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Mar 09 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM
THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Case No. 17-ALJ-07-0441-CC
Case No. 17-ALJ-07-0444-CC
Appellate Case No. 2020-001072

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

Petitioner/
Respondent,

v.

South Carolina Department of Health and Environmental
Control and Medical University Hospital Authority d/b/a
MUSC Health Emergency Services,.....

Respondents,

Of Whom, Medical University Hospital Authority d/b/a
MUSC Health Emergency Services is

Appellant.

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,

Petitioner/
Respondent,

v.

South Carolina Department of Health and Environmental
Control and Medical University Hospital Authority d/b/a
MUSC Health Emergency Services,.....

Respondents,

Of Whom, Medical University Hospital Authority d/b/a
MUSC Health Emergency Services is

Appellant.

MOTION TO SEAL

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, Appellant Medical University Hospital Authority (“MUSC”), with the consent of all other parties, moves to file a portion of the Record on Appeal under seal. The documents at issue are:

1. Exhibits 1-71 to the deposition of Thomas M. Herrman (the “Herrman Deposition Exhibits”), ROA 0397 - 0746; and
2. Trident Medical Center, LLC, Trial Exhibit 68 (“Trident Exhibit 68”), ROA 6353 – 6366.

At the contested case hearing the South Carolina Administrative Law Court (“ALC”) granted consent motions to enter Trident Exhibit 68 and the Herrman Deposition Exhibits (collectively, the “Exhibits”) into the record under seal. *Tr.* at 656:18-25, R. 1402; at 1231:3-19; R. 1977. The Exhibits contain many confidential documents produced in confidence pursuant to the ALC’s Consent Confidentiality Order.

Ex Parte Capital U-Drive-It, Inc., 369 S.C. 1, 12, 630 S.E. 2nd, 464, 470 (2006) sets forth twelve factors to be considered for filing under seal. Though not all are applicable in this situation, a majority of the factors, as set forth below, weigh in favor of filing the Exhibits under seal to protect the confidential and sensitive information they contain.

First, filing under seal will ensure the parties’ right to a fair hearing. Confidential and proprietary information will be protected from potential abuse by competitors while allowing the issues on appeal to receive full and fair consideration by this Court.

Second, there is no issue related to witness cooperation regarding the Exhibits as there will be no witnesses called in this Court.

Third, pursuant to the Consent Confidentiality Order and the order by the South Carolina Administrative Law Court during trial to seal the Exhibits, the underlying parties have an expectation of confidentiality in this matter related to the Exhibits.

Fourth, although this matter contains some public significance, much of the information contained in the Exhibits is confidential or proprietary, non-public information that originates from a private third party.

Fifth, preventing the disclosure of the Exhibits by sealing them will protect MUSC from harm by competitors.

Sixth, the public interest will be best served by allowing filing under seal. To the extent the Exhibits contain sensitive proprietary information related to a private third party, such information will be protected from exposure in the public domain.

Seventh, release of this information will not enhance the public's understanding of an important historical event.

In conclusion, for the reasons set forth above, this Court should grant this motion to file ROA 0397 – 0746 and 6353 – 6366 under seal.

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CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Medical University Hospital Authority d/b/a MUSC Health Emergency Services, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by electronic mail to the following address(es):

Pleadings: **MOTION TO SUPPLEMENT RECORD ON APPEAL AND HOLD FILING DEADLINE IN ABEYANCE**

MOTION TO SEAL

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March 9, 2021