

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

WUESTHOFF MEMORIAL HOSPITAL, INC.,)
d/b/a WUESTHOFF MEMORIAL HOSPITAL,)
)
Petitioner,)
)
vs.) CASE NO. 93-0963
)
AGENCY FOR HEALTH CARE)
ADMINISTRATION,)
)
Respondent.)
_____)

RECOMMENDED ORDER

This case was heard by Eleanor M. Hunter the designated Hearing Officer of the Division of Administrative Hearings, on May 26-28, 1993, in Tallahassee, Florida.

APPEARANCES

For Petitioner: Kenneth F. Hoffman, Attorney
Patricia A. Renovitch, Attorney
OERTEL, HOFFMAN, FERNANDEZ
& COLE, P.A.
Post Office Box 6507
Tallahassee, Florida 32302

For Respondent: Lesley Mendelson, Senior Attorney
Agency For Health Care Administration
The Atrium Building, Suite 301
325 John Knox Road
Tallahassee, Florida 32303

STATEMENT OF THE ISSUES

Whether the application of Wuesthoff Memorial Hospital, Inc. d/b/a Wuesthoff Memorial Hospital ("Wuesthoff"), for the conversion of ten acute care beds to ten Level II neonatal intensive care beds meets, on balance, the applicable statutory and rule criteria for approval.

PRELIMINARY STATEMENT

On August 7, 1992, the Agency for Health Care Administration published a fixed need pool for zero numeric need for additional Level II NICU beds in District 7. Wuesthoff filed an application for a Certificate of Need to convert ten acute care beds to ten Level II NICU beds, which was preliminarily denied by the Agency. This proceeding was initiated to challenge that preliminary decision.

At the hearing, Wuesthoff presented the testimony of Joseph Williams, M.D. (expert in obstetrics and gynecology); Linda L. Miedema, R.N. (expert in nursing care, maternal-child services, nurse staffing and neonatal intensive care equipment); Myra Sue Cody, R.N. (expert in community health); Javier Diaz, M.D. (expert in pediatrics and neonatology); Margo Kelly, C.P.A. (expert in health care planning, health care finance and accounting); Ronald Eason, M.D. (expert in obstetrics and gynecology); Joan M. Braun; and the deposition testimony of Stephen J. Carlan, M.D. Wuesthoff's exhibits 1-7 were received in evidence. Ruling was reserved on the admissibility of Exhibit 8. AHCA presented the testimony of Helen O'Laughlin (expert in health planning), and exhibits 1-7, which were received in evidence.

The transcript of the proceedings was filed with the Division of Administrative Hearings on June 12, 1993. Proposed findings of fact and conclusions of law were filed on July 16, 1993.

FINDINGS OF FACT

1. Wuesthoff Memorial Hospital, Inc., d/b/a Wuesthoff Memorial Hospital ("Wuesthoff") is a 303 bed acute care hospital in Rockledge, Florida, in Brevard County, District 7.

2. The Agency For Health Care Administration ("AHCA") is the state agency designated by statute to issue, revoke, or deny Certificates of Need ("CON") for health care beds and services.

3. Wuesthoff is the applicant for a CON to convert ten acute care beds to a ten bed Level II neonatal intensive care unit ("NICU"), for total project costs of \$1,239,330.

4. By prehearing stipulation, the parties agreed to the following facts:

(1) the fixed need pool for Level II NICU beds for District 7 shows zero net numeric bed need;

(2) there are 41 licensed and 18 approved Level II NICU beds in District 7, 10 in Brevard County, 49 in Orange County, none in Osceola and Seminole Counties;

(3) the letter of intent and CON application were filed timely and properly deemed complete;

(4) Wuesthoff does not have any approved Level II NICU beds;

(5) the District 7 Health Plan, including the 1991 CON Allocation Factors, are applicable to the review of this application; and

(6) the 1989 State Health Plan is also applicable to the review of this application.

5. With regard to the statutory criteria, the parties also agreed that:

(1) Wuesthoff's historic record of providing high quality care is not in dispute;

- (2) Wuesthoff does not maintain that its NICU service will be intended as a research and education facility;
- (3) the availability of resources, including management personnel and funds for capital and operating expenditures, for project accomplishment and operation, is not in dispute;
- (4) the immediate and long term financial feasibility of the proposal as demonstrated in Wuesthoff's application are not in dispute, assuming Wuesthoff proves the accuracy of utilization assumptions;
- (5) Wuesthoff does not provide a substantial portion of services or resources to individuals not residing within the district or in adjacent districts;
- (6) Wuesthoff's past levels of service to Medicaid and medically indigent patients are not in dispute;
- (7) the special needs and circumstances of health maintenance organizations are not applicable to this application; and
- (8) the costs and methods of proposed construction are not in dispute.

