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SC Court of Appeals

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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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

Case No. 20-ALJ-07-0108-CC  
Appellate Case No. 2020-001610

Lexington County Health Services  
District Inc., d/b/a Lexington Medical Center, ..... Petitioner/Respondent,

v.

South Carolina Department of Health and  
Environmental Control, Prisma Health-  
Midlands, Providence Hospital, LLC  
d/b/a Providence Health, Providence Health  
Northeast, Providence Health Fairfield,  
and Kershaw Hospital, LLC d/b/a  
Kershaw Health Medical Center, ..... Respondents,

OF WHICH

Prisma Health-Midlands is the ..... Appellant-Respondent,

and

Providence Hospital, LLC d/b/a Providence Health,  
Providence Health Northeast, Providence Health  
Fairfield, and Kershaw Hospital, LLC  
d/b/a Kershaw Health Medical Center are the ..... Respondents-Appellants.

**MOTION TO WITHDRAW APPEAL AND VACATE APPEALED ORDERS**

This is an appeal from the Administrative Law Court (ALC). It arose under the COPA  
program created by the Health Care Cooperation Act (the COPA Act) and administered by

Respondent South Carolina Department of Health and Environmental Control (DHEC).<sup>1</sup> Appellant Prisma Health - Midlands (PHM) moves to withdraw its appeal and vacate the DHEC Decision and the appealed ALC Orders, because the seller terminated the asset purchase agreement that allowed PHM to purchase the assets that were subject to the DHEC Decision. The termination of the asset purchase agreement moots the issues in this case. The DHEC Decision and the appealed ALC Orders should be vacated to avoid any potential collateral consequences such as res judicata, collateral estoppel, or future use as persuasive authority.<sup>2</sup>

Under the COPA Act, hospitals may enter a “cooperative agreement” to cooperate in providing healthcare in the relevant market. The legislative purpose behind the COPA Act is to provide “state action” protection when DHEC approves and regulates a cooperative agreement under the COPA Act by issuing a “certificate of public advantage” (a COPA). A COPA may provide immunity from civil and criminal liability under state and federal antitrust laws.

In 1997, DHEC approved the cooperative agreement creating Appellant PHM through its predecessor and issued a “certificate of public advantage” with conditions under the COPA Act pursuant to which PHM operates. In 2019, PHM negotiated a letter of intent with LifePoint Health, LLC, for the purchase of Providence Hospital, LLC and Kershaw Hospital, LLC, which have several healthcare assets, including Providence Hospital in downtown Columbia, Providence Northeast<sup>3</sup> in Richland County and Kershaw Health in Camden, Kershaw County, South Carolina. PHM requested that DHEC make these assets subject to and covered by the 1997 certificate of public advantage (COPA-97-01) and its conditions. In 2020, DHEC determined that the assets to

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<sup>1</sup> See generally S.C. Code Ann. §§ 44-7-500 to -590 (2017).

<sup>2</sup> If the appealed orders are vacated, DHEC’s Decision must also be vacated to avoid the anomaly of DHEC’s approval of the asset purchase acquisition being undisturbed.

<sup>3</sup> The freestanding emergency department (Providence Health Fairfield) in Fairfield County is licensed under Providence Northeast.

be purchased by PHM, would be covered by and become part of COPA-97-01 and the amended conditions when purchased by PHM. PHM and LifePoint executed the asset purchase agreement immediately after DHEC issued its Decision. Respondent Lexington Medical Center petitioned the ALC for a contested case hearing; the ALC reversed the DHEC Decision; PHM appealed to this Court.

The asset purchase agreement between LifePoint and PHM included a termination clause that gave LifePoint sole discretion to terminate the agreement for several reasons. After the first anniversary date of the asset purchase agreement, LifePoint exercised this discretion and terminated the asset purchase agreement.<sup>4</sup> As a result, the issues raised in this appeal are moot, because there is no longer any need for any determination by DHEC, the ALC, or this Court in this matter. *Sloan v. Greenville County*, 670 S.E.2d 663, 667 (S.C. App. 2009) (“A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy. Mootness also arises when some event occurs making it impossible for the reviewing court to grant effectual relief.” (citations omitted)).

When an appeal “becomes moot through circumstances beyond the control of the appellant,” the court should vacate the appealed order, because it would be inequitable to deny the appellant any review of the order. *Byerly v. South Carolina Nat’l Bank Corp.*, 438 S.E.2d 233 (S.C. 1993), *aff’g* 427 S.E.2d 715 (S.C. App. 1993). Here, PHM had no control over LifePoint’s decision to exercise its contractual right to terminate the asset purchase agreement. It would be inequitable to deny PHM appellate review of the important issues in this case. Thus, this Court should vacate DHEC’s Decision and the ALC’s Orders.<sup>5</sup>

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<sup>4</sup> PHM had sought expedited treatment in this case since June 2020.

