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RE: TRISTAR STONECREST MEDICAL CENTER, SAINT THOMAS RUTHERFORD HOSPITAL, AND WILLIAMSON MEDICAL CENTER V. TENNESSEE HEALTH FACILITIES COMMISSION AND VANDERBILT UNIVERSITY MEDICAL CENTER D/B/A VANDERBILT RUTHERFORD HOSPITAL, APD Case No. 25.00-220022J

Enclosed is an *Initial Order,* including a *Notice of Appeal Procedures,* rendered in this case.

Administrative Procedures Division
Tennessee Department of State

Enclosure(s)

BEFORE THE TENNESSEE HEALTH FACILITIES COMMISSION

IN THE MATTER OF: **SAINT THOMAS RUTHERFORD HOSPITAL,** **TRISTAR STONECREST MEDICAL CENTER,** **WILLIAMSON MEDICAL CENTER,** ***Petitioner,*** ***v.*** **TENNESSEE HEALTH FACILITIES COMMISSION,** ***Respondent,*** **and** **VANDERBILT UNIVERSITY MEDICAL CENTER d/b/a/ VANDERBILT RUTHERFORD HOSPITAL,** ***Intervenor.***	**APD Case No. 25.00-220022J** **CON No. CN2109-026**

INITIAL ORDER

This contested case was heard *de novo* in Nashville, Tennessee, on December 5-9, 12, 15-16, and 19-20, 2022, before Administrative Judge Claudia Padfield, assigned by the Tennessee Secretary of State, Administrative Procedures Division (APD), to sit on behalf of the Tennessee Health Facilities Commission. The hearing addressed the allegations contained in the NOTICE OF HEARING filed on January 13, 2022, pertaining to the application for a certificate of need ("CON") filed by Vanderbilt University Medical Center d/b/a Vanderbilt Rutherford Hospital ("VRH") on October 1, 2021, which was approved by the Health Facilities Commission[1] ("HFC") on December 15, 2021. Petitioner, Saint Thomas Rutherford Hospital ("STRH"), was represented by attorneys

[1] Pursuant to Public Chapter 1119, the Tennessee Health Services and Development Agency was renamed as of July 1, 2022, to the Tennessee Health Facilities Commission. For consistency, the agency shall be referred to as the current name regardless of when the agency's action occurred.

Warren L. Gooch, John E. Winters, Betsy Beck, and Bryce E. Fitzgerald. Petitioner, TriStar StoneCrest Medical Center ("StoneCrest"), was represented by attorneys M. Clark Spoden, William Scales, Hilary Dennen, and Diamond Stewart. Petitioner, Williamson Medical Center ("WMC"), was represented by attorneys William West, Lindsay Ray, and Abby Nix. General Counsel James B. Christoffersen represented Respondent, HFC. Intervenor, VRH, was represented by attorneys Dan H. Elrod, G. Brian Jackson, Travis Swearingen, and C.E. Hunter Brush.

At the close of the hearing, multiple post-hearing deadlines were set for the filing of the following: the hearing transcript, counter designations of depositions, objections to the counter designations, redacted and condensed deposition transcripts, proposed findings of fact and conclusions of law, and post-hearing briefs. As such, the RECORD closed on April 11, 2023. Pursuant to TENN. CODE ANN. § 68-11-1610(d), the INITIAL ORDER must be entered by June 12, 2023.

Based on the review of the testimony, exhibits, and the entire record, it is determined that Petitioner have met their burden of proof to show that the application for the certificate of need does not mee the relevant statutory and regulatory requirements. According, VRH's application for the certificate of need is **DENIED.**

SUMMARY OF THE EVIDENCE

At the hearing, 25 witnesses provided live testimony. A video deposition of one witness was submitted in lieu of live testimony by agreement of the parties. One hundred ninety-six exhibits were entered into evidence. Six documents were marked for identification purposes only as part of an offer of proof. Sixty-eight condensed and redacted deposition transcripts and four documents were entered as late-filed exhibits.

FINDINGS OF FACT

1. In 2020, VRH applied with HFC for a CON application (No. CN2004-012) to establish a 48-bed full-service hospital in Murfreesboro, Rutherford County, Tennessee. The CON application also included six neonatal intensive care unit (NICU) bassinets.

2. HFC considered VRH's application at a Commission meeting held on August 26, 2020. Also considered by HFC, on that same date, was the CON application submitted by STRH to open a community hospital, Saint Thomas Rutherford Westlawn Hospital. HFC considered both CON applications simultaneously due to the nearly identical locations, overlapping services, overlapping service areas, and similar type of facilities.

3. At the August 26, 2020, meeting, by a 4-2 vote, VRH's CON application was denied by HFC. At the same meeting, HFC approved the Saint Thomas Westlawn Hospital's CON application.

4. VRH timely appealed HFC's denial of the application, which contested case was assigned a case number of 25.00-203133J by the Administrative Procedures Division. Per the ORDER GRANTING PETITIONS TO INTERVENE issued by Administrative Judge Rachel Waterhouse on November 4, 2020, WMC, StoneCrest, and STRH, along with two other Saint Thomas hospitals, were allowed to intervene.

5. VRH filed a notice of voluntary dismissal of APD Case. No. 25.00-203133J on October 7, 2021. An ORDER OF NONSUIT AND DISMISSAL was issued by Administrative Judge Waterhouse on October 8, 2021.

6. Administrative Judge Waterhouse issued both an ORDER GRANTING INTERVENOR'S MOTION FOR COSTS and an ORDER DENYING INTERVENORS' MOTION TO MODIFY AND EXTEND PROTECTIVE ORDER AND GRANTING PETITIONER'S MOTION TO ENFORCE AGREED PROTECTIVE ORDER on December 3, 2021.

7. HFC filed a NOTICE OF PETITIONS FOR JUDICIAL REVIEW with APD on June 9, 2022. A certified technical record was provided by APD on June 15, 2022. To date, no further filings have been received by APD regarding that appeal.

8. The Tennessee Health Services and Planning Act of 2021 became effective after VRH's first CON was denied. Among other changes, the CON requirement for a hospital to add acute care beds to an existing facility was eliminated. Therefore, an existing hospital may add such beds without having to show a need for the same beds. The policy provision of the statute now requires that the establishment of healthcare facilities must promote access to necessary, high-quality, and cost-effective services. TENN. CODE ANN. § 68-11-1603.

9. While the first appeal was pending, VRH submitted a second application for a CON application (No. CN2109-026) on October 1, 2021. The second application was for a 42-bed hospital in Murfreesboro, Rutherford County, Tennessee, including diagnostic and therapeutic cardiac catheterization services.

10. HFC considered the second application at the Commission meeting held on December 15, 2021. At that same meeting, by a vote of 5-1, HFC approved VRH's CON No. CN2109-026.

