IN THE CHANCERY COURT OF THE FIRST JUDICIAL DISTRICT
OF HINDS COUNTY, MISSISSIPPI

JACKSON HMA, LLC, d/b/a MERIT CENTRAL PLAINTIFF

VS. CIVIL ACTION NO. G2010-1337

OCEANS BEHAVIORAL HOSPITAL OF
JACKSON, LLC; MISSISSIPPI STATE DEPARTMENT
OF HEALTH; ST. DOMINIC-
JACKSON MEMORIAL HOSPITAL; DEFENDANTS

Mississippi State Department of Health's Memorandum in Support of Motion to Dismiss
Plaintiff's Petition for Declaratory Judgment

Defendant Mississippi State Department of Health ("MSDH") submits this Memorandum in Support of Motion to Dismiss to the Petition filed by the Plaintiff hospital ("Merit").

After reviewing the arguments submitted by Merit, it is unambiguous that the express statutory authority given to MSDH, and the operative State Health Plan and Regulations enacted by MSDH, authorize St. Dominic to transfer a portion of its *existing* beds and services to Oceans Behavioral via a Change of Ownership (or "CHOW") of Services. A CHOW is an authorized regulatory process, adopted by MSDH pursuant to express statutory authority at § 41-7-173(d). The same Behavioral Hospital that was closed in June 2023 will be reopened and restaffed by Oceans. This situation does not require a "new" Certificate of Need (CON). Thus, MSDH correctly approved the requested regulatory service transfer, which authorizes St. Dominic to lease to Oceans the authority to operate services that are affiliated with 83 existing

Psychiatric beds, and 35 existing Chemical Dependency Unit beds without the need to secure a new Certificate of Need. MSDH respectfully submits that the relief sought by Merit should be denied, and the complaint should be dismissed.

Moreover, Merit does not have authority or standing to bring this lawsuit. This is not an *appeal* from a final decision by the State Health Officer. There is no "final order" from which Plaintiff can appeal under the CON statutes. Instead, this is an improper attempt to bootstrap the CON appeal process onto what is otherwise a regulatory decision to which the Plaintiff is a complete stranger and has no private right to file a complaint. This action should be dismissed summarily.

BACKGROUND

The Mississippi Certificate of Need Program

Congress passed legislation in 1974 requiring states to adopt Certificate of Need statutes to prevent the unnecessary duplication of health care facilities. *St. Dominic-Jackson Mem'l Hosp. v. Miss. State Dep't of Health et al.,* 782 So. 2d 81, 83 (Miss. 1998). A few years later, the Mississippi Legislature adopted the Mississippi Health Care Certificate of Need Law of 1979, setting forth the legal parameters of the Certificate of Need program in Mississippi and giving MSDH broad latitude and discretion by specifically empowering MSDH to "[p]rescribe and promulgate such reasonable rules and regulations as may be necessary to the implementation of the purposes of Section 41-7-171, et seq. . . ." Miss. Code Ann. § 41-7-185(c).

Relying on MSDH's expertise, the Mississippi Legislature clearly and expressly stated that MSDH was "authorized to develop and implement a statewide health

certificate of need program[]" and was "authorized and empowered to adopt by rule and regulation:

> (a) Criteria, standards and plans to be used in evaluating applications for certificates of need;
>
> (b) **Effective standards to determine when a person, facility or organization must apply for a certificate of need;**
>
> (c) **Standards to determine when a change of ownership has occurred or will occur; and**
>
> (d) Review procedures for conducting reviews of applications for certificates of need."

Miss. Code Ann. § 41-7-187 (emphasis added). MSDH has adopted regulations and a state health plan to implement Mississippi's CON law. See Mississippi Certificate of Need Review Manual, CMSR 15-009-091; Mississippi State Health Plan FY2022, https://msdh.ms.gov/page/resources/16691.pdf.

PROCEEDINGS

St. Dominic is an acute care hospital located in Jackson, Mississippi that began offering health care services before the enactment of Mississippi's Certificate of Need law. *See Zumwalt v. Jones Co. Bd. of Supervisors*, 19 So. 3d 672 (Miss. 2009) (discussing a "Historical CON" whereby existing facilities are grandfathered in "because the [entity] existed before CONs were required."). St. Dominic is licensed to operate 571 beds, consisting of: (1) 453 acute care beds; (2) 83 adult psychiatric beds; and (3) 35 chemical dependency unit ("CDU") beds. Historically, St. Dominic operated its inpatient behavioral health service line in the Behavioral Health Building which is located on the main campus of St. Dominic (the same

facility at issue here). St. Dominic holds only one (1) license to provide acute care and psychiatric care. Compl., Exh. 5 [MEC 2 at 170].

Less than a year ago, on June 27, 2023, St. Dominic closed its inpatient behavioral health service line, exacerbating an already critical shortage of acute inpatient psychiatric beds within the Jackson metropolitan area as well as the State as a whole. *See id.* at Exh. 1-G. The CON authority for the 83 psychiatric beds and 35 CDU beds is still held by St. Dominic. These beds could be re-utilized tomorrow by St. Dominic if it so chose—without any required regulatory approval from MSDH. The Lease Agreement allows Oceans to *operate* the beds (and existing behavioral health building) without the need for a separate CON. *See Zumwalt*, 19 So. 3d at 687-88 (CON gives authority for facility to exist; License gives authority to operate the authorized facility).

