

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
The Honorable H.W. Funderburk, Jr., Administrative Law Judge

Appellate Case No. 2019-000358  
Docket No. 2016-ALJ-07-0386-CC

RECEIVED  
JUN 26 2019  
SC Court of Appeals

Trident Medical Center, LLC, d/b/a Trident Medical Center ..... Respondent,

v.

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

Of which Roper St. Francis Hospital – Berkeley, Inc., d/b/a Roper St.  
Francis Hospital – Berkeley County is the ..... Appellant.

**SOUTH CAROLINA DEPARTMENT OF  
HEALTH AND ENVIRONMENTAL CONTROL'S  
MOTION TO BE JOINED AS A PARTY TO THE  
APPEAL**

South Carolina Department of Health and Environmental Control (“Department”), respectfully submits this Motion pursuant to Rule 240, SCACR, to be joined as a party to the above-captioned appeal. Specifically, the Department moves for leave to be added as a Respondent to Appellate Case No. 2019-000358. The grounds for this Motion are as follows:

1. The Department is designated as the sole state agency for control and administration of the granting of Certificates of Need (“CONs”) in accordance with the *State Certification of Need and Health Facility Licensure Act*, S.C. Code Ann. §§ 44-7-100, *et seq.* (“CON Act”).

S.C. Code Ann. § 44-7-140. The purpose of the CON Act is “to promote cost containment, prevent unnecessary duplication of health care facilities and services, guide the establishment of health facilities and services which will best serve public needs, and ensure that high quality services are provided in health facilities in this State.” S.C. Code Ann. § 44-7-120. As part of its duties in carrying out those purposes, the Department is charged with preparing a South Carolina Health Plan for use in the administration of the CON program, reviewing CON applications, and making decisions to approve or deny CON applications. S.C. Code Ann. §§ 44-7-180 & 44-7-210. In deciding whether to approve a CON application, the Department must consider and determine compliance with the South Carolina Health Plan, Project Review Criteria, and other regulations. S.C. Code Ann. § 44-7-210(B).

2. Roper St. Francis Hospital – Berkeley, Inc., d/b/a Roper St. Francis Hospital – Berkeley County (“Roper St. Francis”) submitted a CON application to the Department for the addition of a new diagnostic cardiac catheterization laboratory to be located in Berkeley County. The Department reviewed Roper St. Francis’s CON application and issued a decision approving it. Trident Medical Center, LLC, d/b/a Trident Medical Center (“Trident”), opposed the application and filed a request for a contested case hearing with the Administrative Law Court challenging the Department’s decision, which was assigned Docket No. 2016-ALJ-07-0386-CC.
3. The central issue of the contested case hearing was compliance with a CON Standard for diagnostic cardiac catheterization services set forth in the South Carolina Health Plan. The Department was a party to the contested case and presented testimony at the contested case

hearing regarding its interpretation and application of the Plan standard to Roper St. Francis' CON application.

4. The Honorable H.W. Funderburk, Jr., issued a Final Order dated December 3, 2018, and an Amended Final Order dated February 21, 2019, following the conclusion of the underlying contested case hearing. The Department did not appeal the Administrative Law Court's orders. However, Roper St. Francis filed a Notice of Appeal of both orders with the Court of Appeals on March 5, 2019.
5. In compliance with Rule 203(e)(2)(E), SCACR, Roper St. Francis' Notice of Appeal contained "[t]he names, mailing addresses, and telephone numbers of all attorneys of record and the names of the party or parties represented by each." On the second page of the Notice of Appeal, the Department is listed as a party, specifically a Respondent, and the name, address, and telephone number of the Department's attorneys of record are provided. *See Exhibit A*, Notice of Appeal and Proof of Service.
6. Based upon Roper St. Francis's identification of the Department as a party in its Notice of Appeal, in compliance with Rule 203, SCACR, the Department should be a party to this appeal.
7. To date in this appeal, the Appellant has filed a Motion with the Court of Appeals to ascertain the order(s) on appeal and request an extension of time to file its initial brief, in response to which Respondent Trident filed a Return. Appellant Roper St. Francis and Respondent Trident each served the Department with copies of their filings, as evidenced by the Proofs of Service of those filings identifying the Department as a party, specifically a Respondent, in this appeal. *See Exhibit B*, Proof of Service of Motion to Ascertain Order for Appeal, Extend Time for Initial Filings and Correct Caption, filed by Appellant Roper