11. VRH is owned by Vanderbilt University Medical Center (VUMC), in Nashville, Davidson County, Tennessee. VUMC's main campus consists of Vanderbilt University Hospital, Monroe Carell Jr. Children's Hospital Vanderbilt (MCJCHV), Vanderbilt Psychiatric Hospital, and Vanderbilt Stallworth Rehabilitation Hospital. VUMC's main campus is a tertiary[2] and quaternary[3] medical center with 1,175 licensed beds for the relevant period. VUMC also owns

[2] Tertiary care is highly specialized medical care. Tertiary care is typically provided over an extended period of time. It involves advanced and complex diagnostics, procedures, and treatments that are performed by medical personnel in facilities with highly specialized equipment.
[3] Quaternary care is an extension of tertiary care but is even more specialized.

Vanderbilt Wilson County Hospital, Vanderbilt Bedford Hospital, and Vanderbilt Tullahoma-Harton Hospital.

12. The proposed location for VUMC's VRH CON No. CN2109-026 is at the southeast intersection of Veterans Parkway and I-840, off I-24, on 80 acres of land. The site is approximately six miles from the Williamson County/Rutherford County border on the west side of Rutherford County. The proposed facility would be an acute care, community hospital and would include:

- 26 adult medical/surgical beds
- four intensive care unit beds
- six pediatric beds
- six obstetrical beds
- eight observation beds
- an emergency department
- a surgical suite with two major operating rooms
- four general purpose operating rooms
- two endoscopy procedure rooms
- a cardiac catheterization laboratory
- a physical and respiratory therapy room
- a reception and waiting area
- imaging services including magnetic resonance imaging, computerized tomography, ultrasound, and mammography
- laboratory and pharmacy services
- space for ancillary services and
- a helipad that can be accessed by VUMC LifeFlight aeromedical transport service.

13. STRH is an acute care hospital in Murfreesboro, Rutherford County, Tennessee. It sits on eight acres. STRH is approximately six miles from VRH's proposed location. At the time of the hearing, STRH had 376 licensed beds. Due to the change in Tennessee's CON law, STRH does not need approval to add additional beds; at the time of the hearing, STRH was in the process of adding an additional 58 beds which were expected to open in Spring 2023.

14. STRH also has a community hospital in Murfreesboro, Rutherford County, Tennessee, Saint Thomas Rutherford Westlawn. Westlawn is across the street and less than one mile across Veterans Parkway from VRH's proposed location. Both sites are at the same intersection of I-840 and Veterans Parkway. Westlawn is a community hospital which has eight

inpatient beds, eight emergency beds, outpatient services, imaging services, physician practices, and telemedicine services.[4]

15. StoneCrest is an acute care hospital in Smyrna, Rutherford County, Tennessee. StoneCrest is located approximately 12 miles northwest of VRH's proposed location off I-24. At the time of the hearing, StoneCrest had 119 licensed beds, 115 of which were staffed. Approximately 71% of StoneCrest's patients come from Rutherford County. StoneCrest last added beds in February 2020 when it added six intensive care unit beds. StoneCrest completed a major emergency department expansion in November 2019.

16. WMC is an acute care hospital in Franklin, Williamson County, Tennessee. It is located approximately 20 miles from the proposed site of VRH. WMC is approximately two miles from the Rutherford County/Williamson County border. WMC has 203 licensed beds, all of which were staffed during the relevant period.

17. VUMC has greatly expanded its geographic reach by purchasing three preexisting Middle Tennessee hospitals and also by establishing outpatient and walk-in clinics. VUMC operates more than 800 outpatient clinics across Middle Tennessee in 180 locations. In Rutherford County, VUMC operates retail health clinics in La Vergne, Smyrna, and Murfreesboro; comprehensive cardiology care; behavioral health; maternal medicine; ambulatory surgery; imaging; outpatient surgery; and other outpatient services.

18. For pediatric services in Rutherford County, VUMC's MCJCHV offers imaging, urgent care facilities, subspecialty clinics, and a pediatric outpatient surgery center. The subspecialty clinics include services for cardiology, diabetes, endocrinology, gastroenterology,

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[4] Westlawn opened on March 16, 2023. As stated above in the facts, this hospital's CON application was approved prior to the filing of the current appeal but is relevant to the current appeal to provide a complete and accurate overview of hospital medical services in Rutherford County that had been approved at the time VRH filed the CON application under consideration.

nephrology, neurology, orthopedics and sports medicine, otolaryngology and audiology, plastic surgery, pulmonology, rheumatology, and urology. The magnetic resonance imaging service area at the Rutherford County location has an 18-county service area.

19. VUMC's Vanderbilt Wilson County Hospital has 245 licensed beds, 158 of which are staffed. VUMC's Vanderbilt Bedford Hospital has 49 licensed beds, 24 of which are staffed. VUMC's Vanderbilt Tullahoma-Harton Hospital has 135 licensed beds, 86 of which are staffed. VUMC's Vanderbilt Tullahoma-Harton Hospital is seeking a trauma designation which includes a service area of Rutherford and Williamson Counties.

20. The occupancy rates of VUMC's three existing community hospitals are between 13% and 37%.

21. VUMC, StoneCrest, STRH, and WMC all provide health care that meet appropriate quality standards.

22. The proposed service area of VRH is Rutherford County. Approximately 75% of VRH's patients are expected to originate in Rutherford County.

23. Rutherford County has had and continues to have rapid population growth. Rutherford County currently has a population of approximately 350,000. Rutherford County is projected to become the fourth most populated Tennessee county by 2026.

24. Despite the growth in population, Rutherford County residents have not had a significant increase in the level of utilization of inpatient services. This is consistent with the steady decline in length of hospitalization stays across the country and in Tennessee for general, non-tertiary care.

25. The COVID-19 pandemic caused hospitals across Rutherford County and throughout Tennessee to have occupancy rates that were skewed from typical years. The pandemic also caused various spikes in hospital utilization. The data from 2020-2022 is challenging to

analyze when looking at daily average census and hospital utilization rates. As such, the data from 2020-2022 is not reliable and has been disregarded by healthcare planners.

26. The VRH CON application showed a surplus of 145 licensed beds in Rutherford County. Since the filing of the application, a new community has opened, STRH has added and is in the process of adding beds. Per the most recent data from the Tennessee Department of Health, the current surplus in Rutherford County is 67 licensed beds.

27. There is no evidence that any patient treated in a hallway bed at any of the facilities involved led to a lower quality care for those patients.

28. As such, area physicians have sometimes had difficulty admitting their patients to STRH.

29. STRH has an average inpatient occupancy rate of 80%. STRH has not enacted emergency medical services division.

30. At times, but especially during COVID-19 surges, all area hospitals have had to board patients in the emergency departments due to lack of available bed capacity in other hospital rooms. The wait time to transfer to an available inpatient bed in a hospital has varied greatly. The longer holds (24 or more hours) are typically due to psychiatric patients who are waiting to be transferred to an appropriate facility.

