STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Trident Medical Center, LLC, d/b/a Trident Medical Center and Summerville Medical Center, Petitioners, vs. South Carolina Department of Health and Environmental Control and Medical University Hospital Authority, d/b/a MUSC Health Emergency Services, Respondents.	Docket No.: 17-ALJ-07-0441-CC (consolidated) **ORDER DENYING MUHA'S MOTION TO ALTER AND AMEND**
CareAlliance Health Services, d/b/a Roper St. Francis Healthcare, Roper Hospital, Inc., Bon Secours-St. Francis Xavier Hospital, Inc., Roper Mount Pleasant Hospital and Roper St. Francis Berkeley Hospital, Petitioners, vs. South Carolina Department of Health and Environmental Control and Medical University Hospital Authority, d/b/a MUSC Health Emergency Services, Respondents.	Docket No.: 17-ALJ-07-0444-CC

APPEARANCES: David B. Summer, Jr. Esquire
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For Petitioner CareAlliance Health Services, d/b/a Roper St. Francis Healthcare, Roper Hospital, Inc., Bon Secours-St. Francis Xavier Hospital,

Inc., Roper Mount Pleasant Hospital, and Roper St. Francis Berkeley Hospital

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For Respondent South Carolina Department of Health and Environmental Control

Daniel J. Westbrook, Esquire
Travis Dayhuff, Esquire
For Respondent Medical University Hospital Authority, d/b/a MUSC Health Services

I. INTRODUCTION

This consolidated matter was before the Administrative Law Court (ALC or Court) pursuant to requests for contested case hearings filed by Petitioner Trident Medical Center, d/b/a Trident Medical Center and Summerville Medical Center (collectively referred to as "Trident") and Petitioner CareAlliance Health Services, d/b/a Roper St. Francis Healthcare, Roper Hospital, Inc., Bon Secours-St. Francis Xavier Hospital, Inc., Roper Mount Pleasant Hospital and Roper St. Francis Berkeley Hospital (collectively referred to as "Roper St. Francis"). Roper St. Francis and Trident challenged the decision of the South Carolina Department of Health and Environmental Control (Department) approving Respondent Medical University Hospital Authority, d/b/a MUSC Health Emergency Services (MUHA)'s Certificate of Need (CON) application for a freestanding emergency room department (FSED) in Berkeley County. A contested case hearing was held from July 22, 2019 through August 2, 2019. On May 28, 2020, a final order was issued denying MUHA's request for a FSED.

On June 8, 2020, MUHA filed a Motion to Alter or Amend the Court's order requesting that the Court make additional findings of fact and amend that portion of its order addressing the Department's authority to reorder project review criteria. MUHA also asked the Court to amend it conclusions that the FSED application failed to satisfy Standard 6 in the 2015 Plan and Drive Time and Access Standards in the 2017-2018 Plan, and various project review criteria. On June 19, 2020, Roper St. Francis (and then on June 22, 2020, Trident) submitted responses opposing MUHA's motion. On June 23, 2020, the Department filed a "Memorandum in Response to Motion to Alter or Amend" asking the Court to amend its order to conclude that the Department has the authority to change or reorder the priority criteria for a CON project." The Department

did not file its own motion. After careful review and consideration of the parties' submissions and the applicable law, the Court denies MUHA's motion.

II. APPLICABLE STANDARD

MUHA's motion asserts that it is based on Rule 29(D) of the SCALC Rules and 59(e) of the South Carolina Rules of Civil Procedure, and asks that the Court's order of May 28, 2020, "be reconsidered, altered, and amended." SCALC Rule 29(D) provides that a party may move for reconsideration of an order by way of a motion to alter or amend a final order of the Court, "subject to the grounds for relief set forth in Rule 59(e), SCRCP." Rule 59(e), SCRCP, is identical to Rule 59(e) of the Federal Rules of Civil Procedure with the exception of the time limitation for filing. While neither rule expressly sets forth standards for requesting relief, "courts interpreting Rule 59(e) have recognized three grounds for amending an earlier judgment: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." *Hutchinson v. Staton,* 994 F.2d 1076, 1081 (4th Cir. 1993) (discussing Rule 59(e), FRCP). "In the context of a motion for reconsideration, a 'manifest injustice' is defined as an error by the court that is 'direct, obvious, and observable.'" *Register v. Cameron & Barkley Co.,* 481 F.Supp.2d 479, n. 1 (D.S.C. 2007) (finding the fact that plaintiff incurred significant costs but have no remedy for recovery is not a "manifest injustice" warranting relief under Rule 59(e), FRCP); *see also* 11 Wright & Miller § 2810.1 ("The rule 59(e) motion may not be used to relitigate old matters . . . ."). It is "an extraordinary remedy which should be used sparingly..." 11 Wright & Miller § 2810.1.

