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DIVISION OF ADMINISTRATIVE HEARINGS

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

RENDITION NO.: AHCA-08-0786 -FOF-CON

CON NO. 9833

ST. JOSEPH'S HOSPITAL, INC. d/b/a
ST. JOSEPH's HOSPITAL,

Petitioner,

DOAH CASE NO. 05-2754CON
AHCA NO. 2005006345

vs.

AGENCY FOR HEALTH CARE
ADMINISTRATION,

Respondent,

and

FLORIDA HEALTH SCIENCES
CENTER, INC., d/b/a TAMPA GENERAL
HOSPITAL and SUN CITY HOSPITAL,
INC., d/b/a SOUTH BAY HOSPITAL,

Intervenors.

_________________________________/

FINAL ORDER

This case was referred to the Division of Administrative Hearings (DOAH) where the assigned Administrative Law Judge (ALJ), J.D. Parrish, conducted a formal administrative hearing. At issue in this proceeding is whether the Agency should approve the Certificate of Need (CON) application filed by St. Joseph's Hospital, Inc. ("St. Joseph's") for a new 90-bed acute care satellite hospital in southeastern Hillsborough County, Agency for Health Care Administration ("Agency" or "AHCA") Acute Care Subdistrict 6-1. The Recommended Order dated May 13, 2008 is attached to this final order and incorporated herein by reference, except where noted infra.

RULINGS ON EXCEPTIONS

Florida Health Sciences Center, Inc. d/b/a Tampa General Hospital ("Tampa General"), and Sun City Hospital, Inc. d/b/a South Bay Hospital ("South Bay") and Galencare, Inc. d/b/a Brandon Regional Hospital ("Brandon") filed exceptions to the recommended order to which St. Joseph's filed a response.

Tampa General's Exceptions

In Exception No. 1, Tampa General took exception to the findings of fact in Paragraphs 40, 41 and 54 of the Recommended Order, arguing that there was no record evidence establishing the anticipated construction costs. However, Tampa General made no showing that the findings of fact in Paragraphs 40, 41 and 54 of the Recommended Order were not based on competent, substantial evidence. The Agency can only reject or modify findings of fact in a recommended order if those findings are not based on competent, substantial evidence. See § 120.57(1)(*l*), Fla. Stat.; Heifetz v. Department of Bus. Regulation, 475 So.2d 1277, 1281 (Fla. 1985) (holding that an agency "may not reject the hearing officer's finding [of fact] unless there is no competent, substantial evidence from which the finding could reasonably be inferred"). Tampa General's argument is irrelevant because the findings of fact in Paragraphs 40, 41 and 54 of the Recommended Order were based on competent, substantial evidence. See Transcript, Volume 5, Pages 543-544, 545-546, 569; Transcript, Volume 7, Pages 886 and 892-896; Transcript, Volume 12, Pages 1554-1555 and 1608; and St. Joseph's Exhibit 31 at Pages 16-17, 24, and 47. Thus, the Agency cannot reject or modify them. Therefore Tampa General's Exception No. 1 is denied.

In Exception No. 2, Tampa General took exception to the ALJ's labeling of the Agency as an "opponent" in the Preliminary Statement. First, the Preliminary Statement is not a finding

of fact or conclusion of law to which a party can take exception. Second, Tampa General's exception is non-sensical because the Agency was opposed to the granting of St. Joseph's CON application and participated as an opponent party in the hearing. Therefore, Tampa General's Exception No. 2 is denied.

In Exception No. 3, Tampa General took exception to the findings of fact in Paragraphs 58-62 of the Recommended Order, arguing that the findings were based on inconsistent frames of reference. However, regardless of Tampa General's argument, the findings of fact in Paragraph 58-62 of the Recommended Order were based on competent, substantial evidence (See, e.g., Transcript, Volume 12, Pages 1540 and 1599-1602; and Agency Exhibit 1), and thus cannot be disturbed by the Agency. See § 120.57(1)(*l*), Fla. Stat.; Heifetz. Therefore, Tampa General's Exception No. 3 is denied.