31. STRH offers a variety of services including orthopedic surgery, oncology, obstetrics, neuroscience, and cardiology. STRH has a NICU and is expanding that unit from 16 to

22 beds. STRH has increased the provided services to become a more of a tertiary referral center rather than a local community hospital.

32. StoneCrest offers inpatient services for women's health, obstetrics/gynecology, NICU, cardiology, orthopedics, pulmonology, critical care, diabetes, and oncology. StoneCrest also offers outpatient services such as imaging, physical therapy, emergency department services, and advanced wound care. StoneCrest has a dedicated pediatric emergency room.

33. StoneCrest has an average inpatient occupancy rate of less than 60%. ████████

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34. WMC has a partnership with MCJCHV whereby the eight-bed pediatric emergency department, eight-bed NICU, and 16-bed pediatric inpatient unit at WMC are staffed by Vanderbilt physicians. WMC provides the nurses for the pediatric units. Due to lack of need, WMC has plans to reduce the 16-bed pediatric inpatient unit to ten beds.

35. ██

███████ The various pediatric units at WMC are underutilized and have capacity to admit all lower acuity pediatric patients from Rutherford County and adjacent counties.

36. VRH proposes to have six dedicated pediatric beds. This is a duplicative service to what MCJCHV pediatricians already offer at WMC.[5] VRH does not plan to offer a NICU, any pediatric inpatient surgery, or a pediatric emergency room.

37. STRH provides pediatric inpatient services. ██████████████████████████

███████████ It has six pediatric beds with nurses who have pediatric advanced life support training certifications. STRH has had pediatric trained respiratory therapists.[6] ███████████

[5] Dr. Brent Rosser, a pediatrician at Murfreesboro Medical Clinic, reluctantly testified that the VRH facility would not offer any pediatric services that are not available at WMC.

[6] It was unclear from the testimony at the hearing whether STRH currently had pediatric trained respiratory therapists on staff.

38. The volume of non-critical care population at VUMC's MCJCHV has decreased 10-15% over the last five years. Most pediatric care is provided on an outpatient basis. Half of MCHCHV's subspecialties are offered in Rutherford County at the various locations as outlined above. The length of stay for non-critical care pediatric patients has declined both locally and nationally.

39. .

40. In the CON application, VRH represented to HFC that the average length of stay for a pediatric patient would be 4.6 days.

41. Per Dr. Margaret Rush, President of MCJCHV, the actual anticipated average length of stay for a pediatric patient at VRH would be 2 to 2.5 days.

42. WMC is adding 15 emergency department beds due, in part, to an increase in the need for mental health services and the inability to transfer those patients from the emergency room to a mental health facility.

43. WMC has an average occupancy of 55%.

44. VRH proposes to offer the following services: general medical and surgical, cardiac catheterization, laboratory, and imaging. All of these services are offered at STRH, WMC, and StoneCrest. No tertiary level services are proposed.

45. The federal government requires not-for-profit hospitals to publish a Community Health Needs Assessment every three years to help justify their not-for-profit tax status. STRH and VUMC published a joint Rutherford County Health Needs Assessment in 2019. The report is based on data, interviews, and surveys. The top three needs in Rutherford County in 2019 were

addressing affordable housing and homelessness; social factors including education levels, unemployment, crime, etc.; and health promotion and wellness. The need for an additional hospital was not mentioned anywhere in the report.

46. The cardiac catheterization CON criteria utilize a weighted formula to measure the existing capacity of cardiac catheterization labs in the proposed service area. Per the weighted formula as established in the guidelines, need is presumed to exist for additional cardiac catheterization lab capacity if the average current utilization of all existing providers is greater than 70%.

47. As one of its outpatient practices and clinics in Rutherford County, VUMC operates Vanderbilt Heart Murfreesboro. This consists of four cardiologists and two advanced practice nurse practitioners. Additionally, a heart failure physician, a heart failure nurse practitioner, an electrophysiologist, and a lipid nurse practitioner rotate through the Vanderbilt Heart Murfreesboro Clinic. VRH's CON application includes a cardiac catheterization laboratory that would allow these practitioners to provide services at their own facility rather than having to coordinate the services at a current area hospital such as StoneCrest or STRH.

48. VRH would be staffed and maintained by at least one cardiologist who has performed 75 cases annually over the previous five years.

49. Dr. Fayaz Malik, the Chair of the Department of Cardiology at STRH, provided credible testimony that the practice of cardiology is changing due to emerging technology involving cardiac computed tomography (CT). While some patients are now able to avoid the more invasive procedure of a cardiac catheterization by having a cardiac CT performed, there are some patients who will need to have a cardiac catheterization based on the results of the cardiac CT.

50. Using the most recent reliable data (obtained prior to the pandemic), STRH's cardiac catheterization capacity was over 90%. StoneCrest's capacity was slightly less than 60%.

51. The cardiac catheterization capacity, per the weighted formula as established in the State Health Plan, at STRH and StoneCrest is over the required capacity threshold of 70%.

52. VUMC's cardiologists who practice in Rutherford County satisfy the minimum physician requirements to initiate these services per the guidelines.

53. Prices for services rendered at VRH would be based on the same community hospital charge structure as the three county-adjacent community hospitals: Vanderbilt Bedford Hospital, Vanderbilt Wilson County Hospital, and Vanderbilt Tullahoma-Harton Hospital.

54. VRH would accept Medicare and TennCare/Medicaid patients. VRH projected in the CON application that 61% of its patients would be Medicare and Medicaid patients. This is comparable to other area hospitals.

55. At least two of VUMC's community hospitals have not generated revenues in excess of their expenses. In 2021, Vanderbilt Bedford Hospital had a loss of $4,792,817; Vanderbilt Wilson County Hospital had a loss of $7,330,835.[7]

56. VRH has a projected charity care rate of 5%. This is a slightly lower rate than other area hospitals.

57. BlueCross/BlueShield of Tennessee (BCBST) is the largest commercial insurer in Tennessee. BCBST opposes the CON application due to unnecessary duplication of services that would inflate the cost of healthcare services.

58. VRH submitted a projected payor mix (the percentage of a facilities' revenue from private insurance versus self-paying patients versus public insurance programs such as Medicare

[7] The record does not reflect the revenue compared to expenses of Vanderbilt Tullahoma-Harton Hospital.

and Medicaid) in the CON application. The payor mix listed Humana and Wellcare as part of its Medicare Advantage Payors list.

