

WMC/MRH argument on pages 14-15 of their brief, Dr. Kolb's opinion was **not** shared by any of the experts who considered bed need independently of this case. Other than Dr. Kolb, all experts who have considered Spring Hill have concluded that beds will be needed by 2010 or very soon thereafter:

- WMC's 40-Bed CON Application and LBMC's Report to WMC. These documents, which are addressed on pages 5-6 of SHH's initial brief and in Judge Pogue's Findings of Fact ¶¶ 24 and 25, conclude that beds will be needed in addition to the 40 that were the subject of the application. The 40-bed application concluded that 30 more beds will be needed in Williamson County by 2008. The LBMC report concluded that 60 more beds will be needed in Williamson County by 2010. The WMC/MRH brief simply ignores these documents.
- PYA's 2005 Report. Although this report (which was prepared for and paid for by MRH) concluded that beds would not be needed in Spring Hill in the "near" or "intermediate" term, it concluded that the citizens of Spring Hill would essentially fill 60 beds by 2015. (Tab 6¹, Exhibit 31, PYA 9-20-05 Report, p. MRH 00037). Of course, PYA knew that MRH would like those beds to be located on its main campus in Columbia, 15 miles away. This plan would not, however, fully meet the needs of the citizens of Spring Hill, who even now rarely travel south to MRH. (FF ¶ 71).
- Ed Stall's 2006 Report.² WMC and MRH point out that Ed Stall, an HCA consultant, concluded that 2010 might be "a little soon" for a hospital in Spring Hill. WMC and MRH fail to note that Mr. Stall's advice was based on his assumption of a 66-bed hospital, which would have been a larger hospital than the 56-bed SHH project. Significantly, in the very same report he also concluded that there would be a need for up to 56 beds in Spring Hill by 2010. (Tab 13, Exhibit 19, Stall 2006 Report, pp. 24-25). He cautioned that he made very conservative assumptions in reaching these conclusions. (Exhibit 114, Stall Deposition, pp. 134, 136-39, 142-43). For example, his population projections grew the 2005 Spring Hill special census population at the Claritas rate, rather than at a higher rate more in keeping with the historical trend. (*Id.*, p. 134). He also noted that accelerated population growth would shorten the time frame for construction of a hospital. (Tab 13, Exhibit 19, Stall 2006 Report, p. 25). As set forth on pages 3 and 4 of SHH's initial brief, population growth has in fact accelerated since 2005.

¹ References in this Reply Brief to "Tab" 1-12 are to the documents attached to SHH's initial brief. References to "Tab" 13-16 are to the documents attached to this Reply Brief.

² Stall had also prepared an earlier report, in 2004. The statement in the WMC/MRH Brief that "Stall's 2004 report concluded that the Spring Hill area did not need a hospital" (p. 14) is not correct. Stall's 2004 Report (Trial Exhibit 18) analyzed outpatient utilization in a broad area south of Nashville. It did not focus on Spring Hill, did not address inpatient bed need, and was prepared before the 2005 Special Census demonstrated explosive growth in Spring Hill. (Exhibit 18; Exhibit 114, Stall Deposition, pp. 53-54).

All of these consultants concluded, independently of the litigation in this case, that by 2010 or very soon thereafter, the citizens of Spring Hill will need beds. The WMC and HCA consultants projected a need for 56 to 60 beds by 2010. The MRH consultant projected that 60 beds would be full by 2015. If new beds are not in place by 2010, healthcare in Williamson and Maury Counties will be left to play “catch up” with the growing population, a situation that Mr. Klein of WMC recognized would be difficult. (Klein, Volume 5, p. 839).

Orderly Development

WMC and MRH insist that SHH will “severely damage” WMC and MRH. (WMC/MRH Brief pp. 23-28). The evidence at trial showed, however, that their analysis goes no further than “lost profits,” which is to say, a demonstration that if SHH is built, SHH will have patients and revenues that would otherwise have gone to WMC and MRH. WMC and MRH utterly failed at trial to demonstrate the effect of this “loss” **netted against** the growth that is clearly happening. Their brief also completely ignores this issue.

