

STATE OF FLORIDA  
AGENCY FOR HEALTH CARE ADMINISTRATION

NAPLES HMA, LLC d/b/a  
PHYSICIANS REGIONAL MEDICAL  
CENTER – COLLIER BOULEVARD;  
NAPLES HMA, LLC d/b/a PHYSICIANS  
REGIONAL MEDICAL CENTER – PINE  
RIDGE; NAPLES COMMUNITY HOSPITAL,  
INC.; LEE MEMORIAL HEALTH SYSTEM  
d/b/a LEE HEALTH,

Petitioners,

vs.

MEDICAL CENTER OF SOUTHWEST  
FLORIDA, LLC, AND STATE OF  
FLORIDA, AGENCY FOR HEALTH  
CARE ADMINISTRATION,

Respondents.

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CON No. 10523

DOAH Nos. 18-3371 CON  
18-3375 CON  
18-3376 CON  
18-3377 CON

AHCA Nos. 2018009230  
2018009235  
2018009299  
2018009295

NAPLES COMMUNITY HOSPITAL, INC.;  
NAPLES HMA, LLC d/b/a PHYSICIANS  
REGIONAL MEDICAL CENTER- COLLIER  
BOULEVARD; NAPLES HMA, LLC d/b/a  
PHYSICIANS REGIONAL MEDICAL  
CENTER – PINE RIDGE; MEDICAL CENTER  
OF SOUTHWEST FLORIDA, LLC,

Petitioners,

vs.

LEE MEMORIAL HEALTH SYSTEM AND  
STATE OF FLORIDA, AGENCY FOR  
HEALTH CARE ADMINISTRATION,

Respondents.

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CON No. 10524

DOAH Nos. 18-3387 CON  
18-3388 CON  
18-3389 CON  
18-3390 CON

AHCA Nos. 2018009300  
2018009233  
2018009231  
2018009239

## **FINAL ORDER**

THIS CAUSE is before the State of Florida, Agency for Health Care Administration (“the Agency”) concerning the preliminary approvals of Medical Center of South West Florida’s (“MCSWF”) CON application No. 10523 to establish an 80-bed general acute care hospital and Lee Health, Inc.’s (“Lee Health”) CON application No. 10524 to establish an 82-bed general acute care hospital both in District 8, Sub-district 5, Lee County, Florida.

1. The applications were filed in the Hospital Beds and Facilities February 2018 batching cycle and AHCA issued its State Agency Action Report (the “SAAR”) on June 1, 2018, and published notice of its intent to approve MCSWF’s and Lee Health’s Applications in Volume 44, Number 108 of the *Florida Administrative Register* (June 4, 2018) providing affected persons 21 days from the publication date within which to file a petition for hearing.

2. MCSWF filed a Petition for Formal Administrative Proceeding challenging the Agency’ preliminary approval of Lee Health’s CON Application. Lee Health filed a Petition for Formal Administrative Proceeding to contest the Agency’s preliminary approval of MCSWF’s CON Application. The Petitions were forwarded to the Division of Administrative Hearings as well as Petitions for Hearing that had been filed by existing facilities, including: Naples HMA, LLC d/b/a Physicians Regional Medical Center – Collier Boulevard and d/b/a Physicians Regional Medical Center – Pine Ridge; and Naples Community Hospital, Inc. On July 16, 2018, an Order was entered consolidating the matters for hearing.

3. On May 22, 2019, the Administrative Law Judge entered an Order for each party to file a response setting forth its position on the impact to the case if CS/CS/HB 21 concerning “hospital licensure” was to become law by June 3, 2019. The parties sought and received an extension of time to July 1, 2019.

4. On July 1, 2019, the Agency filed a Motion to Dismiss and Memorandum of Law based on the lack of subject matter jurisdiction due to mootness as CS/CS/HB 21, now Chapter 2019-136, Laws of Florida, amended the Florida certificate of need law to remove general hospital projects such as those proposed in these matters from CON review.

5. On July 1, 2019, HMA LLC d/b/a Physician's Regional Medical Center-Collier, Physicians' Regional Medical Center-Pine Ridge, Medical Center of Southwest Florida, LLC and Lee Health each filed responses to the Order dated May 28, 2019, stating that the cases appeared to have been made moot by the passage and signature of CS/CS/HB 21, now Chapter 2019-136, Laws of Florida. Also on July 1, 2019, the Agency filed a Motion to Dismiss and Memorandum of Law in Support advocating that the petitions had been made moot by Chapter 2019-136, Laws of Florida. Physician's Regional and MCSWF filed responses ultimately agreeing that the matter is moot and should be dismissed.

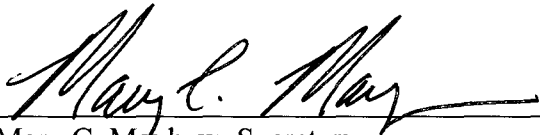
6. On July 19, 2019, the Administrative Law Judge entered an order finding that the case was moot as a result of the change in law, ordering the file be closed and that jurisdiction relinquished to the Agency.

It is therefore, **ORDERED**

1. The petitions for formal hearing are dismissed.

2. The approvals of CON applications Nos. 10523 and 10524 are now moot. As of July 1, 2019, general acute care hospital projects are not subject to CON review. *See* Chapter 2019-136 Laws of Florida § 13.

**ORDERED** in Tallahassee, Florida, on this 9 day of September 2019.

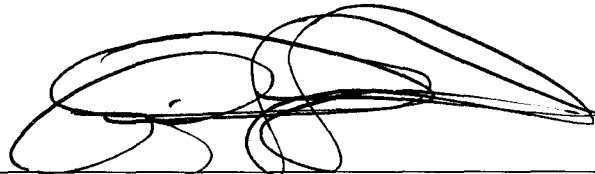
  
Mary C. Mayhew, Secretary  
Agency for Health Care Administration

**NOTICE OF RIGHT TO JUDICIAL REVIEW**

A party who is adversely affected by this Final Order is entitled to judicial review, which shall be instituted by filing the original Notice of Appeal with the Agency Clerk of AHCA, and a copy along with the filing fee 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 of proceedings shall be conducted in accordance with the Florida appellate rules. The Notice of Appeal must be filed within 30 days of the 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 the method designated to the persons named below on this 9<sup>th</sup> day of September, 2019.



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