59. [REDACTED] In a press release to the public, VUMC asserted that a higher reimbursement rate was necessary to pay for inflationary costs of personnel, supplies, equipment, and medications. VUMC announced on March 14, 2023, that an agreement to continue providing in-network care was reached with Humana. The increase in payments from Humana to VUMC was not announced. No agreement with WellCare was announced or provided.

60. There is a nursing shortage both in Tennessee and across the country. The shortage began before the outbreak of the COVID-19 pandemic and continues presently.

61. Due to staffing issues, hospitals have delayed services. Due to staffing issues, hospitals have temporarily closed certain services. This has created accessibility issues. Some of those delayed or closed services were due to staffing problems associated with the pandemic and are not ongoing issues.

62. None of the involved healthcare hospitals caused the nursing shortage. The involved healthcare hospitals have taken action to address the nursing shortage, such as offering residency programs for nursing graduates, programs to allow existing staff to take a more advanced clinical role, sponsorships of clinical workers to receive further education and more advanced training, and affiliation with nursing schools.

63. Hospitals, including all of the parties in this case, have resorted to hiring traveling or contract nurses in order to be adequately staffed. Traveling or contract nurses are paid at much higher rates than on-staff nurses.

64. VUMC represented to HFC, during the December 15, 2021, meeting, that staffing has not been an overwhelming challenge.

65. [redacted]

66. VRH will require 114 nurses and 171 ancillary clinical personnel.

67. VUMC has paid hiring bonuses, student loan forgiveness, and moving expenses to help recruit nurses.

68. VUMC plans to staff VRH by having nurses transfer from other VUMC facilities to VRH as well as hiring new nurses.

69. The additional costs of labor to hospitals cannot be immediately passed directly to consumers due to the hospitals' contracts with the insurance companies or government. As indicative of the demands for a higher contract rate from VUMC to Humana and Wellcare, the additional costs can be a basis for requesting a higher reimbursement rate from insurance companies or the government as a continuation of accepting patients as in-network patients.

APPLICABLE LAW

1. The Tennessee Health Facilities Commission is granted the authority to approve or deny certificate of need applications by TENN. CODE ANN. § 68-11-1609(a).

2. STRH, StoneCrest, and WMC are healthcare institutions that are located within a thirty-five-mile radius of the location of the action proposed. As such, the three entities had authorization to file written objections to appeal the approval of VRH's CON application. TENN. CODE ANN. § 68-11-1609(g).

3. Without opposition from Petitioners or Respondent, VRH moved to intervene in this case, which request was granted pursuant to TENN. CODE ANN. § 4-5-310 and TENN. COMP. R. & REGS. 0720-13-.01(4).

4. This contested case was presided over by the undersigned administrative law judge sitting alone pursuant to TENN. CODE ANN. § 68-11-1610(c). As a proceeding convened by HFC, this contested case was a *de novo* hearing. *Big Fork Mining Company v. Tennessee Water Quality Control Board,* 602 S.W.2d. 515, 521 (TENN. CT. APP. 1981).

5. In a contested case hearing before HFC, Petitioners have the burden of proving, by a preponderance of the evidence, that a CON application should be denied. TENN. COMP. R. & REGS. 0720-13-.01(3).

6. Pursuant to TENN. CODE ANN. § 68-11-1609(b), "A certificate of need shall not be granted unless the action proposed in the application is necessary to provide needed health care in the area served, will provide health care that meets appropriate quality standards, and the effects attributed to competition or duplication would be positive for consumers. In making these determinations, the commission shall use as guidelines the goals, objectives, criteria, and standards adopted to guide the commission in issuing certificates of need. Until the commission adopts its own criteria and standards by rule, those in the state health plan apply. Additional criteria for review of applications must also be prescribed by the rules of the commission."

7. The State Health Plan Certificate of Need Standards and Criteria sets forth the consideration given for applicants seeking to establish acute care beds for a new facility. The determination of need is established through a four step process "[u]sing utilization and patient origin data from the Joint Annual Report of Hospitals and the most current populations projection series from the Department of Health, both by county, … ." State Health Plan, 2017-2018 Edition, p. 54. The need for hospital beds should be projected four years into the future. "New hospital

beds can be approved in excess of the 'need standard for a county' if … [a]ll existing hospitals in the proposed service area have an occupancy level greater than or equal to 80 percent for the most recent Joint Annual Report." *Id.* at p. 56.

8. To determine whether there is a need for acute care beds in a new facility, the State Health Plan considers similar services in the service area, trends in occupancy and utilization, and the likely impact of the proposed increase in acute care beds on existing providers. Consideration is to be given to whether the increase in beds will result in unnecessary, costly duplication of services. *Id.* at p. 60.

9. Other facts to consider when looking to add acute care beds are quality considerations, establishment of service area, services and relationship to high-need and underserved populations, access to serve equally all of the service area, adequate staffing, assurance of resources, data requirements, quality control and monitoring, licensure and quality considerations, and community linkage plan if applicable. *Id.* at pp. 61-62.

10. The State Health Plan provides criteria relating to cardiac catheterization services. State Health Plan, 2009 Edition, Appendix B. TENN. COMP. R. & REGS. 0720-11-.01(2)(h) (July 2022) provides the guidelines for evaluating quality standards for cardiac catheterization projects.

11. TENN. COMP. R. & REGS. 0720-11-.01 (July 2022) provides the general criteria that HFC will consider when determining if an application for a certificate of need should be granted. Specifically applicable to the current appeal are the criteria for need and competition/duplication effects which are:

(1) Need. The health care needed in the area to be served may be evaluated upon the following factors:
  (a) The relationship of the proposal to any existing applicable plans;
  (b) The population served by the proposal;
  (c) The existing or certified services or institutions in the area;
  (d) The reasonableness of the service area;

(e) The special needs of the service area population, including the accessibility to consumers, particularly women, racial and ethnic minorities, TennCare participants, and low-income groups;
(f) Comparison of utilization/occupancy trends and services offered by other area providers;
(g) The extent to which Medicare, Medicaid, TennCare, medically indigent, charity care patients and low-income patients will be served by the project. In determining whether this criteria is met, the Commission shall consider how the applicant has assessed that providers of services which will operate in conjunction with the project will also meet these needs.

…

(3) The effects attributed to competition or duplication would be positive for the consumers. Whether the effects attributed to competition would be positive for the consumers may be evaluated upon the following factors:
(a) Access to high quality, cost-effective healthcare services;
(b) The impact upon patient charges;
(c) Participation in TennCare, Medicare and other federal and state reimbursement programs; participation in other insurance plans; and charity care;
(d) Whether the applicant commits to maintaining an actual payor mix that is comparable to the pay mix projected in its CON application, particularly as it relates to Medicare, TennCare/Medicaid, Charity Care, and the Medically Indigent; and
(e) The availability and accessibility of human resources required by the proposal, including those required by existing providers.

