

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

JUN 27 2019

SC 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

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
AMENDED 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’ 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 (“ALC”) 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 ALC'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' 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 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 its 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 prior to the filing of this amended motion that it also consents to the Department's motion to be added as a party to the appeal.
10. Although it did not appeal the ALC's decision, the Department should remain a party to the appeal in order to represent its policies and positions on the issues on appeal. *See Dorman v. S.C. Dep't of Health & Envtl. Control*, 350 S.C. 159, 169, 565 S.E.2d 119, 125 (Ct. App. 2002) ("While OCRM did not appeal the ALJ's order, the agency remains a party at all levels to represent the agency and its policy stance."). 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. *Id.* at 170, 565 S.E.2d at 124 (holding that OCRM was a “proper party” to the appeal and there was no error in allowing its counsel “to present arguments as to the proper implementation and interpretation of those regulations the agency is charged with administering” in the appeal from the ALC).

11. This appeal is in its early stages. The Appellant’s initial brief has not yet been filed. As noted above, the other parties to the appeal have been treating the Department as a Respondent to the appeal by serving copies of all their correspondence and filings with the Court of Appeals upon the Department and listing it as a Respondent. Granting the Department’s motion to add it as a Respondent to this appeal will not delay the appeal or injure any other party to the appeal. The Department’s motion should therefore be granted. *See Dorman* at 170, 565 S.E.2d at 125 (“Applications to bring in additional parties are ordinarily granted as a matter of course, especially where to do so will not injure the other parties.”); *see also Owen Steel Co. v. S.C. Tax Comm’n*, 281 S.C. 80, 86, 313 S.E.2d 636, 639 (Ct. App. 1984) (Noting that “if [an] agency is minded to participate in the proceeding for judicial review, it may make a timely motion to be joined as a party. Except in unusual circumstances, we anticipate that such a motion would be granted as a matter of course.”).

For the foregoing reasons, the Department respectfully requests that it be joined as party to Appellate Case No. 2019-000358 and be identified as a Respondent in the appeal.

[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 South Carolina Department of
Health and Environmental Control*

June 27, 2019

EXHIBIT A

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

MAR 05 2019

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

SC Court of Appeals

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.

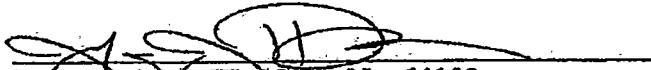
South Carolina Department of Health and Environmental Control,
and Roper St. Francis Hospital – Berkeley, Inc., d/b/a Roper St.
Francis Hospital – Berkeley,

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
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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
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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

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,

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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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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 B

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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
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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

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MAR 25 2019
SC Court of Appls

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,

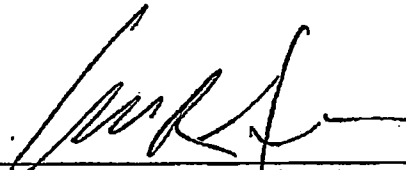
Of which Roper St. Francis Hospital – Berkeley, Inc., d/b/a
Roper St. Francis Hospital – Berkeley County is the.....Appellant.

PROOF OF SERVICE

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
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Attorneys for Appellant
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THE STATE OF SOUTH CAROLINA
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– Berkeley County, below,

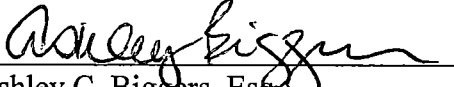
Of which Roper St. Francis Hospital – Berkeley, Inc., d/b/a Roper St.
Francis Hospital – Berkeley County is the Appellant.

PROOF OF SERVICE

I hereby certify that on June 27, 2019, I served South Carolina Department of Health and Environmental Control’s Amended Motion to be Joined as a Party to the Appeal on all parties of record via Electronic Mail and hand-delivery, addressed as follows:

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2600 Bull Street
Columbia, SC 29201

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

June 27, 2019



RECEIVED

JUN 27 2019

SC Court of Appeals

June 27, 2019

VIA HAND-DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court, SC Court of Appeals
1220 Senate Street
Columbia, SC 29201

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.: 2019-000358

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 Amended 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 copy of each document to me for our files.

For background, I filed and served the Department's Motion to be Joined as a Party to the Appeal yesterday, June 26, 2019. I realized afterwards that I had mistakenly filed an early working draft version rather than the final version of the motion. I am filing the enclosed Amended Motion to correct that mistake. I have consulted counsel for the other parties to inform them that I would be filing this Amended Motion for the reasons stated above, and they have informed me that they have no objection. Additionally, Trident's counsel also informed me that Trident now consents to the Department's motion to be added as a party to the appeal, which I have noted in the Amended Motion.

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