetic Resonance Imaging (MRI) unit, and one Computed Tomography (CT) Scanner to be located at the intersection of SC Highway 160 and Highway 21 Bypass

Dear Ms. Fechtel:

By this letter, we request to withdraw the previously submitted CON application for the development of a 64-bed acute care hospital in Fort Mill, S.C.

Also enclosed is an original and one copy of a new CON application for your consideration. I believe all the required information is included with this document. Please feel free to contact me if you have any questions or need other information.

Sincerely,

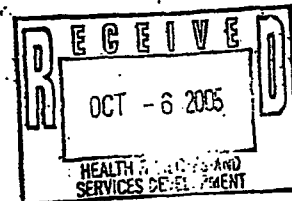
A handwritten signature in dark ink, appearing to be "Charles F. Miller".

Charles F. Miller
President and CEO
AMISUB of South Carolina, Inc.

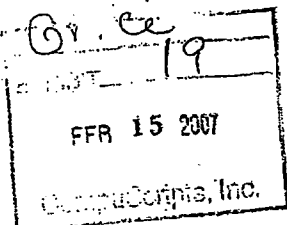
Enclosures

c: Stuart Andrews, Nelson Mullins
David Levitt, Mitretek Healthcare

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TENET



U.S. Department of Justice

Antitrust Division

City Center Building
1401 H Street NW, Suite 4000
Washington, DC 20530
(202) 514-9734

RECEIVED

AUG 24 2006

August 18, 2006

McNair Law Firm, P.A.

Via FedEx and Email

Mrs. Lisa M. Longshore, Clerk
Board of Health and Environmental Control
2600 Bull Street
Columbia, South Carolina 29201

Re: Final Review by the Board of the Department of Health and Environmental Control (DHEC) of Staff Decisions on Certificate of Need (CON) applications to build a hospital in York County.

Dear Mrs. Longshore:

The Antitrust Division of the U.S. Department of Justice recently became aware of a request for final review now pending before the Board that raises significant policy issues for hospital competition in South Carolina. The request for final review addresses certain CON applications for building a new hospital in York County and challenges DHEC's conclusion that no new competitors may enter hospital markets in South Carolina.¹ The Antitrust Division requests the opportunity to submit a letter addressing the policy implications of interpreting South Carolina's law to prohibit new competitive entry into hospital markets and believes that the issue merits full discussion at a final review conference.

¹ The DHEC staff decisions under review are as follows:

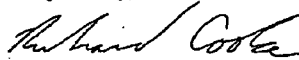
(1) Request to the Board of DHEC for Final Review of Staff Decision dated July 11, 2006 to deny Request for Reconsideration and of Staff Decision dated May 30, 2006 to Issue a CON to Amisub of South Carolina d/b/a Fort Mill Medical Center for the construction of a 100-bed acute care hospital to include one diagnostic cardiac catheterization laboratory, one Magnetic Resonance Imaging (MRI) Unit, and a sixty-four slice Computed Tomography (CT) scanner to be located at the intersection of SC Highway 160 and Highway 21 Bypass in Fort Mill, South Carolina.

(2) Request to the Board of DHEC for Final Review of Staff Decision dated July 11, 2006 to deny Request for Reconsideration and of Staff Decision dated May 30, 2006 to deny a CON application for Presbyterian Hospital-York's construction of a 64-bed acute care hospital to include a MRI unit, a CT scanner, and a diagnostic cardiac catheterization laboratory to be located off of I-77 at Sutton Road in Fort Mill South Carolina.

The Antitrust Division and the Federal Trade Commission have studied the benefits that competition among health care providers brings to patients and payors, and we recently published a report on this subject after a series of hearings: Improving Health Care: A Dose of Competition (July 2004), available at <http://www.ftc.gov/reports/healthcare/040723healthcare rpt.pdf>. In that report, ch. 8, sec. I, we described harmful effects that CON laws can have on competition in health care markets. Our study identified no state CON law that appeared to be so restrictive as to prohibit new competitors from entering the state.

The Antitrust Division would like to have an opportunity to consult with DHEC staff before submitting a more detailed letter on the issues raised by this matter. We request that the Board allow the Antitrust Division thirty days to submit that letter.

Respectfully,



Richard Cooke
Litigation I Section

cc: The Honorable Henry McMaster
C. Havird Jones, Jr., Senior Assistant Attorney General
Carlisle Roberts, Jr., Esq.
Nancy S. Layman, Esq.
Ashley C. Biggers, Esq.
M. Elizabeth Crum, Esq.
Ariail B. Kirk, Esq.
Stuart M. Andrews, Jr., Esq.
Daniel J. Westbrook, Esq.
Jennifer I. Cooke, Esq.
Stephen P. Bates, Esq.
Mary Margaret Hyatt, Esq.
Donald B. Meyer, Esq.
Douglas M. Muller, Esq.
W.E. Applegate, III, Esq.
Trudy H. Robertson, Esq.

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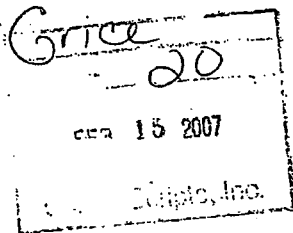


C. Earl Hunter, Commissioner
Promoting and protecting the health of the public and the environment

BOARD:
Henry C. Scott
Paul C. Aughey, III
Glenn A. McCall
Coleman F. Buckhouse, MD

OFFICE OF GENERAL COUNSEL

September 28, 2006



Richard Cooke, Esquire
Antitrust Division
U.S. Department of Justice
City Center Building
1401 H Street NW, Suite 4000
Washington, DC 20530

Dear Mr. Cooke:

The South Carolina Department of Health and Environmental Control appreciates the opportunity it had during this morning's telephone conference to discuss the state's Certificate of Need program and the manner in which hospital bed need is allocated. I hope Mr. Grice sufficiently clarified aspects of the South Carolina Health Plan that may have been unclear.

Should you have any additional questions, please call me on my direct line at (803) 898-3353.

Very truly yours,

Nancy S. Layman
Chief Attorney for Health Regulation

cc: Carlisle Roberts, Jr., DHEC
Office of General Counsel

Pamela Dukes, DHEC
Assistant Deputy Commissioner

Joel C. Grice, DHEC
Certificate of Need

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SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
2600 Bull Street • Columbia, SC 29201 • Phone: (803) 898-3432 • www.scdhec.gov

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ATTORNEYS AND COUNSELORS AT LAW

M. ELIZABETH CLAM
ATTORNEY AT LAW

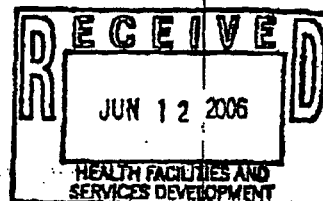
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1301 GERVASE STREET, 11TH FLOOR
COLUMBIA, SOUTH CAROLINA 29201

POST OFFICE BOX 11386
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE (803) 798-8800
FACSIMILE (803) 578-2219

June 12, 2006

VIA HAND DELIVERY

Mr. Joel C. Grice
Director, Bureau of Health Facilities
Middleburg Office Park
Heritage Building, 2nd Floor
1777 St. Julian Place
Columbia, South Carolina 29204



Re: Requests for Reconsideration

- 1) Request for Reconsideration of the Department's Decision dated May 30, 2006 to deny Presbyterian Healthcare System d/b/a Presbyterian Hospital - York's (sic)¹ Application for a Certificate of Need (CON) to construct a 64-bed acute care hospital to include a Magnetic Resonance Imaging (MRI) unit, a Computed Tomography (CT) scanner and a diagnostic cardiac catheterization laboratory to be located off of I-77 at Sutton Road in Fort Mill, South Carolina
- 2) Request for Reconsideration of the Department's Decision Dated May 30, 2006 to Approve the CON Application of Piedmont Healthcare System d/b/a Fort Mill Medical Center (sic)² for the construction of a 100 bed acute care hospital (including 64 beds shown as needed in the Health Plan in addition to 36 existing beds transferred from Piedmont Medical Center) to include one diagnostic cardiac catheterization laboratory, one Magnetic Resonance Imaging (MRI) unit and a sixty-four slice Computed Tomography (CT) scanner to located at the intersection of SC Highway 160 and Highway 21 Bypass in Fort Mill, South Carolina

¹ The Department's letter dated May 30, 2006, does NOT correctly identify the applicant. As the ownership disclosure form, submitted as part of the PHY application clearly shows, the applicant is Presbyterian Hospital, LLC, a South Carolina limited liability company. The ownership disclosure form does not reference a company known as Presbyterian Healthcare System d/b/a Presbyterian Hospital - York. DHEC File, PHY, pp. 16.

² There is no such applicant as "Piedmont Healthcare System d/b/a Fort Mill Medical Center". The ownership disclosure form clearly demonstrates that the applicant is Amisub of South Carolina, Inc. d/b/a Fort Mill Medical Center ("FMMC"). DHEC File, FMMC, pps. 19-21.

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ATTORNEYS AND COUNSELORS AT LAW

Mr. Joel C. Grice
June 12, 2006

Dear Mr. Grice:

On behalf of our client, Presbyterian Hospital York, LLC, ("PHY") we request that the Department of Health and Environmental Control ("DHEC" or "Department") undertake "good cause reconsideration" pursuant to S.C. Code Ann. § 44-7-210(D) (2002) and 24A S.C. Code Ann. Reg. 61-15 § 402 (Supp. 2005) of its decision dated, May 30, 2006 to deny the above referenced CON application for PHY, ("Denial Letter") (Exhibit 1, attached hereto and incorporated herein) and of its decision to approve the above referenced CON application for FMMC ("Approval Letter") (Exhibit 2, attached hereto and incorporated herein). The Denial Letter, mailed certified mail to PHY and received June 2, 2006 by PHY's counsel, denied PHY's application for a Certificate of Need ("CON") to build the above referenced Presbyterian Healthcare System d/b/a Presbyterian Hospital-York project (sic) ("PHY Project"). The Approval Letter, mailed certified mail to PHY and received June 2, 2006 by PHY's counsel, approved the above referenced Piedmont Healthcare System d/b/a Fort Mill Medical Center ("FMMC") (sic) project ("FMMC Project") application for a CON. The Denial and Approval Letters (collectively referred to as "Letters") each contain the same four (4) general grounds as to why the PHY Project was denied and FMMC Project was approved.

Summarized, the four (4) grounds upon which DHEC denied the PHY Project and approved the FMMC Project are:

1. Because it will function under the same licensee, Amisub of South Carolina, Inc. "Amisub", as does Piedmont Medical Center ("PMC"), FMMC must "operate within all parameters of an existing contract between PMC and York County". Exhibit 1, p. 1; Exhibit 2, p. 2. The Denial Letter further provides: "This Contract, which no other applicant is bound by, will ensure that charges remain reasonable at both PMC and the proposed new hospital in Fort Mill. The Contract will continue to remain in effect for an additional 39 years." *Id.*, p. 2.
2. The development of a 100-bed general acute care hospital will result in economies of scale and operating efficiencies that cannot be achieved in the 54-bed facility proposed by PHY.
3. "The applicant, PMC, has operated an existing hospital in York County for more than two decades and has demonstrated a commitment to the community." Exhibit 1, p. 2; Exhibit 2, p. 2.
4. Although each of the four (4) competing applicants is consistent with the 2004-2005 S.C. Health Plan ("Plan") standards for diagnostic cardiac catheterization and MRI services, only FMMC is consistent with the bed need calculated in the Plan. The bed

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Mr. Joel C. Grice
June 12, 2006

need calculation in the Plan is based on PMC as the planning unit and not on York County. Therefore, only FMMC and no other applicant, including PHF can meet the 64-bed "need" identified in the Plan. Only FMMC "is consistent with the hospital bed need methodology as specifically outlined in the" Plan and the number of beds needed in York County is based upon the market share of PMC and not the entire medical patient population in York County. Exhibit 1, p. 2; Exhibit 2, p. 2.

Section 44-7-210(D) provides, in pertinent part:

On the basis of staff review of the application, the staff of the department shall make a proposed decision to grant or deny the Certificate of Need. Notice of the proposed decision must be sent to the applicant and affected persons who have asked to be notified. The proposed decision becomes the final agency decision within ten days after the receipt of a notice of the proposed decision by the applicant unless:

- (1) a reconsideration by the staff of the department is requested in writing within the ten-day period by an affected person showing good cause for reconsideration of the proposed decision; ...

Reg. 61-15 § 402 provides, in pertinent part:

1. Any persons showing "good cause," as defined in these regulations, may request a staff reconsideration of the Department's proposed decision. Such request must be made in writing to the department within ten (10) days from the receipt of the notice of the proposed decision by the applicant, stating the specific reasons for such request. A request for staff's reconsideration must provide documentation that "good cause" as defined in Section 103.12 applies. The burden of proof is on the moving party.

2. If "good cause" has been demonstrated, the Department's staff shall reconsider the decision on the proposed project. Notification that the staff will reconsider its decision will be sent to (1) the person making the request for reconsideration; (2) the applicant; and (3) any person upon request.

DHEC regulation defines "good cause" as

- a. presentation of significant and relevant information not previously considered by the Department;

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Mr. Joel C. Grice
June 12, 2006

- b. demonstration that there have been significant changes in factors or circumstances relied upon by the Department in reaching its decision;
- c. demonstration that the Department has materially failed to follow its adopted procedures in reaching its decision; or ...

Reg. 61-15 § 103.12. This good cause reconsideration request is based upon the information contained herein and the exhibits hereto which are incorporated herein.

A. INFORMATION NOT PREVIOUSLY CONSIDERED BY THE DEPARTMENT.

1. Contrary to DHEC's apparent understanding, PMC and Amisub have not abided by the terms of the Contract³ and/or the multiple addenda thereto (collectively referred to as "Contract") between it and York County. York County and/or its citizens have been forced to sue or threaten to sue PMC to enforce the terms of the Contract. See Exhibit 4, newspaper articles from several area newspapers, attached hereto and incorporated herein. Exhibit 5, Atherton v. Tenet Healthcare Corporation and AMISUB of South Carolina, Inc., Ct. of Appeals, unpublished Opinion No. 2005-UP-362, filed May 25, 2005; Exhibit 6, State of Florida et al. v. Tenet Healthcare Corporation, Docket Number 05-CV-20591, pps. 6-7.

2. Neither DHEC nor the citizens of York County are "third party beneficiaries" of the Contract between Tenet and York County. See Exhibit 5: "We find the trial court properly determined Atherton was not a direct third-party beneficiary under the contract between York County and Respondents and therefore has no right of enforcement." p. 14 (last page). Even assuming the terms of the Contract⁴ were applicable to FMMC (which they clearly are not), the Department cannot rely on the applicability of the terms of the Contract as a reason to approve FMMC or the non-applicability of the terms of the Contract to PHY as a reason to deny PHY.

3. The Letters determination that the Contract terms recited in the Letters will be in place for another 39 years⁵ (Exhibits 1 and 2, Ground 1, p. 2) is misplaced.

³ DHEC's Letters' reliance on the Contract is misplaced and is neither a Project Review Criteria nor a Standard in the 2004-2005 SC Health Plan as discussed below. Our discussion of the Contract in no way waives our contention that DHEC's reliance on the Contract between Tenet, Amisub and York County Council exceeds the Department's authority, is in violation of statutory provisions, is arbitrary and capricious or characterized by an abuse of discretion or an unwarranted exercise of discretion, or is clearly erroneous in light of the information before the Department.

⁴ The issue of whether the Contract is applicable to FMMC and whether the York County Council supports FMMC will be on the agenda for the York County Council meeting on June 19, 2006.

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The Letters ignore the fact that the Contract has already been amended eight times⁶ and is subject to future amendment or termination. Additionally, the various "penalty" provisions, certain funding and gifts set out under Addendum Eight (Exhibit 8) are only in place for five (5) years and will be almost expired by the time FMMC projects the hospital will open.

4. On information and belief, the Department did not consider that PHY is a South Carolina limited liability company. The Department's letter dated May 30, 2006, does NOT correctly identify the applicant. As the ownership disclosure form submitted as part of the PHY application clearly shows, the applicant is Presbyterian Hospital, LLC, a South Carolina limited liability company.

5. On information and belief, the Department did not consider the correct company as the applicant for FMMC. The Denial Letter refers to the FMMC applicant as "Piedmont Healthcare System d/b/a Fort Mill Medical Center". The FMMC ownership disclosure form clearly demonstrates that the applicant is Amisub of South Carolina, Inc. ("Amisub") d/b/a Fort Mill Medical Center.

6. On information and belief, the Department did not consider that Amisub is wholly owned by Tenet Corporation ("Tenet"). In its 2005 Joint Annual Report, PMC, also listing Amisub as the company d/b/a PMC, lists Tenet as the "operating authority" and owner of its facility (building). Exhibit 3, p. 1, PMC 2005 Joint Annual Report attached hereto and incorporated herein.

7. The Department misapprehended the Contract requirements regarding their applicability to FMMC. The Contract terms only apply to PMC, the "Hospital" as defined in the Contract. Exhibit 8, p. 3. The Eighth Addendum states:

"AMISUB and AMISUB Parent agree to exert every reasonable effort to so conduct their operations and finances to maintain price for services at the 'Hospital' at reasonable, competitive levels as and when compared to other hospitals in the 'peer group' [as defined in Section 3.13(a)(xi) of the Agreement, as amended and modified] for which Medpar pricing information is provided pursuant to Section 3.13(a)(xii) of the Agreement, as amended and modified."

The Contract defines "Hospital" to include only PMC and does not include FMMC. ("WHEREAS, AMISUB Parent and AMISUB constructed and operate a hospital in York County, South Carolina, known as Piedmont Medical Center (the "Hospital") ..."). *Id.*, p. 1. See also, DHEC FMMC File, p. 774.

⁶ At its last meeting June 5, 2006, the York County Council approved a resolution adopting the ninth addendum to the Contract. The ninth addendum will require Amisub/Tenet to have 24 hour urgent care coverage in Western York County for five (5) years. We have requested a copy of the resolution and will forward it as soon as it is obtained.

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Mr. Joel C. Grice
June 12, 2006

8. The Contract does not require PMC to "maintain charges that are consistent with peer group hospitals" and the peer group provision does not apply to FMMC. The Contract certainly does not "ensure that charges at [FMMC] will be reasonable." The Contract only requires that PMC be lower than one (1) of the peer group. Assuming the Contract guarantees anything, it is only that charges at FMMC will not be the highest. Addendum Eight provides that effective October 1, 2003 if the Medpar pricing information obtained by PMC shows that its average charge per case for all product lines is the highest in the peer group, it must reduce its rates, charges and fees so that the average charge per case by PMC for all product lines "will be less than the highest in the peer group" (emphasis added) and maintain such reduced rates so that they "will be less than the highest of the peer group." *Id.*, p.3. See also, FMMC DHEC File, p. 776.

9. On information and belief, the Department failed to consider that the "peer group hospitals" charges are predominately higher than those of PHY. Thus, PHY has lower charges than FMMC. Exhibit 14, PHY DHEC File, pp1482; FMMC DHEC File, pp. 57.

B. SIGNIFICANT CHANGES IN FACTORS OR CIRCUMSTANCES RELIED UPON BY THE DEPARTMENT IN REACHING ITS DECISION.

1. The York County community is disappointed and outraged at the Department's decision and its failure to give the citizens of the County a choice of health care providers. The provider of choice of the citizens of all of York County, not just those served as part of the PMC "market share," is PHY. See Exhibits 4 and 7, attached hereto and incorporated herein.

2. The Department's "Draft Certificate of Need Summary Sheet" ("Draft Summary") and "Certificate of Need Summary Sheet" (Summary Sheet) stated that FMMC will capture the out-migration from York County to Charlotte hospitals is misplaced. The adverse public reaction to the Letters makes clear that the out-migration from York County, for services being provided by Tenet at FMMC will continue. Exhibits 4 and 7.

⁷ The Draft Summary sheets for each of the four applicants was received by PHY on the afternoon of June 8, 2006. The Draft Summary is undated. We are assuming that these sheets are those that were extant at the time the Letters were signed and the decisions made.

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Mr. Joel C. Grice
June 12, 2006

C. THE DEPARTMENT HAS MATERIALLY FAILED TO FOLLOW ITS ADOPTED PROCEDURES IN REACHING ITS DECISION.

S.C. Code Ann. § 44-7-210(A) requires the Department to notify the applicants of the Criteria, ranked in relative order of importance, that are applicable to the project(s). On March 28, 2006, the Department reordered the Project Review Criteria⁸ ("Criteria") applicable to the four applications that it deems to be competing for the 64-bed need in York County. The Criteria, ranked by DHEC in relative order of importance are:

1. Compliance with the State Health Plan—1
2. Community Need Documentation—2a, 2b, 2c, 2e
Distribution (Accessibility)—3a, 3b, 3c, 3d, 3e, 3f, 3g
Distribution—22
3. Projected Revenues/Expenses—6a, 6b, 7
Net Income/Financial Feasibility—9, 15
Cost Containment—16a, 16b, 16c
Efficiency—17
4. Record of the Applicant—13a, 13b, 13d
Acceptability—4a, 4b, 4c
Adverse Impact on Other Facilities—23 a, 23b

Exhibit 11 attached hereto and incorporated herein. The Denial Letter does not comply with the "State Certificate of Need and Health Licensure Act", S.C. Code Ann. §§ 44-7-110, et seq. (2002 and Supp. 2005) ("CON Act"). PHY is the competing applicant that most fully complies with the requirements, goals, and purpose of the CON Act, the State Health Plan, Project Review Criteria and the regulations adopted by the department and the above referenced Criteria ranked in relative order of importance.

1. PHY should not have been denied on the ground that FMMC's application was the competing applicant that "best demonstrates the compelling, definitive, characteristics to be most beneficial to the current and future citizens of York County during the coming decades" (Exhibit 1, p. 1; Exhibit 2, pp. 1-2) because FMMC was not a competing applicant in the same cycle with PHY. On November 22, 2004, FMMC filed its first application for a 64 bed acute hospital ("November 2004 Application"). Notice of this filing was published in the *State Register* December 24, 2004. On January 24, 2005, FMMC withdrew its November 2004 Application. On the same day that it

⁸ The Project Review Criteria are contained in Reg. 61-15 §§ 801, et seq. (Supp. 2005).

