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THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

Appellate Case No. 2018-001701
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 ..... Petitioner.

APPENDIX – VOLUME IV OF V

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STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

The 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 NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**

PLEASE TAKE NOTICE that the above-named Petitioner, The Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas HealthCare System ("CHS"), by and through its undersigned attorneys, and pursuant to Rules 19 and 68 of the Rules of Procedure for the Administrative Law Court and Rules 10(c) and 56 of the South Carolina Rules of Civil Procedure, will move before the Presiding Judge of the Administrative Law Court, at such place, date and time as the parties may be heard, for an Order granting summary judgment in its favor in these contested cases involving a Certificate of Need to build and operate a new hospital in York County, South Carolina and remanding the cases back to the South Carolina Department of Health and Environmental Control with instructions to deny the award of the Certificate of Need to Amisub of South Carolina, Inc. d/b/a Piedmont Healthcare System d/b/a Fort Mill Medical Center. The grounds for this motion are set forth in the attached memorandum of law, which is submitted simultaneously herewith and incorporated as if fully set forth herein.

PLEASE BE PRESENT TO DEFEND IF SO MINDED.

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SC ADMIN. LAW COURT

Respectfully submitted,

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February 18, 2009

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STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

The 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 **MEMORANDUM OF PETITIONER CAROLINAS HEALTHCARE SYSTEM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Petitioner, The Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas HealthCare System ("CHS"), submits this memorandum in support of its motion for summary judgment pursuant to Rules 19 and 68 of the Rules of Procedure for the Administrative Law Court and Rules 10(c) and 56 of the South Carolina Rules of Civil Procedure.

I. INTRODUCTION

These seemingly complex contested cases arise from a dispute over who should be granted a Certificate of Need ("CON") to fill a sixty-four (64) hospital-bed-need in York County, South Carolina. The contested case initially filed by CHS has now been pending since June of 2006 – a period of almost three (3) years – and it has involved two (2) phases of discovery, hundreds of discovery requests, thousands of pages of documents produced in discovery, various discovery motions, and numerous depositions. Throughout the proceedings, the Respondents – Amisub of South Carolina, Inc.

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("Amisub") and the South Carolina Department of Health and Environmental Control ("DHEC") – have consistently maintained that CHS is ineligible to receive a CON to construct a new hospital because CHS' application does not comply with the 2004-2005 South Carolina State Health Plan (the "State Health Plan"). What discovery has revealed, and what CHS will indisputably demonstrate in this memorandum, is that even taking the Respondents' position as correct,[1] Amisub's own application did not comply with the State Health Plan, and DHEC's decision to award a CON to Amisub to construct a new hospital was erroneous and should be reversed as a matter of law and remanded.

II. STATEMENT OF UNCONTESTED MATERIAL FACTS

Amisub's Three (3) CON Applications and the Joel Grice Memo:

On October 15, 2004, the State Health Plan relevant to this matter went into effect. A formula set out in the State Health Plan identified that an additional sixty-four (64) hospital beds were needed in York County, South Carolina based upon the population growth in this county. As of October 15, 2004 and through today, there is only one (1) hospital currently located and operating in York County – Piedmont Medical Center, in Rock Hill.

On November 22, 2004, Amisub filed its first CON application to build a new hospital containing sixty-four (64) hospital beds in York County. On January 24, 2005, Amisub withdrew this 64-bed application and submitted a second CON application for sixty-four (64) hospital beds in Fort Mill. Both the first and second CON applications had an identical project cost of $107,158,233, but the first application listed "Fort Mill

[1] CHS vigorously disputes the Respondents' legal position on the ineligibility of CHS to be approved but, for the limited purpose of this summary judgment motion, is taking the position that even if Respondents' position is correct, DHEC's decision to award the CON to Amisub was erroneous as a matter of law.

Medical Center, Inc." as the applicant, and the second application listed "Amisub of South Carolina, Inc." as the applicant.[2]

These Amisub CON applications lead to inquiries by other interested applicants. At the time, Joel Grice was the Director of Bureau of Health Facilities and Services Development at DHEC, and he was responsible for administering DHEC's CON program. Based on inquiries from hospitals interested in applying for the bed need indicated in the State Health Plan, on January 25, 2005, Mr. Grice issued a memorandum entitled "*Departmental Policy Interpretation Relative to Determination of General Hospital Bed Need as Indicated in the 2004-2005 South Carolina Health Plan*" (the "Grice Memo").[3] In the Grice Memo, DHEC took the position (in Point No. 3) that "[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." (Emphasis supplied).

In response to the Grice Memo, Charles Miller, the Chief Executive Officer ("CEO") of Piedmont Medical Center, arranged for a private meeting with the top-level agency staff at DHEC, including the DHEC Commissioner, Earl Hunter, DHEC's legal counsel and one (1) other DHEC staff member. He was accompanied by Amisub's lawyers and a South Carolina State Senator. Mr. Miller testified that the purpose of the meeting was to discuss Point No. 3 of the Grice Memo.[4] Mr. Miller has testified that he advanced his position that because only "***Piedmont Medical Center***" demonstrated the

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2 See Exhibit A (Excerpts from December 2004 and February 2005 South Carolina State Register).

3 See Exhibit B (DHEC Memorandum of January 25, 2005).

4 See Exhibit C (Miller Depo. (January 29, 2009), p. 15, ln. 17 – p. 17, ln. 4); Exhibit K (Amisub 30(b)(6) Depo. (Charles Miller - January 28, 2009), p. 157, ln. 4 – p. 162, ln. 15; p. 176, ln. 3 – p. 177, ln. 16; p. 192, ln. 17 – p. 193, ln. 19).

need for new beds under the 2004-2005 State Health Plan, only "***Piedmont Medical Center***" was eligible for new beds. Mr. Hunter indicated to them that he would take their position into consideration.

Mr. Grice's immediate superior, Deputy Commissioner Leon Frishman, testified that he was contacted by the DHEC Commissioner, Earl Hunter, who told him that based on a meeting with "Mr. Andrews" (Amisub's lawyer, Stuart Andrews), DHEC was going to "reconsider" its policy, and the Grice Memo should be rescinded.[5] According to Mr. Grice, the Grice Memo was rescinded on February 1, 2005 – just five (5) business days after it was issued – but he did not send a formal memorandum announcing its rescission until March 3, 2005. He attributed the delay to his "workload".[6] Mr. Grice testified that existing hospitals within the State of South Carolina, "applicants" at the time and "anyone who requested it" would have received the rescission memo, but he did not believe health care providers from other states or parties that had not yet applied for a CON would have received it.[7] His March 3, 2005 memo indicated only that DHEC would conduct hearings of the State Health Planning Committee "*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*".[8] Leon Frishman, Mr. Grice's boss, testified that even after the March 3rd recission memo, he still agreed with the content of the Grice Memo.[9]

In response to Amisub's second application and in the absence of any firm indication that they could not apply, three (3) other applicants – CHS, Presbyterian

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5 See Exhibit D (Frishman Depo. (September 29, 2008), p. 13, ln. 14 - p. 14, ln. 13.
6 See Exhibit E (Grice Depo. (February 15, 2007), p. 32, ln. 21 - p. 33, ln. 3.
7 See id. Exhibit E (Grice Depo. (February 15, 2007), p. 32, ln. 5 - p. 34, ln. 20.
8 See Exhibit F (DHEC Memorandum of March 3, 2005).
9 See Exhibit D (Frishman Depo. (September 29, 2008), p. 11, ln. 21 - p. 22, ln. 9.

Healthcare System d/b/a Presbyterian Hospital – York ("Presbyterian") and Hospital Partners of America ("HPA") – each timely filed a CON application on March 11, 2005 to build and operate a new hospital in Fort Mill with sixty-four (64) hospital beds. CHS' CON application, Presbyterian's CON application, and HPA's CON application were subsequently deemed by DHEC to be "competing" with Amisub's CON application.

Faced with three (3) "competing" applicants for a sixty-four (64) bed hospital, Amisub's staff and its lawyers entered into a series of private meetings with Mr. Grice and DHEC staff that were intended to determine whether Amisub could withdraw its second CON application and submit a third CON application for a one-hundred (100) bed hospital.[10] Mr. Grice has testified that he viewed a one hundred (100) bed hospital more favorably than a sixty-four (64) bed hospital.[11] In order to submit an application for a one-hundred (100) bed hospital, Amisub would be required to transfer beds from its existing facility in Rock Hill – Piedmont Medical Center – to a new facility to be built in Fort Mill.

On October 5, 2005, Amisub withdrew its second CON application to build and operate a sixty-four (64) bed hospital in York County, and the next day it filed a second CON application to build and operate a one-hundred (100) bed hospital in York County, which included its initial request for sixty-four (64) hospital beds, together with the transfer of an additional thirty-six (36) hospital beds from Amisub's existing hospital, Piedmont Medical Center, in Rock Hill (also in York County). This new hospital facility was to be called the "Fort Mill Medical Center." This third CON application had a project cost of $124,493,883, an increase of over $17 million from the two (2) previous

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10 See Exhibit G (Affidavit of Stuart Andrews dated June 6, 2007).

11 See Exhibit E (Grice Depo. (October 27, 2008), p. 21, ln. 21 - p. 22, ln. 19).

sixty-four (64) bed applications. By contrast, the project cost for CHS' sixty-four (64) bed hospital CON application was only $73,421,664, or roughly $51 million less.[12]

DHEC's Decision Letter:

On May 30, 2006, following DHEC project review in March of 2006, DHEC issued a letter to Amisub approving its CON application to build and operate a one-hundred (100) bed hospital in York County, and issued separate but identical letters to CHS, Presbyterian, and HPA denying their respective CON applications to build and operate a sixty-four (64) bed hospital in York County (collectively the "Decision Letter"). DHEC's Decision Letter set forth four (4) grounds for approving a CON for Amisub and not for the other applicants – they were as follows:

1. As the existing licensee of Piedmont Medical Center in Rock Hill, Amisub was required to comply with an existing contract with York County, and the new Fort Mill Medical Center "*must operate*" within all parameters of the existing contract, which include: (a) keeping charges within the range of a "peer group" of hospitals; and (b) providing various benefits to York County, including setting up an advisory board, sending quarterly financial reports to York County, maintaining a county-wide EMS service, and making certain required community investments and charitable donations;

2. The development of a one-hundred (100) bed hospital was more efficient and led to "economies of scale," making it better than a sixty-four (64) bed hospital;

3. Because the applicant, which DHEC identified as "PMC," had been operating in York County "for more than two decades," it has demonstrated a greater commitment to the community; and

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[12] See Exhibit H (DHEC Record, pp. 000856-000857, 001001-001002 – Certificate of Need Summary Sheets for Amisub and CHS).

4. Finally, under DHEC's interpretation of the State Health Plan, only Amisub was eligible to be approved for a new hospital, as the "*bed need for York County...is based on **Piedmont Medical Center** as the planning unit, not York County.*" (Emphasis supplied). The Decision Letter went on to state that "*[t[he number of beds needed is based on the service area and market share of **Piedmont Medical Center**, not the entire medical patient population of York County.*" (Emphasis supplied).[13]

The York County Contract With Amisub:

The Contract between York County and Amisub (the "York County Contract")[14] is significant in several respects. First, at the time the Decision Letter was issued in May of 2006, it did not contain any reference to "Fort Mill Medical Center," and throughout its numerous addendums (including those executed after the Decision Letter), the "Hospital" defined in the York County Contract continues to be defined as only "Piedmont Medical Center" in Rock Hill, and no other hospital. The only reference to Fort Mill Medical Center is contained in a recital in the Ninth Addendum, which was not executed until June of 2006 and which contains no operative provisions binding the new hospital to the York County Contract.[15]

Secondly, Piedmont Medical Center's CEO, Mr. Miller, has acknowledged that all of the obligations of Amisub contained in the York County Contract will remain binding on Amisub even if it is not granted the CON to build a new hospital.[16]

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[13] See Exhibit I (DHEC Decision Letter of May 30, 2006).

[14] See Exhibit J (The York County Contract and the Sixth, Eighth and Ninth Addenda are collectively contained in Exhibit J).

[15] As a general rule, recitals in a contract, such as 'whereas' clauses, are merely explanations of the circumstances surrounding the execution of the contract, and are not binding obligations unless referred to in the operative provisions of the contract. 17A C.J.S., Contracts § 317 (1999); see generally DeMorais v. Wisniowski, 81 Conn. App. 595, 841 A.2d 226 (2004) (and cases from multiple jurisdictions cited therein).

[16] See Exhibit K (Amisub 30(b)(6) Depo. (Charles Miller - January 28, 2009), p. 191, ln. 24 - p. 192, ln. 6).

Lastly, and most significantly, a plain reading of the York County Contract reveals that Amisub's only obligation with respect to charges is to ensure that it is not the highest among a "peer group" of regional hospitals. The addition of the "peer group" charge structure was not made until the Sixth Addendum in August of 1995, and further charge restrictions were placed on Amisub in an Eighth Addendum in June of 2004 because it "self-reported" that its charges were too high, after being prompted by a York County citizen's lawsuit in 2003.[17] These overcharges resulted in another addition to the York County Contract that required the establishment of community benefits payable to charities in York County for only five (5) years, which was intended to make York County "more comfortable" to remedy the overcharge situation, but which benefits expire in June of 2009.[18] Ironically, this "peer group" of regional hospitals with whom Amisub's charges must be consistent includes two of CHS' hospitals in the Charlotte area, Carolinas Medical Center and Carolinas Medical Center-Mercy, which have been serving York County residents for many years.

Piedmont Medical Center as a Distinct "Facility" and Bed Need:

DHEC's CON department staff members have consistently testified in their deposition testimony that the State Health Plan only allows the award of a CON for new beds to the "facility" identified in the State Health Plan because the planning unit is by "facility" rather than by county.[19] In DHEC's May 30, 2006 denial letter to CHS, it noted that "*[t]he [State Health Plan] uses individual facilities in the unit calculation of bed*

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[17] See id. Exhibit K (Amisub 30(b)(6) Depo. (Charles Miller - January 28, 2009), p. 48, ln. 2 - p. 50, ln. 5; p. 106, ln. 19 - p. 110, ln. 17).

[18] See infra n. 13.

[19] See, e.g., Exhibit E (Grice Depo. (February 15, 2007), p. 107, ln. 21 - p. 109, ln. 10); Exhibit L (DHEC Rule 30(b)(6) Depo. - Joel Grice (November 11, 2008), p. 11, ln. 23 - p. 12, ln. 1); Exhibit E (Grice Depo. (October 27, 2008), p. 79, ln. 23 - p.80, ln. 4); Exhibit M (Fechtel Depo. (September 29, 2008), p. 30, lns. 9 - 16; p. 58, ln. 4 - p.59, ln. 8).

*need...therefore, the bed need for York County, as indicated in the [State Health Plan], is based on **Piedmont Medical Center** as the planning unit, not York County."*[20] (Emphasis supplied).

The State Health Plan's formula identifies a sixty-four (64) bed need only for the expansion of Piedmont Medical Center in Rock Hill. DHEC's CON department staff members have acknowledged that the State Health Plan does not establish a bed need for a new hospital facility like the Fort Mill Medical Center in Fort Mill, which is in a different location.[21] Despite this position, DHEC's CON department staff members have testified that they interpreted the State Health Plan to mean that because only Piedmont Medical Center has generated the bed need, no other applicant is eligible to receive a CON, and thus, only Amisub (the licensee for both Piedmont Medical Center and Fort Mill Medical Center) could be approved for those beds and such approval be consistent with the State Health Plan.[22] DHEC's CON department staff members acknowledge that each facility requires separate licenses,[23] but they maintain (despite the absence of any provision in the State Health Plan supporting it) that DHEC's "internal policy" in the past

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20 See Exhibit I (DHEC Decision Letter of May 30, 2006, ¶ 4).

21 See, e.g., Exhibit N (Whiteside Depo., p. 126, lns. 18 - 24).

22 See, e.g., Exhibit M (Fechtel Depo. (February 16, 2007), p. 22, lns. 14 - 17; Fechtel Depo. (September 29, 2008), p. 29, lns. 21 - 24; p. 30, lns. 9 - 16; p. 33, lns. 3 - 14; p. 35, lns. 12 - 15; p. 58, lns. 4 - 8, 16-21; p. 59, lns. 2 - 8); Exhibit O (Shelton Depo. (March 15, 2007), p. 45, lns. 14 - 20; p. 46, lns. 16 - 20); Shelton Depo. (November 19, 2008), p. 17, lns. 7 - 15); Exhibit E (Grice Depo. (October 27, 2008), p. 61, lns. 2 - 5; p. 79, ln. 23 - p. 80, ln. 4; Exhibit L (DHEC Rule 30(b)(6) Depo. – Joel Grice (November 11, 2008), p. 7, lns. 10 - 13; p. 11, ln. 23 - p. 12, ln. 1); Exhibit E (Grice Depo. (February 15, 2007), p. 72, lns. 17 - 23; p. 77, ln. 17 - p. 78, ln. 4).

23 See, e.g., Exhibit M (Fechtel Depo. (February 16, 2007), p. 60, ln. 25 - p. 61, ln. 8; Fechtel Depo. (September 29, 2008), p. 31, lns. 3 - 25; p. 50, lns. 6 - 22); Exhibit P (Gibbs Depo. (November 19, 2008), p. 6, lns. 8 - 15; Gibbs Depo. (April 26, 2007), p. 14, lns. 16 - 23).

has been to allow a licensee to transfer bed need from one licensed facility to another, to-be-built hospital facility.[24]

Necessity of Compliance with the 2004-2005 State Health Plan:

According to Mr. Grice's testimony, he did not decide that the other three (3) applicants were ineligible until "the last few weeks" before the decision was made, but he felt that he did not have the authority to approve a CON application that was "inconsistent" with the State Health Plan.[25] In a later affidavit provided to this Court, Mr. Grice insisted that "*State law prohibits [DHEC] from approving any CON application unless it complies with the South Carolina Health Plan*".[26]

III. STANDARD OF REVIEW

Rule 68 of the Administrative Law Court Rules provides that "[t]he South Carolina Rules of Civil Procedure may, where practicable, be applied in proceedings before the Court to resolve questions not addressed by these rules." Rule 56 of the South Carolina Rules of Procedure provides that summary judgment shall be granted if it is shown "that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." S.C.R.Civ. 56; see also Gadson v. Hembree, 364 S.C. 316, 613 S.E.2d 533 (2005). While the Court, when reviewing a motion for summary judgment, must construe all ambiguities, conclusions and inferences arising from the evidence against the moving party, the non-moving party may not rest upon mere allegations or denials of the pleadings. See Byers v. Westinghouse Elec. Corp., 310

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[24] See, e.g., Exhibit L (DHEC Rule 30(b)(6) Depo. – Joel Grice (November 11, 2008), p. 6, ln. 20 - p. 7, ln. 13; p. 18, lns. 19 - 25; p. 72, lns. 5 - 10).

[25] See Exhibit E (Grice Depo. (October 28, 2008), p. 245, ln. 18 - p. 247, ln. 20); Grice Depo. (February 15, 2007), p. 160, ln. 22 - p. 162, ln. 20).

[26] See Exhibit Q (Second Affidavit of Joel Grice dated June 6, 2008, ¶ 4).

S.C. 5, 425 S.E.2d 23 (1992); S.C.R. Civ. P. 56(e); Moody v. McLellan, 295, S.C. 157, 163, 367 S.E.2d 449, 452-53 (Ct. App. 1988). Summary judgment should be granted "when plain, palpable and undisputed facts exist on which reasonable minds cannot differ." Bayle v. S.C. Dept. of Transp., 344 S.C. 115, 120, 542 S.E.2d 736, 738 (Ct. App. 2001).

Here, the continued discovery of this case in Phase II of the bifurcated procedure again establishes "plain, palpable and undisputed facts" that render summary judgment in favor of the Petitioners appropriate. As this Court is aware, the parties previously submitted motions for summary judgment on various issues in Phase I of this case with arguments being held, and this Court ultimately denying those motions. A denial of a motion for summary judgment, however, does not establish the law of the case. Brown v. Pearson, 326 S.C. 409, 416-17, 483 S.E.2d 477, 481-82 (Ct. App. 1997). The issues raised in the earlier motions may be raised later in the proceedings, as such is the case here, by another motion for summary judgment. Id.

IV. ARGUMENT AND CITATION OF AUTHORITY

As further explained below, DHEC's decision to award Amisub a CON for the construction of the new hospital in York County is neither supported by its interpretation of the State Health Plan nor by any reasonable interpretation of the State Health Plan and is, thus, erroneous as a matter of law. Fort Mill Medical Center does not, as a matter of law, have a demonstrated bed need in the State Health Plan. Furthermore, neither a bed need identified for Piedmont, nor existing, licensed beds at Piedmont, can be transferred to Fort Mill Medical Center, a yet-to-be established, separately licensed facility that is not an operating business and that is intended to be built in Fort Mill.

A. **Fort Mill Medical Center does not have a demonstrated bed need in the State Health Plan and cannot, as a matter of law, be entitled to the award of the CON.**

A mandatory prerequisite to the issuance of a CON is compliance with the State Health Plan. South Carolina's Certificate of Need Act (S.C. Code Section 44-7-210(C)) provides that DHEC "*may not issue a CON unless an application complies with the State Health Plan, Project Review Criteria, and other regulations.*" Regulation 61-15, Section 802, of the South Carolina Regulations ("S.C. Regs. 61-15"), further provides that a CON application "*shall not be approved unless it is in compliance with the State Health Plan.*"

S.C. Regs. 61-15 governs the implementation of the State Health Plan, and it defines the terms that are used in that Plan. The term "facility" in S.C. Regs. 61-15 equates to the term "hospital," and refers to only a single hospital, not a hospital "system." Specifically, S.C. Regs. 61-15 provides, in pertinent part, as follows (with our emphasis supplied in bold below):

> *SECTION 102. Applicability*
>
> *1. A person or **healthcare facility** as defined in this Regulation is required to obtain a Certificate of Need from the Department of Health and Environmental Control before undertaking any of the following:*
>
> *a. The construction or other establishment of a new **healthcare facility**;....*
>
> *SECTION 103. Definitions*
>
> *...13. **Healthcare facility** means acute care **hospitals**, psychiatric hospitals, alcohol and substance abuse hospitals, tuberculosis hospitals, nursing homes, kidney disease treatment centers (including freestanding hemodialysis centers), ambulatory surgical 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 or state law ....*
>
> *15. **Hospital** means a facility organized and administered to provide services to*

accommodate two or more non-related persons for the diagnosis, treatment and care of such persons over a period exceeding 24 hours and provides medical or surgical care or nursing care of illness, injury, or infirmity and may provide obstetrical care, and in which all diagnoses, treatment, or care is administered by or under the direction of persons currently licensed to practice medicine, surgery, or osteopathy ....

The State Health Plan uses both the term "facility" and the term "hospital" when addressing bed need. The State Health Plan defines a "hospital" as follows (our emphasis is in bold): *"A 'hospital' means a **facility** organized and administered to provide overnight medical or surgical care ...."* As in S.C. Regs. 61-15, this definition in the State Health Plan makes no mention of a hospital "system," nor does it expressly indicate that bed need for a "hospital" may be met by the development of a new sister hospital, which by law must operate under a separate license and a separate Medicare provider number, in a different geographic location in a separate city from the "facility" shown in the State Health Plan.

DHEC deposition testimony establishes in this matter that Piedmont Medical Center in Rock Hill and the proposed Fort Mill Medical Center in Fort Mill will be two (2) separately licensed facilities.[27] The "facility" or "hospital" shown as demonstrating a bed need in the State Health Plan is indisputably Piedmont Medical Center in Rock Hill, South Carolina. There is no mention in the State Health Plan of a different and yet-to-be developed facility or hospital known as "Fort Mill Medical Center" in Fort Mill, South Carolina, which has no demonstrated bed need because it does not exist. The "bed need" in the State Health Plan, as strictly enforced, as it is by DHEC's own interpretation,

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[27] See, e.g., Exhibit M (Fechtel Depo. (February 16, 2007), p. 60, ln.25 - p. 61, ln. 8; Fechtel Depo. (September 29, 2008), p. 31, lns. 3 - 25; p. 50, lns. 6 - 22); Exhibit P (Gibbs Depo. (November 19, 2008), p. 6, lns. 8 - 15; Gibbs Depo. (April 26, 2007), p. 14, lns. 16 - 23).

establishes the need for sixty-four (64) *additional* hospital beds *only* in Rock Hill. As Mr. Albert Whiteside of DHEC acknowledged in his deposition, Fort Mill Medical Center in Fort Mill does not have a demonstrated bed need under the State Health Plan.[28] The very basis for DHEC's exclusion of the other three (3) applicants is that they are not the "facilities" demonstrating bed need under the State Health Plan. As such, the proposed Fort Mill Medical Center cannot, as a matter of law, receive a CON for a new, one-hundred (100) bed hospital in Fort Mill, and DHEC's finding otherwise is erroneous.

B. The State Health Plan also does not allow for a transfer of identified bed need to any facility other than that facility for which the bed need is identified.

While repeatedly acknowledging, as indicated above, that only Piedmont Medical Center has demonstrated bed need in the State Health Plan, DHEC has deliberately ignored yet another mandate of the CON Act and the State Health Plan in its attempt to support and defend its errant approval of the CON to Fort Mill Medical Center -- DHEC interprets the State Health Plan as allowing the hospital generating the bed need to *control* and/or monopolize that bed need to the extent that it may either develop that bed need, itself, or make its own decision to transfer that bed need to another facility.[29] There is, however, simply no provision in the State Health Plan for any transfer of an identified bed need for one facility to be applied to another, yet-to-be constructed facility. Mr. Joel Grice acknowledged in his deposition on October 28, 2008, that there is no provision in the State Health Plan that allows for the transfer of the sixty-four (64)

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28 See Exhibit N (Albert Whiteside Depo., p.126, lns. 18 - 24).

29 See Exhibit L (DHEC Rule 30(b)(6) Depo. – Joel Grice (November 11, 2008), p. 18, lns. 19 - 25; p. 72, lns. 5 - 10).

identified bed need from Piedmont Medical Center to Fort Mill Medical Center.[30] In Mr. Grice's view, the "closest" provision of the State Health Plan that could be used to authorize a transfer of an identified bed need is Section G.1.(A)(4)(h), pp. II-8-II-9, of the State Health Plan (the "Transfer Provision").[31]

The Transfer Provision provides:

> Changes in the delivery system due to health care reform have resulted in the consolidation of facilities and the establishment of provider networks. These consolidations and agreements may lead to situations where affiliated hospitals may wish to transfer beds between themselves in order to serve their patients in a more efficient manner. A proposal to transfer or exchange hospital beds requires a Certificate of Need and must comply with the following criteria:
>
> 1. A transfer or exchange of beds may be approved only if there is no overall increase in the number of beds;
> 2. Such transfers may cross county lines; however, the applicants must document with patient origin data the historical utilization of the receiving facility by residents of the county giving up beds;
> 3. Should the response to Criterion 2. fail to show a historical precedence of residents of the county transferring the beds utilizing the receiving facility, the applicants must document why it is in the best interest of these residents to transfer the beds to a facility with no historical affinity for them;
> 4. The applicants must explain the impact of transferring the beds on the health care delivery system of the county from which the beds are to be taken; any negative impacts must be detailed along with the perceived benefits of such an agreement;
> 5. The facility receiving the beds must demonstrate the need for the additional capacity based on both historical and projected utilization patterns;
> 6. The facility giving up the beds may not use the loss of these beds as justification for a subsequent request for the approval of additional beds;
> 7. A written contract or agreement between the governing bodies of the affected facilities approving the transfer or exchange of beds must be included in the Certificate of Need application;
> 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.

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[30] See Exhibit E (Grice Depo. (October 28, 2008), p. 267, lns. 8 - 20; p. 268, ln. 11 - p. 269, ln. 16; Grice Depo. (February 15, 2007), p. 66, ln. 22 - p. 67, ln. 8); Exhibit L (DHEC Rule 30(b)(6) Depo. – Joel Grice (November 11, 2008), p. 10, ln. 20 - p. 11, ln. 2; p. 15, lns. 7 – 12).

[31] See Exhibit E (Grice Depo. (October 28, 2008), p. 221, lns. 3 - 14; pp. 268 - 270).

2004-2005 South Carolina State Health Plan, Section G.1.(A)(4)(h), pp. II-8-II-9.

The Transfer Provision, however, more accurately relates, as also acknowledged by Mr. Grice, to a transfer of existing, licensed beds between two (2) existing hospital facilities that are operating businesses, as discussed more fully below. None of the circumstances outlined in the Transfer Provision exists here, and the State Health Plan does not contain any language that would support DHEC's decision to ***transfer*** identified bed need from an existing facility in Rock Hill to a new facility in Fort Mill that does not yet exist and which is not operational.

Amisub and DHEC, nevertheless, proffer that DHEC's interpretation of the State Health Plan to allow the creation of a new hospital through the use of a transfer of the identified bed need from Piedmont Medical Center to Fort Mill Medical Center is an "agency interpretation", which must be given deference by this Court. That position, however, is incorrect - where the agency's interpretation is not in accordance with the State Health Plan's plain and clear language, it is not entitled to any deference. See, e.g., Fox v. Moultrie, 379 S.C. 609, 666 S.E.2d 915 (2008). No provision in the State Health Plan allows for the proposed transfer of the identified bed need from Piedmont Medical Center to Fort Mill Medical Center, and particularly because the other applicants were excluded on this basis, DHEC's interpretation of the State Health Plan to allow such a transfer is erroneous as a matter of law.

C. The State Health Plan also does not allow a transfer of licensed beds from an existing hospital to create a new hospital.

In this case, Respondent Amisub's CON application and proposed project also relies upon the transfer of thirty-six (36) existing, licensed beds from Piedmont Medical

Center, an existing hospital facility, to the new, proposed hospital facility, Fort Mill Medical Center. This reliance is significant, as DHEC cited Amisub's ability to build a one-hundred (100) bed hospital in Fort Mill as a reason it was granted a CON over the other applicants, who only proposed sixty-four (64) bed hospitals. Mr. Grice of DHEC testified that Amisub's proposed transfer of the thirty-six (36) existing, licensed beds was approved under the "Transfer Provision" of the State Health Plan set forth above.[32]

Chief Administrative Judge Kittrell recently interpreted the Transfer Provision in a virtually identical context in the matter of Newberry County vs. South Carolina Department of Health and Environmental Control and Palmetto Health, d/b/a Palmetto Health Baptist Parkridge, Docket No. 07-ALJ-07-0486-CC and Lexington County Health Services District, Inc., d/b/a Lexington Medical Center vs. South Carolina Department of Health and Environmental Control and Palmetto Health, d/b/a Palmetto Health Baptist Parkridge, Docket No. 07-ALJ-07-0520-CC (the "Parkridge Decision").[33] Judge Kittrell reviewed the Transfer Provision and held, in an Order just recently issued on January 6, 2009 (copy attached at Exhibit R), that, when read in its plain and ordinary meaning as required by the Court, the Transfer Provision does not allow one facility to transfer licensed beds to a new hospital facility. In so holding, Judge Kittrell noted that the Transfer Provision:

> *clearly contemplates the existence of two affiliated hospitals with inpatient hospital beds who wish to transfer or exchange beds between themselves. An application for a bed transfer must be between two 'hospitals' and the need for the 'additional capacity' at the receiving 'hospital' must be demonstrated based upon both historical and projected utilization patterns. There is simply no language in the section which creates any authority for the establishment of a completely new hospital via a transfer of beds. Indeed, it is impossible for a hospital which is not*

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32 See Exhibit E (Grice Depo. (October 28, 2008), p. 221, lns. 3 - 14; pp. 268 - 270).

33 At the time of the drafting of this Memorandum, Judge Kitrell's decision in the Parkridge case has been "suspended" while he considers a Motion to Reconsider from the respondents in that case.

yet in existence to demonstrate need based upon historical data as required by the Plan . . . ."

(emphasis supplied). As in the Parkridge Decision, Amisub's CON application here does **not** contemplate the transfer of beds between two (2) **existing** hospitals, but instead seeks to create an entirely new hospital by means, in part, of a bed transfer of existing, licensed beds. Such is not in compliance with the State Health Plan, is directly contrary to Judge Kitrell's ruling, and thus, DHEC's approval of the CON to Amisub is erroneous as a matter of law.

As mentioned above, Amisub and DHEC continue to proffer that DHEC's interpretation of the State Health Plan allowing the creation of a new hospital through the use of the Transfer Provision is an agency interpretation which must be given deference by this Court. That, however, cannot be the case where an agency's interpretation contravenes clear language in the State Health Plan. As similarly held by Judge Kittrell in the Parkridge Decision, "*if the agency's interpretation is not in accordance with the statute's plain language, it is not entitled to any deference.*" (Judge Kittrell in Parkridge, citing Fox v. Moultrie, 379 S.C. 609, 666 S.E.2d 915 (2008)).

Here, in the clearest of terms, the State Health Plan does not allow an existing hospital to transfer existing, licensed beds to a yet-to-be constructed new hospital. Any CON application that proposes to do so cannot be approved as it cannot comply with the State Health Plan. Thus, Amisub's application for a CON to create a new hospital comprised of the transfer of existing, licensed beds from Piedmont Medical Center, must be denied. DHEC's decision to do otherwise is erroneous as a matter of law.

D. **The Other Factors in the Decision Letter Do Not Support the Award of a CON to Amisub Over CHS.**

As is evident from the facts, DHEC erroneously took the position that Amisub, as the "incumbent" health care provider in York County, had a decided advantage in the CON process. The factors in the Decision Letter indicate this clear bias. The first three (3) factors in the Decision Letter are also infected by DHEC's ultimate conclusion that only the existing hospital in York County is eligible for a CON.

First, only Amisub was a signatory to the York County Contract, and only Amisub could be a party to such a contract, as it was the only existing hospital in York County. Clearly, DHEC relied on this factor, without even bothering to determine that the charge restrictions placed on Amisub were intended to maintain its charges at a level consistent with CHS hospitals. DHEC did not bother to determine that the "community benefits" were as a result of overcharges by Amisub and only lasted for five (5) years, nor did DHEC note that all of the obligations in the York County Contract would remain in place even if Amisub did not obtain the CON. Other than a passing recital in a post-decision addendum, there is nothing in the York County Contract that includes the "Fort Mill Medical Center" in the definition of "Hospital" or otherwise binds it to these contractual obligations. None of the applicants could have such a contract, as they had no hospitals in York County and (in DHEC's view) were not eligible to build a hospital there.

Secondly, the factor that Amisub's CON application creates cost efficiency and "economies of scale" is clearly erroneous. Only Amisub would have been eligible (at least in DHEC's view) to build a one-hundred (100) bed hospital in York County, as it was the only applicant that could transfer beds. When the bed need specified is only

sixty-four (64) beds – and, in DHEC's view, only bed need at Piedmont Medical Center in Rock Hill - it is difficult to fathom how a project like Fort Mill Medical Center, which costs approximately $51 million more than the CHS project, would achieve "economies of scale," especially insofar as thirty-six (36) of those beds are already licensed to be at Piedmont Medical Center in Rock Hill. The cost increase to transfer these beds alone was at least $17 million when you compare Amisub's second sixty-four (64) bed CON application and Amisub's one-hundred (100) bed CON application. If anything, Amisub's one-hundred (100) bed CON application presents cost *inefficiencies* and wanton waste of existing resources.

Thirdly, the factor that Amisub has demonstrated "community commitment" by operating a hospital in the area for two decades would (if adopted as the sole factor) exclude any other new provider from entering the market. Moreover, it appears that Amisub's relationship with York County has been governed by a contract because it has engaged in past overcharges, which DHEC has completely overlooked. DHEC did not even take into account that the CHS hospitals have been serving York County residents for decades.

Lastly, if Amisub should not have been permitted to transfer beds or bed need to Fort Mill Medical Center under the State Health Plan, then the other factors are clearly irrelevant, and Amisub should not be awarded the CON.

Taken together, all three (3) factors in the Decision Letter are informed by DHEC's biased and incorrect view in its 4th factor that only Amisub, as the existing provider, should be eligible for the CON. On their face, many of these factors are ones

that new providers could not possibly meet. As such, DHEC's decision is clearly erroneous.

E. CHS adopts by reference those statements and positions of Presbyterian that are not otherwise adverse to CHS.

Pursuant to Rule 10(c), South Carolina Rules of Civil Procedure, CHS adopts by reference those statements, positions and exhibits of Presbyterian that are not otherwise adverse to CHS.

V. CONCLUSION

From the chronology of the applications and the events of this contested case, it is apparent that DHEC has gone to great lengths to favor the existing hospital over the other applicants. This favoritism, however caused, has resulted in an inaccurate and erroneous decision that does not comply with the State Health Plan, and it unfairly treats the incumbent hospital as the preferred provider of new medical services, and completely excludes new health care providers. DHEC's own witnesses are critical of DHEC's decision to exclude other providers. DHEC's decision to award a CON to Amisub for the "Fort Mill Medical Center" was clearly erroneous as a matter of law, based on the undisputed facts of the case, and the decision should be reversed by this Court, and the matter remanded back to DHEC.[34]

Based on the foregoing, CHS respectfully requests that its motion for summary judgment be granted and that these matters be remanded back to DHEC with instructions to deny the award of the CON to Amisub.

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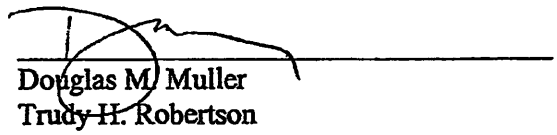
[34] See generally 73A C.J.S. Public Administrative Law and Procedure § 461; 2 Am. Jur. 2d Administrative Law § 574.

Respectfully submitted,



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Attorneys for Petitioner The Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas HealthCare System

February 18, 2009

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 18th day of February 2009, I have served a copy of the foregoing ***Petitioner Carolina HealthCare System's Notice of Motion and Motion for Summary Judgment and Memorandum in Support thereof with exhibits*** upon the following via hand delivery:

Daniel J. Westbrook, Esquire
Stuart M. Andrews, Jr., Esquire
Jennifer I. Cooke, Esquire
Nelson, Mullins, Riley & Scarborough, L.L.P.
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Edna O. Nix

FILED
FEB 18 2009
SC ADMIN. LAW COURT

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 **MEMORANDUM OF PETITIONER CAROLINAS HEALTHCARE SYSTEM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

EXHIBIT A

South Carolina State Register Excerpts

- December 24, 2004, Volume 28, Issue 12
- February 25, 2005, Volume 29, Issue 2

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

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 shelled 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

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

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 December 24, 2004, 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 Dillon County

Establishment of an ambulatory surgery center with one (1) endoscopy room restricted to gastroenterology procedures only.
Dillon Family Medicine, P.A. Endoscopy Center
Dillon, South Carolina
Project Cost: $711,800

Affecting Lexington County

Replacement of mobile Magnetic Resonance Imaging (MRI) services with a fixed Philips Achieva 1.5T MRI.
Lexington Medical Center Irmo
Columbia, South Carolina
Project Cost: $2,426,000

Affecting Richland County

Addition of a 3.0T Magnetic Resonance Imaging (MRI) unit in collaboration with the University of South Carolina to be located within Five Richland Medical Park.
Palmetto Health Richland
Columbia, South Carolina
Project Cost: $3,438,000

Affecting York County

Construction of a 64 bed acute care hospital to include one (1) 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
Project Cost: $107,158,233

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 December 24, 2004. "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.

Certificate of Need Summary Sheet

I. Project Description:

Facility Name: Fort Mill Medical Center

Location of Facility: Intersection of SC Highway 160 and Highway 21 Bypass, Fort Mill, South Carolina

Project Description: Piedmont Medical Center proposes the construction of a 100-bed acute care satellite hospital in the high growth area of Fort Mill, York County, approximately 10 miles from Piedmont Medical Center. This facility will be known as Fort Mill Medical Center (FMMC). The proposed facility will provide 82 medical/surgical beds, 10 intensive care beds, 8 obstetrics beds, 1 diagnostic cardiac catheterization lab, 1 fixed-base MRI scanner and 24-hour emergency department. Additionally, FMMC will offer numerous other imaging modalities and ancillary services in support of this mix of services.

Ownership: This facility will be owned by Amisub of South Carolina, Inc. 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.

Profit or Non-Profit: This will be a for-profit facility.

II. Staff Summary:

A. The total project cost for FMMC is estimated at $124,493,883.

Land	$	11,227,435
Construction	$	55,687,051
Architect's Fee	$	4,434,642
Equipment	$	45,537,069
Financing	$	6,883,553
Other Costs	$	724,133
TOTAL	$	124,493,883

Number of Buildings	One
Number of Stories	Five
Square Footage	221,895

B. A letter dated September 30, 2005, from Steve Corbeil, Senior Vice President of Tenet's Central Northeast-Southern States Region, states that Tenet Healthcare Corporation makes the commitment to provide the necessary funding for this project, which is not expected to exceed $125 million.

C. The applicant addressed the need for the project as follows: (All attachments referenced can be found in the application.)

000856

Piedmont Medical Center (PMC) is a 288-bed acute care facility (including 20 psychiatric beds) located in York County, Rock Hill, South Carolina. Founded in 1983, PMC is the sole acute care provider in York County and offers a full range of services including acute care, emergency and critical care, women's services and education and community support programs. PMC also offers pain care, neonatology, and neurosurgical services as well as a sleep disorder center and a wound care center. Additionally, PMC offers a full range of cardiac services including diagnostic and therapeutic catheterization, open-heart surgery, and cardiac rehabilitation.

The 2004-2005 South Carolina Health Plan shows that Piedmont Medical Center has a need for 64 additional acute care beds based on the current utilization at PMC and expected population growth in York County.

Figure 7
Piedmont Medical Center
FY 2010 Hospital Bed Need

Age Category	Population 2003	Population 2010	2003 Patient Days	Projected ADC	Bed Need (a)	Existing Beds	Need/ (Excess)
<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 State Health Plan.
(a) Based on 70% occupancy

Rather than adding these to the existing site in Rock Hill, Amisub of South Carolina, Inc., proposes the construction of a satellite hospital in the high growth area of Fort Mill, York County, approximately 10 miles from PMC to better serve the residents of northern York County who are currently traveling to Rock Hill and out of state for acute care services.

In addition, the 2004-2005 State Health Plan states that affiliated hospitals may permanently transfer beds between facilities in order to serve their patients in a more efficient manner if there is no overall increase in the number of beds. Therefore, in order to best serve the residents of Fort Mill, PMC proposes to add the 64 beds at Fort Mill Medical Center, and transfer an additional 36 beds from PMC to build a larger, more efficient hospital that will accommodate the future growth of the community and reduce the out migration of residents to other states.

Certificate of Need Summary Sheet

I. Project Description:

Facility Name: Carolinas Medical Center – Fort Mill (CMCFM)

Location of Facility: Fort Mill, South Carolina located West of I-77 at Exit 83.

Project Description: This project entails the construction of a three (3) story, 140,000 square foot hospital to be constructed on 15 acres in Fort Mill, and will be a part of Carolinas HealthCare System (CHS) based in Charlotte, NC. As the third largest public health care system in the nation, CHS currently serves 58.0% of the Medicaid patients that leave the state and seek health care in North Carolina. The scope of the services to be offered include the following:

- 64 acute care beds (48 medical/surgical, 10 intensive care, 6 obstetrical)
- 24 hour emergency care
- Surgical services
- Endoscopy services
- One diagnostic cardiac catheterization laboratory
- Magnetic Resonance Imaging (MRI) unit
- Computed Tomographic (CT) scanner
- Support services and diagnostic imaging to include: fluoroscopy, ultrasound, mammography, cardiac diagnostics, respiratory diagnostics, physical therapy, and sports medicine services

Ownership: The facility will be owned by the Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas HealthCare System located in Charlotte, North Carolina.

Profit or Non-Profit: This will be a non-profit facility.

II. Project Summary:

A. Cost. The total project cost for the proposed project is at $73,421,664. The costs are itemized as follows:

Land	$ 1,500,000
Construction	$40,920,000
Professional Fees	$ 3,348,000
Equipment Costs	$27,653,664
Financing Costs	$ 0
Project Contingency	$ 0
Miscellaneous/Other	$ 0
TOTAL	$73,421,664

Number of Building/Stories	one/three
Square Footage	140,000
Total Project Cost/Square Foot	$ 524
Total Project Cost /Bed	$ 1,147,214

B. The application includes a letter from Mr. Greg A. Gombar, CFO of CHS, regarding the financial strength of CHS to fund the project. Mr. Gombar states that CHS will finance the capital cost from accumulated cash reserves.

C. The applicant addressed the need for the project as follows: (All attachments referenced can be found in the application)

In assessing the overall need for 64 additional hospital beds in York County as identified in the 2004/05 South Carolina Health Plan, CHS evaluated and considered the following:

- The geographic segmentation of York County;
- Historical and projected population trends;
- The placement of hospitals in an advanced metro market;
- Local market share and patient migration patterns;
- The proposed service area for a new hospital;
- The future demand for hospital beds in York County; and
- Projected utilization for a new hospital.

Management's evaluation has addressed each concern identified and the conclusion is that there is a need for the proposed project. Each component of the evaluation is outlined below, followed by a narrative summary of the major findings and analysis.

The Geographic Segmentation of York County-A map of York County by major zip code is attached. Upon evaluating the geography of York County the following major observations were noted and factored in to the need assessment and service area definition of the proposed hospital.

- ☐ It appears York County is appropriately defined by three somewhat distinct and natural geographic areas. These three areas include the following zip code regions:
  - Greater Rock Hill *(zip codes 29730, 732, 733 and 704)*
  - Western York County *(zip codes 29710, 717, 726, 742, 743 and 745)*
  - Northern York County *(zip codes 29708 and 29715)*
- ☐ Lake Wylie and the Catawba River chain provide a somewhat natural separation of the northwestern and eastern sides of York County. Within York County, there are only 2 major bridges that cross this large river/lake system. From a hospital planning and development standpoint, the populations residing in Western York County (west of Lake Wylie) are considered somewhat remote with respect to eastern York County.

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 **MEMORANDUM OF PETITIONER CAROLINAS HEALTHCARE SYSTEM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

EXHIBIT B

DHEC Memorandum of January 25, 2005

D H E C

PROMOTE PROTECT PROSPER

2600 Bull Street
Columbia, SC 29201-1708

Exhibit 10

FEB 15 2005

CompuScripts, Inc.

January 25, 2005

MEMORANDUM

To: Licensed Health Care Providers

From: Joel C. Grice, Director
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 by any questions concerning this memorandum, please contact me at (803) 545-4200.

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 **MEMORANDUM OF PETITIONER CAROLINAS HEALTHCARE SYSTEM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

EXHIBIT C

Charles Miller Deposition Excerpts

- Transcript of January 29, 2009, pp. 15, 16, 17

STATE OF SOUTH CAROLINA
BEFORE THE 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,

vs. CASE NO. 06-ALJ-07-0713-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,

Respondents.

COPY

WITNESS:	CHARLES MILLER
DATE:	January 29, 2009
TIME:	10:12 a.m.
LOCATION:	Piedmont Medical Center 222 South Herlong Avenue Rock Hill, South Carolina
TAKEN BY:	Attorneys for the Petitioner Presbyterian Healthcare System d/b/a Presbyterian Hospital-York, LLC
REPORTED BY:	YVONNE R. BOHANNON Registered Merit Reporter, Certified Realtime Reporter

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and not Representative Kirsch?

A. Because we're in Mr. Norman's district.

Q. Did you meet with other members of council -- I'm sorry, the legislative delegation?

A. I met with Senator Hayes.

Q. And did you ask Senator Hayes to write a letter of support?

A. I did not.

Q. Why not?

A. Because at this point I had already had the conversation with Mr. Norman coming and going and felt like I did not want to place Senator Hayes in an awkward position relative to the rest of the position -- or, you know, of Mr. Norman who actually represented our district as does Senator Hayes.

Q. Well, was this before or after you got Senator Hayes to go meet with Commissioner Hunter with you?

A. My conversation with Senator Hayes would have been before.

Q. But yet you still got Senator Hayes to go meet with Commissioner Hunter with you?

A. That's correct.

Q. And at that point you didn't feel that

put him in an awkward position?

A. No.

Q. Why?

A. Because the meeting with Mr. Hunter was a factual-driven conversation. We met with Mr. Hayes -- Senator Hayes and presented him with the documents that we believe supported our position. He looked at those, believed them to be factually supportive of that position, and really -- and did not call for an opinion.

Q. When you met with Senator Hayes, did you explain to Senator Hayes that if your position was correct, then the only way the state plan could be interpreted would allow only Piedmont Medical Center to get the CON?

A. We explained to Mr. Hayes the interpretation of the Department on how the health plan was being applied and the regulation was being interpreted was incorrect with the intent of the planning board and the documents that we were in possession of explaining that.

Q. Did you explain to Senator Hayes what the intent of the planning board and -- planning board was?

A. Yes.

Q. What did you tell him it was?

A. That the intent of the planning board was that those 64 bed need was a result of the need at Piedmont Medical Center.

Q. Did you also tell Mr. -- Senator Hayes that only Piedmont Medical Center could apply and receive a CON to meet that bed need?

A. I have no recollection of saying that to him.

Q. Did you address with Senator Hayes whether or not any other applicant could -- would be eligible to fill the 64 bed need generated by Piedmont Medical Center?

A. I have no recollection of having said that to him.

Q. Okay. When you went to DHEC with Senator Hayes, had the other applications been filed?

A. I don't recall if it had been filed at that point or not.

Q. Well, when you went to DHEC, Mr. -- had you seen Mr. Grice's motion -- memorandum rescinding his January 25th, 2005, memorandum?

A. No.

Q. Okay. Other than -- what other --

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 **MEMORANDUM OF PETITIONER CAROLINAS HEALTHCARE SYSTEM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

EXHIBIT D

Leon Frishman Deposition Excerpts

- Transcript of September 29, 2008, pp. 11 through 22

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,

Petitioner(s),

vs. Case No: 06-ALJ-07-0713-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).

D E P O S I T I O N

COPY

WITNESS: LEON FRISHMAN

DATE: Monday, September 29, 2008

TIME: 9:20 a.m.

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

TAKEN BY: Attorneys for the Petitioner(s)

REPORTED BY: SHERI L. BYERS
Registered Professional Reporter

- -

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January 25th, 2005, memo from Mr. Grice. Is that one of the two memos that you reviewed?

A. That's correct.

Q. Did you see that memo before it went out?

A. I'm pretty sure I saw a draft copy of that before it went out.

Q. Did you have any discussions with Mr. Grice regarding that memo before it went out?

A. Yes, I did.

Q. Tell me what you and Mr. Grice discussed.

A. We decided that -- we concluded that the State Health Plan was unclear and particularly when building a freestanding facility versus an addition to an existing facility, and we attempted to clarify the state plan with that memorandum saying that if a facility was going to add on to its existing facility, that it would be an institutional need in the plan but that if that facility wanted to build a freestanding facility in a different location, that the beds could be applied for by anyone.

Q. Okay. When that memo was released on January the 25th, 2005, were you in agreement with the content of the memo?

A. Yes, ma'am.

Q. Okay. Do you still agree with the content of

that memo?

A. I agree -- well, yes, let me explain.

Q. Sure.

A. I still agree with it. I think the state plan is unclear and could be interpreted either way. I think from a common sense, logical point of view, this memo would be something that I could agree with.

Q. And do you still agree with it?

A. Yes.

Q. Okay. What are the purposes of the CON Act?

A. Prevent unnecessary duplication -- there's four reasons in the law. I hope I can remember them. Prevent unnecessary duplication of services, cost containment, to ensure services are needed -- provided where they're most needed in the state, and there's a fourth one, which I cannot --

Q. Quality healthcare?

A. Quality of healthcare, improve quality of healthcare.

Q. Do you think that that memo fosters the purposes of the act?

A. Yes.

Q. Okay. I show you another memorandum that was marked Exhibit 11 to Mr. Grice's deposition, and it's a memo of March 3rd, 2005. Would you review that,

please, sir?

A. Yes.

Okay.

Q. Does that memo of March 3rd rescind the memo of January 25th, 2005?

MR. ANDREWS: Object to the form. Go ahead. You can answer.

THE WITNESS: Yes, it does. It states that this is to advise the decision was made on February 1st, 2005, to rescind the departmental policy, interpretation issued by this office on January 25th, 2005.

BY MS. CRUM:

Q. Why was that memo issued?

A. I received a telephone call from the commissioner who explained to me that he would like to reconsider that policy. I relayed that to Mr. Grice, and so he drafted this recension statement.

Q. Tell me what the commissioner told you when he expressed his desire to reconsider the policy.

A. He just said that he had talked to Mr. Andrews and that he would like to reconsider the policy.

Q. By reconsider, did he then say to rescind?

A. I think he -- I don't know. I can't remember

whether that was a -- I know he used the word reconsider. I don't remember him using the word send and -- but it was clear that he didn't want the policy to stand as it currently was without further thinking it over.

Q. Okay. What discussions did you and Mr. Grice have, if any, prior to Mr. Grice's issuing the March 3rd decision?

A. I can only remember one conversation in which I relayed the commissioner's conversation to Mr. Grice.

Q. At that point did you tell Mr. Grice to rescind the policy?

A. I don't recall, but I probably did.

Q. Okay. Did you ever have any other conversations with the commissioner regarding why he wanted the policy reconsidered?

A. No, I did not.

Q. Okay. Did you have any conversations with Mr. Andrews about the January 25th policy? I'm not talking about when you all met the other day, I'm talking about contemporaneously.

A. I believe we may have spoken once or twice about it.

Q. And what did Mr. Andrews tell you then?

A. He told me that he interpreted the State Plan

in a different manner, and we just discussed our interpretation, what we thought or what we meant by the January 25th memorandum. And I guess you could say we just disagreed on the interpretation of the State Health Plan.

(PETITIONER'S EXH. 37, Affidavit of Stuart M. Andrews Dated June 6, 2007, was marked for identification.)

BY MS. CRUM:

Q. Mr. Frishman, I would like you to review the affidavit dated June 6, 2007, submitted by Mr. Stuart Andrews to the South Carolina Administrative Law Court as part of the proceedings in this matter.

A. Yes, ma'am.

Q. Okay. Look at paragraph 3, please, sir, on the second page. Says, "I, along with other representatives of Amisub, had several meetings and telephone conversations with the department staff prior to Amisub's decision to withdraw."

Were you part of any of those meetings or telephone conversations?

A. No, ma'am.

Q. Do you know who might have been part of those?

A. The only person I know that I would think

would have that kind of information would be Mr. Grice.

Q. Okay. Having reviewed the -- let me ask you this. The second sentence in paragraph 3, says, "During these discussions, the staff explained the department's practice of applying sections 103.6 of Regulation 61-15, Competing Applications."

What is the department's practice with regard to applying Section 103.6?

A. In the context of these applications, I don't know. I would -- I'd have to -- could I review 103?

Q. Certainly.

A. It's in the front of your book right there.

Is that an old one?

MS. CRUM: That's an old one, yeah.

(Off the record.)

BY MS. CRUM:

Q. I did not bring that. What I did bring was the definition of competing applicant.

A. This is from the law, not from the reg.

Q. Not from the reg? I don't have the reg with me.

A. The reg should be the same, as far as the definition goes.

All I can say is, to answer your question, how did we apply 103.6, it said the definition

competing application means, "Two or more healthcare facilities who provide -- who apply for Certificate of Need and provide similar services or facilities in the same service area within a time frame that's established by the Department of Regulations and whose applications approved would exceed the need."

And again, I would have to go back to the time frame established by the Department of Regulations, but assuming that -- assuming that these applications were applied -- submitted to the department in the time frame established by the department of regulations, they would be deemed competing.

Q. Okay.

Let me address your attention to Exhibit 8 in the Grice deposition. It is a letter dated November 16th from Willoughby & Hoefer from Ms. Paige Gossett. Look at that and see if you recognize that, and I think it also sets out Regulation 61-15, Section 103 in there.

A. You asked if I recognize this?

Q. Yes, sir, have you seen that before?

A. No, ma'am, I have not.

Q. Okay. Would you look down on the first page and you see the definitions on the first page and

second page?

A. Yes, ma'am.

Q. Would you look at the definition on 103.6, Regulation 61-15, Section 103.6, on the top of the second page?

A. Yes, ma'am.

Q. Could you read that for me, please, sir?

A. "An application shall be considered competing if it is received by the department no later than 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 15 days of publication of a notice of affected persons in the State Register for the first applications will be considered to be competing.

"Any applications received by the department later than the 15th day following the publication of the notice of affected persons in the State Register for the first applications will not be considered to be competing with these applications."

Q. Okay. Let me show you Exhibit 6 to Mr. Grice's deposition. You can keep that one a second.

A. Okay.

Q. Do you recognize that letter? That's a letter from me to Mr. Grice?

A. No, ma'am, I've never seen it.

Q. Okay. During the review process of the York County applications, did Mr. Grice consult you as to what was considered to be a competing application?

A. Not that I can recall.

Q. Okay. Let me get that one back.

Let me show you Exhibit 7 to Mr. Grice's deposition. It's a letter to me from Ms. Layman.

Have you seen that letter before?

A. No, ma'am, not that I can recall.

Q. Okay. Do you -- did you review CON applications for a while?

A. Yes, ma'am.

Q. How many did you review approximately?

A. Over 500.

Q. Okay. Did you review situations where there were competing applicants?

A. Yes, ma'am.

Q. About how many of those do you think you reviewed, just roughly?

A. All I can say is a lot.

Q. Okay. All right. During your review of competing applications, did you apply the state

Certificate of Need Act in the CON regulations?

A. Yes, ma'am.

Q. Do you think in reviewing CON -- competing CON applications, that the CON Act encourages competition?

A. No. I think the purpose of the act was not to stifle competition, but unfortunately, I think one of the by-products or one of the effects of the program is it does reduce competition.

Q. Do you think the CON Act is intended to at least allow for competition among competing applicants?

MR. ANDREWS: Object to the form.

THE WITNESS: Yes, I do.

BY MS. CRUM:

Q. Okay. Would you look at paragraph 4 of Mr. Andrews' affidavit, which we have marked, I believe, as 37. Just you can read that either to yourself or out loud.

A. Yes, ma'am, I've read it.

Q. First off, look at paragraph 2. Review paragraph 2 and tell me if you can figure out who first submitted an application for the 64 beds in Fort Mill. I'm sorry, the 64 beds in York County.

MR. ANDREWS: Object to the form.

THE WITNESS: Yes, ma'am, I can figure out

who sent it first now.

BY MS. CRUM:

Q. Okay.

A. According to this paragraph, Amisub submitted the Certificate of Need application first.

Q. Did you read all the way down to the end of the second paragraph?

A. I did not.

Q. If you could do that, please, sir.

A. Okay. I've read that.

Q. Does that help refresh your recollection as to the sequence of events in the filing of CON applications in York County?

A. I mean, I know what it says. I'm not sure I was ever familiar with, firsthand, the sequence of events that occurred in terms of the filing of those applications. But according to this paragraph, the hundred-bed application was filed within 15 days of the State Register's published notice. So that would be consistent with the regulation that I read earlier.

Q. Would you look at the regulation you read earlier and tell me how it is consistent with that regulation?

A. That regulation says that an application shall be considered competing if it's received by the

department no later than 15 days after a notice of affected persons is published in the State Register for one or more applications for similar services and are facilities in the same service area.

If the 100-bed facility was submitted to the department during that 15 days' notice of affected persons, then it would be competing.

Q. Okay. Look to the middle of the definition. Do you see the sentence that says, "All applications received by the department within 15 days after publication of notice of the affected persons in the State Register for the first application, applications will be considered to be competing?

A. Yes, ma'am.

Q. And did you just testify that Amisub was the first applicant?

A. Oh, yeah, but that application was withdrawn.

Q. How can you have more than one first?

A. Well, when that application is withdrawn, it's no longer the first application.

Q. So the cycle could continue to repeat itself?

A. I don't understand. Did the other -- the other three applications could all withdraw, is that what you're asking, and then the 100-bed application would be --

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 **MEMORANDUM OF PETITIONER CAROLINAS HEALTHCARE SYSTEM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

EXHIBIT E

Joel Grice Deposition Excerpts

- Transcript of February 15, 2007, pp. 32, 33, 34, 66, 67, 72, 77, 78, 107, 108, 109, 160, 161, 162
- Transcript of October 27, 2008, pp. 21, 22, 61, 79, 80
- Transcript of October 28, 2008, pp. 221, 245, 246, 247, 267, 268, 269, 270

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

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Post Office Box 7172
Columbia, SC 29202
803-988-0086

Q. Could you please tell me what that is?

A. It's a memorandum that I issued rescinding the policy that was issued on January 25, 2005.

Q. And to whom did you send that memorandum?

A. It was distributed to anyone that requested -- basically any licensed health care providers. Particularly, this related to hospitals.