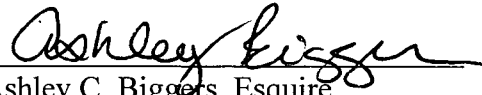
- St. Francis; *see also* **Exhibit C**, Proof of Service of Respondent's Return to Appellant's Motion to Ascertain Order for Appeal, Extend Time for Initial Filings, and Correct Caption, filed by Respondent Trident.
8. Despite being served with copies of all correspondence and filings submitted by Roper St. Francis and Trident in this appeal, the Department has not been copied on any correspondence or orders issued by the Court of Appeals. The Department inquired with the Office of the Clerk of the Court of Appeals and was informed that that the Department was not a party to this appeal and would need to file a motion requesting to be added as a party to the appeal.
  9. The Department consulted with counsel for the other parties prior to filing this motion. Counsel for Appellant Roper St. Francis informed the Department that it consents to the Department's motion. Counsel for Respondent Trident informed the Department that it does not consent to the Department's motion.
  10. As the agency charged with administering the CON Act and making decisions on CON applications and compliance with the South Carolina Health Plan, a document prepared by Department staff and adopted by the Board of Health and Environmental Control, the Department is a proper party to this appeal and should be allowed to submit a Respondent's brief and present arguments as to its interpretation of and the proper implementation of the CON Act, the South Carolina Health Plan, and departmental regulations. *See Dorman v. S.C. Dep't of Health & Env'tl. Control*, 350 S.C. 159, 565 S.E.2d 119 (Ct. App. 2002) (finding that OCRM, a division of the Department, was "clearly" a "proper party" to all levels of an appeal, even though it did not file a Notice of Appeal, and finding no error in the circuit court's decision in the judicial review process "to allow counsel for OCRM to

present arguments as to the proper implementation and interpretation of those regulations the agency is charged with administering.”); *see also Owen Steel Co. v. S.C. Tax Comm’n*, 281 S.C. 80, 313 S.E.2d 636 (Ct. App. 1984) (noting that during the judicial review process of a final agency decision, the agency, upon being served with a copy, may move to be joined as a party, and “[e]xcept in unusual circumstances, we anticipate that such a motion would be granted as a matter of course.”).

11. This appeal is in its early stages. The Appellant’s initial brief has not yet been filed. Granting the Department’s motion to add it as a Respondent to this appeal will not delay the appeal or injury any other party to the appeal.
12. The As noted in the above caption, the Department was a respondent in the below proceeding contested case proceeding The grounds While the Department did not file a Notice of Appeal, the Department issued the decision approving the Certificate of Need (“CON”) application of Roper St. Francis Hospital – Berkeley, Inc. d/b/a Roper St. Francis Hospital – Berkeley County (“Roper”) for the addition of cardiac catherization services in Berkeley County, which was opposed by Trident Medical Center, LLC d/b/a Trident Medical Center (“Trident”), and the subject of a contested case hearing before Administrative Law Court (“ALC”). *See* Docket No. 2016-ALJ-07-0386. The ALC ordered that the CON application be denied. On March 5, 2019, Roper filed a Notice of Appeal, the subject appeal, challenging the ALC’s decision. As the state agency charged with control and administration of the CON program, the Department has an interest in participating in this appeal. *See* S.C. Code Ann. § 44-7-140.

[Signature on following page]

Respectfully submitted,



Ashley C. Biggers, Esquire

Vito M. Wicevic, Esquire

South Carolina Department of Health and  
Environmental Control

2600 Bull Street

Columbia, SC 29201

*Attorneys for Appellant South Carolina  
Department of Health and Environmental  
Control*

June 26, 2019

# **EXHIBIT A**

89205

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**RECEIVED**

MAR 05 2019

SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
The Honorable H.W. Funderburk, Jr., Administrative Law Judge

APPELLATE CASE NO.: \_\_\_\_\_  
ADMINISTRATIVE LAW COURT CASE NO.: 16-ALJ-07-0386-CC

Trident Medical Center, LLC, d/b/a Trident Medical Center,.....Respondent,

v.


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

Of Whom Roper St. Francis Hospital – Berkeley, Inc., d/b/a  
Roper St. Francis Hospital – Berkeley is the..... Appellant.

**NOTICE OF APPEAL**

Appellant Roper St. Francis Hospital – Berkeley, Inc., d/b/a Roper St. Francis Hospital – Berkeley, appeals the Final Order of the Honorable H.W. Funderburk, Jr., dated December 3, 2018, and the Amended Final Order of the Honorable H.W. Funderburk, Jr., dated February 21, 2019. Appellant received written notice of entry of these Orders on December 3, 2018 and February 21, 2019, respectively. Copies of the Orders are attached hereto.