6. At issue in this case are the statutory review criteria in Subsections 408.035(1)(a), (b), (d), (e), (f), portions of (h) and (i), (j) and (l), Florida Statutes (1992 supp.). Subsections 408.035(2)(a), (b), (c) and (d) are also in dispute.

NEED

7. Subsection 408.035(1)(a) requires consideration of need in relation to state and local health plans. The 1989 State Health Plan and CON allocation factors in the 1991 District 7 Health Plan are applicable to the review of Wuesthoff's CON application.

8. Wuesthoff is not located in Orange County and, therefore, does not meet the District 7 factor favoring Orange County providers who will serve Medicaid newborns.

9. The second factor favors applicants proposing to provide at least 45 percent of all patient days to Medicaid patients and 6 percent to indigent patients. Wuesthoff projected that it would achieve 50.5 percent Medicaid patient days and 4.5 percent to uninsured patients. Despite these projections, Wuesthoff failed to make a commitment to have its CON conditioned on the provision of specified percentages Medicaid and indigent patient days. On this basis, AHCA concluded that Wuesthoff fails to meet the factor. Wuesthoff's position is accepted. Its projections justify favorable consideration under this factor, its historic Medicaid service supports its projections, and AHCA can condition the CON if appropriate.

10. The third factor requires applicants to identify specific services, educational programs, and/or interventions which will provide for an unmet need. This factor is also related to Subsection 408.035(1)(b) - the availability and accessibility of existing and approved Level II NICU beds in the district;

(2)(a) - the availability of less costly more efficient facilities; and (2)(c) and (d) - availability and efficiency of existing inpatients facilities, and problems in obtaining existing inpatient care in the absence of the proposed services.

11. There is no dispute that there is zero numeric need for additional Level II NICU beds in District 7. Level II beds exist at Holmes Regional Medical Center ("Holmes") in Melbourne Brevard County, and in Orange County at Winter Park Memorial Hospital ("Winter Park"), Orlando Regional Medical Center ("ORMC") and Florida Hospital.

12. Holmes, the only Level II NICU in Brevard County, is, however, not available because its 10 Level II NICU beds have had occupancy levels not less than 122 percent and up to 147 percent during the past three years. Holmes provided 36.8 percent of the NICU services in District 7, with ten of the 59 licensed or approved beds, or 17 percent of the District beds. There was also evidence that Holmes' physicians do not accept transfers of indigent or Medicaid obstetrics patients from the service area of Wuesthoff and from northern Brevard County.

13. In 1992, district wide occupancy in Level II NICU beds was over 95 percent. All of the other providers, except Holmes, are located in Orange County. Winter Park's 1992 occupancy rate was only 34 percent in its 5 bed unit. Florida Hospital, with a 1992 rate of 87.8 percent in 14 beds, has been approved for 8 additional beds. ORMC, with a 1992 occupancy rate averaging 90.2 percent, has approval for an additional 10 beds.

14. Available beds at Winter Park or Florida Hospital have not historically alleviated overcrowding at Holmes. At hearing, AHCA's expert health planner testified that Holmes reached 122 percent occupancy when Winter Park was at 30 percent and Florida Hospital was 58.2 percent.

15. Wuesthoff has demonstrated that Winter Park, Florida Hospital, and ORMC are geographically and economically inaccessible to Medicaid and indigent patients in Wuesthoff's service area.

16. Expert testimony linked indigency to a greater need for NICU care. Wuesthoff demonstrated that Medicaid and indigent obstetrics patients in its service area cannot and do not use the facilities in Orange County adequately and appropriately for prenatal care or delivery due to transportation and economic difficulties. Indigent patients with high risk pregnancies served by the Brevard County Public Health Unit are referred to ORMC. Experts estimated that fewer than 50 percent of those end up delivering at ORMC.

17. For Medicaid patients who comply with referrals for prenatal care, Medicaid is charged \$119 per patient per non-emergency, pre-scheduled trip to ORMC. For infants born in Brevard County in need of Level II care, emergency transportation to ORMC costs \$700 by ambulance or over \$2000 by helicopter.