Q. Licensed health care providers in South Carolina?

A. Yes, that would be right. Basically the people right now, I mean, anyone that requested this we provided it to. But generally when we do memorandum on our State Health Plan the only providers we really have, you know, what it relates to are existing in South Carolina is who we address it to. But certainly applicants might have gotten it too. But as far as mailings, it would go to existing facilities.

Q. The memo states that the decision was made on February 1 to rescind the departmental policy issued by this office on January the 25th, 2005.

Why did you wait a month to notify

everybody that the policy had been rescinded?

A. Workload. Just workload. I'm weeks behind work today, unfortunately.

Q. Why was the policy rescinded?

A. Basically after the issuance of the January 25, 2005, policy, there had been a lot of discussion I think that had gotten back to the Department, I think the South Carolina Hospital Association, and others. And, you know, I think it was really seen that our staff really didn't have the authority to make an interpretation like that, you know.

It was what I thought would be helpful, but apparently something that was really beyond the scope of our authority. And so in talking to our general counsel, what we did, we rescinded it and then said as an alternative to such a policy we would get our staff to schedule a meeting with the South Carolina Health Planning Committee in the near future to see, you know, their recommendation as to the most beneficial method resolving or clarifying any future issues that may occur regarding the hospital bed methodology.

Q. You mentioned the South Carolina Hospital Association had gotten involved in the

interpretation. Can you tell me what you know about that?

A. I don't know really anything. My understanding is I believe it had been distributed over the state, from what I understand. And this is just rumors. I heard, I think, the hospital association may have gotten a copy, made sure members got it, and there was a lot of concern throughout the state. It wasn't isolated I don't think to any one particular area, but I think that they -- it was probably felt that -- and perhaps might have been their attorneys or whatever felt that it was inappropriate.

Q. From whom did you hear these rumors?

A. I think perhaps Mr. Frishman might have related to me, you know. I just knew that there had been in a week's time, I think from January 25 to February 1, there had been a lot of discussion. And the policy had circulated over the state and there had been a lot of feedback.

Q. Mr. Grice, isn't it one of your responsibilities, to interpret and apply the State Plan standards to CON applications?

A. Yes.

Q. Do you know whether or not Mr. Frishman

separate acute care hospital.

MR. ANDREWS: Object to the form.

THE WITNESS: Today we have had situations occur in the state where hospitals or nursing homes have been developed because an existing hospital sold existing beds to an entity to develop a new facility when there was even no bed need. And, you know, to be creative, I mean, something like that could have occurred.

If you have a county which had only one facility and that facility determined they did not want to apply and there was someone else and there was a compelling need, there could be ways that such an occurrence could occur.

The existing facility could sell existing beds and apply with their institutional bed need to replace those beds. I mean, there are creative ways to accomplish things if they need to be. So, you know, I'm not saying that a situation like that couldn't occur.

BY MS. CRUM:

Q. All I'm asking you to do, Mr. Grice, is to point me to what section of either the CON Act, the CON regulations, or the 2004-2005 State Health Plan that allows for transfer of additional beds

as opposed to existing licensed beds.

A. It does not go into that detail. I do not believe there is language in the Plan which goes into that detail.

Q. What about in the CON Act?

A. No.

Q. What about in the CON regulations?

A. No.

Q. Now, let me go back to my question. Assuming that either AMISUB withdrew its application or never applied for a 64-bed hospital in York County, based on the Department's letter of May 30, 2006, paragraph 4, there you say, "The proposal submitted for the Fort Mill Medical Center is the only project of the competing CON applicants that is consistent with the hospital bed need methodology as specifically outlined in the 2004-2005 South Carolina Health Plan."

Tell me if you could approve a CON application in your opinion for Presbyterian, Charlotte-Mecklenburg, or Hospital Partners?

A. There is no language in the Health Plan that would specifically allow that to occur. There are ways it certainly could be accomplished, in my opinion. But you're correct, I mean, that

applicants, all applicants meet the consistency of the Health Plan and they're competing. Any one meets, they're competing, but we have to base the decision on which better meets the other project review criteria. That is what occurred in this case. You can take the Health Plan out of it all together and the decision would have been the same.

Q. Mr. Grice, when did you come to that conclusion?

A. Came to that conclusion before we made the decision -- at the time we made the decision.

Q. When you made the decision, did you meet with the commissioner prior to publishing your decision on May the 30th?

A. No, I did not.

Q. Did you talk to the commission?

A. I did not.

Q. Did you talk to Mr. Frishman?

A. I think he knew what was happening exactly. Ms. Fechtel and I sat down and did this ourselves.

Q. My question was, did you talk to him?

A. I think the Deputy Commissioner Leon Frishman and I did not talk to the commissioner at

and most general hospitals have various services, not just one service.

Q. Look on Roman numeral II-6 of the 2004-5 plan.

A. Okay.

Q. Under paragraph 4, narrative, general hospital beds.

A. Yes.

Q. It says the general acute hospital bed need methodology. Am I incorrect in that?

A. It uses that term, that's correct.

Q. Under 4, Roman numeral II-6, II-7, that talks about calculating the bed need methodology for the general acute care hospital beds; is that correct?

A. That's correct.

Q. My question to you is, under this bed need calculation, am I correct that the Department has interpreted the Plan that the general acute hospital bed need is hospital specific to the hospital that generated the need, and that the hospital that generated the need is the only one that would meet the bed need methodology?

MS. LAYMAN: Object to the form.

THE WITNESS: It is done specific to

hospitals and the hospital would generate a need -- would see that as a need that is their need. That's correct. That they would have control over or be able to apply for.

MS. CRUM: When we take a break, I'll make a clean copy of the 2004-5 plan and make that Exhibit 16.

MR. ANDREWS: What pages are you going to include?

MS. CRUM: Starting on the general hospital, G(1)(a) on page Roman numeral II-4 through --

MR. ANDREWS: Can we take it through 9?

MS. CRUM: I don't have any problem with that. I mean, some of that doesn't have anything to do with need calculation. I don't have a problem if you want to do that. If I don't y'all can.

MR. ANDREWS: Would you have any objection to including the whole chapter through 19? Otherwise, I'll want to add that later.

MS. CRUM: No problem.

Off the record.

(Off-the-record discussion.)

(A lunch recess was taken at this time.)

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.

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

A. What number was that?

Q. Exhibit 2.

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

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

York County."

Do you still agree with that statement?

A. Yes.

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

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

Q. That's what you determined?

A. Yes.

Q. The next sentence. "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."

Is that correct?

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

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.

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

A. That's correct.

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

A. That's correct.

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

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

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

A. Yes.

newspaper article consistent with your January 25 memo or the March 3 memo?

A. It would be consistent with the January 25 memo, I believe, because I think I said in there -- well, I said the argument could be made that 64 beds is a community need.

Q. Based on your March 3 memo, it's the Department's position that the 64 beds could be considered community need?

A. No. I think the March -- I believe that was the rescission memo. That memo specifically says, as an alternative to such a policy at this time, the staff would schedule a meeting with the State Health Planning Committee to resolve and clarify any issue.

So at that point we rescinded the memo. We weren't exactly sure how this might be resolved but, you know, at that point, I mean, we were not -- I was not going to tell someone that they could not submit an application if they chose to do so.

Q. In your opinion, does the Department have any authority to prevent a party from submitting an application?

A. No, we don't. They are oftentimes, I

mean, there are parties that are going to submit regardless. We've had that experience. They know that for whatever reason their application may be inconsistent with the Health Plan. They're going to submit it anyway. Fine.

I try to tell most people that, indeed, if an application is inconsistent with the Health Plan we don't have the authority to approve it, nor does the court system, the appeals process. But at times people may decide they're going to go forward anyway.

Q. When in this review process did you make the determination that the applicants that were identified as competing with Piedmont could not be approved in a way that was consistent with the State Health Plan?

A. It was focused on towards the end, towards the last month or so. Really, when studying all of this, as I mentioned earlier, I wanted to review them competitively, and we did, and we did find the application we approved to be more -- to better meet certain important criteria. We also put the Health Plan issue in the letter also.

Q. Let me focus you on the fourth paragraph

since that's all we're able to talk about today.

A. Sure.

Q. Did you, or to your knowledge, or Ms. Fechtel, consider any information in that last period of time to which you referred before you made the May 30 decision related to the bed need methodology that caused you to reach the opinion that you did?

A. Yes. That was an issue we looked at, saw what the intent of the Plan was.

Q. Had you considered that before?

A. Yes. I mean -- but here in the decision-making process we were getting down to really looking at it very hard and formulating reasons. And I considered not really putting this reason in the letter, but I did. I thought it would -- that was something that needed to go in there. It would strengthen our decision. Our decision was not based solely on that, but it certainly would strengthen it.

Q. Turn to Exhibit 12. Do you have it?

A. I do.

Q. The third page is the agenda for the Planning Committee, correct?

A. That's correct.

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,

Petitioner(s),

vs. Case No: 06-ALJ-07-0713-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).

COPY

D E P O S I T I O N

WITNESS: JOEL C. GRICE

DATE: Monday, October 27, 2008

TIME: 9:22 a.m.

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

TAKEN BY: Attorneys for the Petitioner(s)

REPORTED BY: SHERI L. BYERS
Registered Professional Reporter

- -

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some hospitals would plan a large room that would be licensed private that could be semiprivate. Not that that could be the case here, but that's a way, for example, that a hospital will have a higher cost with fewer beds but with a plan in the future to redesign and utilize that space more efficiently when there's a need.

Q. Mr. Grice, look on the CON application for the hundred-bed facility and look at Bates page 185 through 188, please, sir.

A. Okay.

Q. Can you compare those and determine whether or not the original 64-bed submission had a hospital design sufficient to house a hundred beds?

A. I do. I do see the situation here now. In the application that was submitted earlier for the 64 beds, there -- on the fourth floor there was an unfinished unit. I didn't notice the term. With zero beds, it was 15,443 square feet. And so that space in the new application would have 26 beds.

In addition, on the third floor in the telemetry unit in the original application, there were 18 beds at 11,000 square feet and in the new application there would be 28 beds at 16,000 square feet, an additional 5,000 square feet. And since the

total is the same, that 5,000 would have had to have been, you know, acquired from some existing footage, which would have been an unfinished unit on the third floor that was 5,119 square feet.

So the original application -- the first -- the earlier application of 64 beds did have square footage that was unfinished that would have been sufficient space for the existing -- for the additional 36 beds.

Q. In your opinion, Mr. Grice, as a health planner and a CON reviewer, is it an efficient way to design a facility so that it has shelled-in space for future growth?

A. Yes, in my opinion.

Q. Is that a cost-effective method of designing a facility?

A. In my opinion, it is because construction costs are rising so rapidly, if that space is shelled in earlier, it could save virtually millions of dollars in the future.

Q. Okay. Mr. Grice, let's look at page 23. I'm sorry, page 16 of the 64-bed January 25th CON application, please, sir.

MR. WESTBROOK: I'm sorry, Liz, what page?

MS. CRUM: 16. Bates page 16.

low utilization.

Q. Okay. Is a 64-bed need identified in the 2004-2005 state plan, an institutional need for Piedmont Medical Center?

A. It is.

Q. How could any hospital not owned by Amisub be able to be awarded a CON to fill that need?

A. In this particular situation, the only way that I could see that occurring, which would be a possibility, is if for some reason the existing provider like Amisub made an agreement for another applicant to apply for those beds.

Q. What if Amisub wouldn't make an agreement for another applicant to apply, how could the applicant apply for the 64 beds under the state plan the way it has been interpreted in this case?

A. Well, they could certainly apply, but the department would probably not have the authority to be able to prove it as being consistent with the plan unless the existing provider that generated that need was willing to agree to let that need be utilized.

Q. Let me rephrase my question, Mr. Grice.

A. Okay. Sure.

Q. Under what circumstance could an applicant who applied for the 64 beds who was not owned by Amisub

in this state. Very few counties showed net need at all. And so when we went to this new method in the 2003 plan and 2004-'5, there were very small needs. It was basically the needs were generally such that only existing hospitals could really get a 50-bed addition based on its low number. I don't think, to my memory, there was any substantial need on a county need basis.

And so as I mentioned even when the draft 2004 plan was done and looked at, I think the need in York County was something like 22 beds. And so it really didn't raise a red flag. A need like that would not have been enough for anybody to be interested except an existing provider who might want to add beds.

But when the numbers were redone which the board -- and it was reasonable. There had been such a delay in the health plan being approved, by the time it got to the board, it was like there was new data in. We were a year behind, and the board agreed to let's update everything. And that's when those numbers came out after the plan was already approved. It jumped up. That was the biggest jump in the state. We went to 64 beds in York County.

Q. Mr. Grice, I want to make sure I understand. Is it your testimony that under the 2004-2005 plan, when there is an additional bed need identified, only

the hospital for which that bed need is identified can be approved for a CON application for that bed need?

A. That's what the plan says. I mean, verbatim, I think that's the interpretation.

Q. Would it also be true, then, that there could be no such thing as a competing applicant for bed need under the 2000 -- additional bed need under the 2004-2005 plan?

A. Well, certainly under a stringent situation you could say that, even though there would always be the possibility.

Q. Tell me how.

A. Well --

Q. There could be a competing applicant?

A. Yeah, I see what you're saying, and I'll tell you in my opinion. Let's say in this situation we have here that Piedmont decided we're withdrawing and then the other three applicants remaining thought we'd like to apply. But looking at the plan -- and they had applied, let's say. Looking at the plan, they knew they all couldn't be approved and then there was concern about Piedmont, maybe each would go to Piedmont or Tenet and say, would you be willing to agree to let us to be the satellite, for whatever reason, for whatever agreement, for whatever compensation. I mean,

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,

Petitioner(s),

vs. Case No: 06-ALJ-07-0713-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).

COPY

VOLUME II

D E P O S I T I O N

WITNESS: JOEL C. GRICE

DATE: Tuesday, October 28, 2008

TIME: 10:12 a.m.

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

TAKEN BY: Attorneys for the Petitioner(s)

REPORTED BY: SHERI L. BYERS
Registered Professional Reporter

- -

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me, please, sir, the 2004-'5 plan, which is Exhibit 38.

A. Okay.

Q. Would you tell me what provision of the plan you rely on to allow the transfer of those 38 -- I'm sorry, the 36 beds from Piedmont Medical Center to the Fort Mill Medical Center?

A. I know this question has come up in other hearings, and what I'm looking at right now is on page roman numeral II-8, up at the top, H1, and I think there may be other sections, too, that relate to this, but this is what I've noticed right now. And what it's saying, it's saying a transfer or exchange of beds may be approved only if there's no overall increase in the number of beds.

The State Health Plan has always allowed hospitals that -- to relocate beds if it's part of their system. And in this case, with the institutional bed need in the health plan, the existing Piedmont Medical Center did show a need for 64 beds. And in my opinion, this provision allows them to transfer the 36 beds they have.

Now, there have been questions in the past in hearings as to the fact can a hospital take bed need and even build a new hospital. But this has been done, you know, many times in the state where a hospital has

the only -- that the only entity that could apply for the bed need was the entity showing -- were the facilities showing the bed need in the plan?

A. I was aware that was certainly an argument that could be made. I was -- my goal was I was hoping that we would be able to get some kind of resolution on this, you know, with the health planning committee. But it could be done as of that point in time. And I had no control over it, so ...

Q. Well, any change you might make with the health planning committee would be perspective only, certainly?

A. That's correct.

Q. It would not apply retroactively to the CON applications being considered under the '04-'05 health plan?

A. That is exactly correct.

Q. So when do you think that you first knew -- and you testified very forcefully yesterday about the fact that only the facilities showing the bed need in the plan was eligible for those beds. When did you first become aware of that?

A. Really, when we got down to probably the last few weeks before the decisions, when I had time to really focus on that, because my goal was to review

them competitively, which we did, and then the issue got down to the health plan. We had to really look at this. And I know the 2004-2005 health plan was written, you know, as an institutional need, and the reasoning for that really had to do with only one area in the state. It had to do with Florence County at the time. And it really -- this plan would have been changed and like it is today, 2008, back to county need.

But there was a time element that was needed to allow things to kind of adjust, and all the bed needs were so low that it really wasn't an issue. But with the update of utilization data in this final draft, it raised an issue because of York County. And that wasn't anticipated.

So I was hoping to be able to resolve this or make it palatable if we did have other applications besides Piedmont. So I was still hoping some way this could be worked out, even though the memorandum was rescinded. But I -- the other applications came in, we did review them competitively, and that was my goal. And toward the end there is when we really sat down and Ms. Fechtel and I studied the old plans going back to 2001, 2003, 2004 and '5, to really look at what was said there. That's a time we had to take time to go

back and look at in detail and realize just what had occurred, that it was really pretty firm.

And in doing the competitive review, though I had decided that in this particular case we had very good applicants, but that I felt that Piedmont did meet the need for the better applicant in terms of the competitive review. And I had considered not even mentioning the health plan at all in that. And, in fact, Mr. Frishman, when I gave him my first draft, he even thought don't put in the health plan. But then it was my decision to put reason number 4 in there because I felt that we really had to address the health plan and that was consistent with our decision in the competitive review. And I felt that probably we were going to be in an appeal, and with our decision, even our competitive review showing the Fort Mill Medical Center as the applicant we approved, I felt that it would strengthen our case, perhaps, to put the plan in there, too. And so that was my reason for putting number 4 in.

Q. Going back to January of '05 and then early February, I mean, clearly you had said that any entity could apply and then your superiors told you that was an incorrect interpretation of the State Health Plan?

MS. LAYMAN: Object to the form.

licensed beds being transferred. Of those 36 beds, 17 are currently not in use by Piedmont Medical Center, 19 are in use. Is that a correct statement?

A. Yes.

Q. In addition to those 36 beds, you have 64 new beds, correct?

A. Yes.

Q. Under your own interpretation of the State Health Plan, those 64-bed need -- that 64-bed need is a need generated by Piedmont Medical Center, correct?

A. Yes.

Q. All right. So I take it that in this hundred-bed CON application, you are authorizing not only the transfer of the 36 beds but also the transfer of the 64-bed need new beds, correct?

A. Yes.

Q. Because they're not going to the facility that's generated the need, they're going to a new facility, correct?

A. That's correct.

Q. All right. It's a facility that doesn't offer the same types of services, correct?

A. That's correct.

Q. It's a facility that's going to have a different service area than Piedmont Medical Center?

MS. LAYMAN: Object to the form.

THE WITNESS: It is within Piedmont Medical Center's current service area, but being a new hospital, it would probably have its own primary service area, yes.

BY MR. MULLER:

Q. It is in a different location?

A. Yes.

MS. LAYMAN: Object to the form.

BY MR. MULLER:

Q. Now, you had earlier testified that the transfer of those 36 beds was done under the State Health Plan; is that correct? That the way that Amisub could justify transferring those 36 beds was under the portion of the State Health Plan that we were reviewing earlier, this is in the 2004-2005 State Health Plan, Exhibit 38, page roman numeral II-8, subsection H.

A. Yes. If I had to pick out a section of the health plan that would relate to that, yes, that's the section I would pick out.

Q. Is that also the section that you would relate to the transfer of the new 64 beds from Piedmont Medical Center to Fort Mill Medical Center?

A. Well, I'm not sure that -- I would say to a certain extent, but the new beds are not licensed beds.

The bed needs are not licensed. So I think on page roman numeral II-8, H1, it talks about a transfer or exchange of beds. It doesn't say licensed. I think when that was probably written it meant for existing licensed beds.

But the situation that Piedmont has done has been allowed by the state numerous time, that it is really more effective and better meets the needs of the public for large bed needs at times to be transferred to develop a new hospital by an existing entity. That has occurred many times over the state.

Q. Where in the State Health Plan is that authorized to be done?

A. Probably I would have to say that same section. I mean, that's the closest to it that we have.

Q. So it's your testimony that even though the facility is showing a 64-bed -- additional 64-bed need was Piedmont Medical Center, Fort Mill Medical Center could obtain them by virtue of this section H of the portion of the State Health Plan dealing with general hospitals at page roman numeral II-8?

A. I mean, that's certainly a consideration. But we've got to remember that it -- the use of -- it's the same licensee. It's Amisub of South Carolina, Inc.

They are a licensed facility, and they would choose to develop those beds at a different site but the same licensee rather than adding it on the existing hospital. So I'm not sure the health plan goes to that kind of detail, but I think that does -- that particular section does relate to that type transfer.

MR. MULLER: Thank you, Mr. Grice.

(Off the record.)

MR. MULLER: I think I'm done.

MR. WESTBROOK: Can we take a short break? Go off the record right now.

(A recess transpired.)

EXAMINATION

BY MR. WESTBROOK:

Q. Okay. Mr. Grice, I'm Dan Westbrook. I represent Amisub of South Carolina in this case. Just a few questions, please.

Let me hand you and hand out to the other folks here an affidavit of yours. Looks like it's dated May 18th, 2007. Pass those around.

(RESPONDENT'S EXH. 42, Affidavit of Joel C. Grice, was marked for identification.)

BY MR. WESTBROOK:

Q. Okay. Mr. Grice, let me just ask you to turn your attention to paragraph 7 over on page 3.

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 **MEMORANDUM OF PETITIONER CAROLINAS HEALTHCARE SYSTEM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

EXHIBIT F

DHEC Memorandum of March 3, 2005

Grice 11

DEC 15 2007

Willoughby & Hoefer, P.A.

D H E C

PROMOTE PROTECT PROSPER

2600 Bull Street
Columbia, SC 29201-1708

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 & Hoefer, 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, 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 **MEMORANDUM OF PETITIONER CAROLINAS HEALTHCARE SYSTEM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

EXHIBIT G

Stuart Andrews Affidavit dated June 6, 2007

STATE OF SOUTH CAROLINA

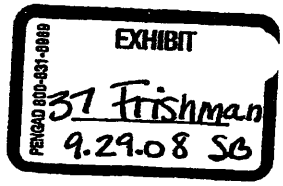
ADMINISTRATIVE LAW COURT

Charlotte-Mecklenburg Hospital Authority, d/b/a Carolinas Healthcare System and Presbyterian Healthcare System, d/b/a Presbyterian Hospital – York, LLC,	)	Docket No. 06-ALJ-07-0713-CC
Petitioners,	)	
v.	)	**AFFIDAVIT OF STUART M. ANDREWS, JR.**
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.	)	

Personally appeared before me Stuart M. Andrews, Jr. who upon being duly sworn, deposes and says:

1) I am a partner in the law firm of Nelson Mullins Riley & Scarborough LLP, which represents Amisub of South Carolina, Inc. in the action captioned above.

2) On January 24, 2005 Amisub submitted a Certificate of Need ("CON") application to the South Carolina Department of Health and Environmental Control (the "Department") to construct a 64-bed hospital in Fort Mill, South Carolina, to be known as Fort Mill Medical Center. Afterwards, three other hospital companies submitted CON applications to build a 64-bed hospital in Fort Mill: Carolinas Healthcare System ("Carolinas"), Presbyterian Healthcare System ("Presbyterian"), and Hospital Partners of America ("HPA"). On September 23, 2005, notice was published in the State Register for Carolinas, Presbyterian,



and HPA. On October 6, 2005, Amisub simultaneously withdrew its application and submitted a new application to construct a 100-bed hospital in Fort Mill. Since Amisub submitted its 100-bed application within 15 days of the State Register's published notice of the other three applications, the Department deemed all four applications to be competing. See S.C. Regs. 61-15 § 103 (6).

3) I, along with other representatives of Amisub, had several meetings and telephone conversations with the Department's staff prior to Amisub's decision to withdraw its 64-bed application and replace it with the 100-bed application. During these discussions, the staff explained the Department's practice of applying section 103(6) of Regulation 61-15 to pending CON applications in order to make determinations about competing applicants. The staff also explained how withdrawals and refilings may affect such determinations.

4) Amisub's discussions with the Department staff on these issues were not abstract. We inquired specifically whether the Department would accept and consider as competing the application if Amisub were to withdraw its 64-bed application and simultaneously submit a 100-bed replacement application. The staff informed us that it would be consistent with the Department's practice for it to accept the replacement application and consider it to be a competing application with those of Carolinas, Presbyterian, and HPA, as long as Amisub's application were filed within 15 days of notice being published in the State Register that the Department determined the other three applications were complete.

5) Amisub relied heavily on these discussions with staff in deciding to withdraw its 64-bed application and replace it with a 100-bed application. In fact, had the staff not taken the unqualified position that it would permit Amisub to withdraw and re-file an application that

the Department would treat as competitive with the other three applications, Amisub would not have elected that course of action.

FURTHER THE AFFIANT SAYETH NOT.

Stuart M. Andrews, Jr.

SWORN to and subscribed before me
this 6 day of June, 2007

(L.S.)
Notary Public for South Carolina
My Commission Expires: 12/21/11

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 **MEMORANDUM OF PETITIONER CAROLINAS HEALTHCARE SYSTEM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

EXHIBIT H

DHEC Record
Summary Sheets for Amisub and CHS

- pp. 000856-000857, 001001-001002

Certificate of Need Summary Sheet

I. **Project Description:**

Facility Name: Fort Mill Medical Center

Location of Facility: Intersection of SC Highway 160 and Highway 21 Bypass, Fort Mill, South Carolina

Project Description: Piedmont Medical Center proposes the construction of a 100-bed acute care satellite hospital in the high growth area of Fort Mill, York County, approximately 10 miles from Piedmont Medical Center. This facility will be known as Fort Mill Medical Center (FMMC). The proposed facility will provide 82 medical/surgical beds, 10 intensive care beds, 8 obstetrics beds, 1 diagnostic cardiac catheterization lab, 1 fixed-base MRI scanner and 24-hour emergency department. Additionally, FMMC will offer numerous other imaging modalities and ancillary services in support of this mix of services.

Ownership: This facility will be owned by Amisub of South Carolina, Inc. 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.

Profit or Non-Profit: This will be a for-profit facility.

II. **Staff Summary:**

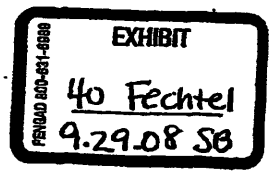
A. The total project cost for FMMC is estimated at $124,493,883.

Land	$ 11,227,435
Construction	$ 55,687,051
Architect's Fee	$ 4,434,642
Equipment	$ 45,537,069
Financing	$ 6,883,553
Other Costs	$ 724,133
TOTAL	$ 124,493,883

Number of Buildings	One
Number of Stories	Five
Square Footage	221,895

B. A letter dated September 30, 2005, from Steve Corbeil, Senior Vice President of Tenet's Central Northeast-Southern States Region, states that Tenet Healthcare Corporation makes the commitment to provide the necessary funding for this project, which is not expected to exceed $125 million.

C. The applicant addressed the need for the project as follows: (All attachments referenced can be found in the application.)



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Piedmont Medical Center (PMC) is a 288-bed acute care facility (including 20 psychiatric beds) located in York County, Rock Hill, South Carolina. Founded in 1983, PMC is the sole acute care provider in York County and offers a full range of services including acute care, emergency and critical care, women's services and education and community support programs. PMC also offers pain care, neonatology, and neurosurgical services as well as a sleep disorder center and a wound care center. Additionally, PMC offers a full range of cardiac services including diagnostic and therapeutic catheterization, open-heart surgery, and cardiac rehabilitation.

The 2004-2005 South Carolina Health Plan shows that Piedmont Medical Center has a need for 64 additional acute care beds based on the current utilization at PMC and expected population growth in York County.

Figure 7
Piedmont Medical Center
FY 2010 Hospital Bed Need

Age Category	Population 2003	Population 2010	2003 Patient Days	Projected ADC	Bed Need (a)	Existing Beds	Need/ (Excess)
<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 State Health Plan.
(a) Based on 70% occupancy

Rather than adding these to the existing site in Rock Hill, Amisub of South Carolina, Inc., proposes the construction of a satellite hospital in the high growth area of Fort Mill, York County, approximately 10 miles from PMC to better serve the residents of northern York County who are currently traveling to Rock Hill and out of state for acute care services.

In addition, the 2004-2005 State Health Plan states that affiliated hospitals may permanently transfer beds between facilities in order to serve their patients in a more efficient manner if there is no overall increase in the number of beds. Therefore, in order to best serve the residents of Fort Mill, PMC proposes to add the 64 beds at Fort Mill Medical Center, and transfer an additional 36 beds from PMC to build a larger, more efficient hospital that will accommodate the future growth of the community and reduce the out migration of residents to other states.

Certificate of Need Summary Sheet

I. Project Description:

Facility Name: Carolinas Medical Center – Fort Mill (CMCFM)

Location of Facility: Fort Mill, South Carolina located West of I-77 at Exit 83.

Project Description: This project entails the construction of a three (3) story, 140,000 square foot hospital to be constructed on 15 acres in Fort Mill, and will be a part of Carolinas HealthCare System (CHS) based in Charlotte, NC. As the third largest public health care system in the nation, CHS currently serves 58.0% of the Medicaid patients that leave the state and seek health care in North Carolina. The scope of the services to be offered include the following:

- 64 acute care beds (48 medical/surgical, 10 intensive care, 6 obstetrical)
- 24 hour emergency care
- Surgical services
- Endoscopy services
- One diagnostic cardiac catheterization laboratory
- Magnetic Resonance Imaging (MRI) unit
- Computed Tomographic (CT) scanner
- Support services and diagnostic imaging to include: fluoroscopy, ultrasound, mammography, cardiac diagnostics, respiratory diagnostics, physical therapy, and sports medicine services

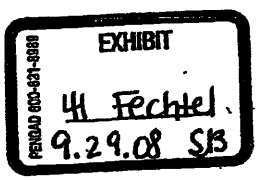
Ownership: The facility will be owned by the Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas HealthCare System located in Charlotte, North Carolina.

Profit or Non-Profit: This will be a non-profit facility.

II. Project Summary:

A. Cost. The total project cost for the proposed project is at $73,421,664. The costs are itemized as follows:

Land	$ 1,500,000
Construction	$40,920,000
Professional Fees	$ 3,348,000
Equipment Costs	$27,653,664
Financing Costs	$ 0
Project Contingency	$ 0
Miscellaneous/Other	$ 0
TOTAL	$73,421,664



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Number of Building/Stories	one/three
Square Footage	140,000
Total Project Cost/Square Foot	$ 524
Total Project Cost /Bed	$ 1,147,214

B. The application includes a letter from Mr. Greg A. Gombar, CFO of CHS, regarding the financial strength of CHS to fund the project. Mr. Gombar states that CHS will finance the capital cost from accumulated cash reserves.

C. The applicant addressed the need for the project as follows: (All attachments referenced can be found in the application)

In assessing the overall need for 64 additional hospital beds in York County as identified in the 2004/05 South Carolina Health Plan, CHS evaluated and considered the following:

- The geographic segmentation of York County;
- Historical and projected population trends;
- The placement of hospitals in an advanced metro market;
- Local market share and patient migration patterns;
- The proposed service area for a new hospital;
- The future demand for hospital beds in York County; and
- Projected utilization for a new hospital.

Management's evaluation has addressed each concern identified and the conclusion is that there is a need for the proposed project. Each component of the evaluation is outlined below, followed by a narrative summary of the major findings and analysis.

The Geographic Segmentation of York County-A map of York County by major zip code is attached. Upon evaluating the geography of York County the following major observations were noted and factored in to the need assessment and service area definition of the proposed hospital.

- ☐ It appears York County is appropriately defined by three somewhat distinct and natural geographic areas. These three areas include the following zip code regions:
  - Greater Rock Hill *(zip codes 29730, 732, 733 and 704)*
  - Western York County *(zip codes 29710, 717, 726, 742, 743 and 745)*
  - Northern York County *(zip codes 29708 and 29715)*
- ☐ Lake Wylie and the Catawba River chain provide a somewhat natural separation of the northwestern and eastern sides of York County. Within York County, there are only 2 major bridges that cross this large river/lake system. From a hospital planning and development standpoint, the populations residing in Western York County (west of Lake Wylie) are considered somewhat remote with respect to eastern York County.

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 **MEMORANDUM OF PETITIONER CAROLINAS HEALTHCARE SYSTEM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

EXHIBIT I

DHEC Decision Letter of May 30, 2006

File

D H E C

PROMOTE PROTECT PROSPER

C. Earl Hunter, Commissioner

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

Certified Mail

May 30, 2006

Re: Carolinas HealthCare System d/b/a Carolinas Medical Center – Fort Mill
Fort Mill, South Carolina

Mr. F. Del Murphy, Jr., Vice President
CHS Management Company
P.O. Box 32861
1000 Blythe Boulevard
Charlotte, North Carolina 28232-2861

Dear Mr. Murphy:

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 submitted by Carolinas 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 one diagnostic cardiac catheterization laboratory to be located off of I-77, Exit 83, South of Sutton Road in York County, 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

000996

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.

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

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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

(4) The relief requested.

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(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

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

CC: Ms. M. Elizabeth Crum, Esquire
Mr. David S. Levitt
Mr. Terry Linn, Chief Development Officer

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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 **MEMORANDUM OF PETITIONER CAROLINAS HEALTHCARE SYSTEM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

EXHIBIT J

York County Contract & Sixth, Eighth and Ninth Addenda

AGREEMENT

dated as of

December 8th, 1980

among

AMERICAN MEDICAL INTERNATIONAL, INC.,

AMISUB OF SOUTH CAROLINA, INC.,

TRUSTEES OF YORK GENERAL HOSPITAL

AND

YORK COUNTY, SOUTH CAROLINA

RECEIVED
APR 26 2006
HEALTH FACILITIES AND
SERVICES DEVELOPMENT

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AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of December, 1980, by and among AMERICAN MEDICAL INTERNATIONAL, INC., a corporation organized and existing under the laws of the State of Delaware (herein referred to as "AMI Parent"), AMISUB OF SOUTH CAROLINA, INC., a corporation organized and existing under the laws of the State of South Carolina (hereinafter referred to as "AMI"), THE TRUSTEES OF YORK GENERAL HOSPITAL (hereinafter referred to as the "Trustees"), and YORK COUNTY, SOUTH CAROLINA, a political subdivision of the State of South Carolina (hereinafter referred to as "York County").

W I T N E S S E T H:

WHEREAS, "York General Hospital" is the name of a hospital (said institution being hereinafter referred to as the "Hospital") located in York County, South Carolina; and

WHEREAS, the Trustees presently hold title to the real and personal property of the Hospital for the benefit of York County, and operate the Hospital; and

WHEREAS, York County and the Trustees (hereinafter collectively referred to as the "Sellers") desire that AMI take over the operation of the Hospital and to that end that AMI lease the Hospital building and certain land on which the Hospital is located from Sellers and purchase certain assets owned by the Sellers and assume certain liabilities of the Sellers in

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connection therewith, pending the completion and licensing of a new hospital to be located in York County, and to be constructed, owned and operated by AMI (hereinafter referred to as the "Replacement Hospital"); and

WHEREAS, subject to the terms and conditions set forth herein, AMI is willing to take over the operation of the Hospital and to lease the Hospital building and certain land on which the Hospital is located from the Sellers pending the completion and licensing of a Replacement Hospital and to purchase certain assets from the Sellers and to assume certain liabilities of the Sellers; and

WHEREAS, AMI is the wholly-owned subsidiary of AMI Parent;

NOW, THEREFORE, for and in consideration of the premises and of TEN AND NO/100 Dollars ($10.00) paid by each party to the other, and of other good and valuable consideration, the receipt and sufficiency of which is acknowledged by each party hereto, the parties hereto, intending to be legally bound, hereby agree as follows:

Section 1. Lease of Hospital Building, Fixtures and Certain Land.

AMI shall lease the Hospital building, fixtures and certain land on which the Hospital is located (exclusive of the premises devoted to Alcoholic Rehabilitation and Detoxification and Mental Health Programs, and exclusive of the Brice Office Building) from the Sellers for a term of thirty-six months at

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a monthly rental of ONE HUNDRED FIFTY THOUSAND DOLLARS ($150,000) per month on the terms and conditions and subject to the limitations set forth in the Lease Agreement of even date herewith (hereinafter referred to as the "Lease"), a copy of which is attached as Exhibit 1.0 hereto. The Lease Agreement shall be executed by AMI and the Sellers, and guaranteed by AMI Parent, by the execution and delivery by AMI Parent of the written guaranty agreement substantially in the form attached hereto as Exhibit 1.1. The term of the Lease shall commence on and as of the "Closing Date" (as hereinafter defined) and the Lease Agreement shall continue in force and effect for the full term of thirty-six months, in accordance with its terms.

Section 2. Replacement Hospital.

AMI shall construct and operate upon the site previously selected by York County an acute-care hospital containing approximately 273 beds and approximately 215,000 square feet to replace the present Hospital. AMI shall commence construction of the Replacement Hospital within twelve months following the granting to AMI of a certificate of need by the South Carolina Department of Health and Environmental Control. AMI shall make application for a certificate of need and other appropriate permits, licenses or certificates for the construction and operation of a Replacement Hospital, pursuant to the "State Hospital Construction and Franchising Act", Section 44-7-110, et seq., South Carolina Code of Laws, 1976, within ninety (90) days after execution of this Agreement. AMI shall commence

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construction of the Replacement Hospital within the period set forth above and carry the work forward continuously and expeditiously, with adequate work forces, materials and financial resources until completion. It is contemplated that construction shall be completed within twenty-four months of commencement. If AMI shall be delayed at any time in the progress of the work by an act or omission of York County or by labor disputes, fire, unusual delay in transportation, adverse weather conditions not reasonably anticipatable, unavoidable casualties, or any cause beyond the control of AMI, including the discovery of concealed sub-surface conditions encountered in the construction of the Replacement Hospital which, through no fault of AMI, cause a delay in construction, then such delays shall not constitute a breach of this provision. If AMI shall not have received a Certificate of Need or other governmental authorization required for the commencement of construction of the Replacement Hospital within eighteen months of the date of this Agreement, this Agreement shall, pursuant to Section 11.3 hereof, terminate automatically.

The parties acknowledge that the Sellers have obtained approval for a Certificate of Need to build the Replacement Hospital and that Sellers have obtained a site location. AMI agrees to construct the Replacement Hospital on the site selected by York County substantially in accordance with the preliminary architectural plans. AMI shall have the right to modify such plans to improve the delivery of health care to the citizens of

York County; provided, however, that any such modifications shall not materially change the square footage, the number of beds, or medical services which such architectural plans contemplate. Upon the lease by AMI of the existing hospital, AMI shall establish a Facilities Planning Committee which shall include appropriate representation from the county government, the medical staff of the existing Hospital and the community. The Facilities Planning Committee shall review and provide advice to AMI concerning any proposed changes in the Replacement Hospital plans.

Section 3. Operation of the existing Hospital and Construction and Operation of Replacement Hospital.

AMI shall undertake the following commitments in connection with the operation of the present Hospital and the construction and operation of the Replacement Hospital:

3.1. Hospital Services. During the term of the lease referred to in Section 1 of this Agreement, and after construction of the Replacement Hospital, AMI shall provide in York County at a minimum (i) all health care services currently provided by the present York General Hospital; and (ii) all health care services which have been authorized in the Certificate of Need granted to the Trustees for the Replacement Hospital.

3.2. Ambulance Service. AMI shall provide at no expense to York County ambulance service which shall respond to calls within the geographical limits of York County on a twenty-four hour basis, and which shall furnish transportation by

ambulance to any hospital operating within the geographic limits of York County and all counties contiguous to York County. The skill levels of the staff and the equipment of the ambulance service shall be maintained in such a manner as to enable the service to provide "advanced life support" as defined by the S. C. Midlands EMS Region II Plan which was established pursuant to the EMS Act of 1973, Public Law 93-154, and amended by Public Law 94-573 of 1976. The principal objective of such service shall be to meet the needs of all citizens of York County rather than the sole needs of the hospital. AMI shall operate the service in such a manner so as not to diminish the level of services presently available within York County. Such operation shall include keeping an ambulance at Divine Saviour Hospital in York so long as space for the ambulance shall be free of charge. The parties hereto understand that York County, in executing this Agreement, does not grant unto AMI an exclusive franchise to operate an ambulance service in York County.

During the first year following the closing, AMI shall undertake a study to determine whether the program in place at the closing is the most effective and economical way to provide high quality ambulance service. During this period, the number of ambulances in service shall not be decreased. Thereafter, AMI may implement changes to improve the effectiveness and cost economy of the operation of the ambulance service, provided that no such changes shall diminish the quality of service, the skill levels of the staff, the response time to emergency ambulance calls,

or the quality of ambulance service equipment. AMI shall not discontinue, abolish, diminish or subcontract for ambulance service without the express written approval and consent of the York County Council.

3.3. Emergency Room Service. AMI shall provide at no expense to York County an emergency room sufficiently staffed on a twenty-four hour basis by qualified physicians who will administer emergency medical care. Emergency medical care will be furnished to all parties regardless of their ability to pay or place of residence. AMI will continue the Hospital's current program of providing emergency room services to Winthrop College students. Emergency room physicians and ambulance service staff shall coordinate their respective functions in order to insure the highest quality life-saving skills.

3.4. Hospital Advisory Board. AMI shall establish a board of hospital advisors consisting of twelve members. Four members of the hospital advisory boards shall be representatives of the medical staff, four members of the hospital board shall be representatives of the community and four members of the hospital board shall be representatives of AMI. The medical staff shall select its representatives. The four AMI representatives shall be selected by AMI and shall include the hospital administrator. The four community representatives shall be selected in the following manner: The York County Council shall select the first four community representatives to serve staggered terms as provided

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hereinbelow. Thereafter, the York County Council shall appoint each successor to the original four community representatives on the board. All members of the board shall serve staggered terms of four year. Therefore, the first board members shall serve terms as follows:

Term	Medical Staff	AMI	Community
1 year	1 member	1 member	1 member
2 years	1 member	1 member	1 member
3 years	1 member	1 member	1 member
4 years	1 member	1 member	1 member

Successors to the first board members shall serve four year terms and shall be selected in the manner as provided hereinabove. The board shall establish its own rules or operation and procedure. The purpose of the advisory board shall be to insure that AMI is continuously apprised of community interest and to provide the appropriate interface between the Hospital and the York County community.

3.5. Annual Report to the York County Council. On September 30 of each year, commencing in 1981, AMI shall present to the County Council of York County an annual report on the status of the Hospital, the state of its operations, and its plans for the future.

3.6. AMI Scholarship Program. During the first year of the lease of the Hospital by AMI and during each of the following ten years, so long as AMI shall continue to operate the Hospital or to own and operate the Replacement Hospital, there shall be awarded by AMI one or more medical scholarship totalling Ten Thousand

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Dollars ($10,000) for York County residents which shall be used for the pursuit of education in a field which shall be related to medical care. The scholarship program shall be established and administered by the hospital advisory board.

3.7. Continuing Education. AMI shall continue and further the health care educational opportunities and programs of the existing York General Hospital, which programs shall include, but not be limited to the following:

(a) York Technical College Programs. AMI will participate in the following medically-related programs currently offered by York Technical College:

(i) Medical Lab Technology;

(ii) Nursing (Associate Degree);

(iii) Operating Room Technician;

(iv) Radiologic Technology;

(v) Respiratory Therapy;

(vi) Dental Assistant.

(b) Winthrop College Programs. AMI will continue to support and participate in the current B. S. Degree in Nursing Program offered by the Medical University of South Carolina satellite program at Winthrop College.

(c) AMI Programs. AMI will provide programs for the continued improvement in educational and skill levels of its employees. To this end, AMI will offer a variety of activities ranging from in-house seminars to programs of formal education presented by major universities.

AMI will also provide programs of management training for hospital personnel, including administrators, directors of nursing, business office managers, and other hospital department heads.

3.8. Physician Recruitment. AMI shall implement an intensive recruitment effort to bring to the York County community the medical specialties required to insure that the citizens of York County receive the highest quality of medical care.

3.9. Medical Staff. No present member of the existing Hospital medical staff shall lose any staff membership and/or clinical privileges at the present Hospital, while leased, or at the Replacement Hospital as a result of the sale and lease contemplated by this Agreement so long as the staff member continues to satisfy the qualifications for staff membership set forth in the corporate and medical staff bylaws of Hospital. AMI shall operate the existing Hospital when leased and the Replacement Hospital after constructed in such manner that, except as otherwise provided in physician agreements entered into by Hospital, the Hospital's medical staff shall be an open staff at all times.

Section 4. Indigent Care.

On and after the Closing Date, and for so long as AMI (or AMI Parent) operates a hospital in York County, South Carolina, AMI (or AMI Parent) shall provide hospital care to York County "indigent persons" as defined and redefined from time to time by York County. York County may, during the

term of this agreement and thereafter, define and classify those persons designated as "indigent persons" for purposes of implementation of this agreement; provided, however, that the persons designated and classified by York County as "indigent persons" for purposes of this agreement shall, at a minimum, be persons who (i) are classified by York County as being "indigent", (ii) do not have the financial ability to pay his or her hospital bill, (iii) will not have any part of his or her hospital bill otherwise paid by medicare, medicaid or some other governmental program or by some other outside source, such as insurance, an employee hospital benefit plan or some other person required by law to provide medical care for such person, and (v) shall be a resident of York County. AMI shall charge York County for hospital care provided to indigent persons pursuant to this Section 4 of this agreement during any fiscal year of York County at a rate which represents a ten percent discount from AMI's standard charges for such care, as provided to its other patients in the same hospital, as in effect on the date on which services are rendered. For purposes of this Section 4, the term "hospital care" shall mean any type of service or product rendered or provided by AMI to a patient including, without limitation, room and bed use, drugs, supplies and laboratory services, emergency room care and ambulance service.

Commencing with the Closing Date, AMI and York County shall maintain records which will provide accurate information regarding the amount of monies expended by York County for the

care of indigent persons.

The total annual amount to be reimbursed by the county to AMI for providing hospital care to indigent persons pursuant to this Section 4 ("total county obligation") shall not exceed an agreed upon limit as set forth hereinbelow. In regard to the total county obligation, the county shall have the right and option at its election, to select one of the following alternatives:

(i) During the twelve months following the Closing Date, the total county obligation shall not exceed Four Hundred Seventy-Five Thousand Dollars ($475,000) ("limit I"). AMI shall provide services to indigent persons until the total sum of Four Hundred Seventy-Five Thousand Dollars ($475,000) shall have been exhausted. After such sum is exhausted, AMI shall continue to be obligated to provide, at its own expense, emergency care to indigent persons; however, AMI shall not be obligated to provide all other hospital services to indigent persons, although it may do so at its own expense. Following the twelve-month period referred to above, York County shall review the records of the treatment of indigent persons to determine whether limit I has been sufficient to meet the needs of indigent persons. Limit I for the next twelve-month period shall be adjusted on the basis of such review.

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OR

(ii) During the twelve months following the Closing Date, the total county obligation shall not exceed the sum of Seven Hundred Fifty Thousand Dollars ($750,000) ("limit II"). Thereafter, adjustments to limit II shall be made at the end of the initial twelve-month period and each subsequent twelve-month period (the "Adjustment Date(s)") as follows:

(a) The index used for computing the adjustment is the Consumer Price Index, All Urban Consumers for the Metropolitian Area - All Items, 1967 Equaling 100, published by the U. S. Department of Labor, Bureau of Labor Statistics (the "Index").

(b) The percentage for the adjustment at the end of the initial twelve-month period shall be determined by dividing the Index for the date nearest the initial Adjustment Date by the Index for the Closing Date. The percentage for the Adjustment at the end of each subsequent twelve-month period shall be determined by dividing the Index for the date nearest the current Adjustment Date by the Index for the immediately preceding Adjustment Date.

(c) The initial adjustment shall be computed by multiplying the sum of Seven Hundred Fifty Thousand Dollars ($750,000) by the percentage determined

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pursuant to (b) above. This adjustment and each subsequent adjustment shall produce an adjusted limit ("Adjusted Limit II") which shall continue until the next Adjustment Date. Each subsequent adjustment shall be computed by multiplying the Adjusted Limit II for the immediately preceding twelve-month period by the percentage determined pursuant to (b) above for the current Adjustment Date.

AMI shall be obligated to continue to provide medical services to indigent persons in any one twelve-month period, even if its reimbursable costs pursuant to this Section 4 exceed the Adjusted Limit II for that twelve-month period.

York County shall elect one of the above alternatives and notify AMI in writing of its election within ninety (90) days following the Closing Date. Thereafter, within thirty (30) days after final billing for indigent care services for any twelve-month period, York County may elect to implement the alternate total county obligation provided by this Section of this Agreement, by giving notice of such election in writing.

Section 5. Purchase of Assets and Assumption of Liabilities.

5.1. Transfer of Assets. On the terms and subject to the conditions set forth in this Agreement, the Sellers agree to sell, assign, transfer and deliver to AMI on and as of the Closing Date, and AMI agrees to purchase from the

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Sellers on and as of the Closing Date, all of the Sellers' right, title and interest in and to the following described assets (said assets being hereinafter referred to as the "assets"):

(i) All inventory, supplies, movable equipment, described on Exhibit 5.1(i) hereto, minor equipment, automotive equipment, furniture, machinery and equipment warranty rights, prepaid expenses, medical records, medical charts, business records and accounts receivable owned by York General Hospital;

(ii) The land described in Exhibit 5.1(ii) comprising approximately 20.7 acres which shall be the site of the Replacement Hospital;

(iii) The land described on Exhibit 5.1(iii) comprising approximately 19.3 acres which is adjacent to the land described in Exhibit 5.1(ii); and

(iv) All contracts and agreements listed on Exhibit 5.1(iv) hereto.

5.2. Assets Excluded from Purchase. York County shall retain all cash, investments, annuity contracts, other receivables, and existing hospital land, building and improvements and all other assets of York General Hospital not specifically enumerated in 5.1 of this agreement.

5.3. Assumption of Liabilities.

(a) Liabilities. On and as of the Closing Date, AMI shall assume and agree to pay, perform and discharge the "Liabilities" (as hereinafter defined). Subject

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to Section 5.3(b), for purposes of this agreement, the term "Liabilities" shall include, and be limited solely to:

(i) Any and all liabilities of the Sellers for funds which have been advanced to the Hospital by the United States Federal Government under the Hill-Burton program. Exhibit 5.3(a)(i) sets forth the claim of the United States Federal Government against the Hospital in the form of a letter stating the claim at One Million Five Hundred Thousand Dollars ($1,500,000);

(ii) Any and all claims of the United States Federal Government under the medicare program for recapture of depreciation generated by the sale or lease of Hospital assets;

(iii) Any and all obligations of the Hospital accruing from and after the closing date under those contracts and agreements listed on Exhibit 5.1(iv) hereto; and

(iv) All sums necessary to maintain the present Hospital, and all liabilities or sums required for correction of deficiencies cited after commencement of the lease to bring the present Hospital into compliance with any federal, state or local laws, ordinances, rules or regulations, necessary to permit the continued operation of the Hospital as a hospital, during the term of the lease referred to in Section 1

of this Agreement.

(b) Excluded Liabilities. Notwithstanding anything in Section 5.3(a) to the contrary, the term "liabilities" shall not include any of the following debts, obligations and liabilities of the Sellers, and, therefore, AMI does not assume under this Agreement, and Sellers shall continue to be obligated to pay, perform and discharge such debts, obligations and liabilities:

(i) Federal and state income taxes, if any, payable with respect to any activities of the Hospital;

(ii) Franchise taxes payable by the Hospital;

(iii) Sales and other taxes (including, without limitation, use taxes) payable with respect to the business operations of the Hospital;

(iv) Federal and state payroll taxes payable with respect to any person employed by the Hospital;

(v) Accrued salaries, wages and vacations as of the date of closing shall be assumed and paid when due by AMI. The amount of such accrued salaries, wages and vacation assumed by AMI shall be deducted from the purchase price to be paid to the county at the closing.

Liability for accrued sick leave as of the date of closing shall be apportioned between the County and AMI on the basis of the following formula: after the

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date of closing, sick leave taken by Hospital employees shall first be credited against sick leave accrued after the date of closing. In the event that sick leave accrued by an employee after the closing is exhausted, and the employee takes sick leave earned prior to the closing, AMI shall pay such sick leave and shall deduct the amount of such payment from the monthly lease payment to the county in the month such payment is made; provided, however, that after the third anniversary of closing, all unexpired sick leave accrued prior to closing shall then be assumed by AMI at no further expense to the county;

(vi) Any liability to the extent the Sellers are insured or otherwise indemnified therefor;

(vii) All accounts payable of the Hospital and adjustments due Medicare and Medicaid by the Hospital except those provided for in 5.3(a)(ii), above; and

(viii) Any other debt, obligation or liability of the Sellers (other than those debts, obligations and liabilities of the Sellers specifically listed in Section 5.3(a) hereof), including retirement, deferred compensation, pension plans, other plans described in Section 8.11(d) hereof and any other compensation or benefits (including, without limitation, any obligation of the Sellers to fund the Hospital's

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Pension Plan) payable by the Sellers to or for any person employed by the Hospital, whether or not such debt, obligation or liability is disclosed on the audited balance sheet of the Hospital dated September, 1979, and all notes thereto (said balance sheet and notes being hereinafter referred to as the "1979 Balance Sheet") which have been delivered to AMI.

(c) Proration. After the Closing Date, the Sellers and AMI shall prorate as of the Closing Date any payments which become due and payable after the Closing Date with respect to (i) the contracts and agreements listed on Exhibit 5.1(iv) hereto, (ii) ad valorem taxes on the assets, (iii) ad valorem taxes on the property leased by AMI from the Sellers under the lease and (iv) all utilities including, without limitation, water, sewer, telephone, electricity, heating oil and gas service. The adjustment shall be made when the payments become due and payable.

5.4. Purchase Price.

AMI shall pay the consideration computed in the manner set forth below (such consideration being hereinafter referred to as the "Purchase Price") on the dates set forth below, in

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exchange for the assets:

(a) On the Closing Date, AMI shall pay the Sellers the following sums, constituting the current estimated value of the assets described in Section 5.1(i), (ii), (iii) and (iv), subject to the provisions of this Agreement, including Sections 5.3(b)(v), (viii) and (c), plus an amount equal to the net receivables of the Hospital at the Closing Date, if the accounting and collection policies of the Hospital to reserve for and collect such accounts receivable as evidenced by the financial statement referred to in Section 8.6 below shall not have changed:

Inventory	$ 631,000.00
Movable Equipment	1,391,678.00
Minor Equipment	79,683.00
Automotive Equipment	42,184.00
Prepaid Expenses	67,582.00
Accounts Receivable	1,348,929.00
Land	421,590.00
TOTAL	$3,982,646.00

(b) The allocation of the Purchase Price to be paid hereunder by AMI is set forth on Exhibit 5.4(b) hereto, and both AMI and the Sellers agree that such allocation is fair and reasonable. It is expressly acknowledged and agreed that the allocation of the Purchase Price

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for the items listed as "Current Assets" in Exhibit 5.4(b) is based on the most recent balance sheet available, and that the Purchase Price of such current assets is subject to adjustment pursuant to Section 5.4(c) hereof. Any change in the value of the current assets pursuant to the Section 5.4(c) audit shall result in corresponding changes to the allocation made in Exhibit 5.4(b). On the "Post Closing Date" (as hereinafter defined) AMI shall prepare, and AMI and the Sellers shall initial a revised Exhibit 5.4(b) which reflect all such changes, and such Exhibit 5.4(b), as revised, shall be deemed substituted in lieu of Exhibit 5.4(b) attached hereto.

(c) Within thirty days following the Closing Date (such date to be hereinafter referred to as the "Post Closing Date"), AMI shall conduct and complete an audit of the items listed as Current Assets on the 1979 Balance Sheet as adjusted to reflect any additions or deletions to such Current Assets through the Closing Date, in accordance with generally accepted auditing standards, as of the Closing Date, and shall notify the Sellers in writing (i) whether or not there has been a change in the value of the Current Assets as adjusted from the amount shown therefor on the 19 79 Balance Sheet to the Closing Date, and (ii) the amount

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of such change, if any. If Sellers disagree with the results of the audit conducted by AMI, the Sellers may cause a complete audit or a separate audit of any item to be conduted by an accounting firm selected by Sellers. If at the conclusion of the audit conducted for Sellers AMI and Sellers shall be unable to resolve any differences between Sellers' audit and the audit conducted by AMI, AMI shall designate one arbitrator and Sellers shall jointly designate one arbitrator, and the two arbitrators so selected shall designate a third arbitrator. The three arbitrators so selected shall resolve any differences in the audits. The remedy provided in this section shall be cummulative to all other remedies available to the parties to this Agreement. The Purchase Price paid for the Current Assets shall be adjusted depending upon whether there has been an increase or decrease in the aggregate of the Current Assets as of the Closing Date. If the aggregate dollar value of the Current Assets has increased, then the dollar amount of such increase shall be paid by AMI to the Sellers within seven days after the Closing Date. If the aggregate dollar value of the Current Assets has decreased, then the dollar amount of such decrease shall be paid by the Sellers to AMI within seven days after the Post Closing Date.

Section 6. Actions to be Taken by AMI, York County and the Trustees.

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6.1. Action by AMI.

AMI shall, as soon as practicable after the date hereof, use its best efforts to obtain:

(i) the transfer to AMI of the license presently issued to the Trustees pursuant to the applicable South Carolina laws (hereinafter referred to as the "Hospital Licensing Act") or the issuance of a new license under the Hospital Licensing Act for AMI to lease and operate the Hospital, on terms and conditions no less restrictive than the terms and conditions imposed under the Trustees' present license;

(ii) the approval of this Agreement and the transfer of the operations of the Hospital to AMI effected hereunder by any necessary federal, state and local authority or agency whose approval is necessary under applicable South Carolina Law (hereinafter referred to as the "South Carolina Certification of Need Laws"), Section 1122 of the Social Security Act, the National Health Planning and Resources Development Act of 1974 (P.L. 93-641) and any other state, federal or local laws governing the operations of a general hospital; and

(iii) the necessary approvals, certificates or permits required under the South Carolina Certification of Need laws, Section 1122 of the Social Security Act, the National Health Planning and Resources Development Act of 1974 (P.L. 94-641) and any other federal, state or local laws governing the operations of a general hospital,

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for AMI to construct, own and operate a new hospital facility to be located in York County (1) having approximately 273 beds, (2) having approximately 215,000 square feet, and (3) offering no fewer services than the services offered by the Hospital on the date of this Agreement or approved in the Certification of Need which was issued to Sellers for the construction of a new hospital.

6.2. Action by York County and the Trustees. The Sellers shall use their best efforts to assist AMI in obtaining the requisite approvals, licenses, Certifications of Need, permits, utilities and the like as set forth in Section 6.1 hereof and shall cooperate fully with AMI in this regard.

Section 7. Instruments of Transfer.

7.1. Transfer of Assets. On the Closing Date, the Sellers shall execute and deliver to AMI a bill of sale in the form of Exhibit 7.1 hereto (hereinafter referred to as the "Bill of Sale"), pursuant to which the Sellers will sell, assign, transfer and deliver to AMI all of their title and interests in and to the Assets.

7.2. Assumption of Obligations. On the Closing Date, AMI shall execute and deliver to the Sellers an assumption agreement in the form of Exhibit 7.2 hereto (hereinafter referred to as the

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"Assumption Agreement"), pursuant to which AMI will agree to pay, perform and discharge the Liabilities.

7.3. Further Assurances. The Sellers shall from time to time at AMI's request and without further consideration execute and deliver to AMI such instruments of transfer, conveyance and assignment, in addition to the Bill of Sale, as AMI may reasonably request to evidence further the transfer, conveyance and assignment of the Assets to AMI. Similarly, AMI shall from time to time at the Sellers' request and without further consideration execute and deliver to the Sellers such instruments of assumption, in addition to the Assumption Agreement, as the Sellers may reasonably request to evidence further AMI's assumption of the Liabilities.

Section 8. Representations and Warranties of the Sellers.

The Sellers hereby represent, warrant, covenant and agree to and with AMI and AMI Parent, as follows:

8.1. Due Organization. York County is a duly created and validly existing political subdivision of the State of South Carolina.