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ATTORNEYS AND COUNSELORS AT LAW

Mr. Joel C. Grice
June 12, 2006

withdrew the November 2004 Application, FMMC filed its second application for a 64 bed acute care hospital ("January 2005 Application"). Notice of filing and notice to affected persons was published in the *State Register* February 25, 2005⁵. On March 11, 2005, PHY filed a CON application to construct a 64 bed acute care hospital to include a Magnetic Resonance Imaging (MRI) unit, a Computed Tomography (CT) scanner, and a diagnostic cardiac catheterization laboratory to be located in Fort Mill, South Carolina. The Plan only provides a bed need of 64 for York County. PHY filed its application within the fifteen (15) day time frame set forth in 24A S.C. Code Ann. Reg. 61-15 § 103.6 and became a competing applicant with FMMC. Thereafter, on October 7, 2005, FMMC withdrew its January 2005 Application for a 64 bed hospital and filed this application for a 100 bed hospital. The only competing applicants in the review cycle with PHY are Hospital Partners of America, Inc. and Charlotte-Mecklenburg Hospital Authority, which each filed their applications for the 64-acute care bed hospitals to be located in York County on March 11, 2005.

It is unquestioned that FMMC's January 2005 application was the first applicant to file for the 64 beds identified in the Plan for which "notice to affected persons" was published in the *State Register* and was the application under review by the Department when PHY filed its above referenced application. Thus, FMMC started the competing applicant cycle. There can be only one FIRST application to begin any "competing application" review cycle. FMMC being the first applicant cannot withdraw from the review cycle it started and have the Department substitute another "first".

2. Pursuant to S.C. Code Ann. § 44-7-140 (2002), DHEC is the State agency responsible for carrying out the requirements of the CON Act. By defaulting to the County of York to enforce the terms of the Contract in order to allegedly assure that FMMC provides quality health care at an "affordable" cost to the citizens of York County, DHEC has unlawfully delegated its responsibility to a political subdivision of the State. DHEC, the citizens of York County or the York County health care providers are not third party beneficiaries to the Contract between Tenet and York County Council. See Exhibit 5, unpublished opinion of the South Carolina Court of Appeals.

3. The fact that PMC has a Contract with the County of York is neither a Project Review Criterion pursuant to 24A S.C. Code Ann. Reg. 61-15 §§ 801, et seq.

⁵ The *State Register* provided:

Construction of a 64 acute care bed hospital to include one diagnostic cardiac catheterization laboratory, one Magnetic Resonance Imaging (MRI) unit and one Computed Tomography (CT) scanner to be located at the intersection of SC Highway 160 and Highway 21 Bypass.
Amisub of South Carolina, Inc. d/b/a Fort Mill Medical Center
Fort Mill, South Carolina
Project Cost: \$107,158,233

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Mr. Joel C. Grice
June 12, 2006

(Supp. 2005) nor a Standard in the Plan that the Department can rely upon for purposes of making its determination to approve the FMMC Project or to deny the PHY Project. The Department committed procedural error in relying on the existence of the Contract as a basis for its determinations to approve the FMMC Project and deny the PHY Project.

4. The fact that PMC has a Contract with the County of York is neither a Project Review Criterion pursuant to 24A S.C. Code Ann. Reg. 61-15 §§ 801, et seq. (Supp. 2005) nor a Standard in the Plan that the Department can rely upon for purposes of making its determination to approve the FMMC Project or to deny the PHY Project. The Department exceeded its statutory authority under the CON Act and the Letters are in violation of law in relying of the existence of the Contract as a basis for its determinations to approve the FMMC Project and deny the PHY Project.

5. The fact that PMC has a Contract with the County of York is not covered by one of Project Review Criterion listed in DHEC's letter of March 27, 2006 setting forth the Criteria that the competing applications will be reviewed under. The Department committed procedural error in relying of the existence of the Contract for its determinations and not following the Criteria listed in order of importance in the March 28, 2006 letter.

6. The fact that PMC has a Contract with the County of York is not covered by one of Project Review Criterion listed in DHEC's letter of March 27, 2006 setting forth the Criteria that the competing applications will be reviewed under. The Department exceeded its statutory authority under the CON Act and the Letters are in violation of law in relying of the existence of the Contract for its determinations and not following the Criteria listed in order of importance in the March 28, 2006 letter.

7. The Department did not apply the Project Review Criteria listed in order of importance in reaching its determinations in the Letters.

8. The Department has exceeded its statutory authority in denying PHY and in approving FMMC because the Department made both determinations (Grounds 1, 2, and 3) on Standards that are not contained in the Plan, are not the Project Review Criteria listed in relative order of importance in the Department's March 28, 2006 letters to PHY and FMMC and are not, in fact, Project Review Criteria contained in 24A S.C. Code Ann. Reg. 61-15 §§ 801, et seq. (Supp. 2005).

9. The Plan, as it regards general hospital beds, has been in effect since October 15, 2004. There has been not one single change to pages II-1 through II-8 of the Plan¹⁰. Suddenly, without warning, DHEC contends that PHY, Charlotte

¹⁰ We note that the Health Planning Committee met during the 64-bed York County hospital review cycle to explore the possibility of amending the Plan regarding calculation of bed need methodology. There is an undated, unsigned and unattributed memorandum in the DHEC file for both PHY and FMMC that

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Mr. Joel C. Grice
June 12, 2006

Mecklenburg Health Care District and Hospital Partners of America, Inc. never had the right to apply for the 64 bed need identified in the Plan for York County and that only PMC could "meet the need" for those beds.

10. The Department's decision to change its mind as to whether PHY is or even could be a competing applicant and be able to utilize the 64-bed need identified in the Plan at some point late in the CON review cycle and determine that only FMMC can utilize the 64-beds is arbitrary and capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

11. PHY filed its CON application on March 11, 2005. On April 22, 2005 DHEC caused notice to be published in the *State Register* that PHY had filed. DHEC PHY File, p. 825. Since PHY filed its application, DHEC has consistently referred to PHY as a "competing applicant" and treated it as such with FMMC.¹¹ The CON Act defines "competing applicants" as "two or persons or health care facilities as defined in this article who apply for Certificates of Need to provide similar services or facilities in the same service area within a time frame as established by departmental regulations and whose applications, if approved, would exceed the need for services or facilities." By definition, in order to be a competing applicant, PHY has to be able to be in a position to provide the 64-bed need service. In other words, the new 64-beds sought by FMMC and the new 64-beds sought by PHY equal 128 beds and exceeds the identified 64-bed need. If the bed need was exclusive to PMC and by extension to FMMC, as DHEC found in the Denial Letter, then PHY could provide "0" beds, and was not and could not be a competing applicant with FMMC. As DHEC stated in its PHY "Project Review Write-up" ("PHY Write-up"): "Presbyterian is proposing a new community hospital in Fort Mill to meet a published need for an additional 64 beds in York County." Exhibit 12, p. 001784, attached hereto and incorporated herein; DHEC PHY File, p. 001784. DHEC also stated: "The 2004 State Health Plan (sic) published a need for an additional 64-acute care beds in the York County service area based on actual need and utilization." Exhibit 12, p. 001785" DHEC PHY File, p. 001785.

12. The Denial Letter is arbitrary and capricious, characterized by an abuse of discretion or an unwarranted exercise of discretion when it found: "Therefore, the bed

stated, *inter alia*, that no changes would be made in the Plan and that: "Certificate of Need (CON) staff should review CON applications for additional general hospital beds and/or facilities utilizing the current bed need methodology of the 2004-2005 South Carolina Health Plan in conjunction with the Project Review Criteria as outlined in Regulation No. 61-15, *Certification of Need for Health Facilities and Services*, in order to make CON decisions that are in the best interest of the public." FMMC DHEC file, pp. 422 and 425. Even after this memorandum was placed in the project files, DHEC continued to treat PHY as a competing applicant and not once indicated that PHY did not meet the Plan's bed need Standard.

¹¹ Note our continuing contention that FMMC is no longer a competing applicant with PHY and should not have been considered in the cycle with PHY.

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need for York County, as indicated in the 2004-2005 S.C. Health Plan, is based on Piedmont Medical Center as the planning unit, not York County. The number of beds needed is based on the service area and the market share of Piedmont Medical Center, not the entire medical patient population in York County." Exhibit 2, p. 2. The CON Act has as a purpose the serving of the entire medical patient population not only of York County but of the State. DHEC cannot arbitrarily exclude from the need for general hospital services that patient population in York County not included in the PMC market share.

13. Throughout the review cycle, the Department has consistently assured both the competing applicants, the general public and the provider community that the 64-bed need identified in the Plan for York County, could be awarded to any of the four (4) competing applicants. Despite the fact that the Plan provisions never changed, the Department, from at least March 11, 2005 until May 31, 2006, allowed and encouraged, through multiple communications, PHY to continue in its quest to be awarded the CON, thereby misleading PHY and causing it to spend considerable resources, both in time and money, seeking to be awarded a CON that DHEC now says it never could have qualified for under the Plan. If the Department knew that the 64-bed need identified in the Plan for York County could only be awarded to Tenet/FMMC, it should have said so from the beginning and not mislead PHY and the York County Community.

14. The following are only some of the assurances that the Department provided regarding the ability of PHY to fill the 64-bed need identified in the Plan.

- Each one of these companies [the four competing applicants] has probably met the basic criteria outlined in the state's health plan. (Charlotte Observer, November 13, 2005), Exhibit 4, p. 000003.
- In this case, Grice said that an argument can be made that the 64 beds identified in the plan are a community need for two reasons: It's more than 50 beds and there's only one hospital in the county. (Rock Hill Herald early Feb. 2005), *Id.*, p. 000006.
- Any need over 50 beds, Grice determined, could be set up as a new hospital, and that meant competition. . . . "Fort Mill is a growing area and I see a legitimate need for another facility. Our goal is to approve the one who will best serve the community." (Who Will Get To Build A Fort Mill Hospital? March 21-23, 2006), *Id.*, p. 000020.
- At this point, Grice said, it's still anybody's game. "I think any one of these applications is approvable," he said. (The Herald, March 19, 2006), *Id.*, p. 000023.

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- Piedmont Medical Center had 471 pages of letters, though more than half were from residents who oppose the Rock Hill based hospital. "That's the trend," Grice said. "The public has expressed they want another provider." . . . Public support is a big factor in the decision-making process, Grice has said. "There is a central theme when you look at all of them—why do people support or oppose?" he said. "We never have a deadline for comments. It's good to keep looking at the citizen's perspective." (The Herald, February 5, 2006), *Id.*, p. 000023.
- Under the 2004 State Health Plan, which determined need by hospital, Piedmont has a need for 64 more beds, based on population growth. DHEC accepted additional applications because of the lack of competition in the county, officials said. "With one hospital generating a need, it is a community need," said Joel Grice, director of the bureau of health facilities and services at DHEC. (Herald, March 12, 2005), *Id.*, p. 000026.
- Grice said DHEC will consider other applications even though under the current policy the need belongs to Piedmont. (Fort Mill Times, March 3, 2005) *Id.*, p. 000027.

15. The Department's determination that the 64-bed need is PMC's and only FMHC can utilize the beds is in violation the CON Act and exceeds the Department's statutory authority.

16. The Letters misinterpret the Plan. The Plan does not create a monopoly so that only existing hospitals can apply to expand their physical plants through the addition of beds to the exclusion of every other possible "competing applicant." The Plan simply uses existing hospitals to develop the general hospital bed need. As noted in paragraph 4 above, DHEC was correct when it stated that the 64-bed need was for York County. There is an existing 64-bed general hospital need for York County that any competing applicant can meet.

17. The effect of the Plan, as the general acute hospital bed need is interpreted by the Department, is to deny PHY both due process and equal protection of the law under the South Carolina and United States Constitutions.

18. If DHEC has correctly interpreted the general acute hospital bed need projections, the provisions of the Plan are in violation of the due process and equal protection provisions of the State and United States Constitutions.

19. The Letters are made in violation of the State and United States Constitutions.

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20. DHEC's interpretation of the Plan to create a monopoly for PMC is in excess of its statutory authority under the CON Act. The purposes of the CON Act are:

The purpose of this article 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 (2002). While the CON Act regulates the establishment of hospitals by determining which facility "will best serve public needs, and ensure that high quality services are provided in health facilities," the Act does not authorize DHEC to establish general hospital monopolies in the State.

21. Assuming for the sake of argument that DHEC's interpretation of the Plan is correct, the Plan was adopted in violation of the requirements of the CON Act, including but not limited to S.C. Code Ann. §§ 44-7-120, 44-7-180 and 44-7-210. Denying PHY on the basis of an invalid Plan and approving FMMC on the basis of an invalid Plan exceeds the Department's statutory authority.

22. The FMMC Project expenses are significantly higher than PHY Project expenses.

	FMMC	PHY
Construction and Equipment	\$101,224,120.00	\$ 61,888,001.00
Cost per Square Foot	\$ 456.18	310.91
Cost per Bed	\$ 1,102,241.00	967,000.02

DHEC PHY File, PHY p.5 and DHEC FMCC File, p. 9. The construction and equipment cost per bed at FMMC is \$135,241 higher than that of PHY.

23. In spite of the fact that PHY's Project expenses are significantly lower than FMMC's Project expenses, the Letters found that the initial construction of the larger increment of 100 beds is much more cost effective. This ignores the fact that PHY's footprint is designed to accommodate 100 beds, not just 64. This determination is arbitrary and capricious, characterized by and abuse of discretion or a clearly unwarranted exercise of discretion. There is no basis in the record before the Department to support this finding.

24. The Department did not address or apparently consider that the indigent care proposed by PHY is more than that proposed by Tenet. PHY has committed to provide care to a family of four (4) that has an income of \$38,700 without charge. Exhibit 13, a copy of which is attached hereto and incorporated herein.

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25. The Department did not appropriately consider the commitment of indigent care by PHY as opposed to FMMC. PHY proposes indigent care at a level of \$2,862,678 in Year 1 while FMMC proposes a level of \$3,020,639 in Year 1.¹² DHEC PHY File, PHY pps. 61-62 and DHEC FMCC File, pps. 70-72. Given the fact that FMMC proposes 100 beds and PHY only 64 beds, this translates to \$44,729 (rounded) per bed indigent care for PHY and only \$30,206 (rounded) per bed for FMMC. PHY is proposing more than \$14,500 per bed indigent care than is FMMC. However, that is not surprising since FMMC is owned by Tenet, a for-profit corporation that has to satisfy shareholders.

26. PHY's proposed charges are lower than FMMC's proposed charges and PMC's existing charges. Exhibit 14, attached hereto and incorporated herein. The fact that PMC's historic charges are so high was one of the, if not the, major complaint of thousands of York County Citizens and of elected officials. See Exhibit 4 and 7. See DHEC FMMC File, letters of opposition to the FMMC application.

27. The Letters ignore the fact that Rep. Ralph Norman, the South Carolina State Representative that represents the Fort Mill area of York County initially endorsed the FMMC Project and then withdrew his support because of the high prices associated with Tenet's provision of services at PMC. Rep. Norman is a former Chairman and Board Member of PMC. See Exhibit 4, pps. 1-2.

28. The Letters, while finding that FMMC had a "commitment to the community" ignored the fact that the community wanted anybody but Tenet. Exhibit 7 and PHY's letters of support. PHY and not Tenet was the "Acceptable" applicant.

29. "Commitment to the community" is not a Project Review Criterion and is not a Standard in the Plan. Therefore, the Letters' reliance on "commitment to the community" is contrary to statutory provisions (the CON Act) and exceeds the agency's authority.

30. "Commitment to the community" is not a Project Review Criterion and is not a Standard in the Plan. Therefore, the Department's reliance upon this "commitment to the community" is arbitrary and capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

31. The Letters ignore the fact that FMMC does not have support of the local medical providers. (Reg. 61-15, § 802.4) Eighty percent (80%) of the York County Medical Society stated that they wanted PHY to be the approved applicant. DHEC FMMC File, p. 849.

32. The Letters ignore the broad community wide support (more than 4000 citizens of York County wrote in support of PHY) for PHY and the county wide

¹² As a review of the two applications clearly demonstrates, the greater commitment to indigent care by PHY exists in Years 2 and 3.

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opposition to Tenet. In relative terms, Tenet had very few letters of support and many letters of opposition from local health care providers and patients, complaining primarily about the high prices. See letters of opposition to the FMMC application. These letters complaining about the high health care prices were written after the Contract Addendum referenced in the Letters.

33. The Draft Summary and the Summary Sheet each states that PHY provided many letters of support but that many of them were duplicative. This statement is in error. There are over 4000 letters of support that are NOT duplicative which are contained in the PHY DHEC file. See Exhibit 9, p. 41, and Exhibit 10, p. 41, attached hereto and incorporated herein.

34. The Summary Sheet assumes that putting a Tenet hospital in Fort Mill will "increase access to healthcare services and will aim to attract the majority of the patients who are out-migrating for care." See Exhibit 15, p.7. This Summary ignores that fact that the existing PMC is just as close in terms of time for the out-migrating patients as the Charlotte hospitals, yet the patients chose to go out of state to get affordable, quality health care.

35. The Department did not properly consider the record of the applicant, FMMC. Criterion 13a, b, and d provide:

- a. The applicant's record should be one of successful operation with adequate management experience.
- b. The applicant should have a demonstrated ability to obtain necessary capital financing. ...
- d. The applicant's record or his representative's record of cooperation and compliance with State and Federal regulatory programs will be considered.

Based upon FMMC's ownership disclosure form (see Exhibit 17, DHEC FMMC File, pps. 18-20) and the PMC 2005 IAR (see Exhibit 3), AMISUB and its parent company Tenet will be the operating entity of FMMC. In its Draft Certificate of Need Summary Sheet for FMMC ("FMMC Draft Summary"), the Department focused only on the "fact" that the FMMC's licensee "has successfully operated three (3) hospitals in South Carolina" and recently the "licensee was approved to build a replacement facility in Charleston, South Carolina."¹³ (sic) Exhibit 15, Certificate of Need Summary Sheet, Fort Mill Medical Center, p. 42, a copy of which is attached hereto and incorporated herein. East Cooper Regional Medical Center is NOT owned by Amisub and Amisub is not its licensee. The licensee and owner of ECRMC is East Cooper Community Hospital, Inc., which owns

¹³ We are assuming that the Department is referring to the East Cooper Regional Medical Center ("ECRMC") application to build a replacement facility in Mount Pleasant, Charleston County, South Carolina.

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100% of the stock. East Cooper Community Hospital, Inc. is a wholly owned subsidiary of Tenet HealthSystem Medical, Inc. Exhibit 16, pp. 18-20, Ownership disclosure form from ECRMC CON application dated April 2005. The common ownership between ECRMC and FMMC is Tenet Medical Systems, Inc.¹⁴ and Tenet Healthcare Corporation. Exhibit 17, pp. 18-20, Ownership disclosure form for FMMC¹⁵. The common owner of the three hospitals in South Carolina is Tenet and Tenet controls the management and operation of the hospitals.

36. Amisub ownership of three (3) hospitals in SC, including the recent approval of East Cooper Regional Medical Center, and found that "no enforcement actions have been processed during the past twelve (12) months." See Exhibit 15.

37. The "record of the applicant" is not limited to only a 12 month period. To the extent that this is the time frame reviewed by the Department, it has not complied with the requirements of 61-15 § 802.13.

38. Reg. 61-15 § 802.13.a requires the Department to consider the applicant's compliance with both State and Federal law and regulation, not just State licensure laws. The Department must consider Tenet's compliance both with State and Federal law and regulation.

39. Criterion 13.a requires that the Department consider the applicant's management experience. Tenet is the operating entity of PMC/Amisub and provides the "management experience". Exhibit 3. The Department should have considered Tenet's experience and compliance with State and Federal law and regulation.

40. Criterion 13.b requires that the applicant demonstrate its ability to obtain the necessary capital financing. FMMC relies on Tenet for its financing. Given Tenet's widely publicized legal problems, large federal fines, significant drop in its stock prices and the limited dollars it has set aside for capital expansion/improvement, FMMC has not demonstrated its ability to obtain the necessary capital financing.

41. Tenet does not meet Reg. 61-15 § 802.13.

42. There is a superior alternative in terms of cost, efficiency and appropriateness to meet the need of York County for 64-additional beds, contrary to DHEC's finding in the Approval Letter. See Exhibit 2, p. 3. PHY's Project Cost Per Bed is significantly lower (\$135,241 rounded) per bed than that of FMMC's. Additionally, DHEC did not consider the fact that PHY's proposed hospital footprint is of sufficient size and will be constructed to support a 100 bed hospital, thus providing a less costly, more efficient alternative to the FMMC Project.

¹⁴ In the ECRMC application Tenet Medical System, Inc. is apparently referred to as Tenet Medical HealthSystem, Inc.

¹⁵ The FMMC application ownership disclosure form does not include Tenet HealthSystem Holding, Inc. It may be part of the ownership chain of Amisub and be another common owner.

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43. Patients will continue to experience serious problems in terms of cost, accessibility or availability with the approval of FMMC and they will not with the approval of PHY. See Exhibit 2, p. 3. The approval of PHY and not FMMC will alleviate the serious patient problems in terms of cost, accessibility or availability. As intended by the provisions of the Plan and Project Review Criteria, granting a CON to PHY will provide a cost effective alternative for York County.

44. Neither the Draft Summary nor the Summary Sheet contains any findings regarding FMMC's average charge and cost per adjusted patient day. However, PHY's average charge and cost per adjusted patient day is significantly less than FMMC's. Exhibit 14.

45. PHY will not have a negative impact on PMC, the only existing provider of inpatient hospital services in York County.

46. In the Letters and in the Draft Summary and Summary, DHEC determined: "Therefore, the bed need for York County, as indicated in the 2004-2005 SC Health Plan is based on the bed need of Piedmont Medical Center as the planning unit, not York County." Exhibit 9, p. 38. While we disagree with this conclusion and contend that the bed need is for the entire population of York County, particularly since PMC is the sole county hospital provider, assuming this finding is correct, FMMC will be a separate and distinct licensed hospital and will not be able, any more than PHY, to utilize the 64 "bed need of Piedmont Medical Center as the planning unit."

47. There is neither a Project Review Criterion nor a Plan Standard that address the issue of "critical mass." Exhibit 10, PHY Summary Sheet, p. 42, a copy of which is attached hereto and incorporated herein. The Department's "Charlotte scenario" is arbitrary and capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion, is clearly erroneous in view of the information before the Department, exceeds the Department's statutory authority, and is based upon unlawful procedure.

48. The Department's decision not to consider the "track record" or operating history of Tenet, the parent company of FMMC is not consistent with the requirements of Reg. 61-15 and the applicable Project Review Criteria and is arbitrary and capricious, exceeds the Department's statutory authority and is in violation of law. Tenet is the "operating entity" (See Exhibit 3) of PMC and as such, the Department should have considered the track record of Tenet and not just PMC.

