

BEFORE THE MARYLAND HEALTH CARE COMMISSION

IN THE MATTER OF

ADVENTIST HEALTHCARE, INC. D/B/A
WASHINGTON ADVENTIST HOSPITAL

Docket No. 13-15-2349

**ADVENTIST HEALTHCARE, INC.'S OPPOSITION TO APPEAL
BY MEDSTAR MONTGOMERY MEDICAL CENTER
FROM DENIAL OF REQUEST FOR EVIDENTIARY HEARING**

Applicant Adventist HealthCare, Inc. ("AHC") submits this opposition to the appeal filed by MedStar Montgomery Medical Center ("MMMC") from the denial of its request for an evidentiary hearing on AHC's application.

It is noteworthy that MMMC has not cited the legal standard under the MHCC regulation for requesting an evidentiary hearing, but presumably it wishes to create the impression that an evidentiary hearing "will assist the reviewer in resolving questions of material fact or witness credibility." *See* COMAR 10.24.01.10D(5). Evidently, the Reviewer -- who considered and analyzed the voluminous filings and data in the record (comprised of 132 entries) and who conducted site visits of both Washington Adventist Hospital's ("WAH") current site and its proposed new site -- believed that an evidentiary hearing was not necessary and would not be of assistance. The Reviewer, Commissioner Frances B. Phillips, RN, MHC, was correct.

MMMC's motives in submitting this appeal are transparent. First, its "appeal" does little more than reargue positions set forth in its Exceptions to the Recommended Decision, which now will afford it additional time to argue its points beyond the ten (10) minute limit for the exceptions hearing. Second, MMMC plainly is unhappy with that Recommended Decision and

wants the opportunity -- through the mechanism of an evidentiary hearing -- to try to convince the Reviewer to change that set forth in her Recommended Decision. However, there is nothing in that Recommended Decision that even suggests that the Reviewer did not understand or did not consider MMMC's submissions and arguments. She just was not persuaded by them. MMMC's failed arguments, however, do not provide a proper basis for the conduct of an evidentiary hearing.

Among MMMC's complaints is its contention that the Reviewer did not address its request that WAH be required to produce patient-specific information that could be utilized by an academician that MMMC hopes to proffer as a witness in an evidentiary hearing, who would design a research study to assess the purported impact of WAH's proposed relocation. In voicing that complaint, MMMC acknowledged that the patient-specific data that WAH would be required to produce and that would be assessed by that university professor is "data that the Commission has not utilized in the past." Indeed, there is no need for such data to be compiled or utilized in this case. The Reviewer and MHCC staff are sufficiently qualified to make determinations regarding unwarranted adverse impact without input from a so-called expert. Such assessments are an integral part of every CON review and the MHCC does not lack the resources or expertise to conduct such evaluations under its own regulation. Moreover, the information submitted by AHC -- and analyzed in depth by the Reviewer -- irrefutably establishes that, as the Reviewer found, "the impacts are simply not that great and . . . AHC has committed to responsible actions that will ameliorate those impacts" (Recommended Decision at 36).

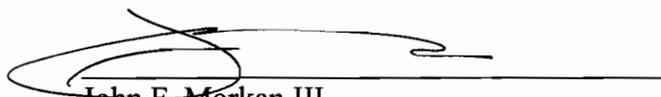
In this CON review, MHCC has been afforded substantial opportunities to present information in the form of comments on the CON application, comments on the completeness

submissions and responses to requests for additional information. The filings and opportunities for input have been many and substantial.

It would indeed be an anomalous result for the Commission to determine that an evidentiary hearing must be held to assist the Reviewer in resolving questions of material fact when the Reviewer herself deemed such a hearing unnecessary, and nothing in her Recommended Decision supports the notion that further fact-finding would be of assistance to her.

AHC respectfully asserts that the Reviewer's decision not to conduct an evidentiary hearing was correct, and that MMMC's appeal is without merit and properly must be denied.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT on this 10th day of December, 2015, a copy of the foregoing Adventist Healthcare, Inc.'s Opposition to Appeal by MedStar Montgomery Medical Center from Denial of Request for Evidentiary Hearing was sent via email and first class mail to:

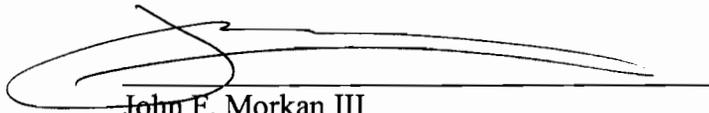
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