8.2. County Council. The County Council of York County has been duly elected in accordance with the laws of the State of South Carolina.

8.3. Approval of Agreement. The execution, delivery and performance of this Agreement and the Lease (i) have been duly approved by all necessary governmental action of York County,

including, without limitation, appropriate action by the County Council of York County, (ii) are within the powers of York County, and (iii) will not violate any law or governmental restriction and will not constitute a breach or default of any agreement to which York County is a party.

8.4. Board of Trustees. The Board of Trustees of Hospital has been duly appointed in accordance with the laws of the State of South Carolina.

8.5. Approval of Sale. The execution, delivery and performance of this Agreement and the Bill of Sale have been duly approved by all necessary action of the Hospital, including, without limitation, appropriate action by Hospital's Board of Trustees.

8.6. Accuracy of Financial Statements. The 19 79 Balance Sheet and the audited balance sheet of the Hospital as of September, 19 79 (hereinafter referred as the "1979 Balance Sheet") and the audited income statement for the 12-month period ending on September, 1979, and the audited income statement for the period ending on September, 1979, and the notes thereto, are attached as Exhibit 8.6 hereto. All of the aforesaid financial statements were prepared in accordance with generally accepted accounting principles consistently applied. To the knowledge of the Sellers, each of said balance sheets, together with the notes thereto, fairly, completely and accurately presents the financial condition of the Hospital as of its respective date, and the said income statements fairly, completely

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and accurately present the results of the operations of the Hospital for the periods indicated. To the knowledge of the Sellers, on September, 1979, the Hospital had no liability, either accrued, absolute, contingent, or otherwise, whether or not then due and payable (including, without limitation, any liabilities for federal, state or local taxes, penalties, assessments and fees of the Hospital for all periods ending on or prior to the said date or any transaction or state of affairs entered into or existing on or before said date), which was not fully reflected on the 1979 Balance Sheet, the notes thereto or any Exhibit hereto, but which, in accordance with generally accepted accounting principles, should have been reflected on the 1979 Balance Sheet, or in the notes thereto. To the knowledge of the Sellers, on September, 1979, the Hospital had no liability whatsoever not required by generally accepted accounting principles to have been disclosed on said balance sheet or in the notes thereto as of such date which is not clearly described in this Agreement or an Exhibit hereto. To the knowledge of the Sellers, since September, 1979, the Hospital has incurred no liability whatsoever except in the ordinary course of its business, and no such liability incurred by it in the ordinary course of its business has been or will prove to be materially adverse to the business or financial condition of the Hospital.

The representations and warranties made by the Sellers to AMI in this Section 8.6 shall terminate on the 90th day following

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the signing of this Agreement. During such 90 day period, the Sellers shall provide AMI access to the premises and the books and records of the Hospital and cause the officers or administrators of the Hospital to furnish AMI or its agents such financial and operating data and other information with respect to the business and properties of the Hospital as AMI shall reasonably request. If during the 90 day period AMI shall discover that the 1979 financial statements include material inaccuracies or omissions, it may within five business days following the expiration of the 90 day period advise Sellers that this Agreement is terminated. If such notice of termination shall be given, neither AMI nor the Sellers shall have any further obligation or liabilities hereunder.

8.7. Properties of the Hospital. To the knowledge of the Sellers, the 1979 Balance Sheet reflect all of the properties presently used by the Hospital in its business, except for (a) inventory acquired or disposed of by the Hospital in the ordinary and usual course of its business since September, 1979, (b) properties that have been fully depreciated or the cost of which have been appropriately expensed by the Hospital and (c) properties leased by the Hospital. Exhibit 8.7 attached hereto sets forth a list and brief description of all the real and personal properties leased by the Hospital and all of the parcels of real property owned by the Hospital. Except for inventory disposed of in the ordinary and usual course of the Hospital's business since September, 1979, the Hospital presently has good and marketable title, free and clear of any lien, claim,

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encumbrance or charge to all of the real and personal property reflected in the 1979 Balance Sheet, to all the non-leased properties presently used by the Hospital that has been fully depreciated or the cost of which has been appropriately expensed by the Hospital and to all of the inventory acquired by the Hospital since September, 1979, and not yet disposed of by the Hospital in the ordinary course of its business,

(i) except for liens, charges or encumbrances reflected in the 1979 Balance Sheet or any schedule attached to Exhibit 8.7 for the purpose of disclosing any liens, encumbrances or charges not reflected on the 1979 Balance sheet; and

(ii) except for statutory liens arising involuntarily in the ordinary course of the Hospital's business and securing liabilities not now due or payable (such as property tax and mechanic's liens and the like).

With exception of the liens, charges and encumbrances referred to in subparagraphs (i) and (ii) above, on the Closing Date, the Sellers will convey to AMI good and marketable title to all of the Assets, free and clear of any lien, claim, encumbrance or charge.

All buildings and improvements located on real property owned or leased by the Hospital are in compliance with all applicable South Carolina (state or local) and, to its knowledge, all federal ordinances, regulations, zoning, environmental and land use laws and all such government regulations, except as

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otherwise set forth in Exhibit 8.13 hereto. None of the buildings or improvements located on real property owned or leased by the Hospital, and no other building or improvement encroaches on the real property owned or leased by the Hospital.

8.8. Taxes and Tax Returns. The Hospital has filed all federal, state and local tax returns and reports for the Hospital which have become due to be filed (including, without limitation, those due in respect of its properties, franchises, licenses, sales, and payrolls) and have paid all taxes, assessments, fees, interests, penalties (if any) and other governmental charges payable for all periods covered thereby. The Hospital is not delinquent in the payment of any taxes, assessments or governmental charges, and there are no assessments of additional taxes threatened against the Hospital or any of its owned or leased properties. No waiver of any statute of limitations or agreement for extension of time for assessment in respect of any tax liability of the Hospital has been given by the Hospital which is presently in effect. Without limiting the foregoing, (a) the Hospital has promptly filed when due all FICA, FUTA and similar state and local tax returns and withholding of employee income tax returns and reports of the Hospital which have become due to be filed and has paid all amounts required to be paid thereunder, and (b) the Hospital has paid over to the appropriate taxing authorities all amounts required to have been withheld by the Hospital from employee compensation, except such withheld amounts not yet due to have been paid over.

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8.9. Inventory. The inventory of Hospital as recorded on Exhibit 8.9 shall not be depleted except in the ordinary course of business, and it shall be maintained through the Closing at a level which does not differ materially from the inventory indicated on Exhibit 8.9.

8.10. Post Date Occurrences. Except as otherwise disclosed on Exhibit 8.10 hereto, since September, 1979, the Hospital has not:

(a) incurred any obligation or liability (absolute or contingent), except obligations or liabilities incurred in the ordinary course of its business, which, in the aggregate, neither have had nor will have a materially adverse effect on the financial condition or business of the Hospital;

(b) discharged or satisfied any lien or encumbrance or paid any obligation or liability (absolute or contingent) other than in the ordinary course of its business;

(c) mortgaged, pledged or subjected to lien or any other encumbrance any of its assets, tangible or intangible (except for statutory tax liens arising involuntarily in the ordinary course of its business and securing liabilities not yet due and payable);

(d) purchased, sold or transferred any asset except for inventory sold in the ordinary and usual course of its business;

(e) suffered any extraordinary losses or waived any rights of substantial value;

(f) Made any increase in, or written or oral agreement with respect to, the compensation payable to any of its Trustees,

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officers, key employees or agents, including, but not limited to, bonuses and pensions or other arrangements except as herein specifically provided;

(g) made any gift or any reimbursement for expenses not ordinary and necessary to the business of the Hospital, to any Trustee, officer, employee or agent;

(h) suffered any material damage to, or loss of, any of its business assets or properties (including leased properties), whether or not covered by insurance, as a result of any strike, fire, explosion, civil disturbance, accident, theft or casualty of any nature;

(i) suffered or experienced any change in the condition (financial or otherwise), assets or business of the Hospital, other than changes in the ordinary course of its business, none of which have been or will be materially adverse;

(j) been the subject of or experienced any strike or other work stoppage or concerted slowdown or threat thereof, union election or attempted collective bargaining of employees; or

(k) entered into any transaction other than in the ordinary and usual course of its business.

8.11. Major Contracts. Except as set forth on Exhibit 8.11 hereto, the Hospital has no:

(a) contract or agreement involving amounts payable to the Hospital that will aggregate $ 25,000.00 or more;

(b) contract or agreement for the purchase, sale or lease

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of goods, materials, equipment, supplies or capital assets or for the rendering of services involving payments by the Hospital that will aggregate $25,000.00 or more or which will require more than 30 days' notice in order for such commitments to be terminated without liability to the Hospital or its assigns;

(c) management or employment contract or collective bargaining or other labor union agreements;

(d) employee benefit plan, fund or program, whether or not legally binding, including, without limitation, (1) any plan, fund or program which provides to employees retirement income or deferred compensation of any kind, or (2) any plan, fund or program which provides to employees, through the purchase of insurance or otherwise, (i) medical, surgical, or hospital care or benefits, (ii) benefits in the event of sickness, accident, disability, death or unemployment, or (iii) day care centers, scholarship funds or prepaid legal services;

(e) contract or agreement with any Trustee, officer or employee or any unpaid loans or advances due or to become due to or from any Trustee, officer or employee;

(f) real estate, building or equipment lease calling for rental payments in excess of $10,000.00 per month;

(g) loan, factoring, credit line, subordination or guaranty agreement;

(h) contract preventing the Hospital or its assigns from carrying on its business anywhere in the world;

(i) joint venture or other agreement involving sharing of profits;

(j) outstanding power of attorney empowering any person, firm or corporation to act on behalf of the Hospital;

(k) outstanding offer or bid that, if accepted, would result in (i) a contract requiring the Hospital to pay, or that there be paid to the Hospital, in the aggregate, $ 25,000.00 or more, or (ii) any material contract or commitment;

(l) material contract or commitment of any type whatsoever not covered by any other item of this Section 8.11; or

(m) contract or agreement requiring the consent of any party other than York County or the Trustees to an assignment thereof.

Except as otherwise noted in Exhibit 8.11, true copies of all such contracts and other documents noted in such Exhibit have been furnished to AMI. The Hospital has duly complied with all provisions of every contract, lease and other agreement (whether written or oral) to which it is a party and is not in default with respect to any such contract, lease or agreement. No condition or state of facts exists that, with notice or the passage of time or both, would constitute a default under any contract, lease or other agreement to which the Hospital is a party. All contracts and leases to which the Hospital is a party are in full force and effect and are enforceable by the Hospital against all other parties thereto in all material

respects. No loan payable by the Hospital provides for any prepayment penalty or premium. The execution, delivery and performance of this Agreement will not cause any default in or breach of any provision of Hospital's Articles of Incorporation or Bylaws or any contract, lease or other agreement to which it is a party or by which it is bound, and none of such actions will result in termination or in acceleration or any similar right of any other party under any loan or other agreement to which the Hospital is a party or by which it is bound.

8.12. Litigation; Claims. There is no litigation, action, suit or proceeding or governmental investigation pending or threatened against the Hospital or affecting the Hospital or its business or any of its assets at law or in equity or before any federal, state, municipal, local or other governmental authority, nor does the Hospital know or have reason to know of any ground for any such litigation, action, suit, proceeding or investigation, except as set forth in Exhibit 8.12 hereto. The Hospital is not subject to any order, writ or decree of any court or other governmental authority, and is not involved in any material controversy with any of its employees or any organization representing any of its employees.

8.13. Compliance with Law. The Hospital to its knowledge is in compliance and has complied in every material respect with all South Carolina (state and local) and, to its knowledge, all federal laws, regulations, rules and decrees of authorities whatsoever relating to the conduct of its business and/or the

ownership of its assets, except as set forth in Exhibit 8.13 hereto.

8.14. Brokers' and Finders' Fee. No agent, broker, person or firm acting on behalf or under authority of either or both of the Sellers is or will be entitled to any commission or brokers' or finders' fee from any of the parties hereto in connection with any of the transactions contemplated herein.

8.15. Material Misstatements or Omissions. No representation or warranty made by the Sellers in this Agreement or in any document, statement, certificate, exhibit or schedule furnished to AMI pursuant hereto or in connection with the transactions contemplated hereby contains, to the knowledge of the Sellers, any untrue statement of a material fact or omits to state a material fact required to make any such representation or warranty not misleading.

8.16. Medicare Cost Reports. The Medicare cost reports furnished to AMI by the Sellers are complete, true and accurate.

8.17. Employee Benefit Plans.

(a) The Sellers have furnished AMI with copies of all reports regarding each employee benefit plan of the Hospital, as described in Section 8.11 and listed on Exhibit 8.11 hereof, which were filed on or after December 8, 1980, with the Internal Revenue Service, the Department of Labor, the Pension Benefit Guaranty Corporation ("PBGC"), any agency or department established under any state or federal securities laws and any other agency or department established under any

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other state or federal law, which copies of all such reports are true and accruate. All such employee benefit plans at all times, to Sellers' knowledge, have satisfied, and will continue to satisfy up to the Closing Date, all applicable requirements, including all reporting and disclosure requirements, under the Internal Revenue Code of 1954, as amended (the "Code"), and the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

(b) The Sellers agree that AMI is not and will not be assuming continuing or maintaining any employee benefit plan (or accepting any assets or assuming any liabilities of any such plan) maintained by the Hospital for its employees, except as provided in 5.2 (b) (v) hereof. Sellers shall be solely responsible for satisfying all applicable requirements discussed in (a) above with respect to such plans up to and after the Closing Date.

(c) The Pension Plan (as defined in Exhibit 8.11 hereof) is a "governmental plan" within the meaning of Section 414(d) of the Code and is a plan described in Section 4021(b)(2) of ERISA.. In the event that the Pension Plan shall be, or be deemed to be, wholly or partially terminated, for whatever reason, the Sellers shall be solely responsible for all obligations and liabilities resulting from such termination or partial termination, and in no event shall AMI be responsible for any such obligations or liabilities.

8.18. Quiet Enjoyment. AMI shall at all times during the term of the Lease have peaceable and quiet enjoyment and possession of the properties leased thereunder.

Section 9. Representations and Warranties of AMI and AMI Paren

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AMI and AMI Parent hereby represent, warrant, covenant and agree to and with the Sellers as follows:

9.1. Due Organization. AMI and AMI Parent each is a corporation duly organized and validly existing, and AMI is in good standing under the laws of the State of South Carolina and AMI Parent is in good standing under the laws of the State of Delaware.

9.2. Board of Directors. The Board of Directors of AMI and of AMI Parent have been duly elected in accordance with the laws of the State of South Carolina and of Delaware, respectively, and the Articles of Incorporation and Bylaws of each respective corporati

9.3. Approval of Purchase. The execution, delivery and performance of this Agreement, the Assumption Agreement and the Lease have been duly approved by all necessary corporate action on the part of AMI and AMI parent, and such actions are within the powers of AMI and AMI Parent.

9.4. Brokers' or Finders' Fees. No agent, broker, person or firm acting on behalf of AMI or AMI Parent or under authority of AMI or AMI Parent is or will be entitled to any commission or brokers' or finders' fee from any of the parties hereto in connection with any of the transactions contemplated herein.

Section 10. Conduct of Business Prior to Closing Date.

10.1. Access to Business. Except as prohibited by law, the Sellers shall give AMI and its agents access to all the premises and books and records of the Hospital, and cause the Hospital's officers and employees to furnish AMI and its agents such financial and operating data and other information with respect to the business

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and properties of the Hospital as AMI shall from time to time request. In the event of the termination of this Agreement, AMI shall return to the Hospital all documents, work papers, and other materials obtained from the Hospital in connection with the transactions contemplated hereby.

10.2. Conduct of Business in Ordinary Course. Prior to the Closing Date, the Hospital shall conduct its business only in the ordinary course and shall not, without prior written advice to AMI (except as provided below):

(a) Make any change:

(i) which exceeds 7% in the compensation payable or to become payable by the Hospital to any employee of the Hospital whose 1980 annual remuneration exceeded $5,000.00;

(ii) in any bonus, insurance, pension, or other benefit plan, payment, or arrangement made to, for, or with any Trustee, officer, or employee of the Hospital, including, without limitation, all plans, funds or programs described in Section 8.11 hereof;

(b) pay or prepay any outstanding indebtedness of the Hospital other than at its stated maturity;

(c) waive any rights of substantial value; or

(d) enter into any contract for the purchase or sale or lease of any property or goods or the obtaining of any

services involving payments to be made by or to the Hospital aggregating in excess of $25,000.00.

(e) Notwithstanding anything hereinabove to the contrary in this Section 10.2, the Hospital may, from time to time, whether before, on or after the Closing Date, and without advice to AMI, take any action with respect to the Pension Plan, the Deferred Compensation Plan, the Deferred Compensation Agreements or the Special Pensions (all as defined on Exhibit 8.11 hereof) as the Hospital in its discretion may determine, including without limitation (i) changing any of the terms and provisions of the Pension Plan, the Deferred Compensation Plan, the Deferred Compensation Agreements or the Special Pensions, (ii) increasing benefits or terminating benefits under any of them, (iii) funding or otherwise providing for the payment of any benefits thereunder and (iv) changing any funding or investment media that from time to time fund or provide any benefits thereunder.

Section 11. Effectiveness of Agreement, Closing Date; and Conditions to Closing.

11.1. Effectiveness of Agreement. This Agreement shall become effective on and as of the date hereof, subject to Section 11.3 hereof.

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11.2. Closing Date. The delivery of the Purchase Price pursuant to Section 5.4(a), the sale, transfer, assignment and delivery of the Assets pursuant to Section 5.1, the delivery of the Bill of Sale pursuant to Section 7.1, the assumption of the Liabilities pursuant to Section 5.3(a), the delivery of the Assumption Agreement pursuant to Section 7.2, and the delivery of the other instruments, certificates and legal opinions required under this Section 11, shall take place at York, S. C., at 2:30 o'clock P.M., local time, five (5) business days after AMI shall have executed and delivered to York County and the Trustees a Notice of Closing in the form of Exhibit 11.2 hereto (hereinafter referred to as the "Notice of Closing"), or on such other date or at such other time or place as the parties hereto shall agree to in writing (the date and time of the closing hereunder being referred to herein as the "Closing Date"). AMI shall execute and deliver the Notice of Closing within seven days after the conditions described in subsections (e), (f), (g), (h), (i) and (j) of Section 11.5 shall have been satisfied (or waived by AMI).

11.3. Maximum Time Period. If AMI has not, through no fault of AMI, executed and delivered a Notice of Closing in the manner specified in Section 11.2 on or before July 1, 1982, and if the closing contemplated in Section 11.2 hereunder is not

otherwise closed on or before said date, then this Agreement shall automatically terminate as of said date.

11.4. Condition to Obligations of the Sellers. The obligations of the Sellers to effect the transactions contemplated hereunder to be performed on the Closing Date by the Sellers shall be subject to the satisfaction (or waiver by the Sellers) on or before the Closing Date of the following condition:

(a) Representations and Warranties of AMI and AMI Parent to be True. The representations and warranties of AMI and AMI Parent herein contained shall be true in all material respects on and as of the Closing Date with the same effect as though made at such time, except to the extent any such representations or warranties are waived in writing by the Sellers; and AMI and AMI Parent shall have delivered to the Trustees and York County, a certificate to such effect, dated the Closing Date and signed by the Chairman of the Board, the President or any Vice President of AMI and of AMI Parent.

11.5. Conditions to Obligation of AMI. The obligation of AMI to effect the transactions contemplated hereunder to be performed by AMI on the Closing Date shall be subject to the satisfaction (or waiver by AMI) on or before the Closing Date of the following conditions:

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(a) Representations and Warranties of the Sellers To Be True. The representations and warranties of the Sellers herein contained shall be true in all material respects on and as of the Closing Date with the same effect as though made at such time, except to the extent that any such representations and warranties are waived in writing by AMI; and York County and the Trustees shall each have delivered to AMI a Certificate to such effect, dated the Closing Date and signed by the Chairman of the Board of the Trustees of the Hospital, in the case of the Trustees, and by the Chairman of the County Council of York County, in the Case of York County.

(b) Opinion of Counsel of York County. AMI shall have received from Spratt, McKeown & Spratt, counsel for York County, an opinion, dated the Closing Date and in form and substance reasonably satisfactory to AMI's counsel to the effect that:

(i) York County is a duly created and validly existing political subdivision of the State of South Carolina;

(ii) York County has the governmental power to execute and deliver this Agreement and Lease and to perform the respective terms and conditions thereof which are to be performed by York County; which such opinion may be qualified by noting that the act of the legislature of South Carolina ratifying the action of the Sellers would eliminate any possibility that the Sellers did not have authority to carry out this Agreement;

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(iii) The County Council of York County has the power to lease the Hospital property and within that authority its actions are binding upon future County Councils, and the Lease executed is within the authority of the County Council under the said South Carolina General Statute;

(iv) The County Council of York County has the authority to sell the Assets and within that authority its actions are binding upon future County Councils; and

(v) This Agreement and the Lease have each been duly authorized, executed and delivered by York County and are each the valid and binding obligations of York County, enforceable against York County in accordance with their respective terms (subject to bankruptcy and other laws affecting the rights of creditors generally).

(c) No Material Adverse Change. There shall not have occurred since September, 1979, (i) any material or adverse change in the business, properties, results of operations or business or financial condition of the Hospital, or (ii) any loss or damage to any of the properties or assets (whether owned or leased), whether or not covered by insurance, of the Hospital which would materially and adversely affect or impair the ability of AMI to conduct after the Closing Date the business now being conducted by the Hospital; and the Trustees shall have delivered to AMI a certificate, dated the Closing Date, and signed by the Chairman of the Board of Trustees of the Hospital, to all such effects.

(d) State Hospital License. AMI shall have been issued a new license under the Hospital Licensing Act or the present license under the Hospital Licensing Act for the Hospital shall have been transferred to the name of AMI (or a binding commitment to issue such license or transfer such license shall have been received from the State of South Carolina).

(e) Other Governmental Approvals. This Agreement and the transfer of the operation of the Hospital to AMI effected hereby shall have been approved by all necessary federal, state and local agencies whose approval is necessary under the Hospital Licensing Act, South Carolina Certification of Need laws, Section 1122 of the Social Security Act, The National Health Planning and Resources Development Act of 1974 (P.L. 93-641), and any other federal, state or local laws governing the operations of a general hospital, including, without limitation, the local Health Systems Agency, the South Carolina State Health Planning and Development Agency and the United States Department of Health, Education and Welfare ("HEW").

(f) Approval of New Hospital Construction. The application by AMI to construct, own and operate the Replacement Hospital shall have been approved by (or a binding commitment to approve such application shall have been received from) all necessary federal, state and local agencies under the South Carolina Certification of Need laws, Section 1122 of the Social Security Act, the National Health Planning and Resources Development Act of 1974 (P.L. 93-641), and any other federal, state or local laws governing the operations

of general hospitals, including, without limitation, the local Health Systems Agency, the South Carolina State Health Planning and Development Agency and the United States Department of Health, Education and Welfare.

(g) Medicare/Medicaid. AMI shall have obtained (or a binding commitment shall have been obtained in favor of AMI) (i) from the appropriate authority of the State of South Carolina or any political subdivision thereof, as applicable, a certification for participation in the South Carolina Medicaid program and (ii) from the appropriate authority of the federal government, a certification for participation under the federal Medicare program.

(h) Blue Cross/Blue Shield. AMI shall have obtained (or a binding commitment shall have been obtained in favor of AMI for) a Blue Cross/Blue Shield reimbursement contract.

(i) Title Insurance for Hospital. York County or the Trustees, at the expense of AMI, shall have provided AMI with a survey of the "Land" (as defined in the Lease) and AMI shall have obtained, at its expense, from Lawyers Title Insurance Company, a commitment to issue as of the Closing Date a leasehold title insurance policy guaranteeing and insuring the leasehold title of AMI in the amount of $5,400,000, such policy to be subject to no exceptions or encumbrances other than the terms of the Lease, statutory tax liens for taxes not yet due and payable, certain Indian claims exceptions described in Exhibit 11.5 and such other encumbrances as AMI may approve.

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(j) Title Insurance for Replacement Hospital. York County or the Trustees, at the expense of AMI, shall have provided AMI with a survey of the land described in Exhibits 5.1(ii) and 5.1(iii) and AMI shall have obtained, at its expense, from Lawyers Title

Insurance Company, a commitment to issue as of the Closing Date an ALTA standard form policy of owner's title insurance guaranteeing and insuring the title of AMI in the amount of $ 20,000,000 , such policy to be subject to no exceptions or encumbrances other than statutory tax liens for taxes not yet due and payable, certain Indian claims exceptions described in Exhibit 11.5, and such other encumbrances as AMI may approve.

(k) Appropriate Zoning. The parcels of land described in Exhibits 5.1(ii) and (iii), respectively, shall be classified under any applicable zoning ordinance "RGO" and, in any event, so as to permit use of each such parcel for purposes of a general acute care hospital, professional offices and related parking, and the time to appeal any such classification shall have expired with no such appeal pending.

Section 12. Claims.

12.1. Claims Against AMI and AMI Parent. The Trustees and York County shall jointly and severally defend AMI and AMI Parent from and against any claims made against AMI or AMI Parent as a result of, or with respect to:

(i) any and all debts, obligations or liabilities of Sellers that are not assumed by AMI pursuant to the terms of this Agreement as Liabilities;

(ii) any inaccuracy in or breach of any representation, warranty, covenant or agreement of the Trustee and/or of York County contained in this Agreement;

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(iii) any claim, cause of action, liability or obligation (actual or alleged) of any nature whatsoever arising out of, or relating to, the use or operation of the Hospital, or the

conduct of the business relating thereto, on or prior to the Closing Date; and

(v) any claim, cause of action, liability or obligation (actual or alleged) of any nature whatsoever of the Hospital arising out of or relating to any act or omission of the Hospital, or any of its agents, employees, Trustees or officers, occurring on or prior to the Closing Date, including, without limitation, any claim or cause of action arising out of or relating to any act of medical malpractice or battery, occurring on or prior to the Closing Date.

12.2. Claims Against York County and the Trustees. AMI and AMI Parent shall defend York County and the Trustees from and against any and all claims made against York County or the Trustees as a result of, or with respect to, any inaccuracy in or breach of any representation, warranty, covenant or agreement of AMI or AMI Parent contained in this Agreement.

12.3. Notice. In the event that any party hereunder shall receive any notice of any claim or proceeding against said party that, if successful, might result in a claim under Section 12 by said party, said party shall give the party upon whom a claim could be made under this Section 12 written notice of such claim or proceeding.

12.4. False Representation. No party hereto may bring any claim, cause of action or claim any liability or obligation against or from another party hereto arising out of a matter in which the moving party made a false representation or warranty hereunder whether by omission or commission.

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Section 13. Right of Set-Off.

AMI shall have the right to set off against any and all rental payments of AMI under the Lease any amount for which the Trustees and/or York County shall be liable to AMI and/or AMI Parent due to Section 12.1 hereof.

Section 14. Option to Purchase.

14.1. Grant of Option. Subject to the terms and conditions of this Section 14, AMI hereby grants to York County the right and option (the "Option") to purchase the land, buildings and all movable and fixed equipment (including, without limitation, all additions, expansions and renovations thereto) comprising at the time of the exercise of the Option, the Replacement Hospital, plus the land described in Exhibit 5.1(iii).

14.2. Term of Option. The Option shall be exercisable for two years commencing on the date which follows by five years the date on which the Replacement Hospital is opened to the public (the "Opening Date").

14.3. Exercise Price. The price at which the Option shall be exercised (the "Option Price") shall be determined as follows: from an amount equal to (x) the amount of Purchase Price plus the sum of all rental payments made under the Lease and Liabilities assumed and discharged by AMI pursuant to Section 5.3(a), plus (y) the aggregate amount of AMI's Investment in the Hospital (as defined in the next sentence) and AMI's Investment in the Replacement Hospital (as defined in the next sentence), adjusted as provided in the next paragraph, subtract an amount

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equal to (z) the aggregate amount of the depreciation claimed by AMI and AMI Parent in their audited financial statements with respect to the Hospital and the Replacement Hospital and any movable and fixed equipment subject to the Option on the date of its exercise. The terms "AMI's Investment in the Hospital" and "AMI's Investment in the Replacement Hospital" shall mean the total cost of constructing and equipping the Hospital or the Replacement Hospital, as the case may be (and the total cost of all additions, expansions and renovations thereto), including, with respect to the said Hospitals, without limitation: (i) land acquisition costs (including, without limitation, brokerage fees and land carrying costs through completion, such as taxes and insurance), (ii) cost of providing necessary and appropriate utility service, (iii) costs of materials and fixed and movable equipment placed in service, (iv) grading, site preparation, paving and parking lot costs, (v) landscaping costs, (vi) labor costs, (vii) costs of surveys, (viii) costs of engineering, achitectural and other studies, (ix) architectural, engineering, legal, land appraisal and contractors' fees and charges, (x) financing costs (including, without limitation, construction and permanent financing costs and mortgage brokerage commissions) and (xi) all other costs and expenses reasonably attributable to construction. AMI shall give York County written notice as to the amount of its Investment in the Hospital and Investment in the Replacement Hospital within 90 days after the Opening Date.

The adjustment referred to in the immediately preceding paragraph shall be effected as follows: multiply the sum of the amounts referred to in clauses (x) and (y) by an amount equal to 75% of the quotient obtained by dividing a dividend consisting of the Consumer Price Index (as defined in the next sentence), expressed as a whole number, for the month immediately preceding the date of exercise by a divisor equal to the most recent Consumer Price Index published prior to the date of this Agreement, expressed as a whole number, for 1980 . For purposes of this Section 14.3 the term "Consumer Price Index" shall mean the Consumer Price Index (U.S. City Average) compiled by the United States Department of Labor, Bureau of Labor Statistics (or any successor to said Index which tracks substantially the same data). In the event the base year for purposes of said Index is changed, the aforementioned dividend and divisor shall be changed accordingly.

14.4. Manner of Exercise. To exercise the Option, York County shall give written notice to AMI and AMI Parent of its intention to do and specify the date of closing, which date shall be not less than 180 nor more than 360 days from the date such notice is mailed or delivered personally. Upon delivery of the Option Price, in cash or in the form of an official bank check drawn upon a bank having at least $100 millon in capital and assets, upon the date specified for the closing, AMI shall execute and deliver to York County a statutory warranty deed in the form attached hereto as Exhibit 14.4, which will convey to York County

an estate consisting of a fee simple in the Replacement Hospital building and the land on which it is located, subject to a covenant running with the land that neither such land nor such building shall for five years following such conveyance be sold, leased or otherwise disposed of to any person, firm, partnership or corporation organized for profit.

14.5. Nontransferability. The option hereby granted to York County is nontransferable and nonassignable. Any attempted assignment, transfer or other disposition of the Option by York County shall be void and of no effect whatsoever.

Section 15. Employment.

15.1. Retention of Employees. On and as of the Closing Date, all employees who were on such date employed at the Hospital shall become employees of AMI. There will be no loss in status (i.e., job description, job classification, etc.) or seniority of York General Hospital employees when they become AMI employees. In addition, all York General Hospital employees will be transferred to AMI at the existing salary/pay scale.

15.2. Transfer of Hospital Service. From the Closing Date, the seniority of York General Hospital employees will be based upon their original date of hire at York General Hospital and those years of service will be carried forward and count toward years of service with AMI.

15.3. Retained Sick Leave and Vacation Time. On and as of the Closing Date, sick leave accumulated by York General Hospital employees will be transferred and honored by AMI. Employees will immediately begin accruing AMI sick leave in accordance with the formula set forth in Exhibit 15.4. In the event any sick leave time is needed, the AMI days will be utilized first. When the AMI days have been exhausted, the days earned through prior employment at York General Hospital will be available as a reserve. With respect to each employee who shall have at least one year's accrued vacation time (that is, 2 or 3 weeks) on the Closing Date, (i) the Hospital shall pay to such employee immediately prior to the Closing Date an amount (computed by York General Hospital utilizing usual formulas for that purpose) equal to the excess (if any) of such employee's accrued vacation time as of the Closing Date over one year's accrued vacation time, and (ii) AMI shall pay and/or credit (as applicable) such employee's one year's accrued vacation time on the Closing Date as follows:

(a) Such employee may use all or any portion of such accrued vacation time during the first year (365 days) after the Closing Date;

(b) If such employee's employment with AMI terminates during the first year after the Closing Date, then AMI shall pay to such employee immediately following such termination of employment the portion (if any) of such

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accrued vacation time that has not been used prior to such termination of employment; and

(c) If such employee's employment with AMI does not terminate during the first year after the Closing Date, then AMI shall pay to such employee immediately after the first anniversary of the Closing Date the portion (if any) of such accrued vacation time that has not been used prior to said anniversary.

With respect to each employee whose accrued vacation time on the Closing Date is less than one year's accrual, AMI shall pay and/or credit (as applicable) such employee's accrued vacation time in accordance with the provisions of subparagraphs (a), (b) and (c) above.

15.4. AMI Benefits. On and as of the Closing Date, AMI will offer the following benefit plans to all York General Hospital employees based on their total length of service as set forth in Section 15.5 below: Medical Plan, Hospital Discount, Dental Plan, Life Insurance, Business Travel Accident Insurance, Pension Plans, Stock Purchase Plan, Holidays, Vacation, and Sick Leave. A detailed description of each of the AMI benefit plans is set forth in Exhibit 15.4. After closing AMI will provide to the York General Hospital employees and Replacement Hospital employees employee benefits which do not vary materially from those available generally in its hospitals in the United States.

15.5. Eligibility for Participation in AMI Benefit Plans. From and after the Closing Date, each York General Hospital employee

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shall be eligible for participation in AMI benefit plans, as enumerated and described in Exhibit 15.4, based upon the total of his York General Hospital and AMI lengths of service as follows:

(a) Such employee will be covered by, and will be eligible for participation in, all AMI benefit plans set forth in Exhibit 15.4, other than the AMI Pension Plan and the AMI Income Protection Plan, on the Closing Date.

(b) If such employee has at least one year of service with York General Hospital as of the Closing Date, he will be eligible for participation in the AMI Pension Plan on the Closing Date. If such employee has less than one year of service with York General Hospital as of the Closing Date, he will be eligible for participation in the AMI Pension Plan on the date that the total of his service with York General Hospital and AMI equals one year.

(c) For purposes of determining such employee's benefits under each AMI benefit plan and (if such AMI benefit plan is the AMI Pension Plan or other plan requiring vesting) his vesting in such benefits, his employment with York General Hospital since his original date of hire by York General Hospital will be taken into account as if such employment with York General Hospital had been employment with AMI; provided, however, that his accrual of benefits under the AMI Pension Plan will be based upon his AMI length of service

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commencing on or after the Closing Date.

(d) Such employee shall be provided with long term disability and dependent life insurance benefits from and after the Closing Date as provided in Section 15.6.

15.6. Availability of Certain Group Disability and Life Insurance Plans. AMI shall use its best efforts to make available to all of its employees a plan providing long-term disability benefits for such employees and a plan providing life insurance benefits on the lives of their dependents. Each such plan's benefits shall be provided through an insurance policy issued by an insurance company qualified to do business in South Carolina and whose premiums are determined on a group basis. Each such plan may provide that the premiums on the insurance policy providing the benefits thereunder shall be paid by participating employees through payroll deductions, except to the extent that AMI shall elect to pay some or all of such premiums itself. AMI shall make such plans available to its employees on the Closing Date. AMI shall use its best efforts to (i) make available plans having contribution and benefit levels, conversion options and other elections and features that are competitive with industry standards and are suitable to the needs of AMI's employees and their dependents, as such standards and needs may change from time to time, and (ii) otherwise administer such plans in the best interests of its employees and their dependents and without charge (except as hereinabove provided with respect to premiums paid by employees). Insofar as is practicable, the plan

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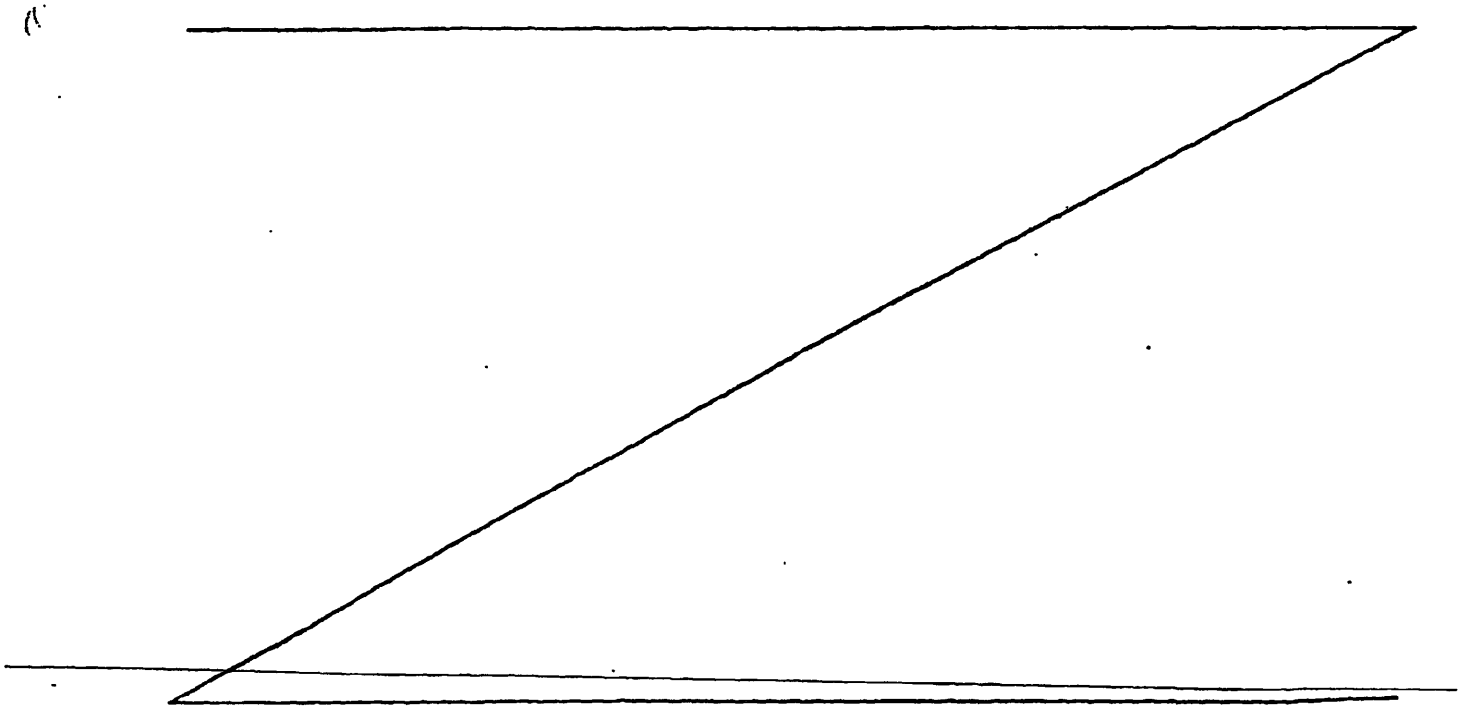
providing long-term disability benefits shall provide at least the benefits currently being provided under the "AMI Income Protection Plan" currently offered by AMI Parent and affiliated companies to certain non-hospital and hospital employees, except that participation shall not be so limited and shall be available to all AMI employees. Nothing in this Section 15.6 shall relieve AMI of the obligation of providing its employees with any employee benefit plan to be provided by AMI from time to time to its employees pursuant to Section 15.4 even though such employee benefit plan shall provide benefits similar or identical to the benefits under the long-term disability plan or the dependent life insurance plan provided for in this Section 15.6.



Section 16. Miscellaneous.

16.1. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon York County, the Trustees, AMI and AMI Parent and their respective successors and assigns including, without limitation, any future County Council of York County.

16.2. Governing Law. This Agreement shall be deemed to be made in, and in all respects shall be interpreted, construed and governed by and in accordance with, the laws of the State of South Carolina.

16.3. Headings. The section and paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

16.4. Notices. All communications provided for hereunder shall be in writing and shall be deemed to be given when delivered in person or deposited in the United States mail, first class, registered or certified, return receipt requested, with proper postage prepaid and

(a) If to AMI or AMI Parent, addressed to:

American Medical
6400 Powers Ferry Road
Atlanta, Georgia 30339
Attention: Mr. Robert Bolhman

(b) If to York County, addressed to:

County Manager
P. O. Box 66
York, South Carolina 29745
Attention: J. E. Klugh

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(c) If to the Trustees of the Hospital, addressed to:

Chairman, Board of Trustees, York General Hospital
101 Sedgewood Drive
Rock Hill, South Carolina 29730
Attention: Dwight Thomas

or at such other place or places or to such other person or persons as shall be designated in writing by the parties hereto.

16.5. Survival of Representations. All the representations, warranties, covenants and agreements contained in this Agreement shall survive the Closing Date, except for those representations and warranties contained in Section 8.6, which shall survive the signing of this Agreement for the 90 day period provided therein. No performance or execution of this Agreement in whole or in part by any party hereto, no course of dealing between or among the parties hereto or any delay or failure on the part of any part in exercising any rights hereunder or at law or in equity, shall operate as a waiver of any rights of such party, except to the extent expressly waived in writing by such party hereto.

16.6. Limitation of Sellers' Warranties. The representations, warranties, covenants and agreements of the Sellers contained in this Agreement are expressly in lieu of all representations, warranties, covenants, and agreements, whether implied, express or otherwise, of the Sellers outside this Agreement, and the Sellers make no warranties and representations which extend beyond those expressly contained in this Agreement. The Sellers specifically make no warranties of merchantability or fitness as to particular use.

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16.7. Guaranty by AMI Parent. AMI Parent hereby jointly and severally guarantees all representations, warranties, agreements, covenants and obligations of AMI contained in this Agreement. AMI Parent specifically guarantees the performance by AMI of all covenants and obligations contained in the Lease which is attached hereto as Exhibit 1.0. AMI Parent further agrees to execute and deliver to Sellers a written guaranty agreement substantially in the form attached hereto as Exhibit 1.1.

16.8. Taxes. The Sellers shall pay all taxes, including without limitation, any sales, use, transfer, excise or property taxes, that are levied as a result of the sale, conveyance, assignment, transfer or delivery of the Assets or as a result of the Lease, pursuant to this Agreement; said taxes, if any, to be paid out of the proceeds of the Purchase Price.

16.9. Exhibits. The following exhibits are attached hereto and are hereby made a part of this Agreement by this reference:

Exhibit 1.0	Lease
Exhibit 1.1	Guaranty Agreement
Exhibit 5.1(i)	Schedule of Movable Equipment
Exhibit 5.1(ii)	Land Description of Replacement Hospital
Exhibit 5.1(iii)	Land Description of Land Adjacent to Exhibit 5.1(ii)
Exhibit 5.1(iv)	Schedule of Certain Contracts
Exhibit 5.3(a)(i)	Hill-Burton Claim
Exhibit 5.4(b)	Allocation of Purchase Price
Exhibit 7.1	Bill of Sale
Exhibit 7.2	Assumption Agreement
Exhibit 8.6	Financial Statements
Exhibit 8.7	Schedule of Leased and Owned Property
Exhibit 8.9	Schedule of Inventory
Exhibit 8.10	Schedule of Post Date Occurrences
Exhibit 8.11	Schedule of Certain Major Contracts
Exhibit 8.12	Litigation
Exhibit 8.13	Compliance with Laws
Exhibit 11.2	Notice of Closing

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Exhibit 11.5	Indian Claims Exceptions
Exhibit 14.4	Form of Deed
Exhibit 15.4	Schedule of AMI Benefits Plans and Classification of Employees

Exhibits required to be provided to the Buyer shall be provided within thirty (30) days after the execution of this Agreement, and the Buyer must advise the Sellers within ten (10) days thereafter as to their acceptability.

16.10. Expenses. Each of the parties hereto shall bear such party's own expenses in connection with the preparation and execution of this Agreement and in connection with the transactions contemplated hereby.

16.11. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

16.12. Laws. Any act or statute specifically referred to herein by name shall be deemed to include any regulations thereunder, as well as any amendments thereto.

16.13. Severability. Each and every provision of this Agreement is severable and the invalidity of one or more such provisions shall not, in any way, affect the validity of this Agreement or any other provision hereof.

16.14. Cumulative Rights and Remedies. Any right, power or remedy provided under this Agreement to any party hereto shall be cumulative and in addition to any other right, power or remedy provided under this Agreement or existing in law or in equity (including, without limitation, the remedies of injunctive

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relief and specific performance).

16.15. Third Party Beneficiaries. There are no third party beneficiaries of this Agreement.

16.16. Prohibition Against Assignment. Neither AMI nor AMI Parent may assign or transfer any of its rights and obligations under this Agreement without the express written consent of the County. Any attempt at such an assignment or transfer by AMI or AMI Parent shall be utterly void and of no effect whatsoever.

16.17. Entire Agreement. This Agreement (including all Exhibits hereto) is intended by the parties hereto to be the final expression of their agreement and is the complete and exclusive statement of the terms thereof notwithstanding any representation or statement to the contrary heretofore made. The parties understand that there are no representations and warranties given one to the other except as so stated herein and that warranties of merchantability are not intended to be given. This Agreement may be modified only by a written instument signed by authorized representatives of each of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this

Agreement to be executed under seal as of the date first above written.

AMERICAN MEDICAL INTERNATIONAL, INC.

(CORPORATE SEAL)

BY Robert L Ballinger

ATTEST:

Thomas E. Donahue Jr
Secretary

Title: Vice-Pres

AMISUB OF SOUTH CAROLINA, INC.

(CORPORATE SEAL)

BY Robert L Ballinger

ATTEST:

Thomas E. Donahue Jr
Secretary

Title: Pres.

TRUSTEES OF YORK GENERAL HOSPITAL

(CORPORATE SEAL)

BY Dwight L Thomas

ATTEST:

Mary Branche
Secretary

Title: Chairman

YORK COUNTY, SOUTH CAROLINA

(CORPORATE SEAL)

BY J. Gus Williams
Chairman of the County Council
of York County, South Carolina

ATTEST:

J. E. Klugh
J. E. Klugh, County Manager

SIXTH ADDENDUM TO AGREEMENT
BY AND AMONG AMERICAN MEDICAL INTERNATIONAL, INC.,
AMISUB OF SOUTH CAROLINA, INC., AND
YORK COUNTY, SOUTH CAROLINA

THIS SIXTH ADDENDUM TO AGREEMENT made and entered into this 25th day of August, 1995, by and among AMERICAN MEDICAL INTERNATIONAL, INC., a corporation organized under the laws of the State of Delaware (herein referred to as "AMI Parent"), AMISUB OF SOUTH CAROLINA, INC., a corporation organized under the laws of the State of South Carolina (herein referred to as "AMI"), and YORK COUNTY, SOUTH CAROLINA, a political subdivision of the State of South Carolina (herein referred to as "York County"),

W I T N E S S E T H:

WHEREAS, AMI Parent, AMI, the Trustees of York General Hospital and York County entered into an agreement on or about December 8, 1980 (herein referred to as the "Prior Agreement"), pursuant to which the Trustees of York General Hospital and York County leased and sold certain property and assets to AMI Parent and its subsidiary corporation, AMI, for the operation of a hospital in York County, South Carolina; and

WHEREAS, York County has succeeded to all rights and interests and assumed all liabilities of the Trustees of York General Hospital under the Prior Agreement; and

WHEREAS, AMI Parent and AMI constructed and operate a hospital in York County, South Carolina, known as Piedmont

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Medical Center (the "Hospital"), pursuant to the terms and conditions of the Prior Agreement; and

WHEREAS, the Prior Agreement has been amended and modified by a First Addendum thereto dated June 16, 1989, a Second Addendum thereto dated April, 1992, a Third Addendum thereto dated April, 1995, a Fourth Addendum thereto dated June, 1995, and a Fifth Addendum thereto dated as of July 1, 1995 (the Prior Agreement, as amended and modified, being referred to herein as the "Agreement"); and

WHEREAS, York County has performed its obligations under the Agreement; and

WHEREAS, in order to induce York County to waive the purchase option granted in the Prior Agreement, as modified by the five prior Addenda thereto, and in order to ensure the continuing provision of high quality, cost effective health care to the citizens of York County without cost to York County, AMI and AMI Parent have proposed to undertake various obligations expanding upon, or in addition to, those contained in Sections 3 and 4 of the Prior Agreement; and

WHEREAS, certain of the provisions of Sections 3 and 4 of the Prior Agreement are no longer applicable, having been satisfied by performance or superseded by the passage of time and changing circumstances;

NOW, THEREFORE, for and in consideration of the premises, the mutual promises contained herein, the sum of ten dollars ($10.00) paid by each party to the other, and of other good and valuable consideration, the receipt, adequacy and sufficiency of which is hereby acknowledged by each party

hereto, the undersigned parties, intending to be legally bound, hereby agree as follows:

Section 1. Sections 3 and 4 of the Agreement are hereby amended to read as follows:

"Section 3. Operation of the Hospital; Ambulance Service, Indigent Care and Related Matters. The parties hereto agree that it is their objective under and through this Agreement to establish and make available to the citizens of York County a secondary/tertiary medical facility serving as a regional medical center for upstate South Carolina. In order to achieve this objective, AMI undertakes the following commitments in connection with the operation of the Hospital and the provision of health care services in York County:

3.1. Hospital Services. (a) General. During the term of this Agreement, AMI shall provide in York County at a minimum (i) all health care services previously provided by the former York General Hospital, (ii) all health care services authorized in the Certificate of Need for the Replacement Hospital and (iii) all other services required to be provided by this Agreement.

(b) New Services and Facilities. In addition to the services and related facilities set forth in 3.1(a), above, and subject to required regulatory approval, the granting of which will be pursued expeditiously in good faith by AMI, AMI agrees to provide the following services and/or complete the following facilities on or before the respective dates set forth below:

(i) Expansion of cardiac services and installation of cardiovascular surgical services including the

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construction of two operating suites, perfusion space, anesthesia space, expanded recovery room space, and adequate support and office space at a cost of approximately $3,900,000, to be completed on or about December 31, 1997, or within twenty-four (24) months of receipt of a Certificate of Need therefor.

(ii) A second heart catheterization laboratory at a cost of approximately $1,450,000, to be completed on or about December 31, 1997, or within twenty-four (24) months of receipt of a Certificate of Need therefor.

(iii) Neurosurgical services facilities including adequate operating room(s) and related equipment at a cost of approximately $3,500,000, to be completed on or about July 31, 1998, or within thirty-two (32) months of receipt of a Certificate of Need therefor.

(iv) Intensive care and monitored bed capacity (rooms) adequate to support the development of cardiovascular and neurosurgical services at a cost of approximately $3,800,000, to be completed on or about December 31, 1997, or within twenty-four (24) months of receipt of a Certificate of Need therefor.

(v) A new hospital emergency room with adequate treatment bays to allow for ambulance cases, emergent walk-ins, non-emergent "fast track", and private physician exam space at a cost of

approximately $3,000,000, to be completed on or about April 30, 1997, or within sixteen (16) months of receipt of a Certificate of Need therefor.

(vi) A free-standing psychiatry pavilion for up to twenty-six (26) patients to improve clinical services and provide for outpatient psychiatric programming at a cost of approximately $2,400,000, to be completed on or about April 30, 1997, or within sixteen (16) months of receipt of a Certificate of Need therefor.

(vii) Expansion of the clinical laboratory at a cost of approximately $200,000, to be completed on or about December 31, 1996.

(viii) Complete facility renovations (decor) on 4B nursing unit (39 beds) at a cost of approximately $160,000, to be completed on or about December 31, 1996.

(ix) Equipment (technology) upgrades:

(A) Purchase or lease of a CT scanner at a cost of approximately $860,000, to be acquired on or about February 28, 1996.

(B) Purchase or lease of nurse call system at a cost of approximately $350,000, to be acquired on or about January 31, 1997.

(C) Purchase laboratory hematology analyzer at a cost of approximately $150,000, to be acquired on or about February 28, 1996.

(D) Purchase vascular laboratory ultrasound at a cost of approximately $222,200, to be acquired on or about February 28, 1996.

(c) Emergency Room Service. AMI shall provide at no expense to York County an emergency room sufficiently staffed on a twenty-four hour basis by qualified physicians who will administer emergency medical care. Care to persons with emergency medical conditions will be furnished at Piedmont Medical Center to all parties regardless of their ability to pay or place of residence. AMI will continue the Hospital's current program of providing emergency room services to Winthrop University students. Emergency room physicians and ambulance service staff shall coordinate their respective functions in order to insure the highest quality life-saving skills. For purposes of this Section 3.1(c), the term "emergency medical condition" shall have the meaning ascribed thereto by the Federal Emergency Medical Treatment and Active Labor Act, 42 U.S.C. Section 1395dd and the corresponding regulations thereunder, 42 C.F.R. Section 489.24(b), or any successor statutory and/or regulation provisions, such definition currently being as follows:

Emergency medical condition means-

(i) A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain, psychiatric disturbances and/or symptoms of substance abuse) such that the absence of immediate medical attention could reasonably be expected to result in-

(A) Placing the health of the individual(or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy;

(B) Serious impairment to bodily functions; or

(C) Serious dysfunction of any bodily organ or part; or

(ii) With respect to a pregnant woman who is having contractions-

(A) That there is inadequate time to effect a safe transfer to another hospital before delivery; or

(ii) That transfer may pose a threat to the health or safety of the woman or the unborn child.

Such term shall include, at a minimum, those conditions listed in Classes I, II and III of the current Triage Criteria of Piedmont Medical Center attached hereto as Schedule 3.1(c). Each person who comes to the emergency room at the Hospital seeking care shall be afforded an appropriate medical screening to determine whether that person has an emergency medical condition, and each such person shall be classified as to the level of severity of condition in accordance with the Hospital's triage criteria. AMI's agreement to provide emergency care at no cost to York County and without regard to a patient's ability to pay shall not preclude AMI's seeking or obtaining payment or reimbursement from any other source which may be available therefor.

(d) Medical/Surgical Beds. AMI shall maintain at least two hundred forty-eight (248) medical/surgical beds and twenty (20) psychiatric beds at the Hospital. On or before May 31, 1999, all medical/surgical beds in the Hospital shall be in

private rooms. For purposes of this Section 3.1(d), the term "medical/surgical beds" means all licensed beds at the Hospital other than psychiatric, rehabilitation, sub-acute, intensive care or general observation beds. Within one hundred eighty (180) days following any date on which the daily census at the Hospital has averaged eighty-five percent (85%) of the then available bed capacity at the Hospital for a period of twelve (12) months, AMI shall prepare and present to York County an estimate of future medical/surgical bed requirements at the Hospital necessary to comply with the terms of this Agreement. In the event such estimate indicates that patient demand will exceed available bed capacity, such estimate shall be accompanied by a proposal, including a schedule, for the filing of a request for a certificate of need and/or such other action as shall be necessary to provide such bed capacity as shall be shown to be required in such estimate, at the time such estimate shall project such capacity shall be needed.

(e) Pricing. AMI acknowledges that, in addition to the securing of the highest quality health care for the citizens of York County, a major objective of York County in entering into this Agreement is that such care be provided on a cost-effective basis at prices favorably comparable to those paid for similar services provided by comparable acute-care hospitals in the same general geographical area. York County acknowledges that the pricing of, and charging and reimbursement for, health care services and the market therefor and other factors relating thereto, including the reporting thereof, is a complex process and but one of a

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number of related major management responsibilities of the governing body of AMI and the administration of the Hospital. Both parties understand that cost-effective, competitive pricing for services provided at the Hospital is essential to the provision of quality health care services to the citizens of York County, to the continuing economic well being of the Hospital and to the ability of AMI to meet its obligations hereunder. AMI agrees to exert every effort to so conduct its operations and finances to maintain prices for services at the Hospital at reasonable, competitive levels vis a vis other hospitals in the "peer group" (as defined in Section 3.13(a)(xii) hereof) for which Medpar pricing information is provided pursuant to such Section 3.13(a)(xii). In the event such pricing information shall show that the average charge per case by the Hospital for "All Product Lines" is the highest in the peer group, AMI shall, within twelve (12) months following the delivery of such information to York County, present to York County, and implement a plan reasonably expected to fix or reduce its costs and/or charges for services such that the average charge per case for All Product Lines at the Hospital will be less than the highest in such peer group. If such average charge remains the highest in the peer group at the end of the second Medpar reporting period following the reporting period which first showed the Hospital's having the highest average charge, AMI shall not increase any charges for services at the Hospital until such time as there have been delivered to York County reports provided pursuant to Section 3.13(a)(xii) hereto which show

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the Hospital's average charge per case for All Product Lines being less than the highest of the peer group.

(f) Trauma Center. AMI agrees to obtain level 3 trauma center designation by July 31, 1996, subject to regulatory approval.

3.2. Ambulance Service. (a) AMI shall provide ambulance service at no expense to York County, which ambulance service shall respond to calls within the geographical limits of York County on a twenty-four hour basis, and which shall furnish transportation by ambulance to any hospital operating within the geographic limits of York County and all counties contiguous to York County. The skill levels of the staff and the equipment of the ambulance service shall be maintained in such a manner as to enable the service to provide "advanced life support" as defined in South Carolina Department of Health and Environmental Control Regulation Number 61-7, Section 306, as amended from time to time, or any successor provision of law or regulation. The principal objective of such service shall be to meet the needs of all citizens of York County rather than the sole needs of AMI or the Hospital. AMI shall operate the service in such a manner so as not to diminish the level of services presently available within York County or as required by this Agreement. The parties hereto understand that York County, in executing this Agreement, does not grant unto AMI an exclusive franchise to operate an ambulance service in York County; York County agrees that it will not grant an exclusive franchise to operate ambulance service in York County to any other person or entity. AMI shall not discontinue, abolish, diminish or

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subcontract for ambulance service without the express written approval and consent of the York County Council.

(b) On or before April 1, 1996, AMI shall provide a second ambulance, with appropriate support facilities and staff, in western York County, such ambulance to be based in the City of York. Thereafter, AMI agrees to maintain at least two (2) ambulances based in western York County, staffed to provide advanced life support, twenty-four (24) hours a day, seven (7) days a week. When the population of western York County exceeds 47,500, AMI shall provide an additional quick response vehicle to serve western York County; when such population exceeds 57,500, AMI shall replace such quick response vehicle with an additional ambulance. Thereafter, AMI shall continue to provide an additional quick response vehicle with each population increase of 15,000 persons following the provision of an ambulance, and shall replace such quick response vehicle with an ambulance with each population increase of 10,000 persons following the provision of such quick response vehicle.

(c) AMI agrees to maintain at least four (4) ambulances and one (1) quick response vehicle based in eastern York County (with at least one (1) of such ambulances being based in the Fort Mill area) staffed to provide advanced life support, twenty-four (24) hours a day, seven (7) days a week. When the population of eastern York County exceeds 131,500, AMI shall provide an additional quick response vehicle to serve eastern York County; when such population exceeds 146,500, AMI shall replace such quick response vehicle with an additional ambulance. Thereafter, AMI shall continue to

provide an additional quick response vehicle with each population increase of 20,000 persons following the provision of an ambulance, and shall replace such quick response vehicle with an ambulance with each population increase of 15,000 persons following the provision of such quick response vehicle.

(d) AMI agrees to cooperate and coordinate with York County and the rescue squads operating in York County to determine the most cost effective, response oriented network of emergency medical care in York County to the end of maintaining response times for emergency care as low as possible. AMI agrees to so provide ambulance service such that average annual response times for ambulance service shall not be more than twelve (12) minutes for eastern York County, which shall, for purposes of this response provision include Newport, Bethesda, Oakdale, Tega Cay, Riverview, Flint Hill, Fort Mill and Lesslie Fire Districts and the City of Rock Hill, and not more than twelve (12) minutes for the City of York; not more than eighteen (18) minutes for the Clover/Lake Wylie area, which for purposes of this response provision shall include the Clover and Bethel Fire Districts; and not more than twenty (20) minutes for the western York County area, which for purposes of this response provision shall include the Bethany, Smyrna, Hickory Grove, Bullock Creek, Sharon, and McConnells Fire Districts and that portion of the York Fire District not encompassed within the corporate limits of the City of York, and the remainder of the western York County area. For purposes of this paragraph (d), "response time" means the period of time from receipt of a call by an

AMI operated unit to the arrival on the scene of the emergency by an AMI operated ambulance. Response times shall be established by the records maintained by York County for emergency medical service in the County. In the event any report delivered to York County pursuant to the provisions of Section 3.14(b)(ix) hereof, or other information available to York County, shall show noncompliance with any of the maximum average response times imposed by this paragraph (d), AMI shall, within six (6) months of the delivery of such report, provide York County an action plan to reduce such response time or times to comply with this paragraph (d). AMI shall implement such plan and shall so modify and/or operate its emergency response system such that monthly average response times shall meet the time limitations of this paragraph (d) not later than the end of the sixth (6th) month following delivery of such plan.

