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**Oct 09 2020**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM THE ADMINISTRATIVE LAW COURT  
The Honorable Ralph King Anderson, III, Administrative Law Court Judge

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APPELLANT CASE No.: 2020-001323

ADMINISTRATIVE LAW COURT CASE No. 18-ALJ-07-0358-CC  
ADMINISTRATIVE LAW COURT CASE No. 18-ALJ-07-0360-CC  
ADMINISTRATIVE LAW COURT CASE No. 18-ALJ-07-0366-CC

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CareAlliance Health Services, d/b/a Roper St. Francis Healthcare,  
Roper Hospital, Inc., Bon Secours-St. Francis Xavier Hospital, Inc.,  
Roper St. Francis Berkeley Hospital, and Roper Mount Pleasant  
Hospital.....Appellant-Respondent,

vs.

South Carolina Department of Health and Environmental Control, and  
Medical University Hospital Authority, d/b/a MUHA Community Hospital.....Respondents,

AND

Walterboro Community Hospital, Inc., d/b/a Colleton Medical Center.....Appellant,

vs.

South Carolina Department of Health and Environmental Control, and  
Medical University Hospital Authority, d/b/a MUHA Community Hospital.....Respondents,

AND

Trident Medical Center, LLC, d/b/a Trident Medical Center  
and Summerville Medical Center.....Appellant,

vs.

South Carolina Department of Health and Environmental Control, and  
Medical University Hospital Authority, d/b/a MUHA Community Hospital.....Respondents.

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**MOTION OF THE APPELLANTS CAREALLIANCE HEALTH SERVICES, D/B/A  
ROPER ST. FRANCIS HEALTHCARE, ROPER HOSPITAL, INC., BON SECOURS-ST.  
FRANCIS HOSPITAL, INC., FOR RELIEF FROM APPEAL BOND**

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## MOTION

The Appellants CareAlliance Health Services, d/b/a Roper St. Francis Healthcare, Roper Hospital, Inc., Bon Secours-St. Francis Xavier Hospital, Inc., Roper St. Francis Berkeley Hospital, and Roper Mount Pleasant Hospital (collectively “Roper St. Francis Appellants”) hereby move this Court pursuant to SCACR Rule 240 for an order relieving the Roper St. Francis Appellants of the obligation to post the bond set forth in the State Certification of Need and Health Facility Licensure Act (“CON Act”) at Section 44-7-220(B) of the South Carolina Code of Laws (the “Appeal Bond”). The Roper St. Francis Appellants submit that the Appeal Bond required in order to obtain judicial review of the Administrative Law Court’s decision to approve the CON Application of Respondent Medical University Hospital Authority, d/b/a MUHA Community Hospital (“MUHA”) is unconstitutional and violates the South Carolina Constitution and the United States Constitution in several particulars, including the Roper St. Francis Appellants’ constitutional rights to Due Process and Equal Protection under the law.

In order to allow for the complete presentation of these issues and due consideration of the merits, the Roper St. Francis Appellants also respectfully request that the Court refrain from any dismissal of this appeal for failure to pay the Appeal Bond in the statutory amount due of \$1,500,000<sup>1</sup> within the time allotted by the CON Act and this Court’s Rules<sup>2</sup>, and further requests that the Court stay and suspend the regular briefing schedule set forth in the Appellate Court Rules pending a decision on the Motion for Relief from Appeal Bond.

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<sup>1</sup> The amount due from the Roper St. Francis Appellants is the maximum amount established by the statute, or \$1,500,000, because 5% of the total project costs for MUHA’s CON application is \$16,250,000.

<sup>2</sup> The Roper St. Francis Appellants timely filed their Notice of Appeal on October 2, 2020. Pursuant to the CON Act and SCACR Rule 263(a), the Appeal Bond must be deposited by October 9, 2020.

## **BACKGROUND**

The Roper St. Francis Appellants adopt the BACKGROUND as set forth in the Joint Motion of the Appellants Trident Medical Center LLC and Walterboro Community Hospital, Inc. (“Trident Appellants”), for Relief from Appeal Bond Required by S.C. Code Ann. § 44-7-220(B) and Memorandum in Support (“Trident Appellants’ Motion”) filed with the Court on October 7, 2020.

## **ARGUMENT**

The Roper St. Francis Appellants join and adopt the ARGUMENT as set forth in the Trident Appellants’ Motion, specifically including the citation of authorities therein, and supports the request for relief from the Appeal Bond with the Affidavit of John Craig Self, the Vice President and Chief Strategy and Business Development Officer of Roper St. Francis Healthcare, attached as Exhibit A.