In Exception No. 4, Tampa General took exception to the findings of fact in Paragraph 17 of the Recommended Order, arguing that the ALJ was applying a different "need" standard in evaluating St. Joseph's CON application that was inconsistent with how the Agency defined need. However, the findings of fact in Paragraph 17 of the Recommended Order were based on competent, substantial evidence. See, e.g., Transcript, Volume 12, Pages 1594 and 1596-1597. Thus, Agency does not have any grounds to reject or modify the findings of fact. See § 120.57(1)(*l*), Fla. Stat.; Heifetz. Therefore, Tampa General's Exception No. 4 is denied.

In Exception No. 5, Tampa General took exception to the findings of fact in Paragraphs 19 and 21 of the Recommended Order, arguing that it was unclear what the term "PSA" that was used by the ALJ in these paragraphs was referring to. A review of the record demonstrates that the "PSA" referred to in Paragraphs 19 and 21 was the proposed service area of St. Joseph's. See, e.g., Transcript, Volume 1, Page 72; Transcript, Volume 4, Page 461; Transcript, Volume 7,

Pages 871-873; and St. Joseph's Exhibits 32 and 35 at Page 8. Since the definition of the term "PSA" is somewhat unclear in these paragraphs, the Agency hereby grants Exception No. 5 to the extent that Paragraph 19 and 21 of the Recommended Order are modified to define "PSA" as proposed service area.

In Exception No. 6, Tampa General took exception to the findings of fact in Paragraph 20 of the Recommended Order, arguing that the findings of fact in that paragraph were inconsistent with other factual findings in the Recommended Order. Tampa General also argued that the ALJ's finding in regards to a growth of 14,900 residents in the "area immediately adjacent to the subject site" was inappropriate and did not demonstrate need for the project at issue. However, Tampa General's arguments are irrelevant. The findings of fact in Paragraph 20 of the Recommended Order were based on competent, substantial evidence (See, e.g., Transcript, Volume 7, Pages 858, 871-872; and Transcript, Volume 10, Page 1355), and thus cannot be disturbed by the Agency. See § 120.57(1)(*l*), Fla. Stat.; Heifetz. Therefore, Exception No. 6 is denied.

In Exception No. 7, Tampa General took exception to the findings of fact in Paragraph 22 of the Recommended Order, arguing that the findings regarding travel times from the southern portion of the PSA were irrelevant to the review criterion. Whether a finding of fact is relevant is immaterial. The findings of fact in Paragraph 22 of the Recommended Order were based on competent, substantial evidence. See, e.g., Transcript, Volume 3, Pages 320-327; and St. Joseph's Exhibit 8. Thus, the Agency is prohibited from rejecting or modifying them. See § 120.57(1)(*l*), Fla. Stat.; Heifetz. Therefore, Tampa General's Exception No. 7 is denied.

In Exception No. 8, Tampa General took exception to the finding of fact in Paragraph 23 of the Recommended Order wherein the ALJ found "[a]ll of the opponent providers have high

occupancy rates and experience seasonal overcapacity," arguing that the only evidence supporting this finding was historical. However, Tampa General's argument is irrelevant because the finding of fact in Paragraph 23 of the Recommended Order was based on competent, substantial evidence. See Transcript, Volume 7, Pages 896-898; Transcript, Volume 9, Pages 1265-1268; Transcript, Volume 10, Page 1369; and St. Joseph's Exhibits 30 and 35. Thus, the Agency cannot alter it. See § 120.57(1)(*l*), Fla. Stat.; Heifetz. Therefore, Exception No. 8 is denied.

In Exception No. 9, Tampa General took exception to the findings of fact in Paragraphs 24, 60 and 65 of the Recommended Order, arguing that it was unfair for the ALJ not to consider evidence that South Bay was pursuing a replacement hospital and instead make findings that it would not further expand its existing facility. However, Tampa General's argument is irrelevant. The findings of fact in Paragraphs 24, 60 and 65 of the Recommended Order were based on competent, substantial evidence. See, e.g., Transcript, Volume 8, Pages 1126 and 1146-1147; and Transcript Volume 9, Pages 1244-1245. Thus, the Agency cannot reject or modify them. See § 120.57(1)(*l*), Fla. Stat.; Heifetz. Therefore, Exception No. 9 is denied.