(e) For purposes of establishing population levels pursuant to this Section 3.2, the term "eastern York County" shall mean the geographical areas of York County so designated on the map appearing as Schedule 3.2(e)(1) attached hereto as lying on the eastern side of a line passing through York County at 81 degrees, 10 minutes west longitude, and the term "western York County" shall mean the geographical areas of York County so designated on the map appearing as Schedule 3.2(e)(1) attached hereto as lying on the western side of a line passing through York County at 81 degrees, 10 minutes west longitude. Response times for ambulance service pursuant to this Section 3.2 shall be as defined in Section 3.2(d) above and the respective geographical areas of York County for

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which response times are designated under this Section 3.2 shall mean the geographical areas of York County so designated on the map appearing as Schedule 3.2(e)(2) attached hereto.

3.3. Indigent Care; Indigent Assistance Program. (a) During the twelve-month period ending May 31, 1996, AMI shall provide, at no cost to York County, medical care at Piedmont Medical Center to indigent residents of York County in an amount (based on AMI's schedule of rates and charges in effect from time to time) not less than Four Hundred Seventy-Five Thousand Dollars ($475,000). Thereafter, adjustments to such amount shall be made at the end of the initial twelve-month period and each subsequent twelve-month period (the "Adjustment Date(s)") as follows:

(i) The index used for computing the adjustment is the "Market Basket Index" as defined in Section 44-6-5, Code of Laws of South Carolina, 1976, as from time to time amended, or any successor or replacement provision of law, currently defined as the index used by the federal government on January 1, 1986, to measure the inflation in hospital inpatient prices for Medicare reimbursement. If the Market Basket Index ceases to be calculated in substantially the same manner, a similar Market Basket Index or some similar index must be developed by the parties using substantially the same methodology as used by the federal government in calculating the Market Basket Index to measure inflation in hospital inpatient prices for Medicare reimbursement, and such substantially similar index shall be used by the

parties thereafter in the administration of this Agreement.

(ii) The percentage for the adjustment at the end of the initial twelve-month period shall be determined by dividing the Market Basket Index for the date nearest the initial Adjustment Date by the Market Basket Index for July 1, 1995. The percentage for the Adjustment at the end of each subsequent twelve-month period shall be determined by dividing the Market Basket Index for the data nearest the current Adjustment Date by the Market Basket Index for the immediately preceding Adjustment Date.

(iii) The initial adjustment shall be computed by multiplying the sum of Four Hundred Seventy-Five Thousand Dollars ($475,000) by the percentage determined pursuant to (ii), above. This adjustment and each subsequent adjustment shall produce an adjusted amount which shall continue until the next Adjustment Date. Each subsequent adjustment shall be computed by multiplying the adjusted amount for the immediately preceding twelve-month period by the percentage determined pursuant to (ii), above, for the current Adjustment Date.

The calculations required by this paragraph (a) shall be made by AMI and, absent manifest error, shall be binding on the parties hereto. York County may audit such information for compliance with the terms and provisions of this Agreement. The provisions of this paragraph (a) shall not limit AMI's obligation to provide emergency care to indigent persons at Piedmont Medical Center, notwithstanding that the minimum

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dollar amount of indigent care services required by this paragraph (a) shall, at any time, have been equaled or exceeded by AMI.

(b) AMI agrees to assume responsibility for payment of any amounts otherwise payable by York County to, or with respect to, the South Carolina Health and Human Services Finance Commission Medically Indigent Assistance Program, or any successor agency or program. AMI agrees, subject to any necessary governmental or regulatory approval, to serve, without cost to York County, as the designee of York County in connection with the administration of, and the making of payments to, such Program. In the administration of such Program, AMI shall comply with all applicable statutes and regulations relating thereto. AMI's obligation to fund and administer such Program shall continue only for so long as York County, absent the provisions of this paragraph (b), would otherwise be required to participate in, or make payments to, such Program. York County agrees to cooperate with AMI in order to ensure that payments by AMI under this paragraph (b) shall be no greater than payments otherwise required to be made by York County absent the provisions hereof.

(c) For purposes of this Agreement, the term "indigent" shall have the same meaning as the term "medically indigent" in Section 44-6-5(5), Code of Laws of South Carolina, 1976, as from time to time amended and the regulations relating to financial eligibility for the South Carolina Medically Indigent Assistance Program, including, particularly, Regulation Section 126-520,and any replacement or successor

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provisions of the law or regulations, currently defined as meaning that such persons must meet all requirements for eligibility for assistance under the South Carolina Medically Indigent Assistance Program under regulations promulgated by the State Health and Human Services Finance Commission, Article 5, Subarticle 1, Regulations 126-500 through 126-520, and such persons must, at a minimum be:

(i) persons whose gross family income and size falls at or below the Federal Community Service Administration Guidelines and who meet certain qualifying criteria regarding real property allowance, qualifying services, residency requirements, and other sponsorship, and migrant or seasonal farmworkers who have no established domicile in any state for purposes of the State Medically Indigent Assistance Program; and

(ii) persons whose gross family income and size falls between one hundred (100) percent and two hundred (200) percent of the Community Service Administration Guidelines who meet certain other qualifying criteria regarding real property allowance, qualifying services, residency requirements and other sponsorship and whose medical bill is sufficiently large in relation to their income and resource to preclude full payment, so as to qualify for assistance under the South Carolina Medically Indigent Assistance Program. For purposes of this definition, the qualifying criteria for real property allowance shall permit ownership of up to fifty acres of farmland upon which the family has resided for at least twenty-five (25) years; and

(iii) persons who qualify for assistance through the South Carolina Medically Indigent Assistance Program under the non-financial eligibility requirements of Regulation 126-515 promulgated by the South Carolina Health and Human Services finance Commission; and

(iv) persons who qualify for assistance through the South Carolina Medically Indigent Assistance Program under the financial eligibility requirements of Regulation 126-520 promulgated by the South Carolina Health and Human Services Finance Commission.

(d) Any resident of York County who believes that he or she has been charged for medical services by AMI based upon an incorrect determination that such person is not indigent shall be entitled to have such determination reviewed by AMI and, following such review, shall be provided by AMI a written determination as to such person's qualification, or not, as "indigent", which determination shall advise the recipient thereof of his or her rights of appeal hereunder. Any person wishing to dispute any such written determination as to indigence with respect to the services required to be provided by AMI pursuant to subsection (a) of this Section 3.3, may, within thirty (30) days of the receipt thereof, but not after, seek further review of such determination by written request to the York County Community Health Board (or if such Board has been dissolved or merged into any other entity, to the Advisory Board established pursuant to Section 3.10 hereof) (the "Board"). Such request for review shall be accompanied by the written determination provided such person and by a written summary of the reasons why the person seeking review

believes that AMI's determination is incorrect. The Board shall provide AMI a copy of any request for review within five (5) business days of receipt thereof by the Board. AMI shall be entitled to provide the Board, in writing, with a response to any such request for review, including therewith such additional information or rebuttal as AMI feels appropriate. Not less than thirty (30) days following the receipt of a request for review hereunder, the Board shall provide AMI and the person seeking review a written determination as to such matter, either confirming or reversing the prior AMI determination as to indigence. A copy of such determination shall also be provided to York County. In connection with its review, the Board may, but shall not be required to, seek additional information, interview persons or conduct hearings in order to assist it in reaching a fair and accurate determination. AMI agrees to cooperate in any such fact finding efforts, and agrees to be bound by the determination of the Board. Pending the outcome of any review and/or appeal process hereunder, AMI shall suspend any and all actions with respect to the billing or collection of any amounts charged with respect to services provided to, or for the account of, the person seeking such review and/or appeal.

(e) Appeals with respect to determinations as to financial eligibility under the Medically Indigent Assistance Program shall be processed by AMI in accordance with South Carolina Code Regulation Section 126-510, as amended, or any replacement or successor provision of law or regulations. Copies of determinations by AMI as to the ineligibility of any person for such Program shall be provided to York County.

3.4. Medical Care for County Prisoners and Inmates.

(a) To the extent requested by York County, AMI shall provide inpatient and outpatient medical services to prisoners and inmates of the York County Prison and Detention Center (the "Detention Center") at a cost equal to the lesser of

(i) the least amount charged by AMI for services under any contract for managed care to which AMI is, at the time of the provision of such services, a party, or

(ii) AMI's cost of providing such services plus ten percent (10%) of such cost.

For purposes of this paragraph (a), "cost" shall be determined by utilizing the latest state-reported Medicaid cost-to-charge ratio as published by the South Carolina Health and Human Services Finance Commission.

(b) In order to assist York County in reducing its costs of operating the Detention Center, AMI agrees that it will, at the written request of York County, from time to time, sell to York County medical supplies for use at the Detention Center at AMI's cost if and to the extent permitted by law.

(c) AMI shall provide supervisory support to the staff of the Detention Center through the medical director of AMI's western York County urgent care center at no cost to York County.

3.5. Rural Healthcare Clinics. On or before December 31, 1996, AMI shall establish an urgent care/occupational medicine facility in western York County, subject to regulatory approval. Such facility shall provide urgent care for minor emergencies, occupational medicine, including physical examinations, occupational testing/screenings, care

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for on-the-job injuries and other similar health care services. Such facility shall be open and staffed between the hours of 8:00 a.m. and 8:00 p.m., seven (7) days a week, with staffing being provided by not less than two (2) licensed physicians (at least one (1) of whom shall be at the facility during all operating hours) and adequate support staff. In order to ensure responsiveness to community needs by this facility, there shall be established an advisory committee comprised of one (1) member of York County Council, three (3) residents of York County Council Districts 2 and/or 3 (as constituted on the date of delivery of this Sixth Addendum) appointed by AMI from a list of not less than five (5) nominees named by York County Council and one (1) representative of AMI. Such committee shall meet no less often than quarterly to discuss the need for services in western York County, the manner in which the western York County urgent care facility is meeting such needs and any changes which might be necessary or advisable with respect to the types of services provided or the manner in which services are provided in order to better meet the needs of the residents of western York County. AMI agrees to take into consideration any recommendations or requests made by the advisory committee in connection with its operation of the urgent care facility and its planning with respect thereto and provide a timely written response to any such recommendation or request.

3.6. Integrated Health Care Delivery System. In order to better provide for the health care needs of the citizens of York County and to maintain competitiveness in a managed care

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environment, AMI shall continue to expand the vertical integration of services into its health care delivery system, including such possible services as primary care, home care, ambulatory diagnostics, pain management, rehabilitation and occupational medicine, and the expansion of York Family Medicine in the Town of York to enable the rotation of specialists and sub-specialists in western York County.

3.7. Reinvestment in York County Medical Services. AMI agrees that in the period beginning June 1, 1995, and ending May 31, 1998, it will make investments in land or depreciable or amortizable property located in York County, South Carolina, in an aggregate amount not less than Twenty-Three Million ($23,000,000) Dollars, provided that in the event AMI shall be relieved from the obligation to provide any facility or service described in Section 3.1(b) hereof as a result of the inability to obtain any regulatory approval required therefor, such amount shall be reduced by the estimated cost of such facility or service as set forth in said Section 3.1(b). Thereafter, in each period of twelve (12) months beginning June 1 of a year and ending on May 31 of the next succeeding year, beginning with the twelve-month period starting June 1, 1998, it will invest in land or depreciable or amortizable property located in York County, South Carolina, used for the purpose of providing the services required by this Agreement, an amount which, when added to the amount so invested by AMI in the preceding two (2) such twelve (12) month periods, would make the average thereof equal to or greater than the greater of (i) $4,000,000 or, (ii) one hundred eight percent (108%) of the average of the amounts

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shown on the financial statements of AMI as depreciation or amortization for property, plant and equipment located in York County for the preceding three (3) such twelve (12) month periods, provided that in no such twelve (12) month period shall the amount actually so invested be less than $1,500,000. Notwithstanding the foregoing, in the event AMI's earnings before depreciation and amortization, as shown in the financial statements of AMI for the twelve (12) month period in question, are less than $4,000,000, the amount required to be reinvested as herein provided during such period shall not exceed an amount equal to fifty percent (50%) of such earnings before depreciation and amortization. Accounting terms used in this Section 3.7 shall be given meaning and applied in accordance with generally accepted accounting principals; depreciation and amortization shall be determined in accordance with American Hospital Association or some other nationally recognized standard therefor.

3.8. Physician Recruitment and Retention; Medical Staff; Staff Privileges. (a) AMI recognizes that, in order to effectively perform its obligations hereunder, the recruitment and retention of qualified physicians is critical. In order to ensure the provision of the highest quality services and the range of services necessary to establish the Hospital as a regional medical center for upstate South Carolina, AMI will diligently pursue the identification and recruitment of qualified physicians and in connection with such recruitment and the relocation and retention of such physicians will provide such economic and other incentives and support as is

consistent with federal and state regulations relating to such matters.

(b) AMI shall at all times establish and maintain policies with respect to medical staff privileges at the Hospital encouraging and enabling any and all qualified, appropriately licensed physicians (i.e. individuals with an M.D. or D.O. degree), dentists and podiatrists to join the active or courtesy medical staff of the Hospital without restriction; provided that AMI may enter into exclusive contracts for Hospital-based services for radiology, anesthesiology, pathology, neonatology, cardiovascular surgery, neurosurgery and emergency medicine.

3.9. Local Hospital Board. (a) AMI covenants and agrees that on or before December 31, 1995, the Rules and Regulations of the Governing Board of Piedmont Medical Center (the "Rules and Regulations") shall be amended in the following respects:

(i) The first paragraph of Article II thereof relating to the Roles and Responsibilities of the Governing Board of the Hospital (the "Governing Board") shall be amended to read as follows:

> "The governing board has the authority and responsibility for ensuring proper organization of the institution's Medical Staff and for monitoring the quality of care provided under the auspices of the institution. The governing board is responsible for the assurance of quality patient care provided by the institution (including the provision of adequate and appropriate staffing, monitoring and reviewing replacement hospital

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equipment, and recommendations for changing services, procedures, and product lines to take into account medical and technological developments and advancements; establishing mechanisms to assure and achieve and maintain high quality medical practice and patient care; and periodic review and recommendations concerning pricing for institution services, procedures, and product lines)."

(ii) Section 1 of Article III of the Rules and Regulations relating to the composition of the governing Board shall be amended to provide that, of the voting membership of the Governing Board, one of such members shall be a resident of western York County and another of such members shall be selected from a list of not less than three (3) nominees submitted by York County Council.

(b) AMI and AMI Parent covenant and agree that no changes (whether initiated by AMI, AMI Parent, the Governing Board or any other person) shall be made to the Rules and Regulations which have the effect of diluting or eroding the role, powers, authority, responsibilities, functions or duties of the Governing Board from those in existence as of July 31, 1995, as modified as hereinabove provided, without the prior written approval of York County, which approval, York County agrees, will not be unreasonably withheld.

(c) AMI and AMI Parent further covenant and agree in connection with the Governing Board that no removal of fifty percent (50%) or more of the members of the Governing Board within a six (6) month period shall be effected, unless prior thereto any such proposed removal shall have been discussed

directly between the President and Chief Operating Officer of Tenet and the Chairman of York County Council. The Chairman and Vice Chairman of York County Council shall be invited to attend any meeting of the Board of Directors of AMI at which any such removal was to be considered or acted upon. Any such meeting shall be held at a location in York County, South Carolina, with sufficient notice so as to provide reasonable opportunity for the Chairman and Vice Chairman at York County Council to be in attendance at such meetings. In the event of any such removal, the positions of any Governing Board members removed pursuant to any such action shall be filled within three (3) months following the date of any such removal.

3.10. Hospital Advisory Board. AMI shall maintain a board of hospital advisors (the "Advisory Board") consisting of twelve members. Four members of the Advisory Board shall be representatives of the medical staff of Piedmont Medical Center, four members of the Advisory Board shall be representatives of the community and four members of the Advisory Board shall be representatives of AMI. The medical staff representatives shall be the Chief of Staff, the Vice Chief of Staff, the Immediate Past Chief of Staff and the Secretary-Treasurer of the medical staff of the Hospital. The four AMI representatives shall be selected by AMI and shall include the chief executive officer of Piedmont Medical Center. The four community representatives shall be selected by York County Council. All members of the Advisory Board shall serve staggered terms of four years. The Advisory Board shall establish its own rules of operation and procedure. The purpose of the Advisory Board shall be to insure that AMI is

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continuously apprised of community interest and to provide the appropriate interface between the Hospital and the York County community.

3.11. AMI Scholarship Program. In each year during the term of this Agreement, there shall be awarded by AMI contributions for medical scholarships for York County residents which shall be used for the pursuit of education in a field which shall be related to medical care. For the fiscal year ending May 31, 1996, the amount to be awarded shall be Twenty Thousand Dollars ($20,000). Thereafter, adjustments to such amount shall be made at the end of the initial twelve-month period and each subsequent twelve-month period (the "Adjustment Data(s)") as follows:

(i) The index used for computing the adjustment is the Consumer Price Index for All Urban Consumers published by the U.S. Department of Labor, Bureau of Labor Statistics (the "CPI").

(ii) The percentage for the adjustment at the end of the initial twelve-month period shall be determined by dividing the CPI for the date nearest the initial Adjustment Date by the CPI for June 1, 1996. The percentage for the Adjustment at the end of each subsequent twelve-month period shall be determined by dividing the CPI for the date nearest the current Adjustment Date by the CPI for the immediately preceding Adjustment Date.

(iii) The initial adjustment shall be computed by multiplying the sum of Twenty Thousand Dollars ($20,000) by the percentage determined pursuant to (ii), above.

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This adjustment and each subsequent adjustment shall produce an adjusted amount which shall continue until the next Adjustment Date. Each subsequent adjustment shall be computed by multiplying the adjusted amount for the immediately preceding twelve-month period by the percentage determined pursuant to (ii), above, for the current Adjustment Date.

The calculations required by this Section 3.11 shall be made by AMI and, absent manifest error, shall be binding on the parties hereto.

3.12. Continuing Education. AMI shall continue and further the health care educational opportunities and programs of York General Hospital, which programs shall include, but not be limited to the following:

(a) York Technical College Programs. AMI will participate in the following medically-related programs currently offered by York Technical College:

(i) Medical Lab Technology:

(ii) Nursing (Associate Degree);

(iii) Operating Room Technician;

(iv) Radiologic Technology.

(b) Winthrop University Programs. AMI will continue to support and participate in the dietician and medical social services programs offered by Winthrop University.

(c) AMI Programs. AMI will provide programs for the continued improvement in educational and skill levels of its employees. To this end, AMI will

offer a variety of activities ranging from in-house seminars to programs of formal education presented by major universities. AMI will also provide programs of management training for hospital personnel, including administrators, directors of nursing, business office managers, and other hospital department heads.

3.13. Annual Report; Other Information. (a) On or before October 1 of each year beginning October 1, 1996, AMI shall provide to York County an annual report on the status of the Hospital, the state of its operations, its plans for the future, and its activities and progress in relation to its various undertakings pursuant to this Agreement. Such report shall include the following information:

(i) Annual financial statements of AMI for the fiscal year ending the preceding May 31, with a certificate as to the accuracy thereof by an officer of AMI Parent;

(ii) Actual depreciation on Hospital assets as reported to the Federal government in Medicare cost reports;

(iii) Calculations showing the amount required to be invested pursuant to Section 3.7 hereof and identified investments equalling or exceeding such amount;

(iv) Information concerning the number and nature of services provided to York County indigents and the cost of such services, and the amount of any payment to the Medically Indigent Care Program pursuant to Section 3.3 hereof;

(v) Services, administrative assistance and supplies provided in connection with the Detention Center pursuant to Section 3.4 hereof;

(vi) In addition to the information provided pursuant to (iii), above, a descriptive list of all equipment purchases for items having a cost basis in excess of $250,000;

(vii) Information relating to the number of patients served and the nature, level and scope of services provided in the Hospital emergency room;

(viii) Information as to physician recruitment activity;

(ix) Detailed information with respect to ambulance response times showing annual averages for each location;

(x) Information concerning the number of full-time employees at the Hospital for the preceding fiscal year;

(xi) Medicaid in-patient cost-charge ratios and Medicaid out-patient cost-charge ratios as reported to the South Carolina State Health and Human Services Finance Commission, division of Acute Care Reimbursement, annually;

(xii) The most recently reported Medpar information, summarized and shown on a comparative basis, on gross charges for cardiology, gynecology, medicine, neurology, oncology, orthopedics, psychiatry, pulmonary, surgery, urology, vascular surgery and all product lines, from the Medpar national data base with respect to a "peer group" comprising the Hospital and the following hospitals: Richland Memorial Hospital-Columbia, S.C., Carolinas

Medical Center-Charlotte, N.C., Providence Hospital-Columbia, S.C., Baptist Medical Center-Columbia, S.C., Spartanburg Regional Medical Center-Spartanburg, S. C., Mercy Hospital-Charlotte, N.C., Gaston Memorial Hospital-Gastonia, N.C., Presbyterian Hospital-Charlotte, N.C., and Mary Black Memorial Hospital-Spartanburg, S. C.;

(xiv) Information concerning number and type of beds at the Hospital for the preceding fiscal year;

(xv) Information as to contributions for medical scholarships and activities with respect to medical education during the prior fiscal year;

(xvi) The summary results of any community or physician surveys conducted by AMI with respect to the Hospital or any services provided by AMI hereunder;

(xvii) A copy of the most recently issued Medically Indigent Assistance Fund Annual Guidelines and Annual Report;

(xviii) The status of any matter required to be addressed hereunder by way of an action plan or remedial action to achieve compliance with any of the terms hereof;

(xix) The filing by or against AMI, AMI Parent or Tenet of any bankruptcy, insolvency or similar or related action under any state or federal bankruptcy law; and

(xx) The loss of any license permit or other regulatory or other approval relating to the operation of the Hospital or the provision of any services hereunder or the filing or pendency of any action by any health

care regulatory agency with respect to AMI, the Hospital or any service provided by AMI hereunder.

(b) AMI agrees to provide such other information as York County or the Advisory Board may from time to time reasonably request in order to verify information provided by AMI in order to determine compliance hereunder by AMI and enable them to meet their respective obligations hereunder or in connection herewith. York County agrees to notify AMI promptly of any request it receives for copies of information provided to York County or the Advisory Board pursuant to the provisions of this Section 3.13.

Section 3.14. Right of First Refusal; Assumption of Agreement by Successors. (a) Subject to the terms and conditions contained in this Section 3.14, York County is hereby granted a right of first refusal to purchase the Hospital. Except as provided in paragraph (b) hereof, in the event that an agreement for the sale of more than an eighty percent (80%) interest in (i) the Hospital or (ii) the voting securities of AMI, has, subject only to the provisions of this Section 3.14, been entered into, written notice thereof shall be provided to York County. Such notice shall set forth the identity of the proposed purchaser, the interest proposed to be conveyed and the consideration, or, if the consideration is other than cash, the fair market value of the consideration, allocable to the Hospital in the proposed transaction. York County shall have forty-five (45) days following receipt of such notice to notify AMI of its election to exercise the right of first refusal herein granted. Notice of exercise of the right of first refusal shall be accompanied by a non-

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refundable good faith check in the amount of fifty thousand dollars($50,000), which amount shall be credited against the purchase price payable hereunder. The purchase price to be paid by York County shall equal the consideration, or, if the consideration is other than cash, the fair market value of the consideration set forth in the notice to York County; provided that (i) if the proposed transaction contemplates a purchase of less than a one hundred percent (100%) interest, York County shall nevertheless purchase a one hundred percent (100%) interest and the consideration to be paid by York County shall equal the consideration set forth in the notice multiplied by a fraction the numerator of which is 1 and the denominator of which is the percentage interest contemplated in the proposed transaction expressed as a decimal, and (ii) if the proposed transaction contemplated is a tax free exchange of assets pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended, the purchase price to be paid by York County shall be increased to provide an equivalent fair market purchase price net of taxes and Medicare recapture resulting from the failure to qualify for Section 1031 treatment. The purchase price shall be paid in cash at closing which shall be a date established by York County in its notice to AMI of its election to exercise the right of first refusal, which date shall be not later than one hundred eighty (180) days following the date of such notice to AMI.

(b) The right of first refusal granted in this Section 3.14 shall not apply to any of the following transactions:

(i) any sale, conveyance or other transfer to any Affiliate, as hereinafter defined; or

(ii) any sale, conveyance or other transfer involving the interest in AMI or the Hospital set forth in paragraph (a), above, together with equivalent or greater interests in two or more acute care hospitals owned by an Affiliate or Affiliates, and/or the voting securities thereof; or

(iii) any sale, conveyance or other transfer as part of a transaction whereby AMI retains operating responsibility for the hospital pursuant to a lease, management contract or other agreement.

For purposes of this paragraph (b), the term "Affiliate" means a corporation, partnership, joint venture, association, business trust or similar entity organized under the laws of the United States of America or any state thereof which is directly or indirectly controlled by AMI, AMI Parent or Tenet Healthcare Corporation ("Tenet"), by any such entity or by any person which controls AMI, AMI Parent, Tenet or any other Affiliate. For purposes of this definition, control means the power to direct the management and policies of a person through the ownership of its voting securities or the right to designate or elect members of its board of directors or other governing board or body by contract or otherwise.

(c) Unless York County shall be entitled to exercise, and shall have exercised the right to purchase granted in paragraph (a) hereof, in the event of any transfer of the Hospital or AMI to anyone other than AMI Parent, there shall be delivered to York County an agreement of the transferee

expressly assuming the obligations of AMI under this Agreement.

(d) For purposes of this Section 3.14 and Section 4.3 hereof, the term "Hospital" means the approximately (as of July 31, 1995) forty-five (45) acre campus on which Piedmont Medical Center is located, all buildings and other improvements thereon owned by AMI, and all hospital or health care related machinery, equipment, furnishings and supplies therein or thereon, as the same shall be constituted on the date of receipt by AMI of notice of the intant of York County to purchase the Hospital pursuant to either of such Sections, subject to any prior dispositions and subject to any leases or other contracts relating thereto; such term shall not include any other assets shown as such on the balance sheets of AMI.

3.15. Licensure; Permits. During the term of this Agreement, AMI shall maintain all licenses, permits and other regulatory approvals as shall be necessary to operate the Hospital and provide the services contemplated by this Agreement. AMI covenants to operate the Hospital in conformity with all applicable statutes, laws and regulations governing the operation of the Hospital or the services rendered thereby.

3.16. Complaint Resolution. Any patient at the Hospital or other recipient of service pursuant to this Agreement who wishes to register a complaint as to any matter relating to the services provided to such person by AMI, or its failure to provide any services, shall be entitled to have such complaint reviewed by AMI and, following such review, shall be provided by AMI a written response as to the matters

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raised in such complaint, which response shall also advise the recipient thereof of his or her rights to have such complaint and response reviewed hereunder. Any person wishing to have such complaint and response so reviewed, may, within thirty (30) days of the receipt of AMI's response, but not thereafter, seek further review of his or her complaint by written request to the Board (as defined in Section 3.3(d) hereof). Such request for review shall be accompanied by the written response of AMI provided such person and by a written summary of the reasons why the person seeking review believes that AMI's response is incorrect. The Board shall provide AMI a copy of any request for review within five (5) business days of receipt thereof by the Board. AMI shall be entitled to provide the Board, in writing, with a response to any such request for review, including therewith such additional information or rebuttal as AMI feels appropriate. Not less than thirty (30) days following the receipt of a request for review hereunder, the Board shall provide AMI and the person seeking review a written determination as to such matter. A copy of such determination shall also be provided to York County. In connection with its review, the Board may, but shall not be required to, seek additional information, interview persons or conduct hearings in order to assist it in reaching a fair and accurate determination. AMI agrees to cooperate in any such fact finding efforts. Promptly following receipt of the Board's determination, AMI shall provide the Board and York County a written response to such determination, setting forth what actions, if any, AMI

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proposes to take in connection with the specific complaint or the matters raised by such complaint.

3.17. Review and Modification. The parties hereto recognize that technological or other changes not known or foreseen at the time of entering into the covenants contained in this Agreement may, at some time in the future, make uneconomical, inefficient, unnecessary or unadvisable the provision of a service or services of a type, in the manner, or at the location, specifically provided for in this Agreement, and that some modification of the Agreement may be advisable in order to avoid unintended results or better effectuate the intent of the parties in entering into this Agreement. The parties agree to cooperate in the review of the provisions and efficacy of this Agreement in order to ensure that its provisions will achieve their intended results. At least every five (5) years the parties shall provide representatives to conduct a review of this Agreement in the light of then current conditions and a report of such representatives on such review shall be prepared and provided to each of the parties. Should any party hereto conclude, in connection with any periodic review or at any other time, that strict adherence to the express terms of any provision of this Agreement has, due to some intervening change in circumstances, become contrary to the true intent of the parties hereto or to the interests of the citizens of York County intended to be protected hereunder, such party may submit a proposed modification of the appropriate provision or provisions of this Agreement designed to remedy the unintended result or achieve the true intent of the parties to the other

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parties hereto. Such proposal shall set forth the changes in circumstances or conditions which indicate the need for the modification and shall describe how the proposed modification will better accomplish the intent of the parties than the existing provision or provisions. Each of the parties agrees to give full consideration to any such proposal submitted by any other party and not to unreasonably withhold consent and cooperation in connection with any requested or proposed modification.

Section 4. Default; Remedies; Term of Agreement.

4.1. Events of Default Defined. The following shall be "events of default" under this Agreement and the terms "event of default" or "default" shall mean, whenever they are used in this Agreement, any one or more of the following events:

(a)(i) commencement by AMI, AMI Parent or Tenet of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or similar law or (ii) consent by AMI, AMI Parent or Tenet to the appointment of a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official for AMI, AMI Parent or Tenet, as the case may be, or (iii) the entry of any decree or order for relief by a court having jurisdiction over AMI, AMI Parent or Tenet or its property in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or similar law, or (iv) appointment of a receiver, liquidator, assignee, trustee, custodian, sequestrator or

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similar official for AMI, AMI Parent or Tenet or any substantial part of its property, or (v) entry of any order for the termination or liquidation of AMI, AMI Parent or Tenet or its affairs;

(b) failure of AMI, AMI Parent or Tenet within 180 days after the commencement of any proceedings against it under the federal bankruptcy laws or other applicable federal or state bankruptcy, insolvency or similar law, to have such proceedings dismissed or stayed;

(c) the entry of a final, unappealable determination, ruling, order or other action by an agency or court of competent jurisdiction which results in the loss of licensure of the Hospital or the loss of any other permits, approvals or other authority theretofore granted to AMI such that AMI is rendered incapable of substantially performing its obligations hereunder;

(d) failure by AMI or AMI Parent to substantially observe and perform any covenant, condition or agreement in this Agreement on the part of AMI or AMI Parent to be observed or performed pursuant to Sections 3.1(c), 3.2 or 3.9 of this Agreement for a period of 90 days after written notice, specifying such failure and requesting that it be remedied, given to AMI and AMI Parent by York County, unless York County shall agree in writing to an extension of such time prior to its expiration (or in the case of any such default, which cannot with due diligence be cured within such 90-day period, if AMI or AMI Parent shall fail to proceed promptly to cure the same and thereafter prosecute the curing of such default with due

diligence, it being intended in connection with such a default not susceptible of being cured with due diligence within the 90 days that the time of AMI or AMI Parent within which to cure the same shall be extended for such period as may be necessary to complete the curing of the same with all due diligence, provided that, without the consent of York County such period shall not extend beyond one hundred thirty-five (135) days following notice from York County).

(e) failure by AMI or AMI Parent to substantially observe and perform any covenant, condition or agreement in this Agreement on the part of AMI or AMI Parent to be observed or performed, other than as referred to in subsections (a), (b), (c) and (d) of this Section for a period of 30 days after written notice, specifying such failure and requesting that it be remedied, given to AMI and AMI Parent by York County, unless York County shall agree in writing to an extension of such time prior to its expiration (or in the case of any such default, which cannot with due diligence be cured within such 30-day period, if AMI or AMI Parent shall fail to proceed promptly to cure the same and thereafter prosecute the curing of such default with due diligence, it being intended in connection with such a default not susceptible of being cured with due diligence within the 30 days that the time of AMI or AMI Parent within which to cure the same shall be extended for such period as may be necessary to complete the curing of the same with all due diligence, provided that, without the consent of York

County such period shall not extend beyond forty-five days following notice from York County).

The foregoing provisions of subsections (d) and (e) of this Section 4.1 are subject to the following limitations: If by reason of force majeure AMI or AMI Parent is unable in whole or in part to carry out the agreements of AMI or AMI Parent on its part herein contained (other than the obligations on the part of AMI or AMI Parent contained in Sections 3.3(b), 3.7, 3.9, 3.10 and 3.11 hereof, to which this paragraph shall have no application), AMI or AMI Parent shall not be deemed in default during the continuance of such inability. The term "force majeure" as used herein shall mean, without limitation, the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; order of any kind of the government of the United States or of South Carolina or any of their departments, agencies, or officials, or any civil or military authority; insurrections; riots; epidemics; landslides; lightning; earthquake; fire; hurricane; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accident to machinery, transmission pipes or canals; partial or entire failure of utilities; or any other cause or event not reasonably within the control of AMI or AMI Parent, it being agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of AMI or AMI Parent and neither AMI nor AMI Parent shall be required to make settlement of strikes, lockouts and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is,

in the judgment of AMI or AMI Parent, unfavorable to AMI or AMI Parent; provided, however, that AMI's ability to rely on force majeure with respect to strikes, lockouts and other industrial disturbances relating to its employees shall be subject to the following conditions: (i) without the written consent of York County, the period of such force majeure shall not exceed three (3) years from the date of receipt of notice from York County pursuant to this Section 4.4, (ii) during the pendency of such force majeure AMI shall continue to staff and operate an emergency room at the Hospital, and (iii) during the pendency of such force majeure AMI shall provide patient referral services to other hospitals.

4.2. Remedies on Default. (a) Whenever any event of default referred to in Section 4.1 hereof shall have happened and be subsisting, York County make take whatever action at law or in equity may appear necessary or desirable to enforce performance and observance of any obligation, agreement or covenant of AMI or AMI Parent under this Agreement.

(b) Whenever any event of default described in Section 4.1(a), (b), (c) or (d) hereof or described in Section 4.1(e) hereof with respect to the obligations of AMI or AMI Parent under Section 3.1(b), 3.1(d), 3.3, 3.4, 3.5, 3.7, 3.8(b), 3.13 or 3.14 hereof shall have happened and be subsisting, York County shall, in addition any remedy available to is pursuant to subsection (a), above, have the right, subject to, and in accordance with the provisions of Section 4.3 hereof, to purchase the Hospital.

4.3. Purchase of Hospital on Certain Defaults. (a) Notice. In order to avail itself of its remedy under Section

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4.2(b) hereof to purchase the Hospital upon any occurrence of an Event of Default described therein, York County shall, within forty-five (45) days following receipt of notice of an event of default described in Section 4.1(a), (b) or (c), above, or following the occurrence of an event of default described in Section 4.1(d) or (e), above, but not thereafter, (i) give written notice to AMI of its intention to purchase the Hospital, specifying in such notice the Event of Default with respect to which the remedy is being exercised and a date of closing (the "Closing Date") for such purchase, which date shall not be less than one hundred eighty (180) days nor more than three hundred sixty-five (365) days from the date such notice is mailed or delivered personally, and (ii) deliver to AMI a non-refundable good faith check equal to fifty thousand dollars ($50,000), which amount shall be credited against the Purchase Price payable on the Closing Date.

(b) Purchase Price. The purchase price at which the Hospital shall be purchased by York County hereunder (the "Purchase Price") shall be the greater of the Fair Market Value of the Hospital, determined in accordance with subsection (g) of this Section 4.3, or the Adjusted Investment determined in accordance with subsection (f) of this Section 4.3.

(c) Conveyance of Hospital. On the Closing Date, York County shall deliver to AMI (i) the remaining balance of the Purchase Price, in cash or in the form of an official bank check drawn upon a bank having at least five hundred million dollars in capital and assets, and (ii) an assumption agreement in form reasonably acceptable to AMI and AMI Parent

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whereby York County assumes all obligations and liabilities in respect of Piedmont Medical Center on and after the Closing Date, and (iii) a release of all obligations AMI or AMI Parent may have to York County under this Agreement, the Guaranty, the Lease or any other agreement of the parties relating to Piedmont Medical Center and (iv) an indemnification agreement in form reasonably acceptable to AMI and AMI Parent whereby York County agrees to indemnify AMI and AMI Parent for all claims, actions and proceedings arising in respect of Piedmont Medical Center and its operations on or after the Closing Date or in respect of "Liabilities" as defined in subsections 5.3(a)(i), (ii) and (iii) of this Agreement.

In exchange for items (i) through (iv) above, on the Closing Date, AMI and AMI Parent or their successors shall execute and deliver to York County a statutory warranty deed (and, if applicable, a bill of sale) in form acceptable to York County, which conveys to York County all their respective right, title and interest in the Hospital (known as Piedmont Medical Center), subject to utility and transportation easements and rights of way and all other similar encumbrances appearing of record or apparent upon a reasonable inspection of the premises.

(d) Failure to Close. In the event that York County should fail to deliver any of the items listed in (i) through (iv) in subsection (c), above, or, subsequent to the delivery thereof by York County, York County shall fail or refuse to close such purchase in accordance with the terms hereof, the right of York County to purchase the Hospital as a remedy for the Event of Default with respect to which the notice of

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exercise of the such right was delivered pursuant to subsection (a), above, will become void and AMI shall retain the non-refundable good faith deposit of York County delivered pursuant to subsection (a), above. Failure by York County to perform with respect to the right to purchase in connection with any Event of Default will not affect any other remedy otherwise available to York County hereunder nor its right to purchase as a result of any other Event of Default with respect to which such remedy is otherwise available.

(e) Non-Transferability. The right of York County to purchase the Hospital as a remedy for the Events of Default described in Section 4.2(b) hereof is non-transferable and non-assignable. Any attempted assignment, transfer or other disposition of such right by York County shall render such right void and unenforceable.

(f) Adjusted Investment. The Adjusted Investment shall equal the sum of the amounts calculated pursuant to the following paragraphs (i) and (ii).

(i)(A) the amount of purchase price of property acquired under this Agreement paid prior to January 1, 1989, plus the sum of all rental payments made under the lease of the former York General Hospital; and liabilities assumed and discharged by AMI pursuant to Section 5.3(a) of this Agreement; plus (B) the aggregate amount of AMI's and/or AMI Parent's investment in the former York General Hospital and in the Hospital as of December 31, 1988, adjusted as provided in the next paragraph; minus (C) the aggregate amount of the depreciation claimed by AMI and/or AMI Parent in their most recent audited financial

statements with respect to the Hospital as of the date of exercise.

The adjustment referred to in the immediately preceding paragraph shall be effected as follows: multiply the sum of the amounts referred to in clauses (A) and (B) by an amount equal to seventy-five (75%) of the percentage of increase in the cost of living from December 1980 to the date of exercise, calculated as follows: by dividing a dividend consisting of the Index (as defined in Section 3.11 hereof), expressed as a whole number, for the month immediately preceding the date of exercise by a divisor equal to the Index established for December 1980, and from the quotient obtained, subtract the integer 1, and any resulting positive number shall be deemed to be the percentage of increase in the cost of living.

The term AMI's or AMI Parent's investment in the former York General Hospital and in the Hospital shall mean the total cost of acquiring, constructing, and equipping the Hospital, including, without limitation: (1) land acquisition costs (including, without limitation, brokerage fees and land carrying costs through completion, such as taxes and insurance), (2) costs of providing necessary and appropriate utility service, (3) costs of materials and fixed and movable equipment placed in service, (4) grading, site preparation, paving and parking lot costs, (5) landscaping costs, (6) labor costs, (7) costs of surveys, (8) costs of engineering, architectural and other

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studies, (9) architectural, engineering, legal, land appraisal and contractors' fees and charges, (10) financing costs (including without limitation, construction and permanent financing costs and mortgage brokerage commissions), (xi) all other costs and expenses reasonably attributable to construction, and (11) cost of supplies, inventory and contract rights. The term AMI's or AMI Parent's additional investment in the Hospital as used in subparagraph (ii), below, shall mean such investment in the Hospital made after December 31, 1988.

(ii) The amount of all additional investments made by AMI or AMI Parent after December 31, 1988, adjusted as provided in the next paragraph, minus an amount equal to the aggregate amount of depreciation claimed by AMI and AMI Parent in their most recent audited financial statements with respect to such additional investments as of the date of exercise.

The adjustment referred to in the immediately preceding paragraph shall be effected as follows: multiply the amount of such additional investments by seventy-five percent (75%) of the percentage of increase in the cost of living from January 1, 1989, to the date of exercise, calculated as follows: by dividing a dividend consisting of the Index, expressed as a whole number, for the month immediately preceding the date of exercise by a divisor equal to the Index established for December 1988, and from the quotient obtained, subtract the integer 1, and any resulting positive number shall be

deemed to be the percentage of increase in the cost of living.

(g) Fair Market Value. (i) The Fair Market Value of the Hospital shall be equal to the Appraised Value of the Hospital as an operating hospital.

(ii) Within thirty (30) days after delivery of the notice and good faith check described in subsection (a) of this Section 4.3, (A) York County and AMI shall select a trustee (the "Trustee") to hire appraisers; which Trustee shall be a bank or trust company having at least $500,000,000 of net worth and authorized to do business in South Carolina and (B) each party will deliver to the other the names and brief qualification statement demonstrating expertise in appraising hospitals of two appraisers nominated by such party to compute the Appraised Value of the Hospital. Each appraiser shall be a member of the American Institute of Real Estate Appraisers (or any successor organization thereto). Within thirty (30) days after selection of the Trustee and nomination of the appraisers, AMI and York County shall negotiate in good faith to either (X) agree on a single appraiser to compute the Appraised Value of the Hospital, or (Y) select which of the two appraisers nominated by the other party will be engaged to conduct an appraisal, in which event two appraisers (the one remaining after one nominated by each party has been stricken by the other party) will be engaged.

(iii) All appraisers engaged hereunder shall be hired by the Trustee on an anonymous basis. The Trustee shall engage the appraisers and each party shall deliver to the Trustee an amount of money equal to the fees, costs and expenses of the

appraiser such party nominated. AMI and York County hereby agree, and any contract with the Trustee shall provide that the Trustee shall agree, not to directly or indirectly communicate to the appraiser or appraisers engaged hereunder which party selected or nominated such appraiser. The appraiser(s) thus appointed shall, within forty-five (45) days after the date of the notice appointing the appraiser, proceed to appraise the Hospital to determine the Appraised Value as of the Closing Date (giving effect to the impact, if any, of inflation from the date of their decision to the closing date). In the case of two (2) appraisers, except as provided in subparagraph (iv) below, the two appraisals shall be averaged to determine the Appraised Value. In any event, the Appraised Value determined in accordance with this subsection (g) shall be final and binding on the parties.

(iv) To the extent consistent with sound appraisal practice as then existing at the time of any such appraisal, such appraisal shall determine the fair market value of the Hospital and shall be made to determine the value of the Hospital as an operating hospital consistent with the current operation of the Hospital at the time the Hospital was appraised. Notwithstanding the provisions of paragraph (ii), above, if the difference between the appraisal amounts determined by the appraisers appointed pursuant there exceeds ten percent (10%) of the lesser of such appraisal amounts, then the two appraisers shall have twenty (20) days to appoint a third appraiser. If no such appraiser is appointed within such twenty (20) days or within ninety (90) days after the original request for a determination of Appraised Value,

either party may apply to any court having jurisdiction to have such appointment made by such court. Any appraiser appointed by the original appraisers or by such court shall be instructed to determine the Appraised Value within forty-five (45) days after the appointment of such appraiser. The determination of the three appraisers which differs most in the terms of dollar amount from the determinations of the other two appraisers shall be excluded, and if the difference between the appraisal amounts determined by the two appraisers is less than ten (10%) of the lesser of the appraised amounts, fifty percent (50%) of the sum of the remaining two determinations shall be the Appraised Value, which Appraised Value shall be final and binding upon York County, AMI and AMI Parent for purposes of determination of the Fair Market Value pursuant to this subsection (g). If the lowest and highest Appraised Values are equidistant in amount from the middle Appraised Value, then such middle Appraised Value shall be used for purposes of determination of the Fair Market Value pursuant to this subsection (g). If the difference between the two remaining Appraised Values so computed is in excess of ten percent (10%) of the lesser of such Appraised Values, the process described above in this paragraph shall be repeated by hiring successive appraisers until such difference is not more than ten percent (10%) of the lesser Appraised Value. The provisions of this subsection (g) shall be specifically enforceable to the extent such remedy is available under applicable law, and any determination hereunder shall be final and binding upon the parties except as otherwise provided by applicable law. York County, AMI and AMI Parent each shall

pay to the Trustee and fees and expenses of the appraiser nominated by it, and each shall pay one-half of the fees and expenses of any additional appraiser or appraisers and one-half of all other costs and expenses incurred in connection with each additional appraisal.

4.4. Term of Agreement. Unless extended by written agreement of the parties hereto, this Agreement shall expire on July 1, 2045."

Section 2. Section 16.4 of the Agreement is hereby amended to delete therefrom the reference to, and address of, the "Trustees of the Hospital" and to substitute the following addresses for AMI and AMI Parent and York County:

If to AMI or AMI Parent, addressed to:

Piedmont Healthcare System
c/o President
222 S. Herlong Avenue
Rock Hill, South Carolina 29732

Tenet Healthcare Corporation
c/o Vice President for Southeast Region
1000 Abernathy Road
Building 400, Suite 1110
Atlanta, Georgia 30328

Tenet Healthcare Corporation
c/o Executive Vice President, Eastern Division
14001 Dallas Parkway
Suite 200
P. O. Box 809088
Dallas, Texas 75380-9088

If to York County, addressed to:

York County, South Carolina
c/o County Manager
P. O. Box 66
York, South Carolina 29745

Section 3. The options to purchase various assets contained in Section 14 of the Prior Agreement and the First and Second Addenda thereto, as modified and amended by the

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Third, Fourth and Fifth Addenda thereto, are terminated and hereby waived by York County, and the parties hereto hereby waive and relinquish all rights with respect thereto. Nothing obtained in this Section 3 shall affect any rights or obligations contained in Section 4 of the Agreement as amended by this Sixth Addendum.

Section 4. AMI Parent hereby jointly and severally guarantees all representations, warranties, agreements, covenants and obligations of AMI contained in this Sixth Addendum.

Section 5. Except as herein modified, the Agreement is hereby ratified and confirmed.

Section 6. Capitalized terms not otherwise defined in this Sixth Addendum shall have the meaning assigned thereto in the Agreement, if defined therein.

IN WITNESS WHEREOF, the undersigned parties have caused this Sixth Addendum to Agreement to be executed under seal as of the date first above written.

AMERICAN MEDICAL INTERNATIONAL, INC.

By _____

Title _____

Attest _____
Secretary

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AMISUB OF SOUTH CAROLINA, INC.

By _____

Title _____

Attest _____
Secretary

YORK COUNTY, SOUTH CAROLINA

By _____
Carl L. Gullick, Chairman
York County Council

Attest _____
J. Clay Killian, County
Manager

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EIGHTH ADDENDUM TO AGREEMENT BY AND AMONG TENET HEALTHCARE CORPORATION (FORMED AS A RESULT OF MERGER BETWEEN AMERICAN MEDICAL INTERNATIONAL, INC., AND NATIONAL MEDICAL ENTERPRISES,INC.),AMISUB OF SOUTH CAROLINA, INC., AND YORK COUNTY, SOUTH CAROLINA

THIS EIGHTH ADDENDUM to Hospital Agreement dated as of December 8, 1980, among American Medical International, Inc., AMISUB of South Carolina, Inc. and York County, South Carolina, as amended and modified from time to time, made and entered into this 7th day of June, 2004, by and among Tenet Healthcare Corporation, a corporation organized under the laws of the State of Delaware, and formed as the result of a merger between American Medical International, Inc., and National Medical Enterprises, Inc. (herein referred to as "AMISUB Parent"), AMISUB of South Carolina, Inc., (herein referred to as "AMISUB"), and York County, South Carolina, a political subdivision of the State of South Carolina (herein referred to as "York County"),

WITNESSETH:

WHEREAS, AMISUB Parent, AMISUB, the trustees of York General Hospital and York County entered into an agreement on or about December 9, 1980 (herein referred to as the "Prior Agreement") pursuant to which the trustees of York General Hospital and York County leased and sold certain property and assets to AMISUB Parent and its subsidiary corporation, AMISUB, for the operation of a hospital in York County, South Carolina; and

WHEREAS, AMISUB Parent and AMISUB constructed and operate a hospital in York County, South Carolina, known as Piedmont Medical Center (the "Hospital") pursuant to the terms and conditions of the Prior Agreement; and

WHEREAS, the Prior Agreement has been amended and modified by a First Addendum thereto dated June 16, 1989, a Second Addendum thereto dated April, 1992, a

Third Addendum thereto dated April, 1995, a Fourth Addendum thereto dated June, 1995, a Fifth Addendum thereto dated as of July 1, 1995, a Sixth Addendum thereto dated as of August 25, 1995, and a Seventh Addendum thereto dated October 5, 2000, (the Prior Agreement, as amended and modified, being referred to herein as the "Agreement"); and

WHEREAS, issues have arisen concerning the pricing provisions of Section 3.1(e) and other sections of the Agreement, as amended and modified; and

WHEREAS, AMISUB, AMISUB Parent and York County have determined that cost-effective competitive pricing for services provided at the "Hospital" is essential to the provision of quality health care services to the citizens of York County, to the continuing economic well-being of the "Hospital", and to the ability of AMISUB and AMISUB Parent to meet their obligations under the Agreement; and

WHEREAS, in order to resolve pricing and other issues under the Agreement, the undersigned parties desire to amend the Agreement, as previously amended and modified, by the execution and delivery of this Eighth Addendum to the Agreement.

NOW, THEREFORE, for and in consideration of the premises, the mutual promises contained herein, the sum of Ten Dollars ($10.00) paid by each party to the other, and of other good and valuable consideration, the receipt, adequacy and sufficiency of which is hereby acknowledged by each party hereto, the undersigned parties, intending to be legally bound, hereby agree as follows:

1. Section 3.1(e) of the Agreement, as amended and modified by the First, Second, Third, Fourth, Fifth, Sixth and Seventh addenda thereto, is hereby amended to read as follows:

(e) Pricing. (i) AMISUB and AMISUB Parent acknowledge that a major objective of York County in entering into this Agreement is that such care be provided on a cost-effective basis at prices favorably

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comparable to those charged for similar services provided by comparable acute-care hospitals in the same general geographical area. York County acknowledges that the pricing of, and charging and reimbursement for, health care services and the market therefor and other factors relating thereto, including the reporting thereof, are complex and but a few of a number of related major management responsibilities of the governing body of AMISUB and AMISUB Parent in the administration of the "Hospital". AMISUB, AMISUB Parent and York County acknowledge and agree that cost-effective, competitive pricing for services provided at the "Hospital" is essential to the provision of quality health care services to the citizens of York County, to the continuing economic well-being of the "Hospital", and to the ability of AMISUB and AMISUB Parent to meet their obligations under this agreement. AMISUB and AMISUB Parent agree to exert every reasonable effort to so conduct their operations and finances to maintain prices 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)(xii) 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.

(ii) Effective with the Medpar reporting period beginning October 1, 2003, in the event Medpar pricing information submitted to or obtained by the "Hospital" shall, at any time, show that the Average Charge Per Case by the "Hospital" for "all product lines" is the highest in the peer group established and described in this Agreement, AMISUB and AMISUB Parent shall in no event more than fifteen (15) business days after receipt of such Medpar report or information:

(1) reduce its rates, charges and fees or otherwise demonstrate to the county that the rates, charges and fees currently utilized by the hospital reduce the Average Charge Per Case to levels which establish that the Average Charge Per Case by the "Hospital" for "all product lines" will be less than the highest in the peer group as reported in the first Medpar report that contains a full year of data reflecting the changes referred to herein; and

(2) maintain such reduced rates, charges and fees and not adjust rates, charges or fees so as to cause the Average Charge Per Case to increase over the prior period report until such time as there has been delivered to York County a report pursuant to Section 3.13(a)(xii) of this agreement, as amended and modified, which shows that the Hospital's Average Charge Per Case for all product lines is less than the highest of the peer group; and

(3) within forty-five (45) days of the receipt of such Medpar information provide York County, at the "Hospital's" expense, a report, from a qualified consultant, mutually agreed upon by the "Hospital" and York County, that the action taken in (1) above will, to the best of the consultant's ability to make such a determination, result in the Average Charge Per Case by the "Hospital" for "all product lines" being less than the next highest in the peer group designated and established in this Agreement on the first Medpar report that contains a full year of data reflecting the changes made in (1) above. Additionally, should the consultant determine that the action taken by the "Hospital" in (1), will not result in the "Average Charge Per Case" for "all product lines" being less than the next highest in the peer group as called for in (1) above, the "Hospital" will immediately, and in no event more than forty-five (45) days unless an extension is agreed to by county, work with the consultant to identify and implement those actions necessary to achieve the required result that the Average Charge Per Case by the "Hospital" for "all product lines" is less than the next highest in the peer group. York County shall respond to the hospital's designation of a proposed consultant by notification to the hospital that such proposed consultant is approved or disapproved within ten days of receipt from hospital of the name of a proposed consultant. The "Hospital" agrees to begin requesting the required Medpar data no later than April 1st of each year. AMISUB, AMISUB Parent, and York County acknowledge that the release of this information is subject to the control of the Centers for Medicare and Medicaid.

(4) York County, AMISUB and the "Hospital" all recognize that MedPar data is not available for over 12 months after each of the "Hospital"'s fiscal years ends. In order to provide more timely information to monitor the "Hospital"'s prices for services, the "Hospital" agrees to provide York County quarterly financial information, commencing with the first financial quarter after the date of this Eighth Addendum, to include: (1) Charge Description Master; (2) Report showing frequency of all charge items processed for inpatient Medicare services consistent with the data available in the Medpar report. These schedules will be prepared from Hospital internal billing data by quarter and show comparable information to that appearing in the annual MedPar data. York County acknowledges this information may not be reflective of the data appearing in the annual Medpar report and is to be used for informational purposes only.

York County, AMISUB and the "Hospital" agree that York County reserves the right, at its expense, to hire an outside consultant to test the data provided by the "Hospital" for reasonableness.

(iii) Should AMISUB and/or AMISUB Parent fail to perform their obligations under Section 3.1(e)(i) and/or (ii) of the Agreement, as amended and modified by this Eighth Addendum, within the time frame prescribed, York County, subject to the provisions of Section 4.1, shall be entitled to take whatever action at law or in equity may appear necessary or desirable to enforce performance and observance of the obligations, agreements and covenants of AMISUB and AMISUB Parent under this Agreement, as further amended by this Eighth Addendum. Additionally, if AMISUB and/or AMISUB Parent shall fail to substantially observe and perform the covenants, conditions or agreements in Section 3.1(e)(i) and/or (ii) above, AMISUB and AMISUB Parent shall, upon written demand by York County:

(a) within thirty (30) days of the receipt of such written demand adjust rates, charges and costs at the "Hospital" to the average of the Average Charge Per Case for hospitals in the peer group, based on the most recent MedPar report available, for "all product lines" for a period of twelve months or until receipt of the next Medpar report, whichever period of time is greater, showing that the Average Charge Per Case is no longer the highest in the peer group; and

(b) within thirty (30) days of the implementation of the provisions of Section 3.1(e)(iii)(a) above, submit a Charge Master Report to York County, which report is subject to audit and verification, at York County's expense, by York County or its agents, consultants or auditors, which shows that the rates, charges and costs at the "Hospital" have been reduced to the average of the Average Charge Per Case for "all product lines" for hospitals in the peer group based on the most recent Medpar report available for all product lines. If the "Hospital" has not reduced rates, charges and costs to the average of the Average Charge Per Case for hospitals in the peer group for all product lines within the thirty (30) day period provided in this subparagraph (b), AMISUB and AMISUB Parent shall, in addition to the actions required in (a) above, promptly pay to York County, upon York County's demand, the sum of one hundred thousand ($100,000.00) dollars per month, representing the amount of liquidated damages which the parties have agreed upon as compensation to York County until the "Hospital" adjusts, fixes

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or reduces its rates, charges and fees to levels which establish that the Average Charge Per Case by the "Hospital" for all product lines will be less than the highest in the peer group for a period of not less than three consecutive months. The parties acknowledge and agree that the sum of one hundred thousand ($100,000.00) dollars per month for each month in which "Hospital" fails or neglects to adjust, fix or reduce the Average Charge Per Case at the "Hospital" for all product lines to less than the highest of the peer group represents a fair and equitable amount of compensation for delay, failure or neglect to adjust, fix or reduce the "Hospital's" Average Charge Per Case for all product lines to less than the highest in the peer group, in view of the impossibility or difficulty of ascertaining actual damages. The foregoing liquidated damages clause shall, however, be in addition to and not in substitution of any other rights or remedies which York County may have under this Agreement or otherwise against AMISUB and AMISUB Parent or the "Hospital".

2. (a) Section 3.7 of the Agreement, as previously amended and modified, is further amended by inserting the following new Section (b) immediately following the existing Section 3.7, and designating existing Section 3.7 of the Agreement as 3.7(a):

(b) AMISUB, AMISUB Parent and York County acknowledge and agree that the viability of community-based agencies which have no ownership relationship with the "Hospital" is essential to serve and improve the delivery of health care services in York County. In recognition of the vital services provided by community-based service agencies which are not directly related to the "Hospital", AMISUB and AMISUB Parent, in a continuing effort to improve the health status of the York County community, agree to contribute the following sums to the following York County community-based agencies:

(i) to Keystone, a not-for-profit substance abuse facility, to be applied to its capital campaign the sum of one hundred twenty-five thousand ($125,000) dollars to expand its York County residential treatment facility, to be paid in annual contributions of twenty-five thousand ($25,000) dollars a year for five years;

(ii) to the York County Hospice Agency, to be applied to the construction of a residential hospice facility in York County, the sum of one hundred twenty-five thousand ($125,000.00) dollars, to be paid in annual contributions of twenty-five thousand ($25,000) dollars a year for five years;

(iii) to North Central Family Clinic, a family medicine clinic which receives federal funding for treating Medicaid patients and others on a "sliding scale" the sum of three hundred fifty thousand ($350,000) dollars, to be paid in annual contributions of seventy thousand ($70,000) dollars per year for five years, provided, however, that North Central Family Clinic shall continue to provide prenatal care as a part of its clinical programming through the use of licensed midwives a minimum of sixty hours per week.

Section 3.11 of the Agreement is amended by adding the following provision at the end of Section 3.11.

AMISUB and AMISUB Parent agree to endow fifteen (15) annual scholarships to York Technical College in its registered nursing and radiology technician programs for a period of five years without restrictions except for the requirement of a two-year commitment of post-graduate work at Piedmont Healthcare System with a projected cost of three thousand seven hundred fifty ($3,750) dollars per year per scholarship, with a maximum total commitment over a five-year period of two hundred eighty-one thousand two hundred fifty ($281,250) dollars.

3. Section 3.1(c), Emergency Room Service, of the Agreement, as previously amended and modified, is further amended by inserting the following new paragraph immediately following the existing Section 3.1(c):

AMISUB and AMISUB Parent further agree that the "Hospital" will maintain its Joint Commission on Accreditation for Healthcare Organizations ("JCAHO") accreditation.