49. In the Summary Sheet, the Department stated: "Even though there is only one medical provider in York County at this time, there remain patient choices within reasonable travel distances. This is evidenced by the current out-migration for basic community services, ..." The Summary Sheet then points to the out-migration to North Carolina hospitals. Exhibit 10, p. 39. Under the Department's interpretation of

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Mr. Joel C. Grice
June 12, 2006

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

CHARLOTTE-MECKLENBURG HOSPITAL
AUTHORITY D/B/A CAROLINAS
HEALTHCARE SYSTEM,

Petitioner(s),

vs

Case No. 06-ALJ-07-0489-CC

SOUTH CAROLINA DEPARTMENT
OF HEALTH AND ENVIRONMENTAL
CONTROL AND AMISUB OF SOUTH
CAROLINA, INC., D/B/A PIEDMONT
HEALTHCARE SYSTEM D/B/A
FORT MILL MEDICAL CENTER,

Respondent(s),

PRESBYTERIAN HEALTHCARE SYSTEM D/B/A
PRESBYTERIAN HOSPITAL - YORK, LLC,

Intervenor(s).

-----X
CHARLOTTE-MECKLENBURG HOSPITAL
AUTHORITY D/B/A CAROLINAS
HEALTHCARE SYSTEM,

Petitioner(s),

vs.

Case No. 06-ALJ-07-0490-CC

SOUTH CAROLINA DEPARTMENT OF
HEALTH AND ENVIRONMENTAL CONTROL,

Respondent(s),

AMISUB OF SOUTH CAROLINA, INC. D/B/A
PIEDMONT HEALTHCARE SYSTEM D/B/A
FORT MILL MEDICAL CENTER AND
PRESBYTERIAN HEALTHCARE SYSTEM D/B/A
PRESBYTERIAN HOSPITAL - YORK, LLC,

Intervenor(s).

1 PRESBYTERIAN HEALTHCARE SYSTEM
2 D/B/A PRESBYTERIAN YORK, LLC,
3 Petitioner(s),
4

5 vs Case No. 06-ALJ-07-0713-CC

6 SOUTH CAROLINA DEPARTMENT OF
7 HEALTH AND ENVIRONMENTAL CONTROL
8 AND AMISUB OF SOUTH CAROLINA, INC.
9 D/B/A PIEDMONT HEALTHCARE SYSTEM D/B/A
10 FORT MILL MEDICAL CENTER,
11 Respondent(s),
12

13 CHARLOTTE-MECKLENBURG HOSPITAL
14 AUTHORITY D/B/A CAROLINAS
15 HEALTHCARE SYSTEM,
16 Intervenor(s)
17

18 -----X
19 PRESBYTERIAN HEALTHCARE SYSTEM D/B/A
20 PRESBYTERIAN YORK, LLC,
21 Petitioner(s),
22

23 vs. Case No. 06-ALJ-07-0712-CC

24 SOUTH CAROLINA DEPARTMENT OF
25 HEALTH AND ENVIRONMENTAL CONTROL,
26

27 Respondent(s),
28

29 AMISUB OF SOUTH CAROLINA, INC.
30 D/B/A PIEDMONT HEALTHCARE SYSTEM
31 D/B/A FORT MILL MEDICAL CENTER AND
32 CHARLOTTE-MECKLENBURG HOSPITAL AUTHORITY
33 D/B/A CAROLINAS HEALTHCARE SYSTEM,
34 Intervenor(s).
35

D E P O S I T I O N

WITNESS: MARY FECHTEL

DATE: Friday, February 16, 2007

TIME: 9:38 a.m.

LOCATION: 1777 St. Julian Place
Heritage Building
Columbia, South Carolina

TAKEN BY: Attorneys for the Petitioner(s)

REPORTED BY: SUSAN M. VALSECCHI,
Certified Realtime Reporter

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1 STIPULATION: It is stipulated by and
2 among Counsel that this deposition is being taken
3 in accordance with the State of South Carolina
4 Administrative Law Court Rules and that the
5 deponent does not waive the right to read and sign
6 the deposition transcript.

7 - - - - -
8 MARY FECHTEL, being first duly sworn,
9 testified as follows:

10 EXAMINATION

11 BY MS. CRUM:

12 Q. Ms. Fechtel, I'm Liz Crum and we've done
13 this before; but if I ask a question and you don't
14 understand it or I'm not clear, if you'd let me
15 know, I'll try to rephrase it so that we can be on
16 the same wavelength, okay?

17 A. Okay.

18 Q. Thank you, ma'am.

19 Would you, please, ma'am, state your
20 full name for the record and your current position
21 at DHEC.

22 A. Mary Fechtel, assistant deputy
23 commissioner, health regulation.

24 Q. When did you become assistant deputy
25 commissioner?

1 A. September of 2006.

2 Q. Okay. And as a deputy commissioner,
3 what are your duties and responsibilities?

4 A. Primarily Medicaid/Medicare budget for
5 certification and all of those reports,
6 employee -- for the whole deputy
7 ship -- employee/personnel issues. That's it in a
8 nutshell.

9 Q. Do you still do anything with
10 Certificate of Need?

11 A. Yes, ma'am, such as today, and any cases
12 that I had that I was working on at the time of my
13 transition.

14 And I've picked up one C.O.N. that I had
15 since I transitioned that is a re-file of one that
16 I had worked on previously.

17 Q. But as I understand it, then, you're
18 really transitioning out and just completing those
19 things that you had already begun before you
20 became --

21 A. Pretty much, yes.

22 Q. And on a going-forward basis, will you
23 have any duties or responsibilities regarding
24 C.O.N.?

25 A. Once I complete what I have under review

1 You were here, I believe, at the
2 beginning of Mr. Grice's deposition yesterday.

3 A. I was.

4 Q. So you understand that we are here on a
5 limited basis today on bifurcated discovery.

6 A. Right.

7 Q. And I believe it might be even Exhibit 1
8 over there that is the court's bifurcated discovery
9 order.

10 A. Yes.

11 Q. Okay. And if you would look at Page 3
12 of Exhibit 1 and Paragraph 1.

13 A. Okay. Yes, ma'am.

14 Q. Those are the items, general categories,
15 that we're going to discuss today. If you would
16 take a moment and review those, please, ma'am.

17 A. Under Number 1?

18 Q. Yes, ma'am, 1 on Page 3.

19 A. Okay.

20 Q. Okay. Now, if I ask you about any of
21 these and you don't have any knowledge about it,
22 just let me know and we won't waste any time on
23 that. Okay?

24 A. Okay.

25 Q. Now, what was your role in the review of

1 and decision-making process of the four
2 applications for the 64 new beds identified in the
3 2004/2005 plan for York County, general acute
4 hospital beds?

5 A. I was the primary reviewer.

6 Q. Okay. Tell me what that means.

7 A. That means I had the responsibility of
8 gathering information in the files from each of the
9 applicants until the time that it is deemed
10 complete and thereafter to develop findings of
11 fact.

12 Q. Do you also, as part of your role, make
13 recommendations to Mr. Grice?

14 A. Yes, ma'am.

15 Q. Who made the ultimate decision to award
16 and deny the various applications in this case?

17 A. Mr. Grice.

18 Q. Did he make that with input from you?

19 A. Yes, ma'am.

20 Q. Was anyone else involved with y'all in
21 the decision-making process prior to the issuance
22 of the May 30th, 2006 decisions?

23 A. No, ma'am.

24 Q. Did you consult with anyone other than
25 Mr. Grice with regard to the decisions?

1 Q. When you say the prior one, are you
2 talking about the initial application for the
3 service?

4 A. The initial application in this case,
5 not the very first one filed by Fort Mill, but the
6 second one, the 64-bed.

7 Q. So you're talking about the January 25th
8 application.

9 A. Yes, ma'am.

10 Q. And so February the 25th, 2005, when the
11 Amisub Fort Mill application was published in the
12 state register with notice to effected parties, is
13 that the application that started the 15-day time
14 period for competing applicants to file?

15 A. Yes, ma'am.

16 Q. Would you, please, ma'am, look at
17 Exhibit 10. And it's just a single-page memo,
18 January 25th, 2005 from Mr. Grice.

19 A. Yes, ma'am.

20 Q. Did Mr. Grice consult you prior to his
21 drafting this application?

22 A. No, ma'am.

23 Q. I'm sorry -- this memo.

24 A. No, ma'am.

5 Q. Did he show it to you after he drafted

1 reasons -- but we looked again in the regulation
2 and it met the criteria and -- I'm not sure if
3 criteria is the right word -- met the definition of
4 competing applicant according to the regulation.

5 Q. Which regulation are you referencing?

6 A. 61-15.

7 Q. And what section of 61-15?

8 To shorten this, you're looking at
9 61.15, 103.6?

10 A. Yes, ma'am.

11 Q. Is there any other section of the
12 regulation that you're relying on to say that the
13 Amisub withdrawal and re-submission met the
14 criteria for competing applicant?

15 A. From my perspective, no, but that's not
16 my decision, either.

17 Q. But I'm just asking from your
18 perspective now.

19 A. No.

20 Q. Now, look at regulation 61-15, please,
21 ma'am and Section 103.6.

22 Look down in that paragraph where it
23 says all, "Applications received by the
24 Department..."

5 A. Yes, ma'am.

1 Q. Okay. It says, "All applications
2 received by the Department within 15 days of
3 publication of the notice of effected persons in
4 the state register for the first application(s)
5 will be considered competing."

6 What was the first application that
7 started this cycle in York County?

8 A. We're not going back to the beginning;
9 we're speaking of the second application that Fort
10 Mill filed?

11 Q. Well, let me just ask you. The Tenet
12 application was never deemed complete; was it?

13 A. The first one, no, I don't think it was.

14 Q. And no notice ever went out to effected
15 parties?

16 A. I believe that is correct.

17 Q. So what application was the first
18 application for which a notice to effected persons
19 was sent out?

20 A. The one filed by Fort Mill for 64 beds.

21 Q. That's the January 25th, 2005
22 application, correct?

23 A. That's correct.

24 Q. So that's the first application, right?

25 A. Yes, ma'am.

1 the letter was signed.

2 Q. Okay. Do you know whether or not
3 Mr. Hunter had any conversations with Mr. Grice
4 about the decisions in this case?

5 A. I don't know.

6 Q. Okay. Excuse me just a second.

7 Ms. Fechtel --

8 A. Yes, ma'am.

9 Q. -- approximately how many C.O.N.
10 applications have you reviewed under the State
11 C.O.N. Act?

12 A. Probably -- this is a wild guess -- in
13 excess of 300, I'm sure.

14 Q. And you're very familiar with the State
15 Certificate of Need and Health Facility Licensure
16 Act, correct --

17 A. Yes, ma'am.

18 Q. -- and the regulations?

19 A. Yes, ma'am.

20 Q. In your opinion, does the C.O.N. Act and
21 regulations contemplate competition between health
22 care facilities to find out -- health care
23 applicants, I should say -- to find out which
24 application best meets the needs of the public?

5 MR. WESTBROOK: Object to the form.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

CHARLOTTE-MECKLENBURG HOSPITAL
AUTHORITY, D/B/A CAROLINAS
HEALTHCARE SYSTEM,

PETITIONER(S),

VS.

CASE NO. 06-ALJ-07-0489-CC

SOUTH CAROLINA DEPARTMENT
OF HEALTH AND ENVIRONMENTAL
CONTROL AND AMISUB OF SOUTH
CAROLINA, INC., D/B/A PIEDMONT
HEALTHCARE SYSTEM, D/B/A
FORT MILL MEDICAL CENTER,

RESPONDENT(S),

PRESBYTERIAN HEALTHCARE SYSTEM, D/B/A
PRESBYTERIAN HOSPITAL-YORK, LLC,

INTERVENER(S)

-----X

CHARLOTTE-MECKLENBURG HOSPITAL,

PETITIONER(S)

VS.

CASE NO. 06-ALJ-07-0490-CC

SOUTH CAROLINA DEPARTMENT
OF HEALTH AND ENVIRONMENTAL
CONTROL,

RESPONDENT(S),

AMISUB OF SOUTH CAROLINA, INC., D/B/A
PIEDMONT HEALTHCARE SYSTEM, D/B/A
FORT MILL MEDICAL CENTER AND
PRESBYTERIAN HEALTHCARE SYSTEM, D/B/A
PRESBYTERIAN HOSPITAL-YORK, LLC,

INTERVENER(S)

-----X

1 PRESBYTERIAN HEALTHCARE SYSTEM, D/B/A
2 PRESBYTERIAN YORK, LLC,

3 PETITIONER(S)

4 VS.

CASE NO. 06-ALJ-07-0713-CC

5 SOUTH CAROLINA DEPARTMENT OF
6 HEALTH AND ENVIRONMENTAL CONTROL
7 AND AMISUB OF SOUTH CAROLINA, INC.,
8 D/B/A PIEDMONT HEALTHCARE SYSTEM,
9 D/B/A FORT MILL MEDICAL CENTER,

10 RESPONDENT(S),

11 CHARLOTTE-MECKLENBURG HOSPITAL
12 AUTHORITY, D/B/A CAROLINAS
13 HEALTHCARE SYSTEM,

14 INTERVENER(S)

15 -----X
16 PRESBYTERIAN HEALTHCARE SYSTEM,
17 D/B/A PRESBYTERIAN YORK, LLC,

18 PETITIONER(S),

19 VS.

CASE NO. 06-ALJ-07-0712-CC

20 SOUTH CAROLINA DEPARTMENT OF
21 HEALTH AND ENVIRONMENTAL CONTROL,
22 RESPONDENT(S),
23 AMISUB OF SOUTH CAROLINA, INC., D/B/A
24 PIEDMONT HEALTHCARE SYSTEM, D/B/A
25 FORT MILL MEDICAL CENTER AND
26 CHARLOTTE-MECKLENBURG HOSPITAL
27 AUTHORITY D/B/A CAROLINAS HEALTHCARE
28 SYSTEM,

29 INTERVENER(S) .

30 -----X

D E P O S I T I O N

1
2
3 WITNESS: ALBERT N. WHITESIDE
4 DATE: Wednesday, February 28, 2007
5 TIME: 9:55 a.m.
6 LOCATION: Department of Health and
7 Environmental Control
8 1777 St. Julian Place
9 Heritage Building
10 Second Floor Conference Room
11 Columbia, South Carolina
12
13 TAKEN BY: Attorney for Presbyterian
14
15 REPORTED BY: LAURA S. DECILLIS
16 Certified Court Reporter
17

APPEARANCES:

18 ATTORNEYS FOR PRESBYTERIAN HEALTHCARE
19 SYSTEM, D/B/A PRESBYTERIAN YORK, LLC:

20 MCNAIR LAW FIRM

21 BY: ARIAIL BURNSIDE KIRK, ESQUIRE
22 M. ELIZABETH CRUM, ESQUIRE
23 The Tower at 1301 Gervais Street
24 Columbia, South Carolina 29201
25

26 ATTORNEY FOR SOUTH CAROLINA DEPARTMENT
27 OF HEALTH AND ENVIRONMENTAL CONTROL:

28 BY: NANCY S. LAYMAN, ESQUIRE
29 2600 Bull Street
30 Columbia, South Carolina 29201

31 ATTORNEY FOR CHARLOTTE-MECKLENBURG
32 HOSPITAL AUTHORITY, D/B/A CAROLINAS
33 HEALTHCARE SYSTEM:

34 MOORE & VAN ALLEN, P.L.L.C.
35 BY: DOUGLAS M. MULLER
36 40 Calhoun Street, Suite 300
37 Charleston, South Carolina 29413
38
39
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41
42
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44
45

1 BY MS. KIRK:

2 A. Do I believe they were consistent? Do you
3 mean their application of 64 beds?

4 Q. Yes, sir.

5 A. Was the number 64? I mean, if the number
6 was 64, I'd say, yeah, that would be okay. But I
7 don't know what the number was.

8 Q. Here you go. Look at that, Mr. Whiteside.

9 A. The number is 64 and I'm assuming that's
10 the Plan they applied under, the 2004/five.

11 Q. I think that's in --

12 A. Yeah. That's what this letter says. So,
13 in my opinion, yeah, they could certainly have applied
14 and they potentially could have been approved.

15 MS. KIRK: Could you mark this as an
16 exhibit.

17 (EXH. 29, '04/05 State Health Plan, was
18 marked for identification.)

19 BY MS. KIRK:

20 Q. Excuse me for just a minute. I'm trying
21 to make sure which documents I've gotten in and which
22 I haven't.

23 A. It's easy to get confused with all of them
24 looking alike.

25 Q. I'm going to hand you a document,

1 recommendations from the Planning Committee, the
2 Committee voted for the following: That no changes
3 should be made to the Plan.

4 Certificate of Need staff should be
5 receiving applications for additional general hospital
6 beds and/or facilities utilizing the current bed-need
7 methodology of the 2004/2005 South Carolina Health
8 Plan in conjunction with the project (b) criteria as
9 outlined in Regulation 6115 in order to make CON
10 decisions that are in the best interest of the
11 public.

12 In addition, the staff will review this
13 section of the Plan in detail to recommend any
14 modifications for future considerations by the South
15 Carolina State Health Planning Committee as the new
16 calculations and bed-need section of the Draft Plan
17 are formulated during the coming year. As we've
18 stated, the staff will be revising the Plan during the
19 coming year and hopefully be able to reach a consensus
20 after the public hearing process on the best planning
21 approach to follow statewide.

22 Q. Okay. The second sentence of paragraph
23 two says that CON staff should review the applications
24 utilized in the current bed-need methodology.

25 Under the current bed-need methodology

1 referred to in Exhibit 13, do you believe that any
2 entity could have applied for and potentially been
3 approved for the 64-published beds needed in York
4 County?

5 A. I think they could have been.

6 Q. Were you consulted on making the decision
7 who to award the York County CON to?

8 A. Not really.

9 Q. When I say York County CON, do you
10 understand --

11 A. Do you mean the three or four applications
12 we had for York County?

13 Q. That all applied to build a new facility.

14 A. Correct.

15 Q. Great. Okay. Did anyone solicit your
16 opinion in determining who to award the CON to?

17 A. Probably not.

18 Q. Do you recall anybody asking you?

19 A. No.

20 Q. Were you aware of the decision to award
21 the Certificate of Need to Fort Mill Medical Center
22 before it was awarded?

23 A. I don't know if I was or not.

24 Q. Okay. Is one of your job responsibilities
25 to assign Certificate of Needs as they are received to

1 Q. Okay. And is it your testimony that you
2 simply didn't consider, at the time the 2003 Plan was
3 adopted --

4 MS. KIRK: Object to the form.

5 BY MR. ANDREWS:

6 Q. -- that you didn't consider at the time
7 when the 2003 Plan was adopted, and you being the
8 Department, as far as you know, didn't consider the
9 question as to whether any other applicant could be
10 approved other than the hospital for which the bed
11 need was identified?

12 MS. KIRK: Object to the form.

13 BY MR. ANDREWS:

14 A. We've probably never thought that other
15 facilities or other entities would have come in to
16 apply for beds like what happened up in the Piedmont
17 situation. We just probably never thought that far in
18 advance about it.

19 Q. Okay. Well, let's even look at Lexington.
20 There's a bed need for eleven showing at Providence
21 Hospital Northeast.

22 A. Yeah.

23 Q. Did you consider whether Providence could
24 apply to establish a hospital in Lexington County and
25 be approved for the use of the beds identified for

1 Is that affiliated with Spartanburg?

2 A. Yeah. I didn't know if it was Spartanburg
3 or Greenville. I've heard of it.

4 Q. Is it fair to say, is it accurate, that
5 there are a number of hospitals that have been
6 established for which applications have been approved
7 by the Department that are hospitals affiliated with a
8 larger historical hospital in the same county?

9 A. Yeah. That has occurred, yes.

10 Q. Okay.

11 A. Although Summerville is a different county
12 than Trident.

13 Q. Are they in the same planning area under
14 the State Health Plan?

15 A. Yes.

16 Q. Okay. Let me ask you to turn to, I want
17 to believe it's Exhibit 2, Presbyterian denial
18 letter?

19 A. Right.

20 Q. Do you have that?

21 A. Yes.

22 Q. Paragraph four. Based on our review of
23 the language in the State Health Plan that identifies
24 beds for individual hospitals, do you believe that any
25 applicant other than Piedmont could have been approved

1 in a way that was consistent with the State Health
2 Plan?

3 A. Well, if you read the language in the Plan
4 as written, probably not. Now, that may not be the
5 best interpretation of the Plan and it's certainly
6 subject to interpretation and I'm sure that's the
7 reason for all of this discussion anyway. And I know
8 when we developed the Plan, it was never designed to
9 exclude anybody from being able to apply and/or be
10 approved.

11 But then, again, the Plan and the numbers,
12 I think this may be the year it got changed in the
13 draft and the final. I'm not sure if it was this one
14 or the prior one, but the numbers all went up a lot.
15 And so there was never any thought given to some other
16 entity probably applying for beds in a particular area
17 other than the hospital itself that had generated the
18 need.

19 Q. So for me to understand your answer to
20 that, is it that -- it appears to be consist of two
21 things, and I want you to tell me if this summary is
22 correct or not. That the language in the Plan would
23 not support approval of another hospital, but it was
24 never something that the staff contemplated?

25 MS. KIRK: Object to the form.

1 A. That's correct.

2 Q. Because the facility has never been built
3 and it's in a different location than the Piedmont
4 Medical Center in Rock Hill.

5 A. Correct.

6 Q. So, I mean, is it consistent if you're
7 going to assume that only a facility, only a facility
8 that has demonstrated a need can apply under the State
9 Health Plan, the '04/'05 State Health Plan, would the
10 Fort Mill Medical Center in Fort Mill qualify?

11 MR. ANDREWS: Object to the form.

12 BY MR. MULLER:

13 A. Well, I've never said that nobody could
14 apply.

15 Q. Right.

16 A. And I've never said nobody could be
17 approved.

18 Q. Is there anywhere in the State Health Plan
19 that suggests that there's a demonstrated bed need for
20 Fort Mill Medical Center in Fort Mill, South Carolina?

21 A. Is there anywhere in the Plan that says
22 there's identified need?

23 Q. Yeah. For that facility.

24 A. No.

25 Q. So just to recap, from the 2001 State

1 Presbyterian or another new provider could potentially
2 receive a CON for the 64-beds published in the Plan?

3 MR. ANDREWS: Object to the form.

4 BY MS. KIRK:

5 A. You said could an amendment been made, and
6 we tried to get an amendment approved.

7 Q. And was the purpose of the amendment, that
8 you tried to get it approved, to clarify what you
9 intended to begin with?

10 A. Yeah. I think, if you go back and read
11 it, that's what it says. It's intended to, whatever
12 the verbiage is. Let me see if this is it. (Views
13 document.) Well, it says here, the referenced concern
14 about interpretation of the hospital bed need section
15 of the Plan. And that's the reference.