In Exception No. 10, Tampa General took exception to the findings of fact in Paragraphs 25 and 27 of the Recommended Order, arguing that there was no evidence to support a finding that Brandon was diverting patients from its emergency room due to overcrowding or lack of bed capacity. However, contrary to Tampa General's assertion, the findings of fact in Paragraphs 25 and 27 were based on competent, substantial evidence (See Transcript, Volume 9, Pages 1249-1250 and 1267-1268; and St. Joseph's Exhibits 32 at Page 15 and 43 at Pages 36-39), and thus cannot be disturbed by the Agency. See § 120.57(1)(*l*), Fla. Stat.; Heifetz. Therefore, Exception No. 10 is denied.

In Exception No. 11, Tampa General took exception to the finding of fact in Paragraph 28 of the Recommended Order wherein the ALJ found that "[i]t is unknown whether the new emergency department will adequately cure the high rates of diversion Tampa General experienced in 2007," arguing that the finding was not supported by competent, substantial evidence. Contrary to Tampa General's argument, the finding of fact in Paragraph 28 of the Recommended Order was based on competent, substantial evidence. See, e.g., Transcript, Volume 7, Pages 900-901; and Transcript Volume 8, Pages 1057-1059. Thus, the Agency cannot reject or modify it. See § 120.57(1)(*l*), Fla. Stat.; Heifetz. Therefore, Exception No. 11 is denied.

In Exception No. 12, Tampa General took exception to the findings of fact in Paragraph 29 of the Recommended Order, arguing that the finding was based on pure speculation and was not supported by competent, substantial evidence. However, contrary to Tampa General's assertion, the findings of fact in Paragraph 29 were based on competent, substantial evidence (See Transcript, Volume 8, Pages 1058-1059), and thus cannot be disturbed by the Agency. See § 120.57(1)(*l*), Fla. Stat.; Heifetz. Therefore, Exception No. 12 is denied.

In Exception No. 13, Tampa General took exception to the findings of fact in Paragraph 31 of the Recommended Order, arguing that the finding was irrelevant and contrary to the competent, substantial record evidence. Tampa General's argument is immaterial because the findings of fact in Paragraph 31 of the Recommended Order were based on competent, substantial evidence. See Transcript, Volume 7, Pages 848-849; Transcript, Volume 9, Page 1256; and St. Joseph's Exhibit 38 at Pages 12-13. Thus, the Agency is prohibited from rejecting or modifying them. See § 120.57(1)(*l*), Fla. Stat.; Heifetz. Therefore, Exception No. 13 is denied.

In Exception No. 14, Tampa General took exception to the findings of fact in Paragraph 34 of the Recommended Order, arguing that the findings suggest undue weight should be given to convenience and the addition of choice where there are already many choices. Tampa General's argument is irrelevant because the findings of fact in Paragraph 34 of the Recommended Order were based on competent, substantial evidence (See, e.g., Ruling on Exception No. 13 supra), and thus cannot be disturbed by the Agency. See § 120.57(1)(*l*), Fla. Stat.; Heifetz. Therefore, Exception No. 14 is denied.

In Exception No.15, Tampa General took exception to the findings of fact in Paragraph 43 of the Recommended Order, arguing that the findings were actually conclusions of law contrary to the CON statute. Contrary to Tampa General's argument, Paragraph 43 of the Recommended Order contains findings of fact, not conclusions of law. The Agency is not permitted to re-cast the ALJ's findings of fact as conclusions of law in order to reject or modify them. "An agency cannot reject a hearing officer's findings of fact by treating the issue as one of policy; rather, the agency's function is to apply its policy to the facts which are supported by competent substantial evidence." Lawnwood Medical Center, Inc. v. Agency for Health Care Administration, 678 So.2d 421, 425 (Fla. 1st DCA 1996) (citing Balsam v. Department of HRS, 486 So.2d 1341 (Fla. 1st DCA 1986). Furthermore, the findings of fact in the first five sentences of Paragraph 43 of the Recommended Order were based on competent, substantial evidence (See, e.g., Transcript, Volume 12, Pages 1599-1600; and St. Joseph's Exhibit 42 at Pages 16-17, 25), and thus cannot be rejected or modified by the Agency. See § 120.57(1)(*l*), Fla. Stat.; Heifetz. The finding of fact in the last sentence of Paragraph 43 of the Recommended Order is based on prior Agency precedent (See, e.g., Wellington Regional Medical Center, Inc. et.al v.