III. DISCUSSION

A. MUHA's Request to Include Additional Findings of Fact

MUHA asks the Court to amend its order to include numerous additional factual findings without providing arguments in support of their inclusion. MUHA's motion fails to identify any of the findings and conclusions in the order that directly contradict MUHA's requested findings, and fails to acknowledge many similar findings that are already reflected in the order (and a statement as to why those findings are inadequate or incorrectly stated).

For example, MUHA asks that the order be amended to find as follows: "Six EDs are currently operational in the North Area (Berkeley County, Dorchester County, and northern

Charleston County), all owned by Trident or Roper." MUHA appears to have overlooked the Court's analysis of the existing and proposed emergency departments in MUHA's proposed service area which not only clearly identifies the providers of Roper St. Francis and Trident, but also details treatment spaces, capacity metrics, and historical utilization. MUHA also asks the Court to include information regarding emergency department utilization from previous CON applications submitted by Petitioners. As noted in the order, those CON applications were not before the Court and are irrelevant to this matter.

MUHA requests that the Court amend the order to reflect population growth along the I-26 corridor near Summerville and the site of the proposed FSED. The Court's order considered the population growth in the area and analyzed that growth in conjunction with the declining trend in emergency department visits, a trend that MUHA acknowledged. Paragraph 93 of the findings of fact stated:

> [W]hile the Court does not dispute population and emergency room visit growth in the tri-county area, the trend in the growth of emergency department visits indicates that it slowed in 2016, and that it actually declined in 2017. There is no indication that there is going to be a consistent dramatic increase in emergency department visits going forward. Moreover, there are additional facilities that will soon be coming online such as Roper St. Francis Berkeley Hospital and Trident Summerville F[S]ED.

(internal citations omitted).

Similarly, MUHA requests that the order be amended to include several factual findings related to its health care planner's analysis of need and projected utilization of the proposed FSED, and drive times. The Court's factual findings already address the utilization projected by MUHA 's health planner and the reasons offered such as "shorter travel time" for redirecting patients from MUHA downtown to the proposed FSED. MUHA asserts no reason or legal authority to support reversal of the following finding of fact in Paragraph 68 of the order:

> MUHA provided no basis, insight, or information for its assumption as to why some of its patients who resided in Berkeley, Charleston, and Dorchester Counties were already bypassing other hospital-based emergency rooms as well as F[S]EDs to seek treatment at MUSC on the peninsula. While pertinent to Standard 6's requirement that an applicant demonstrate why patients are not being adequately served by existing services in the area, the fact that a patient chooses to bypass an existing provider does not mean that existing health resources in the service area are inadequate.

There are other findings requested by MUHA that upon review of MUHA's motion and the order, were clearly considered and specifically rejected by the Court including those relating to MUHA's shift projections and triage acuity levels. Additional examples are outlined in Roper St. Francis and Trident's responses in opposition to MUHA's motion. MUHA provides no insight or reason as to why it believes the order should be amended to add these additional findings and includes no statement as to why the Court's findings are inadequate, not founded in evidence, or otherwise, incorrectly stated.

