



The contested case hearing was held on April 11-24, 2007 with the Honorable Leonard Pogue, Administrative Judge, presiding, sitting alone without the presence of the HSDA. The parties were represented at the hearing by counsel as follows:

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| For Petitioner Maury Regional Hospital                           | Dan H. Elrod<br>G. Brian Jackson<br>Bryant C. Witt<br>Miller & Martin, PLLC<br>150 Fourth Ave., North, Suite 1200<br>Nashville, TN 37219  |
| For Petitioner Williamson Medical Center                         | Warren L. Gooch<br>Charles E. Young<br>Kramer Rayson LLP<br>800 S. Gay Street, 37929<br>P.O. Box 629<br>Knoxville, TN 37901-0629  |
| For Respondent Spring Hill Hospital, Inc.                        | D. Edward Harvey<br>Farris, Mathews, Branam, Bobango, Hellen & Dunlap, PLC<br>618 Church Street, Suite 300<br>Nashville, TN 37219<br><br>Kathryn A. Stephenson<br>Trauger & Tuke<br>The Southern Turf Building<br>222 Fourth Ave., North<br>Nashville, TN 37219 |
| For Respondent, Tennessee Health Services and Development Agency | James B. Christoffersen, Deputy General Counsel<br>Health Services and Development Agency<br>500 Deaderick Street, Suite 850<br>Nashville, TN 37243   |

At the conclusion of the hearing, Administrative Judge Pogue directed that the parties file proposed findings of fact and conclusions of law on or before July 30, 2007. That direction was subsequently amended to require filing on or before August 16, 2007. These proposed findings and conclusions are submitted in accordance with that directive.

### **The State's Proposed Findings of Fact**

The State has reviewed SHH's Proposed Findings of Fact in this contested case, is in agreement with the assertions made therein, and hereby incorporates same herein by reference.

The State further proposes that this Honorable Tribunal adopt the following additional proposed findings of fact.

1. The Agency has vetted applications for the establishment of health care institutions south of Nashville, having denied applications during the past several years for hospitals that it considered too close to WMC and that it considered would have cherry-picked a few highly compensated services while avoiding an array of services and patients for which little or no compensation is received. [Ex. 79]

2. Spring Hill hospital will be a 56 bed general hospital, providing a broad-range of services to the citizens of the Spring Hill area, regardless of ability to pay. [Ex. 27, Spring Hill Hospital CON application and related documents]

3. Spring Hill Hospital will be located approximately 14½ miles between WMC and MRH – not a mere one or 2 exits up the highway – toward Nashville and its numerous hospitals. [Id.]

4. Spring Hill presents a community growing rapidly by any reasonable measure. [*See, e.g.*, Ex. 136, RPC Report, pp. 17, 44; Luke, Tr. 1662, 1671-73, 1675-76, 1678, 1698; Charles, Tr. 1554-55, 1562, 1570, 1574-75, 1589; York, Tr. 1264, 1285-86; Elliott, Tr. 1103, 1105-06, 1109, 1113, 1115, 1117, 1119, 1120-21, 1122; Fox, Tr. 206, 237; Leverette, Tr. 910-11; Otwell, Tr. 639, 653-54, 656; Swanson, Tr. 146-47; York, Tr.

1261; Ex. 144, U.S. Census Bureau Annual Estimates, p. 8; York, Tr. 1262-64, 1271-72, 1276, 1289]

### **Conclusions of Law**

The State has reviewed SHH's Proposed Conclusions of Law in this contested case, is in agreement with the assertions made therein to the extent that they do not conflict with the following additional proposed conclusions of law, and hereby incorporates same herein by reference to the extent that they do not conflict with the following additional proposed conclusions of law.

The State further proposes that this Honorable Tribunal adopt the following additional proposed conclusions of law.

1. The decision by this Tribunal as to whether the certificate of need at issue should be granted for CON CN0604-028A is guided by the provisions of the Tennessee Health Services and Planning Act, T.C.A. §68-11-1601, *et seq.*, particularly §68-11-1609(b), which provides:

No certificate of need shall be granted unless the action proposed in the application is necessary to provide needed healthcare in the area to be served, can be economically accomplished and maintained, and will contribute to the orderly development of adequate and effective healthcare facilities and/or services. In making such determinations, the Agency shall use as guidelines the goals, objectives, criteria and standards in the State Health Plan.

2. Petitioners have the burden of proving, by a preponderance of the evidence, that this hospital is not needed, not economically feasible, or would not contribute to the orderly development of healthcare.

3. This tribunal has determined that the Petitioners in this matter have failed to satisfy their burden of proof by establishing that one of the three statutory criteria in

T.C.A. §68-11-1609(b) have not been satisfied on this record. Therefore, as a matter of law, the HSDA's granting of the CON, # CN0604-028A, to SHH should not be reversed.

4. T.C.A. §68-11-1609(b) requires that the HSDA use "*Tennessee's Health: Guidelines for Growth*", 2000 edition [the "Guidelines"] as guidelines until such time as a comprehensive state health plan is prepared. However, the *Guidelines* are not *mandatory* rather than just *guidelines*; otherwise the HSDA members' collective experience and judgment would not be necessary. While the *Guidelines* can be helpful in many instances, they are one-size-fits-all, and may not account for all relevant considerations for a particular project or service area. This Tribunal has considered all of the relevant information about this project and the rapidly growing area of Spring Hill and its anticipated needs in addition to the *Guidelines*.

Since 2002, several incarnations of T.C.A. §68-11-1625 have provided that the Guidelines be used temporarily until the adoption of an up to date comprehensive state health plan. The several incarnations of T.C.A. §68-11-1625 have mandated the preparation of a comprehensive state health plan (not by the HSDA) that would guide the HSDA in its decisions and be updated at least annually. The Department of Finance and Administration is currently charged by the statute with this function, and neither a comprehensive state health plan nor updated *Guidelines* have been adopted as of this filing.

5. Petitioners, hospitals with 275 & 185 beds respectively, have failed to demonstrate material harm (e.g., loss of physicians, ability to provide services, and significant loss of patients) to this 56 bed hospital in a rapidly-growing area.

**WHEREFORE**, The State, by and through counsel, respectfully requests that this Honorable Tribunal enter an Initial Order incorporating the foregoing proposed findings of fact and conclusions of law, and **RULE** that CN0604-028A remain granted to Spring Hill Hospital, Inc.

Respectfully Submitted,

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## **CERTIFICATE OF SERVICE**

I certify that I have served a copy of the foregoing has been served on the following by email on this the 16th day of August 2007:

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