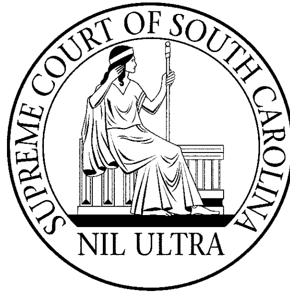

OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 7
February 18, 2015
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

CONTENTS

THE SUPREME COURT OF SOUTH CAROLINA

PUBLISHED OPINIONS AND ORDERS

Order - In the Matter of Dannette Mays Dickey 8

UNPUBLISHED OPINIONS

None

PETITIONS – UNITED STATES SUPREME COURT

27408 - The State v. Anthony Nation — Pending

2010-173586 - Bayan Aleksey v. State — Pending

2014-001612 - The State v. William T. Watts, II — Pending

EXTENSION TO FILE PETITION FOR REHEARING

Order - Columbia/CSA-HS Greater Columbia Healthcare System, et al. v. The South Carolina Medical Malpractice Liability Joint Underwriting Association, et al. — Granted until 2/20/ 2015

PETITIONS FOR REHEARING

27475 - North American Rescue v. P. J. Richardson — Pending

27478 - Carolyn M. Nicholson v. SCDSS — Pending

27479- Judy Barnes v. Charter 1 Realty — Pending

27486 - Carolina First Bank v. Badd — Pending

27487 - The State v. Jacquwn Brewer — Pending

The South Carolina Court of Appeals

PUBLISHED OPINIONS

5297-Trident Medical Center, LLC, d/b/a Berkeley Regional Medical Center v. South Carolina Department of Health and Environmental Control and Roper St. Francis Hospital-Berkeley d/b/a Roper St. Francis Hospital — 10

5298-George W. Thomas v. 5 Star Transportation and S.C. Uninsured Employers Fund — 31

UNPUBLISHED OPINIONS

2015-UP-074-State v. Akeem O. Smith

2015-UP-075-Cornelius K. Cowan v. Alesha T. Cunningham

2015-UP-076-State v. Ashley Barrett

2015-UP-077-Derick Ward v. Margaret H. Ashbaugh

2015-UP-078-Leslie L. Hicks v. Justin Griffin

PETITIONS FOR REHEARING

Case	Status
5253-Sierra Club v. SCDHEC and Chem-Nuclear Systems, Inc.	Pending
5270-56 Leinbach Investors, LLC v. Magnolia Paradigm	Pending
5272-Cindy Ella Dozier v. American Red Cross	Pending
5286-State v. Graham Franklin Douglas	Pending
5287-Jane Srivastava v. Ravindra P. Srivastava	Pending
5288-State v. Damon T. Brown	Pending
5291-Samuel Rose v. JJS Trucking	Pending
2014-UP-430-Cashman Properties v. WNL Properties	Pending

2014-UP-466-John Sherrill v. Gary Moore	Pending
2014-UP-478-State v. Erick E. Hewins	Pending
2014-UP-480-State v. Richard L. Sprinkle	Pending
2015-UP-004-Andrew Plummer v. SCDC	Pending
2015-UP-010-Latonya Footman v. Johnson Food Services	Pending
2015-UP-014-State v. Melvin P. Stukes	Pending
2015-UP-015-State v. Albert Brandeberry	Pending
2015-UP-029-HSBC Mortgage v. Otterbein	Pending
2015-UP-030-Quentin S. Broom, Jr. v. Ten State St.	Pending
2015-UP-031-Blue Ridge Electric Cooperative, Inc. v. Gresham	Pending
2015-UP-036-Allison Morrett v. Capital City Ambulance	Pending
2015-UP-039-State v. Brad A. Day	Pending
2015-UP-041-Nathalie I. Davaut v. USC	Pending
2015-UP-042-Yancey Environmental v. Richardson Plowden	Pending
2015-UP-050-Puniyani v. Avni Grocers	Pending
2015-UP-051-Chaudhari v. S.C. Uninsured Employer's Fund	Pending
2015-UP-055-Alexander Guice v. Pamela Lee	Pending

PETITIONS-SOUTH CAROLINA SUPREME COURT

5077-Kirby L. Bishop et al. v. City of Columbia	Pending
5099-Roosevelt Simmons v. Berkeley Electric	Pending
5140-Bank of America v. Todd Draper	Pending
5175-State v. Karl Ryan Lane	Pending

5201-Phillip Grimsley v. SLED	Pending
5209-State v. Tyrone Whatley	Pending
5229-Coleen Mick-Skaggs v. William Skaggs	Pending
5231-Centennial Casualty v. Western Surety	Pending
5237-Lee C. Palms v. The School District of Greenville Cty.	Pending
5241-Richard A. Fisher v. Shipyard Village Council	Pending
5245-Allegro, Inc. v. Emmett Scully	Pending
5247-State v. Henry Haygood	Pending
5250-Precision Walls v. Liberty Mutual Fire Ins.	Pending
5251-State v. Michael Wilson Pearson	Pending
5259-State v. Victor A. White	Pending
5261-State v. Roderick Pope	Pending
5263-Milton P. Demetre Family Ltd. Partnership v. Beckmann	Pending
5264-Prakash Solanki v. Wal-Mart	Pending
5265-State v. Wayne McCombs	Pending
5266-State v. Anthony K. Blakney	Pending
5267-Steve Bagwell v. State	Pending
5268-Julie Tuten v. David C. Joel	Pending
5271-Richard Stogsdill v. SCDHHS	Pending
5274-Duke Energy v. SCDOR	Pending
5275-Mitul Enterprises v. Beaufort Cty. Assessor	Pending

5276-State v. Dwayne Eddie Starks	Pending
5278-State v. Daniel D'Angelo Jackson	Pending
2012-UP-433-Jeffrey D. Allen v. S.C. Budget and Control Bd. Employee Insurance Plan et al.	Pending
2013-UP-147-State v. Anthony Hackshaw	Pending
2013-UP-251-Betty Jo Floyd v. Ken Baker Used Cars	Pending
2013-UP-322-A.M. Kelly Grove v. SCDHEC	Pending
2014-UP-114-Carolyn Powell v. Ashlin Potterfield	Dismissed 02/10/15
2014-UP-128-3 Chisolm Street v. Chisolm Street	Pending
2014-UP-143-State v. Jeffrey Dodd Thomas	Pending
2014-UP-167-State v. David G. Johnson	Pending
2014-UP-187-State v. Mark Peters	Pending
2014-UP-228-State v. Taurus L. Thompson	Pending
2014-UP-270-Progressive Northern v. Stanley Medlock	Pending
2014-UP-273-Gregory Feldman v. William Casey	Pending
2014-UP-304-State v. Tawanda Allen	Pending
2014-UP-306-Yadkin Valley v. Oaktree Homes	Pending
2014-UP-307-Desiree Brown v. Wendell Brown (1)	Pending
2014-UP-317-Cherry Scott v. Heritage Healthcare	Pending
2014-UP-318-Linda Johnson v. Heritage Healthcare	Pending
2014-UP-346-State v. Jason Bauman	Pending

2014-UP-348-State v. Anthony Jackson	Pending
2014-UP-361-Russell W. Rice, Jr. v. State	Pending
2014-UP-362-State v. James Harris	Pending
2014-UP-365-Fatima Karriem v. Sumter Cty. Disabilities	Pending
2014-UP-367-State v. Shondre L. Williams	Pending
2014-UP-381-State v. Alexander L. Hunsberger	Pending
2014-UP-382-State v. Julio A. Hunsberger	Pending
2014-UP-385-State v. Ralph B. Hayes	Pending
2014-UP-389-James Plemmons v. State Farm Mutual	Pending
2014-UP-399-State v. Matthew B. Fullbright	Pending
2014-UP-400-John Doe v. City of Duncan	Pending
2014-UP-411-State v. Theodore Manning	Pending
2014-UP-438-CACH, LLC v. Hoffman	Pending
2014-UP-447-State v. Carolyn Poe	Pending

The Supreme Court of South Carolina

In the Matter of Dannitte Mays Dickey, Respondent.

Appellate Case Nos. 2015-000228, 000229, 000232

ORDER

The Office of Disciplinary Counsel asks this Court to issue an order placing respondent on interim suspension pursuant to Rule 17, RLDE, Rule 413, SCACR, or in the alternative, transferring respondent to incapacity inactive status pursuant to Rule 28, RLDE, Rule 413, SCACR. The petition also seeks appointment of the Receiver pursuant to Rule 31, RLDE, Rule 413, SCACR, to protect the interests of respondent's clients.

IT IS ORDERED that respondent's license to practice law in this state is suspended and respondent is transferred to incapacity inactive status until further order of this Court.

IT IS FURTHER ORDERED that Peyre Thomas Lumpkin, Esquire, Receiver, is hereby appointed to assume responsibility for respondent's client files, trust account(s), escrow account(s), operating account(s), and any other law office accounts respondent may maintain. Mr. Lumpkin shall take action as required by Rule 31, RLDE, Rule 413, SCACR, to protect the interests of respondent's clients. Mr. Lumpkin may make disbursements from respondent's trust account(s), escrow account(s), operating account(s), and any other law office accounts respondent may maintain that are necessary to effectuate this appointment.

