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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,.....Respondents below,

Of Which South Carolina Department of Health and Environmental
Control is a.....Respondent,

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

APPELLANT’S INITIAL REPLY BRIEF

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December 16, 2019
Columbia, South Carolina

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INTRODUCTION

Roper St. Francis Hospital – Berkeley (“Roper Berkeley”) submits this reply brief to address the arguments raised by Trident Medical Center (“Trident”) in response to Roper Berkeley’s Initial Brief. Trident’s arguments misstate and misrepresent the facts in evidence in hopes to avoid the reasoned result of restoring the agency decision by reversal of the Administrative Law Court (“ALC”). Trident nonetheless fails to identify substantial evidence to support the ALC’s decision or a compelling reason to reject the agency’s interpretation of the South Carolina Health Plan (“Health Plan”).

ARGUMENTS

I. THE FINDINGS WITH REGARD TO EAST COOPER ARE BOTH MISPLACED AND SPECULATIVE WHILE THE RELEVANCE OF DHEC'S APPROVAL OF EAST COOPER'S CON APPLICATION IS ARBITRARILY IGNORED.

Trident resorts to relying on a sensationalized (and unsupported) factual background to support the decision of the ALC.¹ Trident's fabricated 'facts' are merely speculation and conjecture, confusing the issue in dispute as it did below, which likely led to the ALC's misunderstanding or misapprehension of the evidence in the record and resulted in findings and conclusions that lacked evidentiary support. Many of the unsupported findings and conclusions relate to communications between East Cooper Medical Center ("East Cooper"), an unrelated provider who was not a party to the contested case proceeding, and the South Carolina Department of Health and Environmental Control ("DHEC" or the "Department"). With a myopic focus on these communications that occurred six years before the filing of the at-issue CON Application and which address a materially different question, Trident and the ALC ignore and dismiss the only relevant evidence involving East Cooper: the unchallenged Department decision to approve East Cooper's CON Application using the same interpretation of the same Health Plan, for the same service as sought by Roper Berkeley in the same service area.

A. The 2010 Communications Between East Cooper and DHEC Did Not Result in an Interpretation or Prior Department Position Relevant to this Contested Case.

Beginning at page 3 of Trident's Response Brief, and throughout its arguments in support of the ALC Order, Trident makes a number of unsupported assertions that involve East Cooper, a provider that was not a party to the contested case proceeding pursued by Trident. While the record

¹ For purposes of this reply, as with Appellant's Initial Brief, Roper Berkeley cites to the ALC's "Amended (sic) Final Order" filed February 21, 2019 (herein "ALC Order"), although Roper Berkeley also noticed its appeal of the ALC's Final Order filed December 3, 2018, given the timing of the revised Order and the implications of Rule 29(D)(2) of the South Carolina Administrative Law Court Rules, all of which was earlier briefed in this Court.

includes three writings between East Cooper and DHEC, no representative of East Cooper testified at the contested case hearing and no evidence was received to support several of the factual assertions made by Trident and included in the ALC Order regarding East Cooper.

Offered by Trident at the contested case hearing were East Cooper's communications with DHEC regarding cardiac catheterization services in May 2010, consisting of an e-mail string dated May 3, 2010, a letter from East Cooper to DHEC dated May 12, 2010, and a DHEC letter in response, dated May 27, 2010. (P03-004 – P03-011). The documents have no meaning outside the written words, as Trident failed to offer any subscribing testimony by a person with knowledge of the circumstances surrounding the communications. The e-mail exchange is first in time, and on its face is in reference to a "JAR Question"². (P03-004 – P03-008). Following the e-mail communication, East Cooper requested by letter from DHEC a determination as to whether the catheterization laboratory at Bon Secours St. Francis Xavier Hospital ("St. Francis") should be included in the equivalent calculation for evaluating procedural volume because the laboratory "was not operational." (P03-009 – P03-010). The response of the former Chief of the Bureau of Health Facilities and Services Development, Beverly Brandt, was that based on her review of the standards in the 2008-2009 South Carolina Health Plan (though without reference to any particular Standard) and the CON law and regulations, DHEC "do[es] not currently have a mechanism in place that would allow the Department to discount the existence of the St. Francis cardiac cath lab when computing the average utilization for the service area." (*Id.*)

