

**BEFORE THE TENNESSEE  
HEALTH SERVICES AND DEVELOPMENT AGENCY**

**IN THE MATTER OF:**

**SPRING HILL HOSPITAL, INC.**

**Certificate of Need No. CN 0604-028A**

**APD Docket No. 25.00-092967J**

**JOINT RESPONSE OF MAURY REGIONAL HOSPITAL AND  
WILLIAMSON MEDICAL CENTER IN OPPOSITION TO  
SPRING HILL HOSPITAL'S PETITION FOR REVIEW**

Maury Regional Hospital ("MRH") and Williamson Medical Center ("WMC") respectfully submit this response in opposition to the Petition for Review of Administrative Judge's Order Denying a Certificate of Need for Spring Hill Hospital.

Spring Hill Hospital, Inc. ("SHH"), a subsidiary of HCA, Inc., has asked the Health Services and Development Agency to take the extraordinary action of reviewing the Initial Order entered by an Administrative Law Judge ("ALJ") after a thorough contested case proceeding that culminated in a two-week trial yielding extensive factual and legal findings by the ALJ. For the reasons set forth below, the Agency should deny SHH's Petition and allow the ALJ's Initial Order to become a Final Order.

**1. The ALJ reviewed the CON application *de novo* and did not "reverse" the Agency's action.**

SHH's petition states that the ALJ "effectively revers[ed]" the Agency's decision to grant the CON. This statement distorts the true nature of the contested case process. Under this Agency's own Rules and other applicable law, the ALJ does not sit as an appellate court reviewing what took place before the Agency. Rather, the contested case is a *de novo* hearing.

In this context, "*de novo*" means that the ALJ hears the case for a CON as though it is being presented for the first time. The initial vote of the Agency after it considers a CON

application serves only to allocate the burden of proof for the parties in the contested case. The Agency charges the ALJ with making an independent judgment about the project, a judgment based not on the initial hearing before the Agency, but upon the evidence received in the contested case. Of course, the time available to develop and present evidence in a contested case is considerably greater than the time available at a monthly Agency meeting.

Because the ALJ receives so much additional information, and in such a different form, it is not surprising that from time to time ALJs may reach conclusions that differ from the Agency's initial vote. The contested case in this matter began when MRH and WMC filed an appeal in August 2006, and it proceeded through written discovery, depositions and pretrial motions before culminating in a trial in April 2007. At the trial, which took ten business days spread over three calendar weeks, the ALJ heard testimony from 26 live witnesses (and from 23 witnesses who testified by affidavits or who were presented by videotape) and reviewed 151 trial exhibits totaling 3,621 pages. All of the testimony was taken under oath and subject to cross-examination. The ALJ then issued 38 pages of Findings of Fact and Conclusions of Law in the Initial Order.

The contested case process exists so that certain applications can receive the kind of detailed examination that is simply impossible in the limited time available to the Agency. Through its Rules, the Agency created the process by which it refers contested cases to an ALJ for hearing on the Agency's behalf. See Agency Rule 0720-13-.02(1). The process in this case worked exactly the way it was designed to work and SHH's suggestion that the *de novo* hearing was a "reversal" should be disregarded.

**2. SHH has identified no reason to review this case except that SHH did not like the result.**

In its Petition, SHH fails to explain in any detail *why* the Agency should take the extraordinary and time-consuming step of reviewing the ALJ's Initial Order. SHH offers only the most conclusory arguments: the ALJ erred "in some of his findings of fact" and "the facts as he found them do not support the conclusions of law he reached." These are merely generic arguments that could be made in any case. The Agency should not set a precedent for reviewing contested cases simply because the losing party is dissatisfied with the result of the hearing. Doing so would allow an extraordinary remedy in the most ordinary of circumstances.

Review by the full Agency should be rare and reserved for cases where a party can identify some fundamental error or unfairness in the contested case. If a party could single out some gross error in the proceedings before the ALJ — for example, if the ALJ applied the wrong standard to the case — then Agency review might be appropriate.