This Order, when served on any bank or other financial institution maintaining trust, escrow and/or operating account(s) of respondent, shall serve as an injunction to prevent respondent from making withdrawals from the account(s) and shall further serve as notice to the bank or other financial institution that the Receiver, Peyre Thomas Lumpkin, Esquire, has been duly appointed by this Court.

Finally, this Order, when served on any office of the United States Postal Service, shall serve as notice that the Receiver, Peyre Thomas Lumpkin, Esquire, has been duly appointed by this Court and has the authority to receive respondent's mail and the authority to direct that respondent's mail be delivered to Mr. Lumpkin's office.

Mr. Lumpkin's appointment shall be for a period of no longer than nine months unless an extension of the period of appointment is requested.

s/ Jean H. Toal C.J.
FOR THE COURT

Columbia, South Carolina
February 11, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Trident Medical Center, LLC, d/b/a Berkeley Regional Medical Center, Appellant/Respondent,

v.

South Carolina Department of Health and Environmental Control and Roper St. Francis Hospital–Berkeley, d/b/a Roper St. Francis Hospital,

Of Whom South Carolina Department of Health and Environmental Control is the Respondent and Roper St. Francis Hospital is the Respondent/Appellant.

Trident Medical Center, LLC, d/b/a Berkeley Regional Medical Center, Appellant/Respondent,

v.

South Carolina Department of Health and Environmental Control and Roper St. Francis Hospital–Berkeley, d/b/a Roper St. Francis Hospital,

Of whom South Carolina Department of Health and Environmental Control is the Respondent and Roper St. Francis Hospital is the Respondent/Appellant.

CareAlliance Health Services and Roper St. Francis Hospital–Berkeley, Respondents/Appellants,

v.

South Carolina Department of Health and Environmental Control and Trident Medical Center, LLC,

Of whom South Carolina Department of Health and Environmental Control is the Respondent and Trident Medical Center, LLC, is the Appellant/Respondent.

Appellate Case No. 2012-213506

Appeal From The Administrative Law Court
John D. McLeod, Administrative Law Judge

Opinion No. 5297
Heard October 7, 2014 – Filed February 18, 2015

AFFIRMED

David B. Summer Jr., William R. Thomas, and Faye A. Flowers, all of Parker Poe Adams & Bernstein LLP, of Columbia, for Appellant/Respondent.

William Marshall Taylor Jr., Ashley Caroline Biggers, and Vito Michael Wicevic, all of Columbia, for Respondent South Carolina Department of Health and Environmental Control.

James G. Long III, Jennifer J. Hollingsworth, and Tanya A. Gee, all of Nexsen Pruet, LLC, of Columbia, for Respondents/Appellants.

GEATHERS, J.: These cross-appeals involve a decision of the South Carolina Administrative Law Court (ALC) upholding the issuance by the South Carolina Department of Health and Environmental Control (DHEC) of a Certificate of Need (CON) for hospital construction in Berkeley County to both Roper St. Francis Hospital–Berkeley (Roper) and Trident Medical Center, LLC (Trident) pursuant to the State Certification of Need and Health Facility Licensure Act, S.C. Code Ann. § 44-7-110 to -394 (2002 and Supp. 2014) (the CON Act). Trident challenges the

issuance of a CON to Roper, arguing the "Bed Transfer Provision" in the 2008-2009 State Health Plan prohibits DHEC from issuing a CON for the transfer of beds from Roper's hospital in downtown Charleston to a hospital that has not yet been built.

On the other hand, Roper's primary position is that the ALC's decision should be affirmed in its entirety, but if this court accepts Trident's argument and reverses the issuance of a CON to Roper, then the issuance of a CON to Trident must also be reversed. Because we affirm the ALC's decision to uphold the issuance of a CON to both Roper and Trident, we need not address Roper's appeal issue.

FACTS/PROCEDURAL HISTORY

In 2008, Berkeley County's estimated population was 158,140. However, there were (and still are) no hospital beds in Berkeley County. On August 13, 2008, Trident submitted an application for a CON to build a new fifty-bed acute care hospital in the Town of Moncks Corner in central Berkeley County pursuant to the 2004-2005 State Health Plan.[1] The 2004-2005 State Health Plan's inventory of general hospitals indicated that Trident's existing North Charleston facility had a need for forty-two additional beds,[2] and Trident sought to use this facility-specific need to obtain DHEC's approval for the proposed fifty-bed facility in Moncks Corner pursuant to a provision in the State Health Plan referred to as the "Fifty Bed Rule." This provision allows a hospital with a need for beds to add up to the greater of fifty beds or the actual projected number of needed beds to its inventory to provide for a cost-effective addition:

> Should there be a need shown for additional beds for a hospital, then an increase may be approved. In order to

[1] The 2008-2009 State Health Plan did not become effective until September 12, 2008. *See* S.C. Code Ann. Regs. 61-15 § 504 (2011) (amended 2012) ("All decisions on [CON] applications shall be made based on the currently approved State Health Plan in effect at the time such application is accepted. Should a new plan be adopted during any phase of the review or appeals process, the applicant shall have the option of withdrawing the application and resubmitting under the newly adopted plan or continuing the review or appeal process under the plan in use when the application was submitted.").

[2] Trident explains that due to a "prior conversion of nursing home beds to hospital beds, [its North Charleston facility] actually had a bed need of [seventeen]" when it filed the CON application for the proposed hospital in Moncks Corner.

> provide for a cost-effective addition, up to the greater of 50 beds or the actual projected number of additional beds may be approved, provided the hospital can document and demonstrate the need for additional beds.

Chapter II.G.1 § (A)(4)(d), 2004-2005 State Health Plan (Fifty Bed Rule).

Trident proposed to build the new hospital on a twenty-one acre site adjacent to its existing freestanding emergency department and outpatient center, Moncks Corner Medical Center. Trident indicated it planned to convert the building that houses the emergency department into a medical office building and move the emergency department into the new hospital.

A few months after Trident's CON submission, on December 10, 2008, Roper submitted an application for a CON to transfer some of its existing beds in its facility in downtown Charleston to a proposed new fifty-bed acute care hospital in the City of Goose Creek in southern Berkeley County pursuant to the Bed Transfer Provision of the 2008-2009 State Health Plan.[3] The Bed Transfer Provision allows for the transfer of beds between affiliated hospitals in order to serve their patients in a more efficient manner, provided certain conditions are met. *See infra*. The new hospital is to be known as "Roper St. Francis Hospital–Berkeley."

On May 21, 2009, DHEC conducted a joint project review hearing on the two applications. On June 26, 2009, DHEC approved both applications. DHEC also determined that Trident and Roper were not "competing applicants" and, thus, it could properly grant CONs to both. The term "competing applicants" is defined in section 44-7-130(5) of the South Carolina Code (2002) as

> two or more persons or health care facilities as defined in this article who apply for [CONs] to provide similar services or facilities in the same service area within a time frame as established by departmental regulations and *whose applications, if approved, would exceed the need for services or facilities*.

(emphasis added). When DHEC is considering competing applications, it must award a CON on the basis of which applicant most fully complies with the CON

[3] Chapter II.G.1 § (A)(4)(j), 2008-2009 State Health Plan (Bed Transfer Provision).

Act, the State Health Plan, project review criteria,[4] and applicable DHEC regulations. S.C. Code Ann. § 44-7-210(C) (2002) (amended 2010).

On July 6, 2009, Trident submitted two requests for final review conferences before DHEC's board (the Board), seeking (1) a reversal of the staff's decision to grant a CON to Roper, and (2) a determination that Trident and Roper were "competing applicants" and Trident was the applicant that most fully complied with the CON Act, the State Health Plan, project review criteria, and applicable DHEC regulations. On July 10, 2009, Roper also filed a request for a final review conference before the Board, seeking a determination that Roper was the applicant that most fully complied with the CON Act, the State Health Plan, project review criteria, and applicable DHEC regulations in the event the Board found Trident and Roper to be competing applicants. The Board declined to conduct final review conferences.

On August 7, 2009, Trident and Roper collectively filed three separate requests for a contested case review before the ALC. Trident sought (1) reversal of DHEC's determination that Trident and Roper were not competing applicants and (2) reversal of DHEC's issuance of a CON to Roper. Roper sought a decision either upholding DHEC's issuance of CONs to both applicants or finding that Roper was the applicant that most fully complied with the CON Act, the State Health Plan, project review criteria, and applicable DHEC regulations.

The ALC consolidated the proceedings for trial and discovery purposes. On January 30, 2012, the ALC conducted a contested case hearing that lasted through February 16, 2012. Prior to receiving testimony, the ALC granted Roper's motion for partial summary judgment, concluding that if the applicants were found to be competing, the matter would be remanded to DHEC for identification of the applicant that most fully complied with the CON Act, the State Health Plan, project review criteria, and applicable DHEC regulations.