12. The commission has the authority to revoke a certificate of need if "[t]he decision to issue a certificate of need was based, in whole or in part, on information or data in the application which was false, incorrect, or misleading, whether intentional or not." TENN. CODE. ANN. § 68-11-1617(3).

ANALYSIS AND CONCLUSIONS OF LAW

The CON process plays an important role in ensuring access, sustainability, and safety in Tennessee's healthcare system. This includes ensuring appropriate and necessary services and facilities are available in communities across the state, and that patients are able to access those services in a safe and affordable manner. The CON process recognizes the unique needs and challenges of health care compared to other industries.

The written transcript of oral testimony provided at a hearing does not fully convey the evidence given or always provide a complete picture of the proof in a case.[8] Ginna Felts is the Vice President of Business Development at VUMC and prepared both of VRH's CON applications. Ms. Felts was unable to answer questions at the hearing that someone in her position should be expected to know, often stating that she did not recall when asked questions about the CON application or the process. In contrast, Ms. Felts provided one-word answers, such as "yes", "no", or "sure", when she was answering leading questions asked by VRH's counsel. Ms. Felts avoided answering questions directly if the answer would have been harmful to VRH. Ms. Felts' demeanor while providing live testimony was incredulity at the need to answer questions that would cast doubt on the CON application or VUMC. The veracity of Ms. Felts' testimony is questionable and is given little weight.

Appropriate Quality Standards

A CON applicant must prove that the facility will provide health care that meets appropriate quality standards. All four healthcare hospitals in this case offer health care at appropriate quality standards. There was no testimony or evidence that VRH would not be expected to offer the same quality of care at the proposed facility that is offered at other hospitals owned by Intervenor. Petitioners have failed to prove by a preponderance of the evidence that the CON application does not meet this portion of TENN. CODE ANN. § 68-11-1609(b).

Need for Health Care in Area Served

[8] "A stenographic transcript correct in every detail fails to reproduce tones of voice and hesitations of speech that often make a sentence mean the reverse of what the words signify." *Broadcast Music v. Havana Madrid Restaurant Corp.,* 175 F.2d 77, 80 (2d. Cir. 1949). "It is true that the carriage, behavior, bearing, manner and appearance of a witness – in short, his 'demeanor' – is a part of the evidence." *Dyer v. MacDougall*, 201 F. 2d, 265, 268-268 (2d. Cir. 1952). "When credibility and weight to be given testimony are involved, considerable deference must be afforded to the trial court when the trial judge had the opportunity to observe the witnesses' demeanor and to hear in-court testimony." *Hughes v. Metropolitan Government of Nashville and Davidson County,* 340 S.W.3d 352, 360 (Tenn. 2011) (internal citations omitted).

VRH and Petitioner hired expert witnesses to support their respective cases. All experts offered credible, well-reasoned testimony. The opinions reached, not surprisingly, by each expert was to the advantage of the expert's client. The experts used data and methodology to reach conclusions that benefitted their respective clients and discounted data that would have led to a different conclusion. While the testimony and opinions offered are not nullified in what was, essentially, a battle of the experts, VRH's experts relied upon information in forming their opinions that was misleading or is no longer applicable to the case. For example, VRH's experts relied upon statistics from the COVID-19 pandemic period even though it has been established that those figures do not accurately reflect general occupancy or utilization of healthcare services. [redacted] A significant portion of the justification for the need requirement in the CON application was the lack of available space at the Davidson County facilities. As the expansion renders this argument moot, VRH's experts' testimony and opinions must be discounted.

In the CON application, VRH represented to HFC that the average length of stay for a pediatric patient would be 4.6 days. This contrasts with the testimony of Dr. Margaret Rush, President of MCJCHV, who provided credible testimony that the average length of stay at VRH is expected to be 2 to 2.5 days. Dr. Rush was not consulted or involved in planning any portion of the CON application. To the extent that VRH's expert witnesses relied upon the inaccurate higher utilization projections, the testimony and opinions formed based on the inaccurate projections are discounted.

The majority of VRH's anticipated patients will originate in Rutherford County. While VRH would have to draw patients from other counties to be viable and sustainable, the projected service area is reasonable under TENN. COMP. R. & REGS. 0720-11-.01(1)(d).

Some Rutherford County residents choose to travel to VUMC's tertiary campus to seek inpatient treatment that could be received at a hospital in Rutherford County. Due to a variety of factors such as convenience to tertiary services, if needed, or proximity to work, some Rutherford County residents would continue to go to VUMC even if VRH were built. This has proven to be true with the three community hospitals purchased by VUMC. For those Rutherford County residents who choose to have Vanderbilt physicians as their healthcare providers, they may desire to have a Vanderbilt-owned hospital six miles from STRH or 10 miles from StoneCrest. But VRH has conflated desire and need. Vanderbilt has hospitals or units within another hospital in five of the seven counties adjacent to Rutherford County – the various hospitals in downtown Nashville, the pediatric units within WMC, Vanderbilt Tullahoma-Harton Hospital, Vanderbilt Wilson County Hospital, and Vanderbilt Bedford Hospital. Excluding the Davidson County facilities, the other VUMC hospitals or VUMC-managed hospital units all have ample capacity and do not require travel into the tertiary facilities. While residents of Rutherford County may select VUMC as their healthcare provider, the CON application process is focused on providing patients with geographic access to care. Rutherford County residents have access to care and have a choice in hospitals in their county. All Rutherford County residents have "reasonable access to health care" as required in the State Health Plan. Having a third provider choice is not a criterion for approval of a CON application.

The State Health plan gives special consideration to underserved geographic regions. VRH does not seek to provide services to a region or underserved population group but rather to expand the market wherein it can provide inpatient hospital care. VRH has argued that providing a special, six-bed pediatric unit should be given consideration as providing access to an underserved population. WMC, through its partnership with MCJCHV, offers all of VRH's proposed pediatric services, and even higher level of services, approximately two miles from the

Williamson/Rutherford County line. Rutherford County pediatric patients have reasonable access to services within the geographic area. Petitioners have proven by a preponderance of the evidence that the approval of the CON application does not satisfy TENN. COMP. R. & REGS. 0720-11-.01(1)(e). Additionally, WMC's pediatric units are underutilized. A duplication of these services in the geographic area is not positive for consumers. Petitioners have proven by a preponderance of the evidence that, as to the pediatric services, that the CON application also fails to satisfy TENN. COMP. R. & REGS. 0720-11-.01(3).