## **CONCLUSION**

For the reasons set forth in the Trident Appellants’ Motion, the Roper St. Francis Appellants respectfully request that this Court find the Appeal Bond requirement as set forth in Section 44-7-210(B) of the CON Act violates Due Process and the guarantee of Equal Protection of the South Carolina Constitution and the United States Constitution, and further order that the Roper St. Francis Appellants are relieved from any obligation to pay the Appeal Bond in order to proceed with judicial review of the appeal duly filed in accordance with SCACR Rule 203(d)(2). Finally, the Roper St. Francis Appellants respectfully request that the Court refrain from any dismissal of this appeal for failure to pay the Appeal Bond and suspend the regular briefing schedule set forth in the Appellate Court Rules pending a decision on this Motion.

Respectfully submitted,

*/s/ Jennifer J. Hollingsworth*

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*Attorneys for Appellants, CareAlliance Health Services, d/b/a Roper St. Francis Healthcare, Roper Hospital, Inc., Bon Secours-St. Francis Xavier Hospital, Inc., Roper St. Francis Berkeley Hospital, and Roper Mount Pleasant Hospital*

October 9, 2020  
Columbia, South Carolina

# EXHIBIT A

TO

MOTION OF THE APPELLANTS CAREALLIANCE HEALTH SERVICES, D/B/A ROPER ST. FRANCIS HEALTHCARE, ROPER HOSPITAL, INC., BON SECOURS-ST. FRANCIS HOSPITAL, INC.,  
FOR RELIEF FROM APPEAL BOND

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APPEAL FROM THE ADMINISTRATIVE LAW COURT  
The Honorable Ralph King Anderson, III, Administrative Law Court Judge

ADMINISTRATIVE LAW COURT CASE NOS.  
18-ALJ-07-0358-CC; 18-ALJ-07-0360-CC; and 18-ALJ-07-0366-CC

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CareAlliance Health Services, d/b/a Roper St. Francis  
Healthcare, Roper Hospital, Inc., Bon Secours-St. Francis  
Xavier Hospital, Inc., Roper St. Francis Berkeley Hospital,  
and Roper Mount Pleasant Hospital.....Petitioners,

vs.

South Carolina Department of Health and Environmental Control,  
and Medical University Hospital Authority, d/b/a MUHA  
Community Hospital.....Respondents.

Of Whom CareAlliance Health Services, d/b/a Roper St. Francis  
Healthcare, Roper Hospital, Inc., Bon Secours-St. Francis  
Xavier Hospital, Inc., Roper St. Francis Berkeley Hospital,  
and Roper Mount Pleasant Hospital is.....Appellants,

*Consolidated with:*

Walterboro Community Hospital, Inc., d/b/a Colleton Medical Center  
.....Petitioner,

vs.

South Carolina Department of Health and Environmental Control,  
and Medical University Hospital Authority, d/b/a MUHA  
Community Hospital.....Respondents.

*And:*

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 MUHA  
Community Hospital.....Respondents.

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**AFFIDAVIT OF JOHN CRAIG SELF**

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1. I am the Vice President and Chief Strategy and Business Development Officer of Roper St. Francis Healthcare System, which is a healthcare system based in Charleston, South Carolina, that includes four general acute care hospitals: Roper St. Francis Hospital, Inc., Bon Secours-St. Francis Xavier Hospital, Inc., Roper St. Francis Berkeley Hospital, and Roper Mount Pleasant Hospital (collectively "Roper St. Francis"). In my capacity as VP and Chief Strategy and Business Development Officer I have personal knowledge of the facts stated in this Affidavit.

2. I am familiar with the above captioned contested cases in which Roper St. Francis opposed the Medical University Hospital Authority's (MUHA) Certificate of Need (CON) application proposing to construct a new 128-bed community hospital in Berkeley County, South Carolina. Roper St. Francis provided a myriad of reasons for this opposition to the South Carolina Department of Health and Environmental Control (DHEC) Staff during review of the CON application, and again during the contested case hearing before the South Carolina Administrative Law Court (ALC).

3. Following a lengthy hearing and the presentation of opposition by three different healthcare systems, including Walterboro Community Hospital, Inc., and Trident Medical Center, LLC, the ALC affirmed DHEC. Roper St. Francis continues to be aggrieved by the decisions of these administrative bodies and desires to exercise the constitutional right to appeal to the judiciary. Roper St. Francis has filed its Notice of Appeal and paid the applicable filing fee in accordance with the South Carolina Appellate Court Rules, but is further directed by statute to

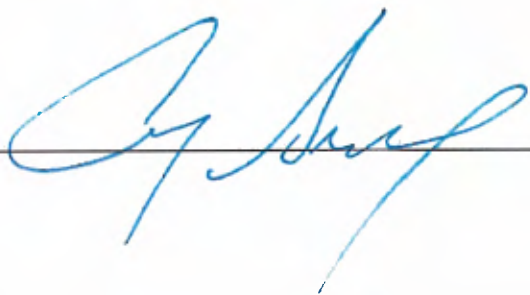
post a \$1.5 million bond within five (5) days of filing the Notice of Appeal in order to obtain review by the Court of Appeals.