Oceans is a subsidiary of Oceans Healthcare, a provider of behavioral healthcare services which currently operates 36 facilities across the country, including psychiatric hospitals located in Tupelo and Biloxi, Mississippi.

On September 15, 2023, St. Dominic and Oceans entered into a lease agreement under which Oceans agrees to provide the same health services formerly provided by St. Dominic, at the same location, using the same licensed beds, and in the same physical facility located at 2969 North Curran Drive, Jackson, Mississippi (the "Building"). Under the lease, Oceans temporarily acquires the CON *authority owned by St. Dominic.* The existence of the Building and beds at issue are critical facts which are not disputed.

On October 3, 2023, Oceans filed a Notice of Intent to apply for a Certificate of Need. See Compl. Exh. 1 [MEC 2 at 15-18]. On October 20, 2023, Oceans filed its Application for a Certificate of Need, denoting "Change of Ownership" for which it was applying as one of the project types under the "Project Description" category of the application. Compl. Exh. 2 [MEC 2 at 19-136]. Once the completed Application and associated fee were submitted, MSDH began processing the Application in the normal course of its work.[1] MSDH must process a completed application pursuant to statute. Section 41-7-193 requires the "department shall not delay review of an application" and make its recommendation approving or disapproving a complete application within forty-five (45) days of the date the application. Miss. Code Ann. § 41-7-193. Merit filed its objection letter with MSDH and sought to be heard as an interested party under the CON laws. Compl., at ¶16, Ex. 3.[MEC 2 at 137-139].

On December 4, 2023, MSDH staff issued a staff analysis recommending approval of Oceans' application with certain recommended conditions. Compl. Exh. 4 [MEC 2 at 140-158]. An administrative hearing was scheduled for April 2-5, 2024, to consider Oceans' Application. Compl., ¶28.

On February 23, 2024, Oceans and St. Dominic filed a Notice of Intent to Change Ownership (MSDH Form 802 E) with MSDH seeking approval for Oceans to reopen the Building as a separately licensed inpatient psychiatric hospital to be called the "Oceans

1 There was no pre-determination process here although there is such a procedure allowed and authorized by MSDH pursuant to Miss. Code Ann. § 41-7-205. "An applicant proposing a project which may be governed by the provisions of Section 41-7-171 et seq. may submit a determination of reviewability request to obtain a written declaratory opinion regarding the reviewability of the proposed project." Such a pre-application review determination is not appealable. *Id.*

Behavioral Hospital of Jackson," which would involve: (1) St. Dominic leasing the Building to Oceans; (2) Oceans acquiring substantially all of the assets from St. Dominic used in connection with its behavioral health service line; (3) St. Dominic leasing or otherwise transferring its adult psychiatric and chemical dependency unit services, along with the associated 83 adult psychiatric beds and 35 CDU beds and all CON and licensure authority to operate the services and beds, to Oceans; and (4) Oceans obtaining its own license from MSDH to operate a psychiatric hospital in the Behavioral Health Building utilizing 77 adult psychiatric beds, and providing the same services formerly provided by St. Dominic. Compl. Ex. 5 [MEC 2 at 159-172].

MSDH reviewed the CHOW proposal and determined that it could proceed as a "change of ownership" without the need for Oceans to receive a "new" Certificate of Need. On March 5, 2024, MSDH issued a ruling that, "In accordance with Section 41-7-191(g) and (h), Mississippi Code of 1972 Annotated, as amended, you may proceed with this transaction with an effective date of March 5, 2024, or later, **without Certificate of Need review."** Compl., Exh. 6 [MEC 2 at 173-175].

On March 12, 2024, Ocean's "new" CON Application process was stayed pending further notice by an Order issued by the Administrative Hearing Officer. Merit admits no Final Order on the Application has been issued by the State Health Officer. Compl. at ¶ 29.

STANDARD OF REVIEW

A motion under Rule 12(b)(6) tests the legal sufficiency of the complaint, accepting the pleaded allegations of the complaint as true for purposes of deciding the

motion. *Bilbo v. Thigpen*, 647 So. 2d 678, 687 (Miss. 1994) (citations omitted). When reviewing an administrative agency's action, the action of the agency is presumed to be correct, and the burden of proving otherwise is on the challenging party. *Jackson HMA, LLC v. Miss. State Dep't of Health*, 98 So. 3d 980, 985 (Miss. 2012) (citing *Allen v. Miss. Employment Sec. Comm'n*, 639 So. 2d 904, 906 (Miss. 1994). "An agency's conclusions must remain undisturbed unless the agency's order 1) is not supported by substantial evidence, 2) is arbitrary or capricious, 3) is beyond the scope or power granted to the agency, or 4) violates one's constitutional rights. . . . [T]his Court must not reweigh the facts of the case or insert its judgment for that of the agency." *Allen*, 639 So. 2d at 906 (citations omitted); *see also Coe L. Firm PLLC v. Miss. Dep't of Emp. Sec.,* 378 So. 3d 445, 451 (Miss. Ct. App. 2024) ("A rebuttable presumption exists in favor of the administrative agency, and the challenging party has the burden of proving otherwise." (citations omitted)).

ARGUMENT

I. Merit has no standing or private right of action to challenge MSDH's determination that the CHOW was appropriate; This case is nonjusticiable.