16 Q. Okay.

17 A. And then it goes on and says, this has
18 caused some concern about whether or not additional
19 hospital beds could be approved. So, yeah. We were
20 working on clarifying the Plan.

21 Q. Did you work on clarifying the Plan
22 because the way it's written and published is
23 ambiguous?

24 A. I don't know if you can say it's ambiguous
25 or not. It certainly can be confusing.

1 Q. I think you called it clearly open to
2 interpretation?

3 A. That's a good answer. Yeah, I would agree
4 with that.

5 Q. Okay. I want to look on Exhibit 29, page
6 2-7, little A, under the methodology section. Can you
7 read that?

8 A. It says, calculation of bed need are made
9 for individual facilities.

10 Q. Okay. We talked hypothetically some
11 earlier about Providence Northeast showing a bed need
12 for eleven beds?

13 A. Correct.

14 Q. Hypothetically, could Providence Downtown
15 apply for those beds? Apply and be awarded, provided
16 the other criteria in the plan be met?

17 MR. ANDREWS: Object to the form.

18 BY MS. KIRK:

19 A. You're asking my opinion?

20 Q. Uh-huh. I am.

21 A. Sure. It could.

22 Q. Could anybody apply for them?

23 A. Anybody could apply. Would we approve
24 anybody? I don't know.

25 Q. Okay. Is it approvable just under the bed

1 need criteria?

2 A. You'll have to ask Mr. Grice. I don't
3 make that decision.

4 Q. If you did make the decision?

5 MR. ANDREWS: Object to the form.

6 BY MS. KIRK:

7 A. It doesn't matter. I don't make the
8 decision.

9 Q. Okay. Back to that sentence that we just
10 read about individual facilities and following up on
11 some of the earlier questions. And if you'll look at
12 Exhibit 2, page 22-R, number four --

13 A. Wait a minute. Say that again?

14 Q. Exhibit 2, and it's Bates numbered page 22
15 with a little R beside it?

16 A. Oh, yes.

17 Q. Mr. Grice's decision letter states that
18 the bed need is based on Piedmont Medical Center as
19 the individual facility, correct?

20 A. That's what it says.

21 Q. Since the bed need is based on Piedmont
22 Medical Center, should Fort Mill Medical Center be
23 treated any differently than Presbyterian?

24 MR. ANDREWS: Object to the form.

25 BY MS. KIRK:

1 A. Not in my opinion.

2 Q. Is that because they are individual
3 different facilities from Piedmont?

4 MR. ANDREWS: Object to the form.

5 BY MS. KIRK:

6 A. Well, I think we ought to treat everybody
7 the same.

8 Q. And are the proposed facilities, Fort Mill
9 Medical Center, Presbyterian, and the Carolinas
10 facility, the same because none of them are an
11 existing provider?

12 MR. ANDREWS: Object to the form.

13 BY MS. KIRK:

14 A. If none of those are existing, what I
15 understand is that they were transferring beds from
16 Piedmont and adding some, I think, if I'm not
17 mistaken, maybe. Maybe I am mistaken. But, anyway,
18 they're different. They're three different providers.
19 One of them have -- one of them, I guess, Tenet, has
20 or owns Piedmont or has some affiliation with
21 Piedmont. So there's that one and two others. I
22 mean, I don't really know the question. This is
23 Joel's interjection into this decision letter.

24 Q. The question is, if the need is specific
25 for Piedmont Medical Center, how could anyone other

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

CHARLOTTE-MECKLENBURG HOSPITAL
AUTHORITY D/B/A CAROLINAS
HEALTHCARE SYSTEM,

Petitioner(s),

vs. Case No. 06-ALJ-07-0489-CC

SOUTH CAROLINA DEPARTMENT
OF HEALTH AND ENVIRONMENTAL
CONTROL AND AMISUB OF SOUTH
CAROLINA, INC., D/B/A PIEDMONT
HEALTHCARE SYSTEM D/B/A
FORT MILL MEDICAL CENTER,

Respondent(s),

PRESBYTERIAN HEALTHCARE SYSTEM, D/B/A
PRESBYTERIAN HOSPITAL - YORK, LLC,

Intervener(s).

-----X
CHARLOTTE-MECKLENBURG HOSPITAL
AUTHORITY D/B/A CAROLINAS
HEALTHCARE SYSTEM,
Petitioner(s),

vs. Case No. 06-ALJ-07-0490-CC

SOUTH CAROLINA DEPARTMENT
OF HEALTH AND ENVIRONMENTAL
CONTROL,

Respondent(s),

AMISUB OF SOUTH CAROLINA, INC. D/B/A
PIEDMONT HEALTHCARE SYSTEM D/B/A
FORT MILL MEDICAL CENTER AND
PRESBYTERIAN HEALTHCARE SYSTEM D/B/A
PRESBYTERIAN HOSPITAL - YORK, LLC,

Intervenor(s).

1 STIPULATION: It is stipulated by and between
2 counsel that this deposition is being taken in
3 accordance with the State of South Carolina
4 Administrative Law Court Rules, and that the deponent
5 reserves the right to read and sign the deposition
6 transcript.

7 -----
8 DENNIS GIBBS, being first duly
9 sworn, testified as follows:

10 EXAMINATION

11 BY MS. CRUM:

12 Q. Mr. Gibbs, I'm Liz Crum.

13 Have you been deposed before?

14 A. Yes, ma'am.

15 Q. Okay. Well, if you don't understand my
16 questions, which I mean, I always think are a model of
17 clarity but rarely they are. If you will let me know,
18 I will rephrase the question, okay?

19 A. Uh-huh.

20 Q. All right?

21 A. Yes, ma'am.

22 Q. Would you state your full name for the
23 record, please, sir?

24 A. Dennis L. Gibbs.

25 Q. What is your position at DHEC?

1 A. I'm the director of the Division of Health
2 Licensing.

3 Q. And what does that position -- what duties
4 and responsibilities do you have?

5 A. We're responsible for the regulatory
6 oversight of numerous facilities and services as
7 authorized in statute for us to license and regulate.
8 There's a -- we use about 18 regulations to license
9 about 24 or 25 different kinds of facilities or
10 services.

11 Q. One of the facilities that you license is
12 hospitals, isn't it?

13 A. Yes, ma'am.

14 Q. Okay. And hospitals are licensed pursuant to
15 Regulation 61-16?

16 A. That's correct.

17 Q. Okay. Your division is responsible for
18 licensing all healthcare facilities in South Carolina
19 that require licensing, correct?

20 A. By the Department of Health and Environmental
21 Control, yes.

22 Q. Right. Are there other healthcare facilities
23 that are licensed by someone else?

24 A. Well, there are -- arguably there might be
25 Department of Social Services licenses group homes

1 A. All right.

2 Q. Okay. Let me show you a memorandum dated
3 March 7th, 1995, and see if you are familiar with this.

4 A. Yes.

5 MS. CRUM: I mark this as Exhibit 36.

6 (PETITIONER'S EXH. 36, Memorandum Dated March
7 7, 1995, was marked for identification.)

8 BY MS. CRUM:

9 Q. Mr. Gibbs, what is this memorandum, if you
10 could just please tell me?

11 A. There were a number of issues where certain
12 hospitals wanted to basically license outlying
13 facilities, perhaps across town, perhaps across
14 counties, as a part of the same license, hospital
15 license. And so this was written to clarify what the
16 Department's position would be on that and when we
17 would allow hospitals to be under a single -- the
18 umbrella of a single license or when they would have to
19 be licensed separately.

20 Q. Okay. Do you still apply the tenants of this
21 memorandum?

22 A. Yes, ma'am.

23 Q. Okay. Now, let's take Spartanburg Regional
24 Medical Center, for example.

25 A. Okay.

1 assume.

2 Q. Well, do you know whether or not it is to be
3 located contiguous to Piedmont Medical Center in Rock
4 Hill?

5 A. Is that the facility by name, the d/b/a of
6 the facility that would be operated by Piedmont Medical
7 Center?

8 Q. Yes, sir.

9 A. Then my recollection is that that would not
10 be contiguous to the existing hospital in Rock Hill.

11 Q. And so it would have to have a separate
12 license, wouldn't it?

13 MS. LAYMAN: Object to the form.

14 THE WITNESS: Yes, ma'am.

15 BY MS. CRUM:

16 Q. Wouldn't Fort Mill Medical Center have to
17 have a separate hospital license, Mr. Gibbs?

18 A. Yes.

19 Q. Any new hospital that is built in South
20 Carolina, Mr. Gibbs, that is not contiguous to an
21 existing hospital, would it have to have a separate
22 medical staff?

23 A. Yes.

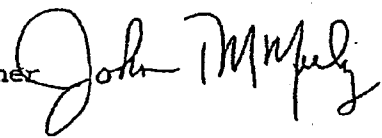
24 Q. Would it have to have a separate hospital
25 administrator?

March 7, 1995

MEMORANDUM

TO: Hospital Administrators

FROM: John T. McNeely, Deputy Commissioner
Health Regulation



SUBJECT: Consolidation of hospital licenses where separate and distinct buildings are involved

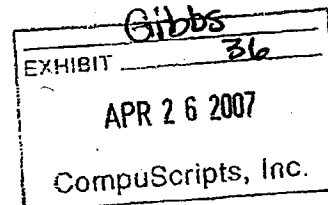
In certain circumstances there are significant financial incentives and other advantages in the consolidation of multiple hospital buildings under one license. In light of many recent requests from the hospital provider community to consolidate certain hospitals under one license (which hospitals had previously been licensed separately or where one of the units is new construction) and in order to clarify our position on this subject, the following guidelines for when consolidation will be permitted are established:

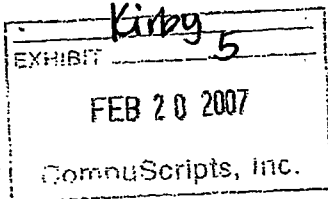
1. The licensee of the individual facilities must be identical.
2. The facilities must be located on the same premises (or campus.) In order to be considered as "on the same premises" structures must be located on contiguous or adjoining property. Unlimited access roads and/or local streets will not be considered as dividing otherwise adjoining property.

This policy will not affect the licensure of existing hospitals as they are currently licensed, but will be applied whenever future licensure changes are requested.

JTM

cc: Douglas E. Bryant
Alice Truluck
Bill Yates, SC Hospital Association





#06RFR10

RECEIVED
S.C. DEPT OF HEALTH
& ENVIRONMENTAL CONTROL

2006 AUG 22 PM 3: 07

OFFICE OF THE COMMISSIONER
CHIEF OF STAFF
CLERK OF SCDHEC BOARD

August 22, 2006

Attn: Elizabeth M. Hagood, Chairman
Office of the Commissioner
South Carolina Department of Health & Environment Control
2600 Bull Street
Columbia, SC 29201

Dear Chairman Hagood:

I am writing to demonstrate the very keen interest of the 93 institutional members of the South Carolina Hospital Association (SCHA) in the Request for Final Review filed by Presbyterian Hospital – York, LLC that is currently before the Board of the South Carolina Department of Health & Environmental Control (Board). While the Board and the parties involved may view this Request for Final Review as an issue impacting York County and the hospitals which have filed Certificate of Need (CON) applications for hospital beds, the SCHA views any action by the Board in this matter as having significant implications for the hospital industry of South Carolina and all the individual hospitals licensed to provide services within the state.

The South Carolina CON Act requires the Board to approve a new State Health Plan at least once every two years. This State Health Plan is used in the administration of the CON program and outlines the need for medical facilities and services in the state.

As each State Health Plan is developed, the staff of the Department of Health & Environmental Control (Department) first creates a Draft Plan and publicly seeks consultation and advice from numerous state agencies, other organizations affected by the Draft Plan, and anyone else who wishes to offer comments. The State Health Planning Committee then reviews the comments and makes final revisions to the Draft Plan and submits it to the Board for final revision and adoption. Once adopted by the Board, the State Health Plan then becomes the starting point for consideration of CON applications by the staff of the Department.

Beginning with the 2003 Plan, the Board made a fundamental change in its policy of allocating hospital beds across the state. SCHA was actively involved in this policy

change. It was perfectly clear that the Board approved a new hospital bed methodology that replaced a county-based methodology with one that identified needs for beds at individual existing hospitals. This methodology used a formula based primarily on an individual hospital's historical utilization, along with market share and patient days. The Board continued this methodology of identifying needs for beds at individual existing hospitals in the 2004-2005 Plan.

Prior to final approval of both the 2003 Plan and the 2004-2005 Plan by the Board, draft Plans with this hospital bed-need methodology were widely circulated and numerous public hearings were conducted, providing ample opportunities for interested parties to both review and comment on the proposed methodology. SCHA and many of its members were active participants.

At the conclusion of this process, the Board indicated its policy for bed allocation and approved the 2003 State Health Plan which contained the following sentences:

"The needs for hospital beds are based on the utilization of individual facilities. Nursing homes and home health agency needs are projected by county."

When the Department developed its Plan for 2004-2005, it again included this methodology in the draft version, sought input from the public and interested parties and approved a final 2004-2005 Plan that included the following sentence:

"The needs for hospital beds are based on the utilization of individual facilities."

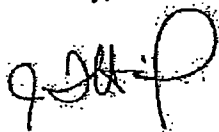
Clearly through these actions the Department and the Board established a fundamental policy in both the 2003 Plan and the 2004-2005 Plan that bed need was to be determined by historical utilization of each acute hospital in the state. That then is the methodology that every hospital in the state has followed since the 2003 Plan. And the CON law requires only CON applications which are consistent with the current Plan can be approved by the Department.

SCHA believes that there is no need for the Board to grant this Request for Final Review. The policy, as established by the Board, is clear. Bed need in the Plan is determined by a formula that projects beds at individual existing hospitals. There is no designation for beds in a county. Therefore, the projected need is unique to the hospital that generated that need and a CON can only be awarded to that hospital. If there is a desire to change the current policy and subsequent methodology, the proposal for change should be included in the process of developing a new Plan, as required by the CON law, with ample opportunity for review and public input.

If the Board does decide to grant this Request for Final Review, SCHA requests an opportunity to participate and represent the interests of all of its members in the Review. Clearly, the actions of the Board on this request and the approval of the CON application for Piedmont Medical Center have implications for all hospitals across South Carolina.

Thank you for your consideration of the issues outlined in this letter. Please feel free to contact me at 796-3080 if I can be of assistance to you or to the Board.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Kirby", with a large, stylized loop at the end.

J. Thornton Kirby
President and CEO, SCHA

Cc: C. Earl Hunter, Commissioner
Lisa Lucas Longshore, Administrative Coordinator Clerk of the Board

TK/pm

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

CHARLOTTE-MECKLENBURG HOSPITAL
AUTHORITY D/B/A CAROLINAS
HEALTHCARE SYSTEM,

Petitioner(s),

vs. Case No. 06-ALJ-07-0489-CC

SOUTH CAROLINA DEPARTMENT
OF HEALTH AND ENVIRONMENTAL
CONTROL AND AMISUB OF SOUTH
CAROLINA, INC., D/B/A PIEDMONT
HEALTHCARE SYSTEM D/B/A
FORT MILL MEDICAL CENTER,

Respondent(s),

PRESBYTERIAN HEALTHCARE SYSTEM, D/B/A
PRESBYTERIAN HOSPITAL - YORK, LLC,

Intervener(s).

-----X
CHARLOTTE-MECKLENBURG HOSPITAL
AUTHORITY D/B/A CAROLINAS
HEALTHCARE SYSTEM,
Petitioner(s),

vs. Case No. 06-ALJ-07-0490-CC

SOUTH CAROLINA DEPARTMENT
OF HEALTH AND ENVIRONMENTAL
CONTROL,

Respondent(s),

AMISUB OF SOUTH CAROLINA, INC. D/B/A
PIEDMONT HEALTHCARE SYSTEM D/B/A
FORT MILL MEDICAL CENTER AND
PRESBYTERIAN HEALTHCARE SYSTEM D/B/A
PRESBYTERIAN HOSPITAL - YORK, LLC,

Intervenor(s).

1 A. Yes.

2 Q. Okay. Mr. Shelton, in drafting the plan in
3 2003 and in 2004, was there ever any discussion between
4 you and Mr. Whiteside as to other hospitals being able
5 to access a bed need generated by an existing hospital?

6 A. No, there wasn't.

7 Q. Was there ever any intent when you drafted
8 the hospital generic -- I'm sorry, the hospital acute
9 bed need to prohibit other hospitals from accessing a
10 generated bed need that was generated by an existing
11 hospital?

12 A. No, it was not our intent to preclude anyone
13 from applying for beds. We envisioned this more as
14 solving or helping a situation in counties with
15 multiple hospitals where -- we keep going back to
16 McLeod, but one hospital had a need but the other
17 hospitals in the county didn't, so we envisioned it as
18 helping those kind of multi-provider counties.

19 We did not envision what the impact would be
20 on a single-county provider such as Piedmont because
21 also the bed need went up in a lot of areas. We went
22 from having small bed need to a situation like Piedmont
23 where all of a sudden they had 64 beds needed where we
24 really didn't envision new providers being willing to
25 come into a county to try and build a new hospital

CHAPTER I

INTRODUCTION

A. Legal Basis:

Section 44-7-180 of the South Carolina Code of Laws requires the Department of Health and Environmental Control, with the advice of the S.C. State Health Planning Committee, to prepare a State Health Plan for use in the administration of the Certificate of Need Program.

B. Purpose:

The South Carolina Health Plan outlines the need for medical facilities and services in the State. This document is used as one of the criteria for reviewing projects under the Certificate of Need Program.

C. Health Planning Committee:

This committee is composed of fourteen members. Twelve are appointed by the Governor with at least one member from each congressional district. Health care consumers, health care financiers, including business and insurance, and health care providers are equally represented. One member is appointed by the Chairman of the Board of Health and Environmental Control and the State Consumer Advocate is an ex-officio member. The State Health Planning Committee will review the South Carolina Health Plan and submit it to the Board of Health and Environmental Control for final revision and adoption.

D. Relationship With Other Agencies:

The Department has received consultation and advice from a number of State Agencies, including the Department of Mental Health, Department of Disabilities and Special Needs, Vocational Rehabilitation Department, Department of Social Services, Department of Alcohol and Other Drug Abuse Services, Continuum of Care for Emotionally Disturbed Children, and the Department of Health and Human Services, during the development of this plan including the collection and analysis of data. Other organizations affected under the program, such as the S.C. Hospital Association, the S.C. Home Care Association and the S.C. Health Care Association, have been consulted as the need arises. The Department wishes to express its appreciation for their assistance.

The Department is conscious that the ultimate responsibility for administering this program cannot be shared with any individual or organization; however, it does recognize the valuable contributions that can be made by other interested organizations and individuals. For that reason it will be the policy to actively seek cooperation and guidance from anyone who wishes to comment on this plan.

E. Standards of Construction and Equipment:

Construction of health care facilities will comply with the Standards for Licensing as promulgated by the S.C. Department of Health and Environmental Control.

F. Standards for Maintenance and Operation:

1. Pursuant to the "State Certification of Need and Health Facility Licensure Act," the South Carolina Department of Health and Environmental Control (DHEC) is designated as the responsible agency for the administration and enforcement of basic standards for maintenance and operation of health care facilities and services in South Carolina. The Division of Health Licensing within DHEC is responsible for licensing Hospitals, Nursing Homes, Intermediate Care Facilities for the Mentally Retarded, Ambulatory Surgical Facilities, Home Health Agencies, Hospice Programs and Facilities, Community Residential Care Facilities, Renal Dialysis Facilities, Psychiatric Hospitals, Psychoactive Substance Abuse Treatment Facilities, Residential Treatment Programs, Detoxification Facilities, Residential Treatment Centers for Children and Adolescents, Abortion Clinics, Day Care Facilities for Adults, Chiropractic Inpatient Facilities, Hearing Aid Specialists, Licensed Midwives, Birthing Centers, and Body Piercing Facilities.
2. Health Officers in local county health departments and various Bureaus of DHEC provide health care facilities with professional consultation, e.g., medical, laboratory, nursing, dietary, home visitation, x-ray, et cetera.
3. The Office of Environmental Quality Control, DHEC, must approve all water supply and sewage disposal systems.

G. State Certification of Need and Health Facility Licensure Act:

1. The purpose of the State Certification of Need and Health Facility Licensure Act as amended is to promote cost containment, prevent unnecessary duplication of health care facilities and services, guide the establishment of health facilities and services that will best serve public needs, and ensure that high quality services are provided in health facilities in this State.
2. This law requires the:
 - (1) issuance of a Certificate of Need prior to the undertaking of any project prescribed by this article;
 - (2) adoption of procedures and criteria for submittal of an application and appropriate review prior to issuance of a Certificate of Need;

emergency situations, and as soon as possible but before the discharge in emergency situations and for which only one billing has occurred and no other efforts have been undertaken to collect such debt. Indigent care does not include debt; contractual adjustments; or care that is reimbursed by a governmental program (Medicare, Medicaid, County indigent care program), church, or philanthropic organizations.

2. Revenue - When indigent care is expressed as a percentage of revenue, gross operating revenues should be used. Gross operating revenues are total charges prior to reduction due to contractual adjustments, discounts, bad debts or similar revenue adjustments.
3. Department - The South Carolina Department of Health and Environmental Control.
4. Health Care Facility or facility - Those "health care facilities" as defined in the State Certification of Need and Health Facility Licensure Act, Section 44-7-130 (10).
5. Home Health Agency or agency - Those "home health agencies" as defined in the Licensure of Home Health Agencies Act Section 44-69-20 (4).