Finally, none of the additional findings proposed by MUHA change the Court's conclusion that there is no need for another FSED in the service area and that an additional FSED would present an unnecessary duplication of services. Residents in the service area already have ample access to emergency services. Every hospital provider in the service area is required to treat all individuals under the federal Emergency Medical Treatment and Labor Act regulations,[1] and every hospital provider, including Roper St. Francis and Trident, provide charity care for the indigent. Health Insurance Portability and Accountability Act regulations allow for the disclosure of patient protected health information for the coordination of care, and patients have the right to have copies of their medical records transferred to any provider of their choosing, including MUHA.[2] There is nothing about the coordination of care through MUHA's Accountable Care Organization (ACO) or the projected amount of charity care to be provided that changes the ultimate factual finding and conclusion of law - that MUHA's proposed project does not comply with the CON Act, the Plans, or the CON Regulations and, therefore, cannot be approved. Here, the Court already considered the matters raised in MUHA's motion, and the order already addresses the issues for which MUHA seeks to include additional factual findings with the exception of MUHA's ACO which is addressed herein.[3] Because the Court chose not to draw the

[1] *See generally*, 42 C.F.R. § 489.24.

[2] *See generally*, 45 C.F.R. § 489 Part 164.

[3] "A judicial opinion should identify the issues presented, set out the relevant facts, and apply the governing law to produce a clear, well-reasoned decision of the issues that must be resolved." FEDERAL JUDICIAL CENTER, JUDICIAL WRITING MANUAL: A POCKET GUIDE FOR JUDGES, § IV, p. 10 (2d ed. 2013). The need for a full and fair statement of the facts is of foremost importance in drafting an opinion, and "[f]acts significant to the losing side should not be omitted." *Id.* at p. 12. However, only the facts necessary to explain the court's decision should be included. *Id.* at p. 15. A judicial opinion should not be a recitation of every piece of evidence or testimony entered into the record. The inclusion of numerous, irrelevant facts does nothing to elucidate the Court's reasoning behind its decision and serves to confuse the issues. The recitation of evidence and arguments presented at the hearing, which are not germane to the Court's decision and which have been considered and addressed would serve no purpose other than to create confusion.

same legal conclusions in its consideration of the factual evidence is not a sufficient reason to amend the order. *See BECA Social Club v. S.C. Dep't of Revenue*, Docket No.: 04-ALJ-17-0014-CC, 2004 WL 3154763 at * 2 (S.C. Admin. Law Judge Div.) ("Rule 59(e) provides a procedure for correcting manifest errors of law or fact or considering the import of newly discovered evidence. . . . A motion under Rule 59(e) is not intended to be utilized to relitigate issues previously considered. . . ."). *See also Brown v. S.C. Dep't of Health & Envtl. Control*, Docket No.: 07-ALJ-08-0180-AP, 2009 WL 8167885 (S.C. Admin. Law Judge Div.) (denying Appellant's Motion because "Appellant, in his Motion attempts to re-argue the merits of his case.").

B. MUHA's Request to Alter and Amend Regarding the Department's Reordering of Priority Criteria

MUHA's motion states, "The Order should be considered, altered, and amend[ed] to conclude that DHEC has the authority to change or reorder the priority criteria for a CON project." MUHA provided no argument in support of its assertion that the Court's statutory interpretation, construction, or analysis of this issue was in error.[4] The CON Act requires that the Department prepare a State Health Plan (Plan) with the advice of the State Health Planning Committee. S.C. Code Ann. § 44-7-180(B) (2018). The draft Plan is then submitted to the Department Board for review and approval. *Id.* at § 44-7-180(C). At a minimum, the Plan must include the following:

(1) an inventory of existing health care facilities, beds, specified health services, and equipment;
(2) projections of need for additional health care facilities, beds, health services, and equipment;
(3) standards for distribution of health care facilities, beds, specified health services, and equipment including scope of services to be provided, utilization, and occupancy rates, travel time, regionalization, other factors relating to proper placement of services, and proper planning of health care facilities; and
(4) **a general statement as to the project review criteria considered most important in evaluating Certificate of Need applications for each type of facility, service, and equipment**, including a finding as to whether the benefits of improved accessibility to each such type of facility, service, and equipment may outweigh the adverse [e]ffects caused by the duplication of any existing facility, service, or equipment.

(emphasis added). Without reiterating the Court's analysis of the law in the final order, the plain

[4] While the Department did not file a motion to alter or amend, its memorandum in response to MUHA's motion to alter or amend asserts that the Department's interpretation of a statute or regulation that it must administer should be given deference. The Court concurs with this premise but as provided by law, not when an agency's interpretation is arbitrary, capricious, or manifestly contrary to the statute. *Kiawah Dev. Partners v. S.C. Dep't of Health& Envtl. Control*, 411 S.C. 16, 34, 766 S.E.2d 707, 718 (2014).

language of the statute requires the inclusion of the project review criteria deemed most important in evaluating a particular health care facility or service. *Id.* (emphasis added).