4. Section 3.13 of the Agreement, as previously amended and modified, is further amended by inserting a new Section (c) immediately following the existing section 3.13(b) as follows:

(c) In order to permit York County or its auditors, consultants, representatives or agents to monitor and determine the observance and performance of the covenants, conditions or agreements in this Agreement on the part of AMISUB and AMISUB Parent, AMISUB, AMISUB Parent and the "Hospital" hereby grant to York County, its

successors, auditors, consultants, accountants, attorneys and agents the right, upon reasonable notice, to inspect, examine, and review books, records and reports of AMISUB Parent, AMISUB and the "Hospital" reasonably necessary in order to determine compliance, observance and performance by AMISUB Parent, AMISUB and the "Hospital" of and with the covenants, conditions, provisions and agreements contained in the Agreement, as amended and modified. In the event AMISUB, AMISUB Parent, or the "Hospital" determines that any such request is not reasonably necessary to York County's ability to monitor or determine the observance or performance of the covenants, conditions, or agreements in this Agreement or is otherwise unreasonable, AMISUB, AMISUB Parent, or the "Hospital" shall provide written objection to York County, describing the specific grounds of objection. Within ten (10) days upon the County's receipt of said objection, the parties shall meet and attempt to resolve the issues. Should the parties be unable to resolve their differences at said meeting, they shall jointly retain a mutually agreeable consultant to determine whether the request at issue is reasonably necessary to York County's ability to monitor or determine the observance or performance of the covenants, conditions, or agreements in this Agreement and is otherwise reasonable. The provisions of this Eighth Addendum shall be cumulative and in addition to, and not in substitution for any other rights or remedies which York County may have under this Agreement or otherwise, and this provision shall not preclude or limit York County in the exercise of any other right or remedy under this Agreement or at law or in equity.

4. Guaranty by AMISUB Parent.

AMISUB Parent hereby jointly and severally guarantees all representations, warranties, agreements, covenants and obligations of AMISUB contained in this agreement.

5. Prior Agreement ratified and confirmed.

Except as modified herein, the Prior Agreement as amended and modified by the First, Second, Third, Fourth, Fifth, Sixth and Seventh addenda thereto, is hereby ratified and confirmed.

6. Miscellaneous provisions.

(a) Enforceability. All of the terms, provisions and conditions of the Agreement, as amended and modified, shall be binding upon and enforceable by the respective parties, their successors, representatives, officials, officers, agents, employees and assigns.

(b) Amendment. The Agreement and this and prior addenda may be amended or modified only by a written document which has been signed by the parties hereto or by their duly authorized officers or officials.

(c) No waiver. No waiver of a breach of any of the covenants, promises or provisions contained in the Agreement, as amended or modified, and this Eighth Addendum shall be construed as a waiver of any succeeding breach of the same covenant or promise or any other covenant or promise thereof.

(d) Governing law; choice of forum. The Agreement, as amended and modified, and this Eighth Addendum shall be governed by the laws of the State of South Carolina, and by the execution of this agreement, the parties consent to the exclusive jurisdiction of the state and federal courts of South Carolina, for resolution of any dispute arising hereunder.

(e) Severability. In the event that any part or provision of the Agreement, as amended and modified, or this Eighth Addendum shall be determined to be invalid and/or unenforceable, the remaining parts and provisions which can be separated from the invalid and/or unenforceable provision or provisions shall continue in full force and effect.

(f) Captions. The captions and headings of the paragraphs of this Eighth Addendum are for convenience only and are not to be used to interpret or define any or all of the provisions of the Agreement, as amended or modified, or provisions of this Eighth Addendum.

(g) Notices. All notices pertaining to the Agreement, as amended or modified or this Eighth Addendum shall be in writing and addressed as set forth below, and shall be deemed properly delivered, given or served when (i) personally delivered, or (ii) sent by overnight courier, or (iii) four (4) days have elapsed following the date mailed by certified or registered mail, postage prepaid.

Notices to AMISUB and AMISUB Parent:

Tenet Healthcare Corporation
c/o Sr. Vice President of Southern States Region
3350 Riverwood Parkway
Suite 1800
Atlanta, Georgia 30339

Tenet Healthcare Corporation
c/o President, Eastern Division
245 Town Park Drive
Suite 075
Kennesaw, GA 30144

Mr. Charles F. Miller (or successor)
President and CEO
Piedmont Healthcare System
222 S. Herlong Avenue
Rock Hill, SC 29732

Notices to County:

York County
P. O. Box 66
York, SC 29745
Attention: County Manager Alfred W. Greene (or successor)

Melvin B. McKeown, Jr. (or successor)
McKeown Law Firm
P. O. Box 299
York, SC 29745-0299

(h) Assignment. Except as otherwise provided by applicable law, the Agreement, as amended and modified, and/or this Eighth Addendum may not be assigned by any party without the written consent of the other party.

(i) Successors. This agreement shall be binding upon and enure to the benefit of the parties hereto, their respective successors and assigns.

(j) No third-party beneficiaries. No rights in any third party are created by this agreement, and no person or entity not a party to this agreement may rely on any aspect of this agreement, notwithstanding any representation, written or oral, to the contrary, made by any person or entity.

(k) Multiple counterparts. This Eighth Addendum is executed in multiple counterparts, each of which shall be deemed an original, but all of which collectively shall constitute but one and the same agreement.

(l) Prior Agreements; entire agreement. All obligations of the parties, each to the other, relating to the subject matter of the Agreement, as previously amended or modified, or this Eighth Addendum, contained in any other document or agreement or based on any other communication prior to the execution of this Eighth Addendum are superseded by the Agreement, as amended and modified. The Agreement, as modified by the First, Second, Third, Fourth, Fifth, Sixth, Seventh and this Eighth addenda, constitutes the entire agreement between the parties relating to the subject matter hereof.

IN WITNESS WHEREOF, the undersigned parties have caused this Eighth Addendum to Agreement to be executed under seal as of the date first above written.

TENET HEALTHCARE CORPORATION

By: _____
Reynold J. Jennings
Chief Operating Officer

Attest: _____

Title: Sr. Admin Assistant

AMISUB OF SOUTH CAROLINA, INC.

By: _____
Charles F. Miller
Chief Executive Officer

Attest: _____

Title: Executive Assistant

YORK COUNTY, SOUTH CAROLINA

By: _____
Ada Chisolm-Perry, Vice Chairman
York County Council

Attest: _____
Alfred W. Greene
County Manager

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NINTH ADDENDUM TO AGREEMENT BY AND AMONG TENET HEALTHCARE CORPORATION (FORMED AS A RESULT OF MERGER BETWEEN AMERICAN MEDICAL INTERNATIONAL, INC., AND NATIONAL MEDICAL ENTERPRISES,INC.),AMISUB OF SOUTH CAROLINA, INC., AND YORK COUNTY, SOUTH CAROLINA

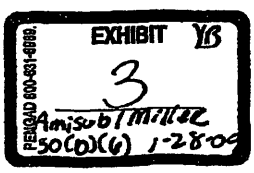
THIS NINTH ADDENDUM to Hospital Agreement dated as of December 8, 1980, among American Medical International, Inc., AMISUB of South Carolina, Inc. and York County, South Carolina, as amended and modified from time to time, made and entered into this 5th day of June, 2006, by and among Tenet Healthcare Corporation, a corporation organized under the laws of the State of Delaware, and formed as the result of a merger between American Medical International, Inc., and National Medical Enterprises, Inc. (herein referred to as "AMISUB Parent"), AMISUB of South Carolina, Inc., (herein referred to as "AMISUB"), and York County, South Carolina, a political subdivision of the State of South Carolina (herein referred to as "York County"),

WITNESSETH:

WHEREAS, AMISUB Parent, AMISUB, the trustees of York General Hospital and York County entered into an agreement on or about December 9, 1980 (herein referred to as the "Prior Agreement") pursuant to which the trustees of York General Hospital and York County leased and sold certain property and assets to AMISUB Parent and its subsidiary corporation, AMISUB, for the operation of a hospital in York County, South Carolina; and

WHEREAS, AMISUB Parent and AMISUB constructed and operate a hospital in York County, South Carolina, known as Piedmont Medical Center (the "Hospital") pursuant to the terms and conditions of the Prior Agreement; and

WHEREAS, the Prior Agreement has been amended and modified by a First Addendum thereto dated June 16, 1989, a Second Addendum thereto dated April, 1992, a



Third Addendum thereto dated April, 1995, a Fourth Addendum thereto dated June, 1995, a Fifth Addendum thereto dated as of July 1, 1995, a Sixth Addendum thereto dated as of August 25, 1995, a Seventh Addendum thereto dated October 5, 2000, and a Eighth Addendum thereto dated June 4, 2004, (the Prior Agreement, as amended and modified, being referred to herein as the "Agreement"); and

WHEREAS, AMISUB has made application to the South Carolina Department of Health and Environmental Control (DHEC) for the purpose of granting a Certificate of Need to expand AMISUB by 64 beds to be located in the vicinity of Fort Mill, South Carolina, such facility to provide medical / surgical services, emergency room services open 24 hours a day / 7 days a week, inpatient / outpatient surgical services and all the necessary diagnostic and support services expected to provided for the successful support of those services, and

WHEREAS, the Fort Mill campus is a continuation of services provided by AMISUB and AMISUB is the contractual party to the Prior Agreement, the Fort Mill campus would operate under the Prior Agreement, as subsequently amended and modified, as applicable.

WHEREAS, opportunities have arisen for further improvement of services for the residents of York County under Section 3.2 and Section 3.5 of the Agreement, as amended and modified; and

WHEREAS, in order to expand and clarify the obligations and expectations under the Agreement, the undersigned parties desire to amend the Agreement, as previously amended and modified, by the execution and delivery of this Ninth Addendum to the Agreement which, unless extended by written agreement of the parties hereto, shall expire on July 1, 2045.

NOW, THEREFORE, for and in consideration of the premises, the mutual promises contained herein, the sum of Ten Dollars ($10.00) paid by each party to the other, and of other

good and valuable consideration, the receipt, adequacy and sufficiency of which is hereby acknowledged by each party hereto, the undersigned parties, intending to be legally bound, hereby agree as follows:

1. Section 3.5 of the Sixth Addendum of the Agreement, as amended and modified by the Seventh and Eighth addenda thereto, is hereby amended to read as follows:

a) AMISUB has established an urgent care/occupational medicine facility (Facility) in western York County, which provides urgent care for minor emergencies, occupational medicine, including physical examinations, occupational testing/screenings, care for on-the-job injuries and other similar health care services, and which currently is open and staffed between the hours of 8:00 a.m. and 8:00 p.m., Monday through Saturday and 1:30 p.m. on Sundays, except for Christmas, New Years, Easter and Thanksgiving in accordance with the guidance provided by the advisory committee established under the Sixth (6th) Addendum of the Agreement. York County and AMISUB have agreed that an evaluation of the community need for an expansion of hours of operation at this Facility is appropriate to determine how best to serve the residents of western York County in an efficient and cost effective manner. Therefore, effective no later than 300 days following the execution of this Ninth (9th) Addendum the Facility will be open between the

hours of 8:00 a.m. and 12:00 midnight Monday through Saturday and 1:30 p.m. and 12:00 midnight Sundays and AMISUB will implement this change as soon as possible after the execution of this Ninth (9th) addendum, the requisite full time professional staff are employed, and the Facility transitioned. Additionally, effective no later than three (3) full months following the extension of hours to 12:00 midnight the Facility will be open twenty-four hours each day, except that the Facility will be permitted to be closed between the hours of 12.00 midnight and 1:30 p.m. on Sundays. Additionally, the Facility will be permitted to be closed from 12:01 a.m. to 10:00 p.m. Christmas, New Years, Easter and Thanksgiving. Staffing of the Facility will be provided by not less than two (2) licensed physicians. AMISUB will use its best efforts to retain Board Certified or Board Eligible in Emergency Medicine physicians (at least one (1) of whom shall be at the Facility during all operating hours) and adequate support staff.

b) This evaluation shall continue for a period of not less than five (5) years from the first day the Facility begins operation "24 hours each day" as set forth in paragraph a) above. At the conclusion of that five (5) year period, AMISUB shall evaluate the performance of the Facility and may, at its sole discretion, adjust the hours of operation and/or levels of service as

AMISUB determines may be appropriate, but at no time shall the hours of operation or service be less than that which existed prior to the execution of this Ninth Addendum. Failure to make adjustments at the end of the five year period shall not preclude AMISUB from making adjustments at a later time should it determine that adjustments are appropriate.

c) In order to ensure responsiveness to community needs by this Facility, there shall be established an advisory committee comprised of one (1) member of York County Council, three (3) residents of York County Council Districts 2 and/or 3 (as constituted on the date of delivery of this Sixth Addendum) appointed by AMISUB from a list of not less than five (5) nominees for three (3) vacancies, four (4) nominees for two (2) vacancies, and three (3) nominees for one (1) vacancy named by York County Council and one (1) representative of AMI. Such committee shall meet no less often than annually to discuss the need for services in western York County, the manner in which the western York County urgent care facility is meeting such needs and any changes which might be necessary or advisable with respect to the types of services provided or the manner in which services are provided in order to better meet the needs of the residents of western York County. AMISUB agrees to take into consideration any recommendations or requests made by the

advisory committee in connection with its operation of the urgent care facility and its planning with respect thereto and provide a timely written response to any such recommendation or request.

2. Section 3.7 of the Sixth Addendum of the Agreement, as amended and modified by the Seventh and Eighth addenda thereto, is hereby amended to read as follows:

AMI agrees that in the period beginning June 1, 1995, and ending May 31, 1998, it will make investments in land or depreciable or amortizable property located in York County, South Carolina, in an aggregate amount not less than Twenty-Three Million ($23,000,000) Dollars, provided that in the event AMI shall be relieved from the obligation to provide any facility or service described in Section 3.1(b) hereof as a result of the inability to obtain any regulatory approval required therefore, such amount shall be reduced by the estimated cost of such facility or service as set forth in said Section 3.1(b). Thereafter, in each period of twelve (12) months beginning June 1 of a year and ending on May 31 of the next succeeding year, beginning with the twelve-month period starting June 1, 1998, it will invest in land, depreciable or amortizable property, and depreciable property acquired by way of operating lease(s), such leases providing for the payment of ad vorem taxes to York County, shall belocated in York County, South Carolina, and used for the purpose of providing the service required by this Agreement, an amount which, when added to the amount so invested by AMI in the preceding two (2) such twelve (12) month periods, would make the average thereof

equal to or greater than the greater of (i) $4,000,000 or, (ii) one hundred eight percent (108%) of the average of the amounts shown on the financial statements of AMI as depreciation or amortization for property, plant and equipment located in York County for the preceding three (3) such twelve (12) month periods, provided that in no such twelve (12) month period shall the amount actually so invested be less than $1,500,000. Notwithstanding the foregoing, in the event AMI's earnings before depreciation and amortization, as shown in the financial statements of AMI for the twelve (12) month period in question, are less than $4,000,000, the amount required to be reinvested as herein provided during such period shall not exceed an amount equal to fifty percent (50%) of such earnings before depreciation and amortization. Accounting terms used in this Section 3.7 shall be given meaning and applied in accordance with generally accepted accounting principles; depreciation and amortization shall be determined in accordance with American Hospital Association or some other nationally recognized standard therefore.

3. Section 3.14 of the Sixth Addendum, Right of First Refusal; Assumption of Agreement by Successors is hereby amended to read as follows:

(a) Subject to the terms and conditions contained in this Section 3.14, York County is hereby granted a right of first refusal to purchase the Hospital. Except as provided in paragraph (b) hereof, in the event that an agreement for the sale of more than an eighty percent (80%) interest in (i) the Hospital or (ii) the voting securities of AMI, has, subject only to the provisions of this Section 3.14, been entered into, written notice thereof shall be provided to York County. Such notice shall set forth the identity

of the proposed purchaser, the interest proposed to be conveyed and the consideration, or, if the consideration is other than cash, the fair market value of the consideration, allocable to the hospital in the proposed transaction. York County shall have ninety (90) days following receipt of such notice to notify AMI of its election to exercise the right of first refusal herein granted. Notice of exercise of the right of first right of refusal shall be accompanied by a non-refundable good faith check in the amount of fifty thousand dollars ($50,000), which amount shall be credited against the purchase price payable hereunder. The purchase price to be paid by York County shall equal the consideration, or, if the consideration is other than cash, the fair market value of the consideration of the consideration set forth in the notice to York County; provided that (i) if the proposed transaction contemplates a purchase of less than a one hundred percent (100%) interest, York County shall nevertheless purchase a one hundred percent (100%) interest and the consideration to be paid by York County shall equal the consideration set forth in the notice multiplied by a fraction, the numerator of which is 1 and the denominator of which is the percentage interest contemplated in the proposed transaction expressed as a decimal, and (ii) if the proposed transaction contemplated is a tax free exchange of assets pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended, the purchase price to be paid by York County shall be increased to provide an equivalent fair market purchase price net of taxes and Medicare recapture resulting from the failure to qualify for Section 1031 treatment. The purchase price shall be paid in cash at closing which shall be a date established by York County in its notice to AMI of its election to exercise the right of first refusal, which date shall be not later than one hundred eighty (180) days following the date of such notice to AMI.

(b) The right of first refusal granted in this Section 3.14 shall not apply to any of the following transactions:

(i) any sale, conveyance or other transfer to any affiliate, as hereinafter defined; or

(ii) any sale, conveyance or other transfer involving the interest in AMI or the Hospital set forth in paragraph (a), above, together with equivalent or greater interest in two or more acute care hospitals owned by an Affiliate or Affiliates, and/or the voting securities thereof; or

(iii) any sale, conveyance or other transfer as part of a transaction whereby AMI retains operating responsibilities for the hospital pursuant to a lease, management contract or other agreement.

For purpose of this paragraph (b), the term "Affiliates" means a corporation, partnership, joint venture, association, business trust or similar entity organized under the laws of the United States of America or any state thereof which is directly or indirectly controlled by AMI, AMI Parent or Tenet Healthcare Corporation ("Tenet"), by any such entity or by any person which controls AMI, AMI Parent, Tenet or any other Affiliate. For purposes of this definition, "control" means the power to direct the management and policies of a person through the ownership of its voting securities or the right to designate or elect members of its board of directors or governing board or body by contract or otherwise.

(c) Unless York County shall be entitled to exercise, and shall have exercised the right to purchase granted in paragraph (a) hereof, in the event of any transfer of the Hospital or AMI to anyone other than AMI Parent, there shall be delivered to York County an agreement of the transferee expressly assuming the obligations of AMI under this Agreement

(d) For purposes of this Section 3.14 and Section 4.3 of the Sixth Addendum, the term "Hospital" means the approximately (as of July 31, 1995) forty-five acre campus on which Piedmont Medical Center is located, all buildings and other improvements thereon owned by AMI, and all hospital or health care related machinery, equipment, furnishings and supplies therein or thereon, as the same shall be constituted on the date of receipt by AMI of notice of the intent of York County to purchase the Hospital pursuant to either of such Sections, subject to any prior dispositions and subject to any leases or other contracts relating thereto; such term shall not included any other assets shown as such on the balance sheets of AMI.

4. Guaranty by AMISUB Parent.

AMISUB Parent hereby jointly and severally guarantees all representations, warranties, agreements, covenants and obligations of AMISUB contained in this agreement.

5. Prior Agreement ratified and confirmed.

Except as modified herein, the Prior Agreement as amended and modified by the First, Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth addenda thereto, is hereby ratified and confirmed. Of specific note is the reaffirmation of Subsection (c) of Section 3.13 of the Sixth Addendum of the Agreement, as previously amended and modified in the Eighth Addendum, (c) In order to permit York County or its auditors, consultants, representatives or agents to monitor and determine the observance and performance of the covenants, conditions or agreements in this Agreement on the part of AMISUB and AMISUB Parent, AMISUB, AMISUB Parent and the "Hospital" hereby grant to York County, its successors, auditors, consultants, accountants, attorneys and agents the right, upon reasonable notice, to inspect, examine, and review books, records and reports of AMISUB Parent, AMISUB and the

"Hospital" reasonably necessary in order to determine compliance, observance and performance by AMISUB Parent, AMISUB and the "Hospital" of and with the covenants, conditions, provisions and agreements contained in the Agreement, as amended and modified. In the event AMISUB, AMISUB Parent, or the "Hospital" determines that any such request is not reasonably necessary to York County's ability to monitor or determine the observance or performance of the covenants, conditions, or agreements in this Agreement or is otherwise unreasonable, AMISUB, AMISUB Parent, or the "Hospital" shall provide written objection to York County, describing the specific grounds of objection. Within ten (10) days upon the County's receipt of said objection, the parties shall meet and attempt to resolve the issues. Should the parties be unable to resolve their differences at said meeting, they shall jointly retain a mutually agreeable consultant to determine whether the request at issue is reasonably necessary to York County's ability to monitor or determine the observance or performance of the covenants, conditions, or agreements in this Agreement and is otherwise reasonable. The provisions of this Ninth Addendum shall be cumulative and in addition to, and not in substitution for any other rights or remedies which York County may have under this Agreement or otherwise, and this provision shall not preclude or limit York County in the exercise of any other right or remedy under this Agreement or at law or in equity.

6. Miscellaneous provisions.

(a) Enforceability. All of the terms, provisions and conditions of the Agreement, as amended and modified, shall be binding upon and enforceable by the respective parties, their successors, representatives, officials, officers, agents, employees and assigns.

(b) Amendment. The Agreement and this and prior addenda may be amended or modified only by a written document which has been signed by the parties hereto or by their duly authorized officers or officials.

(c) No waiver. No waiver of a breach of any of the covenants, promises or provisions contained in the Agreement, as amended or modified, and this Ninth Addendum shall be construed as a waiver of any succeeding breach of the same covenant or promise or any other covenant or promise thereof.

(d) Governing law; choice of forum. The Agreement, as amended and modified, and this Ninth Addendum shall be governed by the laws of the State of South Carolina, and by the execution of this agreement, the parties consent to the exclusive jurisdiction of the state and federal courts of South Carolina, for resolution of any dispute arising hereunder.

(e) Severability. In the event that any part or provision of the Agreement, as amended and modified, or this Ninth Addendum shall be determined to be invalid and/or unenforceable, the remaining parts and provisions which can be separated from the invalid and/or unenforceable provision or provisions shall continue in full force and effect.

(f) Captions. The captions and headings of the paragraphs of this Ninth Addendum are for convenience only and are not to be used to interpret or define any or all of the provisions of the Agreement, as amended or modified, or provisions of this Ninth Addendum.

(g) Notices. All notices pertaining to the Agreement, as amended or modified or this Ninth Addendum shall be in writing and addressed as set forth below, and shall be deemed properly delivered, given or served when (i) personally delivered, or (ii) sent by overnight courier, or (iii) four (4) days have elapsed following the date mailed by certified or registered mail, postage prepaid.

Notices to AMISUB and AMISUB Parent:

Tenet Healthcare Corporation
c/o Sr. Vice President, Regional operations
15450 South Outer Fourty Dr
Suite 120
Chesterfield, MO 63017

Tenet Healthcare Corporation
c/o Chief Operating Officer
13737 Noel Road
Dallas, TX 75240

Mr. Charles F. Miller (or successor)
President and CEO
Piedmont Healthcare System
222 S. Herlong Avenue
Rock Hill, SC 29732

Notices to County:

York County
P. O. Box 66
York, SC 29745
Attention: County Manager Alfred W. Greene (or successor)

Melvin B. McKeown, Jr. (or successor)
McKeown Law Firm
P. O. Box 299
York, SC 29745-0299

(h) Assignment. Except as otherwise provided by applicable law, the Agreement, as amended and modified, and/or this Ninth Addendum may not be assigned by any party without the written consent of the other party.

(i) Successors. This agreement shall be binding upon and enure to the benefit of the parties hereto, their respective successors and assigns.

(j) No third-party beneficiaries. No rights in any third party are created by this agreement, and no person or entity not a party to this agreement may rely on any aspect of this

agreement, notwithstanding any representation, written or oral, to the contrary, made by any person or entity.

(k) Multiple counterparts. This Ninth Addendum is executed in multiple counterparts, each of which shall be deemed an original, but all of which collectively shall constitute but one and the same agreement.

(l) Prior Agreements; entire agreement. All obligations of the parties, each to the other, relating to the subject matter of the Agreement, as previously amended or modified, or this Ninth Addendum, contained in any other document or agreement or based on any other communication prior to the execution of this Ninth Addendum are superseded by the Agreement, as amended and modified. The Agreement, as modified by the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and this Ninth addenda, constitutes the entire agreement between the parties relating to the subject matter hereof.

IN WITNESS WHEREOF, the undersigned parties have caused this Ninth Addendum to Agreement to be executed under seal as of the date first above written.

TENET HEALTHCARE CORPORATION

By: _____

Title: Senior VP

Attest: _____

Title: Executive Assistant

Piedmont.1215

AMISUB OF SOUTH CAROLINA, INC.

By: _____
Charles F. Miller
Chief Executive Officer

Attest: _____

Title: _____

YORK COUNTY, SOUTH CAROLINA

By: _____
T. Steve McNeely, Chairman
York County Council

Attest: _____
Alfred W. Greene
County Manager

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 **MEMORANDUM OF PETITIONER CAROLINAS HEALTHCARE SYSTEM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

EXHIBIT K

Amisub 30(b)(6) Deposition Excerpts

- Transcript of Designee Charles Miller (January 28, 2009), pp. 48, 49, 50, 106, 107, 108, 109, 110, 157, 162, 176, 177, 191, 192, 193

STATE OF SOUTH CAROLINA
BEFORE THE 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,

vs. CASE NO. 06-ALJ-07-0713-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,

Respondents.

WITNESS: 30(b)(6) of CHARLES MILLER

DATE: January 28, 2009

TIME: 10:10 a.m.

LOCATION: Piedmont Medical Center
222 South Herlong Avenue
Rock Hill, South Carolina

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

REPORTED BY: YVONNE R. BOHANNON
Registered Merit Reporter,
Certified Realtime Reporter

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A. I would assume so.

Q. Okay. Let's look on page 779. Section 2 under b, that's an amendment to Section 3.7 of the agreement.

A. Uh-huh.

Q. Now, as part of the addendum -- as part of the amendment, addendum eight, Amisub agreed to make certain payments to various community-based agencies, right?

A. Correct.

Q. Tell me how that was negotiated.

A. Actually it was -- this particular section was placed in there at the request of the hospital at my request.

Q. And why did you request it?

A. I guess the -- during these discussions the representatives of the county were in their minds seeking some form of damage for what they allege to be a breach of the sixth addendum. The sixth addendum -- A, we don't believe that we've breached the sixth addendum. We followed the processes outlined there to address the issue, and, you know, therefore there wasn't really a remedy for the community.

And these organizations that we had

been actively engaged in and who supported us, a number of them were engaged in some various capital campaigns, various long-term projects and that kind of thing, and we offered that we would make a significant commitment over a five-year period to support these organizations, all of which contribute in some way to the health status of the residents of York County.

Q. If I understand what you're saying then, the county -- I'm sorry, Amisub offered these concessions to the county to make the county comfortable with regard to what the county had alleged was a breach of the sixth addendum?

A. That is correct.

Q. Okay. Now, on the various items on 779, 780, and contained in paragraph b in section 3.11, those are each for five years, correct?

A. Correct.

Q. And does that five-year time frame run from the date of the addendum?

A. Through June of 2004, correct.

Q. So those commitments would be up this year, correct?

A. Correct.

Q. Time flies, doesn't it.

A. It does.

Q. Are there any ongoing negotiations to extend these commitments between Piedmont Medical Center and the county?

A. No.

Q. Look on down to 780 under paragraph four there, Section 3.13. Under the new section c that's been added --

A. Uh-huh.

Q. -- it gives York County and its auditors, consultants, et cetera, the authority to look at the books of first Amisub, right? Just take a minute and read c, please, sir.

A. Correct.

Q. Okay. Now, Amisub is the parent company of Piedmont Medical Center, correct?

A. Correct.

Q. That's correct. Amisub owns Piedmont Medical Center?

A. Amisub is -- Amisub of South Carolina, Inc., parentheses, Amisub, is the legal corporate name. Piedmont Medical Center is a d/b/a.

Q. What other healthcare facilities that are operating does Amisub own?

A. None.

Q. Let's go to number eight right now for a minute.

MS. CRUM: Stuart, do you have the notebook with the reconsideration in it? It's part of the DHEC file.

MR. ANDREWS: Yeah.

MS. CRUM: Okay.

MR. ANDREWS: Well, we have the full DHEC file certainly. Do you have a page?

MS. CRUM: We have it copied. It might be easier than looking through the --

MR. ANDREWS: I'm happy to get it. I just don't know the page.

MS. CRUM: They're Bates stamped starting at 81R.

Off the record.

(Off-the-record conference.)

BY MS. CRUM:

Q. Mr. Miller, what I'm handing you is a whole stack of documents. It's Bates 81R through 237R. And will you look at that and see if you can determine whether or not that is the -- a lot of the documents associated with the Atherton versus Tenet Healthcare, a 2003 civil action.

A. It appears to be correct.

MS. CRUM: Let's go ahead and make that Exhibit 5.

MR. ANDREWS: Can I see that, please.

MS. CRUM: Off the record.

(Off-the-record conference.)

(EXH. 5, June 10, 2005, Remittitur, marked for identification.)

BY MS. CRUM:

Q. Mr. Miller, are -- you were CEO of Amisub and administrator of Piedmont Medical Center when the applicant suit was filed, weren't you?

A. That is correct.

Q. So you are somewhat familiar with that suit?

A. That is correct.

Q. When did Amisub make the announcement to the county council that it was in violation of the pricing provision of addendum six?

MR. ANDREWS: Object to the form.

Go ahead and answer.

A. It would have been included in the report ending September 30th, 2003, and was incorporated in my presentation to county council I believe April 2004.

BY MS. CRUM:

Q. Okay. Based on your understanding -- Amisub's understanding of the complaint, was it filed in an effort to get pricing down at Piedmont Medical Center?

MR. ANDREWS: Object to the form.

A. Was -- was the suit filed --

BY MS. CRUM:

Q. Yes.

A. -- in an effort --

Q. To reduce pricing at Fort Mill Medical Center -- I'm sorry, at Piedmont Medical Center.

A. I think -- I guess that's the legal argument that was being made by the plaintiff's attorneys.

Q. I'm just asking was that Amisub's understanding of why it was filed.

A. Yes.

Q. Okay. And I certainly understand that Amisub said no, it hadn't violated the provisions of the -- that was part of the legal defense, right?

A. Correct.

Q. Okay. This lawsuit was filed when? And look at page 105B.

A. June 19th, 2003.

Q. At that point did Amisub know that it was not going to meet the pricing requirements of the sixth addendum?

A. I don't have any recollection that we did at that point.

Q. Do you have any recollection that you didn't -- didn't know?

A. I would have to answer no, I don't.

Q. Okay. Was the renegotiation of the pricing in addendum eight --

A. Eight.

Q. -- was that in part in response to this lawsuit?

A. No.

Q. It is your testimony that county council did not seek to renegotiate the pricing section of addendum eight in partial response to this lawsuit?

A. I can't speak for York County council.

Q. Then when you said no, what do you mean?

A. It was never a part of any conversation that I had with any member of council or representative of council that the Atherton legal action was part of the discussion of driving any

part of the condition with regard to the eighth addendum.

Q. However, you earlier testified -- and correct me if I'm wrong -- that some of the offers that you made with regard to the various five year fundings were associated with the contention that the pricing agreement section of addendum six had been violated?

A. That is correct.

Q. Okay. Is it Amisub's understanding that ultimately the Court of Appeals of South Carolina dismissed the lawsuit on the ground that the contract between York County and Tenet Healthcare Corporation and Amisub does not have -- is not for the benefit of any third party?

A. That the contract specifically prohibits the intervention of a third party, yes.

Q. Let's go to number 11. Go to page 52 of the hundred bed application, please, sir.

A. Okay.

Q. This is discussion of the alternatives to Fort Mill Medical Center. Why didn't -- why wasn't maintaining the status quo appropriate in this case?

A. I mean, there is obviously a

interpretation. Are you -- was Amisub familiar with that rescission?

A. I am.

Q. At any point between the time the interpretation was submitted and rescinded, did Amisub, its counsel or consultants meet with anyone from DHEC regarding that interpretation?

A. We did.

Q. With whom did you meet?

A. Earl Hunter and --

Q. Who was in the meeting?

A. Albert I believe was in the meeting and DHEC legal counsel was present.

Q. What about Leon Frishman?

A. I don't recall Leon being present. My recollection is there were three -- if it was Leon, it wasn't Albert -- from DHEC. There was myself. There was Mr. Andrews. There was Senator Wes Hayes and Mr. Danny Westbrook I believe was present.

Q. Okay. I'm sorry, was it Mr. Whiteside or Mr. Frishman that was there?

A. I recall there were three people from DHEC, Earl Hunter, legal counsel, and I can't -- I'm not clear as to whether it was Albert or Leon. It was one or the other.

A. We thought it was very important to make sure that we were interpreting the plan and the regulations correctly relative to our right and ability to do that, and we were relying solely on their interpretation and answers to our very pointed and specific questions with regards to that.

Q. Who went actually to DHEC on behalf of Amisub?

A. I don't recall specifically that.

Q. Do you recall who they met with?

A. I believe that they met with Joel Grice.

Q. Was there anybody else in the meeting?

A. I don't know the answer to that.

Q. Let's talk about the financial performance of Amisub, including but not limited to, Piedmont Medical Center for fiscal year 2008 back, and that's topic 14 I believe.

Does Amisub produce audited financials?

A. No.

Q. Why not?

A. Because we are a subsidiary of a wholly owned company. We're a subsidiary of a company that wholly owns at this point 54 different

A. Okay.

BY MR. MULLER:

Q. Exhibit Number 10 is a copy of the memo that we've just been discussing. This is Mr. Grice's memo of January 25, 2005. I take it that what you took issue with was subsection three at the bottom of that memo?

A. That would be correct.

Q. In the -- tell me, what was the concern that you expressed to DHEC about -- what was your interpretation of the 2004-2005 State Health Plan as it related to that item number three?

A. Actually I believe it starts with the 2003 Health Plan and -- and which the plan basically assigns those beds to the hospital that generated the need. So my concern is in this interpretation of the plan, the intent of the plan and the application of the plan.

Q. And by hospital, what are you referring to? What hospital?

A. Piedmont -- in our case Piedmont Medical Center generated the need for those 64 beds, and it was the intent of the plan and the planning committee then that those beds basically are subject to application, demonstration of need

and that sort of thing assigned to Piedmont.

Q. Did you express your view to DHEC that the only hospital that was eligible to apply for those beds was Piedmont Medical Center?

A. I believe that would be correct.

Q. And I take it from your earlier testimony that Senator Wes Hayes agreed with your interpretation and he also advanced that interpretation to DHEC?

A. He -- he believed that the material that we had in support of our statements with regards to this supported that -- our statement. I don't recall Senator Hayes actively engaging in conversation other than being present, and certainly expressed his appreciation to Mr. Hunter for seeing us and hearing our perspective on that.

Q. The very next exhibit is Exhibit 11, the March 22, 2005, memo from Mr. Grice which rescinded the previous memo.

A. Uh-huh.

Q. Do you -- I know you were asked this, and maybe you don't recall, but do you recall when you received notice of the rescission?

A. I do not.

Q. Assuming that you received notice of it

difference between the 22 million and the 13 million was as a result of your -- your lower end of charges?

A. Not solely, no.

Q. Because that's the -- the reason I ask is that's the sole reason it's listed here.

A. I appreciate that. It's not the sole reason.

Q. Okay. You talk a little about your JV interest. The ambulatory center is a joint venture with Lancaster Hospital?

A. No. The ambulatory surgery center is a joint venture with a sub S corporation owned by physicians.

Q. Is that the South Cross Group?

A. No.

Q. Is that a different ambulatory surgery center?

A. That's a different ambulatory surgery center.

Q. The radiation therapy center is a joint venture with Carolinas?

A. Carolinas Health System.

Q. If -- I take it that your contract with -- with York County is not contingent upon

whether or not you get a CON for Fort Mill?

A. No.

Q. So in other words, those -- those commitments to York County will remain regardless of whether or not you get a CON?

A. That's correct.

Q. Let me just look at a few other things.

MR. MULLER: Liz, do you want to just briefly talk or --

MS. CRUM: Sure.

(A recess transpired.)

BY MR. MULLER:

Q. I've just got a few more follow-up questions --

A. Sure.

Q. -- and I'm done.

In your meeting with Mr. Hunter, DHEC legal counsel, and even Mr. Whiteside and Mr. Frishman, do you recall -- was it your impression that the -- that Mr. Grice's memo was still in effect or was it your impression that it had been rescinded once you had met with them?

A. I had no impression of either one.

Q. Did they tell you that it had been rescinded?

A. They did not.

Q. If they told you that it had been rescinded, would there have been any need to make a presentation?

A. I -- I'm not in a position to speculate that. I really don't -- I mean, obviously it had been rescinded. I'm not sure --

Q. Well, that's what I'm trying to determine.

A. If it had already been rescinded and we had been notified that it had already been rescinded, I suspect not.

Q. Right. But your memory of the meeting was that you went in there to argue that the memo was wrong and it should be rescinded?

A. We -- we -- our -- we went in to the meeting to point out that the interpretation as laid out in Mr. Grice's log was inconsistent with the plan.

Q. Let me ask you briefly about the cover letter to Exhibit 2 to this deposition which is the York County contract.

A. Okay.

Q. This -- did you hand deliver this letter to Mr. Grice?

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 **MEMORANDUM OF PETITIONER CAROLINAS HEALTHCARE SYSTEM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

EXHIBIT L

DHEC 30(b)(6) Deposition Excerpts

- Transcript of Designee Joel Grice (November 18, 2008), pp. 6, 7, 10, 11, 12, 15, 18, 72

*Please note the transcript cover sheet reflects the correct date of November 18, 2008 for the deposition; however, the subsequent pages of testimony were inadvertently marked November 11, 2008 by the Court Reporter.

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,

Petitioner(s),

vs. Case No: 06-ALJ-07-0713-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).

D E P O S I T I O N

COPY

30(b)(6)

WITNESS: JOEL C. GRICE

DATE: Tuesday, November 18, 2008

TIME: 9:47 a.m.

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

TAKEN BY: Attorneys for the Petitioner(s)

REPORTED BY: SHERI L. BYERS
Registered Professional Reporter

- -

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remember? I'm going to call it Amisub of South Carolina.

A. Okay.

Q. The department's decision to approve Amisub d/b/a Fort Mill Medical Center and to deny Charlotte-Mecklenburg Hospital Authority and Presbyterian Hospital-York, LLC, were those decisions made pursuant to the 2004-2005 State Health Plan?

A. Yes, they were.

Q. Mr. Grice, we have previously made the 2003-2004 -- I'm sorry, the 2004-2005 health plan an exhibit in this case.

(Off the record.)

BY MS. CRUM:

Q. Exhibit 38. Are you familiar with the 2004-2005 State Health Plan?

A. Yes, I am.

(Off the record.)

BY MS. CRUM:

Q. Mr. Grice, describe for me how the department interprets the acute care bed portion or need methodology of the state plan vis-a-vis what entity may be approved for any identified bed need in the plan?

A. Okay. Technically, in the State Health Plan, which has an inventory of all the existing hospital

providers in South Carolina, with the methodology to calculate what the projected need might be, and in many cases it might be a negative number, but in other cases, it's a positive number. The plan, this particular plan would only allow those existing providers to be able to be approved for additional beds or for those providers to be able to allocate those beds to do a new facility that they would have ownership in or even perhaps someone else, if they made an agreement. So it's only allowing the existing hospital providers that are projecting utilization to be able to have approval for additional beds in new facilities.

Q. In interpreting the plan or applying the plan, what provision of the plan does the department rely on to authorize an existing provider to transfer beds to someone, an entity other than an entity it has ownership in?

A. I'm looking right now at page II-8, number H, and in my opinion, this kind of lays the groundwork where that type thing can occur.

It says, "Changes in delivery system due to healthcare reform have resulted in the consolidation of facilities in the establishment of provider networks. These consolidations and agreements may lead to

Q. Is the sale of beds different than the transfer of beds under the department's interpretation of the plan?

A. Well, I might say in my opinion, I think they're very similar. I mean, this is a situation that would occur very rarely, very rarely in the state, but it -- I guess a lot of times if you transfer, it can indeed involve a sale, you know, unless it's going to be joint ownership. So there could be a similarity.

I would say the same criteria would apply, the same situations, and so transfer, you know, or a sale would -- I would interpret as being very similar and could be looked at the same way in these criteria.

Q. Under the department's interpretation of the plan, is there any way, absent Amisub's agreement to transfer the 64-bed need in the plan to Presbyterian, that Presbyterian could be deemed consistent with the bed need methodology set forth in the plan?

A. No.

Q. And is it the department's interpretation of the plan that section H on page II-8 --

A. Yes, ma'am.

Q. -- would authorize Amisub to transfer to Presbyterian the 64 beds?

A. Yes. In my opinion, that could be looked

upon as allowing that event to occur with the Certificate of Need approval.

Q. Is it the department's interpretation of the plan that the only way Amisub or Charlotte-Mecklenburg Hospital Authority could comply with the bed need methodology in the plan would be if Amisub allowed the transfer?

A. Yes.

Q. Okay. Do you have a copy of the act with you, Mr. Grice?

A. Yes, ma'am, I do. Hold on one second here.

Q. Is the definition of "hospital" that the department relies on in interpreting the plan contained in section 44-7-120, subparagraph 12?

A. I believe it's 130 --

Q. I'm sorry, 130.

A. Section 44-7-130.

Q. Right.

A. 12, that's correct.

Q. And is a comparable regulation, Regulation 61-15, section 103, subparagraph 15?

A. Yes.

Q. Mr. Grice, does the department interpret the 2004-2005 plan to calculate hospital bed need for acute hospital beds for individual hospital facilities?

A. Yes.

Q. Okay. Was the first time that the department amended the plan to calculate hospital bed need for individual hospital facilities the 2003 plan?

A. Yes, ma'am.

MS. CRUM: In our prior depositions, the draft 2003 plan was made an exhibit, but the plan itself was not.

(PETITIONER'S EXH. 46, 2003 South Carolina Health Plan, was marked for identification.)

MS. CRUM: I apologize for "Liz Crum" written on the front, but that's the copy we had. This would be the Exhibit 46.

BY MS. CRUM:

Q. What, if any, difference is there in the bed need methodology for general acute beds in the 2003 plan and the 2004-5 plan?

A. My understanding is that, I think, the calculation standards are the same; however, in the calculations, the 2004-5 plan does have updated populations with updated population projections that are projected out further than the 2003. For example, all the bed needs for hospitals in the 2003 plan are based on the 2001 population and 2001 patient day utilization of the hospitals with the future population

Under either the 2004-5 plan or 2003 plan, could any entity, other than the hospital that generated the bed need less than 50, apply to build a hospital having up to 50 beds?

A. In my opinion, yes, they could, if there were an agreement between the two entities.

Q. So you're going back to the transfer agreement?

A. Yes, ma'am. And I know this -- probably the exact detail wouldn't be in the plan, but that would be my view of it and similar situations have occurred in the past.

Q. What situations have occurred in the past?

A. The one that I would point to would be, for example, Aiken Regional Medical Center, which had a bed need I think of 34 beds and they did transfer the right for that need to be applied for by another system that was going to develop an LTAC, which at the time under the 2004-2005 plan did apply for general hospital beds as an LTAC. The new plan doesn't do it that way now, but that's the way LTACs were developed historically in this state up to this point.

Q. Is there a separate section in the 2004-2005 plan for LTACs and the transfer of beds to LTACs?

A. I will have to look. I know the new 2008-9

A. Okay. "Long-term acute care hospital beds will only be approved if an existing hospital converts existing general acute care beds to LTAC beds --" It says LTC but LTAC beds. "-- or if there is a specific need for additional general acute care beds indicated in the plan."

Q. Is there a section in -- a provision in that LTAC section that requires that if the hospital gives up the LTAC -- the general acute beds they can't then apply for new beds to replace the general acute beds they've given to an LTAC?

A. That particular -- I know that particular standard is in earlier in the plan in chapter 2. Now, let me see if it's repeated in here somewhere. I don't see that in this section.

Q. Okay. Do you think that would be found in -- under section H on page 8?

A. Yes, ma'am.

Q. Okay. Is it the department's interpretation of the plan that the facility, the hospital generating the bed need controls those plan -- those beds to the extent that they can either develop the beds or make its own determination to transfer the beds to someone else?

A. Yes, ma'am.

part of that question was it -- was it what part of the health plan or the statute -- I'm sorry.

Q. Let me try it again.

A. Okay.

Q. You have consistently testified today that the department interprets the 2004-2005 plan such that the existing hospital that generates the need is the only hospital that can fill that need absent a transfer to another entity of its choosing; is that correct?

A. That is correct.

Q. What provision of the CON Act or regulations does the department rely on in reaching that interpretation?

A. There is specifically no part of the CON Act, except that part that says a health plan has to be developed. That particular requirement is only in the health plan. So as far as the CON Act goes, it relates to the part of the CON Act that states, you know, about the development of the health plan and who is serving -- the makeup of the State Health Planning committee and approval by the board and the criteria because -- the criterion, the first criterion is consistency with the health plan. So the CON ACT itself doesn't give that detail. That's all in the health plan, and the health plan is a document that's

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 **MEMORANDUM OF PETITIONER CAROLINAS HEALTHCARE SYSTEM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

EXHIBIT M

Mary Fechtel Deposition Excerpts

- Transcript of February 16, 2007, pp. 22, 60, 61
- Transcript of September 29, 2008, pp. 29, 30, 31, 33, 35, 50, 58, 59

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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I had heard some rumblings, but I was not involved with the plan or any of -- I was not privy to any of those meetings or conversations, if there was any.

So when Joel raised the issue, I went back and researched these plans, went back and researched the prior two plans -- 2003 and I believe it was the 2001 plan -- and what the evolution had been from a county unit to an individual hospital unit, the verbiage in the plans, how that had evolved.

Q. And after you did that, what conclusion did you reach?

A. I reached the conclusion that I didn't think that under the current plan we could approve anybody, that none of the others would have been consistent except Fort Mill.

Q. And this was sometime towards the end of May 2006?

A. Yes, ma'am; that's when we made the decision, yes.

Q. And the Presbyterian Hospital - York, Charlotte-Mecklenburg Hospital Authority, and the Hospital Partners of America applications had been pending since March the 11th, 2005, correct?

two of the decision letter?

A. Yes.

Q. Do these conclusions still represent your opinion? Has your opinion changed at all?

A. No.

Q. With respect to reason number 4, Paragraph Number 4 in the decision letters that Mr. Grice wrote, do you agree with Paragraph Number 4 and his conclusion there?

If I could ask you to look at Exhibit 2 or Exhibit 3 for Paragraph Number 4.

A. Yes.

MR. WESTBROOK: I don't have any other questions. Thank you.

RE-EXAMINATION

BY MS. CRUM:

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.

MS. CRUM: Thank you. I don't have any other questions.

MR. WESTBROOK: None from me.

MS. LAYMAN: I don't have any questions.

(The deposition concluded at 11:23 a.m.)

(EXH. 23, a letter to CHS Management Company from Joel C. Grice dated 5/30/06, was marked for identification.)

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,

Petitioner(s),

vs. Case No: 06-ALJ-07-0713-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).

COPY

D E P O S I T I O N

WITNESS: MARY FECHTEL

DATE: Monday, September 29, 2008

TIME: 1:15 p.m.

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

TAKEN BY: Attorneys for the Petitioner(s)

REPORTED BY: SHERI L. BYERS
Registered Professional Reporter

- -

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summary sheets.

Q. And when was that?

A. I really draft everything but the findings, you know, maybe 30 to 60 days before we make a decision because it's the same, that part. Everything up through M or before M is the same whether it's approved or whether it's denied. And then once it was time to make the findings, maybe a month out, we started really getting nitty-gritty about the findings --

Q. Tell me about those discussions.

A. -- I think. Just guessing at time frames.

We had discussions about could we approve somebody besides Piedmont with the way the plan was written. If we could not approve anybody, then, you know, my question was, well, why didn't we know that ahead of time because I didn't -- I didn't -- you know, I always thought we could approve anybody, and I think we could approve anybody. And I was told they were competing. But that's how I reviewed them. I think I gave everybody equal consideration and equal weight.

After I sat down and read the plans, you know, it was my feeling that we could not approve anybody but Piedmont Medical Center's application with the way the plans had evolved.

Q. When you say the way the plans had evolved,

what plan are you talking about?

A. In all of the reference sheets in the first criteria, the criteria by the plan, I tried to write as extensive as I could so people would understand where I was coming from, how it had evolved from --

Q. Are you talking about the State Health Plan?

A. Yes, ma'am.

Q. That's the plan I was trying to understand.

A. I'm sorry, yeah. It evolved from being a county unit for planning purposes to being an institutional need for planning purposes. And I just didn't feel like -- it's not in my place to make a judgment call as far as the plan. But I felt like the way the plans were written and stated, that that was my recommendation that's all we could approve at that time.

Q. And when did you make that recommendation?

A. Maybe two or three weeks, maybe a month. I don't really recall.

Q. Two or three weeks or a month before the actual decision?

A. Yes, ma'am.

Q. Okay. You said when you first started meeting about drafting the findings, one of the discussion was could you approve someone else other

than, you said Piedmont?

A. Yes, ma'am. Fort Mill Medical Center.

Q. Where is Piedmont located, Piedmont Medical Center?

A. Piedmont Medical Center is in -- I think it's Rock Hill city limits.

Q. Okay. And where would the Fort Mill Medical Center be located?

A. I believe that would be in the York County -- not York County -- York city limits.

Q. Did you think it would be in the York city limits or Fort Mill city limits?

A. Fort Mill, obviously, if it's named Fort Mill. It's been a long time.

Q. Okay. Are those the same hospitals? Are they two separate hospitals? Would they be two separate hospitals?

A. They would be two separate physical hospitals. I'm not sure in what reference you're asking me, but two separate physical buildings.

Q. Would they have two separate licenses?

A. Two separate pieces of paper, yes. One that would say Fort Mill Medical Center, the other says Piedmont Medical Center, the proper name but the same licensee.

could only approve Fort Mill Medical Center.

Q. And why was that?

A. Because the plan had evolved from being a -- the county as the planning unit to being institutional specific.

Q. And what was the specific institution for which the 64 beds were developed?

A. Well, they were based on the analysis I did that Mr. Grice went through and agreed with. They were based on Piedmont Medical Center's need.

Q. Okay. And did you approve them for Piedmont Medical Center?

A. And then we approved Fort Mill Medical Center.

Q. What else did you all discuss in that first meeting?

A. We discussed all of these findings to some degree. We discussed -- had some discussion about the contract that the county has with Amisub. We discussed community involvement of the various participants because there are -- there are other -- I'm going to use the word facilities, for lack of a better word, or doctor's offices. There's a presence of Presbyterian and Carolinas already in York County.

Q. Do they have healthcare facility presences as

Fort Mill?

A. Fort Mill Medical Center.

Q. You're talking about the contract -- were you talking about the contract with York County?

A. York County, between York County and Amisub.

Q. So do I understand correctly that -- is it based primarily on the involvement in the plan, is that because --

A. Evolvement of the plan.

Q. Evolvement, I'm sorry.

A. Yes, ma'am.

Q. Would it be fair to say that you did not think anybody but Fort Mill Medical Center would comply with the need in the plan?

A. Yes, ma'am.

Q. Okay. Then the second reason, could you say that for me one more time, had to do with the contract --

A. There was a contract between the county and Amisub that controls to a degree their charges and their pricing of patient services in the market. It also outlines quite a few other services that they must provide to the county.

Q. If you had approved Presbyterian, for example, would that contract have remained in --

Q. -- has demonstrated need for 64 beds?

A. Piedmont Medical Center.

Q. Okay. Does any other hospital have a demonstrated need under the plan for the 64 beds?

A. Not in York County, no.

Q. Okay. Is there a 64-bed need demonstrated in the plan for Fort Mill Medical Center?

A. No, ma'am.

Q. Under the plan, could anybody but Piedmont Medical Center meet the need under the plan, demonstrated in the plan?

A. Meet the need?

Q. Yes, ma'am.

A. Yes, I think other people could meet the need.

Q. Well, if the need is not --

A. Well, I'm not talking about compliance with the State Health Plan.

Q. I'm sorry, I'm talking about compliance with the plan.

A. No.

Q. Okay.

A. Just the criteria of community need, I think others could fulfill that need.

Q. Okay. The Fort Mill Medical Center, does

sentence or this sentence?

MS. CRUM: I'm talking about the first paragraph.

THE WITNESS: "Establishes need on the basis of individual hospitals. If it does, as the department determined, then only Amisub can be awarded beds under the plan."

Yes, I agree with that.

BY MS. CRUM:

Q. Okay. Now, if you will look at that next paragraph that's highlighted, and that last word for you is "county."

A. Okay.

Q. If you could just read that out loud into the record, please, ma'am.

A. "It is perfectly clear that the State Health Plan determines bed need throughout South Carolina by individual hospitals, not by county."

Q. Do you agree with that statement?

A. For the 2004-2005 plan, yes, I agree with that statement.

Q. Let's see here now.

A. Okay.

Q. Now, would you read the last full sentence starting with, "As documents attached to tab 1

indicate--"

A. "As the documents attached to tab 1 demonstrate unequivocally, these amendments replace the county base hospital bed methodology with a system that identified needs for beds at individual existing hospitals."

Q. Do you agree with that statement?

A. Yes, ma'am.

Q. Was this one of the bases upon which you recommended to Mr. Grice that the CON for Piedmont be approved and the other applicants be denied?

A. I don't recall that particular letter.

Q. I don't mean the letter, I'm sorry. I mean the principle. This letter was written months after the decision.

A. Okay. But the principle in theory, where we did our own summary of the 2001 forward to 2005 plan and how it had evolved, yes.

Q. Okay. Look at the next sentence -- next paragraph and you'll see a highlighted sentence there. You're welcome to read that sentence or the whole paragraph, whatever.

A. You want me to read into the record?

Q. Yes, ma'am. If you would read the highlighted portion into the record.

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 **MEMORANDUM OF PETITIONER CAROLINAS HEALTHCARE SYSTEM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

EXHIBIT N

Albert Whiteside Deposition Excerpts

- Transcript of February 28, 2007, p. 126

D E P O S I T I O N

WITNESS: ALBERT N. WHITESIDE

DATE: Wednesday, February 28, 2007

TIME: 9:55 a.m.

LOCATION: Department of Health and Environmental Control
1777 St. Julian Place
Heritage Building
Second Floor Conference Room
Columbia, South Carolina

TAKEN BY: Attorney for Presbyterian

REPORTED BY: LAURA S. DECILLIS
Certified Court Reporter

APPEARANCES:

ATTORNEYS FOR PRESBYTERIAN HEALTHCARE SYSTEM, D/B/A PRESBYTERIAN YORK, LLC:

MCNAIR LAW FIRM
BY: ARIAIL BURNSIDE KIRK, ESQUIRE
M. ELIZABETH CRUM, ESQUIRE
The Tower at 1301 Gervais Street
Columbia, South Carolina 29201

ATTORNEY FOR SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL:

BY: NANCY S. LAYMAN, ESQUIRE
2600 Bull Street
Columbia, South Carolina 29201

ATTORNEY FOR CHARLOTTE-MECKLENBURG HOSPITAL AUTHORITY, D/B/A CAROLINAS HEALTHCARE SYSTEM:

MOORE & VAN ALLEN, P.L.L.C.
BY: DOUGLAS M. MULLER
40 Calhoun Street, Suite 300
Charleston, South Carolina 29413

A. That's correct.

Q. Because the facility has never been built and it's in a different location than the Piedmont Medical Center in Rock Hill.

A. Correct.

Q. So, I mean, is it consistent if you're going to assume that only a facility, only a facility that has demonstrated a need can apply under the State Health Plan, the '04/'05 State Health Plan, would the Fort Mill Medical Center in Fort Mill qualify?

MR. ANDREWS: Object to the form.

BY MR. MULLER:

A. Well, I've never said that nobody could apply.

Q. Right.

A. And I've never said nobody could be approved.

Q. Is there anywhere in the State Health Plan that suggests that there's a demonstrated bed need for Fort Mill Medical Center in Fort Mill, South Carolina?

A. Is there anywhere in the Plan that says there's identified need?

Q. Yeah. For that facility.

A. No.

Q. So just to recap, from the 2001 State

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 **MEMORANDUM OF PETITIONER CAROLINAS HEALTHCARE SYSTEM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

EXHIBIT O

Les Shelton Deposition Excerpts

- Transcript of March 15, 2007, pp. 45, 46
- Transcript of November 19, 2008, pp. 17

D E P O S I T I O N

WITNESS: LESLIE W. SHELTON, III

DATE: Thursday, March 15, 2007

TIME: 9:14 a.m.

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

TAKEN BY: Attorneys for the Petitioner(s)

REPORTED BY: SHERI L. BYERS
Registered Professional Reporter

- -

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A. Okay. Yes, I interpret Mr. Grice's statement that Piedmont would be the only applicant that could be approved as specifically outlined in the plan.

Q. And that's Piedmont Medical Center?

A. I'm sorry, yes, Piedmont Medical Center.

Q. Okay. In your opinion, could Presbyterian Healthcare -- I'm sorry, could Presbyterian Hospital York be approvable? Let me define approvable for you.

By approvable, I mean could it be consistent with the need generated in the State Health Plan, now not looking at whether it met all of the other project review criteria, okay, just whether or not it could access the 64 acute beds identified in the plan.

MR. WESTBROOK: Object to the form.

THE WITNESS: I think strictly reading the plan the way we wrote it, it says that Piedmont is -- sorry, Piedmont Medical Center is the hospital that's generating the need, and so therefore, it would be or one of its subsidiaries would be the only one that could be approved for the bed need.

BY MS. CRUM:

Q. Show me where in the State Health Plan it says -- in the 2004 plan, it says "or one of its subsidiaries."

A. Okay. I'm sorry, that's going off of my

experience from some other situations such as Providence Northeast where there was a bed need shown at the main hospital and they took that bed need and built a new hospital in the same county using that bed need.

Q. And Mr. Shelton, wasn't that when the state plan still had the county as the planning unit?

A. I believe it did. I can't swear to it, but yes.

Q. Well, Providence Northeast was already open by 2003, wasn't it?

A. Yes. Yes it was. Yes.

Q. So that had to be when the bed need was still by a county unit, right?

A. Yes, correct.

Q. You had said interpreting the plan strictly, so what I want you to show me is where in the plan it says anything about generating bed need other than by an existing hospital.

A. Okay. It does not say that.

Q. Okay.

A. And like I said, I'm not a C.O.N. reviewer, so ...

Q. Sure. And I understand you just wrote the verbiage in the plan, right?

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,

Petitioner(s),

vs. Case No: 06-ALJ-07-0713-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).

D E P O S I T I O N

COPY

WITNESS: LES SHELTON

DATE: Wednesday, November 19, 2008

TIME: 10:17 a.m.

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

TAKEN BY: Attorneys for the Petitioner(s)

REPORTED BY: SHERI L. BYERS
Registered Professional Reporter

- -

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A. The projected population, yes.

Q. I was talking about 2003. So that would be actual?

A. It's actually projected from ORS.

Q. Would it be estimated?

A. Yes, I'm sorry. Estimated, yes.

Q. Okay. All right. Now, is the projected need in the 2004-'5 health plan for Piedmont Medical Center, is that a projected need for the individual facility?

A. Yes, ma'am.

Q. Is it a projected need for hospital beds for the entire county?

A. The way the plan was written, the bed need in this plan was projected by hospital, so it's a projection of need for Piedmont Medical Center.

Q. Does the plan project the total number of beds needed to service the population of York County?

A. We do not project a need for York County as we project a need for Piedmont Medical Center; however, we use the entire population of York County in the calculations for Piedmont Hospital. We do not use any York County population data in the projection of need for any other hospital in the state.

Q. For example, Mr. Shelton, if folks on the western side -- I'm sorry, eastern side of York County

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 **MEMORANDUM OF PETITIONER CAROLINAS HEALTHCARE SYSTEM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

EXHIBIT P

Dennis Gibbs Deposition Excerpts

- Transcript of April 26, 2007, pp. 14
- Transcript of November 19, 2008, pp. 6

D E P O S I T I O N

WITNESS: DENNIS GIBBS

DATE: Thursday, April 26, 2007

TIME: 10:05 a.m.