Netting the loss of patients to SHH against the growth in population is the **only** way to understand the actual impact of SHH on WMC and MRH. (Potter, Volume 3, p. 504 (financial impact depends on a lot of circumstances, including overall financial picture of a hospital); Klein, Volume 5, p. 832 (it makes sense to net financial impact against increased revenue)). The WMC and MRH experts admitted that they could have calculated such a “net,” but they did not. (Brown, Volume 3, pp. 423-25; Potter, Volume 3, pp. 501, 506; Knapp, Volume 8, pp. 1425, 1428).

With **no evidence** of the financial impact of net growth, WMC and MRH are reduced to complaining that, if their expert's worst-case scenario comes to pass and they have only "some minimal, anemic growth in the absolute number of discharges," they will be in "dire financial straits." (WMC/MRH Brief pp. 23, 26). As noted in SHH's initial brief, there is absolutely no evidence to support either this gross over-generalization, or WMC/MRH's contention that SHH will prevent MRH from engaging in upgrades. (WMC/MRH Brief p. 26).

Economic Feasibility

Both this Agency and Judge Pogue have concluded that the project is financially feasible. WMC and MRH nevertheless argue that it is not orderly to spend \$110 million to build a new hospital that will lose money in its first three years of operation. (WMC/MRH Brief pp. 21-23). For their contention about how much money the new hospital will "lose" in its first years of operation, they rely on an updated and corrected³ Projected Data Chart prepared by HCA TriStar CFO Chris Taylor. (Tab 14, Exhibit 95, Spring Hill Hospital Projected Income Statement). This chart shows the project would not have positive net income until its fourth year of operation. Yet Mr. Taylor also testified that the Projected Data Chart's "net income" line is **not** the primary consideration for HCA in evaluating the financial feasibility of an investment. (Taylor, Volume 6, p. 997). Instead, the important consideration is earnings before interest, taxes, depreciation, and amortization (EBITDA). (*Id.*). On this line, SHH becomes profitable in year two. It is also significant that this line improves in every year after SHH opens. (Taylor, Volume 6, pp. 997-98).

³ Judge Pogue specifically found that the correction of the error in the Projected Data Chart did not materially alter the CON application. (CL ¶ 15).

In addition, no one in this case believes that HCA would build a hospital in Spring Hill with an expectation of continuing unprofitability, and no one doubts HCA's commitment to the community of Spring Hill. (*See, e.g.*, Kolb, Volume 2, p. 324). WMC/MRH note HCA's apparent intention to recruit physicians to the community (WMC/MRH Brief p. 22), but then speculate that the cost of doing so will increase the cost of the project to a "staggering" number. There is no evidence to support this speculation. Moreover, as WMC argued repeatedly in its 40-bed expansion CON application (Exhibit 80), hospitals attract physicians.

Tangential Arguments

Each of the following arguments also receives headline attention in the WMC/MRH brief. As set forth below, these arguments have little substance and serve only to distract from the issues of need, economic feasibility, and orderly development.

Population Projections

Population projections themselves are directly relevant, rather than tangential, to the need and orderly development analyses. But the arguments by WMC and MRH about population projections are tangential. WMC and MRH devote a large part of their brief (pp. 4-10) to hyperbole attacking Spring Hill Hospital's population projections and Dr. Ron Luke, who was responsible for those projections. They then attempt to characterize SHH's position as "abandoning" Dr. Luke's projections. This characterization is incorrect.

SHH does **not** contend that Dr. Luke's projections "really do not matter." (WMC/MRH Brief p. 5). Indeed, contrary to being "thoroughly discredited" (p. 21) and "effectively abandoned" (p. 25), Dr. Luke's projections have been **proven** conservative

because they are **behind** the actual rate of growth. (FF ¶ 32 (there were between 23,220 and 27,753 residents in Spring Hill in 2007); Tab 9, Fox, Volume 1, pp. 237-238 (if there are 24,000 people in Spring Hill in 2007, then 3300 have been added each year since 2005, which is more than the average of 2508 that Luke projected would be added in those years)).⁴

Dr. Luke's projections, being higher than Dr. Swanson's, are therefore closer to reality. Although WMC and MRH attempt to bolster Dr. Swanson's testimony with Dr. Fox and Dr. Kolb, their theoretical viewpoint falters against the specific, empirical testimony of Edsel Charles, Preston Elliott, and City Manager Ken York regarding the historical and expected growth in the Spring Hill area. These witnesses testified that, based on what they are seeing **in Spring Hill** in terms of available land, housing starts, retail development, and land use patterns, the growth in Spring Hill will **continue to accelerate** in the near future. (Elliott, Volume 6, pp. 1100-1150; York, Volume 7, pp.1264-67, 1273; Charles, Volume 9, pp. 1555, 1562, 1564). Dr. Swanson himself testified that such rapid rates of growth will continue until the area fills up. (Swanson, Volume 1, pp. 122, 152-53). Spring Hill is not close to filling up. (Leverette, Volume 5, pp. 910-11; York, Volume 7, pp. 1271-72, 1276, 1280, 1289).

