

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS

<p>DLP Cardiac Partners, Petitioner,</p> <p>and</p> <p>Henderson County Hospital Corporation d/b/a Pardee Hospital, Petitioner-Intervenor,</p> <p>v.</p> <p>NC Department of Health and Human Services, Division of Health Service Regulation, Health Care Planning & Certificate of Need Section Respondent.</p>	<p>22 DHR 2581</p>
<p>Henderson County Hospital Corporation d/b/a Pardee Hospital Petitioner,</p> <p>and</p> <p>DLP Cardiac Partners, Petitioner-Intervenor,</p> <p>v.</p> <p>NC Department of Health and Human Services, Division of Health Service Regulation, Health Care Planning & Certificate of Need Section Respondent.</p>	<p>22 DHR 2597</p>

FINAL DECISION GRANTING SUMMARY JUDGMENT FOR RESPONDENT

THIS MATTER came before the undersigned Administrative Law Judge, David F. Sutton, via a WebEx hearing on February 14, 2023, on the following motions for summary judgment: Petitioner/Petitioner-Intervenor DLP Cardiac Partners' Motion for Summary Judgment ("DLPCP's Summary Judgment Motion"); Petitioner/Petitioner-Intervenor Henderson County

Hospital Corporation d/b/a Pardee Hospital’s Motion for Summary Judgment (“Pardee’s Summary Judgment Motion”); Respondent’s Motion for Summary Judgment Against DLPCP and Pardee (“Respondent’s Summary Judgment Motion”), each of which were filed with the North Carolina Office of Administrative Hearings (“OAH”) on January 31, 2023; DLP Cardiac Partners (“DLPCP” or “Petitioner/Petitioner-Intervenor DLPCP”), Henderson County Hospital Corporation d/b/a Pardee Hospital (“Pardee” or “Petitioner/Petitioner-Intervenor Pardee”), and North Carolina Department of Health and Human Services, Division of Health Service Regulation, Healthcare Planning and Certificate of Need Section (“Respondent”) are collectively referred to herein as the “Parties” and singularly as a “Party.”

The Tribunal considered: DLPCP’s Summary Judgment Motion, Pardee’s Summary Judgment Motion and Respondent’s Summary Judgment Motion; the Parties’ supporting Memoranda filed on January 31, 2023 with their respective Summary Judgment Motions; the February 10, 2023 Responses filed by DLPCP and Pardee in Opposition to Respondent’s Summary Judgment Motion, the February 10, 2023 Response of Respondent in Opposition to DLPCP and Pardee’s Summary Judgment Motions, the February 10, 2023 Response of DLPCP in Support of Pardee’s Summary Judgment Motion, and the February 10, 2023 Response of Pardee in Support of DLPCP’s Summary Judgment Motion; the pleadings of record; all other evidence of record; and arguments of the Parties’ counsel at the February 14, 2023 hearing on the Summary Judgment Motions.

Pursuant to the authority granted to the Undersigned in N.C. Gen. Stat. §§ 150B-33(b)(3a) and 150B-34(e) and 26 N.C.A.C. 3.0101(a), 3.0105, and 3.0115, and it appearing to the Undersigned that there is no genuine issue as to any material fact, and that summary judgment should be entered as a matter of law, it is hereby ORDERED, ADJUDGED, AND DECREED

1. Respondent’s Summary Judgment Motion is GRANTED.
2. Petitioner/Petitioner-Intervenor DLPCP’s Summary Judgment Motion is DENIED.
3. Petitioner/Petitioner-Intervenor Pardee’s Summary Judgment Motion is DENIED
4. A Final Decision is hereby entered for Respondent.

NOTICE OF APPEAL RIGHTS

Under the provisions of North Carolina General Statute § 131E-188(b): "Any affected person who was a party in a contested case hearing shall be entitled to judicial review of all or any portion of any final decision in the following manner. The appeal shall be to the Court of Appeals as provided in G.S. 7A-29(a). The procedure for the appeal shall be as provided by the rules of appellate procedure. The appeal of the final decision shall be taken within 30 days of the receipt of the written notice of the Final Decision and notice of appeal shall be filed with the Office of Administrative Hearings and served on the Department [North Carolina Department of Health and Human Services] and all other affected persons who were parties to the contested hearing.”

Under N.C. Gen. Stat. § 131E-188(b1): "Before filing an appeal of a final decision granting a certificate of need, the affected person shall deposit a bond with the Clerk of the Court of 14 Appeals. The bond requirements of this subsection shall not apply to any appeal filed by the Department."

In conformity with the Office of Administrative Hearings' Rule 26 NCAC 03.0102 and the Rules of Civil Procedure, N.C. Gen. Stat. 1A-1, Article 2, this Final Decision was served on the parties the date it was placed in the mail or served via electronic service as indicated on the Certificate of Service attached to this Final Decision.

IT IS SO ORDERED.

This the 30th day of March, 2023.



David F Sutton
Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service.

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This the 30th day of March, 2023.



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