BEFORE THE TENNESSEE
HEALTH SERVICES AND DEVELOPMENT AGENCY

IN THE MATTER OF:	**Certificate of Need No. CN 0604-028A**
SPRING HILL HOSPITAL, INC.	**APD Docket No. 25.00-092967J**

BRIEF OF MAURY REGIONAL HOSPITAL AND WILLIAMSON MEDICAL CENTER IN RESPONSE TO SPRING HILL HOSPITAL'S APPEAL TO THE HEALTH SERVICES AND DEVELOPMENT AGENCY

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Maury Regional Hospital ("MRH") and Williamson Medical Center ("WMC") jointly submit this brief in response to the appeal filed by Spring Hill Hospital, Inc., a subsidiary of HCA/TriStar ("HCA").

I. Overview: The Agency's contested case process exposed grave flaws in HCA's application.

By virtue of their collective experience, the members of this Agency are uniquely well-qualified to decide CON applications. Although the Agency's time and resources are necessarily limited, the members and the Agency staff carefully evaluate applications and statements made in support of applications. In the overwhelming majority of cases, the initial decision-making process works so well that no contested case review is requested.

However, the Agency's initial decision depends on the accuracy and completeness of the information submitted by applicants and their supporters. If a party gives a misleading, inaccurate or incomplete presentation, then the Agency's ability to make a sound decision will inevitably be impaired. MRH and WMC contend that is what happened here.

HCA's presentation to this Agency was replete with errors and omissions, and this Agency's established contested case process exposed them. One of the more troubling discoveries in the contested case was the extent of HCA's reliance on an expert who believes Tennessee's CON process is "ineffective" and has outlived its usefulness.

This case underscores the rationale for having a contested case process, namely, giving parties the tools to evaluate in detail the handful of CON applications meriting additional scrutiny. These tools are unavailable to the Agency, the Agency's staff or the public at the time of the initial public hearing. In a contested case, a party gains the right to obtain an applicant's internal documents about a project, take testimony under oath, cross-examine witnesses and question leading health care experts about the need for a project and the project's relationship to the existing health care system. By establishing the contested case process, the Agency has acknowledged that a more detailed examination of some CON applications is appropriate and necessary because, among other things, it preserves the integrity of the CON application process.

So much of what HCA initially told the Agency about this project turned out to be different from reality that it is a challenge to summarize the differences succinctly. It is unsurprising, then, that the Administrative Judge took several weeks to craft his 37 pages of Findings of Fact and Conclusions of Law, which concluded that HCA's proposed Spring Hill Hospital ("SHH") is not needed and will not contribute to the orderly development of health care. The Judge reached his conclusions after hearing sworn testimony over the course of a two-week trial, during which he received far more evidence — and crucial context for assessing HCA's public claims — than the Agency could have received in the few hours of the initial public hearing. Understanding that context is necessary when reviewing the Judge's conclusions.

Most important, the Judge heard extensive testimony from health care experts who analyzed the proposed hospital and had their opinions tested by the rigor of cross-examination. Fairness and the integrity of the CON process require that the Agency carefully consider <u>all</u> of the evidence presented during the contested case, including the detailed testimony of the health care experts.

Contrary to HCA's claim, the proof presented at trial was not "largely consistent" with the initial presentations to the Agency. The Judge did not simply take a different view of an identical set of facts. Rather, many of the arguments, claims and projections presented to the Agency in July 2006 proved on closer examination to be incomplete, misleading or simply false.

For example, HCA told the Agency that the population projections in the application were reasonable and provided critical support for the project. At trial, these projections were demonstrated to be inflated and to have been prepared by someone without legitimate expertise in making such projections. Similarly, although HCA claimed a new hospital was needed in Spring Hill because of long drive times to existing facilities, this argument was completely disavowed by HCA's own health planning expert and by every other health care expert who testified at trial.

Likewise, the trial refuted HCA's claim that the idea for SHH arose from a plea by city officials for someone to serve the community's unmet health care needs. The trial further demonstrated that the only written study undertaken by HCA before the CON application was filed showed no need for the size of hospital being sought. HCA abandoned that original study and instead offered the Agency an analysis prepared as an after-the-fact justification by a professional litigation expert witness. That litigation expert's conclusions are inherently suspect in light of his admitted belief, as noted above, that Tennessee's CON process has outlived its usefulness and does not serve any public purpose.

Moreover, the bed need analysis in the SHH application was misleading and deceptive, and the financial projections turned out to be incorrect by millions of dollars. In addition, the trial revealed in well-documented detail the devastating economic impact that SHH would have on the existing area providers.

A fair review of this case requires much more than simply reading briefs and the few record excerpts HCA has hand-picked from more than ten volumes of testimony and exhibits. That type of review would simply not do justice to everything that was learned about this proposed project over the course of the contested case. If all of the testimony is reviewed and considered, WMC and MRH are confident that the Agency will reach the same conclusion as the Administrative Judge — HCA's application fails to meet the statutory criteria and should be denied.[1]

II. There is no demonstrated need for the proposed Spring Hill Hospital.

A. HCA's inflated population projections were central to its CON application and were proved to be unreasonable at trial.

In support of its CON application, HCA submitted detailed population projections for the Spring Hill area. These projections were prepared under the direction of Ron Luke, an expert witness who devotes his career to testifying in and consulting about lawsuits. Even though Luke himself believes that the CON system does not serve any useful purpose, HCA hired him to provide a justification for the project after HCA's management had already decided to seek approval for a 56-bed hospital in Spring Hill. (Trial Tr. 1751.) The proof at trial showed that

[1]The staff counsel for the Agency have also filed a brief in support of HCA's position. This brief has been identified as representing the position of "the State." MRH and WMC respectfully object to the characterization of the Agency staff counsel as representing the State of Tennessee. The Attorney General is the Constitutional officer authorized to represent the State in legal and administrative proceedings. T.C.A. § 8-6-109(b)(1). Moreover, to the extent the State of Tennessee has taken a position in this matter, it has done so through two agencies—this Agency and the Department of Health. The Administrative Judge in this case rendered his Initial Order while sitting under the authority of and on behalf of the Agency. Therefore, at the present time, the Agency has declared that HCA's CON should not be granted. Similarly, the Department of Health issued its report on the CON application stating that there was no need for additional hospital beds in Maury County. In light of the fact that the only two State agencies that have evaluated this project have concluded that the application should be denied, MRH and WMC respectfully object to the notion that "the State" favors approval of the application. The attorneys purporting to speak on behalf of the State in this regard are more properly viewed as counsel for the Agency staff. In that regard, because the Agency staff has no official position on whether or not the application should be granted, MRH and WMC respectfully submit that it is improper for staff counsel to act as advocates at this time and that allowing such advocacy constitutes error. In any event, to the extent these attorneys are allowed to act as advocates in this proceeding, the Agency should not view the attorneys as representing the position of the State of Tennessee with respect to the application.

