

94067  
**RECEIVED**

APR 09 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals  
APPELLATE CASE NO. 2020-001610

---

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Ralph King Anderson, III  
Chief Administrative Law Judge

Case No: 20-ALJ-07-0108-CC

---

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 OF THE RESPONDENTS-APPELLANTS  
TO WITHDRAW APPEAL**

---

The Respondent-Appellants 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 (“LifePoint”) hereby move to withdraw their appeal filed in this case on December 17, 2020. Respondents-Appellants request withdrawal of their appeal on the grounds that the termination of the asset purchase agreement, which forms the basis of the dispute below, moots the issues in this case.

On December 13, 2019, the Appellant Prisma Health – Midlands (“PHM”) notified the Respondent South Carolina Department of Health and Environmental Control (“DHEC”) that PHM planned to purchase certain healthcare facilities (the “Assets”) from LifePoint and requested that DHEC review the proposed transaction and determine that the Assets would be subject to the existing Certificate of Public Advantage (“COPA”) granted to PHM. DHEC issued its decision on February 28, 2020 and determined that PHM’s operation of the Assets would be subject to the ongoing COPA conditions and to certain additional conditions DHEC added to the COPA to assure that the benefits of the COPA continue to outweigh the potential competitive disadvantages. The Administrative Law Court overturned the decision of DHEC and held that PHM could not operate the Assets it intended to purchase under its original COPA and further held that the purchase of the Assets as presented to the ALC could not be the subject of a new COPA.

The purchase of the Assets by PHM was governed by an asset purchase agreement (“APA”) between LifePoint and PHM. The APA included a termination clause that gave LifePoint the discretion to terminate the agreement for several reasons, including the passage of more than one year without consummation of the purchase of the Assets.

The first anniversary date of the APA has passed and LifePoint has opted to terminate the APA. Thus, the intended purchase of the Assets by PHM under the APA will not occur. As a result, the issues raised in this appeal are moot because there is no longer a need for any determination by DHEC, the ALC, or this Court in this matter. *Sloan v. Greenville County*, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009) (“An appellate court will not pass judgment on moot and academic questions; it will not adjudicate a matter when no actual controversy capable of specific relief exists. . . . 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)). Because termination of the APA renders their appeal moot, the Respondents-Appellants respectfully request that the Court grant their motion to withdraw their appeal in this matter.<sup>1</sup>

Respectfully submitted,



---

David B. Summer, Jr. (SC Bar #7974)  
Faye A. Flowers (SC Bar #2043)  
PARKER POE ADAMS & BERNSTEIN LLP  
1221 Main Street, Suite 1100 (29201)  
Post Office Box 1509  
Columbia, SC 29202  
Telephone: 803-255-8000  
Facsimile: 803-255-8017  
davidsummer@parkerpoe.com  
fayeflowers@parkerpoe.com

*Attorneys for the Respondents-Appellants*

April 9, 2021  
Columbia, South Carolina

---

<sup>1</sup> The Respondents-Appellants note that the Appellant PHM has filed with the Court its Motion to Withdraw Appeal and Vacate Appealed Orders.

**RECEIVED**  
APR 09 2021  
SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals  
APPELLATE CASE No. 2020-001610

---

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Ralph King Anderson, III  
Chief Administrative Law Judge

Case No: 20-ALJ-07-0108-CC

---

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.

---

**PROOF OF SERVICE**

---

The undersigned hereby certifies that on April 9, 2021 he caused a copy of the foregoing  
**MOTION OF THE RESPONDENTS-APPELLANTS TO WITHDRAW APPEAL** to be served upon all  
counsel of record via electronic mail to each counsel's individual AIS email address pursuant to  
SC Supreme Court COVID Order 2020-05-29-02 addressed as follows:

**VIA E-MAIL**

Ashley C. Biggers, Esquire  
Vito M. Wicevic, Esquire  
South Carolina Department of Health and  
Environmental Control  
2600 Bull Street  
Columbia, SC 29201  
([biggerack@dhec.sc.gov](mailto:biggerack@dhec.sc.gov))  
([wicevivm@dhec.sc.gov](mailto:wicevivm@dhec.sc.gov))