For three reasons, this case is nonjusticiable and otherwise inappropriate for this Court's intervention.

First, Merit claims it has standing to sue MSDH because it *might* be affected because "St. Dominic, by allowing Oceans to create a new psychiatric hospital with its leased beds, will not be obligated to transfer psychiatric patients from its emergency department to Oceans for admission." Compl. at ¶22. "With St. Dominic able to transfer

emergent psychiatric patients for admission to other hospitals besides Oceans, this new hospital, separate from St. Dominic emergency department, will experience a lower volume of indigent psychiatric patients than St. Dominic previously treated." *Id.* at ¶ 23. The only hint of potential effect on Merit is found in Paragraph 26 of the Complaint which speculates that "the result of St. Dominic and Oceans' plan is to divert non-paying psychiatric patients away from St. Dominic and Oceans and to transfer these indigent/charity care patients to *other hospitals like Merit, increasing the financial burden of indigent care to Merit." Id.* at 26. Merit's claim of standing fails as a matter of law. It fails to establish any realistic threat of adverse affect because it only speculates that it might experience competitive disadvantage at some point in the future. Even if Merit does have standing, the interpretation and application of the CON laws and Regulations by MSDH is proper.

"Standing is a jurisdictional issue . . . and therefore addresses the fundamental question of the power of courts to act. *In re Initiative Measure No. 65 v. Watson*, 338 So. 3d 599, 605 (Miss. 2021) (citations omitted). To establish standing to sue, Merit must show that it faces an "adverse effect from the conduct of the defendant." *Harrison Cnty. v. City of Gulfport*, 557 So. 2d 780, 782 (Miss. 1990). Merit's alleged "colorable interest" in the lawsuit is not enough. *Reeves v. Gunn*, 307 So. 3d 436, 438-39 (Miss. 2020); *see Initiative Measure No. 65,* 338 So. 3d at 605 (*Reeves* "abandoned the 'colorable interest' standard" opting for the traditional articulation of 'adverse impact." for establishing standing.). For a plaintiff to establish standing on grounds of experiencing an adverse effect from the conduct of the defendant/appellee, the

adverse effect experienced must be different from the adverse effect experienced by the general public." *Hall v. City of Ridgeland*, 37 So. 3d 25, 33-34 (Miss. 2010).

None of this is changed by the fact that Merit has brought its claims as a declaratory-judgment action under Rule 57. Mississippi's standing requirements apply to declaratory-judgment claims. A declaratory judgment "may be sought only in a court of otherwise competent jurisdiction," because the rules of civil procedure may not be "construed to extend or limit the subject matter jurisdiction of our trial courts." *Tillotson v. Anders*, 551 So. 2d 212, 214 (Miss. 1989).

Most recently, in *City of Jackson et al. v. Busby Outdoor, LLC et al.*, Case No. 25CH1:22-cv-00784, one of the plaintiffs, The Lamar Company, LLC, an outdoor advertising agency, claimed that it had standing to sue because one of its competitors, Busby Outdoor, LLC, had not complied with the City of Jackson's zoning laws and sign ordinances, thus placing Lamar "at an unfair competitive advantage . . . ." However, as this Court recently ordered, an "allegation of an 'unfair competitive advantage,' without more, is not an adverse effect required for standing." *City of Jackson et al.*, Case No. 25CH1:22-cv-00784, MEC No. 68 at ¶57 (Jan. 26, 2024).

Merit is making the same argument here in its Complaint. Merit argues that Oceans has gained an unfair competitive advantage through MSDH's approval of St. Dominic's Notice of Intent to Change Ownership. What Merit is really complaining about, as it clearly stated in its Complaint, is that when St. Dominic stops providing psychiatric services, St. Dominic allegedly no longer has the obligation to admit emergency psychiatric patients as inpatients, as Merit is still required to do, in

compliance with the Emergency Medical Treatment and Labor Act ("EMTALA"), 42 U.S.C. § 1395dd (2023). *See* Compl. ¶¶ 20-21 [MEC 2 at 4-5]. We must accept this as true. Thus, according to Merit's own allegations, as a result of St. Dominic ceasing to offer psychiatric services, Merit was (or will be) put at a competitive disadvantage, as another hospital with an emergency room will no longer offers psychiatric services, as Merit does, and thus one less hospital is not required to admit psychiatric patients pursuant to EMTALA. *Id.* This alleged "harm" to Merit occurs without regard as to whether another entity, such as Oceans, without an emergency room, begins offering psychiatric services or not. Thus, the "unfair" position in which Merit finds itself is the result of the actions of Congress in enacting the EMTALA, not companies without emergency rooms who offer psychiatric residential services.

Merit's lawsuit and its attempt to justify standing and the Court's jurisdiction over Merit's claims all come down to Merit's complaint that MSDH's decision to approve Oceans' and St. Dominic's Notice of Intent to Change Ownership gives an unfair advantage to Oceans and St. Dominic. Moreover, there is no statutory right of action for Merit to challenge the purely regulatory decision MSDH approved based on the simple and unambiguous statutes and their enacting regulations. Merit has further failed to show that MSDH's decision adversely affects it differently from that of the general public. Thus, Merit has no standing to bring its Petition and it must be dismissed.

