

**MEMORANDUM**

**TO:** Health Facilities Commission Members

**FROM:** Logan Grant, Executive Director

**RE:** Vanderbilt University Medical Center d/b/a Vanderbilt Rutherford Hospital’s Request for HSDA Review of the Initial Order Approving Baptist Memorial Hospital’s CON Application No. CN1705-018DA

**DATE:** September 22, 2023

---

**Procedural History**

1. This contested case concerns the appeal of a Health Services and Development Agency’s approval of CON application No. CN2109-026, for the establishment of a 42-bed community hospital facility<sup>1</sup> and the initiation of diagnostic and therapeutic cardiac catheterization services to be located at an unaddressed site on Veterans Parkway at the southeast intersection of Veterans Parkway and S.R. 840, Murfreesboro (Rutherford County), TN 37218.
2. TriStar Stonecrest Medical Center [“SMC”], Saint Thomas Rutherford Hospital [“STR”], and Williamson Medical Center [“WMC”] opposed the CON application before the Agency & appealed the CON.
3. This contested case hearing was held in December 2022.
4. The Administrative Law Judge [“ALJ”] issued the Initial Order on June 8, 2023, denying the CON application. A redacted copy<sup>2</sup> of the Initial Order is available on the Commission’s website.
5. VUMC timely petitioned the Agency for review of the Initial Order. Copies of VUMC’s Petition and the Petitioner’s Response will be available on the Agency’s website by the close of business on September 22, 2023.

**The Commission Must Decide *Whether* to Review the Initial Order**

Commission Rule 0720—13—.03 provides as follows:

---

<sup>1</sup> The proposed facility would include 26 adult medical/surgical beds, 4 intensive care unit beds, 6 pediatric beds, 6 obstetrical beds, 8 observation beds, an emergency department, a surgical suite with 2 major operating rooms, 4 general purpose operating rooms, 2 endoscopy procedure rooms, a cardiac catheterization lab, a physical and respiratory therapy room, imaging services including MRI, CT, ultrasound and mammography, laboratory and pharmacy services, and space for ancillary services. The facility would also have a helipad which could be accessed by VUMC LifeFlight aeromedical transport service.

<sup>2</sup> The Commission will have access to an un-redacted copy if it hears the case on appeal.

- (1) An Initial Order issued by an Administrative Judge, sitting alone, may be reviewed by the Commission pursuant to T.C.A §§ 4-5-301, et seq., these Rules, and the Rules of the Secretary of State Chapter 1360-04-01. Such review shall be limited to legal conclusions contained in the Initial Order.<sup>3</sup> The Commission may, in its discretion, decline to exercise any review of an Initial Order issued by an Administrative Judge, in which event the Initial Order issued by an Administrative Judge shall become a Final Order as provided by the Administrative Procedures Act.
- (2) In such a review proceeding, the Commission's review is strictly limited to the record which was developed before the Administrative Judge. No additional evidence is to be received or considered by the Commission.
- (3) Such a review proceeding is in the nature of appellate review.<sup>4</sup> Each party will be given the opportunity to file a brief which should specify what action the party maintains The Commission should take on the Initial Order. The Commission may place reasonable page limitations on such briefs.
- (4) In such a review proceeding, each party will normally be limited to oral argument of thirty (30) minutes in length, including rebuttal.
- (5) At the conclusion of the review proceeding The Commission may decide<sup>5</sup> that the Initial Order should be adopted in its entirety, or it may make such modifications to the Initial Order as it deems appropriate, including a different finding as to whether the application should be approved/denied.<sup>6</sup>

Whether a Final Order results from the exercise of Commission review or the Commission's declining to exercise review, a Final Order may be appealed to Chancery Court under the Administrative Procedures Act. An order of the Chancery Court may be appealed to the Tennessee Court of Appeals.

---

<sup>3</sup> The factual findings may not be changed if the Commission reviews the Initial Order. However, there may be factual findings sprinkled in the ALJ's Conclusions of Law that should have been placed in the Initial Order's Findings of Fact, and are therefore subject to being changed.

<sup>4</sup> The ALJ did not review the Agency's decision, but heard this case *de novo*, which means that arguments and evidence for and against the application were submitted anew and within the procedural and evidentiary constraints of the Administrative Procedures Act. By law, Commission review is about whether the ALJ made the right decision in denying the CON based upon the evidence established during the contested case, not whether the Agency made the right decision after reviewing the application and hearing presentations on December 15, 2021.

<sup>5</sup> The Commission Rule must openly consider findings of fact and conclusions of law for the Final Order before it is issued.

<sup>6</sup> The Commission is not required to defer to the ALJ's conclusions of law when issuing a Final Order. However, in its review of the Agency's Final Order in the *Spring Hill Hospital* contested case, the Davidson County Chancery Court made clear that conclusions of law reversed or replaced by the Commission will be held to a higher level of scrutiny. It is well-settled that a reviewing court would require more discussion on the record for conclusions that differ from the Initial Order.