

STATE OF NORTH CAROLINA
COUNTY OF ORANGE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 UNC 08353

<p>Marc Alperin Petitioner,</p> <p>v.</p> <p>University Of North Carolina Hospitals Respondent.</p>	<p>FINAL DECISION By SUMMARY JUDGMENT in part and DISMISSAL in part</p>
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THIS MATTER comes before the undersigned Administrative Law Judge, Augustus B. Elkins II, on a Motion to Dismiss or Alternative Motion for Summary Judgment filed by Respondent the University of North Carolina Hospitals at Chapel Hill ("UNC Hospitals").

FINDINGS OF FACT

1. On November 12, 2015, after receiving notification of the collection through setoff of his tax refund, Petitioner filed the above-captioned Petition with the North Carolina Office of Administrative Hearings ("NCOAH") contesting the collection by setoff of \$277.05 by UNC Hospitals and the collection by setoff of \$234.34 by UNC Faculty Physicians. The Petition was accepted and this action was initiated.
2. UNC Hospitals is a State agency and is not a constituent institution of the University of North Carolina.
3. UNC Faculty Physicians, by virtue of its affiliation with the University of North Carolina School of Medicine, is both a State agency and a constituent institution of the University of North Carolina.
4. The Undersigned issued an "Order for Pre-Hearing Statements" on January 8, 2016 and therein ordered the parties to file pre-hearing statements by February 8, 2016. UNC Hospitals timely filed its pre-hearing statement. The Undersigned also issued a Scheduling Order on January 8, 2016 and therein ordered the parties to complete discovery by March 14, 2016.
5. UNC Hospitals served Petitioner with a "Request for Admissions" and a "Request for the Production of Documents and Things" on February 2, 2016. Petitioner did not respond to Respondent's discovery requests.

6. On March 7, 2016 UNC Hospitals filed a “Motion to Dismiss or Alternative Motion for Summary Judgment.”
7. On March 11, 2016, the Undersigned issued a “Request for Response to Motion” requiring an action from the Petitioner in response to UNC Hospitals’ Motion.
8. On March 18, 2016, Petitioner filed a Response to UNC Hospitals’ Motion in which Petitioner stated the following:
 - i. On July 26, 2010, Petitioner had a routine biannual exam by physician, Dr. Jon Williams who recommended Petitioner get a colonoscopy as a precautionary measure because men his age have increased risk of having pre-cancerous polyps.
 - ii. On December 17, 2010, Petitioner received medical care from UNC Hospitals (“a colonoscopy procedure at the Endoscopy Center located in the Meadowmont Shopping Village in Chapel Hill”). Petitioner was informed that an outstanding debt was owed to UNC Hospitals for the medical services provided to Petitioner. Petitioner understood that beginning August 1, 2011, office visits at clinics that have an affiliation with UNC Hospital will no longer be billed as hospital visits.
 - iii. Having received a statement from UNC Physicians and Associates on or about January 6, 2011, Petitioner protested the label of “Diagnostic Colonoscopy” as not an accurate description of the preventive procedure recommended by Dr. Williams.
 - iv. On or about October 5, 2011, Dr. Williams sent an email to Dr. Ringel requesting recoding of the colonoscopy. Dr. Ringel did not respond to Dr. Williams or Petitioner.
 - v. In October 2015, Petitioner “received a letter from the N.C. Department of Revenue stating [his] state tax refund had been adjusted to satisfy outstanding debt to UNC Hospitals and UNC Faculty Physicians and Associates.”
9. Petitioner presently owes UNC Hospitals UNC Hospitals \$277.05 on account number 427400510 for medical care rendered to him on December 17, 2010.

CONCLUSIONS OF LAW

1. Pursuant to N.C. Gen. Stat. § 150B-23 *et seq* made applicable through N.C. Gen. Stat. § 105A-8(b), the North Carolina Office of Administrative Hearings (NCOAH) possesses jurisdiction over the parties of this contested case.

2. Pursuant to N.C. Gen. Stat. § 150B-23 *et seq* made applicable through N.C. Gen. Stat. § 105A-8(b), the NCOAH possesses jurisdiction over the subject matter of this contested case with respect to the collection by setoff made by UNC Hospitals.
3. Pursuant to N.C. Gen. Stat. § 150B-23 *et seq* made applicable through N.C. Gen. Stat. § 105A-8(b), the NCOAH lacks subject matter jurisdiction over the collection by setoff made by UNC Faculty Physicians.
4. Where it is obvious that the Court lacks the authority to hear a matter, the Court is precluded from exercising its jurisdiction and is therefore obliged to dismiss the case. *Lovern v. Edwards*, 190 F.3d 648, 654 (4th Cir.1999). The North Carolina Office of Administrative Hearings lacks subject matter jurisdiction to hear collection by setoff action by UNC Faculty Physicians.
5. Petitioner's failure to respond to UNC Hospitals' "Request for Admissions" constitutes an admission as to the truth of each request, and the matters set out in the "Request for Admissions" are established pursuant to Rule 36 of the North Carolina Rules of Civil Procedure and 26 N.C.A.C. 3 .0101.

FINAL DECISION

THEREFORE, based on the foregoing Findings of Fact and Conclusions of Law, the Undersigned determines the following:

1. That the portion of Petitioner's case addressing the collection by setoff made by UNC Faculty Physicians is hereby **DISMISSED**.
2. That, with respect to the portion of Petitioner's case addressing the collection by setoff made by UNC Hospitals, Summary Judgment in favor of UNC Hospitals is hereby **GRANTED**.

NOTICE

THIS IS A FINAL DECISION issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statutes Chapter 150B, Article 4, any party wishing to appeal the Final Decision of the Administrative Law Judge may commence such appeal by filing a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the Final Decision was filed. The appealing party must file the petition within 30 days after being served with a copy of the Administrative Law Judge's Final Decision. N.C. Gen. Stat. §150B-46 describes the contents of the Petition and requires service of the Petition on all parties. This Final Decision was served on the parties as indicated on the Certificate of Service attached to this Final Decision.

Under N.C. Gen. Stat. §150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

IT IS SO ORDERED.

This the 28th day of June, 2016.

Augustus B Elkins II
Administrative Law Judge