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As part of these efforts, VRH coordinated to have individuals submit affidavits in support of the project. VRH offered these affidavits in its CON application, and testimony at the HFC commission hearing, in support of its application. However, it does not appear that the public was provided accurate information from VRH as to what the proposed hospital would entail. In support of VRH, affidavits from community members spoke to being able to access non-routine or specialty care at the proposed hospital. This sentiment is mistakenly repeated throughout the affidavits by individuals who believe that the new hospital would relieve them of having to go to a tertiary hospital to receive specialty care. As delineated above, VRH proposes to be a community hospital and does not propose any level of tertiary care.

Other affidavits supported VRH as a means of spreading medical services throughout Rutherford County. To the contrary, the services would not be spread throughout Rutherford County as VRH would be across the street from an existing hospital and emergency department at Westlawn. All proposed medical services at VRH are also available at StoneCrest and STRH which are not in the same location within Rutherford County.

It appears that the healthcare community was provided inaccurate or misleading information as to what VRH would offer. VRH coordinated with Murfreesboro Medical Clinic

(MMC), a large physician group in Murfreesboro that rents office space to VUMC, to have MMC's physicians submit affidavits in support of the CON application. MMC physicians wrote in affidavits of the addition to the community that could be offered through Vanderbilt's "incredible array of specialties." While VUMC has many specialty clinics in the Rutherford County area, VRH does not propose any specialties that are not available at the local area hospitals. Indeed, all specialty hospitalizations would continue to be admitted at VUMC's main tertiary campus – not at VRH.

Many of the healthcare providers in Rutherford County who submitted affidavits in support of VRH had a shocking lack of knowledge about what services are available to their patients without having to refer patients to a hospital in downtown Nashville. Many physicians referenced the need for having a second hospital in Rutherford County or that there was only one hospital that served Rutherford County. However, there was already a second hospital, StoneCrest, in Rutherford County when all of these physicians signed their affidavits. StoneCrest is a mere 10 miles down the interstate from the proposed location of VRH. Some of the physicians also referenced the mistaken belief that there would be subspecialists and researchers at VRH. MMC pediatricians incorrectly stated that all pediatric patients from Rutherford County and surrounding counties must go to Nashville for any advanced pediatric care. Just twenty miles from the proposed VRH location, all Rutherford County pediatric patients have access to Vanderbilt pediatricians and inpatient care at WMC without having to travel to a tertiary hospital. If the level of pediatric services cannot be provided at a community in-patient setting such as at WMC, VRH will not relieve the need for pediatric patients to travel to MCJCHV.

The granting or denial of a CON application is not a popularity contest based on a number of signatures or affidavits. While there is no evidence that VRH purposely provided false information to individuals or physicians to elicit their support, VRH included affidavits in the CON

application that were clearly based on false or misleading information. The evidence shows that MMC wants to use its support of VRH not necessarily for the good of the public but, at least in part, for its own gain. The evidence shows that MMC has offered support to VRH so that they can "make demands. Get what we want from the beginning" as well as using support of the project to "make St. Thomas nervous." LATE-FILED EXHIBIT 59, at exhibit 18. MMC, a large, for-profit healthcare provider, has offered its support in the current CON application as an ongoing effort to pit one hospital provider against another to advance its own goals. The way the affidavits were obtained, the inaccuracies contained therein, and the motive for submitting the affidavits renders them unpersuasive in their attempt to support any of the criteria to approve a CON application. Thus, they have been given no weight.

A better indication of what is needed and desired in Rutherford County is the 2019 Community Health Needs Assessment. This report was not a result of a marketing tool by VRH to solicit opinions to support its goals but rather an objective assessment across all aspects and populations of Rutherford County as to what was needed. The need for an additional hospital was not mentioned in the report.

The current CON law requires a new hospital to prove a need for additional hospital beds using the acute care bed standards and criteria in the State Health Plan. Any existing hospital can add acute care beds as budgets and space permit. It has been argued by VRH and HFC that the acute care bed need formula is outdated and should not be followed. However, under the current law and guidelines, it is required that VRH prove the beds are needed.

The Tennessee Legislature and HFC have decided to treat existing hospitals and entities differently than those that wish to open a hospital. If HFC does not believe the acute care need bed formula is accurate or applicable, HFC has the authority to change the State Health Plan. The last change to the acute care bed need formula was in 2017-2018. The State Health Plan has been

updated three times since the acute care bed need formula was put into place. This formula also could have been changed when the CON law changed in 2021, but HFC chose not to do so. The governing statute states the commission "*shall* use as guidelines the goals, objectives, criteria, and standards adopted … . Until the commission adopts its own criteria and standards by rule, those in the state health plan apply." TENN. CODE ANN. § 68-11-1609(b) (emphasis added). While the State Health Plan is a guideline and not law, it provides the only objective measurements by which a CON application can be evaluated. The absence of the only applicable guideline would leave the approval process completely subjective as to which measurements should be used to prove that the new facility is needed.

Despite the acute care bed need formula showing a surplus of hospital beds in Rutherford County, [redacted]. STRH has made efforts to become a tertiary center rather than a community hospital and is making the adjustments toward this goal. [redacted] [redacted], none of which need to be approved through the CON application process. This construction project – and the addition of a large number of beds – were not mentioned in the CON application or at the HFC hearing even though the project had been internally approved. While the plan has changed and will likely continue to evolve, VRH did not mention the largest expansion in VUMC's history to HFC. The argument that a hospital is needed in Rutherford County to accommodate additional hospital space in Davidson County is moot given VUMC's expansion plan.

Moreover, the suggestion that HFC was made aware of the expansion under the guise that VRH informed HFC that it is always looking to expand or maximize its space is not flawed. VRH presented to HFC that one aspect of satisfying the need requirement was to progressively transfer non-tertiary Rutherford County patients away from the Davidson County campus in order to create

more availability at the Nashville hospitals. Intervenor now argues that the expansion project is not pertinent to the CON application, but it used the lack of available beds at its Nashville campus as a justification for the CON application. To the extent that this information was relied upon when the CON application was approved, the information was misleading or incorrect.

Petitioners have proven that all existing hospitals in the proposed service area do not have an occupancy level greater than 80% to satisfy the exception to the need standard for Rutherford County. Petitioners have proven by a preponderance of the evidence that the CON application fails to satisfy the criterion for need under TENN. COMP. R. & REGS. 0720-11-.01(1)(f).

Adequate Staffing

A CON applicant must show, under the acute care need criteria, a plan for adequate staffing. There are a finite number of trained nurses.

yet VUMC falsely presented that staffing had not been a problem. Having a nurse transfer from working at one of the downtown Nashville facilities to work at VRH does not "fill" the VRH position as it then opens a position elsewhere. If approved, VUMC would need to fully staff VRH

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Marilyn Dubree, VUMC's Executive Chief Nursing Officer, provided credible testimony[9] as to the nursing shortages and challenges faced at VUMC over the course of her extensive career.

[9] Due to unavailability at the close of the hearing, the parties agreed to submit Ms. Dubree's video deposition into the RECORD.