II. The Separation of Powers Bars This Lawsuit.

Even if Merit could establish standing, separation-of-powers principles bar this Court from adjudicating its claim. Merit seeks a judgment that "declares MSDH's CHOW approval is invalid; finds that Oceans and St. Dominic cannot circumvent the CON law" and forces MSDH to "follow normal CON review procedures" as to Ocean's unnecessary CON Application. Compl., at 13. But CON or CHOW determinations are solely MSDH's province in the first instance. The State Constitution prohibits this Court from exercising jurisdiction to predetermine issues that may arise in a future MSDH proceeding.

Our Constitution divides the "powers of the [State's] government" into "three distinct departments," Miss. Const. art. I, § 1, and prohibits each department from "exercis[ing] any power properly belonging to either of the others," *id.* § 2. Those principles bar Mississippi courts from making "administrative decisions" and performing "the functions of an administrative agency." *Mississippi State Tax Comm'n v. Mississippi-Alabama State Fair*, 222 So. 2d 664, 665 (Miss. 1969); *see also Wilson v. Mississippi Employment Security Comm'n*, 643 So. 2d 538, 541 (Miss. 1994) (Banks, J., concurring in part and in result) (premature court interference in an "agency's decision processes" is "a matter of separation of powers"). Courts thus lack "jurisdiction to participate" or "interven[e]" in an agency's "administrative process" until a proper "appeal from a final [agency] rule, regulation, or order" is taken. *Moore v. Bell Chevrolet-Pontiac-Buick-GMC, LLC*, 864 So. 2d 939, 946-

47 (Miss. 2004). Merit admits that there is no Final Order from which to appeal. Compl., at ¶29.

Merit asks this Court to undertake the sort of interference that the separation of powers forbids. MSDH has exclusive authority to "develop and implement a statewide health certificate of need program[]" and is "authorized and empowered to adopt by rule and regulation:

> (a) Criteria, standards and plans to be used in evaluating applications for certificates of need;
>
> (b) **Effective standards to determine when a person, facility or organization must apply for a certificate of need;**
>
> (c) **Standards to determine when a change of ownership has occurred or will occur; and**
>
> (d) Review procedures for conducting reviews of applications for certificates of need."

Miss. Code Ann. § 41-7-187 (emphasis added). After the CON review and notice process, a "final order of the State Health Officer" ("SHO") shall issue. Miss. Code Ann. §41-7-197. The chancery court may then review the SHO's decision, including whether it "violated some statutory or constitutional right of the complaining party." *Mississippi State Tax Comm'n*, 222 So. 2d at 666. But, without a final CON decision by the SHO, Dr. Edney, a "[c]hancery [c]ourt has no jurisdiction to participate in the administrative process." *Moore*, 864 So. 2d at 946; *see also Bay St. Louis Community Ass'n v. Comm'n on Marine Resources*, 729 So. 2d 796, 798 (Miss. 1988) ("Appeals from state administrative agency hearings are controlled by statute and will only be allowed after entry of a final order.").

This is not a proper "Appeal" from a final administrative decision of MSDH. The approval by MSDH of the CHOW is not an appealable CON decision. Merit has no private right to challenge a regulatory determination to which it is a foreigner. A CHOW is a regulatory notice requirement that has been followed exactly, properly applied, and interpreted, and thus properly approved by MSDH. Merit has no authority to bring this action and it should be dismissed.

III. This Lawsuit Does Not Seek A Proper Declaratory Judgment.

Even if the demands of standing and the separation of powers did not bar this lawsuit, this Court should still dismiss it. Merit seeks only a declaratory judgment. Complaint ¶ 1. This Court should deny that relief because the "judgment, if entered, would not terminate the uncertainty or controversy giving rise to the proceeding." Miss. R. Civ. P. 57(a). A declaratory judgment that the *CHOW* is invalid does not eliminate the "uncertainty or controversy" that Merit claims to exist. *See* Complaint ¶¶ 22-23, 29. The crux of its claimed dilemma is that EMTALA requires Merit to serve indigent psychiatric patients, but that St. Dominic and Oceans allegedly now may not have to serve as many indigent patients. *Id.* ¶ 29. But a declaration against MSDH would not solve that alleged problem.

First, the declaratory judgment that Merit seeks would not prevent the alleged harm because it does not preempt federal law. Federal law (EMTALA) seemingly *allows* for St. Dominic to avoid the requirements of EMTALA (at least with regard to certain psychiatric patients) by *not offering* psychiatric beds. Compl. at ¶¶20-26. Nothing in this lawsuit will in any way bind Congress or override EMTALA. For an

"entity to be bound by" a judgment, the "entity must have been a party to the action." *Johnson v. Howell*, 592 So. 2d 998, 1002 (Miss. 1991). Merit has not sued the federal government seeking to challenge EMTALA's implementation. So even with a declaratory judgment, Merit would remain vulnerable to the exact same harm it claims this Action will prevent because EMTALA is still the controlling law.

Second, declaratory relief could not block the ultimate harm that Merit fears: increased indigent psychiatric patients. Merit has not sought injunctive relief against MSDH to bar it from issuing a License to Oceans to operate the existing behavioral health facility. Neither does it seek to enjoin St. Dominic or Oceans from continuing to provide psychiatric services. (That is presumably because Merit knows that it could not satisfy the demanding requirements for injunctive relief, given the speculative nature of its allegations that St. Dominic will collude with Oceans to dump indigent patients on Merit's doorstep.) And a declaratory judgment declaring the state of the law would not affect St. Dominic's ability to comply with federal law and choose its own business strategy as to what types of health care services it decides to offer in exchange for compensation. So, the declaratory relief requested here would accomplish nothing. Chancery courts do not exist to award hollow judgments that have no real-world impact. On Merit's own allegations, a declaratory judgment thus "would not terminate the uncertainty or controversy giving rise to the proceeding." Miss. R. Civ. P. 57(a). This Court should decline to issue such relief.