Respectfully submitted,



---

James C. Long, III, SC Bar No. 64103  
Jennifer J. Hollingsworth, SC Bar No. 73535  
NEXSEN PRUET, LLC  
1230 Main Street, Suite 700  
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[JLong@nexsenpruet.com](mailto:JLong@nexsenpruet.com)  
[JHollingsworth@nexsenpruet.com](mailto:JHollingsworth@nexsenpruet.com)

*Attorneys for Appellant*  
*Roper St. Francis Hospital – Berkeley, Inc., d/b/a*  
*Roper St. Francis Hospital – Berkeley*

March 5, 2019  
Columbia, South Carolina

Other Counsel of Record:

William R. Thomas, Esquire  
PARKER POE, LLC  
1221 Main Street, Suite 1100  
Columbia, SC 29201

*Attorneys for Respondent*  
*Trident Medical Center, LLC d/b/a*  
*Trident Medical Center*

Ashley C. Biggers, Esquire  
SC DEPARTMENT OF HEALTH  
AND ENVIRONMENTAL CONTROL  
2600 Bull Street  
Columbia, SC 29078

*Attorneys for Respondent*  
*SC Department of Health*  
*and Environmental Control*

THE STATE OF SOUTH CAROLINA,  
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
The Honorable H. W. Funderburk, Jr., Administrative Law Judge

APPELLATE CASE NO.: \_\_\_\_\_  
ADMINISTRATIVE LAW COURT CASE NO.: 16-ALJ-07-0386-CC

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v.

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

**RECEIVED**

MAR 05 2019

SC Court of Appeals

Of Whom Roper St. Francis Hospital – Berkeley, Inc., d/b/a  
Roper St. Francis Hospital – Berkeley is the ..... Appellant.

**PROOF OF SERVICE**

The undersigned hereby certifies that on March 5, 2019, she caused a copy of the  
Notice of Appeal to be served on all parties of record by hand delivering a copy of the  
same, addressed as follows:

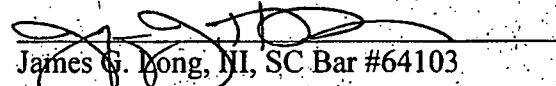
The Honorable H. W. Funderburk, Jr.  
Administrative Law Court Judge  
Edgar A. Brown Building, Suite 224  
1205 Pendleton Street  
Columbia, SC 29201

William R. Thomas, Esquire  
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Ashley C. Biggers, Esquire  
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*Attorneys for Respondent SC Department of Health &  
Environmental Control*



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*Attorneys for Appellant Roper St. Francis  
Hospital – Berkeley, Inc., d/b/a Roper St.  
Francis Hospital – Berkeley*

# **EXHIBIT B**

**RECEIVED**

**MAR 14 2019**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
The Honorable H.W. Funderburk, Jr., Administrative Law Judge

APPELLATE CASE NO.: 2019-000358  
ADMINISTRATIVE LAW COURT CASE NO.: 16-ALJ-07-0386-CC

Trident Medical Center, LLC, d/b/a Trident Medical Center,.....Respondent,

v.

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

Of Which Roper St. Francis Hospital – Berkeley, Inc., d/b/a  
Roper St. Francis Hospital – Berkeley County is  
the.....Appellant.

**PROOF OF SERVICE**

The undersigned hereby certifies that on March 14, 2019, she caused a copy of the Motion to Ascertain Order for Appeal, Extend Time for Initial Filings and Correct Caption to be served on all parties of record by hand delivering a copy of the same, addressed as follows:

William R. Thomas, Esquire  
Parker Poe, LLC  
1221 Main Street, Suite 1100  
Columbia, SC 29202  
*Attorneys for Respondent, Trident Medical Center, LLC, d/b/a  
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Ashley C. Biggers, Esquire  
South Carolina Department of Health  
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*Attorneys for Respondent SC Department of Health &  
Environmental Control*



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*Attorneys for Appellant Roper St. Francis  
Hospital – Berkeley, Inc., d/b/a Roper St.  
Francis Hospital – Berkeley*

# **EXHIBIT C**

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

RECEIVED  
MAR 25 2019  
SC Court of App's

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
The Honorable H. W. Funderburk, Jr., Administrative Law Judge

APPELLATE CASE No.: 2019-000358  
ADMINISTRATIVE LAW COURT CASE No.: 16-ALJ-07-0386-CC

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and Roper St. Francis Hospital – Berkeley, Inc., d/b/a Roper St.  
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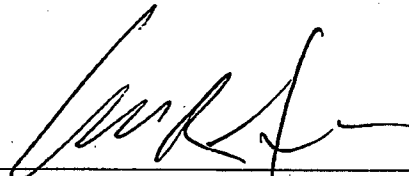
Of which Roper St. Francis Hospital – Berkeley, Inc., d/b/a  
Roper St. Francis Hospital – Berkeley County is the.....Appellant.