On September 26, 2012, the ALC issued a written decision upholding DHEC's issuance of a CON to both Trident and Roper. In its decision, the ALC deferred to DHEC's interpretation of the Bed Transfer Provision and the Fifty Bed Rule and

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[4] There are thirty-three criteria for DHEC's review of a project. S.C. Code Ann. Regs. 61-15 § 802 (2011) (amended 2012). Each section of Chapter II of the State Health Plan designates the most important project review criteria for the particular type of facility or service addressed in that section. Chapter I.H, 2008-2009 State Health Plan; Chapter I.I, 2004-2005 State Health Plan.

found that if both applications were approved, they would not exceed the need for acute care hospital beds in the area. On October 5, 2012, Trident filed a motion for reconsideration, which was denied on November 1, 2012. These appeals followed.

ISSUES ON APPEAL

1. Did the ALC err in deferring to DHEC's interpretation of the Bed Transfer Provision?

2. Did the ALC err in concluding that Trident and Roper were not competing applicants?

STANDARD OF REVIEW

The Administrative Procedures Act governs the standard of review from a decision of the ALC, allowing this court to

> reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) affected by other error of law; (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5) (Supp. 2014). "An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion that is without evidentiary support." *Fields v. Reg'l Med. Ctr. Orangeburg*, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005).

Further, this court may not substitute its judgment for the judgment of the ALC as to the weight of the evidence on questions of fact. *Spartanburg Reg'l Med. Ctr. v. Oncology & Hematology Assocs. of S.C., LLC*, 387 S.C. 79, 89, 690 S.E.2d 783,

788 (2010) (citing § 1-23-380(5)).[5] In a nutshell, this court's review "is limited to determining whether the findings were supported by substantial evidence or were controlled by an error of law." *Hill v. S.C. Dep't of Health & Envtl. Control*, 389 S.C. 1, 9, 698 S.E.2d 612, 617 (2010).

LAW/ANALYSIS

I. Bed Transfer Provision

Trident does not challenge any of the ALC's findings of fact. Rather, Trident maintains that the ALC committed an error of law in deferring to DHEC's interpretation of the Bed Transfer Provision. Trident argues the Bed Transfer Provision prohibits DHEC from issuing a CON for the transfer of beds from an existing hospital to a hospital that has not yet been constructed. To address this argument, we will first discuss the general provisions governing CONs and then focus on the Bed Transfer Provision and the section of the 2008-2009 State Health Plan in which this provision can be found.

Background

The purpose of the CON Act is to "promote cost containment, prevent unnecessary duplication of health care facilities and services, guide the establishment of health facilities and services [that] will best serve public needs, and ensure that high quality services are provided in health facilities in this State." S.C. Code Ann. § 44-7-120 (2002). To achieve these purposes, the CON Act requires (1) the issuance of a CON before undertaking a project prescribed by the CON Act; (2) the adoption of procedures and criteria for submitting a CON application and for review before issuing a CON; (3) the preparation and publication of a State Health Plan; and (4) the licensing of health care facilities. *Id.* DHEC is designated the sole state agency for control and administration of the CON program and licensing of health facilities. S.C. Code Ann. § 44-7-140 (2002). A person or health care facility must obtain a CON before, among other things, establishing a new health care facility or changing the existing bed complement of a health care facility. S.C. Code Ann. § 44-7-160 (2002) (amended 2010).

[5] "The ALC presides over the hearing of a contested case from DHEC's decision on a CON application and serves as the finder of fact." *Spartanburg Reg'l*, 387 S.C. at 89, 690 S.E.2d at 788.

With the advice of a health planning committee, of which most of the members are appointed by the Governor, DHEC must prepare a State Health Plan for use in administering the CON program. S.C. Code Ann. § 44-7-180(A), (B) (2002) (amended 2010). The State Health Plan must include

> (1) an inventory of existing health care facilities, beds, specified health services, and equipment; (2) projections of need for additional health care facilities, beds, health services, and equipment; (3) standards for distribution of health care facilities, beds, specified health services, and equipment including scope of services to be provided, utilization, and occupancy rates, travel time, regionalization, other factors relating to proper placement of services, and proper planning of health care facilities; and (4) a general statement as to the project review criteria considered most important in evaluating [CON] applications for each type of facility, service, and equipment, including a finding as to whether the benefits of improved accessibility to each such type of facility, service, and equipment may outweigh the adverse [e]ffects caused by the duplication of any existing facility, service, or equipment.

§ 44-7-180(B). The State Health Plan must also include projections and standards for certain health services and equipment having "a potential to substantially impact health care cost and accessibility." *Id.*

DHEC is required to submit the State Health Plan to the Board for final revision and adoption at least once every two years. S.C. Code Ann. § 44-7-180(C). Finalization of the State Health Plan requires a public comment period and a public hearing. *Id*. ("[DHEC] shall adopt by regulation a procedure to allow public review and comment, including regional public hearings, before adoption or revision of the plan."). Because the legislature has required these stringent requirements for the State Health Plan's implementation, it is clear the legislature intended for the State Health Plan to be an enforceable document. *Cf. Spectre, LLC v. S.C. Dep't of Health & Envtl. Control*, 386 S.C. 357, 371, 688 S.E.2d 844, 851 (2010) (noting the stringent requirements for DHEC's enactment of the Coastal Management Program "suggest that the General Assembly did not believe it was meant to be an unenforceable document"); *id.* at 371-72, 688 S.E.2d at 851-52 (rejecting the argument that because the promulgation of the Coastal Management

Program did not comply with the Administrative Procedures Act, the Coastal Management Program was not enforceable and noting the legislature "created a separate and more rigorous procedure for promulgation of the [Coastal Management Program] and, because DHEC acted in accordance with the specified procedure, the [Coastal Management Program] is valid").

The State Health Plan has adopted four regions of the state for the purpose of keeping an inventory of health facilities and services. *E.g.*, Chapter II.A, 2008-2009 State Health Plan. Each region is further divided into service areas. *Id.* In the 2008-2009 State Health Plan and the 2004-2005 State Health Plan, most service areas consist of individual counties. However, in the 2008-2009 State Health Plan, two service areas consist of multiple counties: (1) the Tri-County Service Area, consisting of Berkeley, Charleston, and Dorchester counties; and (2) the Orangeburg/Calhoun Service Area.[6] In the 2004-2005 State Health Plan, only the Tri-County Service Area consists of multiple counties.[7]

Finally, DHEC may not issue a CON unless an application complies with the State Health Plan, project review criteria, and other regulations. § 44-7-210(C); *see also* S.C. Code Ann. Regs. 61-15 § 801.3 (2011) (amended 2012) ("[N]o project may be approved unless it is consistent with the State Health Plan."); S.C. Code Ann. Regs. 61-15 § 802.1 ("The proposal shall not be approved unless it is in compliance with the State Health Plan.").

In the present case, Trident contends Roper's proposed hospital is not consistent with the 2008-2009 State Health Plan because it does not comply with the plain language of the Bed Transfer Provision,[8] which states:

> Changes in the delivery system due to health care reform have resulted in the consolidation of facilities and the establishment of provider networks. These consolidations and agreements may lead to situations where affiliated hospitals may wish to transfer beds between themselves *in order to serve their patients in a more efficient manner*. A proposal to transfer or

---

[6] *See* Chapter II.G.1 § A, 2008-2009 State Health Plan.
[7] *See* Chapter II.G.1 § A, 2004-2005 State Health Plan.
[8] It is undisputed that the Bed Transfer Provision is the only provision in the 2008-2009 State Health Plan that Roper may use to obtain a CON for a new hospital.

exchange hospital beds requires a [CON] and must comply with the following criteria:

1. A transfer or exchange of beds may be approved only if there is no overall increase in the number of beds;

2. Such transfers may cross county lines; however, the applicants must document with patient origin data the historical utilization of the receiving facility by residents of the county giving up beds;

3. Should the response to Criterion 2 fail to show a historical precedence of residents of the county transferring the beds utilizing the receiving facility, the applicants must document why it is in the best interest of these residents to transfer the beds to a facility with no historical affinity for them;

4. The applicants must explain the impact of transferring the beds on the health care delivery system of the county from which the beds are to be taken; any negative impacts must be detailed along with the perceived benefits of such an agreement;

5. The facility receiving the beds must demonstrate the need for the additional capacity based on both historical and projected utilization patterns;

6. The facility giving up the beds may not use the loss of these beds as justification for a subsequent request for the approval of additional beds;

7. A written contract or agreement between the governing bodies of the affected facilities approving the transfer or exchange of beds must be included in the [CON] application;

8. Each facility giving up beds must acknowledge in writing that this exchange is permanent; any further transfers would be subject to this same process.

Chapter II.G.1 § (A)(4)(j), 2008-2009 State Health Plan (emphasis added). Trident argues this language allows DHEC to issue a CON for the transfer of beds between hospitals only when both hospitals already exist.