* * *

This Court should grant MSDH's motion for judgment on the pleadings and dismiss Merit's suit. This suit is nonjusticiable and inappropriate for declaratory relief. In so doing, the Court would not need to address the merits of Complaint.

IV. Alternatively, If the Court Finds Merit has Standing, Merit has Statutorily Appealed MSDH's Decision and Cannot Simultaneously Collaterally Attack MSDH's Decision via a Rule 57 Declaratory Judgment Action

Assuming the Court reaches the merits, MSDH asserts alternatively that this Court should treat this lawsuit as an Appeal of a final CON determination (even though it is not). The alternative is to proceed as an improper declaratory judgment action which opens up the possibility of full-blown discovery in this lawsuit and any others in the future that challenge, without standing, regulatory or statutory determinations that do not directly and adversely affect a Plaintiff. Merit should not be allowed to proceed, however, with one foot in the statutory appeal process and its other foot in the camp seeking sweeping declaratory relief from otherwise non-appealable regulatory decisions. If it survives, this action must be either an appeal or a declaratory judgment action. It cannot be both at the same time.

Merit first claims that the Court has jurisdiction over its Complaint pursuant to Mississippi Code Section 9-5-81, setting forth the jurisdiction of Chancery Courts, and Section 41-7-201(2), the statutory right of appeal to Hinds County Chancery Court of any party aggrieved by a final order of MSDH pertaining to a certificate of need for any health care facility. Compl. ¶5 [MEC at 2].

But then, confusingly, Merit also simultaneously claims that this Court has jurisdiction to consider Merit's Complaint pursuant to Mississippi common law where

Chancery Courts have jurisdiction to review administrative agency decisions when there are no statutory rights of appeal of administrative agency decisions nor any otherwise full, plain, complete and adequate remedies at law. However, Merit cannot claim to have a statutory right to appeal and exercise such right, while simultaneously collaterally attacking an agency's decisions with a Complaint for Declaratory Judgment pursuant to Rule 57 of the Mississippi Rules of Civil Procedure.

In *Bowling v. Madison County Bd. of Supervisors*, 724 So. 2d 431 (Miss. Ct. App. 1998), plaintiff property owners filed a declaratory judgment complaint in Madison County Circuit Court against the Madison County Board of Supervisors, alleging that recent decisions by the Board had violated Madison County Zoning Ordinances, instead of filing a bill of exceptions to be transmitted to the Circuit Court, pursuant to Section 11-51-75 of the Mississippi Code. The Circuit Court dismissed the plaintiff's complaint based on a lack of jurisdiction for not having filed an appeal via a bill of exceptions pursuant to statute.

In reviewing the Circuit Court's dismissal, the Mississippi Court of Appeals held:

> If merely asking for a declaratory judgment permits a party to avoid the effect of a failure to appeal from a lower tribunal's decisions, then the requirement of an appeal is largely negated. Declaratory judgments are alternative procedures that permit adjudications of rights when actual controversies exist, but they have not reached the stage at which suits for damages or injunctive relief would normally be brought. M.R.C.P. 57 cmt. A Rule 57 declaration is also an alternative to injunctive relief. *Id.* **What it has never been held to be is an alternative to an appeal from a lower tribunal's actions. To hold that it may be, permits a de novo trial under Rule 57 instead of a deferential review on the record**.

Bowling, 724 So. 2d at 435 (emphasis added).

Similarly, in *Coast Materials Co. v. Harrison County Dev. Comm'n & Delta Indus.*, 1998 WL 909581 (Miss. 1998), a county commission approved the sale of land in an industrial park to a company to build a concrete plant, after which the county Board of Supervisors approved and authorized the commission's actions. Instead of appealing the county board of supervisor's decision pursuant to Section 11-51-75 of the Mississippi Code, Coast Materials filed a civil complaint seeking an injunction and Declaratory Judgment that the commission could not convey such land.

On appeal from a chancery court's decision, the Mississippi Supreme Court concluded that when an aggrieved party fails to appeal a board's decision pursuant to Section 11-51-75 of the Mississippi Code, that aggrieved party "is prohibited from collaterally attacking the judgment, order, or decision." *Id.* at 7-8 (citations omitted). The Court went on to explain 'that inadequacy of the remedy at law is the basis upon which the power of injunction is exercised. An injunction will not issue when the complainants have a complete and adequate remedy by appeal." *Id.* at 8 (quoting *Benedict v. City of Hattiesburg*, 693 So. 2d 377, 381 (Miss. 1997)). The Court concluded by holding that "this action is in form and substance **an appeal from a decision of the Board**, and therefore, the action constitutes a collateral attack on the Board's November 4, 1996 Order in which no appeal was taken pursuant to the exclusive remedy provided in § 11-51-75 and, thus, cannot be maintained." *Id.* at 8-9 (citations omitted) (emphasis added).