The provisions of this policy will apply to all health care facilities and home health agencies that apply to the Department for a Certificate of Need. When an application is submitted, the applicant shall submit as part of the application, an indigent care plan addressing all of the elements of the Board's policy. The plan will describe how the health care facility or home health agency will address indigent care. It shall include at a minimum, the following:

1. The existing and proposed admission and treatment policies of the facility or agency with regard to race, sex, creed, national origin, and ability to pay.
2. The proposed admission and treatment policies of the facility or agency with respect to admission and care of indigent patients including those patients unable to pay at the time of admission and those whose benefits expire while in the care of the facility or agency.
3. In existing facilities or agencies, provide the amount, in terms of dollars and percent of gross revenues, that the facility or agency provided in indigent care during the past three fiscal years. NOTE: Indigent care is defined in H-1.
4. Provide the proposed amount of indigent care the facility or agency projects to provide during the existing fiscal year and next fiscal year. This projection should be expressed in both dollars and a percent of gross revenues.
5. A discussion of why the above figures are adequate or inadequate for the needs of the community; the need of indigent care within the proposed service area; and any solutions, remedial plans or proposals by the facility or agency to better address the indigent care problems in the service area. Include any initiatives or undertakings the

CHAPTER II

PLANNING REGIONS AND FACILITY CATEGORIES

- Inventory Regions and Service Areas
- Exceptions to Service Area Standards
- Identification of Inventory Regions
- Estimated State Civilian Population
- Patient Statistics
- Facility Information and Plan Cut-Off Date
- Categories of Facilities and Services
 - General Medical Facilities and Services
 - General Hospitals
 - General Hospital-Bed Supply
 - General Hospital-Occupancy Rate
 - Obstetrical and Neonatal Services
 - Obstetrical Services
 - Neonatal Services
 - Pediatric Inpatient Services
 - Cardiovascular and Associated Heart Disease
 - Cardiac Catheterization
 - Open Heart Surgery
 - Cancer
 - Linear Accelerators
 - Gamma Knife
 - Diagnostic Imaging
 - Magnetic Resonance Imaging
 - Positron Emission Tomography
 - Outpatient Facilities
 - Ambulatory Surgical Facility
 - Emergency Hospital Services
 - Trauma Referral System
 - Community Psychiatric Beds
 - Residential Treatment Facilities for Children and Adolescents
 - Alcohol and Drug Abuse Facilities
 - Rehabilitation Facilities
 - Long-Term Care Facilities and Services
 - Nursing Homes
 - Medicaid Nursing Home Permits
 - Mental Retardation Facilities
 - Retirement Community: Nursing Home Units
 - Hospice Facilities and Hospice Programs
 - Swing Beds
 - Home Health Agencies
 - Other Services for the Elderly
 - Critical Access Hospitals
 - Long-Term Care Hospitals

equipment or services. There may be certain instances where such a transfer or exchange of acute services could be accomplished in a cost-effective manner and result in a more efficient allocation of health care resources. This transfer or exchange of services applies to both inpatient and outpatient services; however, such transfers or exchanges could only occur between facilities within the same licensing category. A Certificate of Need would be required to achieve the transfer or exchange of services. In order to evaluate a proposal for the transfer or exchange of any health care technology reviewed under the Certificate of Need program, the following criteria must be applied to it:

- (1) A transfer or exchange of services may be approved only if there is no overall increase in the number or amount of such services;
- (2) Although such transfers may cross county or service area lines, the facilities must be located within the one-way driving time established for the proposed service of each other, as determined by the Department;
- (3) The facility receiving the service must demonstrate the need for the additional capacity based on both historical and projected utilization patterns;
- (4) The applicants must explain the impact of transferring the technology on the health care delivery system of the county and/or service area from which it is to be taken; any negative impacts must be detailed along with the perceived benefits of the proposal;
- (5) The facility giving up the service may not use the loss of such services as justification for a subsequent request for the approval of establishment of such service;
- (6) A written contract or agreement between the governing bodies of the affected facilities approving the transfer or exchange of services must be included in the Certificate of Need process;
- (7) Each facility giving up a service must acknowledge in writing that this exchange is permanent; any further transfers would be subject to this same process.

C. Identification of Inventory Regions:

The inventory regions are designated as follows:

<u>Region</u>	<u>Counties</u>
I	Anderson, Cherokee, Greenville, Oconee, Pickens, Spartanburg, and Union.
II	Abbeville, Chester, Edgefield, Fairfield, Greenwood, Kershaw, Lancaster, Laurens, Lexington, McCormick, Newberry, Richland, Saluda and York.
III	Chesterfield, Clarendon, Darlington, Dillon, Florence, Georgetown, Horry, Lee, Marion, Marlboro, Sumter and Williamsburg.

any patient room is the maximum number for which adequate square footage is provided, except that single beds in single rooms have been counted even if the room contained inadequate square footage.

Adequate square footage is defined as:

- 100 square feet in single rooms;
- 80 square feet per bed or pediatric crib in multi-bed rooms;
- 40 square feet per bassinet in pediatric nurseries.

In measuring the square footage of patient rooms for the purpose of determining bed capacity, only the net usable space in the room was considered. Space in toilet rooms, washrooms, closets, vestibules, and corridors were not included.

(b) For facilities constructed under the Certificate of Need program, bed capacity will be as stated in the certificate, regardless of oversize room construction.

(c) For Areas Included:

1. Bed space in all nursing units, including: (1) intensive care unit and (2) minimal or self-care units.
2. Isolation units.
3. Pediatric units, including: (1) pediatric bassinets and (2) incubators located in the pediatric department.
4. Observation units equipped and staffed for overnight use.
5. All space designated for inpatient bed care even if currently closed or assigned to easily convertible, non-patient uses such as administration offices or storage.
6. Space in areas originally designed as solaria, waiting rooms, offices, conference rooms and classrooms that have necessary fixed equipment and are accessible to a nurses' station exclusively staffed for inpatient care.
7. Bed space under construction if planned for immediate completion (not an unfinished "shell" floor).

(d) For Areas Excluded:

1. Newborn nurseries in maternity department.
2. Labor rooms.
3. Recovery rooms.
4. Emergency units.
5. Preparation or anesthesia induction rooms.
6. Rooms used for diagnostic or treatment procedures unless originally designed for patient care.
7. Hospital staff bed areas, including accommodations for on-call staff unless originally designed for patient care.

It should be noted that, throughout the Plan where the term "hospital bed need" is specified, these figures are actually based upon demand or utilization data for the general acute hospitals. Use of these planning factors is not intended to stem initiative or to suggest that facilities cannot operate at more efficient levels than used in the calculations without additional beds.

The methodology for calculating bed needs is as follows:

- (a) Calculations of bed need are made for individual facilities.
- (b)
 - 1. Multiply the current facility use rate by age cohort by the projected population by age cohort (in thousands) and divide by 365 to obtain a projected average daily census by age cohort.
 - 2. Divide the sum of the age cohort projected facility average daily census by the variable occupancy (.65/.70/.75) to determine the number of beds needed to meet the area's need.
- (c) The number of additional beds needed or excess beds is obtained by subtracting the number of existing beds from the bed need.
- (d) Should there be a need shown for additional beds for a hospital, then an increase may be approved. In order to provide for a cost-effective addition, up to the greater of 50 beds or the actual projected number of additional beds may be approved, provided the hospital can document and demonstrate the need for additional beds.
- (e) In some areas of South Carolina, there is a considerable influx of tourists who are not counted in the permanent population. If an individual hospital in these areas can document and demonstrate the need for additional beds due to non-resident (tourist) population, and seasonal utilization fluctuations due to this population, then the Department may approve some additional beds at the existing hospital based on further analysis.
- (f) Should a hospital request additional beds due to the deletion of services at a Federal facility that results in the immediate impact on the utilization of the hospital, then additional beds may be approved at the affected hospital. The impacted hospital must document this increase in demand and explain why additional beds are needed to accommodate the care of patients previously served at a Federal facility. Based on the analysis of utilization provided by the affected hospital, the Department may approve some additional hospital beds to accommodate this immediate need.
- (g) Because of the low utilization and the low capital cost of converting hospital-based nursing home, psychiatric and/or substance abuse beds to general acute care hospital beds, the following policies may apply:

8. Each facility giving up beds must acknowledge in writing that this exchange is permanent; any further transfers would be subject to this same process.
- (i) Factors to be considered regarding modernization of facilities should include:
 1. Functional arrangement of the facility as it relates to efficient handling of patients and related workloads.
 2. The ability to update medical technology within the existing plant.
 3. Existence of Joint Commission on Accreditation of Healthcare Organizations (JCAHO) deficiencies or "grandfathered" licensure deficiencies.
 4. Cost efficiency of the existing physical plant versus plant revision, etc.
- (j) Each modernization proposal must be evaluated on the basis of merit, cost efficiency, and impact on health delivery and status within the service area.

The following pages depict the calculation of hospital bed need as described earlier.

RELATIVE IMPORTANCE OF PROJECT REVIEW CRITERIA

The following project review criteria are considered to be the most important in evaluating certificate of need applications for this service:

- a. Compliance with the Need Outlined in this Plan;
- b. Community Need Documentation;
- c. Distribution (Accessibility);
- d. Acceptability;
- e. Financial Feasibility;
- f. Cost Containment; and
- g. Adverse Effects on Other Facilities.

General hospital beds are located within approximately thirty (30) minutes travel time for the majority of the residents of the State and current utilization and population growth are factored into the methodology for determining general hospital beds. The benefits of improved accessibility will be equally weighted with the adverse affects of duplication in evaluating Certificate of Need applications for these beds.

FY 2010 HOSPITAL NEED

FACILITY/COUNTY	AGE CAT	2003 POP	2010 POP	2003 PAT DAYS	PROJ % ADD OCCU	BED NEED	TO BE EXIST ADDED/OR BEDS (EXCESS)	
SAINT FRANCIS HOSPITAL & ST FRANCIS WOMAN'S & FAMILY HOSP	#4	TOTAL				278	319	-41
REGENCY HOSPITAL GREENVILLE	#5	<18	95,940	99,860	-	0.00		
		18-64	249,390	271,400	-	0.00		
		+65	46,090	49,950	-	0.00		
		TOTAL	390,420	421,210	-	0.00	0	32
OCONEE CO								
OCONEE MEMORIAL		<18	15,380	15,910	855	2.42		
		18-64	42,240	45,020	13,968	40.79		
		+65	11,410	14,530	18,011	62.84		
		TOTAL	69,030	75,460	32,867	106.05	0.65	163
PICKENS CO								
CANNON MEMORIAL		<18	27,690	29,360	75	0.22		
		18-64	74,910	82,880	1,544	4.68		
		+65	13,150	14,810	4,164	12.94		
		TOTAL	115,750	127,150	5,784	17.84	0.65	27
PALMETTO BAPTIST MED CTR EASLEY		<18	27,690	29,360	745	2.16		
		18-64	74,910	82,880	8,920	27.04		
		+65	13,150	14,910	8,958	27.83		
		TOTAL	115,750	127,160	18,623	57.03	0.65	88
SPARTANBURG CO								
B.J. WORKMAN MEMORIAL		<18	65,080	67,440	77	0.22		
		18-64	164,700	177,670	967	2.86		
		+65	32,130	35,490	1,601	4.85		
		TOTAL	261,910	280,600	2,642	7.92	0.65	12
SPART HOSP RESTORATIVE CARE		<18	65,080	67,440	-	0.00		
		18-64	164,700	177,670	5,513	16.29		
		+65	32,130	35,490	17,082	51.69		
		TOTAL	261,910	280,600	22,595	67.99	0.65	105
MARY BLACK MEMORIAL		<18	65,080	67,440	1,472	4.18		
		18-64	164,700	177,670	11,454	33.85		
		+65	32,130	35,490	11,601	35.11		
		TOTAL	261,910	280,600	24,527	73.14	0.70	104
SPARTANBURG REGIONAL MED CTR		<18	66,080	67,440	4,883	13.86		
		18-64	164,700	177,670	83,861	188.74		
		+65	32,130	35,490	58,222	170.14		
		TOTAL	261,910	280,600	125,217	372.75	0.75	497
UNION CO								

FY 2010 HOSPITAL NEED									
FACILITY/COUNTY	AGE CAT	2003 POP	2010 POP	2003 PAT DAYS	PROJ ADC OCCU	%	BED NEED	TO BE EXIST ADDED/OR BEDS (EXCESS)	
SPRINGS MEMORIAL	<18	18,530	18,450	2,114	5.76				
	18-64	38,810	40,540	20,293	58.08				
	+65	7,360	7,970	16,027	47.61				
	TOTAL	61,890	63,960	38,434	111.45	0.65	171	168	3
LAURENS CO									
LAURENS CO. HOSPITAL	<18	17,690	17,720	405	1.11				
	18-64	44,430	48,750	6,333	19.04				
	+65	9,420	10,770	9,443	28.58				
	TOTAL	71,540	77,240	16,197	49.73	0.65	77	76	1
LEXINGTON CO									
LEXINGTON MEDICAL CENTER	<18	35,450	38,961	2,103	6.01				
	18-64	90,687	101,337	42,652	130.50				
	+65	14,863	17,819	39,371	131.81				
	TOTAL	140,790	158,217	84,126	268.49	0.70	384	346	38
NEWBERRY CO									
NEWBERRY CO. MEMORIAL	<18	8,880	8,880	298	0.83				
	18-64	22,840	23,760	4,385	12.61				
	+65	5,330	5,760	7,232	21.49				
	TOTAL	36,850	38,520	11,915	34.92	0.65	54	90	-36
RICHLAND CO									
PALMETTO HEALTH BAPTIST	<18	103,241	105,950	1,919	5.40				
	18-64	288,753	289,794	39,967	115.12				
	+65	40,798	46,361	32,916	102.48				
	TOTAL	412,792	442,105	73,802	222.99	0.75	297	363	-66
PROVIDENCE HOSPITAL	<18	103,241	105,950	70	0.20				
	18-64	288,753	289,794	29,667	87.64				
	+65	40,798	46,361	39,905	124.24				
	TOTAL	412,792	442,105	69,642	212.08	0.70	303	258	45
PROVIDENCE HOSPITAL NORTHEAST	<18	103,241	105,950	74	0.21				
	18-64	288,753	289,794	6,725	19.87				
	+65	40,798	46,361	5,576	17.36				
	TOTAL	412,792	442,105	12,363	37.43	0.65	58	46	12
PALMETTO HEALTH RICHLAND	<18	103,241	105,950	21,430	60.25				
	18-64	288,753	289,794	78,907	233.11				
	+65	40,798	46,361	41,582	129.46				
	TOTAL	412,792	442,105	141,919	422.82	0.75	564	579	-15
INTERMEDICAL HOSPITAL OF SC	<18	103,241	105,950	-	0.00				
	>18	309,651	336,165	9,038	26.89				
	TOTAL	412,792	442,105	9,038	26.89	0.65	41	35	6

[illegible]

FY 2010 HOSPITAL NEED									
FACILITY/COUNTY	AGE CAT	2003 POP	2010 POP	2003 PAT DAYS	PROJ ADC	% OCGU	BED NEED	TO BE EXIST BEDS	ADDED/OR (EXCESS)
	+65	22,010	31,030	17,954	69.35				
	TOTAL	128,080	148,420	40,255	137.38	0.65	212	195	17
HILTON HEAD REGIONAL MEDICAL CTR	<18	28,750	27,740	352	0.93				
	18-64	77,320	87,650	8,491	26.37				
	+65	22,010	31,030	14,613	56.44				
	TOTAL	128,080	148,420	23,456	83.74	0.65	129	93	36
BERKELEY/CHARLESTON/DORCHESTER COS									
TRIDENT MEDICAL CENTER	<18	143,710	143,140	2,449	5.68				
	18-64	363,720	390,100	38,968	114.50				
	+65	62,130	78,300	32,807	113.27				
	TOTAL	569,560	611,540	74,225	234.46	0.75	313	271	42
SUMMERVILLE MEDICAL CENTER	<18	507,430	533,240	11,491	33.08				
	+65	62,130	78,300	9,201	31.77				
	TOTAL	569,560	611,540	20,617	64.85	0.65	100	80	20
KINDRED HOSPITAL CHARLESTON	<18	143,710	143,140		0.00				
	18-64	363,720	390,100	3,533	10.38				
	+65	62,130	78,300	8,442	29.15				
	TOTAL	569,560	611,540	11,975	39.53	0.65	61	59	2
CHARLESTON MEMORIAL #11	<18	143,710	143,140	7	0.02				
	18-64	363,720	390,100	4,342	12.76				
	+65	62,130	78,300	499	1.72				
	TOTAL	569,560	611,540	4,890	14.50	0.65			
MEDICAL UNIVERSITY HOSPITAL #11	<18	143,710	143,140	23,201	63.31				
	18-64	363,720	390,100	76,653	225.24				
	+65	62,130	78,300	28,328	97.81				
	TOTAL	569,560	611,540	128,182	386.36	0.75	536	604	-68
ROPER HOSPITAL	<18	143,710	143,140	1,122	3.06				
	18-64	363,720	390,100	38,144	112.08				
	+65	62,130	78,300	54,224	187.22				
	TOTAL	569,560	611,540	93,489	302.37	0.75	403	414	-11
BON SECOURS ST FRANCIS XAVIER	<18	143,710	143,140	656	1.79				
	18-64	363,720	390,100	20,331	59.74				
	+65	62,130	78,300	17,631	60.88				
	TOTAL	569,560	611,540	38,579	122.41	0.70	175	141	34
EAST COOPER REG MED CTR.	<18	143,710	143,140	166	0.45				
	18-64	363,720	390,100	12,022	35.33				
	+65	62,130	78,300	8,611	29.73				
	TOTAL	569,560	611,540	20,800	65.51	0.65	101	100	1
COLLETON CO.									

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SOUTH CAROLINA GENERAL ACUTE BEDS

% OCCUPANCY RATE

	2001	2002	2003		2001	2002	2003
REGION I	58.3	58.7	59.4	REGION III	54.0	53.3	53.6
ANDERSON AREA MED CTR	52.3	52.8	50.3	CHESTERFIELD GENERAL	25.1	31.1	34.4
UPSTATE CAROLINA MED CTR	34.3	31.7	35.0	CLARENDON MEMORIAL	67.0	69.5	61.5
ALLEN BENNETT MEMORIAL	71.1	71.3	74.3	CAROLINA PINES REG MED CTR	65.1	69.4	74.0
GREENVILLE MEM MED CTR	81.6	81.5	83.5	WILSON CLINIC	20.5	19.7	17.2
NORTH GREENVILLE LTAC	--	--	13.0	ST. EUGENE REGIONAL MED CTR	43.8	48.2	47.9
HILLCREST HOSPITAL	43.7	52.7	55.7	CAROLINAS HOSPITAL SYSTEM	60.3	68.3	75.6
ST FRANCIS HOSPITAL	74.7	73.7	66.6	CAROLINAS HOSP LAKE CITY	21.5	19.9	21.7
ST FRANCIS WOMEN'S & FAMILY	59.8	58.4	60.6	MCLEOD REGIONAL MED CTR	92.5	92.0	90.6
OCONEE MEMORIAL	54.8	52.2	56.3	WOMEN'S CTR/CAROLINAS	53.2	37.1	40.9
CANNON MEMORIAL	31.2	27.8	28.8	REGENCY HOSPITAL OF SC	12.8	78.6	90.5
PALMETTO BAPTIST M C EASLEY	51.1	52.8	53.1	GEORGETOWN MEMORIAL	81.0	81.1	68.4
BJ WORKMAN MEMORIAL	17.5	18.0	16.8	WACCAMAW COMMUNITY	--	--	78.6
MARY BLACK MEMORIAL	40.7	40.7	38.2	CONWAY HOSPITAL	63.3	57.3	58.3
SPART HOSP RESTORATIVE CARE	62.4	40.7	63.8	GRAND STRAND REGIONAL	78.6	64.3	62.2
SPARTANBURG REG MED CTR	62.4	65.6	64.5	LORIS COMMUNITY	56.0	49.9	50.2
HOPE HOSPITAL	13.8	11.5	0.0	MARION COUNTY MED CTR	90.6	69.4	76.8
WALLACE THOMSON	32.1	32.2	33.7	MARLBORO PARK	19.2	21.7	17.5
				TUOMEY	67.7	70.7	68.1
				WILLIAMSBURG REGIONAL	9.3	19.6	18.4
REGION II	61.2	63.0	64.8	REGION IV	60.8	62.9	62.2
ABBEVILLE COUNTY	24.0	25.0	21.3	AIKEN REGIONAL MED CTR	70.9	71.1	69.0
CHESTER REGIONAL MED CTR	44.4	37.3	31.4	ALLENDALE COUNTY	14.8	21.0	20.8
EDGEFIELD COUNTY	24.5	19.9	20.8	BAMBERG CO MEMORIAL	27.0	25.2	26.8
FAIRFIELD MEMORIAL	33.9	36.4	31.1	BARNWELL COUNTY	29.6	27.9	27.6
SELF REGIONAL MED CTR	49.5	48.5	51.4	BEAUFORT MEMORIAL	89.3	94.7	84.8
KERSHAW COUNTY MEMORIAL	56.3	53.3	51.9	HILTON HEAD	78.8	60.6	69.1
SPRINGS MEMORIAL	77.1	67.6	78.0	CHARLESTON MEMORIAL	11.9	12.3	13.7
LAURENS COUNTY HOSPITAL	64.0	61.4	58.4	EAST COOPER REG MED CTR	48.0	48.8	57.0
LEXINGTON MEDICAL CTR	71.6	76.2	78.9	MEDICAL UNIVERSITY	72.5	72.2	75.4
NEWBERRY CO MEMORIAL	29.3	34.0	36.3	TRIDENT MEDICAL CTR	77.6	82.4	76.9
INTERMEDICAL HOSPITAL OF SC	72.3	78.5	70.7	KINDRED-HOSP CHARLESTON	39.1	50.9	55.6
PALMETTO HEALTH BAPTIST	55.9	62.7	55.7	SUMMERVILLE MED CTR	61.4	69.3	74.5
PROVIDENCE HOSPITAL	76.9	79.0	83.7	ROPER	63.4	63.9	61.9
PROVIDENCE HOSPITAL NE	74.1	82.6	73.6	BON SECOURS ST FRANCIS X	72.2	75.7	75.0
PALMETTO HEALTH RICHLAND	69.0	68.5	67.2	COLLETON MEDICAL CTR	69.7	61.6	64.3
PIEDMONT MEDICAL CTR	65.2	71.6	75.1	HAMPTON REGIONAL MED CTR	18.4	13.2	14.6
				LOW COUNTRY	0.0	0.0	0.0
				RMC ORANGEBURG/CALHOUN	58.7	58.9	54.5

II-19

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

AFFIDAVIT

1. My name is M. Elizabeth Crum. My business address is 1301 Gervais Street, Columbia, Richland County, South Carolina. I have been employed with McNair Law Firm, P.A. ("McNair") for almost 26 years, and I am a Shareholder of the Firm.

2. I am a counsel of record in the case captioned *Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Healthcare System and Presbyterian Healthcare System, d/b/a Presbyterian Hospital-York, LLC v. South Carolina Department of Health and Environmental Control and Amisub of South Carolina, Inc. d/b/a Piedmont Healthcare System d/b/a Fort Mill Medical Center* and represent Presbyterian Hospital York ("Presbyterian") in this matter.

3. Attached to this Affidavit as Attachment A is a true and accurate copy of the Department's Notice of Project Review Hearing for March 23, 2005 in the York County hospital CON projects and letter of March 27, 2005 extending the decision date for an additional 60 days.

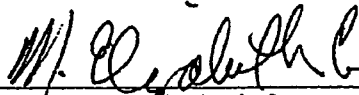
4. Attached to this Affidavit as Attachment B is a true and accurate copy of the Board of Health and Environmental Control's letter refusing to hold a final agency review of the Department's denial of Presbyterian Hospital York's requests for reconsideration. This was received by us on August 31, 2006.