LOCATION: South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, South Carolina

TAKEN BY: Attorneys for the Petitioner(s)

REPORTED BY: SHERI L. BYERS
Registered Professional Reporter

- -

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assume.

Q. Well, do you know whether or not it is to be located contiguous to Piedmont Medical Center in Rock Hill?

A. Is that the facility by name, the d/b/a of the facility that would be operated by Piedmont Medical Center?

Q. Yes, sir.

A. Then my recollection is that that would not be contiguous to the existing hospital in Rock Hill.

Q. And so it would have to have a separate license, wouldn't it?

MS. LAYMAN: Object to the form.

THE WITNESS: Yes, ma'am.

BY MS. CRUM:

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.

Q. Would it have to have a separate hospital administrator?

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,

Petitioner(s),

vs. Case No: 06-ALJ-07-0713-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).

COPY

D E P O S I T I O N

WITNESS: DENNIS GIBBS

DATE: Wednesday, November 19, 2008

TIME: 10:10 a.m.

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

TAKEN BY: Attorneys for the Petitioner(s)

REPORTED BY: SHERI L. BYERS
Registered Professional Reporter

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the hospitals -- would the property for the two hospitals have to be contiguous in order for them to be under the same license?

A. They would have to be contiguous at least at some point. The whole property line would not necessarily have to be contiguous, but they have to touch somewhere.

Q. Okay. If one hospital is in Fort Mill and the other hospital is in Rock Hill, could they be licensed under the same license?

A. According to this memorandum and the department's position, no.

Q. Okay. The memorandum, Exhibit 36, is this still the department's interpretation of the licensure regulations for hospitals?

A. Yes, ma'am.

Q. Is that regulation 61-16?

A. Yes. Those are the standards for licensing hospitals and institutional general infirmaries.

MS. CRUM: Thank you, sir. I don't have any more questions.

MR. MULLER: No questions from me.

MS. COOKE: No questions.

MS. LAYMAN: No questions.

(The deposition concluded at 10:16 a.m.)

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 **MEMORANDUM OF PETITIONER CAROLINAS HEALTHCARE SYSTEM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

EXHIBIT Q

Second Affidavit of Joel Grice
Dated June 6, 2008

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

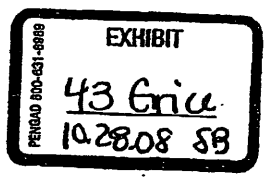
Charlotte-Mecklenburg Hospital Authority, d/b/a Carolinas Healthcare System and Presbyterian Healthcare System, d/b/a Presbyterian Hospital – York, LLC,	)	Docket No. 06-ALJ-07-0713-CC
Petitioners,	)	
v.	)	**SECOND AFFIDAVIT OF JOEL C. GRICE**
South Carolina Department of Health and Environmental Control and Amisub of South Carolina, Inc., d/b/a Piedmont Healthcare System d/b/a Fort Mill Medical Center,	)	
Respondents.	)	

Personally appeared before me Joel C. Grice, who upon being duly sworn, deposes and says:

1) This affidavit incorporates by reference my previous affidavit of May 18, 2007.

2) The South Carolina Department of Health and Environmental Control (the "Department") has no authority to refuse to accept a Certificate of Need ("CON") application. Anyone who wishes to apply for a CON has the right to do so.

3) The Department has no responsibility for advising an applicant, upon receipt of an application or during the review process, whether its application will be or can be approved. The applicant bears the responsibility of convincing the Department that its application complies with the South Carolina Health Plan and meets relevant criteria.



4) State law prohibits the Department from approving any CON application unless it complies with the South Carolina Health Plan. It is not the Department's practice to decide prematurely whether an application complies with the South Carolina Health Plan. Instead, the Department typically makes that decision near the end of the review process.

FURTHER THE AFFIANT SAYETH NOT.

Joel C. Grice

SWORN to and subscribed before me
this 6 day of June, 2007

(L.S.)
Notary Public for South Carolina
My Commission Expires: May 21, 2011

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 **MEMORANDUM OF PETITIONER CAROLINAS HEALTHCARE SYSTEM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

EXHIBIT R

The Parkridge Decision

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Newberry County, Petitioner, vs. South Carolina Department of Health and Environmental Control and Palmetto Health, d/b/a Palmetto Health Baptist Parkridge, Respondents.	Docket No. 07-ALJ-07-0486-CC **ORDER**
Lexington County Health Services District, Inc., d/b/a Lexington Medical Center, Petitioner, vs. South Carolina Department of Health and Environmental Control and Palmetto Health, d/b/a Palmetto Health Baptist Parkridge, Respondents.	Docket No. 07-ALJ-07-0520-CC

ORDER

This matter is before the Administrative Law Court pursuant to the joint motion of the Petitioners, Newberry County Memorial Hospital[1] and Lexington County Health Services District, Inc., d/b/a Lexington Medical Center (Lexington), for summary judgment, filed on December 12, 2008. The motion is made on the grounds that the Certificate of Need (CON) application of the Respondent, Palmetto Health d/b/a Palmetto Health Baptist Parkridge

[1] When this Motion was filed, Newberry County Memorial Hospital was listed as a Petitioner in this matter. However, earlier today this Court issued an Order in Docket No. 07-ALJ-07-0486-CC substituting Newberry County for Newberry County Memorial Hospital as the real party in interest pursuant to Rule 17(a), SCRCP, and amending the caption of that case to reflect Newberry County as the sole Petitioner.

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SC ADMIN. LAW COURT

(Palmetto), does not comply with the 2004-2005 South Carolina Health Plan (State Health Plan), because there is no provision in the State Health Plan which allows the transfer of inpatient hospital beds to create a new hospital. Upon careful consideration of the briefs and arguments submitted by the parties, the motion is granted.[2]

BACKGROUND

On October 20, 2006, Palmetto filed a CON application with DHEC for the establishment of a new 76 bed, 186,163 square foot community hospital on its property at the intersection of Interstate 26 and S.C. Highway 60, in the Harbison area of northwest Columbia (the Parkridge location). The Parkridge location currently includes an existing medical office building, an ambulatory surgery facility, and a diagnostic imaging center. Palmetto proposed the transfer of seventy-six unused licensed general acute care beds from Palmetto Health Baptist in downtown Columbia to establish the new hospital at the Parkridge location, Palmetto Health Baptist Parkridge, pursuant to the State Health Plan, Chapter II, Section G.1.(A)(4)(h).

The South Carolina Department of Health and Environmental Control (DHEC) approved Palmetto's application for the new hospital on August 27, 2007, stating that "[t]he transfer of [the 76] existing licensed beds within the Palmetto Health System is consistent with the hospital bed need standards in the current 2004-2005 South Carolina Health Plan." On September 7, 2007, Lexington filed a request for Board review of the DHEC staff decision, and Newberry County Memorial Hospital filed a similar request on September 10, 2007. By letter dated September 17, 2007, DHEC notified the parties that the Board had decided not to conduct a Final Review Conference. Lexington and Newberry County Memorial Hospital filed requests for a contested case hearing before this Court on October 12, 2007, and October 10, 2007, respectively. Discovery in the two cases was consolidated by agreement of the parties and Order of this Court.

DISCUSSION

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP; Koester v.

[2] At a hearing on December 22, 2008, the Court orally denied this Motion. However, an order is not final until reduced to writing, and the judge retains discretion to amend the oral ruling and issue a written order which is in conflict with the oral ruling. See, e.g., Corbin v. Kohler Co., 351 S.C. 613, 571 S.E.2d 92 (Ct. App. 2002).

Carolina Rental Ctr., 313 S.C. 490, 443 S.E.2d 392 (1994). The Petitioners contend that DHEC's interpretation and application of the State Health Plan, Chapter H, Section G.1.(A)(4)(h), to allow the transfer of beds from an existing hospital to create a new hospital contradicts the plain language of the State Health Plan and is therefore affected by error of law.

Compliance with the State Health Plan is a necessary prerequisite to the issuance of a CON. The Certificate of Need Act, S.C. Code Ann. § 44-7-210(C), provides that DHEC "may not issue a CON unless an application complies with the State Health Plan, Project Review Criteria, and other regulations." S.C. Code Ann. Regs. 16-15, Section 802, further provides that a CON proposal "shall not be approved unless it is in compliance with the State Health Plan."

In this case, Palmetto's proposed project is based upon the provision in the State Health Plan which allows the transfer of inpatient hospital beds between related facilities. The applicable provision is contained in Chapter II, Part G, Paragraph (A)(4)(h), and reads as follows:

> (4)(h) Changes in the delivery system due to health care reform have resulted in the consolidation of facilities and the establishment of provider networks. These consolidations and agreements may lead to situations where affiliated hospitals may wish to transfer beds between themselves in order to serve their patients in a more efficient manner. A proposal to transfer or exchange hospital beds requires a Certificate of Need and must comply with the following criteria:
>
> 1. A transfer or exchange of beds may be approved only if there is no overall increase in beds;
>
> 2. Such transfers may cross county lines; however, the applicants must document with patient origin data the historical utilization of the receiving facility by residents of the county giving up beds;
>
> 3. Should the response to Criterion 2. fail to show a historical precedence of residents of the county transferring the beds utilizing the receiving facility, the applicants must document why it is in the best interest of these residents to transfer the beds to a facility with no historical affinity for them;
>
> 4. The applicants must explain the impact of transferring the beds on the health care delivery system of the county from which the beds are to be taken; any negative impacts must be detailed along with the perceived benefits of such an agreement;
>
> 5. The facility receiving the beds must demonstrate the need for the additional capacity based on both historical and projected utilization patterns;

6. The facility giving up the beds may not use the loss of these beds as justification for a subsequent request for the approval of additional beds;

7. A written contract or agreement between the governing bodies of the affected facilities approving the transfer or exchange of beds must be included in the Certificate of Need application;

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.

State Health Plan, Chapter II, Section G.1.(A)(4)(h), pp. II-8 – II-9 (emphasis added).

A court cannot construe a statute without regard to its plain and ordinary meaning, and it may not resort to subtle or forced construction in an attempt to limit or expand a statute's scope. Fox v. Moultrie, 379 S.C. 609, 666 S.E.2d 915 (2008). This section of the State Health Plan, when read in its plain and ordinary sense, clearly contemplates the existence of two affiliated hospitals with inpatient hospital beds who wish to transfer or exchange beds between themselves. An application for a bed transfer must be between two "hospitals"[3] and the need for the "additional capacity" at the receiving "hospital" must be demonstrated based upon both historical and projected utilization patterns. There is simply no language in the section which creates any authority for the establishment of a completely new hospital via a transfer of beds. Indeed, it is impossible for a hospital which is not yet in existence to demonstrate need based upon historical data as required by the Plan. Since Palmetto's application does not contemplate the transfer of beds between two existing hospitals, but instead seeks to create an entirely new facility by means of a bed transfer, it is not in compliance with the State Health Plan.

Palmetto argues that DHEC's interpretation of the State Health Plan to allow the creation of a new hospital through the use of the bed transfer provision is a longstanding agency interpretation which must be given deference by this Court. Ordinarily, "the construction of a statute by the agency charged with its administration will be accorded the most respectful

[3] The State Health Plan defines a "hospital" as "a facility organized and administered to provide overnight medical or surgical care or nursing care of illness, injury, or infirmity and may provide obstetrical care, and in which all diagnoses, treatment, or care is administered by or under the direction of persons currently licensed to practice medicine, surgery, or osteopathy." State Health Plan, Chapter II, Section G.1.(A)(1)(a), pp. II-4. There is no dispute that the facilities currently located at the Parkridge site, which include medical offices, an ambulatory surgery center, and a diagnostic imaging center, do not constitute a "hospital" under this definition, since the facility does not currently provide overnight medical, surgical, or nursing care. See Exhibit E to Petitioners' Joint Motion for Summary Judgment.

consideration and will not be overruled absent compelling reasons." Dunton v. S.C. Bd. of Exam'rs in Optometry, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987). However, an agency interpretation may not be applied in contravention of the clear language of a statute. If the agency's interpretation is not in accordance with the statute's plain language, it is not entitled to any deference. See, e.g., Fox v. Moultrie, 379 S.C. 609, 666 S.E.2d 915 (2008) (deference to an agency's interpretation is not to be applied to alter the clearly expressed intent of the legislature). In this instance, nothing in the plain language of the State Health Plan supports DHEC's interpretation that the bed transfer provision can be used to create an entirely new hospital.[4]

The State Health Plan does not allow a hospital system to transfer licensed beds to a hospital that does not exist. Furthermore, DHEC cannot issue a CON unless an application complies with the State Health Plan. Accordingly, Palmetto's application for a CON to create a new hospital at the Parkridge location must be denied as a matter of law.

ORDER

For all the foregoing reasons, it is hereby

ORDERED that the Petitioners' Joint Motion for Summary Judgment is hereby **GRANTED**; and it is further

(5)

ORDERED that the Respondent Palmetto Health Baptist Parkridge's Motion for Partial Summary Judgment is hereby **DENIED.**

m

AND IT IS SO ORDERED.

Marvin F. Kittrell
Chief Judge

Columbia, South Carolina
January 6, 2009

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 11th day of Jan., 2009

By: Judicial Law Clerk

[4] Moreover, DHEC's interpretation of the bed transfer provisions is a staff determination which has never been reviewed by the DHEC Board on the merits. In this case, the DHEC Board declined to conduct a Final Review Conference. According to a recent Supreme Court decision involving DHEC's Office of Ocean and Coastal Resource Management, staff decisions are not entitled to deference. See S.C. Coastal Conservation League v. South Carolina Dept. of Health and Environmental Control, 363 S.C. 67, 610 S.E.2d 482 (2005).

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SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

The 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 REPLY MEMORANDUM TO AMISUB'S MEMORANDUM IN OPPOSITION, DHEC'S MEMORANDUM IN OPPOSITION AND PRESBYTERIAN'S MEMORANDUM IN PARTIAL OPPOSITION TO SUMMARY JUDGMENT**

Petitioner, The 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 Respondents Amisub of South Carolina, Inc., d/b/a Piedmont Healthcare System d/b/a Fort Mill Medical Center ("Amisub") and the South Carolina Department of Health and Environmental Control ("DHEC"), as well as the Memorandum in Partial Opposition to CHS' motion for summary judgment filed by Co-Petitioner Presbyterian Healthcare System, d/b/a Presbyterian Hospital-York, LLC ("Presbyterian").

I. Reply to Presbyterian's Partial Opposition – Licensed Beds.

In general, Presbyterian fully supports CHS' position that DHEC failed to properly review the competing applications for a hospital in Fort Mill, and that Amisub should not have been awarded a Certificate of Need ("CON") based on DHEC's position that the 2004-2005 State Health Plan only allowed bed need to be satisfied by "individual facilities" that demonstrated the

need. Stated differently, Presbyterian agrees that the State Health Plan does not allow the transfer of bed need from an existing, licensed facility to a separate, licensed facility that has not yet been built.

Where Presbyterian's legal position differs from CHS is Presbyterian's interpretation that an existing hospital is entitled to transfer licensed beds (not bed **need**) from an existing hospital to a new hospital. Specifically, Presbyterian disagrees with Judge Kittrell's decision in the Parkridge case. Presbyterian has correctly noted that the decision of one Administrative Law Judge is not binding on another Administrative Law Judge. What Presbyterian has failed to point out in its Partial Opposition Memorandum, however, is that Presbyterian is required to take this position because Presbyterian entered into a "strategic alliance" with the Palmetto Health Care System in February of 2006 for the purpose (among others) of gaining support for Presbyterian's proposed Fort Mill hospital – in fact, the announcement of this affiliation was made the very same day as Palmetto Health's announcement of support for Presbyterian's proposed Fort Mill hospital.[1] Palmetto Health was on the losing side of the Parkridge decision, and Palmetto Health's legal counsel in the Parkridge case, Ms. Crum, is Presbyterian's legal counsel in this case. Undoubtedly, this affiliation and counsel representation has created concerns about judicial estoppel and has forced Presbyterian to take a legal position adverse to CHS on this point. As Presbyterian pointed out in Footnote 8 of its Partial Opposition Memorandum, the Affidavit of Les Shelton of DHEC that is offered in this case (and which lacks a caption) is dated December 10, 2008, and it comes from the Parkridge case, where DHEC and Palmetto Health were Co-Respondents and aligned with one another.

[1] See Triad Business Journal and Charlotte Business Journal articles dated February 14, 2006, attached hereto as Exhibit "A".

With respect to Presbyterian's legal argument on the 2004-2005 State Health Plan's meaning, it is at odds with a "plain reading" of Section G.1.(A)(4)(h), pp. II-8-II-9, of the State Health Plan (the "Transfer Provision").

The Transfer Provision provides:

> Changes in the delivery system due to health care reform have resulted in ***the consolidation of facilities and the establishment of provider networks. These consolidations and agreements may lead to situations where affiliated hospitals may wish to transfer beds between themselves in order to serve their patients in a more efficient manner.*** A proposal to transfer or exchange hospital beds requires a Certificate of Need and must comply with the following criteria:
>
> 1. A transfer or exchange of beds may be approved only if there is no overall increase in the number of beds;
> 2. Such transfers may cross county lines; however, the applicants must document with patient origin data the historical utilization of the receiving facility by residents of the county giving up beds;
> 3. Should the response to Criterion 2. fail to show a historical precedence of residents of the county transferring the beds utilizing the receiving facility, the applicants must document why it is in the best interest of these residents to transfer the beds to a facility with no historical affinity for them;
> 4. The applicants must explain the impact of transferring the beds on the health care delivery system of the county from which the beds are to be taken; any negative impacts must be detailed along with the perceived benefits of such an agreement;
> 5. ***The facility receiving the beds must demonstrate the need for the additional capacity based on both historical and projected utilization patterns***;
> 6. The facility giving up the beds may not use the loss of these beds as justification for a subsequent request for the approval of additional beds;
> 7. ***A written contract or agreement between the governing bodies of the affected facilities approving the transfer or exchange of beds must be included in the Certificate of Need application***;
> 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.

2004-2005 South Carolina State Health Plan, Section G.1.(A)(4)(h), pp. II-8-II-9 (emphasis added).

In its argument, Presbyterian has created and focused on a phrase that does <u>not</u> exist in the Transfer Provision. Presbyterian states on Page 14 of its Partial Opposition Memorandum that CHS misconstrues the phrase "historic service area population utilization," as that phrase (in

Presbyterian's view) means "historic usage of hospital services by its residents." Significantly, the phrase cited by Presbyterian does not appear in the Transfer Provision. Instead, the language of the Transfer Provision states that ***"[t]he facility receiving the beds must demonstrate the need for the additional capacity based on both historical and projected utilization patterns."*** A non-existent hospital does not have historical utilization patterns, nor does it have "patients", as the preface to the Transfer Provision indicates is the very purpose of such a transfer. The Transfer Provision also clearly requires a demonstration of a hospital-specific utilization (see subsection 2, quoted above), which is inconsistent with Presbyterian's argument. Finally, the Transfer Provision requires that the "governing bodies" of the respective hospitals agree in advance to such a transfer prior to applying for a CON, which further suggests that the hospitals must be existing at the time that the transfer is first proposed.

Presbyterian points out that Roper St. Francis Mount Pleasant Hospital, an affiliate of CHS, applied for a CON in June of 2005 and was approved for such a transfer in May of 2006. In contrast to this contested case and the Parkridge case, Roper's CON application was granted and the matter resolved without further legal challenges to that decision, and it is axiomatic that an unchallenged agency ruling becomes binding on the agency and becomes the "law of the case" for that particular matter, whether it was right or wrong. See Eadie v. Krause, 381 S.C. 55, 671 S.E.2d 389, 394 (Ct. App. 2008) (stating an unchallenged ruling, right or wrong, is the law of the case for a particular matter).

II. Reply to Amisub's Opposition – Transfer of Bed Need.

A. Levitt Affidavit

Although Amisub's opposition to CHS' Motion for Summary Judgment is based on the same (or similar) arguments as Presbyterian with respect to its proposed transfer of thirty-six

(36) licensed beds, Amisub primarily advances its argument that DHEC properly allowed it to transfer its bed need of sixty-four (64) beds to a new "facility." In connection with this argument, Amisub has presented the Affidavit of David Levitt in an attempt to demonstrate that there are "genuine issues of material fact" with respect to the transfer of bed need. Mr. Levitt is an expert paid by Amisub to draft and present Amisub's CON application and to now defend this application in court. Mr. Levitt was so involved in Amisub's CON application that DHEC's May 30, 2006 decision letter was directed to him, rather than to Amisub. Discovery has also revealed that Amisub has paid Mr. Levitt and his company in excess of Two Hundred and Fifty Thousand Dollars ($250,000.00) solely for "work performed related to Amisub's CON application at issue in the above-captioned case."[2] Clearly, Mr. Levitt is not a disinterested witness.

Mr. Levitt's inherent bias by virtue of his position is evident in his Affidavit, which is submitted for the purpose of attempting to demonstrate that there are "genuine issues of material fact" in the case. With respect to the transfer of bed need, Mr. Levitt contends in Paragraph 3 of his Affidavit that, based on his "personal experience" with DHEC, he is aware of a grand total of two (2) occasions in which DHEC has previously allowed a transfer of bed need. The first example he gives is the Patewood Memorial Hospital in Greenville, which was reviewed under the 2001 State Health Plan. He goes on to make the statement that "the creation of three (sic) satellite hospitals was approved under language in the respective State Health Plan that is similar, if not identical, to the terms of the 2004-2005 State Health Plan...."

The problem with Mr. Levitt's analysis is that it is incorrect – it is the *difference* in language between the 2001 State Health Plan and the 2004-2005 State Health Plan that is the very reason that DHEC is arguing that bed need is now considered by "individual facility" rather

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[2] Amisub's First Supplemental Answers to CHS' Interrogatories at Page 3, attached hereto as Exhibit "B".

than by "county". In Joel Grice's Affidavit of May 18, 2007, Amisub and DHEC specifically relied on this difference in language between the 2001 and 2004-2005 State Health Plans to argue that bed need is now designated by "*individual facility*" and no longer by county.[3] If bed need were designated by "county," than it is foreseeable that intra-county transfers of bed need would be allowed. DHEC and Amisub are instead arguing, however, that because of this change in language, the bed need now belongs to the "individual facility" demonstrating the need. When bed need is designated by "individual facility," and CHS is declared ineligible because it is not an "individual facility" demonstrating the bed need, it is difficult to comprehend how DHEC can then, through an "internal policy," allow a transfer of bed need to a new facility that has not demonstrated the bed need, as that transfer is unsupported by any language in the State Health Plan, and the State Health Plan appears (by DHEC's own interpretation) to prohibit it.

To the extent Mr. Levitt's Affidavit is being offered to contradict previous testimony of the Respondents, it is unavailing, as a party clearly cannot create an "issue of fact" by presenting conflicting versions of its own testimony. See Cothran v. Brown, 357 S.C. 210,218, 592 S.E.2d 629, 633 (2004) (court may disregard a subsequent affidavit as a "sham," that is, as not creating an issue of fact for purposes of summary judgment, when a party submits a subsequent affidavit to contradict that party's own prior sworn statement).

B. Loris Hospital Case

Amisub also relies on another Administrative Law Court ("ALC") decision, Grand Strand Regional Medical Center v. The South Carolina Department of Health and Environmental Control, 2007 WL 1365864 (05-ALJ-07-0344-CC, March 30, 2007) (the "Loris Hospital case"), for the proposition that the ALC has previously allowed a licensed facility to transfer bed need to

[3] Affidavit of Joel Grice dated May 18, 2007 at Para. 3, attached hereto as Exhibit "C".

a facility that has not yet been built. This decision does not support Amisub's position, as it involved the transfer of bed need to an existing hospital, not to a new facility. As the court in the Loris Hospital case noted repeatedly:

> The Seacoast location proposed for the 50 additional beds is actually an existing location of LCH, operating under the LCH hospital license, and part of LCH, not a new location.....I find that DHEC correctly determined that the proposed location of the project is actually a part of an existing hospital, LCH, a location where, as stated above, LCH already provides a variety of hospital services on an overnight basis, 24 hours a day, 7 days a week and, in regard to location, complies with Section G.1.(A)(4)(d) of the 2003 State Health Plan. .....LCH has not attempted to add beds at a new hospital location as Grand Strand contends. .....The Seacoast location proposed for the 50 additional beds is actually an existing location of LCH and part of LCH, not a new location....

Grand Strand Regional Medical Center v. The South Carolina Department of Health and Environmental Control, 2007 WL 1365864 (05-ALJ-07-0344-CC, March 30, 2007).

Any statements made by the ALC in the Loris Hospital case on the ability to transfer bed need to a new facility are strictly *dicta*, and they have no precedential value, so this case cannot be cited in support of a proposition that the ALC very clearly did not address. See Whaley v. CSX Transp., Inc., 362 S.C. 456, 473, 609 S.E.2d 286, 295 (2005); Schulmeyer v. State Farm Fire and Cas. Co., 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003); Herndon v. Wright, 257 S.C. 98, 102 184 S.E.2d 444, 445 (1971) ("[t]o the extent that the language of the Lawton opinion seems opposed to plaintiff's case, which is rested upon allegations of this import, it must be regarded as *Obiter dictum*, hence, without precedential value").

Lastly, even assuming that the language in the Loris Hospital case was not *dicta* (which it very clearly is), as Presbyterian has noted in its Partial Opposition Memorandum, the decision of one Administrative Law Judge is not binding on another. Judge Anderson recently summarized the doctrine of *stare decisis* as it applies to the Administrative Law Judges as follows:

> The Department's reliance on Lowman is misplaced. To begin with, if the Department is seeking to invoke the doctrine of stare decisis, that doctrine is simply not so easily invoked. Rather, the doctrine of stare decisis proclaims that "where a principle of law has

become settled by a series of decisions, it is binding on the courts and should be followed in similar cases." State v. Balance, 51 S.E.2d 731, 733 (N.C. 1949). Additionally, while ALJs should give due consideration to the decisions and reasoning of other ALJs, their rulings are not binding upon other ALJs. See, e.g., Schiffner v. Motorola, Inc., 697 N.E.2d 868, 871 (Ill. App. Ct. 1998) ("Stare decisis requires courts to follow the decisions of higher courts, but does not bind courts to follow decisions of equal or inferior courts."); Shook v. State, 244 S.E.2d 220, 221 (Tex. Crim, App. 1951) ("It is rudimentary that courts are not bound by the decisions of other courts of equal jurisdiction. The power to establish precedent is lodged in courts of superior jurisdiction."); People v. Hill, 834 N.Y.S.2d 840, 845 (N.Y. City Crim. Ct. 2007) ("A decision of a court of co-ordinate jurisdiction is not a binding precedent."); Nationwide Mut. Ins. Co. v. Yungwirth, 940 A.2d 523, 528 n.5 (Pa. Super. 2008) ("While the Superior Court is bound to give due consideration to the decisions and reasoning of the Commonwealth Court, this Court is not bound to follow such decisions as controlling precedent."). Likewise, trial judges simply are not bound by the rulings of other trial judges. See State v. Riley, 698 So.2d 374, 376 n.1 (Fla. Dist. Ct. App. 1997) ("While we understand the trial court's desire to maintain uniformity within the county court, we note that decisions of one county court are not binding precedent on another county court because "[t]rial court's do not create precedent."); see generally 20 Am. Jur. 2d Courts § 141 (2005). Moreover, the ALC Rules provide for a method to create binding precedent in the ALC via a request for an en banc decision. See ALC Rule 70. That rule thus invokes the principle that "[f]or an opinion to have a stare decisis effect, at least a majority of the members of the court must have joined in the opinion." 20 Am. Jur. 2d Courts § 138 (2005)....

South Carolina Dept. of Motor Vehicles and Dept. of Public Safety v. Barnette, 2008 WL 4427997 (07-ALJ-21-0464-AP, August 18, 2008).

III. Reply to DHEC's Opposition – Transfer of Bed Need.

Significantly, in its Response Memorandum, DHEC recites Joel Grice's deposition testimony in support of its argument that DHEC has on "*numerous*" occasions allowed the transfer of bed need, but it can cite to only two (2) examples in which it has allowed the transfer of bed need – the Patewood Hospital matter (which was reviewed under what Mr. Grice claimed was different, "county-wide need" language in the 2001 State Health Plan) and the Loris Hospital case (which did not involve transfer of beds to a newly-created facility). Although DHEC asks this Court for "deference" to its agency decision, the law is clear that where, as here, the language of the 2004-2005 State Health Plan does not support the agency's interpretation,

the Court will reject the agency's interpretation. See, e.g., Brown v. Bi-Lo, Inc., 354 S.C. 436, 581 S.E.2d 836 (2003).

IV. Remand is an appropriate remedy.

The ALC, as a reviewing court, has the inherent power to remand this matter to DHEC if it determines that there has been procedural errors in DHEC's review. See generally 73A C.J.S. Public Administrative Law and Procedure § 461; 2 Am. Jur. 2d Administrative Law § 574.

Amisub describes as "disingenuous" CHS' position that the case should be remanded to DHEC, as it believes that such a remand would require DHEC to award a CON to Piedmont Medical Center for an expansion on its Rock Hill campus. If that were the case (and it is not), at least it would be consistent with DHEC's own interpretation of the 2004-2005 State Health Plan, which was poorly drafted and which even DHEC staff members now agree had unintended consequences.

Unfortunately for Amisub, it did not elect to apply for a CON to expand Piedmont Medical Center in Rock Hill. Instead, it applied for a CON to build a new hospital in Fort Mill. Assuming that DHEC's strict interpretation is correct, Amisub is not entitled to a CON. If DHEC's strict interpretation is incorrect, then DHEC erred in disqualifying CHS as an approvable candidate. That error infected the entire DHEC decision-making process, as the other points on which DHEC based its decision – that Piedmont Medical Center ("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 one hundred (100) beds rather than sixty-four (64) beds – all rest on the fact that Piedmont (rather than the proposed Fort Mill Medical Center) is the sole, existing hospital in York County, and that Piedmont (rather than the proposed Fort Mill Medical Center) is the "facility" eligible for a CON. None of the other

hospital applicants – CHS, Presbyterian, or Fort Mill Medical Center – are existing "individual facilities," and certainly CHS would not have an opportunity to have an existing contract with York County or to transfer beds, as it has no hospital in York County, nor is CHS entitled to build a new hospital under DHEC's interpretation of the 2004-2005 State Health Plan.

V. Conclusion

Amisub cannot have it both ways. If DHEC's strict interpretation of the 2004-2005 State Health Plan is correct, none of the applicants are eligible for the CON. If DHEC's strict interpretation is erroneous, all are eligible for a CON, and DHEC's failure to review their applications properly requires a remand. This Court should not be forced to spend three (3) weeks hearing a contested case that has clearly been infected with obvious procedural errors by DHEC. Either way, summary judgment in favor of CHS is appropriate in this case.

As such, CHS respectfully requests that CHS' motion for summary judgment be granted, and respectfully requests that these matters be remanded back to DHEC with instructions to deny the award of the CON to Amisub for the proposed Fort Mill Medical Center.

Respectfully submitted,

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Attorneys for Petitioner The Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas HealthCare System

March 9, 2009
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 AND CERTIFICATE OF THE DATE OF FILING/MAILING**

I hereby certify that on this the 9th day of March 2009, I have served a copy of the foregoing ***Petitioner Carolinas Healthcare System's Reply Memorandum to Amisub's Memorandum in Opposition, DHEC's Memorandum in Opposition and Presbyterian's Memorandum in Partial Opposition to Summary Judgment with exhibits*** upon the following via regular mail and electronic mail and have further filed a copy of the foregoing on this date with the Administrative Law Court via regular mail:

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STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

The 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 REPLY MEMORANDUM TO AMISUB'S MEMORANDUM IN OPPOSITION, DHEC'S MEMORANDUM IN OPPOSITION AND PRESBYTERIAN'S MEMORANDUM IN PARTIAL OPPOSITION TO SUMMARY JUDGMENT**

EXHIBIT A

Triad Business Journal and Charlotte Business Journal articles dated February 14, 2006

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ie Business Journal of the Greater Triad Area - February 14, 2006
tp://triad.bizjournals.com/triad/stories/2006/02/13/daily4.html

THE BUSINESS JOURNAL
RVING THE GREATER TRIAD AREA
lesday, February 14, 2006

lovant allies with big South Carolina health system

ie Business Journal of the Greater Triad Area

ovant Health will form an alliance with South Carolina's largest health care system, **Palmetto Health**.

ı a news release Monday morning, the two organizations said they would collaborate on matters of mutual interest and share resources.

'inston-Salem-based Novant, which owns **Forsyth Medical Center** and Charlotte-based **Presbyterian Hospital**, is one of the ɔspital systems that's **applied for permission** to build a new hospital in Fort Mill, S.C.

Ve can help Novant become more integrated into South Carolina health care by providing them guidance on our state's planning process ıd on our challenges in serving the diverse needs of our population," Charles D. Beaman Jr., president of Palmetto Health, said in the ɜws release.

ɔlumbia, S.C.,-based Palmetto is a nonprofit that owns three hospitals, Palmetto Health Richland and Palmetto Health Baptist in ɔlumbia and Easley. In Columbia, Palmetto Health Baptist is the primary teaching hospital for the University of South Carolina School of :edicine. Palmetto also owns physician practices and manages two other South Carolina hospitals.

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harlotte Business Journal - February 14, 2006
tp://charlotte.bizjournals.com/charlotte/stories/2006/02/13/daily21.html

CHARLOTTE
BUSINESS JOURNAL

ıesday, February 14, 2006

Palmetto Health backs Presby's Fort Mill hospital plans

harlotte Business Journal

ovant Health Inc., parent company of **Presbyterian Healthcare**, has gained support from **Palmetto Health Care** in its quest to ıild a community hospital in Fort Mill.

harlotte-based Presbyterian Healthcare is in competition with Tenet Healthcare Corp. (NYSE:THC) and Hospital Partners of America ıc. and Carolinas HealthCare System to gain state approval to build a new hospital.

ovant and Palmetto Health of South Carolina say they have established a "strategic alliance to collaborate on matters of mutual interest ıd to share resources."

he two companies began exploring ways to collaborate after their executives "discussed the importance of Novant's application to provide ealth-care services to Fort Mill and York County residents."

almetto Health says it will support Novant as the regulatory approval process goes forward.

ne of the four proposed hospital projects need approval from S.C. regulators to proceed. The Certificate of Need law prohibits health-care roviders from acquiring, replacing or adding to facilities and equipment without state approval.

he law is intended to reduce unnecessary increases in health-care costs by eliminating duplication.

resbyterian Healthcare is seeking S.C. approval to build a 64-bed hospital in Fort Mill. If approved, the hospital will offer surgical, ı ıve-care, obstetrical, diagnostic, cardiac-catheterization, laboratory and emergency services. The projected cost is $75 million to $95 ıillion.

s part of their alliance, Novant and Palmetto plan to hold a patient quality and safety educational summit in May for clinical and dministrative staff. Another area of collaboration, the companies say, may be the evaluation of strategic information technology projects ıch as an electronic medical record and computerized physician order entry.

almetto Health is South Carolina's largest health-care system comprising Palmetto Health Richland and Palmetto Health Baptist in olumbia and Easley.

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STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

The 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 REPLY MEMORANDUM TO AMISUB'S MEMORANDUM IN OPPOSITION, DHEC'S MEMORANDUM IN OPPOSITION AND PRESBYTERIAN'S MEMORANDUM IN PARTIAL OPPOSITION TO SUMMARY JUDGMENT**

EXHIBIT B

Amisub's First Supplemental Answers to CHS' Interrogatories

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'S FIRST SUPPLEMENTAL ANSWERS TO CHS'S FIRST SET OF INTERROGATORIES**

Pursuant to ALC Rule 21 and Rule 33, SCRCP, Respondent Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center d/b/a Fort Mill Medical Center ("Amisub") hereby supplements its answers to Petitioner Charlotte-Mecklenburg Hospital Authority, d/b/a Carolinas Healthcare System's interrogatories as follows:

GENERAL OBJECTIONS

1. Amisub objects to each Interrogatory to the extent it seeks information protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege. Inadvertent disclosure of any privileged information in response to the Requests shall not be deemed a waiver of the applicable privilege or protection.

2. Amisub objects to each Interrogatory to the extent it exceeds the scope of Rule 26 of the South Carolina Rules of Civil Procedure or the requirements of the Administrative Law Court Rules.

3. Amisub objects generally to the instructions or each Interrogatory to the extent they seek to impose obligations different from or in addition to those imposed by the South Carolina Rules of Civil Procedure or the requirements of the Administrative Law Court Rules.

4. Amisub objects generally to each Interrogatory to the extent that it seeks confidential or proprietary information, or information that is subject to any applicable confidentiality orders or agreements.

5. Amisub objects generally to each Interrogatory to the extent that it seeks information contained in documents created prior to 2003.

INTERROGATORIES

10. Describe Piedmont, Tenet, or any Piedmont Affiliate Hospitals' relationship with Mitretek. Please include:

a) the scope of any work performed;
b) the total amount paid for work performed; and
c) whether a written report was generated.
d) education and experience history for all persons who performed work

RESPONSE: Amisub objects on the grounds that Interrogatory 10 is overly broad and seeks irrelevant information. Without waiving these objections and subject to any general objections, Amisub has no relationship with Mitretek. Amisub's expert witness, David S. Levitt, is a prior employee of Mitretek.

a) the scope of any work performed: Amisub filed its October 2005 application for a Fort Mill hospital while David S. Levitt was a Mitretek employee.

b) the total amount paid for work performed: Amisub is searching for responsive information and will supplement its answer at a later date.

c) whether a written report was generated: the only report generated is the October 2005 CON application.

d) education and experience history for all persons who performed work: David S. Levitt is the only person at Mitretek who performed work on Amisub's CON application. Please see documents bates-numbered Piedmont.Levitt.0611 through Piedmont.Levitt.0614 (produced on April 23, 2008 in response to Presbyterian's First Request to Produce to Amisub) for a description of Mr. Levitt's education and experience history.

SUPPLEMENTAL RESPONSE: Amisub paid Mitretek approximately two hundred fifty one thousand ($251,000) dollars for work performed related to Amisub's CON application at issue in the above captioned case.

By: _____

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Columbia, South Carolina
January 9, 2009

CERTIFICATE OF SERVICE

I, the undersigned administrative assistant 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'S FIRST SUPPLEMENTAL ANSWERS TO CHS'S FIRST SET OF INTERROGATORIES**

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STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

The 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 REPLY MEMORANDUM TO AMISUB'S MEMORANDUM IN OPPOSITION, DHEC'S MEMORANDUM IN OPPOSITION AND PRESBYTERIAN'S MEMORANDUM IN PARTIAL OPPOSITION TO SUMMARY JUDGMENT**

EXHIBIT C

Affidavit of Joel Grice dated May 18, 2007

decision was to grant the application of Amisub of South Carolina, Inc. ("Amisub") and deny the others. I based that decision on four grounds, the last of which was that only Amisub's application complied with the 2004-05 South Carolina Health Plan.

3) Between 2001 and 2003, the Department's Board changed the way it determined hospital bed need and the policy of allocating hospital beds in South Carolina. The 2001 South Carolina Health Plan, like plans before it for many years, calculated bed need by county. The 2003 South Carolina Health Plan, however, calculated bed need not for counties, but for individual facilities. In this respect, the 2004-05 Plan was identical to the 2003 Plan.

4) On January 25, 2005 I issued a memorandum (the "January 25 memorandum") to licensed health care providers in South Carolina. Paragraph 3 of the memorandum stated:

> 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.

5) Before issuing the January 25 memorandum, I did not discuss its content with any members of the South Carolina Health Planning Committee or the Department's Board. The memorandum did not, therefore, represent official Department policy. After issuing the memorandum, I studied the issue in greater detail, discussed it with the Department's Commissioner and General Counsel, and realized it was inconsistent with the 2004-05 South Carolina Health Plan and beyond the scope of staff's authority. On March 3, 2005, I issued a memorandum rescinding the January 25 memorandum.

6) Following the rescission of the January 25 memorandum, the Department followed the normal statutory and regulatory procedure for amending a state health plan. Department staff recommended that the Health Planning Committee "consider that the Plan be amended to include language that allows the staff to determine which Certificate of Need

application best meets the community need even though all calculations are performed by individual facility." Staff's recommended amendment would have made the Plan consistent with paragraph 3 of the January 25 memorandum. Four regional public hearings were held and public comments were received and considered. Following this process, however, Department staff recommended that "no changes should be made" to the Plan. The Health Planning Committee agreed, deciding not to amend the 2004-05 Plan.

7) In May 2006, approximately two weeks before issuing final decisions on the Fort Mill hospital applications, I began to focus on the issue of whether any application other than Amisub's could comply with the 2004-05 South Carolina Health Plan. At that time, I collectively reviewed the 2001 Plan, the Draft 2003 Plan, the staff and public comments and recommendations concerning the Draft 2003 Plan, the final 2003 Plan, and the 2004-05 Plan. Reviewing all this material at the same time was enlightening. I had forgotten the level of detail that existed in the staff and public comments and recommendations concerning the Draft 2003 Plan. Had I reviewed all this material at the time I was considering my January 25 memorandum, I would not have written it. My May 2006 review of this material led me to conclude that paragraph 3 of my January 25 memorandum was inconsistent with the 2004-05 South Carolina Health Plan and that, of the four applications to build a Fort Mill hospital, only Amisub's complied with the 2004-05 South Carolina Health Plan.

8) In addition to the CON application approved in this case, the Department has approved other applications allowing a hospital system, for which the South Carolina Health Plan showed a bed need, to obtain a CON for additional beds and place them in a different geographical location in the county, when the licensee or owner of both facilities was the same.

FURTHER THE AFFIANT SAYETH NOT.

Joel C. Grice

SWORN to and subscribed before me
this 18th day of May, 2007

L. Isaac Reddin (L.S.)
Notary Public for South Carolina
My Commission Expires: 1/20/08

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

The 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 **MOTION AND MEMORANDUM OF PETITIONER CAROLINAS HEALTHCARE SYSTEM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Petitioner, The Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas HealthCare System ("CHS"), moves for summary judgment pursuant to Rule 68 of the Rules of Procedure for the Administrative Law Court and Rules 10(c) and 56 of the South Carolina Rules of Civil Procedure. CHS further submits this memorandum in support of its renewed motion for summary judgment.

I. RENEWED MOTION FOR SUMMARY JUDGMENT AND STANDARD OF REVIEW

As this Court is aware, the parties previously submitted motions for summary judgment on various issues in Phase I and Phase II of this case with arguments being held, and this Court ultimately denying those motions. It is settled law in this State that the denial of a summary judgment motion is interlocutory, and the trial court is entitled to reconsider its initial denial of summary judgment or it can entertain a subsequent motion for summary judgment. See Blyth v. Marcus, 335 S.C. 363, 517 S.E.2d 433, 434 (1999); Brown v. Pearson, 326 S.C. 409, 416-17, 483 S.E.2d 477, 481 (Ct. App. 1997); PPG

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Industries, Inc. v. Orangeburg Paint & Decorating Center, Inc., 297 S.C. 176, 183-84, 375 S.E.2d 331, 335 (Ct. App. 1988). As such, the denial of a motion for summary judgment does not establish the law of the case. Brown, 326 S.C. at 416-17, 483 S.E.2d at 481-82. CHS herewith renews its motions for summary judgment for the grounds previously presented and as further presented below.

Rule 68 of the Administrative Law Court Rules provides that "[t]he South Carolina Rules of Civil Procedure may, where practicable, be applied in proceedings before the Court to resolve questions not addressed by these rules." Rule 56 of the South Carolina Rules of Procedure provides that summary judgment shall be granted if it is shown "that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." S.C.R. Civ. 56; see also Gadson v. Hembree, 364 S.C. 316, 613 S.E.2d 533 (2005). While the Court, when reviewing a motion for summary judgment, must construe all ambiguities, conclusions and inferences arising from the evidence against the moving party, the non-moving party may not rest upon mere allegations or denials of the pleadings. See Byers v. Westinghouse Elec. Corp., 310 S.C. 5, 425 S.E.2d 23 (1992); S.C.R. Civ. P. 56(e); Moody v. McLellan, 295, S.C. 157, 163, 367 S.E.2d 449, 452-53 (Ct. App. 1988). Summary judgment should be granted "when plain, palpable and undisputed facts exist on which reasonable minds cannot differ." Bayle v. S.C. Dept. of Transp., 344 S.C. 115, 120, 542 S.E.2d 736, 738 (Ct. App. 2001).

Here, the trial testimony to date again establishes "plain, palpable and undisputed facts" that render summary judgment in favor of Petitioner CHS appropriate.

II. DHEC'S STATUTORY INTERPRETATION IS IN ERROR

While the 2004-2005 State Health Plan ("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 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. 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); and Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000) ("[t]he goal of statutory construction is to harmonize conflicting statutes whenever possible and to prevent an interpretation that would lead to a result that is plainly absurd.")

Based on the facts of the present case, Respondent South Carolina Department of Health and Environmental Control ("DHEC") had two options in how it could have

interpreted the SHP, and, thus, only two ways it could have decided the case. Under the first option, DHEC could have recognized the many inconsistencies and ambiguities inherent in the SHP, and broadly construed the language to allow all of the applicants to apply and be eligible to be approved. This DHEC did not do. Under the second option, DHEC could have chosen to strictly construe the language of the SHP to support the conclusion that none of the applicants who applied were eligible. This DHEC did not do either. An analysis of DHEC's decision reveals, instead, a distinct and inconsistent path that led to an improper decision to allow Fort Mill Medical Center ("FMMC") to access a bed need established by the SHP for Piedmont Medical Center in Rock Hill, South Carolina.

The parties in this case have stipulated that there is sixty-four (64) bed need in York County for Piedmont Medical Center. The central issue for this Court to determine is which applicant, if any, can comply with that stipulated bed need. It is undisputed that an applicant can comply with all other review criteria, but if it cannot comply with the SHP, it cannot be approved.

A. A strict interpretation that CHS and Presbyterian are not eligible under the SHP necessarily leads to a result that FMMC is also not eligible.

If DHEC strictly construed the SHP to allow the award of new beds to only a "facility" identified in the SHP, FMMC is no different that CHS and Presbyterian and is not entitled to a CON. A mandatory prerequisite to the issuance of a CON is compliance with the SHP. South Carolina's Certificate of Need Act (S.C. Code Section 44-7-210(C)) provides that DHEC "*may not issue a CON unless an application complies with the State Health Plan, Project Review Criteria, and other regulations.*" Regulation 61-15, Section

802, of the South Carolina Regulations ("S.C. Regs. 61-15"), further provides that a CON application "*shall not be approved unless it is in compliance with the State Health Plan.*"

S.C. Regs. 61-15 governs the implementation of the State Health Plan, and it defines the terms that are used in that Plan. The term "facility" in S.C. Regs. 61-15 equates to the term "hospital," and refers to only a single hospital, not a hospital "system." Specifically, S.C. Regs. 61-15 provides, in pertinent part, as follows (with our emphasis supplied in bold below):

> *SECTION 102. Applicability*
>
> *1. A person or **healthcare facility** as defined in this Regulation is required to obtain a Certificate of Need from the Department of Health and Environmental Control before undertaking any of the following:*
>
> *a. The construction or other establishment of a new **healthcare facility**;....*
>
> *SECTION 103. Definitions*
>
> *...13. **Healthcare facility means acute care hospitals**, psychiatric hospitals, alcohol and substance abuse hospitals, tuberculosis hospitals, nursing homes, kidney disease treatment centers (including freestanding hemodialysis centers), ambulatory surgical 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 or state law ....*
>
> *15. **Hospital means a facility organized and administered to provide services to accommodate two or more non-related persons for the diagnosis, treatment and care of such persons over a period exceeding 24 hours and provides medical or surgical care or nursing care of illness, injury, or infirmity** and may provide obstetrical care, and in which all diagnoses, treatment, or care is administered by or under the direction of persons currently licensed to practice medicine, surgery, or osteopathy ....*

The SHP uses both the term "facility" and the term "hospital" when addressing bed need. The SHP defines a "hospital" as follows (our emphasis is in bold): "*A*

'hospital' means a facility organized and administered to provide overnight medical or surgical care ...." As in S.C. Regs. 61-15, this definition in the SHP makes no mention of a "licensee" or hospital "system," nor does it expressly indicate that bed need for a "hospital" may be met by the development of a new sister hospital, which by law must operate under a separate license and a separate Medicare provider number, in a different geographic location in a separate city from the "facility" shown in the SHP.

Trial testimony establishes in this matter that Piedmont Medical Center in Rock Hill and FMMC will be two (2) separately licensed facilities.[1] Under a strict construction, the "facility" or "hospital" shown as demonstrating a bed need in the SHP is indisputably Piedmont Medical Center in Rock Hill, South Carolina. There is no mention in the SHP of a different and yet-to-be developed facility or hospital known as FMMC, which has no demonstrated bed need because it does not exist. The "bed need" in the SHP, as strictly enforced, as it is by DHEC's own interpretation, establishes the need for sixty-four (64) *additional* hospital beds *only* in Rock Hill. As Mr. Albert Whiteside of DHEC testified, FMMC does not have a demonstrated bed need under the SHP.[2] The very basis for DHEC's exclusion of CHS and Presbyterian is that they are not the "facilities" demonstrating bed need under the SHP. As such, FMMC cannot, as a matter of law, receive a CON for a new, one-hundred (100) bed hospital in Fort Mill, and DHEC's finding otherwise is erroneous.

[1] See, for example, trial testimony of Dennis Gibbs.
[2] Day 4, Real Time Transcript, p. 12.

B. DHEC's interpretation of the SHP results in unintended consequences.

1. The formula and methodology to calculate bed in the SHP was unchanged from the 2001 SHP.

The methodology by which hospital bed need is calculated in the SHP is virtually identical to the methodology used in the 2001 SHP, with only minor variations. The primary difference is that the facility, rather than the county itself, is now used as the "planning unit" in order to deal with what has become known as the "Florence Rule," which was intended to address the narrow situation in which a thriving hospital could not apply for new beds because the county-wide need was not sufficient. In counties like York County, however, the methodology used in the 2001 SHP is identical to the methodology used in the SHP, with the only difference being that the population projections have changed, and the occupancy rates have changed.

Mr. Whiteside testified that the change from a "county" planning unit to a "facility" planning unit was not intended to mean that a new entity could not apply for a demonstrated bed need shown in a particular county or at a particular hospital. Mr. Whiteside specifically testified as follows:

> ... I know when we developed the plan it was never designed to exclude anybody from being able to apply and/or be approved. But then again, the plan and the numbers, I think this may be the year it got changed in in the draft in the final. I'm not sure if this one or the prior one but the numbers all went up a lot. So there was never any thought given to some other entity probably applying for beds in a particular area other than a hospital itself as a generated need. [Real Time Transcript, p. 6]
>
> Q. Was the 04-'05 plan designed to keep out new providers?
>
> A. No. [Real Time Transcript, p. 14][3]

[3] Day 4, Real Time Transcript.

Additionally, when asked about his interpretation of the acute bed need section of the SHP, Les Shelton testified that he would defer to Mr. Whiteside.[4]

Mr. Grice's interpretation of the SHP was also inconsistent with the SHP, itself. In his May 30, 2006, decision letter (the "Decision Letter"), Mr. Grice stated that "*the number of bed needs is based on the service area and market share of Piedmont Medical Center, not the entire medical patient population in York County.*" In fact, bed need in the SHP uses a methodology that factors in: (a) the projected population in York County; (b) age ranges of the population in York County; (c) a standard occupancy rate; and (d) an historical utilization rate at Piedmont, which is currently the only hospital in Rock Hill from which data could be drawn.

In summary, South Carolina CON laws and regulations would not contain the concept of a "competing applicant" if there could be no new competing applicants, only the expansion of existing hospital facilities. DHEC's interpretation of the SHP leads to the unintended consequence of precluding all but existing medical providers from the CON application process.

2. *The SHP does not allow the "transfer" of bed need from an existing facility for which the bed need was determined to a newly-built, separately-licensed "facility" in a different location.*

Amisub of South Carolina, Inc. ("Amisub") argues that Piedmont Medical Center can transfer the recognized bed need to FMMC. Under a strict interpretation of the SHP, however, it is 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, as proffered by Amisub.

[4] Day 3, Real Time Transcript, p. 188.

The 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 SHP uses "as the unit calculation of bed need" for the beds at issue is Piedmont Medical Center in Rock Hill, South Carolina. Every DHEC witness that has testified 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. Nevertheless, Amisub argues that the common ownership by Amisub of both locations still allows for the sixty-four (64) bed need for "Piedmont Medical Center" to be utilized by FMMC, a yet-to-be constructed, proposed facility in another town and under a separate hospital license. Amisub continues to argue that Amisub and Piedmont Medical Center are one and the same, and the need for 64 beds identified in the SHP was for Amisub. This interpretation is completely unsupported by the 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. The 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 SHP, the CON Act or the

regulations promulgated thereunder, which support Amisub's position allowing the transfer of hospital bed need, and neither Amisub nor DHEC have pointed to any such authority for this Court.[5]

C. DHEC's strict interpretation of the SHP violates the CON Act.

Any interpretation of the SHP must be in harmony with the purposes of the CON Act, which are 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 SHP's and CON Act's purposes.

The concept advanced by Amisub – that the nature of the planning unit restricts the eligibility of health care providers who can apply for a CON – is contrary to the goals of both the SHP and in particular its enabling statute, the CON Act, which contains the concept of "competing" applicants. S.C. Code Section 44-7-160 states that "*[a] person*

[5] Mr. Grice acknowledged that the SHP does not contain a provision authorizing the transfer of bed need. See, Day 4, Real Time Transcript, pp. 136-137.

or health care facility as defined in this article is required to obtain a Certificate of Need from the department before undertaking any of the following: (1) the construction or other establishment of a new health care facility; (2) a change in the existing bed complement of a health care facility through the addition of one or more beds or change in the classification of licensure of one or more beds;...."

The term "Competing Applicants" is defined in S.C. Code Section 44-7-130(5) as *"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."* The term "person" is defined in S.C. Code Section 44-7-130(15) as *"an individual, a trust or estate, a partnership, a corporation including an association, joint stock company, insurance company, and a health maintenance organization, a state, a political subdivision, or an instrumentality including a municipal corporation of a state, or any legal entity recognized by the State."*

As Albert Whiteside testified on this issue (through deposition testimony read in to the trial record):

> Q. ... Under the current bed need methodology . . . 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. [Real Time Transcript, p. 5]
>
> Q. ... Is there anything in the 2004-2005 State Health Plan that suggests that a new entity cannot apply for a CON for an identified bed need?
>
> A. No. [Real Time Transcript, pp. 12-13][6]

[6] Day 4, Real Time Transcript.

Leon Frishman's trial testimony was in agreement with that of Mr. Whiteside. Mr. Frishman testified as follows:

> Q. ... that memo con cloodz [sic – concludes] [speaking of the January 25, 2005 Memorandum of Joel Grice], doesn't it that the net bed need in a county may be requested and approved r [sic – for] any applicant for a new hospital within that county?
> A. Yes, ma'am.
> Q. And you still agree with this memo today, don't you, Mr. Frishman?
> A. Yes, ma'am.
> Q. And specifically then you agree that anyone who wants to build a freestanding hospital in York County in a location other than Piedmont Medical Center, those persons can apply for the 64 bed need in the State Health Plan, correct?
> A. Yes, ma'am.
> Q. And that would include Carolinas?
> A. Correct. [Real Time Transcript, pp. 60-61]
>
> Q. Was the purpose of this memo in your opinion or in your understanding to allow an applicant to come in and compete if there was a net bed need in a county for those beds?
> A. I guess that was the result of this memo. I think the purpose of the memo was to try to clarify how we were going to administer the plan that was in my opinion silent on building new hospitals. [Real Time Transcript, p, 66][7]

None of the language from the SHP or CON Act indicates that the establishment of a new health care facility in South Carolina is restricted only to existing providers in the State - in fact, the language indicates exactly the opposite. The SHP, which is created by the CON Act, cannot be any more limiting than its enabling legislation. See, e.g., Holler v. Ellisor, 259 S.C. 283, 191 S.E.2d 509 (1972) (regulations must rest primarily on the enabling act authorizing them and they must not go beyond power delegated thereby). Amisub's argument – that as the existing provider in York County it is the only health

[7] Day 1, Real Time Transcript.

care provider eligible for a CON under the SHP – is wrong, and is unsupported by a reasonable construction of both the SHP and the CON Act.

D. DHEC's other grounds for awarding the CON to FMMC are pretextual.

Mary Fechtel conceded in trial testimony that once she made the finding that only FMMC complied with the SHP, she did not address who best complied with the other project review criteria. Ms. Fechtel specifically stated:

> Q. Okay. Now, now once you made the finding that only Fort Mill Medical Center complied with the state plan, you didn't go back and make the finding as to who best complied with each of the other project review criteria, did you?
> A. No, ma'am. [Real Time Transcript, p. 43][8]

In addition to DHEC's errant interpretation of the SHP, the three (3) remaining factors in the Decision Letter are infected by DHEC's ultimate conclusion that only the existing hospital in York County is eligible for a CON.

First, only Amisub was a signatory to the York County Contract, and only Amisub could be a party to such a contract, as it was the only existing hospital in York County. DHEC relied on this factor, without even bothering to determine that the charge restrictions placed on Amisub were intended to maintain its charges at a level consistent with CHS hospitals. DHEC did not bother to determine that the "community benefits" were as a result of overcharges by Amisub and only lasted for five (5) years, nor did DHEC note that all of the obligations in the York County Contract would remain in place even if Amisub did not obtain the CON. Other than a passing recital in a post-decision addendum, there is nothing in the York County Contract that includes the FMMC in the definition of "Hospital" or otherwise binds it to these contractual obligations.

[8] Day 2, Real Time Transcript.

Second, the proposition that Amisub's CON application creates cost efficiency and "economies of scale" is unsupported by any evidence. Only Amisub would have been eligible (at least in DHEC's view) to build a one-hundred (100) bed hospital in York County, as it was the only applicant that could transfer beds. When the bed need specified is only sixty-four (64) beds – and, in DHEC's view, only bed need at Piedmont Medical Center in Rock Hill - it is difficult to fathom how a project like FMMC, which costs approximately $51 million more than the CHS project, would achieve "economies of scale," especially insofar as thirty-six (36) of those beds are already licensed to be at Piedmont Medical Center in Rock Hill. The cost increase to transfer these beds alone was at least $17 million when you compare Amisub's second sixty-four (64) bed CON application and Amisub's one-hundred (100) bed CON application. If anything, Amisub's one-hundred (100) bed CON demonstrates a lack of efficiency and waste of existing resources. If the transfer beds or bed need to FMMC was improper, then the efficiency argument would not favor Amisub.

Third, the statement that Amisub has demonstrated "community commitment" by operating a hospital in the area for two decades would (if adopted as the sole factor) exclude any other new provider from entering the market. Moreover, it appears that Amisub's relationship with York County has been governed by a contract because it has engaged in past overcharges, which DHEC has completely overlooked. DHEC did not even take into account that the CHS hospitals have been serving York County residents for decades.

III. POWER OF THIS COURT TO REMAND

The ALC, as a reviewing court, has the inherent power to remand this matter to DHEC if it determines that there have been procedural errors in DHEC's review. See generally 73A C.J.S. Public Administrative Law and Procedure § 461; 2 Am. Jur. 2d Administrative Law § 574; and South Carolina Baptist Hospital v. DHEC, 291 S.C. 267, 353 S.E.2d 277 (1987) (*review of an order of remand to DHEC to develop criteria for proper review of competing applications*).

As such, CHS respectfully requests that CHS' motion for summary judgment be granted, and respectfully requests that these matters be remanded back to DHEC with instructions to deny the award of the CON to Amisub for the proposed Fort Mill Medical Center.

IV. ADOPTION BY REFERENCE

Pursuant to Rule 10(c), South Carolina Rules of Civil Procedure, CHS adopts by reference those statements, positions and exhibits of Presbyterian that are not otherwise adverse to CHS.