Luke's population projections were not only high, but also that the growth they projected for Spring Hill would be unprecedented in American history. (Trial Tr. 121.) Not surprisingly, HCA now attempts to minimize the importance of these outlandish projections to its CON application, even going so far as to claim that "the Agency does not need to accept Dr. Luke's population projections in order to determine that there is a need for hospital beds in Spring Hill." (HCA Br. at 9.)

HCA's current position that Luke's population projections really do not matter is starkly different from what HCA previously told the Agency. In its CON application, HCA repeatedly invoked Luke's projections as demonstrating the need for a new hospital. (See, e.g., Ex. 27, SHH CON App., pp. 16-24, pp. 35-36 and Attachments, RPC Report.) At the July 2006 Agency meeting, HCA and its supporters referred many times to the "fever pitch" and "staggering pace" of population growth in Spring Hill, growth that was "extraordinary" and showed "no signs of slowing down." (Hr'g Tr. 4.) The basis for all these overheated claims was Luke's report. When Luke's methodology was questioned, HCA claimed that the projections "are reasonable, are accurate" and that there would be a need for new beds in the area in 2010 because of the "staggering" population growth. (Hr'g Tr. 7, 40.)

Luke's population projections were cited not only in support of HCA's case for need, but also in response to the issue of what effect a new hospital would have on existing providers. HCA told the Agency that "simply put, the population growth is going to be large enough and is going to be strong enough" to allow MRH and WMC to grow. (Hr'g Tr. 8.) HCA emphasized that "the population growth [as projected by Ron Luke] and demand for admissions in this area will be so strong that Spring Hill Hospital's 56 beds can be filled to capacity without lowering

the utilization of Williamson Medical Center and Maury Regional Hospital below 2005 levels." (Trial Ex. 27, SHH CON App., p. 21-22.)

HCA's current effort to minimize the importance of the its population projections is understandable, because the proof at trial demonstrated that Luke's projections were grossly inflated and were nothing more than an after-the-fact justification prepared by someone who lacked genuine expertise. Luke was exposed as a professional expert witness who devotes 75% of his career to testifying in and consulting about lawsuits. He has almost no real experience, training or reputation in the field of population studies. In preparing his report for HCA, Luke simply asked a young colleague (who herself had no training whatsoever in population projections) to use a simple compound annual growth rate method, by which Spring Hill's past growth was projected into the future long enough to justify the new hospital. This methodology assumed that the Spring Hill area would continue to grow at a very high rate of 17% for eight more years, or a total of 14 years of 17% annual growth.[2] (Hr'g Tr. 7; Trial Tr. 102.) Luke used this continuing growth rate of 17% even though no city, town or county in the United States has ever experienced such a high rate of growth for such an extended period of time, and even though normal economic cycles would suggest that extremely high growth is not sustainable over long time periods. (Trial Tr. 121.)

Carrying Luke's methodology forward, Spring Hill's population will soon surpass that of Chattanooga and Knoxville, growing to the size of Orlando, Florida in only 13 years. (Trial Tr. 58.) Luke's astronomical projected growth rate was used to generate all of the other calculations

[2]At the time of the initial public meeting, there was no way for the Agency or the objecting parties to know just how deficient Luke's work was. The objecting parties had no opportunity to take discovery and Luke himself failed to appear at the initial Agency meeting. Instead, he sent his inexperienced young colleague, Robin Gage, to answer any questions about the projections. When Agency Member Paula Flowers asked several specific questions about the Luke population projections, HCA introduced Robin Gage as "the population person." (In reality, Gage had no training, experience or knowledge about different population projection methods.) Commissioner Flowers never received a satisfactory answer, from Gage, from HCA officials or from anyone else, to any of her questions about Luke's population projections. (Hr'g Tr. 40-43.)

and projections in the CON application, including the projected patient volumes, the bed need analyses and the financial projections. His projections do not account even for the possibility that there might be any economic downtown (such as a recession or slowdown in housing starts) that might affect the growth rate of Spring Hill over a 14-year period from 2000 to 2014.

In response to Luke's population projections, MRH and WMC offered testimony from several expert witnesses with extensive experience in making and evaluating such projections. The Administrative Judge first heard testimony from Dr. David Swanson. Unlike Luke, Swanson has vast experience in population projections and is nationally recognized, not as a litigation expert, but as an expert in the field of population studies. The Director of the Center for Population Studies at the University of Mississippi, Swanson is the author of many books and articles about population, including one book specifically addressing state and local population projections and another textbook that is known as the "Bible of demography." (Trial Tr. 88-89; Trial Ex. 1, Swanson curriculum vitae.) Unlike Luke, who was told what size hospital to justify and when it should open, Swanson was not given his conclusions in advance. Rather, Swanson approached his task objectively and using the same methods he uses in his academic and other work. (Trial Tr. 96-97.)

In a lengthy written report (Trial Exs. 2 and 3) and over hours of sworn testimony, Swanson explained why Luke's population projections were overstated and implausible. This critical testimony gave the Administrative Judge an opportunity to study Luke's population projections in depth, and using the expertise of a genuine leader in the field.

Further, Swanson also prepared his own population projections for Spring Hill. While acknowledging that Spring Hill is certainly a growing community, Swanson's projections were based on realistic assumptions and a reasonable, accepted methodology. Swanson's analysis

revealed that Luke had overstated the likely population of Spring Hill by 65,561 people in 2014. This difference in population is not an academic issue — it means that there would be 3,784 fewer hospital discharges in the two core Spring Hill zip codes than HCA initially projected. (Trial Ex. 9, Kolb Report, Ex. 3.) Contrary to what HCA now claims, Swanson's population projections do not support the claim that Spring Hill will need a new 56-bed hospital in 2010; in fact, Swanson's projections demonstrate conclusively that the HCA's case for need is fundamentally flawed and dependent on an overstated and unachievable area population.

