

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Lexington County Health Services District,)
Inc., d/b/a Lexington Medical Center,)
)
Petitioner,)
vs.)
)
South Carolina Department of Health and)
Environmental Control; Sisters of Charity)
Providence Hospital; and Palmetto Health)
Alliance, Palmetto Health Richland,)
)
Respondents.)

**FINAL ORDER AND DECISION
DOCKET NO. 04-ALJ-07-0365-CC**

APPEARANCES:

David B. Summer, Jr., Esquire
Faye A. Flowers, Esquire
For Petitioner Lexington Medical Center

Nancy S. Layman, Esquire
Ashley C. Biggers, Esquire
For Respondent South Carolina Department of
Health and Environmental Control

James G. Long, III, Esquire
Philip Wesley Jackson, II, Esquire
For Respondent Providence Hospital

M. Elizabeth Crum, Esquire
Ariail B. Kirk, Esquire
Pamela A. Baker, Esquire
For Respondent Palmetto Health Richland

STATEMENT OF THE CASE

The above-captioned matter comes before this Court upon the request of Petitioner Lexington County Health Services District, Inc., d/b/a Lexington Medical Center ("LMC"), for a contested case hearing to challenge the decision of Respondent South Carolina Department of Health and Environmental Control ("DHEC" or "Department") to deny its application for a Certificate of Need

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(CON) for the development of an open-heart surgery program and therapeutic cardiac catheterization program at its hospital in West Columbia, South Carolina. The Department denied LMC's CON application based upon its finding that the implementation of LMC's proposed cardiac program would result in an unnecessary duplication of such services in the Midlands and would have an undue adverse impact upon existing providers of cardiac services in the area. Two of those existing providers, Respondents Sisters of Charity Providence Hospital ("Providence") and Palmetto Health Alliance, Palmetto Health Richland ("Palmetto"), intervened in this matter in support of the Department's decision to deny LMC's CON application.

Prior to a hearing on the merits of this matter, the parties conducted extensive discovery, generating some 30,000 pages of documents and deposing over 40 individuals, and this Court heard a number of motions on discovery issues and other preliminary matters. After timely notice to the parties, a contested case hearing on the merits of this case was held from February 13, 2006, through March 10, 2006, for a total of sixteen days of trial. During the hearing, all four parties presented witnesses and offered exhibits in support of their respective positions. A total of twenty-two witnesses testified at the hearing, and the Court admitted seventy-seven exhibits into evidence, in addition to receiving two proffers of evidence. The following witnesses were designated as experts in the following areas of specialization: Dr. James Morris and Dr. Reid Tribble in the area of Cardiovascular and Open-Heart Surgery; Dr. Edward Leppard in the area of Cardiovascular Surgery; Dr. Leon Khoury, Dr. Stan Juk, Dr. Barry Feldman, and Dr. Myron Bell in the field of Cardiology; Dr. Richard Boyer in the area of Emergency Medicine; Richard Baehr and David Levitt in the field of Healthcare Planning and Finance; Martin Brown in the area of Healthcare Finance; and Joel Grice in the field of Healthcare Planning.

Having reviewed all of the documentary and testimonial evidence presented at the hearing, having considered the arguments of the parties made at the hearing and in their post-trial filings, and having followed the applicable law, I find that DHEC properly denied LMC's CON application for an open-heart surgery program at its West Columbia hospital because the implementation of the proposed program would conflict with the policies regarding the establishment of such programs set forth in the 2003 State Health Plan, would constitute an unnecessary duplication of cardiac services