PROOF OF SERVICE

I certify that, on March 25, 2019, I served Respondent's Return to Appellant's Motion to Ascertain Order for Appeal, Extend Time for Initial Filings, and Correct Caption on all parties of record by hand delivering a copy of same, addressed as follows:

James G. Long, III, Esquire  
Jennifer J. Hollingsworth, Esquire  
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1230 Main Street, Suite 700  
Post Office Drawer 2426  
Columbia, SC 29202  
*Attorneys for Appellant*  
*Roper St. Francis Hospital – Berkeley, Inc., d/b/a*  
*Roper St. Francis Hospital - Berkeley*

Ashley C. Biggers, Esquire  
South Carolina Department of Health  
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2600 Bull Street  
Columbia, SC 29078  
*Attorney for Respondent*  
*South Carolina Department of Health and*  
*Environmental Control*



---

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THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM THE ADMINISTRATIVE LAW COURT  
The Honorable H.W. Funderburk, Jr., Administrative Law Judge

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Appellate Case No. 2019-000358  
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Of which Roper St. Francis Hospital – Berkeley, Inc., d/b/a Roper St.  
Francis Hospital – Berkeley County is the ..... Appellant.

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PROOF OF SERVICE

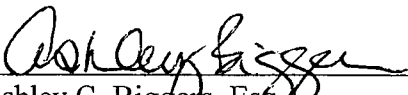
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I hereby certify that on June 26, 2019, I served South Carolina Department of Health and Environmental Control’s Motion to be Joined as a Party to the Appeal on all parties of record via Electric Mail and via U.S. Mail, regular mail delivery, with proper postage affixed and addressed as follows:

James G. Long III  
[jlong@nexsenpruet.com](mailto:jlong@nexsenpruet.com)  
Jennifer J. Hollingsworth  
[jhollingsworth@nexsenpruet.com](mailto:jhollingsworth@nexsenpruet.com)  
Nexsen Pruet, LLC  
1230 Main Street, Suite 700  
Columbia, SC 29201  
*Attorneys for Appellant*  
*Roper St. Francis Hospital – Berkeley Inc., d/b/a*  
*Roper St. Francis Hospital – Berkeley*

RECEIVED  
JUN 26 2019  
SC Court of Appeals

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Vito M. Wicevic, Esq.  
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Environmental Control  
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Columbia, SC 29201

*Attorneys for South Carolina Department of  
Health and Environmental Control*

June 26, 2019



Healthy People. Healthy Communities.

June 26, 2019

**VIA HAND-DELIVERY**

The Honorable Jenny Abbott Kitchings  
Clerk of Court, SC Court of Appeals  
PO Box 11629  
Columbia, SC 29211

**RECEIVED**  
JUN 26 2019  
SC Court of Appeals

Re: Trident Medical Center, LLC, d/b/a, Trident Medical Center vs. South Carolina  
Department of Health and Environmental Control and Roper St. Francis Hospital -  
Berkeley, Inc., d/b/a Roper St. Francis Hospital-Berkeley County  
Appellate Case No.: 2018-000358

Dear Ms. Kitchings:

Enclosed for filing with the Court, please find the original and seven (7) copies of South Carolina Department of Health and Environmental Control's Motion to be Joined as a Party to the Appeal in the above-captioned matter, along with the Proof of Service thereof, to be clocked and filed. Please return a filed-stamped of each document to me for our files.

By copy of this letter, and as evidenced by the enclosed Proof of Service, I am serving counsel of record with a copy of the same. Please contact me if your office has any questions related to these filings.

Very truly yours,

Ashley C. Biggers

Enclosures

cc (via hand-delivery and e-mail):

James G. Long, III, Esquire  
Jennifer J. Hollingsworth, Esquire  
William R. Thomas, Esquire  
Walter H. Cartin, Esquire