MRH and WMC also offered the testimony of Dr. Bill Fox, Director of the Center for Business and Economic Research and the William B. Stokely Distinguished Professor of Business at the University of Tennessee. Fox is widely recognized as a leading expert on the Tennessee economy and has published more than 150 peer-reviewed articles and other publications. (Trial Tr. 191.) He regularly uses population forecasts in his work for private corporations, municipalities and the State of Tennessee.

Fox testified that Luke's use of a compound annual growth methodology "was simply unacceptable" and "the most naïve approach as possible." (Id. 202, 210.) Fox explained that the "magic of compounding" and the methodological flaws in Dr. Luke's analysis led to population projections that are unreasonable and outside the range of an acceptable forecast. By contrast, Fox testified that Swanson had used a familiar and well-accepted methodology which resulted in a reasonable population forecast. (Id. 223-27.)

In addition to Swanson and Fox, the Administrative Judge also heard testimony from health care planning expert Dr. Deborah Kolb, a principal with Noblis in Atlanta. Over the course of a 28-year career as a health care consultant, Kolb has provided advice to more than 200 hospitals, including most of the larger hospitals in Tennessee. (Id. 254.) Kolb concluded that

Luke's population projections "were not reasonable projections" and were simply not credible. (Id. 272-73; FOF ¶48.)

Kolb further performed her own need analysis using Swanson's highest population projections. Contrary to what HCA now suggests, discarding Luke's inflated population projections eliminates any need for a 56-bed hospital in the area. In fact, using Luke's methodology and correcting only for population showed that there is no need for a 56-bed hospital in Spring Hill even looking forward as far as 2014. (Trial Ex. 9, Kolb Report, Ex. 29A.) Moreover, if tertiary out-migration is factored into the bed need analysis, as it should be, the fact that the area is overbedded becomes even more apparent. (Trial Ex. 9, Kolb Report, Ex. 29B.)

It is telling that, despite its vast economic resources, HCA failed to find any qualified full-time professional population expert to support or validate any of the projections contained in its CON application. HCA's case for need and its analysis of impact rise or fall solely on the testimony of Luke, someone who believes the CON process is essentially a meaningless exercise. The Administrative Judge concluded that "based on their professional qualifications and testimony, the opinions of Dr. Swanson Dr. Fox and Dr. Kolb are found to be more credible than Dr. Luke's. Therefore, the population growth forecast of Dr. Luke is determined to be unreasonable." (COL ¶12.)

This conclusion of law, which cannot properly be set aside without wholly disregarding the thoughtful testimony of three well-qualified experts, has profound implications for the CON application. Without Luke's projected "staggering" population growth, there simply is no need for a new hospital in Spring Hill. Further, unless population growth continues at a "fever pitch," any new hospital will have a severe impact on existing providers. Removing Luke's population projections from the SHH application destroys the case for need and furthermore reveals that the

proposed hospital would be extremely detrimental to existing providers. The Agency should therefore reject HCA's current claim that its inflated population projections were not important to its application or that the application should still be approved even though Luke's population projections were found to be unreasonable.

B. As HCA's key expert witness admitted at trial, "timely access" to care is not an important reason for approving construction of SHH.

In its CON application, HCA repeatedly referred to what it called the "overly long drive times" faced by Spring Hill residents needing acute health care services. (Trial Ex. 27, SHH CON App., pp. 16, 22.) Drive times were also a central part of HCA's oral presentation to the Agency. HCA claimed that "this project is needed now because traffic congestion and drive times are growing problems." (Hr'g Tr. 5.) HCA supporters asserted that "convenient access" was an important reason to approve the project. (Hr'g Tr. 10, 12-19.) Several members of the public who spoke in favor of the application suggested that a new hospital was needed for this reason. At trial, HCA continued this theme by offering anecdotal testimony from a few Spring Hill residents who described what they believed to be delays in obtaining medical care because of traffic problems. (Trial Tr. 1163-64, 1170-72, 1179, 1192-93.)

Of course, responsible health planning cannot be based solely on anecdotes of lay witnesses. If asked, almost any citizen would support a new health care facility being built nearby. But Tennessee's health planning process relies on more than public opinion surveys. No health care expert who testified at trial believed that difficulties in accessing current facilities justified approval of the new hospital. Even HCA's health planning expert, Luke, declined to support the timely access argument. (Trial Tr. 1762-66.)

It is apparent that the minimal improvement in convenience of access that SHH might represent is not a material factor. HCA's drive time study showed that it takes an average of

between 24 to 28 minutes for a Spring Hill resident to drive to the existing area hospitals, and that it would take Spring Hill residents an average of 13 minutes to drive to the proposed new hospital. Setting aside the fact that many residents of the service area will live closer to WMC or MRH than to the proposed new hospital, the savings in travel time for the *average* resident would be only 11 to 15 minutes. (Trial Tr. 1762.) No expert believed that such a modest improvement in drive times necessitates construction of a $110 million hospital. In fact, Luke acknowledged that, if a person lives within 14 to 29 minutes of an existing hospital, hospital services can be considered "easily accessible." (Id. 1766.) According to Luke, a 30-minute drive time to a community hospital does not endanger health or safety and does not provide an important reason to build a new hospital. (Id. 1764.)

The trial demonstrated that HCA's previous arguments about emergency access — while emotional and dramatic — were so unsupportable that not even HCA's litigation expert could embrace them. Just as the contested case process exposed HCA's preposterous population projections, it allowed a full exploration and discrediting of HCA's central argument that SHH is needed to provide access, a problem that proved to be nonexistent.

C. The proof at trial refuted HCA's claim that the needs of Spring Hill residents are being ignored by the existing providers.

At its presentation to the Agency, HCA and its supporters suggested that existing providers had ignored Spring Hill's health care needs, leaving only HCA willing to provide needed services to the community. For example, HCA told the Agency that: "We didn't go to Spring Hill. Spring Hill came to us. Spring Hill came to us and said, look, because we're on the county line, we're not getting service from either of these counties. Can you help us?" (Hr'g Tr. 37, emphasis added.) The CON application similarly claimed that "for two years" the elected government of Spring Hill had been working to improve local health care resources, but existing

providers had "not offered to operate full basic acute care services." (Trial Ex. 27, SHH CON App., p.16.) These statements implied that MRH and WMC had disregarded Spring Hill's needs, forcing city officials to turn to HCA for help.