AHCA, 30 FALR 7, 57 (AHCA 2007).), and also cannot be disturbed by the Agency. Therefore, Exception No. 15 is denied.

In Exception No. 16, Tampa General took exception to the findings of fact in Paragraph 47 of the Recommended Order, arguing that the ALJ limited consideration of adverse impact to just dollars and cents and the findings in that regard were not supported by competent, substantial evidence. However, contrary to Tampa General's argument, the findings of fact in Paragraph 47 of the Recommended Order were reasonable inferences based on competent, substantial evidence. See, e.g., Transcript, Volume 7, Pages 879, 899, 913-915 and 965-967; and Transcript, Volume 13, Pages 1713-1714. Thus, the Agency is prohibited from rejecting or modifying them. See § 120.57(1)(*l*), Fla. Stat.; Heifetz. Therefore, Exception No. 16 is denied.

In Exception No. 17, Tampa General took exception to the findings of fact in Paragraphs 59 and 60 of the Recommended Order, arguing that the ALJ's finding that "[a]pplying the Agency's assessment, all existing hospital providers could add beds to meet "need" for a Subdistrict and thereby eliminate the approval of any satellite community facility that would address local concerns" was, in actuality, a conclusion of law that was contrary to the applicable CON laws. The ALJ's finding in Paragraph 60 of the Recommended Order to which Tampa

General took exception, is an ultimate finding of fact[1] made by the ALJ after weighing the competent, substantial evidence presented in this case. See, e.g., AHCA Exhibit 1. Thus, the Agency cannot reject or modify it. See § 120.57(1)(*l*), Fla. Stat.; Heifetz. Therefore, Exception No. 17 is denied.

In Exception No. 18, Tampa General took exception to the conclusion of law in Paragraph 74 of the Recommended Order, arguing that recommendation that St. Joseph's agree not to add the beds back to its main campus for a designated period of time was an impermissible application amendment. However, there is established law that supports the Agency's ability to impose conditions on a CON application that were not explicitly agreed to by the applicant in its CON application. See Peterson Health Care v. AHCA, 19 FALR 3861 (AHCA 1997); and Beverly et.al v. AHCA et.al, 17 FALR 3569, 3570 (AHCA 1995). Therefore, Exception No. 18 is denied.

In Exception No. 19, Tampa General took exception to the conclusions of law in Paragraph 75 of the Recommended Order, arguing that they were findings of fact that were not

[1] The "ultimate facts" mentioned above

> are those "necessary to determine issues in [a] case" or the "final facts" derived from the "evidentiary facts supporting them." Id. (citing *Black's Law Dictionary* 1522 (6th ed. 1990)). Ultimate facts are also regularly described as "mixed questions" of law and fact, *see, e.g.,* Antonucci v. Unemp. App. Comm'n, 793 So.2d 1116, 1117 (Fla. 4th DCA 2001), and must generally be made by the fact finder in an administrative proceeding because they are "necessary for proper review of administrative orders." Tedder, 697 So.2d at 902; *see also* San Roman v. Unemp. App. Comm'n, 711 So.2d 93 (Fla. 4th DCA 1998) (finding that whether "good cause" exists for unemployment compensation claimant to voluntarily leave work frequently involves mixed question of law and fact, and is an ultimate fact best left to the fact-finder); Heifetz v. Dep't of Bus. Reg., Div. of Alcoholic Beverages & Tobacco , 475 So.2d 1277 (Fla. 1st DCA 1985) (finding that "negligent supervision and lack of diligence are essentially ultimate findings of fact clearly within the realm of the hearing officer's fact-finding discretion.") (citations omitted).

Costin v. Fla. A&M Univ. Bd. of Trustees, 972 So.2d 1084 (Fla. 5th DCA 2008).

based on competent, substantial evidence. Based on the ruling on South Bay and Brandon's Exception Nos. 18-21 infra, Exception 19 is denied.