[REDACTED]. Based on Ms. Dubree's credible testimony, the statements made by VUMC personnel at the HFC hearing that VUMC's main campus is fully staffed, and that staffing has not been an overwhelming challenge, were false and/or misleading in order to gain approval of the CON application.

The parties' efforts to address the nursing shortage by helping to improve the availability of nursing and clinical staff are commendable. While providing hiring bonuses, moving expenses, and student loan forgiveness adds to the cost of a facility, these are costs that all healthcare providers are having to pay. The addition of a fourth acute care community hospital in Rutherford County does not alleviate these costs, it only exacerbates the need for additional nursing staff. Historically, no CON application has been denied on the basis of staffing. If it is presumed that every project can be fully staffed at the completion of the project without considering a full analysis of the staffing situation, one must question why the criterion as to staffing is even a factor. While one cannot predict the future of nursing, the current nursing crisis and large number of open positions across all healthcare facilities, including VRH's many facilities, demonstrate sufficient evidence to prove that the lack of availability and accessibility of human resources required by the proposed construction project, including those required by existing providers, will not be positive for consumers. Petitioners have proven by a preponderance of the evidence that the CON application fails to satisfy the staffing criterion under TENN. COMP. R. & REGS. 0720-11-.01(3)(e).

Other Guidelines

Several of the guidelines were uncontested: demonstration of an ability and willingness to serve all patients in the proposed service area; documentation that it will provide the resources necessary to properly support the applicable level of services; agreement to provide the Department of Health and/or HFC with all reasonably requested information and statistical data, identification for data reporting, quality improvement, and outcome and process monitoring

system; and compliance with appropriate rules of the Department of Health as well as accreditation with the Joint Commission. As these factors were not contested, Petitioners have failed to prove that VRH's CON application does not satisfy these guidelines.

Cardiac Catheterization Services

The State Health Plan established extensive guidelines in 2009 for a CON application to establish cardiac catheterization services. Since the current guidelines were established more than 13 years ago, new cardiac technology has been created that may reduce the demand for diagnostic cardiac catheterizations. Much like the requirements established for the acute card bed need formula, those guidelines could have been updated in the 10 more recent State Health Plans if the appropriate bodies had chosen to do so, but they did not. It should be noted that VRH relies upon these guidelines to prove the need for cardiac catheterization services, while simultaneously arguing that the acute bed need formula in the guidelines should not be utilized. The applicable data support the weighted formula in the guidelines. Petitioners have failed to prove by a preponderance of the evidence that the CON application for cardiac catheterization criteria has not been met pursuant to TENN. COMP. R. & REGS. 0720-11-.01(2)(h).

Effects for Consumers

VRH's current CON application was filed after the CON application for the Westlawn hospital was approved. VRH is proposed to be in virtually the identical location as Westlawn. VRH's proposal is for the same type of facility, though larger, than Westlawn. VRH would cover the same service area as Westlawn thought it would extend into a larger area. Lastly, VRH would provide overlapping services to Westlawn in that both would have an emergency department and inpatient hospital services. The need for these identical services at the identical location in the identical service area has not been established and have not been shown to be positive for

consumers. Petitioners have proven by a preponderance of the evidence the criteria under TENN. COMP. R. & REGS. 0720-11-.01(3)(a).

The effects of competition or duplication are required to be positive for consumers. Consumer advantage does not just mean convenience. Hospitals are unique among other industries as well as other aspects of the healthcare system. If an individual wants a car, hamburger, haircut, or house built, that individual may go to any business to attempt to purchase that item or service, and the business may demand a price for that service or item. If an agreed-upon price cannot be reached, the individual may attempt to find that item or service elsewhere. Within the healthcare system, this also applies to certain specialties such as plastic surgery, dermatological, or pediatrics. A pediatrician may refuse to see a patient who cannot provide payment for the services rendered or who is simply too difficult, in the pediatrician's opinion, to work with. This is not the case with a hospital. A hospital cannot turn away a patient who does not have the means to pay for the service the patient needs or if the patient becomes difficult. Hospital services are not governed by traditional supply/demand economic principles. As testified to by Armand Balsano, VRH's expert witness and healthcare management consultant, duplicative competition is not good for consumers. Mr. Balsano agreed that a planning tenet for healthcare services has been not to duplicate services unnecessarily. This has been a fundamental principle of the CON laws for the last 30 years. VRH, however, presented an affidavit with its CON application from an individual who supports VRH under the guise of the concept that "[t]he free market should be allowed to work."[10] Allowing more hospitals into a given healthcare market simply for the sake of competition shows a lack of understanding of how the healthcare system and hospitals in particular work.

VRH has positioned itself as a low-cost provider of health care. After submitting the CON application and before the hearing began for one payor and during the hearing for the other payor,

[10] EXHIBIT 1, at p. 244.

Intervenor chose to terminate contracts with Medicare Advantage Plans providers Humana and WellCare. VRH did not announce an adjustment to the projected payor mix or make HFC or the tribunal aware of the decision to stop accepting these Medicare Advantage plans despite VUMC asserting that the decision was made only after undertaking a careful analysis. While information has been provided to show that the contract with Humana was resolved, no such information was provided for WellCare. It is inevitable that healthcare providers and payors of care will have contractual discussions. There is also no guarantee that any healthcare provider will continue to accept every Medicare Advantage plan or any other payor. However, the validity of the data that VRH used to support its argument that it can provide cost-effective health care is questionable. The timing of the decision and the failure of VUMC to be forthcoming with its decision is tantamount to providing false, incorrect, or misleading information in the CON application.

VRH has asserted it will be a participant in TennCare, Medicare, and other federal and state reimbursement programs, similar to Intervenor's other facilities. VRH has presented that its payment model will be the same as VUMC's three existing community hospitals. Those hospitals have all lost money. According to Dr. Wright Pinson, the Deputy CEO and Chief Health System Office for VUMC, a healthcare system cannot undertake to complete a project unless it is financially feasible. It is not reasonable to believe that a new hospital will generate profits when using the same payment structure as the three existing hospitals that have lost revenue. Presuming a higher cost in order to be sustaining, VRH would likely be a more expensive healthcare option than the current providers. A provider is not required to be the lowest cost provider in a market, only that it be a cost-effective provider of services. Petitioner has proven by a preponderance of the evidence that the effects attributed to competition or duplication of services would not be positive for consumers under TENN. COMP. R. & REGS. 0720-11-.01(3)(b), (c), and (d).