*Counsel for the South Carolina Department  
of Health and Environmental Control*

**VIA E-MAIL**

Kelly M. Jolley, Esquire  
Ariail B. Kirk, Esquire  
Jolley Law Group, LLC  
810 Bellwood Road  
Columbia, SC 29205  
([kjolley@jolleylawgroup.com](mailto:kjolley@jolleylawgroup.com))  
([akirk@jolleylawgroup.com](mailto:akirk@jolleylawgroup.com))

*Counsel for Lexington County Health  
Services District Inc., d/b/a Lexington  
Medical Center*

**VIA E-MAIL**

Jennifer J. Hollingsworth, Esquire  
Shannon V. Lipman, Esquire  
Nexsen Pruet, LLC  
1230 Main Street, Suite 700  
Columbia, SC 29201  
([jhollingsworth@nexsenpruet.com](mailto:jhollingsworth@nexsenpruet.com))  
([svlipham@nexsenpruet.com](mailto:svlipham@nexsenpruet.com))

*Counsel for Lexington County Health  
Services District Inc., d/b/a Lexington  
Medical Center*

**VIA E-MAIL**

M. Elizabeth Crum, Esquire  
Celeste T. Jones, Esquire  
Pamela A. Baker, Esquire  
Burr Forman McNair  
1221 Main Street, Suite 1800  
Columbia, SC 29201  
([lcrum@burr.com](mailto:lcrum@burr.com))  
([ctjones@burr.com](mailto:ctjones@burr.com))  
([pbaker@burr.com](mailto:pbaker@burr.com))

*Counsel for Prisma Health-Midlands*



---

David B. Summer, Jr., SC Bar #7974  
Faye A. Flowers, SC Bar #2043  
PARKER POE ADAMS & BERNSTEIN LLP  
1221 Main Street, Suite 1100 (29201)  
Post Office Box 1509  
Columbia, South Carolina 29202  
(803) 255-8000 / (803) 255-8017 (fax)  
[davidsummer@parkerpoe.com](mailto:davidsummer@parkerpoe.com)  
[fayeflowers@parkerpoe.com](mailto:fayeflowers@parkerpoe.com)

*Attorneys for Respondents-Appellants  
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*



**RECEIVED**

APR 09 2021

**SC Court of Appeals**

David B. Summer, Jr.  
*Partner*  
t: 803.253.8910  
f: 803.255.8017  
davidsummer@parkerpoe.com

Atlanta, GA  
Charleston, SC  
Charlotte, NC  
Columbia, SC  
Greenville, SC  
Raleigh, NC  
Spartanburg, SC  
Washington, DC

April 9, 2021

**VIA HAND DELIVERY AND  
EMAIL – CTAPPFILINGS@SCCOURTS.ORG**  
The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

**Re: Appellate Case No: 2020-001610**  
***Lexington County Health Services District, Inc. d/b/a Lexington Medical Center***  
***v. South Carolina Department of Health and Environmental Control, et al.***

Dear Ms. Kitchings:

In connection with the above-referenced appeal, enclosed for filing please find Respondents-Appellants' Motion to Withdraw Appeal. Also enclosed please find this firm's check in the amount of \$50 in satisfaction of the Court's filing fee.

By copy of this letter and pursuant to the Court's standing Order, we are providing a copy of the same via email to all counsel of record.

With best regards, I am

Sincerely,

A handwritten signature in black ink, appearing to read 'David B. Summer, Jr.', written over a horizontal line.

David B. Summer, Jr.

Enclosures

cc: Kelly M. Jolley, Esq. *(via email)*  
Ariail B. Kirk, Esq. *(via email)*  
Jennifer J. Hollingsworth, Esq. *(via email)*  
Shannon V. Lipham, Esq. *(via email)*  
Ashley C. Biggers, Esq. *(via email)*  
Vito M. Wicevic, Esq. *(via email)*  
M. Elizabeth Crum, Esq. *(via email)*  
Celeste T. Jones, Esq. *(via email)*  
Pamela A. Baker, Esq. *(via email)*



The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

**RECEIVED**  
APR 09 2021  
SC Court of Appeals