But the proof at trial showed that the idea for a new hospital originated <u>not</u> with Spring Hill city officials seeking health care services, but with a real estate developer eager to develop some property. (Trial Tr. 888-89, 902-04.) The proof further showed that one of the key motivations of city officials was to generate new tax revenue for a city government that several years ago abolished the property tax. (Hr'g Tr. 47; Trial Tr. 893.) Both motivations are a far cry from HCA's specious suggestions of neglect and both motivations have nothing to do with sound health planning.

Specifically, the proof showed that in fall 2005, a real estate developer invited HCA to a meeting. Some Spring Hill city officials were also invited. At the meeting, the developer suggested that HCA might build a hospital in Spring Hill. Among other things, it was suggested to HCA that Spring Hill had a young, well-insured population. (Trial Tr. 903.)

Neither the developer nor the Spring Hill city officials present at the meeting had any background or expertise in health care. (Trial Tr. 901, 904-05.) The city never conducted any research or consulted with any health care expert to advise the city on whether a new hospital was actually needed in Spring Hill, or whether HCA was the best company to solicit for such an endeavor, or whether the city's needs might be met by either MRH or WMC. (Trial Tr. 903-05.) Neither WMC nor MRH was ever invited to a similar meeting with city officials; in fact, the city officials never even considered arranging such a meeting with the county hospitals. (Trial Tr. 905). Moreover, the sworn testimony of the city officials flatly contradicts HCA's claim that the

health care needs of the Spring Hill community were not met by existing providers. For example, the Mayor of Spring Hill testified as follows:

> Q. You don't have any basis to believe that Maury Regional Hospital has failed to serve the healthcare needs of Spring Hill in any respect, do you?
> A. No.
>
> (Trial Tr. 906.)
>
> Q. Just so we're clear, you testified [that] the City of Spring Hill at least under your administration has never approached Williamson Medical Center about providing services in the community, correct, sir?
> A. I have not.
>
> (Trial Tr. 915-16.)

The evidence demonstrated that both MRH and WMC have invested millions of dollars to benefit their service areas, including extensive direct investment in Spring Hill. MRH has substantially expanded its services over the years as Spring Hill has grown from a very small village to its present size. For example, MRH constructed a primary care facility in 1998 and expanded that facility in 2004; opened a specialty care facility in 2005 providing ENT, Gastroenterology, Orthopedic, Cardiology, Obstetrics/Gynecology and Podiatry services; and constructed an outpatient diagnostic imaging center and an urgent care center in 2006. To date, MRH has invested more than <u>$6.2 million</u> in bringing additional health care services to the residents of Spring Hill. Similarly, through its recent $83 million addition and renovation project, WMC sought to address the health care needs of its entire service area, which has always included Spring Hill. (Trial Tr. 764; Tr. Ex. 48, D. Miller Aff.) The proof at trial further demonstrated that both MRH and WMC have been actively evaluating the ongoing needs of the Spring Hill community and have retained experts to evaluate those needs to ensure they are

being met. In sum, HCA's claim that existing providers were ignoring Spring Hill's needs is simply false.

D. The trial revealed that HCA's own regular health care consultant (as well as consultants retained by MRH and WMC) had concluded that there was <u>no need</u> for a 56-bed hospital in Spring Hill in 2010.

In its initial presentation to the Agency, HCA claimed it had decided to build a hospital in Spring Hill only after "significant research." (Hr'g Tr. 4.) The trial proved otherwise. Not only did HCA perform minimal research, the research it did conduct failed to support its ultimate decision to seek approval for SHH.

HCA first considered developing health care services in the Spring Hill area in 2004. Working with Vanderbilt University Medical Center, HCA commissioned an assessment of the area's health care needs from Ed Stall, an experienced health planning consultant whom HCA had regularly engaged to analyze the need for new facilities and services. (Trial Tr. 1038.) Stall had worked for HCA on many occasions to provide strategic planning, market feasibility studies and market projections for future health care needs. (Trial Ex. 114, Stall Dep. at 19-20.) Stall's 2004 report concluded that the Spring Hill area did not need a hospital. (Trial Ex. 18, Stall 2004 Report.)

In 2005, MRH conducted its own evaluation of Spring Hill's health care needs. MRH retained the firm of Pershing, Yoakley & Associates ("PYA") to perform a high-level analysis of the Spring Hill marketplace to determine whether there might be a need for additional MRH facilities or services. (Trial Tr. 389-90; Trial Ex. 55, PYA Report.) Like the HCA/Vanderbilt 2004 study, and contrary to HCA's suggestion in its brief, the 2005 MRH analysis concluded that a new hospital would not be needed or even feasible in Spring Hill in the near or intermediate term. (Trial Tr. 397-98.) This analysis also concluded that, if another health care

provider were to construct a hospital in Spring Hill, the impact on MRH would be devastating. (Trial Tr. 401-02.)

A few weeks after the December 2005 meeting between HCA, the Spring Hill real estate developer and city officials, HCA asked Stall to update his 2004 analysis of the need for health care services in Spring Hill (Trial Tr. 1060.) Stall performed a new bed need analysis of the area and summarized his work in a second report. (Trial Ex. 114, Stall Dep. at 80). This 2006 Stall report prepared for HCA again concluded that Spring Hill did not yet need a hospital, either at that time or in 2010. (Trial Ex. 19, Stall 2006 Report.) Stall, who was never mentioned by HCA in its CON application or even called by HCA to testify at the trial, is the only expert not hired for litigation purposes who has ever analyzed this project for HCA. (Trial Tr. 1061) Yet after he reached the conclusion that there was no need for a hospital in Spring Hill in 2010, and submitted those findings to HCA, Stall never heard back from anyone at HCA concerning the Spring Hill project. (Trial Ex. 114, Stall Dep. at 149.)

Instead of following the advice of its longstanding health care consultant Ed Stall and his conclusion that a hospital was not needed in 2010, HCA's management decided to seek approval for a 56-bed hospital to open in that year. Curiously, even though HCA's standard operating procedures call for such a decision to be backed up by a comprehensive internal written analysis, no such analysis was ever completed for SHH. (Trial Ex. 115, Taylor Dep. at 98-101.) Indeed, there is no written analysis anywhere showing how HCA came up with either the number of 56 beds for SHH or its proposed opening date. Instead, after HCA made its decision, it hired Ron Luke to provide a report for inclusion with the application. Luke was recommended by HCA's outside litigation counsel; no one at HCA knew anything about him or his qualifications. (Trial Ex. 113, Scarvey Dep. at 65; Trial Ex. 115, Taylor Dep. at 50-51.) Not surprisingly, Luke's

report purported to show a need in Spring Hill for the number of beds, and in the timeframe, that HCA officials had already decided before Luke was retained.