Respectfully submitted,

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September 29, 2009

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 AND CERTIFICATE OF THE DATE OF FILING/MAILING**

I hereby certify that I have, this 29th day of September 2009, served a copy of the foregoing ***Petitioner Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Healthcare System's Motion for Summary Judgment and Memorandum in Support*** upon the following by hand delivery and have further filed a copy of the foregoing on this date with the Administrative Law Court via hand delivery, at:

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STATE OF SOUTH CAROLINA

BEFORE THE 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 **RENEWED MOTION FOR SUMMARY JUDGMENT OF PETITIONER PRESBYTERIAN HOSPITAL-YORK, LLC AND MEMORANDUM IN SUPPORT**

Petitioner Presbyterian Healthcare System, d/b/a Presbyterian Hospital-York, LLC ("Presbyterian"), by and through its undersigned counsel, hereby renews its Motion for Summary Judgment in the above-captioned action pursuant to Rule 68, RPALC, and Rule 56, SCRCP. This Court should reverse the decision of the South Carolina Department of Health and Environmental Control ("DHEC" or "Department") to approve the application of Amisub of South Carolina, Inc. ("Amisub"), d/b/a Piedmont Medical Center ("Piedmont") d/b/a Fort Mill Medical Center ("FMMC") for a certificate of need ("CON") to build a 100-bed hospital in York County, South Carolina, and to deny Presbyterian's CON application to build a 64-bed hospital in York County ("Decisions") on the following grounds:

1. The decisions violate the State Certificate of Need and Health Facility Licensure Act, S.C. Code Ann. Ann. § 44-7-110, et seq. (Rev. 2002) ("CON Act") and 24A S.C. Code Reg. 61-15 (Supp. 2009) ("CON Regs") and exceed DHEC's authority because there is no authority for the Department, through its Board, to adopt and apply the 2004-2005 South Carolina Health Plan ("Plan" or "State Health Plan") so that only existing licensed hospitals South Carolina are in compliance with the State Health Plan;

2. The Department's decisions that the FMMC application complied with the Plan and Presbyterian's did not is erroneous because the bed need is calculated specifically for Piedmont and neither the CON Act, the CON Regs nor the Plan authorize Piedmont to transfer or sell that need to FMMC or any other proposed facility;

I. PURPOSES AND REQUIREMENTS OF THE CON ACT

A. PURPOSES OF THE CON ACT. The General Assembly's declaration of legislative purposes in the CON Act provides:

> 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. To achieve these purposes, this article requires:
>
> (1) the issuance of a Certificate of Need before undertaking a project prescribed by this article;
> (2) adoption of procedures and criteria for submittal of an application and appropriate review before issuance of a Certificate of Need;
> (3) preparation and publication of a State Health Plan;
> (4) the licensure of facilities rendering medical, nursing, and other health care.

S.C. Code Ann. § 44-7-120 (Rev. 2002) (emphasis added). The General Assembly has chosen to regulate new health care facilities, beds and services to ensure that they are in the best interest of the South Carolina general public. The CON Act was not enacted for the protection of existing health care providers. On its face, the CON Act encourages competition between health facilities to establish new facilities in the State, as long as the provider is not unnecessarily duplicating services.

The cardinal rule of statutory construction is that the legislative intent must be ascertained and it must prevail. Gardner v. Biggart, 308 S.C 331, 417 S.E.2d 858 (1992). In ascertaining the legislative intent, the courts look to the clear and unambiguous language of the statute. "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, 72, 417 S.E.2d 85, 87 (1992), citing Duke Power Co. v. South Carolina Tax Comm'n, 292 S.C. 64, 354 S.E.2d 902 (1987). "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, 28, 416 S.E.2d 641, 644 (1992), citing Gunnells v. American Liberty Ins. Co., 251 S.C. 242, 161 S.E.2d 822

(1968). "When faced with an undefined statutory term, the court must interpret the term in accord with its usual and customary meaning." Adoptive Parents v. Biological Parents, 315 S.C. 535, 446 S.E.2d 404 (1994); see also Catawba Indian Tribe of South Carolina v. State of South Carolina, 372 S.C. 519, 524, 642 S.E.2d 751, 753.

Neither the word "best" nor the phrase "public need" are defined in the CON Act. "Best" is defined a "1. Surpassing all others in excellence, achievement, or quality; ... 2. Most satisfactory, suitable, or useful; most desirable: *the best solution.*" American Heritage Dictionary, 2nd College Ed. (1985) (emphasis in original). Merriam-Webster Online defines "best" as: "1 : excelling all others <the best student>; 2 : most productive of good : offering or producing the greatest advantage, utility, or satisfaction <what is the best thing to do>." http://www.merriam-webster.com/dictionary/best (September 28, 2009).

"Public" is defined as "1 : Of, concerning, or affecting the community or the people; *the public good.* American Heritage Dictionary, 2nd College Ed. (1985) Merriam-Webster Online defines "public" as: "2 a : of, relating to, or affecting all the people or the whole area of a nation or state <public law> b : of or relating to a government c : of, relating to, or being in the service of the community or nation." http://www.merriam-webster.com/dictionary/public (September 28, 2009). "Need" is defined as "1. A lack of something required or desirable: *crops in need of water.*" American Heritage Dictionary, 2nd College Ed. (1985) The Merriam-Webster Online defines "need" as: a condition requiring supply or relief." http://www.merriam-webster.com/dictionary/best (September 28, 2009).

In the recent case of Dema v. Tenet Physician Services-Hilton Head, 383 S.C. 115, 678 S.E.2d 430 (2009), the South Carolina Supreme Court opined that the CON Act does not create a private right of action so that a civil suit can be brought against a hospital for injury resulting from a DHEC finding of violation of the CON Act. The Court found that "[i]f the overall purpose of the

statute is to aid society and the public in general, the statute is not enacted for the special benefit of a private party." Id. 383 S.C. 115, 121-122, 678 S.E.2d 430, 433 (2009) (citation omitted). The expressly stated clear legislative intent of the CON Act is "to advance the quality of healthcare provided in this State for all people receiving the care, not for a particular individual." Id. Likewise, the need here is for all people receiving hospital care and not for a particular existing hospital.

A clear and unambiguous purpose of the CON Act is to determine which new health facility offers or produces the greatest advantage, utility, or satisfaction to the people in York County that it will serve.

B. REQUIREMENTS OF AND DEFINITIONS IN THE CON ACT. The Department is designated as the sole state agency for control and administration of the granting of CONs, licensure of health care facilities and other activities necessary to be carried out under the CON Act. See S.C. Code Ann. § 44-7-140 (Rev. 2002).

The CON Act provides for the adoption and content of the Plan. "The plan at a minimum must include: (1) an inventory of existing health care facilities, beds, ... ; (2) projections of need for additional health care facilities, beds, ..." S.C. Code Ann. § 44-7-180(B) (Rev. 2002) (emphasis added). No application can be approved unless it complies with the need in the Plan. 24A S.C. Code Ann. Reg. 61-15 § 802.1 (Supp. 2009). See also S.C. Code Ann. § 44-7-210(C) (Rev. 2002). In adopting the Plan, the Board must carry out the purposes of the CON Act. See S.C. Code § 44-7-120(3) (Rev. 2002).

A person is required to obtain a CON before constructing a new health care facility. S.C. Code Ann. § 44-7-160(1) (Rev. 2002). "Health care facility" is defined to include an acute hospital. S.C. Code Ann. § 44-7-130(10) (Rev. 2002). "Hospital" is defined as "a facility organized and administered to provide overnight medical or surgical care or nursing care of illness, injury, or infirmity ..., and in which all diagnoses, treatment, or care is administered by or under the direction

of persons currently licensed to practice medicine, surgery, or osteopathy." S.C. Code Ann. § 44-7-130(12) (Rev. 2002).

The Department is required to promulgate "substantive and procedural regulations considered necessary by the department . . . to carry out the department's licensure and Certificate of Need duties under this article, including regulations to deal with competing applications . . . ." S.C. Code Ann. § 44-7-150(3) (Rev. 2002)(emphasis added).

The CON Act defines "competing applicants" as meaning "two or more ... health care facilities as defined in this article who apply for Certificates of Need to provide ... 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) (emphasis added). To be competing, the applications have to be approvable, thus have to comply with the Plan need. "Compete" is defined as: "To strive or contend with another or others, as for profit or a prize; ..." American Heritage Dictionary, 2nd College Ed. (1985). Merriam-Webster Online defines "competing" is defined as: : "to strive consciously or unconsciously for an objective (as position, profit, or a prize): be in a state of rivalry <competing teams> <companies competing for customers>." http://www.merriam-webster.com/dictionary/competing (September 28, 2009)

To be a competing applicant, an application has to be received by the Department within fifteen (15) days of publication of the Notice to Affected Persons in the State Register for the first application(s). Any application received after the fifteenth day following the State Register notice is not considered to be competing. 24A S.C. Code Reg. 61-15 § 103.6 (Supp. 2009) (emphasis added).

Section 44-7-210(C) provides, in pertinent part: "In the case of competing applications, the department shall award a Certificate of Need, if appropriate, on the basis of which, if any, most fully complies with the requirements, goals, and purposes of this article and the State Health Plan, Project Review Criteria, and the regulations adopted by the department." (Emphasis added).

C. AUTHORITY OF THE AGENCY. The Department is an agency of the State and is a creature of statute. DHEC's authority is dependent upon statute -- the CON Act and the CON Regs. As creatures of statute, the Department, its Board and this Court are possessed only with those powers that are specifically delineated or necessarily implied in their enabling legislation. See City of Columbia v. Bd. of Health and Envtl. Control, 292 S.C. 199, 355 S.E.2d 536, (1987).

When determining what powers or authority an agency possesses by necessary implication, the basic premise is that:

> [s]uch implication, inference, or presumption, as the fact may be, is always indulged to supply a deficiency, and is never permitted to contradict the act, grant, or instrument whatsoever involved.

See Sutherland Statutes and Statutory Construction, § 55:3. Any implication which is inconsistent with the spirit and purpose of the CON Act must be denied. Id., § 55.4. In Mungo v. Smith, the Supreme Court held:

> Such (administrative) bodies, being unknown to the common law, and deriving their authority wholly from constitutional and statutory provisions, will be held to possess only such powers as are conferred, expressly or by reasonably *necessary* implication, or such as are merely incidental to the powers expressly granted. See 51 C.J. 36, 37, where among other things it is said: "Any reasonable doubt of the existence in the commission of any particular power should ordinarily be resolved against its exercise of the power."

Mungo v. Smith, 289 S.C. 560, 564, 347 S.E.2d 514, 517 (1986). If there is any doubt whether the Department has exercised a power by necessary implication in this case, the power should be resolved against DHEC.

II. 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); see also Catawba Indian Tribe of South Carolina v. State of South Carolina, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007).

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"). In MRI at Belfair, LLC v. S.C. Dep't of Health and Envtl. Control, *379 S.C. 1, 664 S.E.2d 471* (2008), the our Supreme Court found that **"[t]he issue whether the Plan standards satisfy the statutory requirements is a legal conclusion based on statutory interpretation principles. Thus, no factual findings are necessary to determine compliance with § 44-7-180(B)."**[1] Id., 379 S.C. 1, 6 n.4, 664 S.E.2d 471, 474 n.4 (2008) (emphasis added). Just as in Belfair, in this case no factual findings are necessary to determine whether the Plan bed need standards comply with the purposes and other statutory requirements of the CON Act. The issue whether the Plan standards satisfy the statutory requirements is a legal conclusion based on statutory interpretation principles.

III. ARGUMENT

A. THE ACUTE BED NEED PORTION OF THE PLAN DOES NOT COMPLY WITH THE PURPOSES AND REQUIREMENTS OF THE CON ACT AND THE DECISIONS BASED UPON THE PLAN EXCEED DHEC'S AUTHORITY AND IS IN VIOLATION OF THE CON ACT AND REGS.

A CON application cannot be approved unless the application complies with the requirements of the Plan. The May 30, 2006 letters approving FMMC (PHY Ex. 12) and denying Presbyterian (PHY Ex. 10) and Carolinas (PHY Ex. 11) (collectively "Decision Letters") found that only FMMC complied with the Plan:

[1] This was an appeal involving, inter alia, the sufficiency of the MRI standards under the 2003 South Carolina Health Plan.

> [T]he 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 (sic). 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 (sic), 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.

PHY Ex. 12, p. 851, ¶ 4. The Decision Letters found that because the 64 additional bed need in the Plan was for Piedmont, FMMC's application complied with the Plan. The award to FMMC cannot be based upon the Plan, since the bed Plan standards do not comply with the CON Act or the CON Regs.

Prior to the publication of the 2003 South Carolina Health Plan ("2003 Plan"), projections of need for additional facilities and beds was done on a county-wide basis and, if an additional bed need was identified for a county, any applying entity could comply with the Plan need criterion in 24A S.C. Code Reg. 61-15 802.1. In adopting the 2003 Plan, the Department changed the way projection of bed need was calculated and used individual existing hospital facilities as the planning unit instead of the counties. This methodology was carried forward in the Plan.

The Plan calculates bed need "for individual facilities" and is based upon each facility's "historical utilization," the population of the county in which the hospital is located, use rates and age cohorts.[2] PHY Ex. 14, pp. II-6-7. To calculate the need for each individual facility, the Plan requires the Department to "[m]ultiply the current facility use rate by age cohort by the [county] projected population by age cohort ... and divide by 365" to determine projected average daily census ("ADC") for each existing hospital and then to divide the ADC by the variable occupancy to determine the number of beds needed to meet the area's need. Id. As the FFMC Decision Letter

[2] The Plan provides that for some of the State's hospitals, "different age groups were used based on the data provided by the facility." PHY Ex. 14, p. II-6-7.

stated: "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." See PHY Ex. 12, p. 851. In fact, the Plan provides that the purpose of the Plan is to outline "the need for medical facilities and services in the State." DHEC Ex. 1, p. I-2.

The Plan as written calculates bed need for individual South Carolina hospital facilities and not the need for the South Carolina population, *i.e.* the "public need." The plain language of the CON Act makes the existing licensed hospital facility, in this case Piedmont, the sole proprietor of the generated bed need. Therefore, no other entity can compete with Piedmont to access the bed need because no other entity can be approved.

The adoption and application of the Plan conflicts with and nullifies portions of the CON Act exceeds DHEC's authority. The clear and unambiguous language of the CON Act and Regs requires that the Plan identify the need for hospitals, so that applicants can file competing applications, each of which complies with the Plan, and the Department can choose the applicant that most fully complies with the other Project Review Criteria identified by the Department during the CON review process. To have a Plan where only Piedmont complies with the bed need flies in the face of the express CON Act legislative purpose and requirement of having applicants compete to fill the additional bed need (be in a state of rivalry to compete for patients).

The Decisions are void ab initio in that they are based upon a Plan that does not comply with the CON Act. The Decisions should be reversed and the applicants, to the extent that each so chooses, should be allowed to apply under a South Carolina Health Plan[3] that complies with the purposes and requirements of the CON Act. See South Carolina Cable Tel. Ass'n v. Pub. Serv. Comm'n of South Carolina, 313 S.C. 48, 437 S.E.2d 38 (holding that the PSC exceeded its statutory

[3] The 2008-2009 South Carolina Health Plan ("2008 Plan") acute hospital bed need standards were changed to correct the unintended consequences of the Plan and to make it clear that any entity can apply and be approved for any additional bed need in a county.

authority in adopting an Earnings Sharing Plan in violation of S. C. Code Ann. § 58-9-210.)

B. IF PRESBYTERIAN DOES NOT COMPLY WITH THE PLAN, NEITHER DOES FMMC.

This case is one of first impression because there has not been, nor will there be because of the changes in the 2008 South Carolina Health Plan, another case where applicants sought to fill the bed need generated by and for an existing hospital. As discussed above, the bed need in the Plan is exclusive to Piedmont as the planning unit. FMMC does not exist and is not a planning unit under the Plan. If FMMC were built, it would be a different size hospital and would provide different services. It is undisputed that FMMC would be a community hospital, as would Presbyterian or Carolinas, and Piedmont is a tertiary hospital. From the point of compliance with the Plan, the only difference between FMMC and Presbyterian and Carolinas is that FMMC would be owned by Amisub, the owner of Piedmont.

Nothing in the CON Act, CON Regs or the Plan authorizes the Department to allow Piedmont to transfer the additional 64-bed need to a new, yet-to-be-constructed facility such as FMMC as opposed to Presbyterian. Mr. Grice testified that the Plan was silent as to whether additional bed need could be transferred or sold to a proposed hospital and in his opinion Piedmont could do either. A transfer or sale of Piedmont's additional bed need is in contravention of the CON Act and Regs and to allow the same exceeds the Department's authority.

Section 44-7-230(E) of the CON Act provides:

> A Certificate of Need or rights thereunder may not be sold, assigned, leased, transferred, mortgaged, pledged, or hypothecated, and any actual transfer or attempt to make a transfer of this sort results in the immediate voidance of the Certificate of Need. The sale or transfer of the controlling interest or majority ownership in a corporation, partnership, or other entity holding, either directly or indirectly, a Certificate of Need, results in the transfer and voidance of a Certificate of Need.

If Piedmont were awarded a CON to put the 64 additional beds in place at its current location, the express terms of the CON Act prohibit it from transferring or selling the rights to the 64 beds it

obtained under the CON. See also, 24A S.C. Code Ann. Reg. 61-15 § 604 (Supp. 2009). Certainly, if Piedmont cannot transfer or sell the additional bed need after the Department issues a CON, there is no justification, expressly or implied, under the Act or Regs for DHEC to allow Piedmont to transfer or sell the 64-bed need prior to the issuance of a CON.

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. TNS Mills, Inc. v. South Carolina Dep't of Revenue, 331 S.C. 611, 503 S.E.2d 471 (1998). A statute should not be construed by concentrating on an isolated phrase. Laurens County Sch. Dist. 55 and 56 v. Cox, 308 S.C. 171, 417 S.E.2d 560 (1992). South Carolina State Ports Auth. v. Jasper County, 368 SC 388, 398, 629 SE2d 624, 629 (2006). In that the clear purpose of the CON Act is to benefit the health and welfare of the public, allowing Piedmont, as the existing hospital in York County, to control who can apply and be susceptible of approval violates the CON Act and Regs and exceeds DHEC's authority, both express and implied.

Mr. Grice cited the case of Grand Strand Regional Medical Ctr. v. SC Dep't of Health and Envtl. Control, Docket No. 05-ALJ-0344-CC, 2007 WL 136584 (2007) in support of his decision. The cases are legally distinguishable. First, there was no applicant competing for the bed need generated by the Loris Healthcare System ("LHS"). Second, LHS applied under the 2003 Plan to transfer existing licensed beds and additional need to an existing location, Seacoast. LHS's Seacoast location had been operating under the LHS hospital license. Thus, the patient utilization at Seacoast was captured in the LHS additional bed need calculations. The Administrative Law Court (Judge McLeod) concluded in the Grand Strand case that Seacoast was part of an existing licensed hospital:

> 18. The Seacoast location of LCH is part of a hospital because it is part of LCH. The Seacoast location of LCH operates under the LCH hospital license. Under that hospital license, LCH already offers emergency room, laboratory, pharmacy, diagnostic imaging, and respiratory therapy and admits patients at

> the Seacoast location 24 hours a day, i.e. on an "overnight" basis. Under the LCH hospital license, LCH at times keeps patients overnight in its emergency room at the Seacoast location.

Id., 2007 WL 136584 p. 23.

It is important to note what the opinion holds regarding precluding entry into the market: "Even if LHS were attempting to add beds at a new location in Horry County as Grand Strand contends, Grand Strand has pointed to no language in the 2003 State Health Plan that would prohibit this or that would give any hospital exclusive rights to any portion of Horry County." Id. (emphasis added).

The other support Mr. Grice offered in support of his interpretation was Aiken Regional Medical Center's transfer of its additional bed need under the 2004-2005 Plan to establish a long-term acute-care hospital ("LTCH"). Again, this case is legally distinguishable. The 2004-2005 Plan contains specific language authorizing transfer of additional bed need to an LTCH to create a new facility. DHEC Ex. 1, p. II, 153. Under the well-established rule of statutory construction expressio unius est exclusio alterius, statutes listing specific things or characteristics evidence the intent of the Legislature that the list exclude all other things and characteristics not mentioned. State v. Burton, 301 S.C. 305, 391 S.E.2d 583, 584 (1990); Pennsylvania Nat'l Mutual Casualty Insurance Co. v. Parker, 282 S.C. 546, 554, 320 S.E.2d 458, 463 (Ct. App. 1984). Here, the Plan specifically provides for the transfer of additional bed need to create a new LTCH but is silent as to such transfer to create a new acute care hospital.

C. DEFERENCE TO THE AGENCY INTERPRETATION IS NOT WARRANTED IN THIS CASE.

The general rule of law is "the construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons." Dunton v. S.C. Bd. of Exam'rs in Optometry, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987). See also Leventis v. South Carolina Dep't of Health & Envtl. Control, 340 S.C.

118, 530 S.E.2d 643 (Ct. App. 2000). Deference should not be given in this case because: 1) DHEC officials do not consistently interpret the CON Act or Plan; 2) the Decisions violate the CON Act and Regs and exceed the agency's authority; 3) the Plan interpretation in the Decisions reaches an absurd result; and 4) is not long-standing.

1. Inconsistent Interpretations. There is no uniformity in the DHEC witnesses' interpretation of the Plan whether only FMMC or all of the applicants comply with the 64-bed need for York County. Mr. Grice and Ms. Fechtel both testified that only FMMC complies with the Plan need under Reg. 61-15 § 802.1. However, Mr. Grice, with the approval of Mr. Frishman, the DHEC Commissioner, and General Counsel, initially interpreted the Plan so that any applicant could comply with the Plan. PHY Ex. 25. Some sixteen (16) months latter, Mr. Grice reversed his interpretation and determined that only FMMC, through Piedmont, complied with the Plan. Finally, Mr. Grice did not consult with Mr. Whiteside or Mr. Shelton before making the Decisions.

Mr. Frishman, Deputy Commissioner when the Decisions were made, testified that any one of the applicants complied with the Plan bed need. See Exhibit 1 hereto, Tr. Day 1, p. 68, l. 25 to p. 69, l. 5.[4] Mr. Whiteside, responsible for the drafting and approval of the Plan, testified that any applicant was approvable under the Plan (see Ex. 5 hereto, excerpt from PHY Ex. 103, p. 47, ll. 1-5) , and further testified that "when we developed the Plan it was never designed to exclude anybody from being able to apply and/or be approved." See Exhibit 3 hereto, Tr. Day 4, p. 5, l. 5 to p. 6, l. 5; p. 27, l. 13-20. While deferring to Mr. Whiteside, Mr. Shelton also testified that it was never the intent of the Plan to exclude applicants from complying with the Plan need. See Exhibit 2 hereto, Tr. Day 3, pages 128, l. 25 to p. 129, l. 25. The attempt to fix the "Florence County Rule" had the unintended consequence of excluding applicants other than the existing hospital from being in compliance with the Plan need.

[4] We have attached copies of the unofficial real time transcript for the convenience of the Court.

2. *The Decisions Violate The CON Act And Regs.* The Department's interpretation of the Plan nullifies the public need purpose of the CON Act as discussed above and vitiates the competing applicant requirements. No applicant, other than Piedmont as the existing hospital, can ever be in compliance with the Plan.[5] Where the Department's interpretation is in violation of the CON Act, deference should not be afforded. Fox v. Moultrie, 379 S.C. 609, 614, 666 S.E.2d 915, 917 (2008).

3. *The Decisions Interpretation Of The Plan Reaches An Absurd Result.* The Department's interpretation essentially creates an exclusive property right in additional bed need for the sole benefit of the existing Piedmont hospital facility. As discussed above, Mr. Grice suggested that the only way for another provider to access the Plan bed need is for Piedmont, if it chooses, to sell or transfer the need to another hospital facility. See Exhibit 3 hereto, Tr. Day 4, p. 182, ll. 1-18 and Exhibit 4 hereto, Tr. Day 5, p. 72, l. 3 to p. 73, l. 23. In other words, Piedmont is the gatekeeper for the Plan additional bed need. Such an absurd result does not comply with the purposes of the CON Act or the requirements thereof. While the Department still could decide whether to issue a CON to an applicant, Mr. Grice's interpretation of the Plan prevents the Department from ever being able to make a determination between competing applicants to determine who best meets the public need or which applicant most fully complies with "the requirements, goals, and purposes of this article and the State Health Plan, Project Review Criteria, and the regulations adopted by the department." S.C. Code Ann. § 44-7-210(c) (Rev. 2002).

4. *No Long Standing Interpretation.* It is uncontested that this is the first time that the Department has interpreted and applied the general acute bed need standard either in a county with a

[5] DHEC witnesses admitted at trial that under the Plan as written, there could never be competing applicants for additional acute hospital bed need. Specifically, Mr. Leon Frishman, the former Deputy Commissioner for Health Licensing, Health Planning and Certification, testified that, if the only applicant that could meet the need in the Plan was Piedmont, then you could not have competing applicants. See Exhibit 1 hereto, Tr. Day 1, p. 60, l. 1 to p. 61, l. 12; p. 79, ll. 11-14. Mr. Grice also admitted that you could not have competing applicants under the Plan. See Exhibit 3 hereto, Tr. Day 4, pp. 189, l. 9 to p. 192, l. 4.

single hospital or where an applicant other than the existing hospital has sought to comply with the Plan since the Plan language was amended in 2003. There is no history, much less a long history, of the General Assembly acquiescing in Mr. Grice's interpretation. See Etiwan Fertilizer Co. v. S.C. Tax Comm'n, 217 S.C. 354, 60 S.E.2d 682 (1950)." Pruitt v. S.C. Dep't of Health and Human Servs., Docket No. 06-ALJ-08-0605, p. 7 (2008). See also Bunch v. Cobb, 273 S.C. 445, 452, 257 S.E.2d 225, 228 (1979)(holding "[a] consistent mode of applying a statute by the responsible governing agency has been given considerable judicial deference in the construction of ambiguous statutes").

IV. CONCLUSION

For the foregoing reasons, Petitioner Presbyterian Healthcare System. d/b/a Presbyterian Hospital-York, LLC, respectfully requests that this Renewed Motion for Summary Judgment be granted and the Department's Decisions should be reversed because no applicant can be awarded the CON at issue. Any applicant may apply for and potentially be awarded the 56 needed beds for York County under the 2008-2009 South Carolina Health Plan.

Respectfully submitted,

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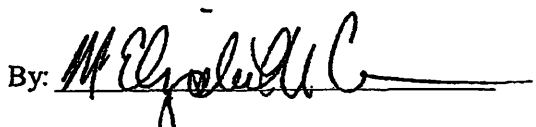
By: 

September 28, 2009
Columbia, South Carolina

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

STATE OF SOUTH CAROLINA

BEFORE THE 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. SCDHEC 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 **CERTIFICATE OF SERVICE**

I, ElizaBeth A. Blitch, do hereby certify that I have this date served one (1) copy of the Presbyterian's Response to Amisub/FMMC's Motion to Exclude Expert Testimony, upon the following counsel of record by causing said copy to be hand-delivered by law firm courier to the following:

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I further certify that I have this date served one (1) copy of the same upon the following counsel of record by causing said copies to be deposited with the United States Postal Service, first class postage prepaid and affixed thereto, and addressed as follows:

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September 28, 2009
Columbia, South Carolina

CHARLOTTE-MECKLENBURG HOSPITAL, ET AL.

V

SCDHEC, ET AL.

Friday, September 11, 2009

TRIAL - DAY THREE

REPORTER'S REALTIME DISCLAIMER

Since this deposition is being realtimed, please be aware that there will be a discrepancy regarding page and line numbers when comparing the realtime screen, the realtime draft, if any, and the final transcript.

Also, please be aware that the realtime screen and the realtime draft, if any, may contain untranslated steno, an occasional reporter's note, a misspelled proper name, and/or nonsensical English word combinations. All such entries will be corrected on the final transcript.

have the facilities listed for bed need then we have oh sum by county?

A. Correct.

Q. And the same formula being applied in both plans, correct?

A. Other than the modification of the occupancy rate and use of the population.

Q. Otherwise, the formulas were identical?

A. Yes, ma'am.

Q. The projected need in the '04-'05 State Health Plan for individual facilities, the 64 bed need, is that for Piedmont Medical Center?

A. Yes, it was projected for Piedmont Medical Center.

Q. And Piedmont Medical Center is the existing facility in Rock Hill; is that correct?

A. That's correct.

Q. Mr. Shelton does the language if your opinion in the 2004-2005 State Health Plan result in Piedmont Medical Center being the only facility that can be approved for the 64 bed need?

A. As the plan is written, yes, I believe that that is the only conclusion. Yes, it was for Piedmont Medical Center.

Q. And Mr. Shelton, when you drafted or

participated in the drafting of the language that's in the '04-'05 health plan that originated in the '03 health plan, you did not intend to preclude providers other than Piedmont Medical Center from accessing that 64 bed need, did you?

A. There had never been a situation like this. Ordinarily when the methodology was changed in 2003, it was designed to assist hospitals that were this a multi provider county. The example we traditionally use is McLeod center in Florence which was showing a huge need. They were over 90 percent occupied but the other hospitals in Florence had low utilizations. Overall Florence had no need so therefore we couldn't approve McLeod. So we did not anticipate the impact that that could have on a county that only had a single provider that might have generated a bed need that high.

Q. Correct. And you didn't intend to preclude people such as Carolinas entities such as Carolinas and Presbyterian from applying for and being approvable for the 64 bed need many a single county provider?

A. We never contemplated that possibility happening.

Q. So you didn't intend to preclude anyone, correct?

A. No.

CHARLOTTE-MECKLENBURG HOSPITAL, ET AL.

V

SCDHEC, ET AL.

Monday, September 14, 2009

TRIAL - DAY FOUR

REPORTER'S REALTIME DISCLAIMER

Since this deposition is being realtimed, please be aware that there will be a discrepancy regarding page and line numbers when comparing the realtime screen, the realtime draft, if any, and the final transcript.

Also, please be aware that the realtime screen and the realtime draft, if any, may contain untranslated steno, an occasional reporter's note, a misspelled proper name, and/or nonsensical English word combinations. All such entries will be corrected on the final transcript.

A. Well, I think we got to consider any application by any provider. I don't think we can limit it to one potential person.

Q. Then page 46.

Under the current bed need methodology referred to many 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.

Q. Page 114 starting at line 22?

THE COURT: What was that page with that last question?

MS. ROBERTSON: That was page 46. Starting at line 25, going over to page 47 through line 5.

THE COURT: Thank you.

Q. Now page 114, line 22.

Paragraph 4. 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 have been the

best interpretation of the plan and it's certainly subject to interpretation and I'm sure that's the reason for all this discussion anyway. I know when we developed the plan it was never designed to exclude anybody from being able to apply and/or be approved. But then again, the plan and the numbers, I think this may be the year it got changed in in the draft in the final. I'm not sure if this one or the prior one but the numbers all went up a lot. So there was never any thought given to some other entity probably applying for beds in a particular area other than a hospital itself as a generated need.

Q. Then page 118. Beginning at line 18.

What I wanted to do was just work through bed need methodology because that's what we've been talking about most of today. Let me start, if I can, with if if you will turn to Exhibit 21, tab A, there's a tab 1 and then a tab B. Tax A is the 2001 State Health Plan.

A. Uh-huh.

Q. When we say bed need methodology, what I consider that to be is page II-7?

A. Okay.

Q. Do you see an A there, the methodology for calculating bed need follows then there's a formula set forth there?

that right?

A. Yeah. That's different language.

Q. Okay. Do you believe that the plan was designed and written to establish need for particular hospitals identified in the plan?

A. That is the way it was calculated and done, yes.

Q. And that's what it says, isn't it?

A. That's what it says.

Q. Okay.

A. Whether that's what it means may be different.

Q. Now what do you mean by that, Mr. Whiteside? That at the time you and your staff were preparing the plan that you, as you testified before, never took into consideration whether or not the need was identified for particular hospitals might have been the effect of excluding the approval of beds for a new provider?

A. Yeah, I don't think that was ever discussed or considered to exclude anyone.

Q. You just didn't think about it one way or the other?

A. Not really.

Q. Is it accurate then what you did consider was the establishment of need for specific hospitals

Q. Okay. When you say unless the beds -- thed additional bed need was sold, are you talk underground about a transfer?

A. Both. Transfer or the need itself.

Q. Show me what under the 2004 plan authorizes a facility that is generated need to first transfer that need to another entity to create a new hospital?

A. There's no such language in there.

Q. Okay. Show me what language under the plan allowed Piedmont Medical Center to sell the additional bed need to another entity?

A. There does not go into that detail.

Q. Okay. In fact, Mr. Grice, the only entity that really complies with the 2004 plan bed need methodology would be the facility licensed as Piedmont Medical Center, correct?

A. Yes, based on strict reading of these standards.

Q. Let's look at page 15 on the plan, II-15.

Look under Clarendon County, please, if you could just pull that out for me.

A. Clarendon County.

Q. I don't see Clarendon County. Why don't we news -- go back to II-14. Look at Clarendon County up there and pull that out on II-14, please, ma'am. Just

Q. So an applicant to be approved has to the first comply with the State Health Plan?

A. That's correct.

Q. And if you have competing applicants, then they also have to comply with goals, requirements, purposes of -- when it says the article, that's the CON Act, right?

A. Yes, ma'am.

Q. Okay. Now, look at section 44-7-130, subparagraph 5. The definition of competing applicants.

A. Okay.

Q. Now, competing applicants means two or more persons or healthcare 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 application, if approved, would exceed the need for the services or facilities.

Did I read that correctly?

A. Yes, ma'am.

Q. Okay. Now, in order to be competing applicants, each of the applicants has to be approvable, doesn't it?

A. Not necessarily in my opinion. I mean, there

could be -- not necessarily talking about State Health Plan now. But there could be some compelling reason an applicant could have some severe problem, financial problems, could not get financing where it would not be able to be approvable but yet applies.

Q. Let's go back to the State Health Plan. Now, first off we know unless an applicant complies with the State Health Plan, it cannot be approved, correct?

A. That's correct.

Q. In this case the only applicant that the department found that could be approvable was Piedmont Medical Center because they gave the beds to Fort Mill Medical Center, right?

A. That's correct.

Q. Okay. Therefore, Presbyterian and Carolinas were not approvable, were they?

A. No, ma'am, not under this situation.

Q. Therefore, they could never be competing applicants, could they?

A. They applied to be competing applicants. They submitted their application to meet the requirement to be competing. Not necessarily that definition, but the definition in the regulations where competing applicants, if they want to compete, must apply within 15 days after the first applicant gos to

the State Register.

Q. Is there another definition of competing applicant in either the CON Act or the regulations other than this section?

A. No. But here again, Presbyterian and Carolinas had access to the regulation. They did apply to be competing and basically at the time that we accepted their application, you know, we were trying to be open and not necessarily be closed regarding the health plan. And we did accept them as competing applicants.

Q. But you shut the door and said they couldn't be approved, didn't you, under the plan?

A. We did in the decision letter, that's correct.

Q. And so they could not be competing applicants as defined under the CON Act in the regs, could they?

A. Well, when we look at that definition, it says, who apply in the time frame, in which they did, whose applications exceed the need. It certainly would exceed the need.

Q. But they couldn't be approved, so it wouldn't exceed the need, would it, Mr. Grice? If you have one applicant that meets the 64 bed need and you have two that don't meet the requirements of the plan, they

can't be approved, can they?

A. No. If we had denied Piedmont or Fort Mill Medical Center, we would have had to deny all the projects based on our final analysis.

MS. CRUM: Your Honor --

THE COURT: It looks like a good time to break. So why don't we reconvene tomorrow morning, Mr. Grice.

(The hearing recessed.)

Ms. Fechtel, but I thought about not even addressing the plan, but I did.

Q. You said, Mr. Grice, you said many things could have happened during the review process. Other than the State Health Plan, the board changing the plan, what could have happened during the review process, using your interpretation of the plan, that would have made either Presbyterian or Carolinas approve the plan?

A. Well, here again, this is based on what could have happened in my opinion, if for some reason Piedmont Medical Center had withdrawn, if Amisub would have withdrawn, we would have had three applications left.

Technically if we looked at it, there would have been an approval based on what we discussed here, but it's possible, you know, whatever might have happened, if Tenet Healthcare had been sold or whatever, it could have been that an applicant could have gone to Piedmont and said, can we do a joint venture? Can we have those beds? Now, I know there's some question about whether or not a Health Plan -- whether that would have been consistent with the actual standards of the Health Plan, but I think under some circumstances it

possibly could be.

Q. Mr. Grice, ^ under that scenario that's not competitive for applicants in the review cycle, would they, this scenario that you just gave us?

A. I'm sorry, what was that again?

Q. If the scenario that you -- the scenario that you just gave us, if somebody wanted to come in and do a joint venture or something like that, they wouldn't have been competitive applicants in the review cycle, would they?

A. No. But let's say this. They were competitive and let's suppose a month before the decision -- let's say -- this is a hypothetical. If for some reason Piedmont ^ renewed their application, we would have three applications. Those applicants would have made whatever decisions. They could decide to withdraw themselves, reapply or whatever, but, I mean, I don't think -- I don't think we are for -- for me to make that kind of determination that early, and as I said, my goal was to review them competitively which I did.

Q. One last question. Under the plan as you interpret it, there is no way that Presbyterian

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.

Q. Were you consulted on making the decision who to award the York County CON to?

A. Not really.

Q. When I say York County CON, do you understand --

A. Do you mean the three or four applications we had for York County?

Q. That all applied to build a new facility.

A. Correct.

Q. Great. Okay. Did anyone solicit your opinion in determining who to award the CON to?

A. Probably not.

Q. Do you recall anybody asking you?

A. No.

Q. Were you aware of the decision to award the Certificate of Need to Fort Mill Medical Center before it was awarded?

A. I don't know if I was or not.

Q. Okay. Is one of your job responsibilities to assign Certificate of Needs as they are received to

STATE OF SOUTH CAROLINA

BEFORE THE 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 **ERRATA** **Renewed Motion for Summary Judgment of Petitioner Presbyterian Hospital-York, LLC and Memorandum in Support**

Presbyterian Healthcare System d/b/a Presbyterian Healthcare, LLC ("Presbyterian") hereby submits this Errata to the Court to correct an error on page 9 of Presbyterian's Renewed Motion for Summary Judgment and Memorandum in Support, which was filed with the Court on Monday, September 28, 2009.

The first full paragraph on page 9 reads:

> The Plan as written calculates bed need for individual South Carolina hospital facilities and not the need for the South Carolina population, i.e. the "public need." The plain language of the CON Act makes the existing licensed hospital facility, in this case Piedmont, the sole proprietor of the generated bed need. Therefore, no other entity can compete with Piedmont to access the bed need because no other entity can be approved.

It should be corrected to read:

> The Plan as written calculates bed need for individual South Carolina hospital facilities and not the need for the South Carolina population, i.e. the "public need." The plain language of the Plan makes the existing licensed hospital facility, in this case Piedmont, the sole proprietor of the generated bed need. Therefore, no other entity can compete with Piedmont to access the bed need because no other entity can be approved.

[signature on following page]

Respectfully submitted,

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

September 29, 2009
Columbia, South Carolina

stated: "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." See PHY Ex. 12, p. 851. In fact, the Plan provides that the purpose of the Plan is to outline "the need for medical facilities and services in the State." DHEC Ex. 1, p. I-2.

The Plan as written calculates bed need for individual South Carolina hospital facilities and not the need for the South Carolina population, *i.e.* the "public need." The plain language of the Plan makes the existing licensed hospital facility, in this case Piedmont, the sole proprietor of the generated bed need. Therefore, no other entity can compete with Piedmont to access the bed need because no other entity can be approved.

The adoption and application of the Plan conflicts with and nullifies portions of the CON Act exceeds DHEC's authority. The clear and unambiguous language of the CON Act and Regs requires that the Plan identify the need for hospitals, so that applicants can file competing applications, each of which complies with the Plan, and the Department can choose the applicant that most fully complies with the other Project Review Criteria identified by the Department during the CON review process. To have a Plan where only Piedmont complies with the bed need flies in the face of the express CON Act legislative purpose and requirement of having applicants compete to fill the additional bed need (be in a state of rivalry to compete for patients).

The Decisions are void ab initio in that they are based upon a Plan that does not comply with the CON Act. The Decisions should be reversed and the applicants, to the extent that each so chooses, should be allowed to apply under a South Carolina Health Plan[3] that complies with the purposes and requirements of the CON Act. See South Carolina Cable Tel. Ass'n v. Pub. Serv. Comm'n of South Carolina, 313 S.C. 48, 437 S.E.2d 38 (holding that the PSC exceeded its statutory

[3] The 2008-2009 South Carolina Health Plan ("2008 Plan") acute hospital bed need standards were changed to correct the unintended consequences of the Plan and to make it clear that any entity can apply and be approved for any additional bed need in a county.

STATE OF SOUTH CAROLINA

BEFORE THE ADMINISTRATIVE LAW COURT

The 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 **ORDER** **1. GRANTING RESPONDENT AMISUB'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND** **2. GRANTING PETITIONERS' MOTION FOR SUMMARY JUDGMENT AND REMANDING CASE**

THE HONORABLE CAROLYN C. MATTHEWS

DECEMBER 9, 2009

FILED

DEC 9 2009

SC ADMIN. LAW COURT

APPEARANCES:

M. Elizabeth Crum, Esquire
Pamela A. Baker, Esquire
Ariail B. Kirk, Esquire
For Petitioner Presbyterian Healthcare System d/b/a Presbyterian Hospital-York, LLC

Douglas M. Muller, Esquire
Trudy H. Robertson, Esquire
Robert E. Summer, IV, Esquire
For Petitioner The Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas HealthCare System

Stuart M. Andrews, Jr., Esquire
Daniel J. Westbrook, Esquire
Holly G. Gillespie, Esquire
For Respondent Amisub of South Carolina, Inc. d/b/a Piedmont Healthcare System d/b/a Fort Mill Medical Center

Nancy S. Layman, Esquire
for Respondent South Carolina Department of Health and Environmental Control

I. RESPONDENT AMISUB'S MOTION FOR PARTIAL SUMMARY JUDGMENT

A. Issue: Is Amisub a "competing applicant" in this case?

Regulation 61-15 § 103(6) provides that "[a]ll applications received by the Department within fifteen (15) days of publication of the Notice of Affected Persons in the State Register of the first application(s) will be considered to be competing." On January 24, 2005, Amisub filed its CON application for 64 beds. On March 11, 2005, Presbyterian, Carolinas, and Hospital Partners of America ("HPA") filed 64-bed applications within the regulatory time frame, so that there were then four competing applicants. On September 23, 2005, Notice of Affected Persons was published in the State Register for Presbyterian, Carolinas, and HPA.

After discussions with DHEC staff, on October 6, 2005, Amisub withdrew its application. When this occurred, the other three applicants succeeded Amisub and automatically became the first applicants in the competitive review process. Also on October 6, 2005, Amisub submitted a replacement application for a 100 bed hospital. Because the filing of the 100-bed application occurred within 15 days of the State Register notice on September 23, Amisub satisfied the regulatory requirements necessary to be considered a competing application.

B. The Department Considered and Rejected Petitioners' Argument.

Petitioners' contention that Amisub's application should be disregarded is not new. Presbyterian raised it during the staff's review. Nancy S. Layman, the Department's Chief Attorney for Health Regulation, responded with a legal opinion rejecting Presbyterian's argument. Presbyterian raised it again in its request for review to the Department's Board, a request the Board

declined. Finally, both Presbyterian and Carolinas raised it before this Court in their previous summary judgment motions.

Amisub did not withdraw its 64-bed application and re-file without discussing the issue thoroughly with staff. During these discussions, the staff explained the Department's practice of applying Regulation 61-15 § 103(6) to pending CON applications in order to make determinations about competing applicants. The staff also explained how withdrawals and re-filings may affect such determinations. Amisub representatives inquired specifically whether the Department would accept and consider their application "competing" if Amisub withdrew its 64-bed application and simultaneously submitred a 100-bed application. Amisub was informed it would be consistent with the Department's practice to accept the application and consider it a competing application with those of Carolinas, Presbyterian, and HPA, as long as Amisub's application was filed within 15 days of notice being published in the State Register that the other applications had been deemed complete.

Amisub relied heavily on these discussions with staff in deciding to withdraw its 64-bed application and replace it with a 100-bed application. Had the staff not taken the position that it would permit Amisub to withdraw and re-file an application that the Department would treat as competitive with the other three applications, Amisub would not have elected that course of action.

In a letter dated November 10, 2005, Ms. Layman set forth the Department's legal position concerning the effect of the withdrawal of an applicant that filed prior to the submission of competing applicants and then re-filed:

> 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.

DHEC witnesses' testimony is consistent with the legal position set forth in Ms. Layman's letter. Mary Fechtel, Assistant Deputy Commissioner of Health Regulation and CON reviewer in this case, testified that she agreed with the position provided in Ms. Layman's November 10, 2005 letter and verified that it is the position of the Department. Ms. Fechtel testified further that when Amisub withdrew its 64-bed application, it was no longer part of the process and the other York County applications became the first applicants:

Ms. Fechtel: Once its (sic) withdrawn, it's no longer a part of the process.

Mr. Westbrook: It's dead, right?

Ms. Fechtel: It's dead.

Mr. Westbrook: All right. And at that point in time, consistent with Ms. Layman's letter, what succeeds as the first application in the review process?

Ms. Fechtel: The other three applications.

Mr. Westbrook: Since they all filed on the same day?

Ms. Fechtel: At the same time.

Joel Grice, retired Bureau of Health Facilities and Services Development, testified that it was the Department's practice to allow an applicant to withdraw and re-file its application. Furthermore, Ms. Fechtel recalled the meeting during which the withdrawal issue was discussed with Mr. Grice:

Ms. Crum: Ms. Fechtel, when did you first find out that FMMC was going to withdraw its January 2005 64-bed CON application and submit a 100-bed application?

Ms. Fechtel: Probably a week or so before they did it.

Ms. Crum: So sometime right after the Notice to Affected Persons was published in the State Register on September 23, 2005?

Ms. Fechtel: Right. They came in to discuss it with Mr. Grice, and I remember thinking in my mind, I don't know how anybody's going to get an application done and make this time line.

Ms. Crum: Did they actually discuss it with you, the fact –

Ms. Fechtel: I was – I was in the office with Mr. Grice when it was discussed, yes.

. . .

Ms. Fechtel: That was the only conversation I remember. I vaguely remember Mr. Stewart saying – Mr. Stewart – Mr. Andrews giving – saying they were giving that some consideration and asking Mr. Grice his opinion of doing that and he told them they could do that.

Lastly, when asked about the timeline of events related to the application filings and notice in the State Register, Leon Frishman, retired Deputy Commissioner for Health Regulations, replied that he could not testify to the issue because he did not know and that Mr. Grice or Ms. Fechtel should be asked instead.

Therefore, based upon Regulation 61-15 § 103(6), Ms. Layman's letter interpreting the Regulation, and the testimony of the DHEC witnesses, Amisub's 100-bed application meets the definition of "competing applicant." Upon its withdrawal of the 64-bed application, Amisub was no longer the first applicant. Because Amisub submitted its 100-bed application within 15 days of the State Register notice on September 23, its application was properly deemed to be "competing."

C. **DHEC's Interpretation of Its Own Regulation is entitled to deference.**

The Department's position reflects a reasonable construction of the regulation. Moreover, it is an interpretation DHEC applied in a previously contested matter. The decisions of a state agency with respect to interpreting its own regulations are entitled to great deference. *White v. S.C. Dep't of Health and Envtl. Control*, No. 04-ALJ-07-03570-CC, 2005 WL 3694238 at *3 (Dec. 30, 2005); *see also S.C. Coastal Conservation League v. S.C. Dep't of Health and Envtl. Control*, 380 S.C. 349, 362, 669 S.E.2d 899, 906 (Ct. App. 2008) ("This Court, although not bound by the decision, will ordinarily defer to the opinion of a state agency as to the interpretation of a statute it is charged with

the duty of enforcing."); *Open MRI of Charlotte, Inc. v. S.C. Dep't of Health and Envtl. Control*, No. 97-ALJ-07-0706-CC, 1999 WL 186848 (March 5, 1999) ("DHEC is the sole state agency responsible for implementation of the CON program, its interpretations of the Plan and regulations concerning administration of the Certificate of Need Program must be accorded great deference and will not be overruled absent compelling reasons."); *Safety Disposal Systems, Inc. v. S.C. Dep't of Health and Envtl. Control*, No. 01-ALJ-07-0122-CC, 2002 WL 1354623 at *26 (June 5, 2002) (quoting *Lloyd v. South Carolina Dep't of Health and Envtl. Control*, 328 S.C. 419, 428-29, 491 S.E.2d 592, 597 (Ct. App. 1999)) ("'It is well established that construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons.'"); *Joe's Custom Brickwork, Inc. v. S.C. Dep't of Revenue*, No. 05-ALJ-17-0112-CC, 2005 WL 2277955 at *4 (Aug. 23, 2005) (holding that the same deference applied to an agency's construction of a statute should apply to the implementation of the agency's practice, absent any specific restrictions to the contrary, or a clear abuse of discretion.).

DHEC's decision to issue the permits must be given deference. "Courts defer to the relevant administrative agency's decisions with respect to its own regulations unless there is a compelling reason to differ." *Brownlee v. South Carolina Dept. of Health and Environmental Control*, 382 S.C. 129, 676 S.E.2d 116 (S.C.,2009). The decisions of a state agency with respect to interpreting its own regulations are entitled to great deference. *See S.C. Coastal Conservation League v. S.C. Dep't of Health and Envtl. Control*, 380 S.C. 349, 362, 669 S.E.2d 899, 906 (Ct. App. 2008) ("This Court, although not bound by the decision, will ordinarily defer to the opinion of a state agency as to the interpretation of a statute it is charged with the duty of enforcing."); *Lloyd v. South Carolina Dep't of Health and Envtl. Control*, 328 S.C. 419, 428-29, 491 S.E.2d 592, 597 (Ct. App. 1999)) ("'It is well

established that construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons.'").

A reviewing court "may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact." S.C. Code Ann. § 1-23-380(5) (Supp. 2008). The DHEC Board's findings are presumptively correct, and therefore, the challenging party bears the burden of proving its decision was erroneous in view of the substantial evidence in the record. *Leventis v. S.C. Dep't of Health & Envtl. Control,* 340 S.C. 118, 136, 530 S.E.2d 643, 653 (Ct. App. 2000). *See also*; *Too Tacky Partnership v. South Carolina Department of Health and Environmental Control and Mayo Read, Jr.,* Op. No. 4616 (S.C. Sup. Ct. filed September 9, 2009) (Shearhouse Adv. Sh. No. 40 at 78).

CONCLUSION

Based on the above analysis, Respondent Amisub is a competing applicant in this Certificate of Need case and its Motion for Partial Summary Judgment is **Granted.**

II. PETITIONERS' MOTION FOR SUMMARY JUDGMENT

STATEMENT OF THE CASE

This contested case arises from decisions by the South Carolina Department of Health and Environmental Control ("Department" or "DHEC") to approve a Certificate of Need ("CON") for one applicant to construct a proposed hospital in Fort Mill, South Carolina, and to deny Certificates of Need to the other applicants. The legal issue is whether the 2004-2005 South Carolina State

Health Plan[1] ("Plan") was properly interpreted by the Department to allow only the existing hospital to access the additional general acute hospital bed need identified in the Plan and apply to construct a new hospital, to the exclusion of all other applicants.

After hearing testimony, reviewing exhibits and hearing legal argument, I find that there are no genuine issues of material fact and conclude, as a matter of law, that the Department committed a error of law and exceeded its statutory authority by its application of the Plan. Further, I find that the error of law was so pervasive that it infected the entire decision-making process. Thus, a remand to the Department is the appropriate remedy under the circumstances.

PROCEDURAL HISTORY

On November 22, 2004, Fort Mill Medical Center, Inc. ("FMMC") filed a CON application under the Plan for the construction of a sixty-four (64) bed acute-care hospital to include one (1) diagnostic cardiac catheterization laboratory, one (1) magnetic resonance imaging ("MRI") unit and one (1) computed tomography ("CT") scanner, to be located at the intersection of SC Highway 160 and Highway 21 Bypass, Fort Mill, South Carolina ("2004 Application"). On January 25, 2005, the 2004 Application was withdrawn without being deemed complete, without notice to affected parties being filed in the State Register and without any other party filing a competing application.

On January 25, 2005, — the same day that the 2004 Application was withdrawn — Amisub of South Carolina, Inc. ("Amisub") d/b/a FMMC filed its application to construct and operate a sixty-four (64) bed acute-care hospital ("First 2005 Application") in Fort Mill, York County. On February 25, 2005, a notice to affected persons was published in the State Register stating that the First 2005 Application had been deemed complete.

On March 11, 2005, three (3) applicants filed competing applications to construct and operate

[1] The applications were filed under the Plan. Regulation 61-15 § 504 provides that the applications will be reviewed under the plan in effect when the applications are filed.

a sixty-four (64) bed hospital in York County. These three (3) applicants were Petitioner Presbyterian Healthcare System d/b/a Presbyterian Hospital York, LLC ("Presbyterian"); Petitioner The Charlotte-Mecklenburg Hospital Authority, d/b/a Carolinas HealthCare System ("Carolinas"); and Hospital Partners of America[2] ("HPA"). Presbyterian's CON application, Carolinas' CON application and HPA's CON application were subsequently deemed by the Department to be "competing" with the First 2005 Application. On September 23, 2005, a notice to affected persons was published in the State Register, which indicated that the three (3) CON applications of Presbyterian, Carolinas and HPA were deemed complete.

On October 6, 2005, FMMC withdrew its First 2005 Application, and submitted on the same day a CON application for a one hundred (100) bed hospital in York County, consisting of sixty-four (64) general acute-care hospital beds and thirty-six (36) licensed general acute hospital beds to be transferred from Piedmont Medical Center in Rock Hill to the new, proposed facility in Fort Mill ("Second 2005 Application").

On May 30, 2006, the Department issued four (4) substantially identical decision letters ("Decision Letters") to the applicants. In these Decision Letters, the Department indicated that it was granting a CON to FMMC for a one hundred (100) bed hospital and denying the applications of Presbyterian, Carolinas and HPA for sixty-four (64) bed hospitals. The Department's decisions regarding FMMC, Presbyterian and Carolinas are the subject of this contested case.

After extensive discovery and several pre-trial hearings on various motions filed by all the parties, including previous Motions for Summary Judgment, the case proceeded to a contested case hearing beginning on September 9, 2009. After the conclusion of the Petitioners' collective cases in chief, on September 28, 2009, Presbyterian filed its Renewed Motion for Summary Judgment and on

[2] HPA did not seek contested case review of the Department's decision.

September 29, 2009, Carolinas filed its Renewed Motion for Summary Judgment. On October 6, 2009, Respondents filed a Motion for Involuntary Non-suit. These motions were heard before the Court on October 19, 2009, at which time I denied Respondents' Motion for Involuntary Non-suit and granted Petitioners' Renewed Motions for Summary Judgment. The basis for my ruling is set forth below.

FACTS

The following facts are undisputed. Amisub is a South Carolina corporation and the licensee of Piedmont Medical Center in Rock Hill, South Carolina. Amisub's sole shareholder is Tenet Medical Systems, Inc. Tenet Medical Systems, Inc. is ultimately owned by Tenet Healthcare Corporation, a Delaware corporation ("Tenet"). Tenet is a for-profit health care system publicly traded on the New York Stock Exchange. Piedmont Medical Center is an existing two-hundred and eighty-eight (288) bed general acute-care hospital located at 222 South Herlong Avenue, Rock Hill, York County, South Carolina. Piedmont Medical Center is the only general acute-care hospital located in York County.

Presbyterian is a South Carolina not-for-profit limited liability corporation. Presbyterian is wholly owned by Novant Health, Southern Piedmont Region, LLC, a North Carolina not-for-profit corporation which, in turn, is wholly owned by Novant Health, Inc., a North Carolina not-for-profit corporation.

Carolinas is a public entity existing and organized pursuant to the North Carolina Hospital Authorities Act, N.C. Gen. Stat. § 131E-15 et seq. and is a body politic and corporate.

The Department is an agency of the State of South Carolina, overseen by the Board of Health and Environmental Control ("Board"). The Board and Department are established pursuant to S.C. Code Ann. § 44-1-20 (Rev. 2002).

The CON decisions that are the subject of this contested case were all made under the Plan. The bed need methodology for determining whether there is a need for additional general acute hospital beds is set forth in section G.1.(A)(4)(a)-(c) of the Plan. The Plan shows a general acute-care hospital bed need of sixty-four (64) additional acute-care beds ("Bed Need") for Piedmont Medical Center, the only hospital in York County. Regarding the Bed Need in York County, the parties have stipulated as follows:

> The Plan shows a bed need for 64 additional acute care hospital beds for Piedmont Medical Center in York County. The parties agree that there is a bed need for 64 acute care hospital beds but disagree as to who is entitled under the Plan to be awarded those beds, irrespective of other Reg. 61-15 § 802 project review criteria.

Therefore, there is an undisputed need for sixty-four (64) additional acute-care beds in York County, South Carolina.

The Department's Decision Letters found:

> [T]he 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 (sic). 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 (sic), 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.

The Department determined that because Amisub was the licensee of Piedmont Medical Center and would be the licensee of only FMMC, FMMC complied with the Plan Bed Need. The FMMC hospital facility would have to be separately licensed. Dennis Gibbs, the Department's Director of the Division of Health Licensing, testified that the Fort Mill Medical Center proposed by Amisub in the Second 2005 Application was a distinct "facility" that would have to be separately licensed from the existing Piedmont Medical Center in Rock Hill and that it would be a distinct facility from the existing Piedmont facility in Rock Hill.

Finally, the Department found that, with the exception of 24A S.C. Code Reg. 61-15 § 802.1 (compliance with the Plan), FMMC, Presbyterian and Carolinas each complied with all of the other Project Review Criteria applicable to the projects.

STANDARD OF REVIEW

It is settled law in this State that the denial of a summary judgment motion is interlocutory, and the trial court is entitled to reconsider its initial denial of summary judgment or it can entertain a subsequent motion for summary judgment. See Blyth v. Marcus, 335 S.C. 363, 367, 517 S.E.2d 433, 434 (1999). The denial of a motion for summary judgment does not establish the law of the case. Brown v. Pearson, 326 S.C. 409, 416-17, 483 S.E.2d 477, 481-82 (Ct. App. 1997).

Rule 68, RPALC, provides that "[t]he South Carolina Rules of Civil Procedure may, where practicable, be applied in proceedings before the Court to resolve questions not addressed by these rules." Rule 56, SCRCP, provides that summary judgment shall be granted if it is shown" that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." See also Gadson v. Hembree, 364 S.C. 316, 613 S.E.2d 533 (2005).

The issue of interpretation of a statute[3] 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"). In MRI at Belfair, LLC v. S.C. Dep't of Health and Envtl. Control, 379 S.C. 1, 664 S.E.2d 471 (2008), the South Carolina Supreme Court found that "[t]he issue whether the Plan standards satisfy the statutory requirements is a legal conclusion based on statutory interpretation principles. Thus, no factual findings are necessary to

[3] The Court recognized that the Plan itself is not a statute or regulation, having never been subject to the General Assembly's review. However, as discussed below, the Plan is adopted by the Board pursuant to the requirements of the CON Act and CON Regs.

determine compliance with § 44-7-180(B)." 379 S.C. 1, 7 n.4, 664 S.E.2d 471, 474 n.4. All parties have conceded that the interpretation of the Plan is a matter of law.

DISCUSSION

Petitioners assert that they are entitled to judgment as a matter of law because the Department's May 30, 2006 decisions violate the State Certificate of Need and Health Facility Licensure Act, S.C. Code Ann. § 44-7-110, et seq. (Rev. 2002) ("CON Act") and 24A S.C. Code Reg. 61-15 (Supp. 2009) ("CON Regs") and exceed DHEC's authority because there is no authority for the Department, through its Board, to adopt, interpret and apply the Plan so that only existing licensed hospitals in South Carolina are in compliance with the Plan. Such an interpretation would preclude the existence of competing applicants from which that the Department can choose the applicant that most fully complies with the goals and purposes of the CON Act and CON Regs, including the Project Review Criteria and other regulations, as required by the CON Act and CON Regs.

A. Purposes And Requirements Of The CON Act

The CON Act provides:

> 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. To achieve these purposes, this article requires:
>
> (1) the issuance of a Certificate of Need before undertaking a project prescribed by this article;
> (2) adoption of procedures and criteria for submittal of an application and appropriate review before issuance of a Certificate of Need;
> (3) preparation and publication of a State Health Plan;
> (4) the licensure of facilities rendering medical, nursing, and other health care.