In Exception No. 20, Tampa General took exception to the failure of the ALJ to address significant material facts established by competent, substantial evidence. Specifically, Tampa General took exception to the findings of fact in Paragraph 39 of the Recommended Order, and the conclusions of law in Paragraph 74 of the Recommended Order. The findings of fact in Paragraph 39 of the Recommended Order were based on competent, substantial evidence. See, e.g., Transcript, Volume 5, Pages 656-668. Thus, the Agency cannot disturb them. See § 120.57(1)(*l*), Fla. Stat.; Heifetz. In regards to the conclusions of law in Paragraph 74 of the Recommended Order, Tampa General's exception is denied based upon the reasoning in the ruling on South Bay and Brandon's Exception Nos. 18-21 infra.

In Exception No. 21, Tampa General took exception to the ALJ's failure to address material factual issues regarding the availability of scarce nursing and physician resources. However, Tampa General failed to identify the disputed portion of the recommended order by page number or paragraph and failed to identify a legal basis for the exception. While Section 120.57(1)(k), Florida Statutes (2007), requires that the Agency's "final order shall include an explicit ruling on each exception", the Agency "need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record." Thus, the Agency declines to rule on Exception No. 21.

In Exception No. 22, Tampa General took exception to the ALJ's ultimate conclusion in Paragraph 76 of the Recommended Order, arguing that the ALJ substantially lowered the standards for approving a CON application as to render the review process meaningless. Based

on the reasoning set forth in the ruling on South Bay and Brandon's Exception Nos. 18-21 infra, Exception No. 22 is denied.

South Bay and Brandon's Exceptions

In Exception No. 1, South Bay and Brandon took exception to the findings of fact in Paragraph 19 of the Recommended Order, arguing that the ALJ's use of "PSA" in that paragraph was unclear. Based on the reasoning set forth in the ruling on Tampa General's Exception No. 5 supra, Exception No. 1 is granted to the extent that Paragraph 19 is modified to reflect that the term PSA means proposed service area.

In Exception No. 2, South Bay and Brandon took exception to the findings of fact in Paragraph 20 of the Recommended Order, arguing that the findings were vague based on the ALJ's use of PSA. Based on the reasoning set forth in the ruling on Tampa General's Exception No. 6 and South Bay and Brandon's Exception No. 1 supra, Exception No. 2 is denied.

In Exception No. 3, South Bay and Brandon took exception to the findings of fact in Paragraph 21 of the Recommended Order, arguing that the findings of fact in that paragraph were not supported by competent, substantial evidence. However, contrary to South Bay and Brandon's argument, the findings of fact in Paragraph 21 of the Recommended Order were based on competent, substantial evidence. See, e.g., Transcript, Volume 1, Page 72; Transcript, Volume 2, Pages 201-202; Transcript, Volume 4, Pages 4601-461 and 481-483; Transcript, Volume 6, Pages 812-814. Thus, the Agency cannot disturb them. See § 120.57(1)(*l*), Fla. Stat.; Heifetz. Therefore, Exception No. 3 is denied.

In Exception No. 4, South Bay and Brandon took exception to the findings of fact in Paragraph 22 of the Recommended Order, arguing that the finding was not clear. Based on the ruling on Tampa General's Exception No. 7 supra, Exception No. 4 is denied.

In Exception No. 5, South Bay and Brandon took exception to the findings of fact in Paragraph 23 of the Recommended Order, arguing that the breadth of the findings were at odds with the record evidence. Based on the ruling on Tampa General's Exception No. 8 supra, Exception No. 5 is denied.

In Exception No. 6, South Bay and Brandon took exception to the findings of fact in Paragraphs 24 and 60 of the Recommended Order, arguing that the findings unfairly imply that South Bay has no strategic plan to address future need for hospital services in south Hillsborough County. However, South Bay and Brandon's argument is irrelevant. The findings of fact in Paragraphs 24 and 60 of the Recommended Order were based on competent, substantial evidence. See ruling on Tampa General's Exception No. 9 supra. Thus, the Agency cannot reject or modify them. See § 120.57(1)(*l*), Fla. Stat.; Heifetz. Therefore, Exception No. 6 is denied.