18. The number of Public Health Medicaid or indigent obstetrics patients referred to ORMC from the Wuesthoff area was reasonably estimated to be 250 patients a year. With 50 percent of the babies needing Level II care, the estimate of 125 neonatal referrals is reasonable.

19. The statutory criterion of need in relation to the State Health Plan also requires consideration of preferences for applicants (1) converting from acute care to NICU beds; (2) proposing to serve Children's Medical Services ("CMS"), Medicaid and charity patients; and (3) proposing to serve substance abusing pregnant and postpartum women. AHCA agreed that the Wuesthoff CON application meets all of the applicable State Health Plan preferences. Wuesthoff is proposing, as also required by AHCA rule, to convert acute care beds, currently utilized at 56.33 percent occupancy. In 1992, Medicaid obstetric patients days accounted for 50.5 percent of the total. A CMS clinic is located on the Wuesthoff campus and receives services from its staff pediatricians. See also, 59C-1.042(3)(j) and (k), F.A.C.

20. Wuesthoff demonstrated the absence of any outpatient alternatives for Level II NICU beds, as required in Subsection 408.035(1)(d), Florida Statutes, (1992 supp.).

21. Wuesthoff fails to comply with the criteria in Subsections 408.035(1)(e), (f), (g), (j) and (k), Florida Statutes, (1992 supp.). It does not plan to jointly operate a NICU with other providers, although it is under consideration as a satellite regional perinatal intensive care center ("RPICC"). The proposed services are available in adjoining areas, including Volusia County to the north, where Level II NICU occupancy was 85 percent in 1992. Wuesthoff does not intend to be a research or educational facility, nor will it serve substantial numbers of individuals residing outside its service district. Wuesthoff is not a health maintenance organization hospital.

UTILIZATION AND OPERATIONS

22. Pursuant to Subsections 408.035(1)(h), (i) and (l), and (2)(a), Wuesthoff must be able to staff and fund a Level II NICU that is financially feasible and does not impact negatively health services quality or costs.

23. AHCA presented no evidence at hearing to contradict that presented by Wuesthoff to show that it has the staff and funds for its proposed project. Wuesthoff also has shown that it will profit from the conversion of underutilized acute care beds to Level II NICU beds.

24. Rule 59C-1.042, Florida Administrative Code, includes the methodology for calculating numeric need, among other requirements for approval of Level II NICU programs. Numeric need, under the rule, is zero. In fact, the calculations show that 15 more Level II beds than needed have been approved in District 7.

25. As required by the rule, average occupancy rates in District 7 exceeded 80 percent in the 12 months ending 6 months prior to the quarter in which numeric need was calculated.

26. The rule also favors RPICC's. Wuesthoff is not a RPICC, although it is under consideration as a satellite of the ORMC RPICC.

27. Wuesthoff is not an existing provider of Level II NICU services, and therefore, does not qualify for additional beds under the rule.

28. As required by the NICU rule, Wuesthoff's application seeks the establishment of the minimum size Level II unit of ten beds. The applicant also has on staff a neonatologist, a head nurse with experience and training in neonatal intensive care, registered nurses, respiratory therapists, and social

services personnel with the required training. Wuesthoff is capable of performing the blood gas analyses, clinical laboratory support services, and intervention screening. If approved, Wuesthoff would also be eligible to participate in a county grant-funded neonatal developmental disabilities program.

29. Wuesthoff either has installed or has made appropriate plans to obtain the equipment and to make the renovations required by Subsections (9)(b) and (c) of the Rule.

30. Wuesthoff is capable of meeting the data reporting requirements of Subsection 13 of the Rule.

31. The two hour travel time for geographic access to Level II NICU services is met by the existing District 7 providers, and Wuesthoff's proposal is not needed to meet that standard.

MINIMUM BIRTH VOLUME

32. Rule 59C-1.042(6), provides in relevant part, as follows:

Hospitals applying for Level II NICU services shall not normally be approved unless the hospital had a minimum service volume of 1,000 live births for the most recent 12-month period ending 6 months prior to the beginning date of the quarter of the publication of the fixed need pool.