5. Attached to this Affidavit as Attachment C is a true and accurate copy of Bates numbered pages 596 through 598 of the application of Fort Mill Medical Center filed with the Department of Health and Environmental Control and provided to this Firm by the Department.

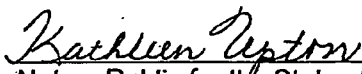
COLUMBIA 888885v1

6. Attached to this Affidavit as Attachment D are true and accurate copies of the responses by FMMC and DHEC to Presbyterian's Requests to Admit.

7. Further Affiant saith not.


M. Elizabeth Crum

Sworn to and subscribed before me
this 18th day of May, 2007.


(L.S.)
Notary Public for the State of South Carolina.
My Commission expires ~~September 9, 2009~~

July 29, 2015



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

March 17, 2006

MEMORANDUM

To: Members, Project Review Committee

From: Albert N. Whiteside, Director *ANW*
Division of Planning and Certification of Need

Re: Construction of a 64 bed acute care to include a Magnetic Resonance Imaging (MRI) unit, a Computed Tomography (CT) Scanner, and one diagnostic cardiac catheterization laboratory.
Carolinas Medical Center – Fort Mill
Fort Mill, South Carolina

Construction of a 64 bed acute care to include a Magnetic Resonance Imaging (MRI) unit, a Computed Tomography (CT) Scanner, and one diagnostic cardiac catheterization laboratory.
Fort Mill Medical Center
Fort Mill, South Carolina

Construction of a 64 bed acute care hospital and 12 skilled nursing care beds for a total of 76 licensed beds with provisions for a Magnetic Resonance Imaging (MRI) unit, a Computed Tomography (CT) Scanner, a linear accelerator and one diagnostic cardiac catheterization laboratory.
Lake Wylie Regional Medical Center
Fort Mill, South Carolina

Construction of a 64 bed acute care to include a Magnetic Resonance Imaging (MRI) unit, a Computed Tomography (CT) Scanner, and one diagnostic cardiac catheterization laboratory.
Presbyterian Hospital – York
Fort Mill, South Carolina

A meeting is scheduled for Thursday, March 23, 2006, at 9:00 AM in the Peebles Auditorium Room of the Sims/Avcock Building, SCDHEC, 2600 Bull Street, Columbia, SC 29201.

Attached is the information relative to the projects to be discussed during the meeting. In many cases, the applicant furnished additional information that cannot be appropriately addressed in a brief narrative. As a result, the project files to be discussed at this meeting will be in the active file cabinet in the file room for your review prior to the meeting.

mwf

001775

UTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

Health Regulation

2600 Bull Street • Columbia, SC 29201 • www.scdhec.gov



C. Ead Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

Certified Mail

March 27, 2006

Re: Construction of a 64 bed acute care hospital to include a Magnetic Resonance Imaging (MRI) unit, a Computed Tomography (CT) scanner, and a diagnostic cardiac catheterization laboratory located off of I-77 at Sutton Road in Fort Mill, South Carolina.
Presbyterian Hospital - York
Fort Mill, South Carolina

M. Elizabeth Crum, Esquire
McNair Law Firm
PO Box 11390
Columbia, SC 29211

Dear Ms. Crum:

Pursuant to Section 304 of Regulation No. 61-15, Certification of Need for Health Facilities and Services, this is to advise that the Department has determined that the relative importance of the project review criteria to be used in reviewing the application for the above referenced project has changed from that as previously provided to you in our letter dated January 23, 2006, which reordered criteria. The change is based on information this office has received since the aforementioned date.

The following project review criteria are now considered more important in the review of this application. These criteria are ranked according to their relative importance with the most important being listed first. All other relevant criteria will be given equal importance.

1. Compliance with the State Health Plan - 1
2. Community Need Documentation - 2a, 2b, 2c, 2d, 2e
Distribution (Accessibility) - 3a, 3b, 3c, 3d, 3e, 3f, 3g
Distribution - 22
3. Projected Revenues/Expenses - 6a, 6b, 7
Net Income/Financial Feasibility - 9, 15
Cost Containment - 16a, 16b, 16c
Efficiency - 17
4. Record of the Applicant - 13a, 13b, 13d
Acceptability - 4a, 4b, 4c
Adverse Impact on Other Facilities - 23a, 23b

If you wish to provide any information regarding the relative importance of the project review criteria, you must provide written comments within thirty (30) days of your receipt of this letter. However, any supplementary information relative to your application or in response to any information presented during the Department's Project Review Committee Meeting should be submitted to the Department no later than April 17, 2006.

Should you require further information, please contact me at (803) 545-4200.

Sincerely,

Jillie Cheek for:

Mary W. Fechtel
Division of Planning and Certification of Need

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cc: Mr. David Levitt
Mr. F. Del Murphy, Jr.
Mr. Terry H. Linn

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PS Form 3800, June 2002 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. - Print your name and address on the reverse so that we can return the card to you. - Attach this card to the back of the mail piece or on the front if space permits.	A. Signature X: <i>[Signature]</i> ☐ Agent ☐ Addressee B. Delivery (Printed Name) <i>[Signature]</i> C. Date of Delivery 3/29/06 D. Is delivery address the same as item 17? ☐ Yes ☐ No If YES, enter delivery address below:
1. Article Addressed to: M. Elizabeth Crum, Esquire McNair Law Firm P.O. Box 11390 Columbia, South Carolina 29211	RECEIVED MAR 30 2006 HEALTH FACILITIES AND SERVICES DEVELOPMENT MAR 29 2006
2. Article Number 7005 0390 0001 4010 8301	3. Service type ☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.
4. Restricted Delivery? (Extra Fee) ☐ Yes	

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-4-1540

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Steven G. Kisner
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S.C. Board of Health and Environmental Control - Phone: (803) 898-3309 Fax: (803) 898-3323

MEMORANDUM

Via Certified Mail, Return Receipt

RECEIVED

SEP 01 2006

TO: Elizabeth M. Crum, Esquire
Aerial B. Kirk, Esquire
Presbyterian Hospital - York

McNair Law Firm, P.A.

Stuart M. Andrews, Jr., Esquire
Daniel J. Westbrook, Esquire
Amisub of South Carolina d/b/a Fort Mill Medical Center

Trudy H. Robertson, Esquire
W.E. Applegate, III, Esquire
Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas HealthCare
System

Richard Cooke
U.S. Department of Justice, Antitrust Division, Litigation I Section

J. Thornton Kirby, President and CEO
S.C. Hospital Association

Nancy S. Layman, Esquire
Ashley C. Biggers, Esquire
S.C. Department of Health and Environmental Control

FROM: Lisa Lucas Longshore, Clerk
S.C. Board of Health and Environmental Control

DATE: August 31, 2006

RE: Request for Final Review - Board Docket No. 06-RFR-10

Request for Final Review of staff decisions as follows:

*Decision to deny Request for Reconsideration and Staff Decision to issue
a Certificate of Need to Amisub of South Carolina d/b/a Fort Mill
Medical Center for the construction of a 100 bed acute care hospital to
include one diagnostic cardiac catheterization laboratory, one Magnetic*

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
2600 Bull Street • Columbia, SC 29201 • Phone: (803) 898-3432 • www.scdhec.gov

Resonance Imaging (MRI) unit and a sixty-four slice Computer Tomography (CT) scanner to be located at the intersection of SC Highway 160 and Highway 21 Bypass in Fort Mill, South Carolina

Decision to deny Request for Reconsideration and a of staff decision to deny a Certificate of Need application for Presbyterian Hospital – York's construction of 64-bed acute care hospital to include a Magnetic Resonance Imaging (MRI) unit, a Computed Tomography (CT) scanner and a diagnostic cardiac catheterization laboratory to be located off of I-77 at Sutton Road in Fort Mill, South Carolina

The S.C. Board of Health and Environmental Control decided on August 24, 2006, not to conduct a Final Review Conference on the above-referenced matter.

S.C. Code Section 44-1-60(F), 2006 Act No. 387, Section 48, provides, "If a final review conference is not conducted within sixty days, the department decision becomes the final agency decision, and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court, in accordance with the Administrative Procedures Act, within thirty days after the deadline for the final review conference."

A request for a contested case hearing before the Administrative Law Court (ALC) must be filed in accordance with the Rules of the ALC, including payment of the ALC's filing fee, at the following address:

Clerk's Office
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Suite 224
Columbia, SC 29201

The ALC's Notice of Request for Contested Case Hearing form and the Rules of the ALC can be found at the ALC's website: <http://www.scalc.net>. Further information on filing a request for a contested case hearing before the ALC may be obtained by calling the Clerk's Office at the Administrative Law Court (803-734-0550).

If a party files a request for a contested case hearing with the ALC, the party must serve a copy of the request on DHEC and any other parties at the same time the request is filed with the ALC. A copy of the request for a contested case hearing must be delivered or mailed to DHEC at the address at the top of this memorandum.

The above information on filing a request for a contested case hearing before the Administrative Law Court is provided as a courtesy; parties before the ALC are responsible for complying with all applicable requirements of the Court.

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Vice Chairman

Steven G. Kiser
Secretary



C. Earl Hunter, Commissioner

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BOARD:
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Paul C. Anghy, III

Glenn A. McCall

Coleman R. Buckhouse, MD

Clerk, S.C. Board of Health and Environmental Control — Telephone (803) 898-3309 Fax: (803) 898-3323

CERTIFICATE OF SERVICE

I, Lisa Lucas Longshore, Clerk, S.C. Board of Health and Environmental Control, with the South Carolina Department of Health and Environmental Control, hereby certify that I have this 31st day of August 2006 served the foregoing *Memorandum re: Final Review Conference Denial- Board Docket No. 06-RFR-10* upon all parties and counsel of record by placing a copy of same in an envelope and depositing it in the U.S. Mail, with sufficient postage paid, at the address indicated below:

Certified Mail, Return Receipt

M. Elizabeth Crum, Esq.

Ariail Kirk, Esq.

McNair Law Firm

Post Office Box 11390

Columbia, SC 29211

Stuart M. Andrews, Jr., Esq.

Nelson Mullins

17th Floor

1320 Main Street

Columbia, SC 29201

Trudy H. Robertson, Esq.

Moore & Van Allen

Post Office Box 22828

Charleston, SC 29413

J. Thornton Kirby, President and CEO

S.C. Hospital Association

1000 Center Point Road

Columbia, SC 29210

Richard Cooke

US Department of Justice

Antitrust Division, Litigation I Section

City Center Bldg., Suite 4000

1401 H Street NW

Washington, DC 20350

Interagency Mail Delivery

Nancy S. Layman, Esq.

SCDHEC — Office of General Counsel

2600 Bull Street

Columbia, SC 29201

Lisa Lucas Longshore

Lisa Lucas Longshore, Clerk

S.C. Board of Health and Environmental Control

August 31, 2006

Columbia, South Carolina

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

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Norcross, GA 30092
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Maryland

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Suite 302
Baltimore, MD 21244
Tel: 410.277.4341

Massachusetts

Mitretek Healthcare
1050 Waltham Street
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Lexington, MA 02421
Tel: 781.863.5656

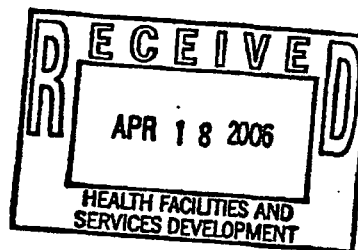
Mitretek Healthcare
80 Capital Drive
West Springfield, MA 01089
Tel: 413.732.3366

Texas

Mitretek Healthcare
5838 Balcones Drive
Austin, TX 78731
Tel: 512.342.8815

www.mitretek.org

April 17, 2006



Mr. Joel Grice

Director, Bureau of Health Facilities and Services Development
South Carolina Department of Health and Environmental Control
1777 St. Julian Place
Middleburg Park
Columbia, SC 29204

**Re: Piedmont Medical Center's Response to the CON Applications and
Project Review Presentations for Development of 64-Bed Hospital in the
Fort Mill Area by Hospital Partners of America, Presbyterian
Healthcare, and Carolinas HealthCare System**

Dear Mr. Grice:

This letter, written on behalf of Amisub of South Carolina, Inc., (Amisub), is being submitted to provide additional information in support of Amisub's CON application for a 100-bed hospital in Fort Mill, and to oppose the three competing hospital applications filed by Hospital Partners of America, Presbyterian Healthcare, and Carolinas HealthCare System for the development of 64-bed hospitals in the same area.

BACKGROUND

Amisub has filed a CON application for the development of a 100-bed hospital, Fort Mill Medical Center, in the Fort Mill area. The proposal for a new 100-bed hospital is based upon Amisub's strategic initiative to develop a comprehensive healthcare campus at Baxter Village, which will include a new hospital, an Urgent Care Center (in operation since 2002), physician offices, and an outpatient diagnostic imaging center (CON filed, April 2006). The project proposes to construct a 100-bed hospital by the addition of 64 new acute care beds plus the transfer of 36 acute care beds from Piedmont Medical Center, which results in a new, larger, and more efficient hospital able to support the growing needs of York County. The addition of the 64 new acute care beds is based upon the 2004-2005 South Carolina Health Plan, which calculated bed need specifically for Piedmont based upon historical utilization.

The development of a new hospital in the Fort Mill area by Amisub will result in increased access for York County residents, and a better distribution of inpatient acute care beds throughout the county. The 100-bed hospital at Fort Mill will provide inpatient acute services including medical/surgical, ICU, and obstetrical care. In addition to inpatient care, the hospital will provide outpatient surgery,

000596

diagnostic services, 24-hour emergency department, and diagnostic cardiac catheterization services. If a patient should require additional care or services not provided at Fort Mill, the patient can be transferred to Piedmont, resulting in a streamlined continuum of care without having to leave the county or state.

The three out-of-state applicants vying to build a hospital in the Fort Mill area have not demonstrated the need or the commitment to the community that Piedmont has demonstrated over the years. Two of the applicants, Presbyterian and Carolinas, are well established North Carolina providers, who will likely continue to transfer South Carolina residents to North Carolina hospitals and physicians for future services. This practice will not address the issue of York County residents leaving the state for care. The third applicant, a for-profit start up organization led by a leadership team with a history of selling off companies, does not have any experience in the southeast, and currently only owns hospitals in Texas and California.

These three applicants do not bring a history of providing care to the Fort Mill area, nor do they have any commitment to the community other than submitting a CON application to build a hospital. Amisub is committed to the Fort Mill area. In addition to submitting this CON application for a new hospital, and being a longstanding provider in the Rock Hill community, Amisub is currently providing services in Fort Mill by operating an urgent care center, physician offices, and has submitted a CON application for an outpatient diagnostic imaging center. Therefore, the addition of a hospital to the area by Amisub will result in a continuum of care within the community, and alleviate the need for residents to travel to North Carolina for care. If either of the two North Carolina providers is awarded the CON, then residents will still be required to travel to North Carolina for follow-up care, and tertiary level services, if they desire to stay within the same healthcare system.

COMPLIANCE WITH STATE HEALTH PLAN

The 2004-2005 South Carolina Health Plan shows that Piedmont Medical Center has a need for 64 additional acute care beds based on the historical utilization at PMC, and expected population growth in York County. Amisub proposes to add 64 new beds at Fort Mill Medical Center, and transfer an additional 36 beds from PMC to build a larger, more efficient hospital that will accommodate future growth in the community and reduce the out-migration of residents to other states.

The bed need methodology utilized in the Health Plan is facility specific based on the historical utilization of Piedmont Medical Center. The following figure illustrates the bed need methodology as it was applied to Piedmont Medical Center.

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**Figure 1
Piedmont Medical Center
Bed Need**

Age Category	Population		2003 Patient Days	Projected ADC	Bed Need (a)	Existing Beds	Need/ (Excess)
	2003	2010					
<18	44,300	45,910	2,937	8.34			
18-64	110,120	125,480	36,863	115.08			
65+	17,670	20,910	33,632	109.04			
Total	172,090	192,300	73,432	232.46	332	268	64

Source: 2004 - 2005 State Health Plan.

(a) Based on 70% occupancy

The other three applicants argue that since Piedmont Medical Center demonstrates a need for 64 beds, then they should be allowed to apply for those beds to build a new hospital. However, the methodology is based upon institution-specific utilization and market share, so it is unreasonable and not sound health planning to assume that simply because one facility shows a need for acute care beds, that a new facility would be able to utilize the calculated need.

In addition, the bed need methodology for PMC is based on historical hospital-wide patient days, which means that it includes Piedmont's draw from other counties, including Chester and Lancaster. Therefore, the bed need methodology includes a greater service area than simply York County, and it is unreasonable and an overstatement of bed need for the other applicants to assume that PMC's need for additional beds translates to a need for a third party to develop a new hospital.

The health plan provides the bed need for each facility in the State of South Carolina. For counties with multiple facilities, the need will differ for each facility and often shows a need for more beds at one facility, while another facility in the same county shows a surplus. It is illogical to assume that the need for each facility is directly transferable to an unrelated third party.

COMMUNITY NEED DOCUMENTATION

Fort Mill Medical Center will primarily serve the residents of four ZIP Codes within northeast York County: 29708, 29715, 29730, and 29732. The secondary service area is comprised of other York County ZIP Codes.

000598

Charlotte-Mecklenburg Hospital Authority)
d/b/a Carolinas Healthcare System and)
Presbyterian Healthcare System d/b/a)
Presbyterian Hospital-York, LLC,)

Petitioners,

-v-

South Carolina Department of Health
and Environmental Control and Amisub
of South Carolina, Inc. d/b/a Piedmont
Healthcare System d/b/a Fort Mill
Medical Center.

Respondents.

**SOUTH CAROLINA
DEPARTMENT OF HEALTH AND
ENVIRONMENTAL CONTROL'S
RESPONSES TO PRESBYTERIAN'S
FIRST REQUESTS TO ADMIT**

Pursuant to Rule 21, RPALC, and Rule 26 and 36(a), SCRCPP, Respondent South Carolina Department of Health and Environmental Control (“DHEC” or “Department”) hereby responds to Requests to Admit from Petitioner Presbyterian Healthcare System d/b/a Presbyterian Hospital-York as follows:

DHEC is requested to admit or deny the following:

- RESPONSE:** Denied. Although each hospital in a county is licensed separately and generates its own specific data, for purposes of the Plan, the bed need of two or more

hospitals with the same licensee and owner in the same county may be added together for the calculation of data relevant to adding beds to an existing facility or to the construction of a new facility.

2. The only existing individual general acute care hospital facility in York County is AMISUB of South Carolina, Inc. d/b/a Piedmont Medical Center ("Piedmont Medical Center").

RESPONSE: Admitted

3. The Plan shows a calculated need for 64 general hospital acute care beds at Piedmont Medical Center.

RESPONSE: Denied. The bed need for Piedmont Medical Center ("PMC") as reflected in the 2004-2005 South Carolina Health Plan is 332 beds generated by the existing Piedmont Medical Center. PMC currently has 268 operational licensed beds and, as a result, 64 additional hospital beds are under the control of PMC, but do not necessarily have to be located at the existing hospital site.

4. Piedmont Medical Center is located at 222 South Herlong Drive, Rock Hill, South Carolina 29732.

RESPONSE: Admitted in part. PMC is located at 222 South Herlong *Avenue* in Rock Hill, South Carolina.

5. There is no general acute care hospital facility in Fort Mill, South Carolina.

RESPONSE: Admitted.

6. In adopting the Plan, the DHEC Board did not intend to grant a monopoly to existing general acute care hospital facilities which are the single general acute care hospital facility within their respective counties.

RESPONSE: The Department objects to the Request and is unable to admit or deny the

Request because it is without knowledge regarding the intent of the members of the DHEC Board. The 2004-2005 South Carolina Health Plan speaks for itself.

7. The FMMC January 2005 CON Application was the first application filed and deemed complete for the 64 bed need identified for Piedmont Medical Center.

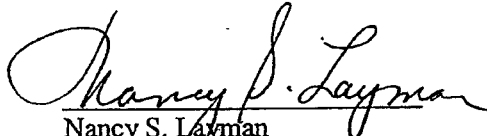
RESPONSE: Admitted that the FMMC January 2005 CON application filed and deemed complete was the first application filed for 64 *additional* beds.

8. The CMHA CON Application, the HPA CON Application and the Presbyterian CON Application each became competing applicants with the FMMC January 2005 CON Application when they were filed on March 12, 2005.

RESPONSE: Admitted that on March 12, 2005 CMHA, HPA and Presbyterian each became competing applicants with FMMC.

9. As DHEC has interpreted the Plan, in any county in South Carolina where there is only one general acute care hospital facility, the Plan bed need can be used only that existing licensed facility whose data was used to generate the bed need calculation.

RESPONSE: The Department objects to this Request because the meaning of the statement is unclear and indecipherable.


Nancy S. Layman
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South Carolina Department of
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Fax: (803) 898-3367

May 3, 2007
Columbia, South Carolina

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McNair Law Firm, P.A.

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Charlotte-Mecklenburg Hospital Authority)
d/b/a Carolinas Healthcare System and)
Presbyterian Healthcare System, d/b/a)
Presbyterian Hospital-York, LLC,)

DOCKET NO. 06-ALJ-07-0713-CC

Petitioner,)

vs.)

South Carolina Department of Health and)
Environmental Control and Amisub of)
South Carolina d/b/a Piedmont Healthcare)
System d/b/a Fort Mill Medical)
Center,)

CERTIFICATE OF SERVICE

Respondent.)

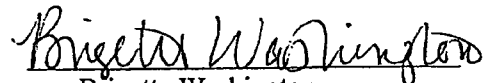
I, Brigitte Washington, Paralegal for the South Carolina Department of Health and Environmental Control, hereby certify that I have on this 3rd day of May, 2007, served a copy of *South Carolina Department of Health and Environmental Control's Responses to Presbyterian's First Requests to Admit* upon all parties and counsel of record in the above-captioned case by placing a copy of same in the United States mail, proper postage affixed, return address clearly marked and addressed as follows:

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Brigitte Washington

May 3, 2007
Columbia, South Carolina

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STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

Charlotte-Mecklenburg Hospital
Authority, d/b/a Carolinas Healthcare
System and Presbyterian Healthcare
System, d/b/a Presbyterian Hospital –
York, LLC,

Petitioners,

v.

South Carolina Department of Health and
Environmental Control and Amisub of
South Carolina, Inc., d/b/a Piedmont
Healthcare System d/b/a Fort Mill Medical
Center,

Respondents.