In Exception No. 7, South Bay and Brandon took exception to the findings of fact in Paragraphs 25 and 27 of the Recommended Order, arguing that the findings of fact in these paragraphs were not supported by competent, substantial evidence. However, contrary to South Bay and Brandon's assertion, the findings of fact in Paragraphs 25 and 27 of the Recommended Order were based on competent, substantial evidence. See ruling on Tampa General's Exception No. 10 supra; Transcript, Volume 6, Pages 723-724, 754-755, 765 and 770; and Transcript, Volume 7, Page 900. Thus the Agency is prohibited from rejecting or modifying them. See § 120.57(1)(*l*), Fla. Stat.; Heifetz. Therefore, Exception No. 7 is denied.

In Exception No. 8, South Bay and Brandon took exception to the findings of fact in Paragraph 29 of the Recommended Order, arguing that the findings were based on conjecture

and not supported by competent, substantial evidence. Based on the ruling on Tampa General's Exception No. 12 supra, Exception No. 8 is denied.

In Exception No. 9, South Bay and Brandon took exception to the findings of fact in Paragraphs 31 and 34 of the Recommended Order, arguing that the findings regarding "nonprofit hospitals" and "another choice of provider" had no legal relevance. South Bay and Brandon's argument is immaterial. The findings of fact in Paragraphs 31 and 34 of the Recommended Order were based on competent, substantial evidence (See Transcript, Volume 7, Pages 848-849; Transcript, Volume 9, Page 1256; and St. Joseph's Exhibit 38 at Pages 12-13) and thus cannot be disturbed by the Agency. See § 120.57(1)(*l*), Fla. Stat.; Heifetz. Therefore, Exception No. 9 is denied.

In Exception No. 10, South Bay and Brandon took exception to the findings of fact in Paragraphs 38 and 41 of the Recommended Order, arguing that the findings of fact in these paragraphs were not supported by competent, substantial evidence. Contrary to South Bay and Brandon's argument, the findings of fact in Paragraphs 38 and 41 of the Recommended Order were based on competent, substantial evidence. See the ruling on Tampa General's Exception No. 1 supra; and Transcript, Volume 5, Pages 647-668. Thus, the Agency cannot disturb them. See § 120.57(1)(*l*), Fla. Stat.; Heifetz. Therefore, Exception No. 10 is denied.

In Exception No. 11, South Bay and Brandon took exception to the findings of fact in Paragraph 47 of the Recommended Order, arguing that the ALJ's finding that "[i]f non-tertiary patients elect to use the satellite hospital, Tampa General should not be adversely affected" was not supported by competent, substantial evidence. Based on the ruling on Tampa General's Exception No. 16 supra, Exception No. 11 is denied.

In Exception No. 12, South Bay and Brandon took exception to the findings of fact in Paragraph 49 of the Recommended Order, arguing that the findings were not supported by competent, substantial evidence. Contrary to South Bay and Brandon's assertion, the findings of fact in Paragraph 49 of the Recommended Order were based on competent, substantial evidence (See Transcript, Volume 5, Pages 543-544; Transcript, Volume 7, Pages 885-886 and 892-895; and Transcript, Volume 12, Pages 1606-1608) and cannot be rejected or modified by the Agency. See § 120.57(1)(*l*), Fla. Stat.; Heifetz. Therefore, Exception No. 12 is denied.

In Exception No. 13, South Bay and Brandon took exception to the findings of fact in Paragraph 52 of the Recommended Order, arguing that the ALJ's findings concerning the existing providers' financial stability did not conform to the record evidence. The findings of fact in Paragraph 52 of the Recommended Order were reasonable inferences based on competent, substantial evidence. See Transcript, Volume 5, Pages 556-560; Transcript, Volume 8, Pages 1110 and 1158-1159; and Transcript, Volume 11, Page 1506. Thus, they cannot be disturbed by the Agency. See § 120.57(1)(*l*), Fla. Stat.; Heifetz. Therefore, Exception No. 13 is denied.