In its Order, the ALC clearly misunderstands or misinterprets these three pieces of

² "JAR" is the Joint Annual Report, a comprehensive questionnaire submitted by hospital providers to DHEC providing hospital-specific utilization data required by statute and regulation. S.C. Code Ann. Regs. 61-16 § 705; *see also* S.C. Code Ann. Regs. § 19-801 (directing the reporting of JARs by hospitals be to the Office of Research and Statistics, which is now known as South Carolina Revenue and Fiscal Affairs Office ("RFA")).

evidence. Wholly contrary to Trident's claims and the ALC's Order, East Cooper's 2010 letter does not allege that the St. Francis laboratory is operating in violation of the CON laws, nor does DHEC address the possibility of taking enforcement action against Roper St. Francis for any operational 'concerns.' (P03-009 – P03-011; Sullivan Trial Tr. 233:22-24). Moreover, Ms. Brandt's response does not determine "that the appropriate remedy would be to amend the State Health Plan" to address an underutilized laboratory, nor is there *any* evidence for the ALC to find that DHEC in 2010 "exercised its discretion not to take enforcement action to address the Bon Secours dilemma" or that this letter is a "position[] taken by the Department" relevant to this contested case dispute. (ALC Order, pp. 11, 21). Instead, it was undisputed at the contested case hearing that the question presented by East Cooper to DHEC in 2010 was not the same as the position taken by East Cooper in its CON Application in 2016. (J02-023 – J02-024). Trident's expert witness acknowledged that discounting the existence of a laboratory and allowing it to continue, versus taking enforcement action in closing a laboratory, "are two different things." (Sullivan Trial Tr. 234:3-7). The evidence in the record does not support the finding that DHEC considered or was asked to consider whether the St. Francis laboratory should be *closed and removed* from the Health Plan inventory but instead "exercised its discretion not to take enforcement action to address the Bon Secours dilemma" in 2010. (ALC Order, p. 11).

Furthermore, it was undisputed that Standard 3 was amended between the 2008-2009 Health Plan and the 2015 Health Plan (J07-006; J04-047), and the metric for evaluating service area utilization changed from an aggregate utilization to utilization by laboratory. (ALC Order, p. 11; Sullivan Trial Tr. 225:1-22). The significance of the change was wholly ignored by the ALC, who proceeded to consider this 2010 letter a "prior interpretation" of an admittedly different Standard and despite the entirely different formula and absence of any reference to any Standard

in the 2010 writings. The response to East Cooper in 2010 answers a different question under an entirely different set of facts, and was not a decision on a CON application or otherwise a directive published to the regulated community. For all of these reasons, treatment of the 2010 communications as probative to the issue in dispute at the contested case hearing is misplaced, and the ALC's conclusion that DHEC's letter is a "prior interpretation" relevant to this contested case is arbitrary and improper.

B. DHEC's Approval of East Cooper's 2016 CON Application is Consistent with the Approval of Roper Berkeley's CON Application.

Trident and the ALC ignore and overlook the significance of DHEC's approval of East Cooper's CON Application, the only application submitted by East Cooper for diagnostic cardiac catheterization services which was approved on July 25, 2016. (J02-088 – J02-091). For reasons based only on its desire to prevent Roper Berkeley from adding diagnostic cardiac catheterization services to its hospital in Berkeley County – and not a desire to protest a purportedly impermissible interpretation of the Health Plan – Trident did not oppose East Cooper's CON Application and did not challenge DHEC's authority to approve that additional laboratory in the same service area as the laboratory proposed by Roper Berkeley under the same Health Plan Standards. (Sullivan Trial Tr. 189:10-190:19). Thus, the uncontroverted precedent of the Department and the only reliable and relevant evidence in the record of a prior interpretation of Standard 3 is represented by DHEC's decision to approve East Cooper's CON Application, an interpretation entirely consistent with the analysis used in the review and approval of Roper Berkeley's CON Application.