Docket No. 06-ALJ-07-0713-CC

**AMISUB OF SOUTH CAROLINA'S
RESPONSES TO PRESBYTERIAN'S
FIRST REQUESTS TO ADMIT**

Amisub of South Carolina, Inc. ("Amisub") responds to Presbyterian Healthcare System, d/b/a Presbyterian Hospital – York, LLC's ("Presbyterian") First Requests to Admit as follows:

REQUESTS

1. The Plan uses each separately licensed existing individual general acute care hospital facility as the planning unit to calculate general hospital acute bed need for the existing hospital facility.

RESPONSE: Denied, to the extent the request implies that an existing hospital facility can be used as the planning unit only for that existing hospital facility. The Department has interpreted the Plan as authorizing beds, identified in the Plan as being needed by an existing general acute hospital facility, being used by that hospital as the basis for

approving a CON application for the construction of a new hospital, for which such existing hospital is the licensee and owner.

2. The only existing individual general acute care hospital facility in York County is AMISUB of South Carolina, Inc. d/b/a Piedmont Medical Center ("Piedmont Medical Center").

RESPONSE: Admitted.

3. The Plan shows a calculated need for 64 general hospital acute care beds at Piedmont Medical Center.

RESPONSE: Denied, to the extent that the request implies that the Plan provides or has been interpreted by the Department to limit the placement of the 64 beds to the same site as Piedmont Medical Center in Rock Hill.

4. Piedmont Medical Center is located at 222 South Herlong Drive, Rock Hill, South Carolina 29732.

RESPONSE: Admitted.

5. There is no general acute care hospital facility in Fort Mill, South Carolina.

RESPONSE: Admitted.

6. In adopting the Plan, the DHEC Board did not intend to grant a monopoly to existing general acute care hospital facilities which are the single general acute care hospital facility within their respective counties.

RESPONSE: Amisub objects to this Request on the grounds that the only evidence produced in this case reflective of the intent of the DHEC Board is the State Health Plan, which speaks for itself. Amisub, therefore, has no factual basis for admitting or denying this request.

7. The FMMC January 2005 CON Application was the first application filed and deemed complete for the 64 bed need identified for Piedmont Medical Center.

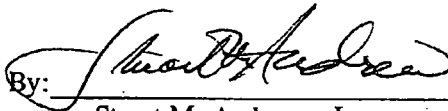
RESPONSE: Admitted.

8. The CMHA CON Application, the HPA CON Application and the Presbyterian CON Application each became competing applicants with the FMMC January 2005 CON Application when they were filed on March 12, 2005.

RESPONSE: Amisub objects to this request on the grounds that it calls for a legal conclusion.

9. As DHEC has interpreted the Plan, in any county in South Carolina where there is only one general acute care hospital facility, the Plan bed need can be used only that existing licensed facility whose data was used to generate the bed need calculation.

RESPONSE: Amisub objects to this request on the grounds that it is vague, susceptible of different interpretations, and seems to be missing one or more words. Without waiving its objections, Amisub refers Presbyterian to Amisub's response to Request No. 1.

By: 

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Attorneys for Respondent Amisub of South Carolina,
Inc. d/b/a Piedmont Healthcare System d/b/a Fort Mill
Medical Center

Columbia, South Carolina

May 2, 2007

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MAY 07 2007

McNair Law Firm, P.A.

CERTIFICATE OF SERVICE

I, the undersigned paralegal of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center d/b/a Fort Mill Medical Center do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by delivering to the following address(es):

Pleadings: AMISUB OF SOUTH CAROLINA'S RESPONSES TO
PRESBYTERIAN'S FIRST REQUESTS TO ADMIT

Counsel Served:

U.S. Mail

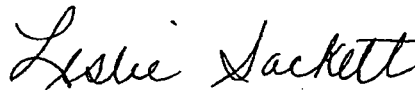
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Leslie Sackett
Paralegal

May 3, 2007

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Charlotte-Mecklenburg Hospital Authority,
d/b/a Carolinas HealthCare System and
Presbyterian Healthcare System, d/b/a
Presbyterian Hospital-York, LLC,

Petitioners,

v.

South Carolina Department of Health and
Environmental Control and Amisub of South
Carolina, Inc. d/b/a Piedmont Healthcare
System d/b/a Fort Mill Medical Center,

Respondents.

Docket No. 06-ALJ-07-0713-CC

**PETITIONER CAROLINAS
HEALTHCARE SYSTEM'S
MEMORANDUM IN OPPOSITION
TO FORT MILL MEDICAL
CENTER'S MOTION FOR
SUMMARY JUDGMENT**

Petitioner, Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas HealthCare System ("CHS"), submits this memorandum in opposition to the motion for summary judgment filed by Respondent, Amisub of South Carolina, Inc., d/b/a Piedmont Healthcare System d/b/a Fort Mill Medical Center ("FMMC"). This memorandum in opposition is submitted pursuant to the Consent Scheduling Order in this case.

I. Interpretation of South Carolina's State Health Plan must be rational and reasonable. To interpret the State Health Plan as suggested by FMMC leads to absurd and illogical results.

FMMC's summary judgment motion is premised on the following arguments: (a) that the certificate of need ("CON") applications in the present case are subject to the 2004-2005 South Carolina State Health Plan ("2004-2005 SHP"); (b) that the 2004-2005 SHP only uses existing facilities to calculate hospital bed need; (c) that because the hospital bed need shown in the 2004-2005 SHP "belongs" only to Piedmont Medical Center in Rock Hill, no other health care providers can apply for it; and (d) that because the hospital bed need only "belongs" to Piedmont

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Medical Center in Rock Hill, Piedmont Medical Center can freely designate the bed need to be filled by "transferring" its bed need to a different, separately-licensed facility to be built in another town (Fort Mill) that has no demonstrated hospital bed need shown in the 2004-2005 SHP, even though there is no language in the 2004-2005 SHP that would authorize such a new hospital bed need transfer. FMMC's argument defies a reasonable construction of the 2004-2005 SHP and, if taken to its "logical" conclusion, would lead to the absurd result that no new hospital would be allowed in York County unless it is owned by the existing medical provider.

It is well established that the interpretation of a statute should be rational and reasonable and not lead to an absurd result. See, e.g., Bolton v. Doe, 266 S.C. 344, 223 S.E.2d 187 (1976); Singletary v. South Carolina Dept. of Educ., 316 S.C. 153, 447 S.E.2d 231 (Ct. App. 1994). While the 2004-2005 SHP is not a statute, it is a document required by statute, and it is appropriate to look to rules of statutory construction to determine the intent and construction of the 2004-2005 SHP. Where a statute is clear and unambiguous, the terms of the statute must be given their literal meaning. Medlock v. 1985 Ford F-150 Pick Up, 308 S.C. 68, 417 S.E.2d 85, 87 (1992). If the language of a statute gives rise to doubt or uncertainty as to legislative intent, the construing court may search for that intent beyond the borders of the act itself. Georgia-Carolina Bail Bonds, Inc. v. County of Aiken, 354 S.C. 18, 579 S.E.2d 334, 338 (Ct. App. 2003). Any ambiguity in a statute should be resolved in favor of a just, beneficial, and equitable operation of the law, and in light of its manifest purpose. Id. In construing statutory language, the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect. South Carolina State Ports Authority v. Jasper County, 368 S.C. 388, 629 S.E.2d 624 (2006). A statute should not be construed by concentrating on an isolated phrase. Id.

Clearly, here, as demonstrated by the different past analyses and positions taken by the South Carolina Department of Health and Environmental Control ("SCDHEC") (and as described in memoranda in support of motions for summary judgment by CHS and Presbyterian Healthcare System, d/b/a Presbyterian Hospital-York, LLC ("Presbyterian")), the 2004-2005 SHP, and specifically the bed need methodology provisions, are open to multiple and differing interpretations. Since the hospital bed need methodology provisions are not clear and unambiguous, and are clearly open to interpretation, this Court may construe the 2004-2005 SHP and should do so in a reasonable manner to allow the 2004-2005 SHP to be in harmony with the State Certification of Need and Health Facility Licensure Act (the "CON Act"), S.C. Code Ann. Section 44-7-110, *et seq.*

Any interpretation of the 2004-2005 SHP must be in harmony with the purpose of the CON Act, which is to *"promote costs 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 § 44-7-120 (2002) (emphasis added). Limiting the provision of those health care services to only existing providers is inconsistent with a goal that is intended to guide "the establishment of health facilities and services which will best serve public needs and ensure high quality of services." It is logical that hospital bed "need" must be determined from a planning perspective by looking at the usage in existing facilities, for only those facilities are providing services. It is not logical or reasonable, however, to conclude that because the planning calculations rely on the usage at existing facilities, then hospital bed "need" can only be "serviced" by existing facilities. Such an interpretation is in direct contravention of the 2004-2005 SHP's and CON Act's purposes.

For these reasons, FMMC's argument – that as the existing provider in York County it is the only health care provider eligible for a CON under the 2004-2005 SHP – is flatly wrong, and is unsupported by a reasonable construction of both the 2004-2005 SHP and the CON Act.

II. Even if FMMC's interpretation of the hospital bed need methodology in the 2004-2005 SHP were accepted by this Court (which CHS disputes), FMMC, too, cannot itself comply with the 2004-2005 SHP as it is not the "facility" for which the hospital bed need has been determined.

Assuming, for the sake of argument, that the only way to address hospital bed need in York County under the 2004-2005 SHP is to allow the facility demonstrating the bed need to apply for a CON, it is even more illogical and unreasonable to conclude that a new facility with no demonstrated hospital bed need could then be authorized in an entirely different geographic location from the facility with the demonstrated need.

The 2004-2005 SHP, at page II-2, provides that "[t]he needs for hospital beds are based on the utilization of individual facilities." It is uncontested that the individual facility the 2004-2005 SHP uses "as the unit calculation of bed need" for the beds at issue is Piedmont Medical Center in Rock Hill, South Carolina. As stated in earlier memoranda of both CHS and Presbyterian in support of their respective motions for summary judgment, every single DHEC witness that has been deposed in this matter on this specific issue has agreed that Piedmont Medical Center is a separate and distinct licensed facility from FMMC, just as Presbyterian and CHS would be separate and distinct licensed facilities from Piedmont Medical Center. Even FMMC concedes in its memorandum that Piedmont Medical Center and FMMC would require separate licenses as hospitals. Nevertheless, FMMC tries to weakly argue that the common ownership by Amisub of both locations still allows for the sixty-four (64) bed need for "Piedmont Medical Center" to be addressed by FMMC, a yet-to-be constructed, proposed facility

in another town and under a separate hospital license. FMMC argues that Amisub and Piedmont Medical Center are "one and the same, and the need for 64 beds identified in the 2004-05 Plan was for Amisub." This interpretation is completely unsupported by the 2004-2005 SHP, which lacks any language allowing the "transfer" of bed need in one "facility" to a newly-built, separately-licensed "facility" in a different location.

The record is clear and uncontested in this matter that FMMC and Piedmont Medical Center would be separate and distinct licensed hospitals and, thus, would also logically be separate and distinct planning units. (See the numerous citations to deposition testimony of Mr. Grice, Mr. Gibbs and Mr. Whiteside cited in the memoranda in support of motions for summary judgment by Presbyterian and CHS). The 2004-2005 SHP only provides for a transfer of *existing* hospital beds, not *new* hospital beds. The sixty-four (64) hospital beds at issue were the projected *new* hospital beds needed based on the utilization of the existing facility, Piedmont Medical Center in Rock Hill. If they are specific to a facility (which CHS and Presbyterian contest in this matter) – they could only be specific to Piedmont Medical Center in Rock Hill. There is no provision in the 2004-2005 SHP, the CON Act or the regulations promulgated thereunder, which support FMMC's position allowing the transfer of hospital bed need, and neither FMMC nor SCDHEC have pointed to any such authority for this Court.

III. In further opposition to FMMC's motion for summary judgment, CHS adopts and incorporates as if fully set forth herein the memoranda in support of the motions for summary judgment submitted by CHS and Presbyterian.

Pursuant to Rule 10(c), South Carolina Rules of Civil Procedure, and in further opposition to FMMC's motion for summary judgment, CHS herein incorporates and adopts by reference those statements, positions and exhibits of CHS and Presbyterian, submitted in their

memoranda in support of their respective cross-motions for summary judgment and filed with this Court on May 18, 2007.

CHS respectfully requests that its motion for summary judgment be granted and that FMMC's motion for summary judgment be denied by this Court, and respectfully requests that these matters be remanded back to SCDHEC with instructions to deny the award of the CON to FMMC.

Respectfully submitted,



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Attorneys for Petitioner Charlotte-Mecklenburg
Hospital Authority d/b/a Carolinas HealthCare
System

June 6, 2007

Charleston, SC

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Charlotte-Mecklenburg Hospital Authority,
d/b/a Carolinas HealthCare System and
Presbyterian Healthcare System, d/b/a
Presbyterian Hospital-York, LLC,

Petitioners,

v.

South Carolina Department of Health and
Environmental Control and Amisub of
South Carolina, Inc. d/b/a Piedmont
Healthcare System d/b/a Fort Mill Medical
Center,

Respondents.

Docket No. 06-ALJ-07-0713-CC

CERTIFICATE OF SERVICE

I hereby certify that on this the 6th day of June, 2007, I have served a copy of the foregoing

Petitioner Carolinas Healthcare System's Memorandum In Opposition to Fort Mill Medical

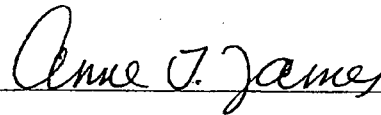
Center's Motion for Summary Judgment upon the following by electronic mail only, addressed to:

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SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Charlotte-Mecklenburg Hospital Authority,
d/b/a Carolinas HealthCare System and
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South Carolina Department of Health and
Environmental Control and Amisub of South
Carolina, Inc. d/b/a Piedmont Healthcare
System d/b/a Fort Mill Medical Center,

Respondents.

Docket No. 06-ALJ-07-0713-CC

**PETITIONER CAROLINAS
HEALTHCARE SYSTEM'S REPLY
MEMORANDUM TO FORT MILL
MEDICAL CENTER'S
MEMORANDUM IN OPPOSITION
TO SUMMARY JUDGMENT**

Petitioner, Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas HealthCare System ("CHS"), submits this reply memorandum in response to the memorandum in opposition to CHS' motion for summary judgment filed by Respondent, Amisub of South Carolina, Inc., d/b/a Piedmont Healthcare System d/b/a Fort Mill Medical Center ("FMMC"). This reply memorandum is submitted pursuant to the Consent Scheduling Order in this case.

I. FMMC's argument that there is a distinction between the right to apply and the right to be approved is disingenuous.

FMMC argues that estoppel should not apply because the South Carolina Department of Health and Environmental Control ("SCDHEC") is not charged with determining whether Certificate of Need ("CON") applicants are ineligible to be approved for a CON until project review, and that one may have the right to apply, but not the right to be approved. This argument is inconsistent with FMMC's own argument that it is patent from the language of the 2004-2005 South Carolina State Health Plan ("2004-2005 SHP") that only existing "facilities" with

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ADMIN. LAW COURT

demonstrated bed need are eligible for a CON for new hospital beds. Presumably if such an interpretation is apparent from the language of the 2004-2005 SHP, SCDHEC would have known at the outset of the application process that CHS could never be approved for a CON, rather than fifteen (15) months into it, and only after a lengthy public comment process, project review and site visits by SCDHEC officials to CHS hospitals in North Carolina. Moreover, SCDHEC accepted \$7,000 application fees from each of the "ineligible" applicants, which money was never returned, and SCDHEC required them to spend countless hours providing substantive information which, had they been patently ineligible to be approved, never should have been requested. FMMC would have this Court believe that three (3) hospital applicants other than FMMC wasted fifteen (15) months of their time and resources in vain simply because (in FMMC's view) SCDHEC did not have the obligation to inform them that they were ineligible for approval.

The facts demonstrate instead: that Joel Grice felt initially that any applicant could apply (see Reply Exhibit A attached hereto (Grice Depo., p. 22, line 18-p. 24, line 22))¹; that he withdrew his January 25, 2005 memorandum based on objections from, among others, the S.C. Hospital Association or "perhaps" its attorneys (Reply Exhibit A attached hereto (Grice Depo., p. 33, line 4-p. 34, line 13)); that Mr. Grice thereafter sought to (in his own words) "clarify" the "future" hospital bed need interpretation (Joel Grice memo of March 3, 2005, attached as Exhibit D to CHS' Memorandum in Support of its Motion for Summary Judgment); that Del Murphy of CHS considered the point as one of clarification and he would not have applied if he thought CHS was ineligible to be approved, and in fact SCDHEC suggested that the application was

¹ CHS has created Reply Exhibit A and Reply Exhibit B for this Reply Memorandum for ease of reference for the Court. While many of the citation references to deposition testimony for Mr. Grice and Mr. Murphy were included in CHS' Memorandum in Support of its Motion for Summary Judgment, a few new page/line references were added, so CHS has included all citations for ease of reference for the Court in this Reply Memorandum. Other exhibits refer to those attached to CHS' Memorandum in Support of its Motion for Summary Judgment.

"approvable" (see Reply Exhibit B attached hereto (Murphy Depo., p. 33, line 19-p. 34, line 5; p. 50, line 11-p. 52, line 18)); that Mr. Grice, by his own, written admission in his affidavit, did not even begin to "focus" on the 2004-2005 SHP as disqualifying the other three (3) hospital applicants until May of 2006, some fourteen (14) months after the applications were submitted, and just a few weeks before the decision was made (Joel Grice affidavit of May 18, 2007 at ¶ 7); and that in early May of 2006, Mr. Grice toured CHS' facilities in North Carolina and indicated at the CON project review meeting that the application that "best met public needs" would be approved (see Reply Exhibit B attached hereto (Murphy Depo., at p. 51, line 16-p. 54, line 12)). These facts demonstrate that estoppel has been established under these circumstances.

II. The 2004-2005 SHP does not preclude other health care providers from applying for a CON because it uses existing "facilities" as a planning unit for hospital bed need.

FMMC argues that because the 2004-2005 SHP uses existing facilities for planning purposes, it precludes new health care providers (who have no demonstrated hospital bed need under the SHP) from applying for a CON. This argument ignores the fact that the 2004-2005 SHP has qualifying language that states "*[i]t should be noted that, throughout the Plan where the term 'hospital bed need' is specified, these figures are actually based upon demand or utilization data for the general acute hospitals. Use of these planning factors is not intended to stem initiative or to suggest that facilities cannot operate at more efficient levels than used in the calculations without additional beds.*" The word 'or' is used in its ordinary sense as a disjunctive article denoting an alternative. See State v. Pilot Life Ins. Co., 257 S.C. 383, 186 S.E.2d 262 (1972). The very first definition of the term "initiative" as defined on an internet search on Google is "*enterprise: readiness to embark on bold new ventures.*" As such, the words "*[u]se of these planning factors is not intended to stem initiative*" must be construed, in their ordinary

sense, to denote that that the use of facilities as the planning unit for hospital bed need is not intended to prohibit the entry of new health care providers, who bring healthy competition and reduce costs to the patients.

It is also abundantly clear from the deposition testimony of Albert Whiteside, SCDHEC's Director of Division Planning and Certificate of Need, that the 2004-2005 SHP uses existing facilities for data on planning because they are the one source from which SCDHEC derives patient usage, not because they are the only hospitals eligible for new hospital beds. Mr. Whiteside testified that the 2004-2005 SHP was not intended to prevent a new health care provider from applying for and being approved for a CON for demonstrated hospital bed need in a particular county, and his belief was that new providers like CHS or Presbyterian Healthcare System, d/b/a Presbyterian Hospital-York, LLC ("Presbyterian") could apply for a demonstrated hospital bed need and be consistent with (and approved under) the 2004-2005 SHP. (Whiteside Depo., p. 30, line 22-p. 31, line 5; p. 31, line 22-p. 32, line 1; p. 34, line 10-p. 35, line 14; p. 46, line 22-p. 47, line 5, attached as Exhibit G to CHS' Memorandum in Support of its Motion for Summary Judgment).

Strangely, FMMC makes the argument that the interpretation of the 2004-2005 SHP offered by SCDHEC's Director of Division Planning and Certificate of Need should be ignored in favor of the interpretation offered by Joel Grice of SCDHEC, who has acknowledged in his deposition testimony that he and his staff had no authority to issue policy interpretations of the 2004-2005 SHP, and they deferred instead to the Health Planning Committee. See Reply Exhibit A attached hereto (Grice Depo., p. 33, lines 9-12; p. 35, line 23 - p. 36, line 1). FMMC argues further that Mr. Grice's (presumably unauthorized) interpretation of the 2004-2005 SHP is that hospital bed need may be freely transferred to a different "facility" in an entirely different

geographic location by the "facility" demonstrating the need. This policy interpretation is not supported by any language contained in the 2004-2005 SHP, and Mr. Grice has conceded in his sworn testimony that regardless of whether they were under common ownership, a new hospital in Rock Hill would be a separately licensed "facility." *Id.* (Grice Depo., p. 99, line 11-p. 100, line 2).

Assuming for the sake of argument that Mr. Grice's interpretation of the 2004-2005 SHP somehow trumps the interpretation given by the SCDHEC official charged with creating the 2004-2005 SHP, the interpretation is still plainly wrong, and this Court is under no obligation to follow it. Where, as here, the plain language of the statute is contrary to the agency's interpretation, South Carolina courts typically reject the agency's interpretation. *See Brown v. South Carolina Dept. of Health and Environmental Control*, 348 S.C. 507, 560 S.E.2d 410 (2002). Moreover, the deferential standard of review is applied at the appellate review stage, not at the point in which the Administrative Law Court is serving as the *de novo* finder of fact. *See Marlboro Park Hosp. v. South Carolina Dept. of Health and Environmental Control*, 358 S.C. 573, 595 S.E.2d 851 (Ct. App. 2004).

III. A remand to SCDHEC is an appropriate remedy where SCDHEC's entire decision-making process has been infected by a mistake in its determination of the 2004-2005 SHP eligibility criteria.

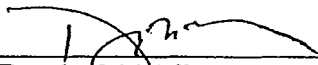
Despite filing its own, dispositive motion for summary judgment, FMMC argues that a remand to SCDHEC is an inappropriate remedy. FMMC misses the point. Should this Court find that SCDHEC erred in disqualifying CHS and Presbyterian as approvable candidates, that error went well beyond Point No. 4 of SCDHEC's May 30, 2006 decision letter, and it infected the entire SCDHEC decision-making process. The other points on which SCDHEC based its decision – that Piedmont has an existing contract with York County, that Piedmont has an

existing relationship with the community in York County, and that Piedmont can apply for 100 beds rather than 64 beds – all rest on the fact that Piedmont (rather than FMMC) is the sole, existing hospital in York County, and that Piedmont (rather than FMMC) is the “facility” eligible for a CON. Instead, none of the hospital applicants – CHS, Presbyterian, or FMMC – are existing facilities, and certainly neither CHS or Presbyterian would have an opportunity to have an existing contract with York County or to transfer beds, as they have no hospital in York County (nor can they, under SCDHEC’s analysis). SCDHEC’s entire decision-making process reflects this bias towards the “existing hospital” – not just Point No. 4 of its decision letter – and so the matter requires remand to SCDHEC because its decision-making abilities were infected by this error and must be undertaken again using a “clean slate.”