In addition to its inflated population projections, Luke's report also projected that SHH would be so successful that it would achieve occupancy rates of 81% by Year Four. (Tr. Ex. 27, SHH CON App., p. 51a.) Although the occupancy rates presented to the HSDA were ultimately revised downward after the initiation of this contested case, HCA still claims that in Year Five its Spring Hill Hospital will have 82% occupancy. (Tr. Ex. 27, SHH CON App., RPC Report p. 26.) No medical/surgical facility in HCA/TriStar's system of 21 hospitals has achieved a 75% occupancy rate. (Trial Tr. 959.) When questioned about them under oath, even HCA's Chief Financial Officer admitted that the application's occupancy rates seemed high. (Tr. Ex. 115, Taylor Dep. at 68.)

Further, when Luke's report was presented to the Agency, HCA did not disclose to the Agency that Luke believes that the CON process and this Agency have outlived their usefulness. (Trial Ex. 27, SHH CON App., p. 16; Hr'g Tr. 6; Trial Tr. 1796-97.) Although Luke does not even believe that the CON process is effective in promoting the goals for which it is established, his analysis provided the main support for HCA's application.

In summary, at the Agency's hearing on this project, HCA was simply not forthcoming about the level of analysis that had been performed or what its own non-litigation analysis had concluded. This was not a project stemming from "significant research," but rather was the result of an undocumented — and still largely unexplained — decision by HCA's management to rush an application for a new hospital in Spring Hill before there was a legitimate need for one.

E. The trial showed that the way HCA presented its bed need analysis to the Agency was confusing at best, and at worst was misleading and deceptive.

Everyone agrees that using the bed need criteria in the *Guidelines for Growth*, no new hospital beds will be needed in Maury County in 2010. (Trial Ex. 110, Kloess Dep. at 81-84; Tr. Ex. 27, SHH CON App., p.33.) However, HCA offered its own bed need analysis to support its application. This analysis, like most of the substance of HCA's application, was prepared by Ron Luke, the professional witness retained at the suggestion of HCA's outside litigation counsel. As discussed above, HCA told Luke to assume, when performing his analysis, that SHH would have 56 beds and open in 2010. Following HCA's instructions, Luke prepared a report that purportedly showed a need for a 56-bed hospital in 2010, and HCA presented the report to the Agency.

Two tables or "Figures" in Luke's report are critical and must be reviewed closely to appreciate the lack of transparency in HCA's application. First, Revised Figure 21 of Luke's report, entitled "Bed Need Analysis," is set forth verbatim below:

Revised Figure 21
Bed Need Analysis

Discharge Rate Per 100,000: 10,296

Population	**2010**	**2011**	**2012**	**2013**	**2014**
Maury County	94,836	100,495	107,078	114,754	123,726
Williamson County	188,386	198,266	209,324	221,750	235,767
Subtotal	283,222	298,761	316,401	336,504	359,493
Discharges	29,159	30,759	32,575	34,645	37,012
ALOS	4.7	4.7	4.7	4.7	4.7
Days	137,049	144,568	153,104	162,832	173,956
Desired Occupancy Rate	75%	75%	75%	75%	75%
Bed Need	501	528	559	595	635

Discharge Rate based on all discharges except 391 in Maury and Williamson County, FY 2004.
ALOS based on :MRH and WMC CY 2004 inpatient discharges for all except normal newborns.
Source: THA-HIN CY 2004 Discharges, 2000 Census data and 2005 and 2010 projections from Claritas Inc.2005 Demographic Data Release, 2005 Census data from Dempsey, Dilling & Associates, P.C., Spring Hill 2005 Special City-Wide.

(Trial Ex. 27, SHH CON App., Second Supp., Revised RPC Report, Attach. 4., emphasis added.) There are currently 435 licensed hospital beds in Maury and Williamson Counties. Therefore, on its face, Revised Figure 21 suggests there will be a need for 66 new hospital beds in Maury and Williamson Counties in 2010 — and that by 2014 there will be a need for some 200 new beds.

Second, Figure 22 of Luke's report entitled "Maury and Williamson County Combined Occupancy Rates" is set forth verbatim below:

Figure 22
Maury and Williamson County Combined Occupancy Rates

Beds	**2010**	**2011**	**2012**	**2013**	**2014**
Inpatient Beds without SHH	435	435	435	435	435
Occupancy	86%	91%	96%	103%	110%
Inpatient Beds with SHH	491	491	491	491	491
Occupancy	76%	81%	85%	91%	97%

Discharge Rate based on AU discharges except 391.
Source: THA-HIN CY 2004 Discharges, 2000 Census data and 2005 and 20 I 0 projections from Claritas Inc. 2005 Demographic Data Release, 2005 Census data from Dempsey, Dilling & Associates, P.C., Spring Hill 2005 Special City-Wide

(Trial Ex. 27, SHH CON App., Second Supp., Revised RPC Report, Attach. 4.) On its face, Figure 22 suggests that, unless the new HCA hospital is constructed, the two existing hospitals in Maury and Williamson Counties will have a 110% occupancy rate by 2014. This Figure further suggests that the facilities in the counties will have a 97% percent occupancy rate even if the new hospital is built.

However, Revised Figure 21 and Figure 22 in Luke's report are false and misleading. While clearly designed to give the impression that they address issues actually before the Agency — whether new beds are needed in Maury and Williamson Counties and what the occupancy rates will be of facilities located in those counties — in fact these figures do not address those issues at all. Instead, the figures reflect the number of beds needed for all the residents of Maury and Williamson Counties, wherever they seek health care, which is an entirely different matter.

To be precise, Revised Figure 21 includes beds actually located in Davidson County and any other county where residents of the Spring Hill area may go to seek services. By counting all Maury and Williamson County discharges, including tertiary out-migration for medical services unavailable in Maury and Williamson Counties, the CON application significantly overstated bed need in a way that HCA failed to make apparent. HCA failed to account for out-migration even though its expert admitted that a certain percentage of patients from Williamson and Maury Counties out-migrate to tertiary providers in Nashville for care and treatment of complex medical problems and even though SHH will have no effect on such tertiary out-migration. (Trial Ex. 109, Gage Dep. at 43-44, 47, 50-51; Trial Ex. 111, Luke Dep. at 188.) In applying for a CON for StoneCrest Hospital in Smyrna, HCA reduced discharges by 10.8% to account for out-migration for tertiary services. (Trial Tr. 950-51.) HCA has never offered a meaningful explanation for its failure to make a similar accounting in the SHH application.