II. THERE IS NO EVIDENCE OF AN IMPROPER MOTIVE ON THE PART OF ROPER ST. FRANCIS.

Despite the wealth of evidence to the contrary, including testimony of its own health planning expert, Trident furthers the disdain apparent in the ALC's finding that a "plan was devised" between Roper St. Francis and DHEC by repeatedly mischaracterizing the record in a

false and negative manner. It is false and offensive for Trident to describe the common and appropriate communications between DHEC and Roper St. Francis prior to the filing of Roper Berkeley's CON Application as "enforcement negotiations," "one-time 'settlement agreement' of a threatened enforcement action" or a "negotiated resolution". (Resp. Br. pp. 9, 26, 27). These statements are as devoid of evidentiary support as the ALC's finding of a "plan," addressed at pages 22-23 of Appellant's Initial Brief.

Trident's own health planning expert acknowledged that there was no evidence of an agreement between DHEC and Roper St. Francis regarding the proposed CON Application in advance. (Sullivan Trial Tr. 187:3-18). Mr. Sullivan acknowledged that the CON Application had to be approvable, testifying: "Yeah, I mean, obviously they have to actually review the application, yes." (Sullivan Trial Tr. 187:16-18). Mr. Eubank affirmatively testified under oath that there was no agreement between DHEC and Roper St. Francis "regarding the outcome of Roper's CON Application." (Eubank Trial Tr. 293:5-12). What is abundantly clear from the record and was known or knowable to any interested person, is that Roper St. Francis proposed to submit a CON application to add diagnostic cardiac catheterization services at Roper Berkeley hospital in response to DHEC's notice that the agency intended to take enforcement action against Roper St. Francis because of the underutilized catheterization laboratory at St. Francis hospital. The proposal was described by Roper St. Francis in a letter to Mr. Eubank dated April 20, 2016, which also notified DHEC of its status as an affected person for the East Cooper CON Application and is included in the DHEC record for East Cooper's CON Application. (J02-069 – J02-070). The proposal was thereafter detailed in the CON Application filed May 9, 2016. (J01). Mr. Sullivan acknowledged that the CON Application was consistent with the information set forth in the April 20, 2016 letter. (Sullivan Trial Tr. 186:9-12).

The irony of Trident's reference to the "pejorative" nature of the ALC's finding of a "plan" between Roper St. Francis and DHEC should not be lost, as Trident's mischaracterizations of those same communications are exceedingly more pejorative and plainly false. (Resp. Br. p. 27). Trident is obviously intending to disparage Roper St. Francis and the Department in its arguments, displaying a reckless disregard for the truth. Trident concedes as it must in the Response Brief, "**no evidence exists** that DHEC guaranteed approval of Roper's CON application," as did Mr. Sullivan at trial. (Resp. Br. p. 18 (emphasis added); Sullivan Trial Tr. 187:3-18). In fact, Mr. Sullivan testified:

Q: The Department asked Roper St. Francis for a proposed solution. Is that right?

A. Yes.

Q: Okay. And it actually says, in hopes of avoiding such action, right?

A. Right.

Q: And they give a deadline for Roper St. Francis to respond.

A. They did.

Q: Is there anything in this letter that says, we will accept whatever proposal you give us?

A: No.

Q: Okay. And have you seen any email or letter or even the testimony of Mr. Eubank that The Department planned in advance to accept whatever proposal Roper St. Francis brought to them?

A: I did not see those words.

(Sullivan Trial Tr. 215:6-24).

The evidence confirms that Roper St. Francis disagreed with the allegation that its laboratory was operating in violation of the CON laws and it submitted a proposal at the request of DHEC in hopes of avoiding contested enforcement proceedings. (J02-069 – J02-070). It is also

uncontroverted that DHEC's intention at the time of the notice to Roper St. Francis of the potential enforcement action was that "a cease and desist order may be required to be sent to Roper in addition to a substantial monetary penalty." (Eubank Trial Tr. 367:3-9). Mr. Eubank further testified without objection that had he denied the CON Application, he would have proceeded "with a notice of enforcement conference and proceeding." (Eubank Trial Tr. 368:14-369:3). Trident's dismissiveness of the potential enforcement action had DHEC not found the CON Application approvable and instead issued a cease and desist order to Roper St. Francis speaks volumes to its disregard of the agency's authority, or at least shows a cavalier disregard for the impact such actions could have on physician and patient relationships in the community. Roper St. Francis submits that the decision to propose services at Roper Berkeley as a *possible* means to address DHEC's position regarding the St. Francis laboratory was a reasonable and appropriate response to the agency's demand for action.