IV. Conclusion

CHS respectfully requests that its motion for summary judgment be granted and that FMMC’s motion for summary judgment be denied by this Court, and respectfully requests that these matters be remanded back to SCDHEC with instructions to deny the award of the CON to FMMC.

Respectfully submitted,



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Attorneys for Petitioner Charlotte-Mecklenburg
Hospital Authority d/b/a Carolinas HealthCare
System

June 13, 2007
Charleston, SC

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Charlotte-Mecklenburg Hospital Authority,
d/b/a Carolinas HealthCare System and
Presbyterian Healthcare System, d/b/a
Presbyterian Hospital-York, LLC,

Petitioners,

v.

South Carolina Department of Health and
Environmental Control and Amisub of
South Carolina, Inc. d/b/a Piedmont
Healthcare System d/b/a Fort Mill Medical
Center,

Respondents.

Docket No. 06-ALJ-07-0713-CC

CERTIFICATE OF SERVICE

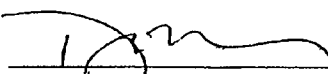
I hereby certify that on this the 13th day of June, 2007, I have served a copy of the foregoing
**Petitioner Carolinas Healthcare System's Reply Memorandum to Fort Mill Medical Center's
Memorandum in Opposition to Motion for Summary Judgment** upon the following by electronic mail
only, addressed to:

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Douglas M. Muller

CHARLESTON, SC

FILED

JUN 13 2007

CLERK OF COURT

REPLY EXHIBIT A

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Charlotte-Mecklenburg Hospital
Authority d/b/a Carolinas Healthcare
System,

Petitioner,

vs.

Case No.: 06-ALJ-07-0489-CC

South Carolina Department of Health
and Environmental Control and Amisub
of South Carolina, Inc. d/b/a Piedmont
Healthcare System d/b/a Fort Mill
Medical Center,

Respondent,

Presbyterian Healthcare System, d/b/a
Presbyterian Hospital-York, LLC,
Intervenor.

COPY

Charlotte-Mecklenburg Hospital
Authority d/b/a Carolinas Healthcare
System,

Petitioner,

vs.

Case No.: 06-ALJ-07-0490-CC

South Carolina Department of Health
and Environmental Control,
Respondent,

Amisub of South Carolina, Inc. d/b/a
Piedmont Healthcare System d/b/a
Fort Mill Medical Center and Presbyterian
Healthcare System, d/b/a
Presbyterian Hospital-York, LLC
Intervenors.

JOEL C. GRICE

Thursday, February 15, 2007

COMPUSCRIPTS, INC.

A Full-Service Court-Reporting Agency
Post Office Box 7172
Columbia, SC 29202
803-988-0086

EXHIBIT "A"

1

D E P O S I T I O N

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WITNESS: JOEL C. GRICE

3

4

DATE: Thursday, February 15, 2007

5

TIME: 10:08 a.m.

6

7

LOCATION: South Carolina Department of
Health and Environmental Control
1777 St. Julian Place
Columbia, South Carolina

9

10

TAKEN BY: Attorneys for Presbyterian
Healthcare System, d/b/a
Presbyterian Hospital-York, LLC

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REPORTED BY: EILEEN CROSS
Court Reporter

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1 APPEARANCES:

2

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HOSPITAL AUTHORITY, d/b/a CAROLINAS
HEALTHCARE SYSTEM

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3 MCNAIR LAW FIRM
4 BY: M. ELIZABETH, CRUM ESQ.
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6 Columbia, SC 29211

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9 (INDEX AT REAR OF TRANSCRIPT)

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1 they requested that the Department hold one public
2 hearing on all the applications together.

3 Q. Mr. Grice, I'm going to ask you to see if
4 you can identify this letter. It's dated October
5 the 10th, 2005. Actually, it doesn't have your
6 name on it so I'll wait and ask Ms. Fechtel about
7 this one.

8 Mr. Grice, I'm going to show you this and
9 have it marked as Exhibit 10.

10 (EXH. 10, Memorandum to Licensed Health
11 Care Providers from Joel C. Grice dated 1/25/05,
12 was marked for identification.)

13 BY MS. CRUM:

14 Q. Exhibit 10, A memorandum dated January
15 25, 2005. See if you recognize that.

16 A. Yes, I do.

17 Q. Tell me what that is, please.

18 A. It's a memorandum that I drafted on
19 January 25, 2005, to be provided to licensed
20 health care providers in the state regarding the
21 interpretation of the general hospital bed needs
22 as indicated in our current 2004-2005 South
23 Carolina Health Plan.

24 Q. And was this your interpretation of the
25 2004-2005 general hospital bed need as of January

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1 25, 2005?

2 A. It was a proposal that I made, yes, to
3 try to interpret the bedding methodology in the
4 current plan where they -- where there was some
5 specific situations, where there was a larger
6 institutional need than we had seen in previous
7 plans.

8 Q. I'm sorry. Could you say the last part
9 again.

10 A. It was a memorandum I drafted to try to
11 deal with an unusual situation that could occur
12 such as we had in York County where the bed
13 need -- an institutional bed need was higher than
14 50 beds. And it also had other interpretations.

15 Q. Tell me what other interpretation.

16 A. What it says -- but I'll be happy to read
17 it. I mean, it says what it says. But generally
18 this was a situation where I made an effort to try
19 to interpret a way that explained the evolution of
20 the Health Plan from 1999 to current. It says,
21 "In order to allow potential CON applicants to
22 participate in the health planning process
23 equitably."

24 I made a suggestion that, you know,
25 "Should an individual hospital show a positive bed

1 need calculation of less than 50 additional beds,
2 it may apply and receive CON approval for a
3 maximum of 50 additional beds."

4 And, No. 2, "Any hospital reflecting a
5 need of more than 50 additional beds may apply and
6 receive approval for the specific projected need
7 as calculated in the State Health Plan for that
8 hospital."

9 And, 3, "A CON for the net hospital bed
10 need in a county may be requested and approved for
11 any existing hospital located in the county, or
12 for any other entity/applicant, for the
13 development of a new hospital or an addition to an
14 existing hospital within that county."

15 Q. So as of January the 25th, 2005 as the
16 director of the Bureau of Health Facilities and
17 Services Development, it was your departmental
18 policy's interpretation that the State Plan
19 general bed need would allow an entity other than
20 an existing hospital to utilize any bed need more
21 than 50 beds within the county, correct?

22 A. Yes.

23 MR. ANDREWS: Object to the form.

24 BY MS. CRUM:

25 Q. Mr. Grice, Presbyterian Health Care-York

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1 everybody that the policy had been rescinded?

2 A. Workload. Just workload. I'm weeks
3 behind work today, unfortunately.

4 Q. Why was the policy rescinded?

5 A. Basically after the issuance of the
6 January 25, 2005, policy, there had been a lot of
7 discussion I think that had gotten back to the
8 Department, I think the South Carolina Hospital
9 Association, and others. And, you know, I think
10 it was really seen that our staff really didn't
11 have the authority to make an interpretation like
12 that, you know.

13 It was what I thought would be helpful,
14 but apparently something that was really beyond
15 the scope of our authority. And so in talking to
16 our general counsel, what we did, we rescinded it
17 and then said as an alternative to such a policy
18 we would get our staff to schedule a meeting with
19 the South Carolina Health Planning Committee in
20 the near future to see, you know, their
21 recommendation as to the most beneficial method
22 resolving or clarifying any future issues that may
23 occur regarding the hospital bed methodology.

24 Q. You mentioned the South Carolina Hospital
25 Association had gotten involved in the

1 interpretation. Can you tell me what you know
2 about that?

3 A. I don't know really anything. My
4 understanding is I believe it had been distributed
5 over the state, from what I understand. And this
6 is just rumors. I heard, I think, the hospital
7 association may have gotten a copy, made sure
8 members got it, and there was a lot of concern
9 throughout the state. It wasn't isolated I don't
10 think to any one particular area, but I think that
11 they -- it was probably felt that -- and perhaps
12 might have been their attorneys or whatever felt
13 that it was inappropriate.

14 Q. From whom did you hear these rumors?

15 A. I think perhaps Mr. Frishman might have
16 related to me, you know. I just knew that there
17 had been in a week's time, I think from January 25
18 to February 1, there had been a lot of discussion.
19 And the policy had circulated over the state and
20 there had been a lot of feedback.

21 Q. Mr. Grice, isn't it one of your
22 responsibilities, to interpret and apply the State
23 Plan standards to CON applications?

24 A. Yes.

25 Q. Do you know whether or not Mr. Frishman

1 met with anyone from the hospital association or
2 others with regard to the January 25, 2005, memo?

3 A. No. Not that I'm aware of, no.

4 Q. I'm sorry. You don't know?

5 A. No, I don't know. But I think he did
6 either -- I'm not -- to my knowledge there were no
7 meetings that I was aware of.

8 Q. Do you know if he had any phone calls?

9 A. I do not know.

10 Q. Or e-mails?

11 A. I do not know.

12 Q. Did you have any telephone conversations
13 with anyone, other than Mr. Frishman, regarding
14 the January 25, 2005, policy?

15 A. No.

16 Q. Prior to writing this March 3 memorandum,
17 other than with the Department's general counsel,
18 did you discuss this rescission with Mr. Hunter?

19 A. Yes. I think Mr. Hunter reviewed the
20 memo before it went out. I did have a brief
21 meeting with him and with Carl Roberts, our
22 general counsel of DHEC, and it was seen that this
23 was really a better -- a more legal way. It was
24 apparently more appropriate to let the Health
25 Planning Committee make some type of decision

1 rather than our staff.

2 Q. Do you remember approximately when that
3 meeting was?

4 A. It would have been probably February 1.
5 The memo says that this revised decision was made
6 February 1. I think that was the day that we
7 probably met.

8 Q. What was the issue that needed resolution
9 and clarification regarding the hospital bed need
10 methodology interpretation? Was it whether or not
11 someone other than a specific institution
12 generating the need could apply if the need was
13 over 50 beds?

14 MR. ANDREWS: Object to the form.

15 THE WITNESS: That would be one of the
16 issues. Specifically, in the January 25
17 memorandum, it's really item No. 3 that we really
18 I think show the variability there because, when
19 we look at 1 and 2, those are generally what you
20 would have the authority to do in the current
21 Health Plan. But No. 3 gave a little variation
22 there.

23 As I mentioned earlier, I don't think
24 this question would ever come up if you -- until
25 you had a bed need of more than 50 beds. There

1 care facilities and services, at best meet public
2 need, ensure there are high quality services
3 provided in facilities, and to try to, I think --
4 I guess there's one more. I can't remember the
5 other one exactly, but it's got -- I guess try to
6 ensure that -- let me look here a second.

7 Prevent unnecessary duplication of health
8 facilities and services is the fourth one. And
9 these are stated in Section 101 of Regulation
10 61-15.

11 Q. Assume for me a minute, Mr. Grice, that
12 in fact the AMISUB Fort Mill Medical Center
13 hundred bed hospital is built, it would be -- it
14 would have to have a separate hospital license
15 from Piedmont, wouldn't it?

16 A. Yes. Every hospital is licensed
17 separately.

18 Q. The thing would be they would have a
19 common ownership?

20 A. They would. The licensee would be
21 identical just like Greenville Hospital Systems
22 has four or five hospitals separate licensed under
23 the same licensee.

24 Q. But that the hospital should be
25 separately licensed and would be distinct

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1 facilities?

2 A. That's correct.

3 Q. Let me ask you to look again at 74-R.

4 Not again. I haven't asked you to look at that
5 one yet. It's Exhibit 15, page 74-R.

6 A. Okay.

7 Q. Would it be fair to say that the
8 sentiment in York County was that they wanted
9 competition?

10 MR. ANDREWS: Object to the question.
11 Moving beyond the bounds of the discovery order.

12 MS. CRUM: I'm asking the question -- I
13 think that goes to the intent as to whether or not
14 the CON Act itself envisions competition.

15 MR. ANDREWS: What does that have to do
16 with this case?

17 BY MS. CRUM:

18 Q. Let me address you to the second column,
19 Mr. Grice, the second paragraph, the first full
20 paragraph and the second paragraph. Just read
21 them into the record, please.

22 A. That's the second column?

23 Q. Starting at the right with "Piedmont
24 Medical Center."

25 A. "Piedmont Medical Center has 471 pages of

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REPLY EXHIBIT B

1 STATE OF SOUTH CAROLINA
2 ADMINISTRATIVE LAW COURT

3 CHARLOTTE-MECKLENBURG HOSPITAL
4 AUTHORITY D/B/A CAROLINAS
5 HEALTHCARE SYSTEM,

6 Petitioner(s),

7 vs. Case No. 06-ALJ-07-0489-CC

8 SOUTH CAROLINA DEPARTMENT
9 OF HEALTH AND ENVIRONMENTAL
10 CONTROL AND AMISUB OF SOUTH
11 CAROLINA, INC., D/B/A PIEDMONT
12 HEALTHCARE SYSTEM D/B/A
13 FORT MILL MEDICAL CENTER,

COPY

14 Respondent(s),

15 PRESBYTERIAN HEALTHCARE SYSTEM, D/B/A
16 PRESBYTERIAN HOSPITAL - YORK, LLC,

17 Intervener(s).

-----X

18 CHARLOTTE-MECKLENBURG HOSPITAL
19 AUTHORITY D/B/A CAROLINAS
20 HEALTHCARE SYSTEM,

21 Petitioner(s),

22 vs. Case No. 06-ALJ-07-0490-CC

23 SOUTH CAROLINA DEPARTMENT
24 OF HEALTH AND ENVIRONMENTAL
25 CONTROL,

Respondent(s),

AMISUB OF SOUTH CAROLINA, INC. D/B/A
PIEDMONT HEALTHCARE SYSTEM D/B/A
FORT MILL MEDICAL CENTER AND
PRESBYTERIAN HEALTHCARE SYSTEM D/B/A
PRESBYTERIAN HOSPITAL - YORK, LLC,

Intervenor(s).

-----X

EXHIBIT "B"

DEPOSITION

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WITNESS: F. DEL MURPHY, JR.

DATE: Wednesday, April 25, 2007

TIME: 11:06 a.m.

LOCATION: Moore & Van Allen
100 North Tryon Street, 47th Floor
Charlotte, North Carolina

TAKEN BY: Attorneys for the Respondent(s)

REPORTED BY: SHERI L. BYERS
Registered Professional Reporter

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1 Q. Okay. Mr. Murphy, do you recall writing this
2 letter?

3 A. Yes.

4 Q. Look at the second paragraph, first sentence
5 that says, "We have reviewed the DHEC staff comments
6 provided at the public hearing in Columbia on May 23rd,
7 2005."

8 You did not attend that public hearing, I
9 take it, from your earlier --

10 A. I don't believe I did, no.

11 Q. But somebody from Carolinas did?

12 A. I believe so.

13 Q. Do you recall who it was?

14 A. My recollection was it was Greg Bass, and I'm
15 vague on it, it could have been someone from our system
16 in Charleston, the Roper St. Francis system. I
17 remember it was either Greg or someone from there
18 attended on our behalf.

19 Q. Okay. Do you recall whether you, yourself,
20 personally looked at the DHEC staff comments?

21 A. Yes, I did.

22 Q. All right. And do you remember what they
23 said?

24 A. I remember there were some clarifying
25 language on the application -- on bed need and, you

1 know, this last -- this last sentence, "We are
2 supportive of the efforts to allow any entity to apply
3 for new hospital beds when a need for additional beds
4 is indicated." And I think we felt it provided clarity
5 on the issue.

6 Q. All right. Now, you've been -- you've
7 already testified that you talked with Mr. Grice about
8 whether Carolinas could apply or not, and had you
9 already been given that assurance by the time you wrote
10 this letter?

11 A. Yes.

12 Q. Okay. And the -- let me pass out Exhibit 30.
13 It's already been marked as Exhibit 30 to these
14 depositions.

15 Take a look at this, if you will, Mr. Murphy.
16 Are these the DHEC staff comments that you reference in
17 your May 27 letter?

18 A. I believe so.

19 Q. Just take your time and read through them to
20 yourself, satisfy yourself.

21 A. Okay.

22 Q. Okay. Do these appear to be the staff
23 comments that you reference in your May 27 letter?

24 A. Yes.

25 Q. And do these comments appear to you to be

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1 consistent with the January 25th memo from Mr. Grice
2 that we looked at a minute ago?

3 And in particular, I'd ask you to look at
4 number 3 at the bottom of the page.

5 MR. MULLER: Object to the form of the
6 question, but you can answer it.

7 THE WITNESS: So your question was: Are
8 these comments consistent with number 3?

9 MR. WESTBROOK: Correct, that's my question.

10 MR. MULLER: Same objection, but you can
11 answer it.

12 THE WITNESS: They seem to be. They seem to
13 be clarifying the application in terms of who could
14 apply when there's a bed need.

15 BY MR. WESTBROOK:

16 Q. All right. Now, going back to your May 27
17 letter, which is Exhibit 35, the first sentence of that
18 letter begins on March 31, 2005, "The South Carolina
19 State Health Planning Committee voted to seek public
20 comment on the hospital bed need section of the
21 2004-2005 State Health Plan."

22 Do you see where it says that?

23 A. Yes.

24 Q. Okay. And this seems obvious, but my
25 question is, this May 27th letter, is this your

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1 mind that led you to believe that that we haven't
2 talked about today, right?

3 A. I don't believe so.

4 MR. WESTBROOK: Okay. All right. I don't
5 have any other questions. Thanks.

6 MS. CRUM: I've got just a few questions,
7 Mr. Murphy. I'm Liz Crum and I'm here on behalf of
8 Presbyterian.

9 EXAMINATION

10 BY MS. CRUM:

11 Q. Mr. Westbrook has asked you a series of
12 questions with regard to whether or not you, and when I
13 say "you," I'm talking about Charlotte-Mecklenburg,
14 believed it could apply for the CON application. Do
15 you remember those lines of questions?

16 A. Yes.

17 Q. Okay. Now, isn't the only reason an
18 applicant would ever apply for a CON is so that they
19 could be approved?

20 A. Absolutely.

21 Q. Okay. And inherent in the ability to apply
22 for a CON application is the ability to be approved for
23 it, isn't it?

24 A. Absolutely.

25 Q. Okay. Now, any time during the review

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1 process after the CON applications of
2 Charlotte-Mecklenburg, Presbyterian and Hospital
3 Partners were filed on March 11th of '05, did DHEC ever
4 tell you that you were not eligible to be approved
5 because of a State Health Plan provision?

6 A. No.

7 Q. Do you remember conversations with Mr. Grice
8 or others from DHEC where they stated that it was the
9 Department's intent to approve the application that
10 best met the needs of the public?

11 A. Yes.

12 Q. Okay. And do you remember those
13 conversations occurring after the November 3rd, 2005,
14 memo was sent out? And that's Exhibit 13, if you want
15 to refer to Exhibit 13.

16 A. This memo was November, and the last time we
17 met with Joel and Mary and Sally was when they came up
18 and we again went through the different review criteria
19 and talked to them about, you know, our application,
20 why we felt we should be approved and, you know, they
21 sat and listened. So we did have discussion after this
22 November 3rd.

23 I don't remember other than that May visit,
24 there was probably another visit sometime between
25 November and that final May visit they made up here to

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1 Charlotte.

2 Q. The memo that you're referring to, Exhibit
3 13, was November 2005, and was the May visit 2006?

4 A. If I'm remembering correctly, the decision
5 was May of '06, and their visit was early that month.
6 And that -- the purpose of that visit, they wanted to
7 come up and look at the -- you know, do site visits to
8 the Presbyterian campus in Huntersville, I believe, and
9 they wanted to do a site visit at our CMC Pineville
10 campus and get a feel for our facilities and that type
11 thing.

12 Q. Mr. Murphy, do you remember at or about the
13 time of the project review hearing in March of 2006,
14 that Mr. Grice publicly stated that the applicant that
15 would be awarded the CON was the one that best met the
16 needs of the public?

17 MR. WESTBROOK: Object.

18 THE WITNESS: Yes.

19 MS. CRUM: Okay. Thank you, Mr. Murphy. I
20 don't have any additional questions.

21 MR. WESTBROOK: I just have a couple of
22 follow-ups.

23 REEXAMINATION

24 BY MR. WESTBROOK:

25 Q. Ms. Crum asked you whether you recall DHEC

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1 saying that -- DHEC or Mr. Grice saying that they
2 intended to approve the application that best met the
3 needs of the public, you said you didn't recall that.

4 A. I remember it seems on multiple occasions
5 Joel made the statement that, you know, that these
6 applications -- and I don't remember the word -- if the
7 word was "approvable" or not, but I remember him saying
8 that, you know, these were all applications that met
9 the review criteria and were deemed complete. And I
10 took from that anyone could be approved. And, you
11 know, that's my recollection.

12 Q. Do you have a specific recollection of
13 Mr. Grice saying what Ms. Crum asked you?

14 A. I do. You know, like I say, during -- it
15 seems like there was a point where he did say something
16 about the needs of the public.

17 Q. Do you recall when that point was or what the
18 forum was that he said that, whether it was a private
19 meeting or public meeting or who was there, anything
20 like that?

21 A. It seems like he said it at the project
22 review because it seemed like I remember a newspaper
23 article about the project review right after that and
24 that was in there.

25 Q. All right. So you attended the project

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1 review meeting?

2 A. Yes.

3 Q. Did you attend all of it?

4 A. Yes.

5 Q. And heard all the presentations?

6 A. Yes.

7 Q. And it's your memory, then, if I understand
8 this correctly, that at the project review meeting,
9 Mr. Grice said that he was going -- or DHEC would
10 approve the application that best met the needs of the
11 public; is that your memory?

12 A. That is.

13 Q. All right. Is it your understanding that
14 DHEC can only approve an application that complies with
15 the State Health Plan?

16 A. Yes.

17 MR. MULLER: Object to the form of the
18 question, but you can answer it.

19 THE WITNESS: Well, based on their letter,
20 that seems to be their interpretation.

21 BY MR. WESTBROOK:

22 Q. Were you aware before that letter that an
23 application had to comply with the State Health Plan to
24 be approved?

25 A. Yes. Right. Yes.

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