S.C. Code Ann. § 44-7-120 (Rev. 2002) (emphasis added). The Department is designated as the sole state agency for control and administration of the granting of CONs, licensure of health care

facilities and other activities necessary to be carried out under the CON Act. See S.C. Code Ann. § 44-7-140 (Rev. 2002).

Pursuant to the CON Act, the Department is required to promulgate "substantive and procedural regulations considered necessary by the department . . . to carry out the department's licensure and Certificate of Need duties under this article, including regulations to deal with competing applications... ." S.C. Code Ann. § 44-7-150(3) (Rev. 2002) (emphasis added). The CON Act also provides for the adoption and content of the Plan. "The plan at a minimum must include: (1) an inventory of existing health care facilities, beds.... (2) projections of need for additional health care facilities, beds ... ." S.C. Code Ann. § 44-7-180(B) (Rev. 2002) (emphasis added).

No application can be approved unless it complies with the State Health Plan. 24A S.C. Code Ann. Reg. 61-15 § 802.1 (Supp. 2009); see also S.C. Code Ann. § 44-7-210(C) (Rev. 2002). The CON Act requires preparation and publication of a State Health Plan. See S.C. Code § 44-7-120(3) (Rev. 2002).

In the recent case of Dema v. Tenet Physician Services - Hilton Head, Inc., the South Carolina Supreme Court opined that the CON Act does not create a private right of action so that a civil suit can be brought against a hospital for injury resulting from DHEC's finding a violation of the CON Act. The Court found that "[i]f the overall purpose of the statute is to aid society and the public in general, the statute is not enacted for the special benefit of a private party." Dema, 383 S.C. 115, 121-122, 678 S.E.2d 430, 433 (citation omitted). The expressly stated clear legislative intent of the CON Act is "to advance the quality of healthcare provided in this State for all people receiving the care, not for a particular individual." Id. Likewise, the need here is for all people receiving hospital care, not for those receiving care at a particular hospital. I find that the clear and

unambiguous legislative purpose of the CON Act is to serve the people of South Carolina. The CON Act was not enacted for the benefit of any single health care provider; thus, an interpretation of the Plan that the Bed Need is for a specific existing hospital, not the general public, is contrary to the legislative purposes of the CON Act.

B. Definition Of "Competing Applicants" Under The CON Act

The CON Act defines "competing applicants" as "two or more ... health care facilities as defined in this article who apply for Certificates of Need to provide ... 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) (emphasis added). In other words, to be considered a competing application, the applications have to meet the criteria of S.C. Code Ann. Section 44-7-130(5), which includes being approvable under the Plan.

"Compete" is defined as: "To strive or contend with another or others, as for profit or a prize ..." American Heritage Dictionary, 2nd College Ed. (1985). Merriam-Webster Online defines "competing" as: "to strive consciously or unconsciously for an objective (as position, profit, or a prize): be in a state of rivalry. <companies competing for customers>." http://www.merriam-webster.com/dictionary/competing (September 28, 2009).

Section 44-7-210(C) provides, in pertinent part: "In the case of competing applications, the department shall award a Certificate of Need, if appropriate, on the basis of which, if any, most fully complies with the requirements, goals, and purposes of this article and the State Health Plan, Project Review Criteria, and the regulations adopted by the department." (Emphasis added). If only Piedmont Medical Center can be approved under the Plan, as DHEC found in the Decision letters,

there could never be competing applications for the York County Bed Need from which the Department could make a choice to award a CON.

A clear and unambiguous statutory requirement of the CON Act is to allow applicants to compete for the Bed Need identified in the Plan so the Department can determine, through review under the Project Review Criteria contained in the CON Regs, which competing applicant, if any, "most fully complies with the requirements, goals, and purposes of this article and the State Health Plan, Project Review Criteria, and the regulations adopted by the department", and I so conclude. In other words, it is the Department's statutory responsibility under the CON Act to choose which application offers a hospital that will "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." Moreover, the Department must determine which will comply with the CON Regs, including the Project Review Criteria.

I find that the Department's interpretation of the Plan in which only an existing hospital (or one affiliated with that hospital) can comply with the Plan is contrary to the CON Act's and CON Regs' requirement that applicants be allowed to compete for the public need for the Bed Need in the Plan.

C. The Scope Of The Department's Authority Under The Act

As an agency of the State and a creature of statute, DHEC's authority is dependent upon statute – in this case, the CON Act and the CON Regs. As creatures of statute, the Department, its Board and this Court are possessed only with those powers specifically delineated or necessarily implied in their enabling legislation. See City of Columbia v. Bd. of Health and Envtl. Control, 292

S.C. 199, 355 S.E.2d 536 (1987). Respondents argue that the Department was exercising its implied authority under the CON Act in adopting and interpreting the plan so that only an existing hospital could comply with the Bed Need methodology and satisfy the Bed Need shown in the Plan.

When determining what powers or authority an agency possesses by necessary implication, the basic premise is that:

> [s]uch implication, inference, or presumption, as the fact may be, is always indulged to supply a deficiency, and is never permitted to contradict the act, grant, or instrument whatsoever involved.

See Sutherland Statutes and Statutory Construction, § 55:3 (emphasis added). Any implication which is inconsistent with the spirit and purpose of the CON Act must be denied. Id. at § 55.4. In Mungo v. Smith, the South Carolina Supreme Court held:

> Such (administrative) bodies, being unknown to the common law, and deriving their authority wholly from constitutional and statutory provisions, will be held to possess only such powers as are conferred, expressly or by reasonably necessary implication, or such as are merely incidental to the powers expressly granted. See 51 C.J. 36, 37, where among other things it is said: "Any reasonable doubt of the existence in the commission of any particular power should ordinarily be resolved against its exercise of the power."

Mungo v. Smith, 289 S.C. 560, 564, 347 S.E.2d 514, 517 (1986) (emphasis in original) (emphasis added).

There is no language in either the CON Act or the CON Regs which makes it "reasonably necessary" for the Department to interpret the Plan so that only Piedmont Medical Center complies with the Bed Need. The Department's power under the CON Act does not (1) authorize it to interpret the Plan's Bed Need methodology so that only existing hospitals comply with that methodology and (2) allow Piedmont Medical Center, as the existing hospital, to serve as the gatekeeper that will determine the single applicant that the Department approves. Because the Department interpreted the Plan so that only Piedmont Medical Center and FMMC comply with the

Plan Bed Need, the interpretation conferred a special benefit upon Piedmont Medical Center and FMMC in contravention of the CON Act's stated purposes to determine public need; thus, that interpretation exceeds the agency's statutory authority.

D. Petitioners Are Entitled To Judgment As A Matter Of Law Because The Department's Decisions Are Affected By Error Of Law.

The Department's Decision Letters interpreting and applying the Plan's Bed Need methodology are affected by error of law and the Department exceeded its statutory authority by interpreting the Plan so that only Piedmont Medical Center, as the existing hospital in York County, complied with the Plan Bed Need methodology so that only FMMC was eligible to be approved. The Plan, as a matter of law, must be construed so that Carolinas, Presbyterian and FMMC each comply equally with the Plan's Bed Need and 24 S.C. Code Reg. 61-15 § 802(1).

The cardinal rule of statutory construction is that the legislative intent must be ascertained and it must prevail. Gardner v. Biggart, 308 S.C. 331, 417 S.E.2d 858 (1992). In Hitachi Data Sys. Corp. v. Leatherman, a case involving a statutory interpretation of the South Carolina Code, the South Carolina Supreme Court found that:

> In 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.

309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992) (citations omitted). "On the other hand, where a statute is ambiguous, the Court must construe the terms of the statute." Wade v. Berkeley County, 348 S.C. 224, 229, 559, S.E.2d 586, 588 (2002) (citations omitted). "If the language of an act 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 .... An ambiguity in a statute should be resolved in favor of a just, beneficial, and equitable operation of the law, ... [and i]n light of its manifest purpose.

Georgia-Carolina Bail Bonds, Inc. v. County of Aiken, 354 S.C. 18, 25, 579 S.E.2d 334, 337-38 (Ct. App. 2003) (citations omitted).

In this case, the legislative purposes and intent are clear, and the CON Act requires that the Plan be consistent with the legislative purposes of the CON Act. See S.C. Code Ann. § 44-7-120(3) (Rev. 2002). Based upon the legislative purposes of the CON Act and CON Regs discussed above, the clear and unambiguous requirement of the CON Act is to allow applicants to compete for the public Bed Need identified in the Plan so the Department can determine, through review under the Project Review Criteria contained in the CON Regs, which competing applicant "most fully complies with the requirements, goals, and purposes of this article and the State Health Plan, Project Review Criteria, and the regulations adopted by the Department." The Department committed an error of law by interpreting the Plan in a manner contrary to the CON Act and CON Regs.

1. The Plan Language Is Ambiguous. I find that the Bed Need methodology in the Plan is ambiguous, as evidenced by the face of the Plan and by the varying Department staff Plan interpretations discussed below. When there is an ambiguity in the Plan and one interpretation complies with the legislative purposes and statutory requirements and the other does not, pursuant to Section 44-7-120(3) and to the principles of statutory construction, to the extent they provide guidance to this Court, the interpretation of the Plan must be that which complies with the purposes and requirements of the CON Act and CON Regs.

On its face, the Plan states that it calculates general acute care hospital Bed Need for individual hospitals, but the calculation formula uses the projected total population growth for each county to calculate the Bed Need for the hospital. Piedmont Medical Center is the only hospital in York County. The column labeled "Facility/County in the Plan on page II-14, which refers to "York Co" contains the stated Bed Need for 64 beds. Id. Based on the fact that the total population in

York County is used to determine Bed Need for the only hospital in a county, on the face of the Plan, one could conclude that the Bed Need in York County is for the entire county and any applicant seeking a CON to construct and operate a 64-bed hospital is in compliance with the Bed Need in the Plan.

Further, the testimony of the Department's witnesses demonstrates the ambiguities in the Plan. Prior to the 2003 South Carolina Health Plan ("2003 Plan"), the planning unit for additional general acute hospital Bed Need was the county. In the 2003 Plan, the planning unit was changed to the individual hospital, a change which was carried forward to the Plan. Mr. Whiteside, former Director of the Department Division of Planning and CON, testified that the Bed Need methodology sections of the 2003 Plan were changed in response to requests by several hospitals which focused on a provision in the 2001 South Carolina Health Plan ("2001 Plan") that allowed existing hospitals to add up to an additional fifty (50) beds as an "efficient addition" exception to the general rules requiring demonstration of county need. In response, the Department's health planning staff recommended changes to the language in the draft 2003 Plan that addressed general hospital Bed Need, primarily to address what Mr. Whiteside termed the "Florence Rule."

Using Florence County as an example, Mr. Whiteside testified that in some counties with multiple hospitals, the entire county might show that no beds were needed, while a particular facility within that County might have a demonstrated need. To address the "Florence issue," the formula for calculating Bed Need was unchanged, but changes were made to the text of the 2003 Plan to replace references to the county as the unit planning and to make individual hospitals the planning unit.

As Mr. Whiteside testified, the "county-wide" Bed Need formula used prior to 2003, in the 2001 Plan, is identical to the hospital Bed Need formula used in the Plan. The number of hospital

beds needed is calculated in the same manner. The only changes to the State Health Plan from 2001 to 2004-2005 were changes in some of the terminology; there was no change in the fundamental manner in which Bed Need was calculated.

In single hospital counties such as York County, the calculation for hospital Bed Need in 2001 is identical to the calculation made in 2004-2005, other than the fact that the variable numbers (such as projected population growth and occupancy rates) changed. In effect, the formula used to calculate hospital Bed Need methodology was unchanged from the 2001 Plan to the 2004-2005 Plan.

Mr. Frishman, the Department's Deputy Commissioner when the decisions were made, testified that he thought the Plan was ambiguous; that it was "silent" on the treatment of new hospitals; and that it should be interpreted so that any one of the applicants could comply with the Plan Bed Need.

Joel Grice, the former Director of the Department's Bureau of Health Facilities and Services Development, was ultimately responsible for making CON decisions (awards and denials) in South Carolina. Mr. Grice took the following actions regarding interpretation of the Plan during the review process:

1) issued a memorandum on January 25, 2005, in which he interpreted the Plan as stating that: "[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." At the direction of the Commissioner, this memorandum was rescinded.

2) told the news media that any applicant could apply and be approved for the Bed Need in the Plan.

3) testified that he changed his mind a couple of weeks before the May 30, 2006 Decision Letters and concluded that the Plan could only be interpreted to allow Piedmont Medical Center to be approved for the Bed Need.

Ultimately, at the conclusion of the review process, Mr. Grice issued the Decision Letters interpreting the Plan so that FMMC, through Piedmont Medical Center, was the only applicant that complied with the Plan Bed Need.

I find that, based both upon both the face of the Plan and the disparate interpretations the various Department witnesses had as to the interpretation of the Plan, the Bed Need methodology is ambiguous and must be interpreted in a manner that complies with the purposes and requirements of the CON Act and CON Regs.

2. Deference to the Agency Is Not Appropriate In This Case. Although deference is usually given to an agency's interpretation of its own statute and regulations, an agency's interpretation will be rejected if it conflicts with the language of the statute or regulation. Brown v. Bi-Lo, Inc., 354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003). South Carolina courts have long held that however clear the language is in a statute, the courts will not apply a construction that reaches an absurd result 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) ("If possible, the court will construe the statute so as to escape the absurdity and carry the intention into effect."); Catawba Indian Tribe of South Carolina v. State of South Carolina, 372 S.C. 519, 527, 642 S.E.2d 751, 755 (2007) (citations omitted). Respondents argue that the plain meaning of the words in the Plan provide that the Bed Need was generated by Piedmont Medical Center and therefore, only Piedmont Medical Center and FMMC can comply with the Plan.

In this case, the record is replete with evidence that there is no uniformity among the Department witnesses in terms of their interpretation of the Plan. While both Mr. Grice and Ms. Fechtel ultimately testified they believed it was clear that only Piedmont Medical Center (and, in turn, FMMC) complies with the Plan's Bed Need under Regulation 61-15 § 802.1, it took them well

over a year to arrive at that conclusion. As discussed above, Mr. Grice, with the approval of Mr. Frishman, as well as with the approval of the Department's Commissioner and General Counsel, issued a memorandum construing the Plan in such a manner that any hospital-applicant could comply with the Plan.

Mr. Grice later withdrew that memorandum, but Mr. Frishman continued to believe that it was the correct interpretation of the Plan. Some sixteen (16) months later, Mr. Grice finally made the determination that only FMMC, through Piedmont Medical Center's Bed Need, complied with the Plan. Significantly, Ms. Fechtel did not consult with either of the Department's health planners, Mr. Whiteside or Les Shelton, before making her recommendation to Mr. Grice that Presbyterian and Carolinas did not comply with the Plan, and Mr. Shelton testified that Mr. Grice never consulted with him before making this decision.

As discussed above, Mr. Frishman testified that the Plan should be interpreted so that any one of the applicants complied with the Plan Bed Need. Mr. Whiteside, who was responsible for the drafting and approval of the Plan, also testified that any applicant was approvable under the Plan, and further testified that "when we developed the Plan it was never designed to exclude anybody from being able to apply and/or be approved." While deferring to Mr. Whiteside,[4] Mr. Shelton also testified that it was never the intent of the Plan to exclude applicants from complying with the Plan need.

The Department's interpretation of the Plan nullifies the public need purpose of the CON Act and vitiates the "competing applicant" requirements. The Department's witnesses admitted at trial that, under the Plan as interpreted by the Department, there could never be competing applicants for additional acute hospital Bed Need. Mr. Frishman testified that if the only hospital which could

[4] Mr. Shelton testified that he deferred to his superior in the Department, Mr. Whiteside, in terms of the proper interpretation of the Plan.

meet the need in the Plan was Piedmont Medical Center, then there could never be competing applicants. Mr. Grice, who issued the Decision Letters, also admitted that you could not have "competing applicants" under his interpretation of the Plan.

Ultimately, in the face of this ambiguity, the Department issued the May 30, 2006 Decision Letters and concluded that "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 (sic)." The Decision Letters stated that because the sixty-four (64) additional Bed Need in the Plan was for Piedmont Medical Center, FMMC's application for a different hospital in a different location complied with the Plan.

In construing the Plan in the face of this ambiguity, it is compelling that both the CON Act and CON Regs define and contain provisions regarding the Department's responsibility to choose the competing applicant that best complies with the purposes and goals of the CON Act and the CON Regs. Clearly, the CON Act contemplates competition and the Department does not have the authority to interpret the Plan so that it nullifies the Department's statutory responsibility to choose among competing applicants.

As an agency of the State, the Department's interpretation and application of the Plan is bound by the legislative intent embodied in the clear and unambiguous language of the CON Act and the CON Regs. The Department's interpretation of the Plan vitiates the requirement that the Department review the CON applications, apply the Project Review Criteria and decide which competing applicant best complies with those criteria.

In fact, DHEC witness Mary Fechtel, the project reviewer for each applicant, testified that once she made the finding that only FMMC complied with the Plan, she did not address who best complied with the other Project Review Criteria. Ms. Fechtel specifically stated:

Q. Okay. Now, now once you made the finding that only Fort Mill Medical Center complied with the state plan, you didn't go back and make the finding as to who best complied with each of the other project review criteria, did you?

A. No, ma'am.

Ms. Fechtel's testimony makes it clear that the Department never conducted a true comparative analysis and did not make its determination "on the basis of which, if any, most fully complies with the requirements, goals, and purposes of this article and the State Health Plan, Project Review Criteria, and the regulations adopted by the department" as required by the CON Act. See S.C. Code Ann. § 44-7-210(C) (Rev. 2002) (emphasis added). Under the circumstances, I find that the Department committed an error of law and exceeded its statutory authority when it construed this ambiguous Plan so that only the existing hospital could comply with the Plan Bed Need.

Further, I find that the error of law was so pervasive that it infected the entire decision-making process. Ms. Fechtel testified that she was instructed to review the applications "competitively" and Mr. Grice testified that the applications were reviewed competitively. Yet, each witness decided that only the FMMC application could comply with the Plan; therefore, the Department did not make contemporaneous findings as to which applicant most fully complied with the purposes, goals and Project Review Criteria during the final decision making process.

This Court cannot evaluate the merits of which applicant best met the Project Review Criteria because the Department's Decision Letters failed to apply the Plan in accordance with the purposes, goals and requirements of the CON Act. Thus, the Department failed to carry out its statutory mandate under the CON Act and the CON Regs. to determine which applicant, if any, "most fully complies with the requirements, goals, and purposes of this article and the State Health Plan, Project Review Criteria, and the regulations adopted by the department." S.C. Code Ann. § 44-7-210(C) (emphasis added).

The Administrative Law Court, has the inherent power to remand a matter to the Department if it determines that there have been pervasive errors in the Department's review which would, if carried forward, unfairly place burdens on the party or parties affected by the error. See generally S.C. Code Ann. § 1-23-630 (Rev. 2005); 73A C.J.S. Public Administrative Law and Procedure § 461; 2 Am. Jur. 2d Administrative Law § 574; and South Carolina Baptist Hosp. v. S.C. Dep't of Health and Envtl. Control, 291 S.C. 267, 353 S.E.2d 277 (1987) (hearing officer's order of remand to the Department to develop criteria for proper review of competing applications). Accordingly, because I find that the Department's decisions were affected by error of law and exceeded the agency's authority, remand is appropriate in this case, so that the agency can make the determination as to which of the applicants "most fully complies with the requirements, goals, and purposes of this article and the State Health Plan, Project Review Criteria, and the regulations adopted by the department." S.C. Code Ann. § 44-7-210(C).

E. Petitioners' Other Grounds for Renewed Summary Judgment

Having concluded that a remand of the applications in this case is appropriate so that the CON applications of FMMC, Presbyterian and Carolinas may all be reviewed equally under the Plan as competing applicants, and so that the Department, having already determined that each applicant complies with the remaining Project Review Criteria, can determine which applicant most fully complies with the CON Act purposes and the Project Review Criteria, I find it unnecessary to address the other issues raised by Petitioners in their respective Renewed Motions.

ORDER

Because the CON Act defines the parameters of the Department's authority and contemplates that applicants can freely apply and be approvable to compete for a new hospital to meet the public need and other purposes of the CON Act and the CON Regs, I find the Department committed an

error of law and exceeded its statutory authority in interpreting and applying the Plan. The Department's decisions were affected by an error of law and exceeded the agency's authority because the Department interpreted and applied the Plan in a manner that precluded competing applicants from being approved in this case.

Accordingly, **IT IS HEREBY ORDERED** that the Petitioners' **MOTIONS FOR SUMMARY JUDGMENT** are **GRANTED** and that this matter is **DISMISSED** and **REMANDED** to the Department to take action consistent with the following instructions:

1. Review the Presbyterian, Carolinas, and FMMC CON applications to determine "which of the applicants, if any, most fully complies with the requirements, goals, and purposes of this article and the State Health Plan, Project Review Criteria, and the regulations adopted by the department" as required by S.C. Code Ann. § 44-7-210(C).
2. If any party wishes to provide information to the Department and update its application or provide information to address issues regarding changes concerning the other applicants (collectively, "Updated Information"), that Updated Information must be submitted not later than sixty (60) days from the date of this Order.
3. The Department has thirty (30) days from receipt of additional information from any party to request information from that party, and the party shall have thirty (30) days to provide the requested additional information to the Department. When the Department does not need any additional information for a party, it shall notify such party in writing within thirty (30) days of the submission of Updated Information.
4. The Department, at its sole election, may conduct a project review meeting to receive information and to question the parties.
5. The Department must reach decisions not more than sixty (60) days from the date that it

sent the last party a letter stating that the Department needs no additional information. However, in the spirit of 24A S.C. Code Reg. § 305 (2)(b), the review period may be extended by the Department for a maximum of sixty (60) days from the date of the last party letter.

6. Notice of the Department decisions must be served on counsel for each party the day of the decisions by hand, email, or facsimile to the addresses listed in each party's Prehearing Statement.

7. The Department's decisions must be made based upon the fact that each of the parties is in equal compliance with 24A S.C. Code Reg. 61-15 § 802.1. The Department's decisions must be accompanied by written findings as to each applicant's compliance with the relevant Project Review Criteria and which party best meets each project review criterion and the basis thereof.

AND IT IS SO ORDERED.

Carolyn C. Matthews
Administrative Law Judge

December 9, 2009
Columbia, South Carolina

This ... served ... all parties ... by ... interagency ... or attorney(s).
This 9th day of December 2009
By Shelly A. Keith

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 **MEMORANDUM OF PETITIONER CAROLINAS HEALTHCARE SYSTEM IN OPPOSITION TO RESPONDENT AMISUB'S MOTION TO ALTER OR AMEND**

Petitioner, Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas HealthCare System ("Carolinas"), submits this memorandum in opposition to the motion made by Respondent Amisub of South Carolina, Inc. d/b/a Piedmont Healthcare System d/b/a Fort Mill Medical Center ("Amisub") under Rule 59(e) of the South Carolina Rules of Civil Procedure to alter or amend the Court's order of December 9, 2009 (the "Order").

I. STANDARD OF REVIEW

Motions for reconsideration are permitted by Rule 29(D) of the Rules of Procedure for the Administrative Law Court ("RPALC"). See also Home Med. Sys. v. S.C. Dep't of Revenue, 382 S.C. 556, 677 S.E.2d 582 (2009) (holding that Rule 59(e) motions are permitted in South Carolina Administrative Law Court ("ALC") proceedings because, inter alia, a Rule 59(e) motion is necessary for issue preservation in administrative proceedings when a party raises an issue or argument, but the ALC does not rule on it).

Because of the interests in finality and conservation of judicial resources, Rule 59(e) motions should be granted sparingly. Rouse v. Nielsen, 851 F. Supp. 717, 734 (D.S.C. 1994) (analyzing analogous federal rule). There do not appear to be many South Carolina cases that have clearly addressed the court's standard of review of a motion made under SCRCP Rule 59(e).[1] When there are few or no South Carolina cases directly on point, the court may look to the construction placed on the corresponding federal rules of civil procedure. Coward Hund Const. Co. v. Ball Corp., 336 S.C. 1, 518 S.E.2d 56 (Ct. App. 1999) (interpreting successive motions under SCRCP Rule 59(e)). Federal courts recognize that Rule 59(e) motions seek an extraordinary remedy that federal district courts should use sparingly. See Pacific Ins. Co. v. American Nat'l Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998). Thus, under federal procedural law, a motion for reconsideration made under Rule 59(e) is limited in scope and is not to be used to rehash the same arguments and facts previously presented. Dockins v. Benchmark Communications, 180 F.R.D. 294, 295 (D.S.C. 1998), aff'd, 176 F.3d 745 (4th Cir. 1999); U.S. v. Carolina Eastern Chemical Co., 639 F. Supp. 1420 (D.S.C. 1986) (standard for motion to amend findings under Rule 52(b)). Accordingly, the federal courts have recognized only three grounds for revisiting a settled matter under this rule: (1) to accommodate an intervening change in the law; (2) to account for new evidence not previously available; and (3) to correct a clear error of law or prevent manifest injustice. Id. (quoting EEOC v. Lockheed Martin Corp., 116 F.3d 110, 112 (4th Cir. 1997)); see also Register v. Cameron & Barkley Co., 481 F. Supp. 2d 479 (D.S.C. 2007).

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[1] There are, of course, a number of cases in South Carolina that state that a party cannot use a motion to reconsider, alter or amend a judgment to present an issue that could have been raised prior to judgment, but was not. See, e.g., Fields v. Regional Med. Ctr., 363 S.C. 19, 609 S.E.2d 506 (2005). There are not, however, many South Carolina cases that address the standard of review of a Rule 59(e), SCRCP, motion.

The purpose of the rule restricting review on motions to reconsider is to ensure the finality of decisions and to prevent the practice of a losing party examining a decision and then plugging the gaps with additional arguments. See McMahan & Co. v. Donaldson, Lufkin & Jenrette Securities Corp., 727 F. Supp. 833 (S.D.N.Y. 1989). The proponent of such a motion is not supposed to treat the court's initial decision as the opening of a dialogue in which that party may then advance new facts and theories in response to the court's rulings. Id.

II. ARGUMENT AND CITATION OF AUTHORITY

Amisub's legal argument raises the same point made repeatedly by Amisub prior to the Order - that the Respondent South Carolina Department of Health and Environmental Control ("DHEC") was within its authority to issue the 2004-2005 State Health Plan and subsequently interpret that State Health Plan to mean that only an existing hospital in a county can apply for new hospital beds and that these beds can be located at another, affiliated hospital under the Certificate of Need ("CON") that is awarded. See Order, pp. 16-25.

Whether Amisub's argument is viewed as falling within DHEC's implied or express authority, it is clearly wrong – the South Carolina Certificate of Need Act, S.C. Code Sections 44-7-110, *et seq.* (the "CON Act") simply cannot be read to allow DHEC to issue a State Health Plan *or* to interpret one in such a way that it only provides for services offered by a single healthcare provider and no other, or that the single health care provider has a monopoly over health care services in any given county. It is an incorrect and unauthorized construction of the CON Act, and it is clearly wrong.

Furthermore, Amisub's unilateral attempt to limit the extent of the Court's ruling is unavailing. Amisub states that DHEC's alleged "practice" of permitting a hospital to locate beds

awarded to one hospital to a satellite hospital in another location was "an issue not reached in the Order," but in the Order the Court very clearly states that:

> *I find that the Department's interpretation of the Plan in which only an existing hospital (or one affiliated with that hospital) can comply with the Plan is contrary to the CON Act's and CON Regs' requirement that applicants be allowed to compete for the public need for the Bed Need in the Plan.*

Order, p. 16 (emphasis added).

Amisub acknowledges in its memorandum that these same arguments have been "repeatedly maintained" by it during the contested case proceedings. Re-arguing the same points is not allowed in a Rule 59(e) motion, and as Rule 29(D), RPALC, expressly states, a motion to reconsider is not a prerequisite to filing a notice of appeal. This Court is not and should not be required to re-review the very same arguments that Amisub has made throughout three (3) weeks of contested case hearings and which Amisub has made repeatedly prior to the issuance of this Court's Order. There are simply no grounds presented by Amisub under SCRCP Rule 59(e) that would allow this Court to alter or amend its previous rulings, and Amisub's Motion to Alter or Amend should be denied.

III. CONCLUSION

Based on the foregoing, Carolinas respectfully requests that Amisub's Motion to Alter or Amend the Court's Order of December 9, 2009 be denied in its entirety.

Respectfully submitted,

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January 6, 2009

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 AND CERTIFICATE OF THE DATE OF FILING/MAILING**

I hereby certify that I have, this 6th day of January 2010, served a copy of the foregoing ***Memorandum of Petitioner Carolinas Healthcare System in Opposition to Respondent Amisub's Motion to Alter or Amend*** upon the following via electronic mail and regular US Mail and have further filed a copy of the foregoing on this date with the Administrative Law Court via electronic mail and regular US mail, addressed to:

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ATTACHMENT C

(Carolinas' Reply Memorandum in Support of Motion for Reconsideration filed with the ALC on April 24, 2014)

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center d/b/a Fort Mill Medical Center, Petitioners, v. South Carolina Department of Health and Environmental Control and The Charlotte Mecklenburg Hospital Authority, d/b/a Carolinas Medical Center - Fort Mill, Respondents.	)	Docket No. 11-ALJ-07-0575-CC **REPLY MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION OF RESPONDENT THE CHARLOTTE-MECKLENBURG HOSPITAL AUTHORITY D/B/A CAROLINAS MEDICAL CENTER – FORT MILL**

Respondent The Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Medical Center-Fort Mill ("CHS") submits this Reply Memorandum in support of its Motion for Reconsideration of the Court's "Final Order and Decision" of March 31, 2014 (the "Order") pursuant to Administrative Law Court Rule 19(A).

I. ARGUMENT:

A. *The Dormant Commerce Clause Argument is Not Untimely.*

Piedmont argues in its Response that CHS failed to properly raise the dormant Commerce Clause argument at the contested case hearing, and therefore it is untimely. Nothing could be further from the truth. In CHS's Counter Proffer of Evidence filed with the Court on June 6, 2013, under the heading "Legal Argument" as Item #2, CHS submitted to this Court the arguments previously advanced to Judge Matthews in Presbyterian's Motion for Summary Judgment and Memorandum in Support dated May 18, 2007 (labeled in the proffer as "Attachment 8"), which specifically included the dormant Commerce Clause legal argument.

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Ironically, it is Piedmont that objected to the issue being raised at the contested case hearing, which is why the legal argument was raised by proffer. Piedmont's counsel took the unusual step of objecting during CHS's opening argument to legal arguments that Piedmont insisted were to be presented to the Court only through a proffer at the end of the hearing. The Court subsequently agreed with Piedmont that this legal argument would need to be presented by proffer. The colloquy between the Court and the parties' legal counsel was as follows:

> *MR. MULLER: In addition to that at the prior hearing, there was this issue of what you have referred to as, you've heard us refer to before, as the State Healthcare Plan issue. And that issue, very simply was that when we applied, we being Carolinas, applied and put in that 64-bed application. There was actually a memo issued by DHEC that said anyone can apply for this bed need, it's shown in this county as 64 beds. When Charlie Miller heard about it, Charlie Miller is Mr. Masterton's predecessor, he went to the Commission of DHEC with a state legislator, with either Mr. Andrews or Mr. Westbrook, I can't recall, and that memo was rescinded. So it was a memo saying anybody could apply, that memo was rescinded.* ***We, as an applicant, then went through that entire process for a year and a half, the result of which was that Joel Grice of DHEC, who is now an expert for Piedmont decided that we, being Carolinas, were not eligible. His argument was essentially, that the only eligible provider for new beds in the county was the provider that was already in the county, which would mean perpetually, Piedmont had a lock on York County. No one could ever move there. It was an argument that strained credulity and it's an argument that we fought and Presbyterian fought at length in the last year.*** *And what Judge Matthews ruled is that we were right, that it's a ridiculous argument to say that.*
>
> *MR. ANDREWS: Your Honor, excuse me for interrupting. I really apologize. I know it's absolutely against the pale, but Mr. Muller is making the arguments the flip side of what was addressed by the motion in limine, which we were not to go into the basis for the award of the hospital based on the Plan to Piedmont. He's arguing why that was improper, which certainly invites the counter. And I'm not sure why this is being presented at all. So I apologize for the interruption, but it was something that seemed to be completely off the record.*
>
> *MR. MULLER: Your Honor, this is an issue that is important, particularly for the credibility of these witnesses.* ***If they had made a decision before that is intended to eliminate competition in this county and that is our counter to this adverse impact argument. Our counter is that their whole focus is on eliminating competition which is exactly what they tried to do.*** *I think in an opening statement,* ***I'm allowed to educate the Court, which I know I had before on this issue. And what they're doing now is consistent with what they've done before.***

> ***They are trying to keep competition out of York County and to keep a stranglehold in York County. So that issue relates to this as much as anything else.*** *And I don't see how Mr. Andrews has the right to object during an opening statement to the presentation of information that is factual and that we're allowed to recite.*
>
> *MR. ANDREWS: If we're permitted an opportunity to explain the basis for the Department, then we're fine. I thought that was the determination that was not going to be something that was considered by you at all in this case.*
>
> *THE COURT: With regard to this, I did sign that motion that we're going to allow you to make that proffer at some point, and we're going to do that at the end of the proceeding with regard to the State Health Plan. And I understand what you're saying. Let's try to keep the references to the State Health Plan to a minimum if we could. Thank you, sir.*

(Tr. Trans. at 99:6 – 102:8) (emphasis added).

Consistent with the Court's ruling, CHS presented the argument by proffer. Clearly, it was Piedmont's own actions and objections that relegated this legal argument to the proffer and prevented it from being raised at the contested case hearing.

Piedmont further argues that because CHS's legal argument on the application of the dormant Commerce Clause differs from Presbyterian's argument, this Court does not need to consider it. Piedmont's strained interpretation of issue preservation is inconsistent with the prevailing law on this subject. The two (2) older cases cited by Piedmont, *Hickman v. Hickman*, 301 S.C. 455, 392 S.E.2d 481 (Ct. App. 1990), and *Patterson v. Reid*, 318 S.C. 183, 456 S.E. 2d 436 (Ct. App. 1995), both come from the South Carolina Court of Appeals and both pre-date the South Carolina Supreme Court's more expansive interpretation of SCRCP Rule 59 in *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004).

As the S.C. Supreme Court noted in *Elam*:

> *[O]ur rules contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or*

> *rule on it. A party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review. . . . [C]ivil procedure and appellate rules should not be written or interpreted to create a trap for the unwary lawyer or party, ... If a party is unsure whether he properly raised all issues and obtained a ruling, he must file a Rule 59(e) motion or an appellate court may later determine the issue or argument is not preserved for review. But in filing the motion, he may unwittingly forfeit the right to an appeal if an appellate court later determines the Rule 59(e) motion was unnecessary because he already had raised the issue and obtained a ruling. We strive to avoid an interpretation of procedural rules which routinely would place a party between the proverbial rock and a hard place."*

Id. at 24-25, 602 S.E.2d at 780-81 (citations omitted).

The prior contested case and the present one are in different postures. It would have been difficult to frame the legal arguments identically, but CHS has been consistent in arguing that any interpretation of the State Health Plan, CON Act, S.C. Reg. 61-15, and the Project Review Criteria that prevents a North Carolina health care provider from operating a hospital in York County and which favors the incumbent South Carolina provider is a violation of the dormant Commerce Clause. South Carolina Supreme Court's holding in *Elam* does not limit the issues that can be raised in a Motion for Reconsideration, and it is consistent with federal law on the subject. *See Yee v. City of Escondido*, 503 U.S. 519, 534-35 (1992) (once a constitutional claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below).

B. *Piedmont's Legal Argument Misconstrues the Dormant Commerce Clause.*

In its rebuttal to the substance of CHS's dormant Commerce Clause argument, Piedmont does not and cannot refute that the purpose and effect of the Court's Order is to discriminate against out-of-state competition. Rather, it attempts to excuse the discriminatory purpose and effect of the Order with a three-fold argument that such discrimination is permissible because the Order (1) could conceivably seek to limit outmigration from York County to other counties in

South Carolina and not just to North Carolina; (2) could discriminate against out-of-county healthcare providers as well as out-of-state providers; and (3) serves a legitimate local purpose. As explained below, these arguments are unconvincing and misconstrue the dormant Commerce Clause doctrine.

First, beyond the fact that the first two arguments are mere speculation and that the Court was very specific in its intent of reversing the outmigration of patients to North Carolina and not to other counties in South Carolina, it is immaterial under the dormant Commerce Clause analysis that the Court's Order could have the effect and purpose of interfering with competition from in-state providers and burdening intra-state economic activity and not just out-of-state providers and interstate commerce. It is well-settled that a discriminatory regulatory scheme will not pass constitutional muster just because it also discriminates against some in-state interests. For example, in *C & A Carbone, Inc. v. Clarkstown*, 511 U.S. 383 (1994), the United States Supreme Court invalidated a waste control ordinance under the dormant Commerce Clause that allowed only favored operators to process waste within the town limits. The Court stated that the "ordinance is no less discriminatory because in-state or in-town processors are also covered by the prohibition." *Id.* at 391. Similarly, in *Dean Milk Co. v. Madison*, 340 U.S. 249 (1951), the Supreme Court struck down a city ordinance that required all milk sold in the city to be pasteurized within five miles of the city lines. The Court found it "immaterial that Wisconsin milk from outside of the Madison area is subjected to the same proscription as that moving in interstate commerce." *Id.* at 354, n. 4. Accordingly, Piedmont's argument that the Order could be applied in theory to stop out-of-state and out-of-county outmigration and could apply equally to other non-incumbent in-state providers will not save the Order from its constitutional infirmity. Instead, the fact that the Court's Order applies the CON Act, State Health Plan, and

Project Review Criteria to purposefully interfere with competition and interstate commerce makes it *per se* discriminatory against interstate commerce, regardless of whether some in-state providers may similarly be limited in their competitive activities as well. *See Walgreen Co. v. Rullan*, 405 F.3d 50, 58-59 (1st Cir. 2005) (rejecting argument that certificate of need laws that protected existing pharmacies from competition did not violate the dormant Commerce Clause because they treated all "newcomers" equally, regardless of whether they were in-state or out-of-state); *Cloverland-Green Spring Dairies, Inc. v. Penn. Milk Mktg. Bd.*, 298 F.3d 201, 214 (3rd Cir. 2002) (noting that a statute may be invalid under dormant Commerce Clause "if it favors only a single or finite set of businesses").

Second, Piedmont's argument that the Order's purpose is to protect the York County healthcare system and therefore serves the "public needs purpose of the CON Act" neglects the second part of the analysis that must be conducted to determine whether a discriminatory law can survive the strict scrutiny test under the dormant Commerce Clause. Under the dormant Commerce Clause's "strict scrutiny analysis," a law or the application thereof that discriminates against interstate commerce is subject to "a virtually *per se* rule of invalidity." *Colon Health Centers of America, Inc. v. Hazel*, 733 F.3d 535, 543 (4th Cir. 2013). Under this analysis, a court must invalidate a challenged law "unless the state demonstrates 'both that the statute serves a legitimate local purpose, and that this purpose could not be served as well by available nondiscriminatory means.'" *Id.*

While Piedmont argues that the Court's Order has a legitimate local purpose, its response is devoid of any analysis about whether the local purposes asserted in the Order could not be served as well by available nondiscriminatory means. Moreover, the Court does not engage in any discussion of the lack of alternative, nondiscriminatory means that could accomplish the

purposes set forth in the Order. In awarding the CON to CHS in 2011, DHEC applied the CON Act, State Health Plan, and Project Review Criteria in a nondiscriminatory manner that fulfills the legitimate local purposes of the CON Act without unconstitutionally interfering with interstate commerce, as DHEC did not apply the adverse impact criteria in a manner designed to protect an existing provider from competition. While the CON Act may be designed to serve the legitimate local purpose stated in S.C. Code § 44-7-120, "restricting market entry does not serve that purpose." *See Medigen of Ky., Inc. v. Pub. Serv. Comm'n of W. Va.*, 985 F.2d 164, 167 (4th Cir. 1993). Accordingly, the Court should reinstate DHEC's decision and avoid the constitutional pitfall of awarding the CON to Piedmont for the purpose of shielding it from competition.

C. *The Court's Application of the Project Review Criteria is Unsupported by the Majority of the Evidence.*

In its Response, Piedmont goes to great lengths to re-draft the Order in a manner favorable to Piedmont. First, Piedmont minimizes the Court's reliance on Mr. Grice and Ms. Fechtel as relating solely to the financial feasibility criteria and the ranking of the Project Review Criteria. (Response at p. 4, n. 1 and p. 8). Unfortunately, the Order clearly states: "*To the extent that the court disagrees with aspects of Ms. Brandt's analysis, it was persuaded by the testimony of Mr. Grice and Ms. Fechtel, both of whom worked within the CON program for many years and possessed greater experience and institutional knowledge.*" (Order, Conclusions of Law ¶40) (emphasis added). Piedmont acknowledges that Ms. Fechtel did not testify (Response at p. 7), while Piedmont presented exhaustive testimony from Mr. Grice on all of the Project Review Criteria, which differed in many respects from the Court's findings. The Court's reliance on the testimony of Mr. Grice and Ms. Fechtel for the purposes stated in the Order is clearly erroneous.

Second, Piedmont states on numerous occasions that the Court's missing findings and conclusions can be "reasonably inferred" or that they are "not susceptible to a conclusion other than" a conclusion favorable to Piedmont[1]. This argument is contradicted by the evidence, in which at least two (2) of the three (3) Piedmont experts do not agree with Piedmont's view of the evidence. As illustrated by the chart below, Piedmont's experts Joel Grice and Dan Sullivan do not agree with Piedmont's characterization of the Court's "inferred" conclusions on most of the highest-ranked Project Review Criteria.

		Sullivan	Grice	Piedmont /Court
Rank 2				
2a	Community Need Documentation	Both	Both	PMC
2b	Population projections	Both	Both	PMC
2c	Service to meet need	Both	Both	PMC
2d	Reduction, elimination or relocation of service	Both	Both	PMC
2e	Current or projected utilization justified	Both	Both	PMC
3b	Located to serve medically undeserved	PMC	PMC	Both
3d	No restriction on admissions	Both	Both	PMC
3f	Access to medically underserved	Both	Both	PMC

Rank 3				
16c	Impact on Costs	Both	Both	PMC

The information from this Chart was derived from sources in evidence, including Mr. Grice's testimony as summarized in Piedmont's Demonstrative Exhibit 117 (attached to this Reply Memorandum), as well as the prior testimony of Mr. Sullivan as summarized in CHS Exhibit 14.

Significantly, during CHS's cross-examination of Mr. Sullivan, Piedmont's counsel objected vigorously to any questions on Mr. Sullivan's own application of the Project Review

[1] Piedmont acknowledges in its Response that "it is not possible from the Order to discern the Court's conclusion of law with regards to Project Review Criterion 23b."

Criteria, contending that Piedmont had never asked him for this testimony (Trial Tr.2875:18-2876:2). CHS's counsel pointed out that this information was already in evidence by virtue of CHS Exhibit 14, and the court allowed the questioning (Trial Tr. 2882:8-2883:19). When asked specifically about the charity care criteria, Mr. Sullivan testified that:

> *Q: Despite what you testified to yesterday, did CHS equally meet the criteria related to charity care?*
>
> *A: Yes. I mean, I -- I don't think -- what I was saying is I don't think that there should have been any differentiation between CHS and Piedmont, or I'm sorry, FMMC on that particular criterion and that -- I would expect that CHS would be an accessible facility.....*

(Trial Tr. 2883:20-2884:3.) This testimony does not support Piedmont's contention in its Response that Piedmont "best met" the charity care criteria, including 3(d) and 3(f).

As the foregoing chart and evidence demonstrates, Piedmont's characterization of the Court's application of the Project Review Criteria conflicts with the evidence and testimony from the majority of experts Piedmont offered at the contested case hearing. Unless the Court considers the testimony of the majority of Piedmont's experts to be unreliable and has discounted it, the Court has erroneously relied on evidence that does not support the Court's findings and conclusions.

D. *At Piedmont's Urging, the Court has Misunderstood the Concepts of "Adverse Impact" and "Accessibility."*

The evidence in the contested case hearing demonstrated that in 2009 CHS was servicing the majority of inpatients for community hospital services in Northern York County (52.9%) in comparison to only 28.7% of patients served by Piedmont in the same area. (Trial Tr. 1399:14-1401:5; Joint-A-CHS-001.0009-10, Figures 3-4; Joint-A-CHS-001.0371.) In 2009, the population in the Northern York County zip codes (29707, 29708 and 29715) was 50,151 people, in comparison to the rest of York County, which had a population of 182,937, according to

commonly-accepted data from Claritas. (Joint-A-CHS-001.0499, 0506-0508.) In other words, in 2009 Northern York County represented only about 27% of the total population in York County, and the majority of these residents were choosing to use CHS for community hospital services, rather than Piedmont, even though CHS lacked a hospital in York County.

Despite the irrefutable evidence that CHS would be a logical provider of community hospital services in Northern York County, Piedmont argued to the Court that a 64-bed CHS hospital would adversely impact Piedmont. Instead, Piedmont proposed that it would build a new, $120 million 100-bed hospital in Northern York County and transfer 36 beds from its hospital serving the larger population in Rock Hill and Western York County. In Piedmont's view, that substantial expenditure would reverse its declining market share in Northern York County. In the Order, the Court adopted this argument – "if we build it, they will come" – despite the fact that patients in the area where the hospital would be located prefer CHS and are not coming to Piedmont.

Piedmont's argument is not supported by a plain reading of the Project Review Criteria. In its Response, Piedmont relies on Project Review Criteria 16(c), 22 and 23 to support its argument that the Court properly weighed adverse impact against accessibility and that Piedmont "best met" these criteria (Response at p. 11, 13-14). These criteria provide verbatim as follows:

> *16. Cost Containment (Minimizing Costs):*
>
> *c. The impact of the project upon the applicant's cost to provide services and the applicant's patient charges should be reasonable. The impact of the project upon the cost and charges of other providers of similar services should be considered if the data are available.*

22. Distribution:

The existing distribution of the health service(s) should be identified and the effect of the proposed project upon that distribution should be carefully considered to functionally balance the distribution to the target population.

23. Adverse Effects on Other Facilities:

a. The impact on the current and projected occupancy rates or use rates of existing facilities and services should be weighed against the increased accessibility offered by the proposed services.

b. The staffing of the proposed service should be provided without unnecessarily depleting the staff of existing facilities or services or causing an excessive rise in staffing costs due to increased competition.

Applying these criteria, Piedmont's arguments fail completely. On cost containment, it is adding 36 beds at a substantial cost when it has 36 existing beds that sit unused in Rock Hill, which serves a far larger population. It is also spending $120 million to target a relatively small population[2]. On distribution, CHS's smaller hospital appropriately serves the smaller population in Northern York County, while Piedmont would continue to serve the much larger population in Rock Hill and Western York County. On adverse impact and staffing, a CHS hospital in Northern York county would be the least likely to impact Piedmont, which has a relatively small market share in that area – conversely, Piedmont aggressively plans to impact CHS by "re-taking" CHS's market share to justify the expense. On accessibility, CHS is offering its patients a hospital in York County closer to home, while Piedmont will need to fill its beds with residents from all parts of York County, at least a portion of who live closer to Piedmont's existing hospital in Rock Hill. In sum, Piedmont's duplicative, expensive project is exactly the type of hospital project that the CON Act seeks to avoid, particularly when Piedmont is having great

[2] During the testimony of Piedmont's expert David Levitt, he acknowledged that Piedmont's utilization projections changed at least 3 times, and that on its third attempt Piedmont reduced anticipated patient discharges from Western York County from 1,000 patients per year to 200 patients per year. (Trial Trans. 849:1- 850:19).

difficulty keeping its existing hospital full. In the Order, the Court has bought into Piedmont's argument hook-line-and-sinker, while ignoring the ample evidence that Piedmont's brand-new, $120 million hospital is likely to sit empty once built.

III. CONCLUSION:

For the foregoing reasons, Respondent The Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Medical Center-Fort Mill respectfully requests that the Court grant its Motion for Reconsideration in its entirety. Additionally, Respondent requests that the Court grant a stay of the Order pursuant to Administrative Law Court Rule 29(E).

Respectfully submitted,

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April 24, 2014

Charleston, South Carolina

ATTACHMENT

Applicable Project Review Criteria

		Brandt	Grice
Rank 2			
2a	Community Need Documentation	Both	Both
2b	Population projections	Both	Both
2c	Service to meet need	Both	Both
2d	Reduction, elimination or relocation of services	CHS	Both
2e	Current or projected utilization justified	CHS	Both
3a	Duplication and modernization	CHS	PMC
3b	Located to serve medically underserved	CHS	PMC
3c	Location allows for timely delivery of support services	Both	Both
3d	No restriction on admissions	Both	Both
3e	Documentation of access means	Both	Both
3f	Access to medically underserved	CHS	Both
3g	Provisions for access regardless of ability to pay	CHS	Both
3h	Impact on providers' service to medically underserved	—	PMC
22	Distribution	CHS	PMC
Rank 3			
6a	Charges	Both	Both
6b	Projcted Utilization/Expenses	CHS	Both
7	Consistent with Similar Facilities	CHS	Both
9	Net Income	CHS	Both
15	Financial Feasibility	CHS	Both
16a	Cost Containment	CHS	Both
16b	Lease Alternatives	CHS	Both
16c	Impact on Costs	CHS	Both
17	Efficiency	CHS	PMC
Rank 4			
13a	Record of the Applicant	Both	Both
13b	Ability to Obtain Financing	Both	Both
13d	Record of Compliance	Both	Both
4a	Acceptability	Both	Both
4b	Opposition	CHS	Both
23a	Adverse Impact on Existing Facilities	CHS	PMC
23b	Adverse Impact on Staffing	Both	PMC

DX117

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center d/b/a Fort Mill Medical Center Petitioners, v. South Carolina Department of Health and Environmental Control and The Charlotte Mecklenburg Hospital Authority, d/b/a Carolinas Medical Center - Fort Mill, Respondents.	Docket No. 11-ALJ-07-0575-CC **CERTIFICATE OF SERVICE**

I hereby certify that I have, this 24th day of April, 2014, served a copy of the foregoing ***Reply Memorandum in Support of Motion for Reconsideration of Respondent The Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Medical Center-Fort Mill*** upon the following by electronic mail and by placing the same in the United States Mail with proper postage affixed thereto and addressed to:

Daniel J. Westbrook, Esquire
Stuart M. Andrews, Jr., Esquire
Nelson, Mullins, Riley & Scarborough, L.L.P.
Post Office Box 11070
Columbia, SC 29211

Ashley C. Biggers, Esquire
Vito Wicevic, Esquire
DHEC, Office of the General Counsel
2600 Bull Street
Columbia, SC 29201-1708

Heather Morin

FILED

APR 24 2014

SC ADMIN. LAW COURT

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.

PROOF OF SERVICE

This is to certify that I have this day served counsel of record in the foregoing matter with a copy of the foregoing ***Appellant's Petition for Rehearing*** by hand delivery, addressed as follows:

Daniel J. Westbrook, Esquire
Stuart M. Andrews, Jr., Esquire
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Scarborough, L.L.P.
1320 Main Street, 17th Floor
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RECEIVED
JAN 26 2017
SC Court of Appeals

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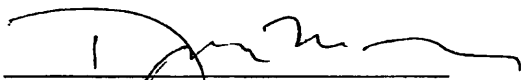

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Attorneys for Appellant The Charlotte-Mecklenburg Hospital Authority, d/b/a Carolinas Medical Center – Fort Mill

January 26, 2017

Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
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Of whom The Charlotte-Mecklenburg Hospital Authority, d/b/a Carolinas
Medical Center-Fort Mill, is ..... Appellant.

PROOF OF SERVICE

This is to certify that I have this day served counsel of record in the foregoing matter with a copy of the foregoing ***Appellant's Motion to Supplement the Record on Appeal*** by hand delivery, addressed as follows:

Daniel J. Westbrook, Esquire
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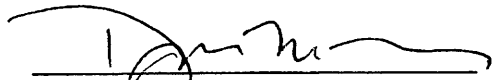

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Attorneys for Appellant The Charlotte-Mecklenburg Hospital Authority, d/b/a Carolinas Medical Center – Fort Mill

January 26, 2017

Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
FEB 13 2017
SC Court of Appeals

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

Appellate Case No. 2015-000056

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.

RESPONDENT AMISUB OF SOUTH CAROLINA, INC.'S RETURN TO APPELLANT'S PETITION FOR REHEARING AND MOTION TO SUPPLEMENT THE RECORD ON APPEAL

I. INTRODUCTION

This appeal from the South Carolina Administrative Law Court ("ALC") arises from competing applications for a Certificate of Need ("CON") submitted to the South Carolina Department of Health and Environmental Control ("DHEC") by Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center ("Piedmont") and the Charlotte-Mecklenburg Hospital Authority, d/b/a Carolinas Medical Center – Fort Mill ("CHS").

Piedmont and CHS submitted their competing applications to build a hospital in Fort Mill in 2005. In the ensuing twelve years this case has undergone a DHEC administrative

review, been tried before the ALC, remanded for a second administrative review, and tried a second time in the ALC. The second trial, held April 8 – May 7, 2013, resulted in the issuance of a 2014 Amended Final Order awarding the CON to Piedmont. *See* Piedmont's Final Brief at 1-3. On January 11, 2017 the Court of Appeals affirmed.

CHS's Petition for Rehearing argues that the Court of Appeals overlooked or misapprehended that CHS preserved its dormant Commerce Clause argument, misapprehended or failed to apply the proper standard of review; and overlooked or misapprehended CHS's argument that the bond requirement of S.C. Code Ann §44-7-220(B) violates the United States and South Carolina Constitutions. For the reasons set forth below, CHS's Petition and Motion to Supplement the Record on Appeal should be denied.

II. ARGUMENT

A. Dormant Commerce Clause

On December 9, 2009, after two weeks of trial, the ALC granted summary judgment to Petitioners CHS and Presbyterian Healthcare System.[1] Grounds for the order were that DHEC had erroneously interpreted the State Health Plan to allow only existing providers in a service area to obtain a CON (the "State Health Plan Issue"). (R. pp. 26-27). The State Health Plan Issue was not a basis for the 2014 ALC decision.

In its 2014 decision, the ALC adopted Piedmont's position that its application satisfied applicable CON standards and criteria better than CHS's application, particularly the criteria related to adverse impact and outmigration. At no point during the litigation did CHS present evidence or argue that a decision in favor of Piedmont based on adverse impact or

[1] Presbyterian Healthcare System later withdrew as a party to this action.

outmigration could violate the dormant Commerce Clause. As noted by the Court of Appeals, CHS did not raise that issue until the Rule 59(e) motion.

In its Petition for Rehearing, CHS argues that it failed to include evidence of a dormant Commerce Clause violation in the record on appeal because neither Respondent argued in their appellate briefs that CHS had failed to preserve the issue. That, of course, does not bar this Court from finding the issue unpreserved. *See Atl. Coast Builders & Contractors, LLC v. Lewis,* 398 S.C. 323, 333, 730 S.E.2d 282, 287 (2012) (Toal, C.J., concurring).

CHS moves to supplement the record on appeal with evidence and argument that it contends will demonstrate it did raise the dormant Commerce Clause issue below. But the material CHS wishes to add to the record only confirms the Court of Appeals' finding that the only dormant Commerce Clause issue raised prior to CHS's Rule 59(e) motion related to the State Health Plan Issue. For example, the argument between counsel that interrupted CHS counsel's opening statement in the 2013 trial specifically relates to the State Health Plan Issue (and does not reference the dormant Commerce Clause). CHS Motion to Supp. Record on Appeal, Att. A, pp. 99-102. Similarly, the 2007-2009 motions, briefs, and testimony CHS wishes to add to the record on appeal all relate specifically to the State Health Plan Issue. *See id.,* Att. B. None raise an issue or support an argument that a decision that Piedmont's application satisfied applicable CON standards and criteria better than CHS's application, particularly criteria related to adverse impact and outmigration, would violate the dormant Commerce Clause.

B. Standard of Review

The Court of Appeals correctly apprehended and properly applied the standard of review set forth in S. C. Code Ann. § 1-23-380(5) (Supp. 2016).

C. **Bond Requirement**

The bond requirement of S.C. Code Ann. § 44-7-220(B) serves to deter appeals raised primarily for the purpose of delay and is not unconstitutional.

III. CONCLUSION

For the reasons set forth above, Appellant's Petition for Rehearing and Motion to Supplement the Record on Appeal should be denied.

NELSON MULLINS RILEY & SCARBOROUGH LLP

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

Columbia, South Carolina

February 13, 2017

CERTIFICATE OF SERVICE

I, the undersigned administrative assistant 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: ***Respondent Amisub of South Carolina, Inc.'s Response to Appellant's Petition for Rehearing and Motion to Supplement the Record on Appeal***

Counsel Served:

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RECEIVED
FEB 13 2017
SC Court of Appeals

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Myriam Brown
Administrative Assistant

February 13, 2017

The South Carolina Court of Appeals

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 the Appellant.

Appellate Case No. 2015-000056

ORDER

Appellant, The Charlotte-Mecklenburg Hospital Authority, d/b/a Carolinas Medical Center-Fort Mill (Carolinas), has simultaneously filed a petition for rehearing and a motion to supplement the Record on Appeal.

Motion to Supplement

The motion to supplement the Record on Appeal is denied. During the docketing of this appeal, South Carolina case law placed Carolinas on fair notice of this court's authority and obligation to enforce error preservation rules *sua sponte*. *See Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) ("[W]e are not precluded from finding an issue unpreserved *even when the parties themselves do not argue error preservation to us*. In fact, a rule [that] would permit such an 'appeal by consent' is contrary to the very core of our preservation requirement: 'Issue preservation rules are designed to give the trial court a *fair* opportunity to rule on the issues[] and[,] thus[,] provide us with a platform for

meaningful appellate review.'" (emphases added) (quoting *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006))). Likewise, our case law placed Carolinas on fair notice of its own obligation to include in the record those materials adequately reflecting preservation of its chosen issues on appeal. *See State v. Smith*, 329 S.C. 550, 562, 495 S.E.2d 798, 804 (Ct. App. 1998) (noting "the record *must* show" that an issue on appeal "was *raised in the trial court*" (emphases added) (citing *Zaman v. S.C. State Bd. of Med. Exam'rs*, 305 S.C. 281, 285, 408 S.E.2d 213, 215 (1991))); *see also Johnson v. S.C. Dep't of Prob., Parole, & Pardon Servs.*, 372 S.C. 279, 283, 641 S.E.2d 895, 897 (2007) ("Because court rules require the appealing party to prepare the record on appeal, *see* Rule 210(a), SCACR, South Carolina courts have traditionally held the appealing party accountable for failing to present the court with an adequate record on appeal for review."); *State v. Mitchell*, 330 S.C. 189, 199, 498 S.E.2d 642, 647 (1998) (noting the burden is on the appellant "to provide a sufficient record for review" (citing *State v. Williams*, 321 S.C. 455, 464 n.4, 469 S.E.2d 49, 54 n.4 (1996))).

Petition for Rehearing

We have carefully considered the petition for rehearing. However, Carolinas has not established that the court overlooked or disregarded any material fact or principle of law. Hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied. However, we take this opportunity to address Carolinas' misapprehension of our January 11, 2017 opinion.

Carolinas contends the opinion does not address its assignment of legal errors in the third argument of its appellate brief, which is captioned, "The ALC erroneously, arbitrarily, and capriciously applied the CON Act, State Health Plan, and Project Review Criteria." In response to this argument, we held the ALC's decision was rationally based on the standards in all of the pertinent Project Review Criteria and was, therefore, not arbitrary and capricious. This holding implicitly rejected any assignment of legal error to the extent Carolinas' brief made a genuine distinction between errors of law and arbitrary and capricious decisionmaking.

J.

J.

J.

FILED

March 23, 2017

Columbia, South Carolina

cc:
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E. Brandon Gaskins, Esquire
Daniel J. Westbrook, Esquire
Stuart M. Andrews, Jr., Esquire
Ashley Caroline Biggers, Esquire
Vito Michael Wicevic, Esquire
The Honorable S. Phillip Lenski