33. Wuesthoff does not meet the 1000 minimum number of births. In 1991, there were 963 live births at Wuesthoff. From 1988-1990, live birth at Wuesthoff exceeded 1000. In 1992, Wuesthoff had 998 live births. AHCA asserts that the quality of care that volume requirements assure will be adversely affected by the approval of Wuesthoff's application. Wuesthoff has presented competent, substantial evidence that this concern is not well founded, for the following reasons: A privately-owned Birthing Center located on Merritt Island in Brevard County, is staffed by a doctor who owns the facility and has hospital privileges only at Wuesthoff. At the Birthing Center, there were 124 deliveries in 1990, 156 in 1991, and 178 in 1992. The Birthing Center, Jess Parrish Memorial Hospital in Titusville, and Cape Canaveral Hospital, all are Brevard County obstetrics facilities without Level II NICU services. In fact, births at Cape Canaveral exceeded 1000 in 1992. The live births in these three Brevard County facilities, at Wuesthoff, and the overcrowding at the Level II NICU at Holmes, provide a reasonable basis to conclude that Wuesthoff can exceed the minimum birth volume necessary to meet the quality of care objectives of the rule.

34. As required by Subsections (11) and (12) of the NICU rule, Wuesthoff has 24 hour emergency transportation in cooperation with Jess Parrish Memorial Hospital and Cape Canaveral Hospital. Wuesthoff has a transfer agreement with ORMC, which has all levels of NICU care.

35. AHCA also questioned Wuesthoff's utilization assumption and projections. With combined live births at Brevard facilities without Level II NICUs exceeding 3,000 a year, with two of the facilities jointly operating an emergency transportation service with Wuesthoff, and the third staffed by a

obstetrician with privileges only at Wuesthoff, Wuesthoff's assumptions that the majority of neonates born at these facilities needing Level II NICU care will be transferred to Wuesthoff are reasonable.

36. As agreed in the prehearing stipulation, because utilization projections are found reasonable, Wuesthoff's proposal is financially feasible.

CONCLUSIONS OF LAW

37. The Division of Administrative Hearings has jurisdiction over the subject matter of and parties to this proceeding, pursuant to Subsections 408.039(5) and 120.57(1), Florida Statutes.

38. Wuesthoff, as the applicant, has the burden of proving its entitlement to a CON based on a balanced consideration of statutory and rule criteria. *Boca Raton Artificial Kidney Center v. Department of Health and Rehabilitative Services*, 475 So.2d 260 (Fla. 1st DCA 1985); *Balsom v. Department of Health and Rehabilitative Services*, 486 So.2d 1341 (Fla. 1st DCA 1986).

39. Wuesthoff meets all state and local health plan criteria, except the local criterion for Orange County Medicaid providers.

40. AHCA emphasized the tertiary nature of Level II NICU services, the absence of numeric need and Wuesthoff's failure to meet minimum birth volumes as reasons to deny the CON application.

41. The need for Wuesthoff's services was demonstrated by the lack of space at Holmes and the geographic inaccessibility of other District 7 Level II providers for Medicaid and indigent patients.

42. There is competent, substantial evidence that Wuesthoff's failure to meet minimum birth volumes in 1991 in its obstetrics unit will not adversely affect quality of care, utilization projections, or the financial feasibility of Wuesthoff's proposal.

43. On balance, Wuesthoff has demonstrated that its CON application meets the criteria of the statutes and rules provided its CON is conditioned on providing 51 percent of total Level II NICU patient days to Medicaid or indigent patients.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a Final Order be issued approving Certificate of Need 7081 to Wuesthoff Memorial Hospital to convert ten acute care beds to a ten bed Level II neonatal intensive care unit conditioned upon Wuesthoff's providing not less than a combined total of 51 percent Medicaid and indigent patient days in the unit.

DONE AND ENTERED this 10th day of November, 1993, in Tallahassee, Leon County, Florida.

ELEANOR M. HUNTER
Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550
(904) 488-9675

Filed with the Clerk of the
Division of Administrative
Hearings this 10th day of
November, 1993.

APPENDIX TO RECOMMENDED ORDER, CASE NO. 93-0963

To comply with the requirements of Section 120.59(2), Fla. Stat. (1991), the following rulings are made on the parties' proposed findings of fact:

Petitioner's Proposed Findings of Fact.