The so-called "occupancy rates" set forth in Figure 22 of the HCA application are similarly misleading. Although the Figure is labeled "Maury and Williamson County Combined Occupancy Rates," the calculation of the occupancy rates includes patients who will be hospitalized in other counties. In other words, the numerator of the occupancy percentage equation includes patients being treated for tertiary and other services in Davidson County, while the denominator consists of beds physically located in Maury and Williamson Counties. This method of presenting occupancy rates is inherently misleading. It is not "customary," as HCA now claims, to suggest to the Agency that there will be a shortage of beds in a community when in fact that is not the case.

Moreover, HCA's "explanation" in its supplemental filing of why it included these two charts in its application is woefully deficient. (Trial Ex. 27, SHH CON App., Second Supp., RPC

Responses to Supp. Req. 20(A).) The minimal explanation provided fails to eliminate or correct the misleading nature of the charts, which HCA highlighted in its application and argument to create the impression that there was a shortage of hospital beds in the Spring Hill area.

To cap its mathematical sleight of hand, HCA now disingenuously claims it "never contended that its bed need analysis established that the beds must be located in Spring Hill or anywhere else within the counties." (HCA Br. at 8.) But HCA submitted Luke's report, including the misleading Figures 21 and 22, as a key component of its application for a CON to build 56-bed hospital in Spring Hill. HCA has not submitted Luke's report to support an application for additional beds at Centennial Medical Center or any other HCA facility that treats patients from Maury and Williamson Counties — although, as the Agency knows, HCA has recently submitted applications for additional beds and services at Centennial, in which it included Maury and Williamson Counties in its service area, and in which it relied on the Department of Health's population projections.

Like all CON applications, HCA's request was for a approval of a specific facility in a specific geographic location, and the data submitted in support of the application should have addressed a specific project and not a generic need. HCA's application and Luke's report can not be interpreted reasonably as advocating for a non-hospital-specific addition of 56 medical/surgical beds to the Middle Tennessee area. But that distorted interpretation is exactly what HCA now urges, in an effort to divert attention from the misleading nature of its application. HCA's attempt to create the false impression of need, by ignoring the reality of migration for tertiary services, should be rejected

F. SHH is not needed to stem any outmigration of non-tertiary patients, as very few patients in the core service area travel outside the area for medical treatment.

Ignoring the outmigration of tertiary patients (patients needing treatment in Nashville for complex medical problems) allows HCA to inflate the "need" for SHH. The need must be exaggerated in this fashion because there is very little nontertiary outmigration from Spring Hill to Nashville or anywhere else. With respect to the non-tertiary services proposed by SHH, 95% of such existing patients in the service area receive medical care from WMC and MRH. (Trial Tr. 289; Tr. Ex. 9, Kolb Report, Exs. 21, 22.) The 5% non-tertiary out-migration is insufficient to fill a 56-bed hospital in Spring Hill. In fact, in the year 2005, the non-tertiary out-migration of medical surgical from the Spring Hill zip codes would generate an average daily census of only 4.4 patients; if OB out-migrating patients are also included the average daily census of such a hospital would be a mere 6.3 patients. (Trial Tr. 289.) The very small numbers of nontertiary patients who are seeking care outside Maury and Williamson Counties further demonstrates that the existing providers are meeting the needs of area residents.

III. The proposed Spring Hill Hospital is not economically feasible and will not contribute to the orderly development of health care.

A. The contested case process and trial exposed HCA's financial projections in the CON application as full of errors.

HCA submitted five years of financial projections in support of its CON application. Even using Ron Luke's inflated and now thoroughly-discredited population projections, HCA acknowledged in its original application that the hospital would lose money for the first three years of its operation. In the first three years, HCA's application projected losses ranging from $14.4 million in 2010 to $3.9 million in 2012, before turning a profit in its fourth year of operation, 2013.

HCA now admits that the financial projections contained in the application were incorrect and overstated. Because of an error in preparing the projections, virtually all of the categories contained in the application financial pro forma were incorrect. When these errors are corrected, the projected financial performance of the Spring Hill hospital is even worse than HCA initially allowed. The first three years of the project become much more unprofitable under the revised pro forma, and the facility barely generates a meager profit in its fourth year of operation. Moreover, following discovery in the contested case, HCA submitted yet another version of its financial projections, which made further reductions in the projected volume at the facility.

At the end of the day, while HCA's original application projected that SHH would lose approximately $25 million during its first five years of operation, HCA now expects to lose more than $29 million over that period of time. Moreover, projections for the first year of profitability (2013) have declined from income of around $1 million to income of just $179,000. Accepting HCA at its word, therefore, the expenditure of $110 million in health care resources to construct SHH will result in a facility that will generate approximately $30 million in losses. And that assumes SHH reaches an occupancy rate higher than HCA has achieved at any other hospital.

Further, HCA also intends to spend substantial amounts of money to persuade 49 additional physicians to move their practices or to establish them in Spring Hill. (Trial Ex. 24, HCA Exec. Mgnt Review, SHH 18517-24; Trial Ex. 112, Rutledge Dep. at pp. 63-65, 77.) It is a fair question whether, in view of the anticipated recruitment, HCA truly intends for SHH to be a simple community hospital. But in any event, when the inevitable cost of physician recruitment is added to the other proposed spending, the cost of the SHH project will substantially exceed the $140 million in admitted capital costs and projected losses — and this staggering number does not include the negative financial impact SHH will have on WMC and MRH.

The proposed hospital does not represent a sound investment of health care resources and, while HCA can doubtless afford to subsidize it, the project plainly violates the statutory criteria of orderly development of health care. There is nothing orderly about allowing one of the world's largest health care corporations to construct a multi-million dollar losing facility in a community already fully served by two nearby public hospitals.

B. The proof at trial demonstrated that the proposed hospital will severely damage MRH and WMC.

HCA admits that no services will be offered at Spring Hill Hospital that are not already offered at MRH or WMC. The proof at trial established that the needless duplication of services in the area will have a dramatic impact on the existing providers. HCA now suggests that this conclusion was reached by an Administrative Judge who lacks the experience and expertise possessed by members of this Agency and that the conclusion should therefore be disregarded. However, this argument ignores the fact that the Administrative Judge did not reach these conclusions on his own. Rather, he based them on extensive sworn testimony from leading health care experts who collectively have dozens of years of pertinent experience. The Judge also heard lengthy testimony from the management of HCA and of both existing facilities. All of this testimony was subjected to rigorous cross-examination. Ultimately, the Administrative Judge entered lengthy findings of fact supporting the conclusion that the proposed hospital would have a "severe impact" on WMC and MRH. That conclusion cannot simply be set aside based on HCA's terse and superficial brief.