Quite contrary to the insinuation that the parties were scheming in secret or hiding information from public view, the discussions between DHEC and Roper St. Francis were plainly identified in the April 20, 2016 letter to DHEC, and the e-mail communications were publically available to any interested person.³ There was no agreement or understanding between DHEC and Roper St. Francis in advance of the CON Application filing, nor is there any evidence to support any improper motive on the part of Roper St. Francis, and Trident's false assertions and *pejorative*

³ The suggestion that the communications between DHEC and Roper St. Francis are somehow more difficult to obtain than any other DHEC document subject to a Freedom of Information Act ("FOIA") request is absurd. (Resp. Br. p. 30). To the contrary, the e-mails were available through the same mechanism by which Trident obtained a copy of Roper Berkeley's CON Application – a FOIA request to DHEC – and is the same mechanism by which an interested person obtains the JARs submitted to RFA. Trident's arguments in the Response Brief further highlight the arbitrariness of the ALC's ruling and conclusions regarding public notice – with some publically available documents acceptable as notice to the regulated community but not others. (ALC Order, pp. 23-24).

mischaracterizations of the evidence should be disregarded as fundamentally contrary to the record.

III. TRIDENT'S INTERPRETATION, ADOPTED BY THE ALC, IS REPUGNANT TO THE HEALTH PLAN AND DESTRUCTIVE OF ITS OBVIOUS INTENT.

Trident correctly notes that “[i]n the absence of a compelling reason to reject DHEC’s interpretation [of Standard 3], established case law requires the ALC to defer and accept DHEC’s interpretation as correct.” (Resp. Br. p. 16). Trident consistently fails to appreciate the significance of the Health Plan as the *fundamental planning tool* used by DHEC to carry out the Act’s purpose, including to *guide the establishment* of health facilities and services that best serve public needs. S.C. Code Ann. § 44-7-110. There was but one issue presented to the ALC for contested case review: whether Trident established by a preponderance of the evidence that DHEC erred in finding Roper Berkeley’s CON Application was consistent with the 2015 Health Plan, with the basis of Trident’s challenge intentionally limited to Standard 3 of the Health Plan’s standards for diagnostic cardiac catheterization services. (Stip. ¶ 9).

The Health Plan, like the CON Regulations, is interpreted using the same rules of construction as statutes, and “[w]hen interpreting a regulation, we look for the plain and ordinary meaning of the words of the regulation, without resort to subtle or forced construction to limit or expand the regulation’s operation.” *Murphy v. S.C. Dept. of Health and Envtl. Control*, 396 S.C. 633, 639-40, 723 S.E.2d 191, 195 (2012) (quoting *Converse Power Corp. v. S.C. Dep’t of Health and Envtl. Control*, 350 S.C. 39, 47, 564 S.E.2d 341, 346 (Ct. App. 2002)). A reviewing court must “give deference to the interpretation of a regulation by the agency charged with its enforcement.” *Murphy*, 396 S.C. at 640, 723 S.E.2d at 195 (citing *Brown v. Bi-Lo, Inc.*, 354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003)). Where DHEC’s interpretation “is both reasonable and consistent with the plain language of the regulation, [there is] no reason to deviate from DHEC’s construction and

application.” *Murphy*, 396 S.C. at 640-41, 723 S.E.2d at 195.

In *Trident Medical Center v. South Carolina Department of Health and Environmental Control*, this Court considered strikingly similar arguments from Trident in its challenge to DHEC’s approval of the Roper Berkeley hospital on the grounds that “the Bed Transfer Provision prohibits DHEC from issuing a CON for the transfer of beds from an existing hospital to a hospital that has not yet been constructed.” *Trident Med. Ctr. v. S.C. Dept. of Health and Envtl. Control*, 412 S.C. 341, 349, 772 S.E.2d 177, 181 (Ct. App. 2015). Roper Berkeley submits that this Court’s analysis of the Health Plan and resulting belief that “flexibility is built into the requirements for general hospitals when determining need,” is similarly applicable to the Health Plan’s provisions with regard to diagnostic cardiac catheterization services. *Id.* at 359, 772 S.E.2d at 186. Contrary to the reasoning of the ALC below and the arguments of Trident here, a court “may not consider the language of [Standard 3] in isolation.” *Id.* at 357, 772 S.E.2d at 185. Instead, the entirety of the Cardiovascular Care Chapter should be considered, and its terms construed in context. This is because a “court may not, in order to give effect to particular words, virtually destroy the meaning of the entire context; that is, give the particular words a significance which would be clearly repugnant to the statute, looked at as a whole, and destructive of its obvious intent.” *Id.* at 357, 772 S.E.2d at 186 (quoting *Sparks v. Palmetto Hardwood, Inc.*, 406 S.C. 124, 128-29, 750 S.E.2d 61, 63 (2013)).