1. Accepted in Finding of Fact 1.
2. Subordinate to Finding of Fact 33.
3. Accepted in Finding of Fact 4.
4. Accepted in Finding of Fact 4.
5. Accepted in Findings of Fact 11, 12, and 13.
6. Subordinate to Finding of Fact 16.
7. Subordinate to Finding of Fact 16.
8. Subordinate to Finding of Fact 16.
9. Subordinate to Findings of Fact 16 and 17.
10. Subordinate to Findings of Fact 15 and 17.
11. Subordinate to Findings of Fact 12 and 13.
12. Accepted in Finding of Facts 15 and 18.
13. Accepted in Finding of Fact 15.
14. Accepted in Finding of Fact 16.
15. Subordinate to Finding of Fact 17.
16. Accepted in Finding of Fact 17.
17. Subordinate to Finding of Fact 16.
18. Accepted in Finding of Fact 17.
19. Accepted in Finding of Fact 15.
20. Accepted in Finding of Fact 17.
21. Subordinate to Finding of Fact 16.
22. Subordinate to Finding of Fact 16.
23. Subordinate to Finding of Fact 16.
24. Subordinate to Finding of Fact 16.
25. Subordinate to Finding of Fact 16.
26. Subordinate to Finding of Fact 16.
27. Subordinate to Finding of Fact 16.
28. Accepted in Finding of Fact 16.
29. Accepted in Finding of Fact 12.
30. Subordinate to Finding of Fact 16.
31. Accepted in Finding of Fact 16.

32. Accepted in Finding of Fact 15.
33. Accepted in Finding of Fact 15.
34. Accepted in Conclusions of Law 40.
35. Accepted in Finding of Fact 15.
36. Subordinate to Finding of Fact 16.
37. Accepted in Finding of Fact 16.
38. Subordinate to Finding of Fact 16.
39. Subordinate to Finding of Fact 16.
40. Subordinate to Finding of Fact 16.
41. Subordinate to Finding of Fact 15.
42. Subordinate to Finding of Fact 16.
43. Accepted in Finding of Fact 12.
44. Subordinate to Finding of Fact 16.
45. Accepted in Finding of Fact 21.
46. Accepted in Finding of Fact 16 and 17.
47. Accepted in Finding of Fact 16.
48. Subordinate to Finding of Fact 12.
49. Accepted in Finding of Fact 28.
50. Subordinate to Findings of Fact 16 and 17.
51. Subordinate to Findings of Fact 16 and 17.
52. Subordinate to Findings of Fact 16 and 17.
53. Subordinate to Findings of Fact 16 and 17.
54. Accepted in Findings of Fact 21 and 26.
55. Accepted in Findings of Fact 21 and 26.
56. Subordinate to Findings of Fact 21 and 26.
57. Subordinate to Findings of Fact 21 and 26.
58. Subordinate to Findings of Fact 21 and 26.
59. Subordinate to Findings of Fact 21 and 26.
60. Subordinate to Findings of Fact 21 and 26.
61. Subordinate to Findings of Fact 21 and 26.
62. Subordinate to Findings of Fact 21 and 26.
63. Subordinate to Findings of Fact 21 and 26.
64. Subordinate to Findings of Fact 21 and 26.
65. Subordinate to Findings of Fact 21 and 26.
66. Subordinate to Findings of Fact 21 and 26.
67. Accepted in Finding of Fact 17.
68. Subordinate to Finding of Fact 16.
69. Subordinate to Finding of Fact 17.
70. Subordinate to Finding of Fact 18.
71. Accepted in Finding of Fact 35.
72. Subordinate to Findings of Fact 35.
73. Subordinate to Finding of Fact 12 and 35.
74. Accepted in Finding of Fact 19.
75. Accepted in Finding of Fact 19.
76. Accepted in Finding of Fact 9.
77. Accepted in Finding of Fact 9.
78. Accepted in Finding of Fact 78.
79. Accepted in Conclusions of Law 39.
80. Accepted in Finding of Fact 12-15.
81. Accepted in Finding of Fact 12.
82. Accepted in Finding of Fact 12.
83. Accepted in Finding of Fact 12-13.
84. Accepted in Finding of Fact 12.
85. Accepted in relevant part in Finding of Fact 32.
86. Accepted in relevant part in Finding of Fact 32.
87. Accepted in relevant part in Finding of Fact 32.
88. Accepted in relevant part in Finding of Fact 32.