The plain language of the statute does not give the Department the authority to ignore those criteria once they have been decided upon and approved by the Department's Board. *See Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) ("Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute."). To allow the Department the discretion to alter the requirements of a validly adopted Plan would render the statutory requirements for what must be included in the Plan superfluous and the adoption of the Plan futile. It is presumed that the legislature does not intend to create acts of futility. *See Florence Cnty. Democratic Party v. Florence Cnty. Republican Party*, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012). Given that the cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature, the Court must reject any argument which undermines the plain language of a statute and absurdly results in a meaningless act of futility. *See Hodges*, 341 S.C. at 85, 533 S.E.2d at 581 ("The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature."). Finally, any error raised by MUHA in this regard would not affect the outcome of this matter as the Court considered the criteria set forth in both the Plan and by the Department prior to reaching its decision that there is no need for an additional FSED in the proposed service area.

C. MUHA's Request for Changes to the Court's Conclusions

Paragraph 3 of MUHA's motion makes a sweeping request for changes to the conclusions of law set forth in the order. The motion states in part:

> 3. The Order's conclusions that MUSC's FED CON application does not satisfy Standard 6 in the 2015 State Health Plan and the Drive Time and Access Standard in the 2017-2018 State Health Plan; does not comply with project review criteria Community Need Documentation, Distribution (Accessibility), and Medically Underserved Groups; and does not further the purposes of the CON Act are erroneous and should be reconsidered, altered, and amended because:
>
> a. These conclusions are affected by errors of law, including erroneous interpretations of these standards, criteria, and purposes;
> b. These conclusions are clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; and
> c. These conclusions are arbitrary, capricious, characterized by abuse of discretion, and clearly unwarranted exercise of discretion.

Like MUHA's other requests for amendment, MUHA provides no identification or detail as to which conclusions it believes are affected by errors of law much less what it contends those errors of law to be; which conclusions it believes are erroneous or unsubstantiated by the evidence on the whole record; or which conclusions are arbitrary or capricious.

As the trier of fact, this Court "has the task of assessing the credibility, persuasiveness, and weight of the evidence presented." *Jones v. Leagan*, 384 S.C. 1, 12, 681 S.E.2d 6, 12 (Ct. App. 2009). The Court weighed the evidence and applied the law. The grounds for the Court's decision are plainly set forth in detail and in the order. Bare allegations of errors of law and arbitrary and capricious application of the law are wholly insufficient for amending an order, and MUHA's attempt to re-litigate its case by means of a motion to alter or amend is inappropriate and must be denied. *See, e.g., BECA Social Club*, Docket No.: 04-ALJ-17-0014-CC, 2004 WL 3154763 at * 2.

"Mere disagreement with how the law is applied does not support a Rule 59(e) motion." *McCall v. Williams*, 59 F.Supp.2d 556, 558 (D.S.C. 1999) (*citing Hutchinson v. Staton*, 994 F.2d 1076, 1081 (4th Cir. 1993). *See also, F.D.I.C. v. Cage*, 810 F.Supp. 745, 747 (S.D.Miss. 1993) (When a Rule 59(e) motion "merely expresses disagreement with the findings of the Court and fails to demonstrate a 'clear error of law' or 'manifest injustice,'" the motion is not "well taken" and must be denied.). Because MUHA has failed to identify any clear error or manifest injustice, the motion must be denied.

IV. ORDER

Based on the foregoing,

IT IS HEREBY ORDERED that Respondent Medical University Hospital Authority, d/b/a MUSC Health Emergency Services' Motion to Alter and Amend, is **DENIED.**

AND IT IS SO ORDERED.

Shirley C. Robinson

SHIRLEY C. ROBINSON
Administrative Law Judge

July 6, 2020
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Ti'a Smith, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

Ti'a Smith
Judicial Law Clerk

July 6, 2020
Columbia, South Carolina