In Exception No. 14, South Bay and Brandon took exception to the findings of fact in Paragraph 56 of the Recommended Order, arguing that findings of fact should be modified to reflect St. Joseph's admission at hearing that it failed to budget for the proposed condition. South Bay and Brandon's argument is irrelevant. The findings of fact in Paragraph 56 of the Recommended Order were based on competent, substantial evidence. See Transcript, Volume 1, Pages 77-78; and St. Joseph's Exhibit 3. Thus, the Agency cannot reject or modify them. See § 120.57(1)(*l*), Fla. Stat.; Heifetz. Therefore, Exception No. 14 is denied.

In Exception No. 15, South Bay and Brandon took exception to the findings of fact in Paragraphs 58 and 61 of the Recommended Order, arguing that the findings should be modified

to make it clear that the SAAR's findings were preliminary in nature and subject to de novo review through the administrative hearing process. Based on the ruling on Tampa General's Exception No. 3 supra, Exception No. 15 is denied.

In Exception No. 16, South Bay and Brandon took exception to the findings of fact in Paragraph 60 of the Recommended Order, arguing that the ALJ's finding that "[a]pplying the Agency's assessment, all existing hospital providers could add beds to meet 'need' for a Subdistrict and thereby eliminate the approval of any satellite community facility that would address local concerns" should be rejected as a speculative legal conclusion having nothing to do with the case. Based on the ruling on Tampa General's Exception No. 17 supra, Exception No. 16 is denied.

In Exception No. 17, South Bay and Brandon took exception to the findings of fact in Paragraphs 64 and 65 of the Recommended Order, arguing that findings of fact in these paragraphs had no evidentiary support and must be rejected. Contrary to South Bay and Brandon's argument, the findings of fact in Paragraphs 64 and 65 of the Recommended Order were based on competent, substantial evidence. See Transcript, Volume 7, Pages 885-886, 911-913 and 990-991; Transcript, Volume 8, Pages 1126 and 1146-1147; Transcript Volume 9, Pages 1244-1245; Transcript, Volume 10, Pages 1381-1382; Transcript, Volume 11, Pages 1499-1500; and Transcript, Volume 15, Page 2022. Thus, they cannot be disturbed by the Agency. See § 120.57(1)(*l*), Fla. Stat.; Heifetz. Therefore, Exception No. 17 is denied.

In Exception Nos. 18-21, South Bay and Brandon took exception to the conclusions of law in Paragraphs 73-76 of the Recommended Order, arguing in effect that the conclusions of law in these paragraphs had no evidentiary support and went against prior Agency precedent. The conclusions of law in Paragraphs 73-76 of the Recommended Order were based on the

findings of fact in the Recommended Order, which, in turn, were based on competent, substantial evidence. See rulings on Exception Nos. 1-17 supra. Therefore, Exception Nos. 18-21 are denied.

FINDINGS OF FACT

The Agency hereby adopts the findings of fact set forth in the Recommended Order, except where noted supra.

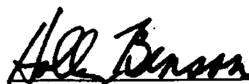
CONCLUSIONS OF LAW

The Agency adopts the conclusions of law set forth in the Recommended Order.

ORDER

Based upon the foregoing, St. Joseph's CON application No. 9833 is granted with the conditions that the new satellite hospital is built in the location specified in the CON application, that 12.5% of St. Joseph's patient days per year are dedicated to Medicaid and charity care, and that St. Joseph's not add back the 90 beds to its existing facility for a period of two years from the date that the new hospital is opened.

DONE and **ORDERED** this 15th day of August, 2008, in Tallahassee, Florida.



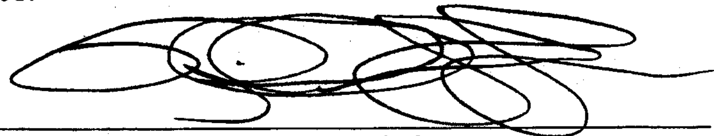
HOLLY BENSON, SECRETARY
AGENCY FOR HEALTH CARE ADMINISTRATION

NOTICE OF RIGHT TO JUDICIAL REVIEW

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 THE 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.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been furnished by U.S. Mail, or by the method indicated, to the persons named below on this 15th day of August, 2008.



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