In that same vein, the Court held that "where the lower court does not have subject matter jurisdiction over a case, the court may not hear requests for declaratory

judgments." *Id.* at 12. Relying on *Benedict*, the Court held that "declaratory judgment was not appropriate in this action" because the chancery court did not have subject matter jurisdiction over an appeal of a decision of a board of supervisors to grant injunctive relief, and because the exclusive remedy was via Section 11-51-75. *Id.*

In the instant case, Merit argues first that this is an appeal to Hinds County Chancery Court pursuant to Section 41-7-201(2) of the Mississippi Code, which governs "any party appealing any final order of [MSDH] **pertaining to a certificate of need** for any health care facility . . ." Miss. Code Ann. § 41-7-201(2) (2024 (emphasis added). Because MSDH's Change of Ownership authority necessarily falls under the umbrella of Mississippi's CON legal regime, a decision by MSDH granting a CHOW would necessarily "pertain[] to a certificate of need[,]" in this case, for a health care facility. Thus, if the Court finds that Merit has standing (which we do not believe it does), then Merit's Complaint should most appropriately be considered an appeal of MSDH's decision to approve Oceans/St. Dominic Notice of Intent to Change Ownership, and not a traditional civil complaint seeking a declaratory judgment.

Courts have warned against the use of a Rule 57 Complaint in lieu of or as a substitute for a direct statutory right of appeal. Because Merit has an adequate remedy at law, which it is attempting to rely upon in exercising its appeal pursuant to Section 41-7-201(2), it cannot also concurrently utilize a Rule 57 Complaint for Declaratory Judgment to collaterally attack an agency decision. As the *Bowling* Court has said, "A Rule 57 declaration . . . has never been held to be is an alternative to an appeal from a lower tribunal's actions. To hold that it may be, permits a de novo trial

under Rule 57 instead of a deferential review on the record." *Bowling*, 724 So. 2d at 435.

If the Court finds that Merit has standing, which MSDH contends it does not, Merit's Complaint should either be dismissed as an improper vehicle by which to request relief, or in the alternative, be allowed to continue as a direct, statutory appeal of MSDH's decision, pursuant to Section 41-7-201(2). Merit cannot have it both ways.

V. MSDH Acted Within its Statutory and Regulatory Authority in Approving Oceans/St. Dominic Change of Ownership and Determining a Certificate of Need was Not Required.

If the Court were to conclude that this case is justiciable and otherwise proper, it should issue a declaratory judgment stating that MSDH has properly applied its applicable rules and regulations to this situation and that the approval of the CHOW requested by St. Dominic and Oceans was proper. That judgment would express a correct view of state law and of MSDH's interpretation of its regulations adopted to implement the transfer of ownership of services procedures.

Merit complains that MSDH acted outside its statutory and regulatory authority in approving the change of ownership from St. Dominic to Oceans and deciding that a CON was not required. Merit alleges that pursuant to Mississippi Code Section 41-7-191(1)(a), Oceans was required to obtain a CON because it seeks to establish a "new health care facility." Merit puts form over substance, however, by continually citing irrelevant information contained in Oceans' CON Application, such as Oceans' characterization of the proposed transaction as a "new" hospital. MSDH on the other hand looks at substance, as should this Court. Reviewing the CON regulatory and

statutory scheme as a whole shows the deficiency of Merit's arguments. Specifically, Mississippi Code Section 41-7-187 expressly delegates to MSDH the authority to adopt by rules and regulations both: (1) standards to determine when a person, facility, or organization must apply for a certificate of need; and (2) standards to determine when a change of ownership has occurred or will occur.

As set forth below, pursuant to regulations promulgated by MSDH, Oceans and St. Dominic filed a notice of intent to change ownership. MSDH reviewed this filing and determined that Oceans' and St. Dominic proposal—for Oceans to offer the same psychiatric services formerly provided by St. Dominic, in the same location, using the same building, and using the same licensed beds—was properly characterized as a "change of ownership." The Lease Agreement expressly demonstrates all this and MSDH is entitled to rely upon it. MSDH is also authorized to determine that Oceans was not required to obtain a CON in this situation. A "certificate of need" is a written order from MSDH setting forth the affirmative finding that a proposal sufficiently satisfies the plans, standards and criteria prescribed for such service or project. Miss. Code Ann. § 41-7-173(b). The CON application is currently stayed pending the outcome of this litigation and no final decision has been made on the CON application. Compl., at ¶29.

Mississippi Code Section 41-7-191(1) sets forth certain activities which may require a CON, providing in pertinent part that:

> (1) No person shall engage in any of the following activities without obtaining the required certificate of need:

> (a) The **construction, development or other establishment of a new health care facility** . . . ;
> . . .
> (d) Offering of the following health services if those services have not been provided on a regular basis by the proposed provider of such services within the period of twelve (12) months prior to the time such services would be offered: . . .
>
> (iv) Licensed psychiatric services;
> . . .
> (g) **Changes of ownership of existing health care facilities in which a notice of intent is not filed with the State Department of Health at least thirty (30) days prior to the date such change of ownership occurs, or a change in services or bed capacity as prescribed in paragraph (c) or (d) of this subsection as a result of the change of ownership**; an acquisition for less than fair market value must be reviewed, if the acquisition at fair market value would be subject to review.