It is Trident’s interpretation of Standard 3, accepted whole cloth by the ALC, that destroys the meaning of the entire context of the Health Plan as a tool for planning health care services by myopically focusing on a single term “existing,” and ascribing to it a meaning and effect that is clearly repugnant to the purpose of the CON Act. The ALC adopts at the suggestion of Trident an unwritten temporal restriction with its interpretation that “‘existing’ as used in Standard 3 means

that a lab is open and offering and has the capacity to provide catheterization services to patients, as Bon Secours did, *at the time a CON Application is filed and under review*". (ALC Order, p. 19). This inferred limitation on DHEC's authority to consider present and future circumstances in review of diagnostic cardiac catheterization services is not dissimilar to Trident's interpretation of the Bed Transfer Provision that was refused by this Court in 2015. (ALC Order, p. 19, emphasis added).

In *Trident Medical Center*, Trident asserted that DHEC did not have the authority to approve the transfer of acute care beds to a receiving facility that was not yet constructed or "existing." In rejecting Trident's interpretation, this Court explained:

The remainder of the Bed Transfer Provision consists of a list of eight criteria with which a CON applicant must comply. The language in this list certainly *accommodates* those CON applications for the transfer of beds to a receiving facility already in existence at the time the application is submitted. Yet, there is no language in this list that either expressly or impliedly *requires* the receiving facility to be in existence when the CON application is submitted. Therefore, the plain language of the Bed Transfer Provision can be reasonably interpreted to include a receiving facility that will be constructed after DHEC issues the CON.

Trident Med. Ctr. at 356-57, 772 S.E.2d at 185 (emphasis in original). In the challenge at issue in this proceeding, Standard 3 of the Health Plan can be construed to include each and every catheterization laboratory in the service area, but the language of the Standard can also be reasonably interpreted to not consider as "existing" a catheterization laboratory that would not be offering diagnostic cardiac catheterization services "after DHEC issues the CON." *See id.* at 57, 772 S.E.2d at 185. Trident's expert opined that Standard 3 is "a community need standard" and "is the only standard in the plan that actually looks at the community as a whole and says, what's going on in the service area." (Sullivan Trial Tr. 66:6-19). The Department's interpretation of Standard 3 and evaluation of community need based on the utilization of the laboratories actually being used is entirely consistent with Standard 3's purpose and is not destructive of the intent of

the Standard and the Health Plan itself. This reasonable interpretation is also supported by the different language used in Standard 2 (“all labs”) and Standard 3 (“all existing labs”), an obvious distinction in the plain language of the Standards, which demonstrates the flexibility afforded to DHEC in guiding the establishment of cardiac catheterization services in the State. *See Trident Med. Ctr.* at 360, 772 S.E.2d at 187 (finding the intent of the State Health Planning Committee in drafting the Bed Transfer Provision was to provide flexibility in review of each proposed project with its own unique circumstances, and the agency’s interpretation was reasonable where it would improve health care access for the target population). It is Trident’s interpretation, adopted by the ALC, that is contrary to the rules of construction, and nothing in Trident’s Response Brief demonstrates a compelling reason for the ALC to reject DHEC’s interpretation of Standard 3. *See Dunton v. S.C. Bd. of Exam’rs in Optometry*, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987) (“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.”)