89. Accepted in relevant part in Finding of Fact 32.
90. Accepted in Finding of Fact 20.
91. Rejected Conclusion in Findings of Fact 21.
92. Rejected Conclusion in Findings of Fact 21.
93. Rejected Conclusion in Findings of Fact 21.
94. Accepted in Finding of Fact 23.
95. Accepted in Finding of Fact 23.
96. Accepted in Finding of Fact 17.
97. Accepted in Finding of Fact 33.
98. Accepted in Finding of Fact 21.
99. Accepted in Finding of Fact 21.
100. Accepted in Finding of Fact 23.
101. Accepted in Finding of Fact 5.
102. Accepted in Finding of Fact 9.
103. Accepted in Finding of Fact 9.
104. Accepted in Finding of Fact 9.
105. Accepted in Findings of Fact 10-17.
106. Accepted in Finding of Fact 12.
107. Accepted in Finding of Fact 15.
108. Accepted in Finding of Fact 14.
109. Accepted in Finding of Fact 12.
110. Accepted in Finding of Fact 15.
111. Accepted in Findings of Fact 10-17.
112. Accepted in Findings of Fact 10-17.
113. Accepted in Finding of Fact 24.
114. Accepted in Finding of Fact 24.
115. Accepted in Finding of Fact 25.
116. Accepted in Conclusions of Law 42.
117. Accepted in Finding of Fact 19.
118. Accepted in Finding of Fact 19.
119. Accepted in Finding of Fact 28.
120. Accepted in Finding of Fact 28.
121. Accepted in Finding of Fact 33.
122. Accepted in Finding of Fact 31.
123. Accepted in Finding of Fact 28.
124. Accepted in Finding of Fact 29.
125. Accepted in Finding of Fact 34.
126. Accepted in Finding of Fact 34.
127. Accepted in Finding of Fact 30.
128. Accepted in general in Conclusions of Law 42.
129. Accepted in Finding of Fact 11.
130. Accepted in Findings of Fact 13 and 24.
131. Accepted in Finding of Fact 14.

Respondent's Proposed Findings of Fact.

1. Accepted in Findings of Fact 1 and 4.
2. Accepted in Finding of Fact 3.
3. Accepted in Finding of Fact 4.
4. Accepted in Finding of Fact 4.
5. Accepted in Finding of Fact 8.
6. Rejected in Findings of Fact 9.
7. Rejected in Findings of Fact 10.
8. Accepted in Finding of Fact 19.
9. Accepted in Finding of Fact 19.
10. Accepted in Conclusions of Law 40.
11. Rejected in Conclusions of Law 41.

12. Accepted in Finding of Fact 4.
13. Accepted in Finding of Fact 4.
14. Accepted in Finding of Fact 24.
15. Accepted in Finding of Fact 13.
16. Accepted in Finding of Fact 25.
17. Accepted in Finding of Fact 13.
18. Accepted in Finding of Fact 4.
19. Accepted in Findings of Fact 21 and 26.
20. Subordinate to Finding of Fact 21.
21. Subordinate to Finding of Fact 21.
22. Subordinate to Finding of Fact 21.
23. Subordinate to Finding of Fact 21.
24. Subordinate to Finding of Fact 21.
25. Subordinate to Finding of Fact 21.
26. Accepted in Finding of Fact 31.
27. Accepted in Findings of Fact 16 and 17.
28. Subordinate to Finding of Fact 16.
29. Accepted in Findings of Fact 15-17.
30. Accepted in Finding of Fact 17.
31. Accepted in Finding of Fact 17.
32. Accepted in Finding of Fact 16.
33. Subordinate to Finding of Fact 16.
34. Subordinate to Finding of Fact 16.
35. Rejected in Findings of Fact 12.
36. Accepted in Finding of Fact 35.
37. Accepted in Finding of Fact 12.
38. Rejected first sentence in Finding of Fact 35.
39. Accepted in Finding of Fact 35.
40. Accepted in Finding of Fact 5.
41. Accepted in Finding of Fact 28.
42. Accepted in Finding of Fact 33.
43. Accepted in Finding of Fact 33.
44. Accepted in Finding of Fact 28.
45. Accepted in Finding of Fact 34.
46. Accepted in Finding of Fact 34.
47. Accepted in Finding of Fact 35.
48. Accepted in Finding of Fact 5.
49. Accepted in Finding of Fact 20.
50. Accepted in Finding of Fact 21.
51. Accepted in Finding of Fact 21.
52. Accepted in Finding of Fact 21.
53. Accepted in Findings of Fact 5 and 22.
54. Accepted in Findings of Fact 5 and 22.
55. Accepted in Finding of Fact 21.
56. Accepted in Finding of Fact 23.
57. Accepted in Findings of Fact 5 and 36.
58. Accepted in Finding of Fact 35.
59. Subordinate to Finding of Fact 35.
60. Accepted in Conclusions of Law 40.
61. Subordinate to Finding of Fact 35.
62. Rejected in Findings of Fact 35.
63. Rejected in Findings of Fact 36.
64. Accepted in Finding of Fact 21.
65. Accepted in Finding of Fact 21.
66. Rejected in Findings of Fact 35.
67. Accepted in Finding of Fact 5.
68. Accepted in Finding of Fact 5.

