

IN THE MATTER OF	*	BEFORE
ANNE ARUNDEL MEDICAL	*	MARYLAND HEALTH
CENTER, INC.	*	CARE COMMISSION
	*	Docket No.: 15-02-2360.

* * * * *

**OPPOSITION OF ANNE ARUNDEL MEDICAL CENTER, INC. TO MOTION
TO STRIKE AND MOTION *IN LIMINE***

Anne Arundel Medical Center, Inc. (“AAMC”) opposes the Motion to Strike and Motion *in Limine* (the “Motion”) filed by Interested Party Dimensions Health Corporation d/b/a Prince George’s Hospital Center (“PGHC”). The Commission should deny the Motion.

1. Contrary to PGHC’s assertion,¹ AAMC has consistently argued that PGHC did not meet the regulatory standards for protection under COMAR 10.24.17.05(A)(2)(b)(iii) (“Standard (iii)”), and that AAMC would have little to no impact on PGHC’s cardiac surgery program.²

2. PGHC argued, in its exceptions to the Revised Recommended Decision, that PGHC met the criteria for protection under Standard (iii). Yet, PGHC now incongruously contends in its Motion that AAMC should not be able to respond to PGHC’s own argument. For that reason alone, the Motion should be denied.

¹ Motion at ¶¶ 6-7.

² AAMC’s original application noted that its impact on volume at PGHC would be approximately zero, given the paucity of cases performed at PGHC during the applicable measurement period. *See* DI #3 at 92. AAMC reiterated this conclusion in its response to PGHC’s comments in this regard. DI #45GF at 26-28. AAMC then objected to PGHC’s motion to add the data for an impact review into the record as untimely and therefore impermissible. *See* DI #66GF. AAMC then made a similar argument in its Response to Exceptions to the Recommended Decision, which AAMC filed on January 19, 2017. *See* DI #1 at 18-21. Finally, AAMC has again raised these arguments in its Response to Exceptions to Revised Recommended Decision presently before the Commission. *See* Anne Arundel Medical Center Response to Exceptions to Revised Recommended Decision at 17.

3. Additionally, a motion *in limine* is not a proper procedural tool for precluding oral argument on an issue. A motion *in limine* is “a pretrial request that certain inadmissible evidence not be referred to or offered at trial” and is generally used to prevent a jury from hearing the “mere mention” of “highly prejudicial” information.³ Here, PGHC is not trying to prevent the admission of evidence. Rather, PGHC is trying to stop the Commission from hearing a legal argument it would prefer the Commission not hear. Similarly, there is no legal basis for using a motion to strike to prohibit the Commission from hearing legal argument.

4. Moreover, under applicable law, AAMC is entitled to support Commissioner Tanio’s recommended decision for any reason, including a reason Commissioner Tanio did not accept.⁴

5. Finally, AAMC had no reason to file exceptions. AAMC was not aggrieved by the recommendation to award it a CON, nor by Commissioner Tanio’s conclusion that AAMC satisfied Standard (iii). Commissioner Tanio concluded in his Revised Recommended Decision that the impact on PGHC’s program would be minimal because PGHC and AAMC have different referral patterns and because there are plenty of patients in both Counties for both programs to flourish.⁵

6. PGHC and AAMC should be free to argue whether Commissioner Tanio’s impact analysis was proper at oral argument if either chooses to do so.

³ *Motion in Limine*, BLACK’S LAW DICTIONARY (10th ed. 2014).

⁴ *See Darby v. Mercy Cooling Tower Co.*, 190 Md. App. 736, 745 (2010).

⁵ *See generally* DI #121GF at 44-45.

Wherefore, AAMC respectfully requests that the Commission deny the Motion.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "J.E. Montgomery", is written above a horizontal line.

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