DHEC's Interpretation

In 2009, the Board specifically addressed the Bed Transfer Provision in the 2004-2005 State Health Plan, which is identical to the Bed Transfer Provision in the 2008-2009 State Health Plan. The interpretation of the Bed Transfer Provision was an issue in a contested case pending before the ALC, i.e., *Lexington County Health Services District, Inc. v. South Carolina Department of Health & Environmental Control*, Docket No. 07-ALJ-07-0520-CC. During the pendency of this contested case, the ALC remanded the question of whether the Bed Transfer Provision "allows the approval of a CON application for the transfer of . . . hospital beds for the purpose of establishing a new hospital facility." The Board concluded:

> Read as a whole, the General Hospital section of the [State Health Plan] recognizes that changes in the health care delivery system may call for the transfer of unused beds at one facility to a new facility constructed to receive them.
>
> Accordingly, the Board has determined that the 2004-2005 South Carolina Health Plan, which includes the [Bed] Transfer Standard, allows for approval of a CON application for the transfer of licensed general acute care hospital beds to establish a new hospital.

The Board noted that DHEC's staff had properly interpreted and applied the 2004-2005 State Health Plan in approving the transfer of seventy-six acute care hospital beds from Palmetto Health Baptist Hospital in downtown Columbia to create

Palmetto Health Baptist Parkridge, which was to be built in northwest Richland County.[9]

Deference to DHEC's Interpretation

Our supreme court has recently expounded on the application of statutes and regulations administered by an administrative agency. In *Kiawah Development Partners, II, v. South Carolina Department of Health & Environmental Control*, the court stated:

> Interpreting and applying statutes and regulations administered by an agency is a two-step process. First, a court must determine whether the language of a statute or regulation directly speaks to the issue. If so, the court must utilize the clear meaning of the statute or regulation. If the statute or regulation is silent or ambiguous with respect to the specific issue, the court then must give deference to the agency's interpretation of the statute or regulation, assuming the interpretation is worthy of deference.

Op. No. 27065 (S.C. Sup. Ct. refiled December 10, 2014) (Shearouse Adv. Sh. No. 49 at 11) (citations and internal quotation marks omitted).

The court further stated, "We defer to an agency interpretation unless it is 'arbitrary, capricious, or manifestly contrary to the statute.'" *Id.* at 25 (quoting *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 844 (1984)).[10] After tracing the history of South Carolina's deference doctrine, the

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[9] Although there is no conflict between the Board's interpretation of the Bed Transfer Provision and the staff's interpretation, we note that when such a conflict exists, "an agency's Appellate Panel [(here, the Board)], not its staff, is typically entitled to deference in interpreting agency regulations." *Neal v. Brown*, 383 S.C. 619, 624, 682 S.E.2d 268, 270 (2009).

[10] *See also Murphy v. S.C. Dep't of Health & Envtl. Control*, 396 S.C. 633, 640, 723 S.E.2d 191, 195 (2012) ("[W]e give deference to the interpretation of a regulation by the agency charged with it[s] enforcement." (citation omitted)); *S.C. Dep't of Revenue v. Anonymous Co. A*, 401 S.C. 513, 516, 678 S.E.2d 255, 257 (2009) ("'The construction of a statute by an agency charged with its administration is entitled to the most respectful consideration and should not be overruled absent

court concluded, "[W]e give deference to agencies both because they have been entrusted with administering their statutes and regulations and because they have unique skill and expertise in administering those statutes and regulations." *Id.* at 24.

In the present case, as we evaluate the deference given by the ALC to DHEC's interpretation of the Bed Transfer Provision, we must be mindful of the General Assembly's entrustment of South Carolina's health care marketplace to DHEC for cost containment, prevention of unnecessary duplication, serving public needs, and ensuring the high quality of healthcare services. *See* § 44-7-120 (stating the purpose of the CON Act). DHEC plays a significant role in the drafting and approval of the State Health Plan, as it does in promulgating regulations. Therefore, we may interpret the State Health Plan using the rules of statutory construction applied to regulations,[11] with one caveat: "[E]ach *section* of the [State Health Plan] must be read as a whole." Chapter I.I, 2008-2009 State Health Plan (emphasis added).

In *Murphy v. South Carolina Department of Health & Environmental Control*, our supreme court was presented with DHEC's interpretation of its regulation

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compelling reasons.'" (quoting *Sloan v. S.C. Bd. of Physical Therapy Exam'rs*, 370 S.C. 452, 469, 636 S.E.2d 598, 607 (2006))); *S.C. Coastal Conservation League v. S.C. Dep't of Health & Envtl. Control*, 363 S.C. 67, 75, 610 S.E.2d 482, 486 (2005) ("Courts defer to the relevant administrative agency's decisions with respect to its own regulations unless there is a *compelling* reason to differ." (emphasis added) (citations omitted)); *Spruill v. Richland Cnty. Sch. Dist. 2*, 363 S.C. 61, 65, 609 S.E.2d 524, 526 (2005) (stating that an agency's construction of its own regulation "is accorded most respectful consideration and will not be overturned absent *compelling* reasons." (emphasis added) (citation and internal quotation marks omitted)); *Dorman v. S.C. Dep't of Health & Envtl. Control*, 350 S.C. 159, 167, 565 S.E.2d 119, 123 (Ct. App. 2002) ("[T]he construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons." (citation and internal quotation marks omitted)); *Converse Power Corp. v. S.C. Dep't of Health & Envtl. Control*, 350 S.C. 39, 48, 564 S.E.2d 341, 346 (Ct. App. 2002) ("The construction of a regulation by the agency charged with executing the regulations is entitled to the most respectful consideration and should not be overruled without cogent reasons." (citation omitted)).

[11] *Murphy*, 396 S.C. at 639, 723 S.E.2d at 195 (holding that regulations are interpreted using the rules of statutory construction).

concerning state water quality certifications.[12] 396 S.C. at 636-38, 723 S.E.2d at 192-94. In particular, the court examined the following language in Regulation 61-101: "'Certification will be denied if (a) the proposed activity permanently alters the aquatic ecosystem in the vicinity of the project such that its functions and values are eliminated or impaired.'" *Id*. at 640, 723 S.E.2d at 195 (footnote omitted) (quoting S.C. Code Ann. Regs. 61–101.F.5(a) (Supp. 2011)). DHEC interpreted the term "vicinity," which was not defined in the regulation, to include more than the immediate project area. *Id.* DHEC's project manager for the proposed project testified that DHEC "interpreted the 'vicinity of the project' on a case by case basis according to its best professional judgment as each project is different." *Id.* The court concluded, "Because this interpretation is both reasonable and consistent with the plain language of the regulation, we see no reason to deviate from DHEC's construction and application." *Id.* at 640-41, 723 S.E.2d at 195.

Likewise, in the present case, DHEC's interpretation of the Bed Transfer Provision is not only reasonable but also consistent with the Bed Transfer Provision's plain language. The following language from the preamble to the Bed Transfer Provision indicates a purpose of building flexibility into the State Health Plan when dealing with provider networks:

> Changes in the delivery system due to health care reform have resulted in the consolidation of facilities and the establishment of provider networks. These consolidations and agreements may lead to situations where affiliated hospitals may wish to transfer beds between themselves *in order to serve their patients in a more efficient manner*.

(emphasis added).[13]

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[12] A state water quality certification is required before the Army Corps of Engineers may issue a permit to fill portions of "waters of the United States" pursuant to Section 404 of the Clean Water Act, 33 U.S.C. § 1344.

[13] We note Trident argues that Roper's Charleston facility and its proposed new hospital in Goose Creek are not "affiliated hospitals" because the definition of "affiliated hospitals" in Chapter II.B of the 2008-2009 State Health Plan excludes two facilities whose relationship has been established for the purpose of transferring beds. However, the record shows that Roper is not attempting to establish a relationship with a legally separate entity that has its own network of

The remainder of the Bed Transfer Provision consists of a list of eight criteria with which a CON applicant must comply. *See supra*. The language in this list certainly *accommodates* those CON applications for the transfer of beds to a receiving facility already in existence at the time the application is submitted. Yet, there is no language in this list that either expressly or impliedly *requires* the receiving facility to be in existence when the CON application is submitted. Therefore, the plain language of the Bed Transfer Provision can be reasonably interpreted to include a receiving facility that will be constructed after DHEC issues the CON.

In any event, the Bed Transfer Provision is not a section unto itself—it is part of Chapter II.G.1 § (A) ("General Hospitals").[14] Therefore, we may not consider the language of the Bed Transfer Provision in isolation. Rather, Chapter I.I of the 2008-2009 State Health Plan states, "The criteria and standards set forth in the [State Health Plan] speak for themselves, and each *section* of the [State Health Plan] must be read *as a whole*." (emphases added). *Cf. Sparks v. Palmetto Hardwood, Inc.*, 406 S.C. 124, 128, 750 S.E.2d 61, 63 (2013) ("A statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers," and "the language of the statute must be read in a sense that harmonizes with its subject matter and accords with its general purpose." (citation and internal quotation marks omitted)); *id.* at 128-29, 750 S.E.2d at 63 (holding that words in a statute must be construed in context and

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existing hospitals. Rather, Roper seeks to expand its own network of hospitals with the intent to provide convenience for its existing patients residing in Berkeley County, who now travel to Roper's facility in downtown Charleston. The new hospital will be a continuation of an existing network of acute care facilities serving Roper patients in the Tri-County service area, i.e., Roper Hospital in downtown Charleston, Bon Secours St. Francis in Charleston County, Roper St. Francis Mount Pleasant Hospital, and a freestanding Emergency Department and Ambulatory Surgery Facility in Berkeley County.