HCA attempts to explain away the impact of SHH by claiming that, because the existing providers <u>might</u> experience some minimal, anemic growth in the absolute number of discharges over a period of <u>nine years</u>, there is no cause for concern. (HCA Br. At 11; Trial Ex. 123, Knapp Report.) This argument completely ignores the extensive evidence presented at trial about the

challenges facing the existing providers and the impact that will result from the construction of a new $110 million hospital in the area.

A number of challenges already face the existing providers. The occupancy rates at MRH's main campus have been steadily declining in recent years, averaging only 55% in 2006. This is due to many factors, including the increasing prevalence of patients who are treated in an outpatient setting rather than in an acute care hospital and the overall declining hospital utilization rates in its eight-county service area. (Trial Tr. 613.) Discharges in MRH's eight-county service area have declined every year since 2003. Testifying at the trial, HCA/TriStar's President Larry Kloess admitted that changes in technology have been lowering the average length of stay nationwide. (Trial Tr. 951.)

Further, while WMC's occupancy rates have been higher than those of MRH, to a significant extent this reflects the fact that WMC has been undergoing a major construction project which has at times reduced its capacity as low as 116 staffed beds. That artificially inflated WMC's occupancy rates such that they inadequately reflect utilization of WMC's full licensed bed complement. (Trial Ex. 48, D. Miller Aff.; FOF ¶72.)

HCA's proposed new hospital would be a secondary facility with limited services and facilities, and could not treat most of the life-threatening illnesses and complex emergencies that Spring Hill area residents may sustain. As discussed above, only a handful of nontertiary patients in Spring Hill are currently seeking treatment outside Maury and Williamson Counties. In light of this fact, it cannot be disputed that the overwhelming majority of patients at the proposed new 56-bed hospital would be patients who otherwise would be seen at WMC or MRH. The loss of a substantial number of patients, and the diminished opportunity to serve new patients from the growing Spring Hill community, will cause substantial harm to the existing providers. This harm

will not be offset by a huge population growth as projected by the now discredited (and effectively abandoned) Luke population projections.

The main campus of MRH is located just 14 miles from the site of the proposed new hospital. MRH is a regional referral center for an eight-county service area in southern Middle Tennessee. MRH provides vital health care services in communities that would not otherwise have access to such services. Many of these services and facilities operate at a financial loss, and depend upon MRH for financial support and for capital investment for upkeep, renovation and improvement. (Trial Ex. 42, P. Brown Aff.; Trial Ex. 43, D. Flowers Aff.; Trial Ex. 44, B. Quinton Aff.)

The proof at trial demonstrated that MRH faces substantial capital requirements in the near future, including a need to convert semi-private rooms to modern private rooms, and a need to invest in changing medical technologies. In evaluating the potential impact of the proposed new hospital, MRH offered the testimony of Martin D. Brown, a CPA and member of the Pershing Yoakley & Associates firm. PYA is one of the leading health care advisory and accounting firms in Tennessee, serving around 60 hospitals in Tennessee since 2003, or about one-third of all hospitals in the state. Brown is not a "litigation expert," but a legitimate health care expert who actually provides advice to hospitals.

Brown's analysis showed that the construction of a new hospital in Spring Hill would result in losses to MRH of between $5 million to $12 million every year, with cumulative losses over five years of approximately $40 million. (Trial Tr. 408.) Such losses will necessarily reduce MRH's ability to provide for future fixed expenses and needs for capital expenses, such as renovation and maintenance of MRH's main campus in Columbia as well as the outlying facilities in the MRH system such as Wayne Medical Center, Marshall Medical Center, and

Lewis Ambulatory Care Clinic—all of which have very low percentages of commercially insured patients.

Brown also responded to HCA's argument that WMC and MRH would not be injured financially because they would supposedly maintain the same number of discharges in 2014 as they had in 2005. As Brown testified, having the same number of discharges today as a hospital had 10 years ago would put that hospital in dire financial straits in light of factors such as increased expenses, increased capital spending and possible decreases in reimbursement by payers. (Trial Tr. 409-10.) Similarly, HCA's CEO Larry Kloess testified that private hospital rooms are state of the art in today's health care environment and patients do not want to settle for anything less. (Trial Tr. 956.) Kloess testified that HCA has a commitment to improving facilities through capital upgrades in order to retain physicians and patients. (Trial Tr. 957.) The approval of SHH would make it impossible for MRH to engage in such essential upgrades.

WMC similarly offered expert testimony to show the potential negative impact of SHH on its operations. WMC's witness was Jeffrey Potter, another Tennessee CPA and a partner with Lattimore Black Morgan & Cain, the state's largest certified public accounting firm. Like Brown, Potter has not made a career out of testifying in lawsuits; he provides actual financial analysis and operations advice to hospitals. Potter prepared a report showing that WMC stands to suffer approximately $18 million in lost profits in the first five (5) years of SHH's operation. (Trial Tr. 490-91; Trial Ex. 35, Potter Report, Table P.) Put differently, WMC will lose on average approximately $3.8 million a year from its bottom line.

For the past few years, WMC has averaged a profit of roughly $8.5 million a year. Thus, SHH threatens to cut WMC's profits almost in half. Such a loss will drastically affect WMC's

abilities to service its debt while maintaining and enhancing the care it provides to its owners: Williamson County citizens. (Trial Ex. 48, D. Miller Aff.; Trial Ex. 49, Webb Aff..)

The only expert HCA offered to address specifically the detrimental financial impact of SHH was Rick Knapp. Knapp has testified for hire in hundreds of cases. In all or most of these cases, he has represented himself to be a licensed Certified Public Accountant. (Trial Tr. 1398-1400.) Likewise, in the present case, Knapp testified under oath that he was a Certified Public Accountant in Ohio and Georgia. (Trial Tr. 1399-1400.) In fact, however, Knapp was not licensed in either state. He has not been licensed in Ohio since 1977, and there is no evidence he has ever been licensed in Georgia. (Trial Ex. 121, Letter from Accountancy Board of Ohio; Trial Ex. 122, Letter from Georgia State Board of Accountancy.) Because Knapp was dishonest about his credentials, his testimony should not be afforded any weight.