While not "abandoning" Dr. Luke, SHH does contend that **even Dr. Swanson's very conservative projections** demonstrate that SHH meets the need and orderly development criteria. Based on Dr. Swanson's projections, Dr. Kolb demonstrated that

⁴ WMC/MRH describe Dr. Luke's projections as "unprecedented in American history." (WMC/MRH Brief p. 5). No witness made that statement. Indeed, their expert Dr. Swanson noted that Summerlin, Nevada experienced 183% growth rates for five years until the area filled up and growth moved elsewhere. (Swanson, Volume 1, p. 122). WMC/MRH also insist that Dr. Luke's methodology would have Spring Hill grow to the size of Orlando by 2020. (WMC/MRH Brief p. 6). Dr. Luke never purported to carry his projections past 2014.

after SHH opens, WMC and MRH will have more discharges in every year than they had in a financially healthy 2005. (Tab 12, Exhibit 11, Impact Analysis). Because Dr. Kolb's conclusion is based on Dr. Swanson's very conservative projections, her conclusion represents a worst-case scenario for WMC and MRH. If even these worst-case projections show no negative impact on WMC and MRH, then SHH clearly meets the need and orderly development criteria.

WMC and MRH also attack Dr. Luke on a personal level, calling him a "professional expert witness" who has "almost no real experience, training or reputation in the field of population studies." (WMC/MRH Brief p. 6). Although Dr. Luke is not a professional demographer, he has considerable training in demography, which he uses in his profession as a health planner. (Luke, Volume 9, pp. 1597-98, 1606-09, 1653-56). Moreover, in practice, professional health planners such as Dr. Luke often make population projections without consulting a professional demographer. (*See, e.g.*, Kolb, Volume 2, pp. 272-73 (Dr. Kolb gives her opinion about the reasonableness of Dr. Luke's projections); 314 (Dr. Kolb believes she is qualified to give an opinion about population projections); Luke, Volume 9, pp. 1655-56, 1694-95).

WMC's current low opinion of Dr. Luke has not prevented WMC from hiring Dr. Luke in the past as an expert in demography. (Klein, Volume 5, p. 826; Luke, Volume 9, p. 1625). MRH's counsel has also retained Dr. Luke as an expert in the past. (Luke, Volume 9, pp. 1779-80).

Drive Times

WMC and MRH argue that average drive times of 24 to 28 minutes do not justify a hospital in Spring Hill, and they contend that even Dr. Luke "declined to support the

timely access argument.” (WMC/MRH Brief p. 10). Dr. Luke did not “decline to support” the argument. He said that drive times are a matter of convenience and accessibility. (Luke, Volume 9, pp. 1762-63). Longer drive times might be acceptable in rural areas where population density cannot justify hospitals within 15 miles of one another. But long drive times in more populated areas are not consistent with orderly development.

Moreover, the “average” drive times of 24 to 28 minutes do not preclude the sort of hour-long ordeals endured by Melissa Nesbitt and, undoubtedly, by other residents. (Nesbitt, Volume 7, pp. 1162-64).

WMC/MRH’s Efforts in Spring Hill

WMC and MRH argue that they should not be accused of ignoring the health care needs of Spring Hill. (WMC/MRH Brief pp. 11-13). SHH absolutely agrees that WMC and MRH have not ignored Spring Hill. But they have not built or offered to build hospital beds, and they have made it clear that they have no intention of doing so. (FF ¶¶ 6, 9; Klein, Volume 5, p. 767; Leverette, Volume 5, pp. 892-95 (“The City of Spring Hill is a two-county city. Basically we have to answer to two different masters.... In the process of making that decision, I would ask myself many times, why would WMC and MRH not approach the City of Spring Hill? The growth in Spring Hill has been no secret.”)).