[14] *See* Chapter I.H (indicating what constitutes a "section" in Chapter II by noting, "A general statement has been added to each *section* of Chapter II stating the project review criteria considered to be the most important in reviewing [CON] applications for each type of facility, service, and equipment. . . . In addition, a finding has been made in each *section* as to whether the benefits of improved accessibility to each such type of facility, service[,] and equipment may outweigh the adverse [e]ffects caused by the duplication of any existing facility, service[,] or equipment." (emphases added)).

that the court "may not, in order to give effect to particular words, virtually destroy the meaning of the entire context; that is, give the particular words a significance which would be clearly repugnant to the statute, looked at as a whole, and destructive of its obvious intent" (citation and internal quotation marks omitted)).

Hence, we must examine all the provisions of Chapter II.G.1 § (A) ("General Hospitals") before determining whether there is a compelling reason to reject DHEC's interpretation of the Bed Transfer Provision. Section (A) includes provisions that describe how the bed capacity of a general hospital is determined, set forth an inventory of general hospitals in the state and an explanation of the inventory, explain how the need for beds in the respective service areas is calculated, list required services a general hospital must provide, set forth factors to be considered regarding modernization of facilities, and describe the relative importance of the project review criteria for general hospitals. Of particular interest is the discussion of the most important project review criteria for general hospitals. *See* Chapter II.G.1 § (A), 2008-2009 State Health Plan. Significant emphasis should be placed on these criteria in interpreting section (A) as a whole. These criteria are

a. Compliance with the Need Outlined in [the State Health Plan];
b. Community Need Documentation;
c. Distribution (Accessibility);
d. Acceptability;
e. Financial Feasibility;
f. Cost Containment; and
g. Adverse Effects on Other Facilities.

Id. These criteria are not listed in order of importance. Chapter I.H, 2008-2009 State Health Plan. In fact, "[t]he relative importance assigned to each specific criterion is established by [DHEC] depending upon the importance of the criterion applied to the specific project." S.C. Code Ann. Regs. 61-15 § 801.2. Further, "[a] project does not have to satisfy every criterion in order to be approved," provided the project is consistent with the applicable State Health Plan. S.C. Code Ann. Regs. 61-15 § 801.3.

The first listed criterion, "Compliance with the Need Outlined in the [State Health Plan]," refers to the need for, or surplus of, beds at each listed hospital in the respective service areas. Notably, items (d) and (e) of Chapter II.G.1 § (A)(4), 2008-2009 State Health Plan, contemplate circumstances in which population

projections that are not considered in the State Health Plan demonstrate the need for beds in a service area.[15] These provisions demonstrate that the published results of the calculations for each hospital and each service area are not the final determinant of need for a particular service area. Rather, flexibility is built into the requirements for general hospitals when determining need.

The second listed criterion, "Community Need Documentation," states that the proposed project should provide services that meet a documented need of the target population and current or projected utilization should justify the expansion or implementation of the proposed service. S.C. Code Ann. Regs. 61-15 § 802.2. The third listed criterion, "Distribution (Accessibility)," provides, in pertinent part, that the proposed service "should be located so that it may serve medically underserved areas" and "allow for the delivery of necessary support services in an acceptable period of time." S.C. Code Ann. Regs. 61-15 § 802.3. This criterion is particularly relevant to the two CON applications in this case, as a review of the inventory of general hospitals reveals an excess of forty-eight beds for the entire Tri-County Service Area but absolutely no beds in Berkeley County.

The fourth listed criterion, "Acceptability," states that the proposed project and the applicant should have the support of "affected persons,"[16] including local providers

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[15] *See* Chapter II.G.1 § (A)(4)(d), 2008-2009 State Health Plan ("The hospital requesting the addition must document the need for additional beds *beyond those indicated as needed by the methodology stated above*, based on historical and projected utilization, as well as projected population growth or other factors demonstrating the need for the proposed beds." (emphasis added)); *id.* at (4)(e) ("An applicant requesting additional beds beyond those indicated as needed by the methodology stated above[] must document the need for additional beds based on historical and projected utilization, floor plan layouts, *projected population growth that has not been considered in this Plan*[,] or other factors demonstrating the need for the proposed beds." (emphasis added)).

[16] "Affected person" means

> the applicant, a person residing within the geographic area served or to be served by the applicant, persons located in the health service area in which the project is to be located and who provide similar services to the proposed project, persons who before receipt by [DHEC] of the proposal being reviewed have formally indicated an intention to provide similar services in the future,

and the target population. S.C. Code Ann. Regs. 61-15 § 802.4. The fifth listed criterion, "Financial Feasibility," requires the applicant to project the immediate and long-term financial feasibility of the proposed project. S.C. Code Ann. Regs. 61-15 § 802.15. The sixth listed criterion, "Cost Containment," requires the applicant to demonstrate that its chosen funding method is the most feasible option and the project's impact on the applicant's cost to provide services is reasonable. S.C. Code Ann. Regs. 61-15 § 802.16. Finally, the seventh listed criterion, "Adverse Effects on Other Facilities," states, "The impact on the current and projected occupancy rates or use rates of existing facilities and services should be weighed against the increased accessibility offered by the proposed services." S.C. Code Ann. Regs. 61-15 § 802.23. This criterion also provides that the staffing of the proposed service should not unnecessarily deplete the staff of existing facilities or cause an excessive rise in staffing costs. *Id.*

All of these criteria undoubtedly afford DHEC broad discretion in bringing its expertise in health care planning to the evaluation of CON applications for general hospitals. In turn, the incorporation of these criteria into the section in which the Bed Transfer Provision is located, Chapter II.G.1 § (A), signifies the intent of the State Health Planning Committee to provide flexibility in the application of section (A) to each proposed project with its own unique circumstances. Thus, it is reasonable for DHEC to interpret the Bed Transfer Provision as allowing the transfer of beds to a hospital that has not yet been built when the transfer would improve health care access in a medically underserved community. This is consistent with the plain language of the Bed Transfer Provision as well as the General Assembly's stated purpose for the CON Act: "[T]o promote cost containment, prevent unnecessary duplication of health care facilities and services, guide the establishment of health facilities and services [that] *will best serve public needs*, and ensure that high quality services are provided in health facilities in this State." § 44-7-120 (emphasis added).

> persons who pay for health services in the health service area in which the project is to be located and who have notified [DHEC] in writing of their interest in [CON] applications, the State Consumer Advocate and the State Ombudsman.

S.C. Code Ann. Regs. 61-15 § 103.1 (2011) (amended 2012).

Just as the *Murphy* court found DHEC's flexible interpretation of its water quality certification regulation reasonable and consistent with the regulation's plain language,[17] we find DHEC's interpretation of the Bed Transfer Provision in the 2008-2009 State Health Plan reasonable and consistent with the plain language of that provision. Therefore, we find no compelling reason to reject DHEC's interpretation of the Bed Transfer Provision within section (A). *See S.C. Coastal Conservation League*, 363 S.C. at 75, 610 S.E.2d at 486 ("Courts defer to the relevant administrative agency's decisions with respect to its own regulations unless there is a compelling reason to differ."); *Spruill*, 363 S.C. at 65, 609 S.E.2d at 526 (holding courts traditionally defer to an executive agency's construction of its own regulation and this "construction is accorded most respectful consideration and will not be overturned absent compelling reasons" (citation and internal quotation marks omitted)).

Based on the foregoing, the ALC properly deferred to DHEC's interpretation of the Bed Transfer Provision.

II. Competing Applicants

Trident assigns error to the ALC's finding that Trident and Roper were not "competing applicants." Trident argues that as a matter of law, the approval of both CON applications would exceed the need for hospital beds in the area, and, therefore, DHEC was required to determine which applicant most fully complied with the CON Act, the State Health Plan, project review criteria, and applicable DHEC regulations. We disagree.

Section 44-7-130(5) defines "competing applicants" as

> two or more persons or health care facilities as defined in this article who apply for [CONs] to provide similar services or facilities in the same service area within a time frame as established by departmental regulations and *whose applications, if approved, would exceed the need for services or facilities*.

(emphasis added).[18] When DHEC is faced with competing applications, it is required to award a CON, "if appropriate," based on which, if any, application

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[17] 396 S.C. at 640-41, 723 S.E.2d at 195.

[18] Similarly, Regulation 61-15 defines "competing applicants" as

most fully complies with the CON Act, the State Health Plan, the project review criteria, and applicable DHEC regulations. § 44-7-210(C).

Here, the parties agree that (1) both Trident and Roper propose to provide similar services and facilities in the same service area; and (2) Trident's and Roper's respective CON applications were filed within the appropriate time frame for competing applications. However, Trident challenges the ALC's finding that the approval of both applications would not exceed the need for hospital facilities in the service area. Roper, on the other hand, argues substantial evidence supports the ALC's finding.