Miss. Code Ann. §41-7-191(1). MSDH's regulations, as promulgated in the Mississippi CON Review Manual, further provide that, "No person shall engage in any of the following activities without obtaining a CON from the Department . . . **Changes of ownership of existing health care facilities**, major medical equipment, a health service**, or an institutional health service**, **in which a notice of intent is not filed with the State Department of Health at least 15 calendar days before the date such change of ownership occurs**." CMSR 15-009-091 Rule 2.1.8 (2024) (Mississippi CON Review Manual). Thus, both the CON statute and MSDH's regulations contemplate that "changes of ownership" may occur without CON review, provided that the requisite notice is provided to MSDH.

> A **"change of ownership" includes, but is not limited to**, *inter vivos* gifts, purchases, transfers, **lease arrangements**, cash and/or stock transactions or other comparable arrangements whenever any person or **entity acquires or controls a majority interest of an existing health care facility**, **and/or the change of ownership of** major medical equipment, **a**

> **health service, or an institutional health service**. Changes of ownership from partnerships, single proprietorships or corporations to another form of ownership are specifically included.

Mississippi Code Ann. § 41-7-173(d); CMSR 15-009-091 Rule 1.14(i) (emp.added).

"Health services" means "clinically related (*i.e.*, diagnostic, treatment or rehabilitative) services and includes alcohol, drug abuse, mental health and home health care services." Miss. Code Ann. § 41-7-173(k). "Institutional Health Service" is defined as "health services provided in or through health care facilities and shall include the entities in or through such services are provided." Miss. Code Ann. § 41-7-173(l). A "health care facility" is defined to include both "hospitals" as well as "psychiatric hospitals." Miss. Code Ann. § 41-7-173(h)(i) and (ii). Licensed psychiatric services, such as those formerly provided by St. Dominic , and proposed to be provided by Oceans, constitute an "institutional health service."

As part of its statutory authority to implement and administer the CON Program, the legislature expressly delegated to MSDH the authority to "adopt by rule and regulation: . . . (b) **Effective standards to determine when a person, facility, or organization must apply for a certificate of need**; [and] (c) **Standards to determine when a change of ownership has occurred or will occur**." Miss. Code § 41-7-187(b) and (c).

MSDH regulations provide those applicants proposing a change of ownership of existing health care facilities, a health service, major medical equipment, or an institutional health service must file a completed Notice of Intent to Change Ownership. CMSR 15-009-091 Rule 3.18. MSDH's Notice of Intent to Change

Ownership Form (MSDH Form 802-E) contains additional detailed guidance regarding what constitutes a "change of ownership" for CON purposes, and notes that "this regulation defines what constitutes a change of ownership or control." This guidance states that: "When a facility, once having achieved provider status, **is leased in whole or in part, a change of ownership has occurred if the lessee will operate the business enterprise without substantial guidance or control from the lessor**." Compl., Ex. 5 [MEC 2 at 166-169] (emphasis added). MSDH's determination that this transaction between St. Dominic and Oceans could lawfully be accomplished by a CHOW is expressly authorized by statute and regulation. Merit cannot state a valid claim that MSDH has acted contrary to its express authority and guidance. This case should be dismissed.

A. The Mississippi State Department of Health's Interpretation of its Governing Statutes and Regulations is Correct.

Merit challenges MSDH's interpretation and implementation of its governing statutes. Merit contends that MSDH's conclusion that the CON statutes did not apply to St. Dominic/Oceans CHOW is an incorrect interpretation of those statutes. MSDH's Regulations expressly describe the circumstances where a CHOW (change of ownership of services) is allowed in lieu of the need to acquire a new CON. Importantly, it is MSDH's interpretation of its unambiguous CON statutes, and not the interpretation of Merit, that should be afforded deference by a reviewing court.

The legislature has delegated to MSDH the legislative responsibility to "develop and implement a statewide certificate of need program." Miss. Code Ann. § 41-7-187.

Included in that delegation is the authority of MSDH to "adopt by rule and regulation" the "criteria, standards and plans to be used in evaluating applications for certificates of need." *Id.* Further, the legislature has delegated to MSDH the authority to develop "*effective standards to determine when a person, facility or organization must apply for a certificate of need." Id.* MSDH is charged with implementing the CON program in accordance with the health care policies and priorities of the State. MSDH's actions in administering the CON program are "presumed to be correct" and "the challenging party has the burden of proving otherwise." *Mississippi State Bd. of Funeral Services v. Coleman*, 944 So.2d 92, 97 (Miss. App. 2006).

In addition to the general presumption of correctness, "great deference [is] afforded an administrative agency's 'construction of its own rules and regulations and the statutes under which it operates.'" *McDerment v. Miss. Real Estate Comm'n*, 748 So.2d 114, 118 (Miss.1999) (quoting *Miss. State Tax Comm'n v. Mask*, 667 So.2d 1313, 1314 (Miss.1995))[2].

As a general matter, when reviewing an agency's statutory interpretation, courts determine whether the statute is "ambiguous or silent" on the precise question, and, if so, the agency's interpretation must be upheld if it is "based on a permissible construction of the statute." *Barbour v. State ex rel. Hood*, 974 So.2d 232, 240 (Miss. 2008)(citing *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S.

2 There has been departure from this great deference standard in recent years and has stated that the Court may review *de novo* the interpretation of an administrative statute or regulation. *See King v. Miss. Military Dep't.,* 245 So.3d 404, 407 (Miss. 2018).The facts or evidence considered by MSDH and the application of an unambiguous statute or regulation to those facts are still entitled to great deference.