With the change of the CON law that allows the addition of more beds once the originally approved facility is completed, if approved, VRH could continue to expand on the 80-acre property without any further requirement to prove need or advantage to the consumer. It is possible for additional entries into the market of additional providers to result in services that outweigh the demand. Healthcare providers must have a basic level of utilization of services to justify the addition or maintenance of such services or facilities. [redacted]

[redacted]

[redacted]

[redacted] A new hospital has opened in Rutherford County that was approved and known about prior to submission of the instant CON application. The impact of that hospital on creating existing availability to in-patient care or access to services is not yet known. The impact of every preexisting hospital being able to add hospital beds without regard for the need for those beds, available staffing, or benefit to patients is also not yet known.

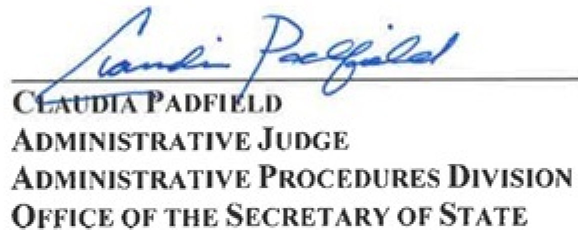
For the foregoing reasons, Petitioners have established by a preponderance of the evidence that the application for a certificate of need, when taken as a whole, for a 42-bed community hospital facility including the initiation of diagnostic and therapeutic cardiac catheterization services does not meet the statutory definition of being necessary to provide needed health care in the area to be served and that the effects attributed to competition or duplication would not be positive for consumers. Additionally, HFC's "decision to issue the certificate of need was based, in whole or in part, on information or data in the application which was false, incorrect, or misleading, whether intentional or not," in violation of TENN. CODE ANN. § 68-11-1617(3).

Accordingly, it is **ORDERED** that Vanderbilt Rutherford Hospital CON's application number CN2109-026 is **DENIED.**

This INITIAL ORDER denying the application for a certificate of need is entered to protect the public in the State of Tennessee, consistent with the purposes fairly intended by the policy and provisions of the law.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the **8th day of June, 2023**.



CLAUDIA PADFIELD
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the **8th day of June, 2023.**

IN THE MATTER OF: **APD CASE No. 25.00-220022J**
TRISTAR STONECREST MEDICAL CENTER,
SAINT THOMAS RUTHERFORD HOSPITAL,
AND WILLIAMSON MEDICAL CENTER V.
TENNESSEE HEALTH FACILITIES
COMMISSION AND VANDERBILT
UNIVERSITY MEDICAL CENTER D/B/A
VANDERBILT RUTHERFORD HOSPITAL

NOTICE OF APPEAL PROCEDURES

REVIEW OF INITIAL ORDER

Attached is the Administrative Judge's decision in your case before the **BEFORE THE TENNESSEE HEALTH FACILITIES COMMISSION** (**COMMISSION**), called an Initial Order, with an entry date of **June 8, 2023**. The Initial Order is not a Final Order but shall become a Final Order unless:

1. **A Party Files a Petition for Reconsideration of the Initial Order:** You may ask the Administrative Judge to reconsider the decision by filing a Petition for Reconsideration with the Administrative Procedures Division (APD). A Petition for Reconsideration should include your name and the above APD case number and should state the specific reasons why you think the decision is incorrect. APD must **receive** your written Petition no later than 15 days after entry of the Initial Order, which is no later than **June 23, 2023**. A new 15 day period for the filing of an appeal to the COMMISSION (as set forth in paragraph (2), below) starts to run from the entry date of an order disposing of a Petition for Reconsideration, or from the twentieth day after filing of the Petition if no order is issued. Filing instructions are included at the end of this document.

   The Administrative Judge has 20 days from receipt of your Petition to grant, deny, or take no action on your Petition for Reconsideration. If the Petition is granted, you will be notified about further proceedings, and the timeline for appealing (as discussed in paragraph (2), below) will be adjusted. If no action is taken within 20 days, the Petition is deemed denied. As discussed below, if the Petition is denied, you may file an appeal. Such an Appeal must be **received** by the APD no later than 15 days after the date of denial of the Petition. *See* TENN. CODE ANN. §§ 4-5-317 and 4-5-322.

2. **A Party Files an Appeal of the Initial Order:** You may appeal the decision to the COMMISSION by filing an Appeal of the Initial Order with APD. An Appeal of the Initial Order should include your name and the above APD case number, and state that you want to appeal the decision to the COMMISSION, along with the specific reasons for your appeal. APD must **receive** your written Appeal no later than 15 days after the entry of the Initial Order, which is no later than **June 23, 2023.** The filing of a Petition for Reconsideration is not required before appealing. *See* TENN. CODE ANN. § 4-5-317.

3. **The COMMISSION decides to Review the Initial Order:** In addition, the COMMISSION may give written notice of its intent to review the Initial Order, within 15 days after entry of the Initial Order.

   If either of the actions set forth in paragraphs (2) or (3) above occurs prior to the Initial Order becoming a Final Order, there is no Final Order until the COMMISSION renders a Final Order.

   If none of the actions in paragraphs (1), (2), or (3) above are taken, then the Initial Order will become a Final Order. **In that event, YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER.**

IN THE MATTER OF:
TRISTAR STONECREST MEDICAL CENTER, SAINT THOMAS RUTHERFORD HOSPITAL, AND WILLIAMSON MEDICAL CENTER V. TENNESSEE HEALTH FACILITIES COMMISSION AND VANDERBILT UNIVERSITY MEDICAL CENTER D/B/A VANDERBILT RUTHERFORD HOSPITAL

APD CASE No. 25.00-220022J

NOTICE OF APPEAL PROCEDURES

STAY

In addition, you may file a Petition, with APD, asking the Administrative Judge for a stay that will delay the effectiveness of the Initial Order. A Petition For Stay must be **received** by APD within 7 days of the date of entry of the Initial Order, which is no later than **June 15, 2023**. *See* TENN. CODE ANN. § 4-5-316. A reviewing court also may order a stay of the Order upon appropriate terms. *See* TENN. CODE ANN. §§ 4-5-322 and 4-5-317.

REVIEW OF A FINAL ORDER

When an Initial Order becomes a Final Order, a person who is aggrieved by a Final Order in a contested case may seek judicial review of the Final Order by filing a Petition for Review "in the Chancery Court nearest to the place of residence of the person contesting the agency action or alternatively, at the person's discretion, in the chancery court nearest to the place where the cause of action arose, or in the Chancery Court of Davidson County," within 60 days of the date the Initial Order becomes a Final Order. *See* TENN. CODE ANN. § 4-5-322. The filing of a Petition for Reconsideration is not required before appealing. *See* TENN. CODE ANN. § 4-5-317.

FILING

Documents should be filed with the Administrative Procedures Division by email *or* fax:

Email: APD.Filings@tn.gov

Fax: 615-741-4472

In the event you do not have access to email or fax, you may mail or deliver documents to:

Secretary of State
Administrative Procedures Division
William R. Snodgrass Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, TN 37243-1102