

wiseman | ashworth trauger

August 11, 2023

Via email

Mr. James B. Christoffersen, General Counsel
Tennessee Health Facilities Commission
502 Deaderick Street, 9th Floor
Nashville, TN 37243
Jim.Christoffersen@tn.gov

RE: TriStar Hendersonville Medical Center –
Gallatin Freestanding Emergency Department
Certificate of Need Application CN2305-012

Dear Mr. Christoffersen:

Thank you for forwarding to me the August 1, 2023 letter that counsel for the applicant in the referenced case submitted to you in the referenced matter. Although I do not believe that that 16-page diatribe against the Health Facilities Commission staff merits much of a response, on behalf of Sumner Regional Medical Center, I do want to make a few observations.

The applicant fundamentally misunderstands the professional work that the staff performed in reviewing the referenced certificate of need application. The staff analyzed the application under the current statutory criteria of need, quality, and benefit to consumers from competition. In doing so, they considered certain facts which the applicant apparently believes would also have been relevant under a criterion that is no longer in the statute, namely whether the application complied with the “orderly development of healthcare.” The applicant then draws the logically fallacious conclusion that because the facts were relevant to a criterion that is no longer in the statute, they should be excluded from consideration under a criterion that is very much in the statute.

The absurdity of the applicant’s position is revealed in its insistence that, in determining whether there is a need for another free-standing emergency department in the service area, it is improper to consider the conditions in the existing emergency departments in the service area, including whether those existing emergency departments are operating at capacity. One wonders how it would be possible to determine the need for a particular service without considering the existing providers of that service. Indeed, the application itself is based upon its assertion that its ED – located in the service area – is “operating at capacity,” yet at the same time the applicant

ATTORNEYS

Thomas A. Wiseman III*
Gail Vaughn Ashworth**
Byron R. Trauger
Margaret J. Moore
Kimberly G. Silvus
Michele T. Marsicano
Anthony C. Bills
Bradley M. Dowd***
Jordan J. Couch
Kaitlin R. Parham
Johnson Laney****

* CERTIFIED AS A CIVIL TRIAL AND
MEDICAL MALPRACTICE SPECIALIST

** TENNESSEE SUPREME COURT
RULE 31 MEDIATOR

*** ALSO LICENSED IN MISSOURI

**** ALSO LICENSED IN GEORGIA

insists that that factor is “**no longer legitimate guidance for the Commission.**” (Applicant’s August 1, 2023 letter, p. 4, emphasis in original)

Without exposing all of the other problems with the letter, suffice it to say that much of it appears to be a rehearsal of arguments that the applicant will make at the hearing. There is nothing improper with the applicant making those arguments at the hearing, of course, but no one should be encouraged to use letters to the Commission – which one knows will become part of the public record – to obtain a second “bite of the apple.”

We look forward to the hearing of this matter.

Very truly yours,



Byron R. Trauger

cc: M. Clark Spoden, Esq. (via e-mail: cspoden@gsrc.com)