<sup>5</sup> Research indicates that the appellate courts routinely vacate the appealed order when an appeal becomes moot for any number of reasons. *E.g.*, *Beaufort County Bd. of Educa. v. Lighthouse Charter Sch. Comm.*, 576 S.E.2d 180 (S.C. 2003) (appeal dismissed and appealed order vacated when General Assembly substantially amends the subject statute

The law recognizes three exceptions to the mootness doctrine, including situations where the trial court’s decision “may affect future events, or have collateral consequences for the parties.” *Sloan v. Greenville County*, 670 S.E.2d 663 (S.C. App. 2009). The easiest way to avoid this problem is to vacate the appealed orders. Absent that, however, the appeal should continue to avoid any effect on future events or collateral consequences. Here, if this Court does not vacate DHEC’s Decision and the ALC’s Orders, this Court should retain the appeal and consider the issues to avoid potential collateral consequences such as res judicata, collateral estoppel, or use of the ALC Orders as persuasive authority in other administrative proceedings.

In sum, due to LifePoint’s unilateral termination of the asset purchase agreement, this matter has become moot. Accordingly, DHEC’s Decision and the appealed ALC Orders should be vacated, and the appeal should be dismissed as moot. In the alternative, if this Court does not vacate DHEC’s Decision and the appealed ALC Orders, then this Court should retain this appeal and decide the issues presented therein. This is necessary to avoid the inequity of denying PHM any judicial review and to avoid potential collateral consequences such as res judicata, collateral estoppel, or use of the appealed Orders as persuasive authority in other administrative matters before the ALC.

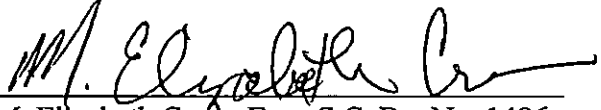
### CONCLUSION

For the reasons set forth above, PHM respectfully requests that the Court grant its “Motion to Withdraw Appeal and to Vacate Appealed Orders.”

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during the appeal). The same is true when the Supreme Court has granted certiorari to review a decision by this Court, and the matter thereafter becomes moot. *E.g.*, *State v. Miller*, 762 S.E.2d 394 (S.C. 2014) (appellant dies during appeal), *vacating* 727 S.E.2d 32 (S.C. App. 2012); *Friends of McLeod, Inc. v. City of Charleston*, 682 S.E.2d 488 (S.C. 2009) (parties enter agreement that renders matter moot), *vacating* 658 S.E.2d 544 (S.C. 2008).



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April 7, 2021  
Columbia, SC

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

Appellate Case No. 2020-001610

Lexington County Health Services  
District Inc., d/b/a Lexington Medical Center, ..... Petitioner/Respondent,

v.

South Carolina Department of Health and  
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Northeast, Providence Health Fairfield,  
and Kershaw Hospital, LLC d/b/a  
Kershaw Health Medical Center, ..... Respondents,

OF WHICH

Prisma Health-Midlands is the Appellant-Respondent and  
Providence Hospital, LLC d/b/a Providence Health, Providence  
Health Northeast, Providence Health Fairfield, and Kershaw  
Hospital, LLC d/b/a Kershaw Health Medical Center are the  
Respondents-Appellants.

CERTIFICATE OF SERVICE

I, Donna O'Daniel, an employee of Burr & Forman, LLP, hereby certify that a true and  
correct copy of the **Motion to Withdraw Appeal and Vacate Appealed Orders** was served upon  
all counsel of record in the above-captioned matter, this 5th day of April 2021, as indicated and  
addressed as follows:

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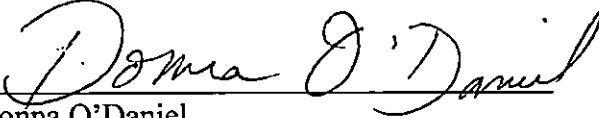
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April 7, 2021

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**Via Email: (ctappfilings@sccourts.org)**  
**and Hand Delivery**

The Honorable Jenny Abbott Kitchings, Clerk  
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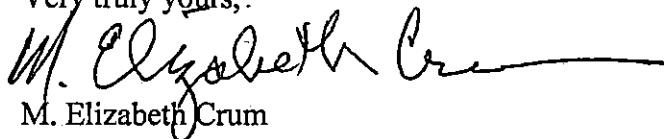
**Re: Lexington County Health v. SCDHEC, Prisma Health – Midlands, et al.**  
**Appellate Case No. 2020-001610**

Dear Ms. Kitchings:

On behalf of Prisma Health-Midlands, enclosed for filing with the Court is *Appellant/Respondent Prisma Health-Midlands' Motion to Withdraw Appeal and Vacate Appealed Orders*. A check in the amount of \$50 is also enclosed to cover the cost of the filing fee for the Motion.

By copy of this letter, we are serving all counsel of record with a copy of the same. Should you have any questions with respect to this filing, please do not hesitate to contact me.

Very truly yours,

  
M. Elizabeth Crum

MEC/dmo  
Enclosures

cc: **All w/enclosure**

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Ariail B. Kirk, Esq. (via email)

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(M. Elizabeth Crom, Esq.)

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