IV. TRIDENT’S PRIOR INCONSISTENT POSITION IS FURTHER EVIDENCE THAT DHEC’S INTERPRETATION IS NOT ARBITRARY.

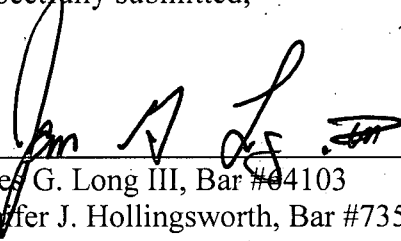
Trident’s dismissal of its prior inconsistent position regarding the St. Francis catheterization laboratory during DHEC staff review of the CON Application is not surprising, given that the analysis then offered to DHEC provides support for DHEC’s ultimate finding with regard to the application of Standard 3, and is further evidence that DHEC’s interpretation was not arbitrary or capricious. It was admitted by Trident at trial that DHEC staff had the analysis of three different health planning consultants during review of the Roper Berkeley CON Application: Mr. Sullivan on behalf of Trident, Ms. Platt on behalf of Roper Berkeley, and Mr. Levitt on behalf of East Cooper. (Sullivan Trial Tr. 226:12-227:21). All three of these health planners offered an analysis of the service area, and all three in varying ways suggested to DHEC that the St. Francis

catheterization laboratory should not be considered an existing program or should not be included in the community need analysis under Standard 3. (J01-199; J01-030 – J01-031; J02-024). Regardless of the tightrope Mr. Sullivan sought to walk at trial by differentiating between his definition for “existing” under the transfer criteria and “existing” for purposes of Standard 3 (Sullivan Trial Tr. 205:15-20), Trident cannot dispute that his analysis submitted to DHEC staff during review of the CON Application was that DHEC had the authority to “not recognize [St. Francis’s] diagnostic catheterization program as an existing service merely because only (3) three diagnostic caths are performed on average each year, which is not indicative of an actual program.” (J01-199). The record thus demonstrates that DHEC’s interpretation of the Health Plan and application of Standard 3 in the approval of Roper Berkeley’s CON Application “is reasonable and consistent with its statutory authority.” *Kiawah Dev. Partners, II, v. S.C. Dept. of Health and Envtl. Control*, 411 S.C. 16, 35, 766 S.E.2d 707, 719 (2014). Roper St. Francis submits that mere disagreement with DHEC’s interpretation, given the wealth of support in the record for its reasonableness, is not a permissible basis for the ALC to reject the agency’s interpretation and therefore reversal of the ALC’s Order is appropriate.

CONCLUSION

For all of the reasons stated above and in Roper Berkeley’s main brief, Roper Berkeley respectfully requests that the Court hold that the Department’s interpretation of its Health Plan is reasonable and consistent with the plain language used and that the Order of the ALC reversing the Department’s decision to approve Roper Berkeley’s CON Application must be reversed.

Respectfully submitted,



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

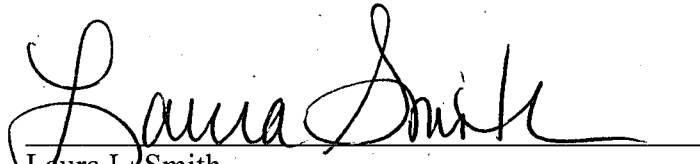
PROOF OF SERVICE

I certify that I have served the foregoing *Appellant's Initial Reply Brief* to be served on all parties of record by electronic mail, and by mailing a copy of the same, addressed as follows, on this 16 day of December, 2019:

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A handwritten signature in black ink, reading "Laura L. Smith". The signature is written in a cursive style and is positioned above a horizontal line.

Laura L. Smith

Legal Assistant to James G. Long, III

Laura L. Smith
Legal Practice Assistant

December 16, 2019

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SC Court of Appeals

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court, Court of Appeals
1015 Sumter Street
Columbia, South Carolina 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
Appellate Case No.: 2019-000358*

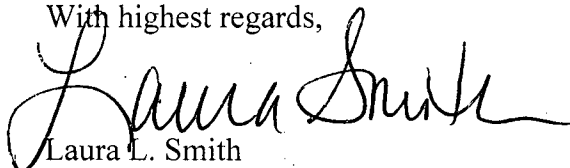
Dear Ms. Kitchings:

Enclosed please find an original and two (2) copies of *Appellant's Initial Reply Brief*, together with the *Proof of Service* in the above captioned matter, to be clocked and filed. Please file the originals and return the file-stamped copies to me via our courier.

By copy of this letter, I am hereby serving a copy of the same on all counsel of record.

Please do not hesitate to contact me should you have any questions.

With highest regards,



Laura L. Smith
Legal Assistant to James G. Long, III

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