Bed Need Analysis

In perhaps their most confusing argument, WMC and MRH contend that the bed need analysis presented in the SHH CON Application was “misleading and deceptive” and constitutes “mathematical sleight of hand.” (WMC/MRH Brief pp. 3, 17-20). They

contend that Figures 21 and 22 of the RPC Report attached to the Application purported to show that “there will be a need for 66 new hospital beds in Maury and Williamson Counties in 2010,” whereas in fact the Figures show the number of beds needed by the residents of the two Counties. (WMC/MRH Brief p. 18).

The Figures do not, however, purport to show anything other than what they in fact show: the number of beds needed by the residents of the counties. Figure 21 shows that in 2010 residents of the two counties will need 501 beds. There are 440 beds existing, so there will be a need for 61 more beds for these residents in 2010. As is always the case in CON applications, if a need for additional beds is demonstrated, the Agency has the discretion and authority to determine where the beds should be located. SHH contends that 56 of these beds should be located in Spring Hill, the area of most rapid population growth. SHH further explained the bed need methodology in response to Supplemental Question 20 to the application. (Tab 15, Exhibit 27, CON Application, p. 00298).

Out-Migration

WMC/MRH contend that there is insufficient non-tertiary out-migration to be captured by new hospital beds in Williamson and Maury Counties. (WMC/MRH Brief p. 21). In support of this contention, they cite Exhibits 21 and 22 to Dr. Kolb’s report (Trial Exhibit 9), which they say show that there is currently only 5% non-tertiary out-migration. Actually, the charts show that there is currently 25% non-tertiary med/surg out-migration and 41% OB out-migration. WMC captures only 40% of the inpatient market in Spring Hill. (Klein, Volume 5, p. 765). MRH captures very little of the Spring

Hill market. (Otwell, Volume 4, p. 648). There is a significant amount of non-tertiary out-migration that can be captured by SHH.

Delicensing Beds

As HCA stated in the SHH application, HCA is committed to delicensing 56 beds at another HCA TriStar hospital in Middle Tennessee when the 56 beds at SHH open. HCA has further consistently stated that it will determine which beds to delicense as circumstances dictate at the time the SHH beds are licensed. The recently approved expansion at Centennial Hospital has no effect on this commitment, since HCA also committed to delicense beds at other hospitals when Centennial's new beds open. In short, HCA has no interest in overbedding the Middle Tennessee market. Instead, HCA is committed to distributing beds in accordance with the distribution and growth of the population in Middle Tennessee.

StoneCrest

WMC and MRH argue that Smyrna is not Spring Hill, and that therefore the success of both StoneCrest Hospital and Middle Tennessee Medical Center does not offer an accurate comparison to the effect that SHH will have on WMC and MRH. Certainly, Smyrna is currently larger than Spring Hill. On the other hand, StoneCrest Hospital was initially 50% larger than SHH, and now has almost twice the number of beds.

SHH does not contend that StoneCrest and Smyrna present a direct correlation to SHH and Spring Hill. But the dire predictions of MTMC about the expected effect of Stone Crest are directly correlated to the dire predictions of WMC and MRH in this case – in fact, except for the dollar amounts they are nearly identical. The point is that such dire predictions should not be taken at face value.

Conclusion

Everyone in this case acknowledges that Spring Hill's population is growing rapidly, and has grown faster since 2005 than any expert in the case predicted. With the exception of Dr. Kolb, who was retained by WMC/MRH specifically to oppose SHH, every expert and consultant who has analyzed the issue has concluded that there will be a need for between 56 and 60 new beds for Spring Hill service area residents by 2010 or soon thereafter. Yet, WMC and MRH have clearly stated that they will not put inpatient beds in Spring Hill.

Spring Hill needs not only its own hospital, but also primary care physicians, which a hospital will help to attract. Spring Hill has three times as many residents per primary care physician as Franklin has. (Klein, Volume 5, pp. 832-33; FF ¶ 58).

Both WMC and MRH are strong financially. They will not only survive, but will likely benefit from a hospital in Spring Hill through tertiary referrals from Spring Hill.

For the foregoing reasons, and for the reasons set forth in its initial brief, SHH respectfully submits that this Agency should conclude that, in addition to being economically feasible, Spring Hill Hospital is necessary to provided needed healthcare in the service area and will contribute to the orderly development of healthcare. Spring Hill Hospital submits herewith a Proposed Final Order, attached at Tab 16.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been served on the following, without the attached appendix by email, and with the attached appendix by first class mail, on this the 11 day of February 2008:

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