Nevertheless, Trident characterizes this issue as an issue of law, asserting that the question of whether both projects would exceed the need for hospital beds in the service area is determined solely by the indication of need set forth in the 2008-2009 State Health Plan's hospital inventory, which reflects an excess of forty-eight hospital beds for the Tri-County Service Area and an excess of six beds in Roper's inventory. Trident concludes that Roper's proposed hospital, "by itself or in conjunction with Trident's proposed hospital exceeds the need for hospital beds in the service area." We disagree. Section 44-7-130(5) clearly focuses on whether the proposed projects would *cause* an excess of services or facilities for the service area.

We agree with Trident that this issue is one of law but only because, in this case, we need not look to indicators of need outside of the 2008-2009 State Health Plan—the approval of both CONs will not exceed the need already documented in

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> two or more persons and/or health care facilities as defined in this regulation who apply for [CONs] to provide similar services and/or facilities in the same service area and *whose applications[,] if approved[,] would exceed the need for this facility or service*. An application shall be considered competing if it is received by [DHEC] no later than fifteen (15) days after a Notice of Affected Persons is published in the State Register for one or more applications for similar services and/or facilities in the same service area.

S.C. Code Ann. Regs. 61-15 § 103.6 (emphasis added).

the 2008-2009 State Health Plan.[19] Roper is not seeking to add new beds to the service area. Roper's existing hospital beds at its facility in downtown Charleston were already approved for a CON in the past. Roper is merely seeking to transfer beds that are already available for use in the service area to a location in the very same service area that will be more convenient for its existing patients residing in Berkeley County, who now travel to Roper's facility in downtown Charleston.

Further, Trident's proposed addition of beds to the service area is filling a need already documented in the State Health Plan's hospital inventory. Moreover, the number of beds added by Trident that will exceed the number designated in the hospital inventory are allowed under the Fifty Bed Rule. *See supra*.

Based on the foregoing, the ALC correctly determined that Trident and Roper are not "competing applicants."

CONCLUSION

Accordingly, the ALC's decision is

AFFIRMED.

WILLIAMS and McDONALD, JJ., concur.

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[19] At oral argument, Roper asserted the supreme court's opinion in *Spartanburg Reg'l*, 387 S.C. at 90-91, 690 S.E.2d at 789, established that the determination of "competing applicants" is always a factual determination. We do not read the *Spartanburg Reg'l* opinion that broadly. The determination *in that case* was factual, as it will likely be in many other cases. However, in this case, we need not go beyond the methodology set forth in the 2008-2009 State Health Plan to determine that Trident and Roper are not competing applicants.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

George W. Thomas, Employee, Respondent,

v.

5 Star Transportation, Employer, and S.C. Uninsured Employers Fund, Carrier,

Of whom 5 Star Transportation is the Appellant.

Appellate Case No. 2012-211392

Appeal From The Workers' Compensation Commission

Opinion No. 5298
Heard October 6, 2014 – Filed February 18, 2015

AFFIRMED

Michael E. Chase and Carmelo Barone Sammataro, both of Turner Padget Graham & Laney, P.A., of Columbia, for Appellant.

Malcolm M. Crosland, Jr., of The Steinberg Law Firm, LLP, of Charleston, for Respondent.

KONDUROS, J.: In this workers' compensation case, 5 Star Transportation appeals the Appellate Panel of the Workers' Compensation Commission's awarding benefits to Emily Thomas as George W. Thomas's putative or common law spouse. 5 Star contends the Appellate Panel erred in finding George's injuries arose out of

and in the course and scope of his employment because he suffered an aneurysm. 5 Star also maintains the Appellate Panel erred in finding Emily was George's surviving spouse because George was already married when they married. We affirm.

FACTS/PROCEDURAL HISTORY

5 Star employed George as a tour bus driver. On November 19, 2007, a bus George was driving on Interstate 26 left the road and collided with a tree. George was pronounced dead at the scene. The autopsy noted that George was "witnessed to slump over and become unresponsive prior to driving off the road." Dr. Cynthia Schandl, who performed the forensic autopsy, found the cause of death was "full body blunt trauma complicating ruptured saccular aneurysm of the brain."[1]

George married Cynthia Whaley on February 9, 1995.[2] The two did not have any children together.[3] George and Emily met in 1999 and lived together for about eight years prior to his death.[4] On September 20, 2006, George and Emily had a marriage ceremony. George told Emily a day or two before the ceremony he and Cynthia were divorced. However, George and Cynthia's divorce was not final until February 9, 2007.[5] Emily did not learn about the timing of the divorce until after George's death.

On June 26, 2008, Emily filed a claim for workers' compensation benefits for George's death. 5 Star filed a Form 53, denying George sustained an injury. It also denied Emily was entitled to benefits because her marriage to George was void. The South Carolina Uninsured Employers Fund (the Fund) also filed a Form 53, denying George sustained an injury.

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[1] Dr. Schandl found the injuries sustained were not survivable and included multiple fractures and bleeding.
[2] George was married two times prior to this and had been divorced both times.
[3] George had children with his two previous wives. They were not minors at the time of his death and were not dependent on him.
[4] George and Cynthia officially separated on July 1, 2000.
[5] Cynthia filed the summons and complaint for divorce on July 10, 2006, and George was served. George was not present at the final hearing on February 9, 2007.

Dr. Schandl testified at her deposition that "there are so many different fatal injuries at that moment of the crash that it's kind of difficult to sort out which one would have made him more dead." Dr. Schandl was unable to determine whether the aneurysm occurred before the collision or as a result of it but stated "to a reasonable degree of medical certainty, this condition did not cause death." Dr. Schandl noted two-thirds of patients with the same aneurysm would have survived with half of the survivors being "fine." Dr. Schandl also determined "to a reasonable degree of medical certainty, [George] died as a result of injuries sustained in a motor vehicle collision."

The single commissioner conducted a hearing on the matter on December 19, 2008. The single commissioner found the marriage did not "ripen into a common law marriage" after George's divorce from Cynthia. Accordingly, the single commissioner granted 5 Star and the Fund's motion to dismiss the claim, finding Emily was not the surviving spouse. Emily filed a request for Commission review of the single commissioner's decision. The Appellate Panel reversed the single commissioner, finding it violated Regulation 67-215(B)(1) of the South Carolina Code (2012), which provides "[t]he Commission will not address a motion involving the merits of the claim, including, but not limited to, a motion for dismissal." The Appellate Panel vacated the single commissioner's order and returned the claim to a commissioner for a de novo hearing.

A hearing was held on October 28, 2010, by a different single commissioner. The single commissioner determined George "sustained fatal compensable injuries by accident arising out of and in the course and scope of his employment as a tour bus driver" for 5 Star. It further found Emily was the common-law wife of George at the time of his death and because of that and the putative spouse doctrine, she was entitled to all rights, benefits, and privileges of a surviving spouse.

5 Star filed a Form 30 requesting review of the single commissioner's decision. The Appellate Panel issued an order affirming the single commissioner's order. It determined George suffered compensable injuries because the evidence was that he probably would have survived the ruptured aneurysm and what most probably caused his death was the blunt force trauma suffered in the wreck. It found it was impossible to determine whether the ruptured aneurysm occurred before or after the wreck. The Appellate Panel noted George was driving at a high speed on an interstate and was therefore exposed to an increased risk of injury in the event a physical condition caused him to lose consciousness. The Appellate Panel also

found Emily and George held themselves out as husband and wife to the public after George's divorce was finalized. The Appellate Panel accordingly determined Emily and George were common law spouses. The Appellate Panel concluded Emily should also be entitled to benefits under the putative marriage doctrine, which it believed South Carolina courts would adopt. This appeal followed.

STANDARD OF REVIEW

In a workers' compensation appeal, an appellate court can reverse or modify the Appellate Panel's decision if the appellant's substantial rights have been prejudiced because the decision is affected by an error of law or is "clearly erroneous in view of the reliable, probative and substantial evidence on the whole record." S.C. Code Ann. § 1-23-380(5) (Supp. 2014). This court may not "substitute its judgment for that of the [Appellate Panel] as to the weight of the evidence on questions of fact, but may reverse whe[n] the decision is affected by an error of law." *Stone v. Traylor Bros.*, 360 S.C. 271, 274, 600 S.E.2d 551, 552 (Ct. App. 2004).

"The substantial evidence rule . . . governs the standard of review in a [w]orkers' [c]ompensation decision." *Frame v. Resort Servs. Inc.*, 357 S.C. 520, 527, 593 S.E.2d 491, 494 (Ct. App. 2004). The Appellate Panel's decision must be affirmed if supported by substantial evidence in the record. *Shuler v. Gregory Elec.*, 366 S.C. 435, 440, 622 S.E.2d 569, 571 (Ct. App. 2005).

> Substantial evidence is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action.

Lark v. Bi-Lo, Inc., 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981) (internal quotation marks omitted).

LAW/ANALYSIS

I. Arising out of and in the Course and Scope of Employment

5 Star argues the Appellate Panel erred in finding George's injuries arose out of and in the course and scope of his employment because his death was caused by an aneurysm. We disagree.

