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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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

Appellate Case No. 2019-001159  
Case No. 18-ALJ-07-0100-CC

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

v.

South Carolina Department of Health and Environmental  
Control and Medical University Hospital Authority d/b/a  
MUSC Radiation Therapy Center – Berkeley County, ..... Respondents,

Of Which, Medical University Hospital Authority d/b/a  
MUSC Radiation Therapy Center – Berkeley County is the, ..... Appellant.

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REPLY TO RETURN TO  
MOTION FOR LEAVE TO FILE A JOINT AMICUS BRIEF

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The Medical University of South Carolina (MUSC) and MUSC Strategic Ventures (MSV) moved this Court to permit the filing of their Joint Amicus Brief in the above-captioned matter. Respondent Trident Medical Center, LLC (Trident) filed a Return in opposition to the motion. MUSC and MSV submit this Reply in response to Trident’s Return and in support of their motion for leave to file their joint amicus brief.

## REPLY ARGUMENT

Trident admits that its post-trial motion before the ALC was based upon and sought a ruling based upon the non-party issues of MUSC allegedly violating its enabling statutes, of MSV thereby being an *ultra vires* corporation, and of MUSC Cancer Care Network, LLC (Network) being an unconstitutional joint venture in violation of S.C. Const. art. X, § 11. (Trident Return at 6-8). Trident further admits that the ALC “had to consider” the non-party issues to decide Trident’s motion. Trident also admits the ALC made findings on and determinations of these non-party issues in order to reverse DHEC and deny the CON Application of Appellant Medical University Hospital Authority (MUHA). (*Id.* at 8, 10). Despite these admissions, Trident claims the ALC properly considered and determined these non-party issues, because it did not take the further illegal step of ordering the dissolution of MSV or some other similar illegal act against MUSC or MSV. (*Id.* at 10-11).

As set forth in the Motion and Joint Amicus Brief, the ALC has no power to administer or enforce MUSC’s enabling legislation or Article X, § 11 of the South Carolina Constitution. Trident does not dispute this, or even address the question. Rather, it hides behind semantics to take advantage of the ALC’s findings and determinations on the non-party issues while claiming the ALC never made any such decisions and determinations.

Trident complains that the Joint Amicus Brief “would add nothing of value” in this appeal, because the Brief “reiterate[s] arguments already ably made” by the parties. To the extent that Trident is complaining that the Brief focuses on the same issues as the parties’ briefs, that is the requirement of Rule 213, SCACR. Moreover, if it is true that the Joint Amicus Brief adds “nothing of value,” one must ask why Trident opposes the motion with such ferocity. If Trident believes its assertion, it need not file a responsive brief beyond incorporating its existing Brief of Respondent.

MUSC and MSV respectfully submit that, contrary to Trident's assertions, the Joint Amicus Brief provides a deeper and broader discussion on the pending issue of the ALC's statutory and constitutional power to consider and determine the non-party issues. In like manner, the Joint Amicus Brief addresses more completely the question of whether the ALC properly exercised any such power without first joining the non-parties so that they could be heard on the non-party issues.

Oddly, and despite its assertion that the Joint Amicus Brief merely reiterates existing arguments, Trident also complains that the Joint Amicus Brief goes beyond the parties' arguments on the error preservation question. (See Trident Return at 10, footnote 2). The error preservation issue is before this Court, as Trident admits. The Joint Amicus Brief reviews the existing law to explain why the issue is properly before this Court, which is something this Court is free to do even if no party raised any such arguments. Questions of error preservation are commonly raised and ruled upon by the appellate courts in the absence of any such questions or arguments being raised by the parties.

Finally, Trident asserts there is no need to hear from the non-parties on the non-party issues. This is an astounding assertion. Trident asked the ALC to declare and determine MSV to be an *ultra vires* corporation – any such declaration and determination manifestly should and must include providing an opportunity to MSV to be heard on this issue before making any such determination and declaration. In like manner, Trident asked to ALC to declare and determine that MUSC had violated its enabling statutes – surely it is desirous that MUSC be heard on this matter before making any such determination and declaration. Trident also asked the ALC to declare and determine that the Network, of which MSV was part owner in service of MUSC, existed in violation of Article X, § 11 of the South Carolina Constitution. Here again, MSV and MUSC manifestly should and must be given an opportunity to be heard before any such

determination and declaration. And, as noted earlier, the Joint Amicus Brief provides a broader and deeper discussion of these issues that MUSC and MSV submit would be of use to this Court.

### CONCLUSION

For all of the foregoing reasons, and for the reasons set forth in the their Motion and Joint Amicus Brief, MUSC and MSV respectfully submit that this Court should grant the motion to file the joint amicus brief of the Medical University of South Carolina and MUSC Strategic Ventures.

Respectfully Submitted,

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