But there is no such claim here. SHH does not and cannot dispute that it had a full opportunity to present its case for a new hospital before a fair and evenhanded ALJ, sitting for and on behalf of this Agency. Under these circumstances, there is no reason for the Agency to review the case further. Moreover, choosing to do so would invite other dissatisfied parties to file similar petitions.

**3. Accepting this case for review would impose an unreasonable burden on the Agency and defeat the purpose of the existing contested case procedure.**

For many years, the Agency has resolved contested cases by referring them to an ALJ sitting alone. This serves a valuable purpose of conserving the time and resources of the constituent Agency, while allowing for a thorough examination of applications for which appeals are submitted. SHH's Petition would turn this process on its head.

Because SHH identifies no core procedural or legal error that the Agency could swiftly evaluate, the gist of its proposed appeal is that the ALJ's conclusions were contrary to the weight of the evidence. Essentially, SHH asks this Agency to substitute its judgment for that of the ALJ. To review an appeal on that basis, the Agency would in fairness need to review **all** of the materials submitted to the ALJ — not merely those portions hand-picked by SHH. This would require review of a trial transcript consisting of 10 volumes and 1,963 pages, in addition to the 3,621 pages in the 151 trial exhibits. Beyond the clear logistical burden this represents, such an exercise would defeat the purpose for having an ALJ hear the contested case in the first place. If SHH believes the initial order in this case requires further review, the appropriate forum for such review is the Chancery Court of Davidson County, which routinely hears appeals of orders in state administrative proceedings.

**4. Under the Agency's Rules, the Agency's ability to review the Initial Order is limited.**

Even if the Agency decided to grant SHH's request for further review, under the Agency's own Rules the scope of that review would be very limited. Agency Rule 0720-13-.03(2) states that, if the Agency grants a review, then that review "is strictly limited to the record that was developed before the Administrative Judge. No additional evidence is to be received or considered by the Agency." See also T.C.A. § 4-5-319(c) (stating that the trial record "shall constitute the exclusive basis for agency action in adjudicative proceedings under this chapter, and for judicial review thereof"). Further, subpart (3) of the same Agency Rule provides that "such a review proceeding **is in the nature of appellate review.**" (emphasis added).

Tennessee law limits the scope of appellate review of administrative decision-making. A decision of an agency can be reversed only if the decision is:

- (1) In violation of constitutional or statutory provisions;

- (2) In excess of statutory authority;
- (3) Made upon unlawful procedure;
- (4) Arbitrary or capricious or characterized by an abuse of discretion; or
- (5)(A) Unsupported by evidence which is both substantial and material in light of the entire record.

T.C.A. § 4-5-322(h). Moreover, a court reviewing an administrative order “shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.” § 4-5-322(h)(5)(B); see also Humana of Tenn. v. Tennessee Health Facilities Comm’n, 551 S.W.2d 664, 671 (Tenn. 1977) (stating that “reviewing courts cannot reverse an agency merely because they might have decided the matter differently”).

In other words, unless there is some constitutional or procedural defect in the proceeding (which has not been and cannot be alleged by SHH), then the ALJ’s decision must be affirmed so long as there is evidence supporting it. SHH cannot credibly claim that the ALJ’s decision in this case was not based on some evidence. The critical decisions in this case revolved around the validity of the expert testimony offered by both sides. The ALJ heard all the testimony, personally observed the witnesses, and assessed their credibility. Under applicable rules of appellate review, the Agency is required to defer to the ALJ on those issues.

### **Conclusion**

For the reasons set forth above, WMC and MRH urge the Agency to deny SHH’s Petition for Review and allow the ALJ’s Initial Order to become the Final Order.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing has been sent to the following counsel of record by the means indicated to the addresses below:

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This second day of November, 2007.

  
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