But even if there was no issue with Knapp's credentials or credibility, his testimony falls short because he did not actually perform his own analysis of the proposed SHH project's financial feasibility. Rather, he appeared to have simply taken pieces of the analyses performed by other experts and cobbled together an opinion. Still, Knapp estimated WMC stands to suffer $13,629,761.00 in lost profits in the first five years of SHH's operation. (Trial Ex. 123, Knapp Report, App'x D.) Thus, assuming solely for the sake of argument that Knapp is correct, WMC will lose on average approximately $2.7 million a year from its bottom line. Again, this is a material loss that is likely to drastically affect WMC's ability to service its debt while maintaining and enhancing the care it provides Williamson County citizens. Knapp also estimated MRH's lost profits for the first five years of SHH's operation as $6,266,119. (Trial Ex. 123, Knapp Report, App'x D.) Again, assuming Knapp is correct, MRH will sustain a substantial loss that will severely impact its ability to provide health care services to its patients.

The concept of "orderly development" of health care resources envisions development of resources as they are actually needed in the marketplace. HCA demonstrated how such development can occur through its experience with StoneCrest Hospital in Rutherford County. In that instance, for 15 years HCA operated a freestanding emergency room in the community until the population of the area grew to the point where a new hospital could arguably be supported. (Trial Tr. 947-48.)

In the present case, HCA seeks to circumvent the incremental, orderly development of health care with a speculative project based on future "need" that may or may not materialize. Even by delaying the proposed opening of the facility until 2010, HCA was able to generate "need" only through massively inflating the area's population. The present proposal represents nothing more than an effort to jump ahead of actual need by building a money-losing hospital in the hope that, eventually, the population may grow enough to support it. Approving such a scheme gives an unfair advantage to massive health care corporations like HCA, whose deep pockets permit it to assume such risks. The orderly development of health care should not allow HCA to conduct such a "preemptive strike" and thereby do substantial harm to the existing community providers.

C. Although HCA claimed that it would de-license beds in middle Tennessee and that therefore SHH would not add to the overall number of beds, that condition was not part of the CON as originally granted — and HCA apparently does not intend to de-license any beds.

To enhance the appearance of orderliness, HCA's CON application stated that if the Agency approved Spring Hill Hospital, then HCA would de-license 56 beds at other HCA facilities in middle Tennessee. (Trial Tr. 960; Trial Ex. 27, SHH CON App., Question B(2)(II)(A).) Specifically, HCA proposed to de-license 28 beds at Hendersonville Medical Center and 28 beds at Horizon Medical Center. (Trial Ex. 27, SHH CON App., Question

B(2)(II)(A).) By letter dated April 27, 2006, TriStar president Larry Kloess stated that HCA might change the facility(ies) at which the beds would be de-licensed. (Tr. Ex. 27, SHH CON App., Second Supp., (1)(A).)

But in March 2006, Kloess had sent an e-mail to fellow HCA executive Tim Scarvey discussing de-licensing beds at Tennessee Christian Hospital, a facility outside the SHH service area. (Trial Tr. 964; Trial Ex. 92, Kloess e-mail.) HCA never informed the HSDA of this possibility, even as in public it specifically named other hospitals it had in mind. (Trial Tr. 964-65.) In fact, since the Agency initially approved the SHH application in July 2006, HCA has sought to add a number of hospital beds into the middle Tennessee area at Centennial Medical Center. (Trial Tr. 1251-53; CON Application CN 0701009; Trial Ex. 91, CON Application CN 0611-095; pending CON Application CN 071710-079.)

The Certificate of Need that the Agency granted for SHH does not reflect HCA's stated commitment to de-license 56 beds in middle Tennessee. (Trial Tr. 960; Trial Ex. 90, SHH Certificate of Need.) Kloess freely admitted at trial that the CON should be conditioned on the de-licensure. (Trial Tr. 961.) But perhaps more important, if — as HCA has contended to this Agency — the 56 beds proposed for SHH could be located anywhere in middle Tennessee and are not required to be in Spring Hill, then it is fair to ask whether the Centennial additions have effectively been substituted for SHH.

D. The fact that a new hospital was approved in Smyrna does not support approval of SHH.

HCA repeatedly suggests that SHH should be approved because StoneCrest Hospital was approved in Smyrna in 2001 and, according to HCA, there has been no negative impact on existing providers. This simplistic argument ignores the differences between Smyrna and Spring Hill and is simply another effort to divert attention from the glaring deficiencies in the present

application. In fact, if HCA had used the same assumptions in its Spring Hill application as it used in its Smyrna application, it would be apparent that there is no need for SHH.

One of the many differences between Smyrna and Spring Hill is population density. Seventy two thousand five hundred and nineteen people live within five miles of StoneCrest, as compared to 28, 884 people who live within five miles of the proposed site of SHH. In a 10 mile radius the difference is even more evident: almost 190,000 people live within 10 miles of StoneCrest as opposed to 56,725 people living within 10 miles of Spring Hill. (Trial Ex. 9, Kolb Report, p. 4.)

The application that HCA filed in support of its Smyrna project also stands in stark contrast to the SHH application analysis prepared by Ron Luke. Instead of projecting an astronomical future growth rate, HCA used conservative lower numbers. HCA used a declining Average Length of Stay in projecting admissions. Moreover, while HCA now criticizes Dr. Kolb for projecting declining use rates in her analysis of the Spring Hill Hospital, HCA used declining use rates in its StoneCrest application. In the StoneCrest application, HCA also accounted for tertiary out-migration in its need analysis. (Trial Ex. 9, Kolb Report, p. 5.) In sum, the StoneCrest experience does not support approval of SHH. To the contrary, a review of that application demonstrates the misleading nature of the present proposal.

IV. Conclusion

MRH and WMC respectfully submit that a full review of the trial record will compel a conclusion that SHH has failed to meet any of the criteria for a Certificate of Need set forth in T.C.A. § 68-11-1609(b) and in Agency Rules 0720-11-.01(1)-(3). Consequently, the application for a CON for Spring Hill Hospital should be denied.

Respectfully submitted this 22nd day of January, 2008.

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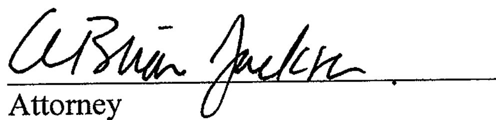
This 22nd day of January, 2008.



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