"[T]he possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." *Palmetto Alliance, Inc. v. S.C. Pub. Serv. Comm'n*, 282 S.C. 430, 432, 319 S.E.2d 695, 696 (1984). In workers' compensation cases, the Appellate Panel is the ultimate finder of fact. *Shealy v. Aiken Cnty.*, 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000). When the evidence is conflicting over a factual issue, the findings of the Appellate Panel are conclusive. *Hargrove v. Titan Textile Co.*, 360 S.C. 276, 290, 599 S.E.2d 604, 611 (Ct. App. 2004). "The final determination of witness credibility and the weight to be accorded evidence is reserved to the [A]ppellate [P]anel." *Bass v. Kenco Grp.*, 366 S.C. 450, 458, 622 S.E.2d 577, 581 (Ct. App. 2005). "[I]t is not for this court to balance objective against subjective findings of medical witnesses, or to weigh the testimony of one witness against that of another. That function belongs to the Appellate Panel alone." *Potter v. Spartanburg Sch. Dist. 7*, 395 S.C. 17, 24, 716 S.E.2d 123, 127 (Ct. App. 2011) (internal quotation marks omitted). "The general policy in South Carolina is to construe the Workers' Compensation Act in favor of coverage, and any reasonable doubts as to construction should be resolved in favor of the claimant." *Pierre v. Seaside Farms, Inc.*, 386 S.C. 534, 541, 689 S.E.2d 615, 618 (2010) (internal quotation marks omitted).

"To be compensable, an injury by accident must be one arising out of and in the course of employment." *Hall v. Desert Aire, Inc.*, 376 S.C. 338, 348, 656 S.E.2d 753, 758 (Ct. App. 2007) (internal quotation marks omitted). "Whether an accident arises out of and is in the course and scope of employment is largely a question of fact for the Appellate Panel." *Id.* at 349, 656 S.E.2d at 758. For an injury to arise out of employment, the conditions under which the work must be performed and the resulting injury must have a causal connection. *Osteen v. Greenville Cnty. Sch. Dist.*, 333 S.C. 43, 50, 508 S.E.2d 21, 25 (1998). "If the injury can be seen to have followed as a natural incident of the work and as a result of the exposure occasioned by the nature of the employment, then it arises out of

the employment." *Crosby v. Wal-Mart Store, Inc.*, 330 S.C. 489, 493, 499 S.E.2d 253, 255 (Ct. App. 1998). However, an injury does not arise from employment if it "cannot fairly be traced to the employment as a contributing proximate cause and . . . comes from a hazard to which the workmen would have been equally exposed apart from the employment." *Id.* The danger "need not have been foreseen or expected, but after the event it must appear to have had its origin in a risk connected with the employment, and to have flowed from that source as a rational consequence." *West v. Alliance Capital*, 368 S.C. 246, 252, 628 S.E.2d 279, 282 (Ct. App. 2006) (internal quotation marks omitted).

"Whe[n] the work and the method of doing the work exposes the employee to the forces of nature to a greater extent than he would be if not so engaged, the industry increases the danger from such forces, and the employer is liable." *Hiers v. Brunson Constr. Co.*, 221 S.C. 212, 232, 70 S.E.2d 211, 220 (1952). "In [one] type of idiopathic fall, employment does not cause the fall but it significantly contributes to the injury by placing the employee in a position which increases the dangerous effects of the fall. These injuries are compensable." *Nicholson v. S.C. Dep't of Soc. Servs.*, Op. No. 27478 (S.C. Sup. Ct. filed Jan. 14, 2015) (Shearouse Adv. Sh. No. 2 at 18) (alteration by court) (internal quotation marks omitted). When a

> fall is unwitnessed or purely unexplained, as in situations where the employee dies before he has an opportunity to relate the occurrence, and there are no eyewitnesses to the occurrence itself, our courts have tended to affirm an award of compensation, deferring to the fact finding discretion of the commission.

Crosby, 330 S.C. at 495-96, 499 S.E.2d at 257.

> Stress, mental injuries, heart attacks, strokes, embolisms, or aneur[y]sms arising out of and in the course of employment unaccompanied by physical injury are not considered compensable if they result from any event or series of events which are incidental to normal employer/employee relations including, but not limited to, personnel actions by the employer such as disciplinary actions, work evaluations, transfers, promotions,

> demotions, salary reviews, or terminations, except when these actions are taken in an extraordinary and unusual manner.

S.C. Code Ann. § 42-1-160(C) (2015).

> An aneurysm in itself is not considered an accident for workers' compensation. It is a natural condition which only becomes a compensable accident if it was brought about by unexpected strain or over-exertion in the performance of the duties of employment or by unusual and extraordinary conditions in the employment.

Jennings v. Chambers Dev. Co., 335 S.C. 249, 256, 516 S.E.2d 453, 457 (Ct. App. 1999).

"The South Carolina Workers' Compensation Act was tailored after the North Carolina Act and opinions of the North Carolina Supreme Court construing such Act are entitled to great weight with the appellate courts of this state." *Holley v. Owens Corning Fiberglas Corp.*, 301 S.C. 519, 523, 392 S.E.2d 804, 806 (Ct. App. 1990), *cert. granted, opinion adopted*, 302 S.C. 518, 397 S.E.2d 377 (1990). In a North Carolina Supreme Court case similar to the present case, the court found:

> The claimant's injury was sustained when the vehicle hit the pole. [A] [b]lackout caused him to lose control of the vehicle which he was driving on an errand of his employer. His work required him to be operating the vehicle at the time and place of the blackout. The injury followed because of the blackout and the position claimant was in at the time it occurred. Had he been in the office or walking on the street, probably no injury-certainly not this one-would have occurred. It appears, therefore, the injury was directly connected to the employment. The majority, but not all courts, seem to adopt this view.

Allred v. Allred-Gardner, Inc., 117 S.E.2d 476, 478 (N.C. 1960).

In another North Carolina case, "[t]he Commission found that plaintiff suffered a syncopal episode (i.e., blackout) while operating defendant-employer's truck, after which time the truck ran off the road, hit a light pole, and flipped over." *Billings v. Gen. Parts, Inc.*, 654 S.E.2d 254, 259 (N.C. Ct. App. 2007), *review denied*, 659 S.E.2d 435 (N.C. 2008).

> The Commission concluded: "The hazards or risks incidental to plaintiff's employment were a contributing proximate cause of plaintiff's accident and resulting injuries. The risk of driving a truck aggravated, accelerated, or combined with plaintiff's pre-existing condition to produce his injury. Thus, plaintiff's injuries arose out of and in the course of his employment, as they were the result of his June 2, 2003 work-related accident."

Id. The court determined, "The Commission's conclusion was supported by its findings of fact and correct as a matter of law." *Id.*

In this case, the Appellate Panel found George's death arose out of and in the course of employment because he was placed in an increased danger by driving a bus at a high rate of speed on an interstate. Dr. Schandl's testimony, report, and memorandum all indicate George's death was due to the injuries from the motor vehicle accident, not the brain aneurysm. 5 Star did not present any evidence to the contrary but instead argued Emily did not prove the aneurysm occurred after the accident, not before. Although Dr. Scandl could not determine if the aneurysm occurred before the accident, thus causing the accident, or after the crash, because of the accident, she testified two-thirds of people experiencing such an aneurysm would survive. Accordingly, substantial evidence supports the Appellate Panel's finding George's death was in the course and scope of his employment.

II. Common Law Marriage

5 Star contends the Appellate Panel erred in finding Emily was a surviving spouse because she and George had a common law marriage as he was already married when the two of them married. We agree.

The determination by the Appellate Panel of the existence of a common-law marriage is a question of fact. *See Byers v. Mount Vernon Mills, Inc.*, 268 S.C. 68, 71, 231 S.E.2d 699, 700 (1977). "[T]he possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." *Palmetto Alliance*, 282 S.C. at 432, 319 S.E.2d at 696. In workers' compensation cases, the Appellate Panel is the ultimate finder of fact. *Shealy*, 341 S.C. at 455, 535 S.E.2d at 442. When the evidence is conflicting over a factual issue, the findings of the Appellate Panel are conclusive. *Hargrove*, 360 S.C. at 290, 599 S.E.2d at 611. "The final determination of witness credibility and the weight to be accorded evidence is reserved to the [A]ppellate [P]anel." *Bass*, 366 S.C. at 458, 622 S.E.2d at 581. "[I]t is not for this court to balance objective against subjective findings of medical witnesses, or to weigh the testimony of one witness against that of another. That function belongs to the Appellate Panel alone." *Potter*, 395 S.C. at 24, 716 S.E.2d at 127 (internal quotation marks omitted).

Section 42-9-290 of the South Carolina Code (2015) provides if an employee dies as the result of an accident arising out of the course of employment, the employer must provide death benefits to dependents wholly dependent on the decedent's earnings for support. "A surviving spouse . . . shall be conclusively presumed to be wholly dependent for support on a deceased employee." S.C. Code Ann. § 42-9-110 (1985). "The term 'surviving spouse' includes only the decedent's wife or husband living with or dependent for support upon the decedent at the time of the decedent's death or living apart from the decedent for justifiable cause or by reason of desertion by the decedent at such time." S.C. Code Ann. § 42-1-175 (1985).