4. It would be an imprudent use of healthcare resources even during normal times, which these times are not, to expend \$1.5 million solely for the right to obtain judicial review of an adverse decision of DHEC and the ALC, even though these cases involve a matter of great importance and DHEC's approval will have material negative impacts on Roper St. Francis well into the future, particularly on our Roper St. Francis Berkeley hospital facility and staff.

5. It is my understanding that MUHA is not prevented from proceeding with development of its \$325,000,000 hospital down the road from our Berkeley hospital while we pursue appeal of these decisions. Given this and the greater uses to which we can devote such significant healthcare resources, Roper St. Francis cannot in good conscience commit \$1.5 million solely to pursue its appeal to the Court of Appeals.

6. But for the statutory directive to post a \$1.5 million bond that applies only because Roper St. Francis is challenging the approval of a CON, Roper St. Francis would proceed with the appeal of the ALC's Amended Final Order.

**FURTHER AFFIANT SAYETH NOT.**



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SWORN to and subscribed before me  
this 9th day of October, 2020.

Marion R Parish  
Notary Public for South Carolina

My Commission Expires: 3/3/22

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ADMINISTRATIVE LAW COURT CASE NO. 18-ALJ-07-0366-CC

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CareAlliance Health Services, d/b/a Roper St. Francis Healthcare,  
Roper Hospital, Inc., Bon Secours-St. Francis Xavier Hospital, Inc.,  
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vs.

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Medical University Hospital Authority, d/b/a MUHA Community Hospital.....Respondents.

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**PROOF OF SERVICE**

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I hereby certify that I have served a copy of the ***MOTION OF THE APPELLANT-RESPONDENTS CAREALLIANCE HEALTH SERVICES, D/B/A ROPER ST. FRANCIS HEALTHCARE, ROPER HOSPITAL, INC., BON SECOURS-ST. FRANCIS HOSPITAL, INC., FOR RELIEF FROM APPEAL BOND*** on all parties of record by mailing a copy of the same, addressed as follows, and by electronic mail, on this 9<sup>th</sup> day of October, 2020:

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Celeste Jones, Esquire  
Pamela A. Baker, Esquire  
Burr Forman Law Firm  
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/s/ Jennifer J. Hollingsworth

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Francis Healthcare, Roper Hospital, Inc., Bon  
Secours-St. Francis Xavier Hospital, Inc., Roper  
St. Francis Berkeley Hospital, and Roper Mount  
Pleasant Hospital*

October 9, 2020  
Columbia, South Carolina

Jennifer J. Hollingsworth  
Member  
Admitted in SC

October 9, 2020

**VIA HAND DELIVERY AND VIA ELECTRONIC MAIL**

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1220 Senate Street  
Post Office Box 11629  
Columbia, SC 29211

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**Oct 09 2020**

**SC Court of Appeals**

Re: **Appellate Case No.: 2020-001323**  
**CareAlliance Health Services, d/b/a Roper St. Francis Healthcare, et al. vs. SCDHEC, et al.; AND Walterboro Community Hospital, Inc., d/b/a Colleton Medical Center vs. SCDHEC, et al.; AND Trident Medical Center, LLC, d/b/a Trident Medical Center and Summerville Medical Center vs. SCDHEC, et al.**

Charleston  
Charlotte  
**Columbia**  
Greensboro  
Greenville  
Hilton Head  
Myrtle Beach  
Raleigh

Dear Ms. Kitchings:

Enclosed for filing in the above-referenced matter, please find an original and one (1) copy of *Appellant-Respondents CareAlliance Health Services, d/b/a Roper St. Francis Healthcare, et al.'s Motion for Relief from Appeal Bond*. I have also enclosed a Proof of Service, and our firm's check in the amount of \$50.00 which represents the filing fee.

By copy of this letter and pursuant to the Court's standing Order, I am hereby serving a copy of the same on all counsel of record via U.S. Mail and via electronic mail.

If you have any questions regarding the enclosed, please do not hesitate to contact me.

With highest regards, I remain

Very truly yours,

Jennifer J. Hollingsworth

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
October 9, 2020  
Page 2

Enclosures

cc: M. Elizabeth Crum, Esquire (*Via Electronic & U.S. Mail*)  
Celeste T. Jones, Esquire (*Via Electronic & U.S. Mail*)  
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