69. Accepted in Finding of Fact 9.
70. Rejected in Findings of Fact 10-17.
71. Rejected first sentence in Findings of Fact 10-17.
72. Rejected in Findings of Fact 10-17.

COPIES FURNISHED:

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Tallahassee, Florida 32303

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions to this recommended order. All agencies allow each party at least ten days in which to submit written exceptions. Some agencies allow a larger period within which to submit written exceptions. You should contact the agency that will issue the final order in this case concerning agency rules on the deadline for filing exceptions to this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.

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AGENCY FINAL ORDER

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STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

WUESTHOFF MEMORIAL HOSPITAL,
INC. d/b/a WUESTHOFF
MEMORIAL HOSPITAL,

Petitioner,

CASE NO.: 93-0963
RENDITION NO.: AHCA-94-14-S-CON

vs.

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Respondent.

_____ /

FINAL ORDER

The parties reached a Settlement Agreement resolving all disputed issues.

Upon consideration of the foregoing, the Stipulation and Settlement Agreement of December 8, 1993, is approved and the agency's file is CLOSED. CON 7081 is approved pursuant to the terms of the Stipulation and Settlement Agreement.

DONE and ORDERED this 7th day of February, 1994, in Tallahassee, Florida.

Douglas M. Cook, Director
Agency for Health Care Administration

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO A JUDICIAL REVIEW WHICH SHALL BE INSTITUTED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A SECOND COPY ALONG WITH FILING FEE AS PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

Copies furnished to:

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Elizabeth Dudek (AHCA/CON)

Alberta Granger (AHCA/CON)

Elfie Stamm (AHCA/CON))

DOAH

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the above named people by U.S. Mail this 8th day of February, 1994.

R. S. Power, Agency Clerk
State of Florida, Agency for
Health Care Administration
325 John Knox Road
The Atrium Building, Suite 301
Tallahassee, Florida 32303
(904) 922-3808

power/12-30-93

Attachment

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

WUESTHOFF MEMORIAL HOSPITAL, INC.
d/b/a WUESTHOFF MEMORIAL HOSPITAL,

Petitioner,

vs.

CASE NO. 93-0963

STATE OF FLORIDA AGENCY FOR HEALTH
CARE ADMINISTRATION,

Respondent.

_____ /

STIPULATION AND SETTLEMENT AGREEMENT

Petitioner, Wuesthoff Memorial Hospital, Inc. d/b/a Wuesthoff Memorial Hospital (Wuesthoff), and Respondent, State of Florida Agency for Health Care Administration (Agency), by and through undersigned counsel, hereby stipulate and agree as follows:

1. In consideration for the granting of certificate of need #7081 applied for by Wuesthoff, and in light of the Hearing Officer's Recommended Order in this case, Petitioner, Wuesthoff, agrees to accept the Hearing Officer's recommended condition on the certificate of need to the effect that Wuesthoff will provide not less than a combined total of 51 per cent Medicaid and indigent patient days in the Level II NICU unit. In addition, upon the issuance of CON #7081 Wuesthoff will dismiss its Petition in this case.

2. In consideration for acceptance of the above-stated condition by the applicant, the Respondent, Agency, stipulates and agrees to enter a Final Order granting certificate of need #7081, to include conversion of ten acute care beds to a ten-bed Level II neonatal intensive care unit conditioned as set forth in paragraph 1, above.

3. Each party agrees to pay its own costs.

4. The undersigned agree to sign this Stipulation and Settlement Agreement on behalf of their clients.

WHEREFORE, the parties stipulate and agree that certificate of need #7081 shall be issued as requested by the applicant, with the additional condition as set forth in paragraph 1, above, and upon issuance of CON #7081 by the Agency, Wuesthoff will dismiss its Petition in this case.

DATED this 8th day of December, 1993.

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