"A common-law marriage is formed when two parties contract to be married." *Callen v. Callen*, 365 S.C. 618, 624, 620 S.E.2d 59, 62 (2005). However, an express contract is not needed; instead, "the agreement may be inferred from the circumstances." *Id.* Therefore, the fact finder must

> look for mutual assent: the intent of each party to be married to the other and a mutual understanding of each party's intent. Consideration is the participation in the marriage. If these factual elements are present, then the court should find as a matter of law that a common-law marriage exists.

Id. "[W]hen the proponent proves that the parties participated in 'apparently matrimonial' cohabitation, and that while cohabitating the parties had a reputation in the community as being married, a rebuttable presumption arises that a common-law marriage was created." *Id.* A party may overcome the presumption by presenting strong, cogent evidence the parties never agreed to marry. *Id.*

> When, however, there is an impediment to marriage, such as one party's existing marriage to a third person, no common-law marriage may be formed, regardless whether mutual assent is present. Further, after the impediment is removed, the relationship is not automatically transformed into a common-law marriage. Instead, it is presumed that relationship remains non-marital. For the relationship to become marital, there must be a new mutual agreement either by way of civil ceremony or by way of recognition of the illicit relation and a new agreement to enter into a common law marriage.

Id. (internal quotation marks omitted).

> [A] relationship illicit at its inception does not ripen into a common law marriage once the impediment to marriage is removed. Instead, the law . . . presumes that the relationship retains its illicit character after removal of the impediment. In order for a common law marriage to arise, the parties must agree to enter into a common law marriage after the impediment is removed, though such agreement may be gathered from the conduct of the parties.

Prevatte v. Prevatte, 297 S.C. 345, 349, 377 S.E.2d 114, 117 (Ct. App. 1989) (internal quotation marks omitted).

"In *Prevatte*, the [c]ourt of [a]ppeals raised the split of authority as to whether the parties must have knowledge that the impediment has been removed. The court decided that it need not resolve the issue because the parties there were aware of the impediment and its removal." *Callen*, 365 S.C. at 625 n.1, 620 S.E.2d at 62 n.1

(citation and internal quotation marks omitted). The supreme court noted, "The issue becomes important in cases in which the parties are aware of the impediment but not its removal. The determination that must be made there is whether the parties truly intended to enter into a valid marriage." *Id.* However, the court found it did not need to resolve the issue in that case because the party asserting the marriage admitted she was never aware of the impediment in the first place. *Id.*

> The law is well settled in this state that the removal of an impediment to a marriage contract (the divorce in this case) does not convert an illegal bigamous marriage into a common law legal marriage. After the barrier to marriage has been removed, there must be a new mutual agreement, either by way of civil ceremony or by way of a recognition of the illicit relation and a new agreement to enter into a common law marriage arrangement.

Byers, 268 S.C. at 71, 231 S.E.2d at 700.

In *Prevatte*, the purported spouses "knew of the impediment to their marriage at the time they first began living together as husband and wife." 297 S.C. at 349-50, 377 S.E.2d at 117. However, they later came to the conclusion they were married. *Id.* at 350, 377 S.E.2d at 117. They both represented to the court that they were married even though it was contrary to the husband's best interest. *Id.* The court found, "they had somehow come to the conclusion that the impediment to their marriage no longer existed. In fact, the impediment had been removed." *Id.* The court determined "it is clear from their conduct that they thereafter gave every indication of their agreement to be married. The fact that they did not know exactly when the impediment to their marriage had been removed or even how it had been removed is of no consequence, under the circumstances." *Id.*

In *Kirby v. Kirby*, 270 S.C. 137, 139, 141, 241 S.E.2d 415, 416 (1978), the parties conceded their relationship was illicit from the beginning because they both knew one of them was married to another person at the time.

> [T]he removal of the impediment to marriage by appellant's divorce . . . did not ipso factor convert the parties' illicit relationship into a common law marriage. After the barrier to marriage has been removed there

> must be a new mutual agreement either by way of civil ceremony or by way of recognition of the illicit relation and a new agreement to enter into a common law marriage.

Id. at 141, 241 S.E.2d at 416.

In the present case, Emily testified she did not learn George was not divorced from Cynthia when they married until after his death. Accordingly, because she did not know of the impediment to marriage, she could not recognize it and agree to continue the relationship once it was removed. Therefore, under South Carolina law, George and Emily's relationship was not converted to a common law marriage once the impediment to their marriage was removed.

III. Putative Spouse Doctrine

5 Star asserts the Appellate Panel erred in finding Emily was George's putative spouse because no South Carolina Court has recognized the putative marriage doctrine. We agree.

In *Hill v. Bert Bell/Pete Rozelle NFL Player Retirement Plan*,[6] the supreme court "decline[d] to adopt the putative spouse doctrine, as it is contrary to South Carolina's statutory law and marital jurisprudence." 405 S.C. 423, 426, 747 S.E.2d 791, 792-93 (2013). Accordingly, the Appellate Panel erred in finding Emily was George's putative spouse.

IV. Good Faith Exception

"The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal." Rule 220(c), SCACR. "[T]his court[] may affirm a trial judge's decision on any ground appearing in the record and, hence, may affirm the trial judge's correct result even though he may have erred on some other ground." *Potomac Leasing Co. v. Otts Mkt., Inc.*, 292 S.C. 603, 606, 358 S.E.2d 154, 156 (Ct. App. 1987). The reasoning adopted by the trial court is not binding upon this court if the record discloses a correct result. *Id.*

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[6] The opinion was issued by the supreme court after the Appellate Panel issued its order.

> [I]f a man and woman enter into a contract of marriage believing in good faith that they are capable of entering into the relation notwithstanding a former marriage, when, in fact, the marriage is still of force, and after the removal of the obstacle of the former marriage the parties continue the relation and hold themselves out as man and wife, such action constitutes them man and wife from the date of the removal of the obstacle.

Davis v. Whitlock, 90 S.C. 233, 246, 73 S.E. 171, 175 (1911); *see also Weathers v. Bolt*, 293 S.C. 486, 489, 361 S.E.2d 773, 774 (Ct. App. 1987) ("[I]f the parties enter into a contract of marriage believing in 'good faith' that they are capable of marrying and after the removal of all impediments they continue the relationship, they are considered man and wife from the date they became free to marry.").

In a North Carolina case applying South Carolina law, the court found the purported husband and wife entered into a marriage in good faith. *Bowlin v. Bowlin*, 285 S.E.2d 273, 274, 276 (N.C. Ct. App. 1981). Wife did not learn husband was not divorced from his previous wife when they married until she applied for social security benefits after he died. *Id.* Husband "had told her that he had been to his lawyer's office and received some papers and that he had torn them up. The next day they went to South Carolina and were married." *Id.* On the day they married, husband stated, in wife's presence, he was divorced. *Id.* The court found husband's "good faith belief that he was legally divorced on the date of his marriage is supported by his mother's testimony that [he] said that he was divorced." *Id.* The court noted, "More importantly, there is no evidence to the contrary." *Id.* The court found it could not imply wrong or fraud to husband and held he and wife entered into the marriage ceremony in good faith. *Id.*

In *Bannister v. Bannister*, 150 S.C. 411, 414, 148 S.E. 228, 229 (1929), the supreme court found the parties could not claim they were married in good faith because Husband had no reason to believe his previous wife was deceased and one could reasonably conclude it was a certainty he knew she was living. The court noted testimony was presented that he visited his previous wife and child and vice versa and paid child support for several years after they separated. *Id.* In *Weathers*, 293 S.C. at 489, 361 S.E.2d at 774, this court found the circuit court did not err in implicitly ruling "the parties did not enter the relationship in good faith

believing they each had the capacity to marry." The court noted the only evidence of husband's entering the relation in good faith was his testimony his previous wife had told him she obtained a divorce from him. *Id.* However, husband did not verify the information and knew that a subsequent wife had annulled their marriage due to his not being divorced. *Id.* This court found, "It is apparent the probate and circuit courts simply did not believe [husband's] testimony on the good faith issue, in light of overwhelming evidence to the contrary."

Here, the only evidence as to whether George knew of an impediment to his marriage with Emily was Emily's testimony he said he was divorced from Cynthia. He was served with a summons and complaint for divorce from Cynthia more than two months prior to the marriage ceremony with Emily. Much like *Bowlin*, 5 Star presented no evidence George did not know he could not marry when he and Emily had their marriage ceremony. Additionally, George and Emily continued to act as husband and wife after the impediment was removed. Accordingly, we find Emily was George's surviving spouse because she and George married in good faith.

CONCLUSION

We affirm the Appellate Panel's decision that George's death occurred in the course and scope of his employment. Although the Appellate Panel erred in determining Emily was George's common law or putative spouse, we affirm that Emily was George's surviving spouse because they entered into marriage with a good faith belief that they could marry and continued to act as husband and wife once the impediment was removed.

AFFIRMED.

HUFF and SHORT, JJ., concur.