837, 865-866 (1984)). Further, "[t]he court need not conclude that the agency construction was the only one it permissibly could have adopted to uphold the construction, or even the reading the court would have reached if the question initially had arisen in a judicial proceeding." *Mississippi Gaming Comm'n v. Imperial Palace of Mississippi, Inc.*, 751 So.2d 1025, 1029 (Miss. 1999) (quoting *Chevron*, 467 U.S. at 843 n.11).

Although firmly grounded in the separation of powers doctrine, the great deference afforded administrative agencies reflects the complexity of legal, policy, and fiscal concerns with which agencies like MSDH are intimately familiar with and which are the basis of their administrative expertise. The Supreme Court has specifically instructed lower courts that in light of MSDH's "familiarity with the particularities and nuances of the problems committed to its care[,]" courts are "obligated to defer to the MSDH's judgment in the absence of a breach of established requirements." *Mississippi State Dept. of Health v. Baptist Memorial Hosp.-Desoto, Inc.*, 984 So.2d 967, 980 (Miss. 2008). Merit has alleged no breach of the established requirements in MSDH's regulations.

As our Supreme Court has noted in similar circumstances, "our realization that the everyday experience of the administrative agency gives it familiarity with the particularities and nuances of the problems committed to its care which no court can hope to replicate. *Gill v. Mississippi Dept. of Wildlife Conservation*, 574 So.2d 586, 593 (Miss. 1990) (citations omitted). In addition to the traditional level of deference afforded an agency decision, the Supreme Court has specifically acknowledged that an

agency acting in a legislative function to establish state policy is entitled to special deference based on the principle of separation of powers. A court "refrains from interfering with duly delegated authority to an administrative agency, particularly where the rule making power of the agency is involved due to its legislative function." *Mississippi Public Service Comm'n v. Mississippi Power & Light Co.*, 593 So.2d 997, 1000 (Miss. 1991) (emphasis supplied). The Supreme Court has explained the distinction between the different roles of administrative agencies and the requirements of, and basis for, judicial non-intervention as follows:

> In carrying out its legislative mandated function, the Board exercises two very different types of power. First, it carries out a quasi-judicial or "adjudicative" function as a delegation of power from the judicial branch of government. In exercising that power, it decides disputes between competing parties to a controversy specific to the parties' interests and in which neither the Board nor other parties have a stake. The Board also carries out legislative or "rulemaking" functions as a delegation of power from the legislative branch of government. It does this function when, as is true in the case of the Board's adoption of rule 69, the Legislature directs the Board to enact rules or regulations on a particular subject within the Board's regulatory jurisdiction. The Legislature mandated that the Board promulgate rules and regulations governing oilfield NORM. Miss. Code Ann. § 53-1-17(7); Miss. Code Ann. § 53-1-3(t)(I).
>
> **This Court, as well as other courts, have recognized the distinction between adjudicatory and rulemaking functions of an administrative agency. In *Mississippi Pub. Serv. Comm'n v. Mississippi Power & Light Co.*, 593 So.2d 997, 1000 (Miss.1991), this Court held, "the court refrains from interfering with duly delegated authority to an administrative agency, *particularly where the rule making power of an agency is involved due to its legislative function.*"** (emphasis added). In so ruling, this Court explained that the rule against interfering with duly delegated legislative authority is based upon separation of power considerations. *Id.* at 999-1000. This Court recognized that the creation of administrative agencies resulted in a combination of powers from all three branches of government. In order to maintain the appropriate checks and balances, the judicial branch of government must refrain from interfering with the

> portion of administrative agency's function that has been delegated by the legislative branch. . . .
>
> Here, the Board was clearly engaged in policy rulemaking pursuant to a specific delegation from the Mississippi Legislature. It was not adjudicating competing claims to a specific valuable right such as a permit to drill a well on a certain piece of property. . . . [I]t is a well-settled proposition that this Court refrains from interfering with the rulemaking function of an administrative agency.

Boyles v. Mississippi State Oil & Gas Bd., 794 So.2d 149, 157-58 (Miss. 2001) (emphasis supplied).

Thus, Merit faces a heavy burden when seeking to overturn MSDH's interpretation of the CON statutes which MSDH is legislatively authorized to administer. As long as the MSDH's interpretation is a "permissible" reading of the statute premised on the agency's administrative expertise, MSDH's interpretation must be upheld even if this Court might itself interpret the statute differently. *See Imperial Palace of Mississippi, Inc.*, 751 So.2d at 1029 ("[t]he court need not conclude that the agency construction was the only one it permissibly could have adopted to uphold the construction, or even the reading the court would have reached if the question initially had arisen in a judicial proceeding").

III. The Mississippi State Department of Health's Approval of the Requested Transfer by St. Dominic is Correct.

As an initial matter, it is clear that the CON statutes apply to St. Dominic and Merit. The CON statutes are set out in Code Sections 41-7-171 through 41-7-209 and are collectively entitled the "Mississippi Health Care Certificate of Need Law of 1979." Here, MSDH acted well within its statutory and regulatory authority to determine that

this proposed project constituted a change of ownership. Oceans proposes to provide, through its "lease arrangement" with St. Dominic, the same institutional health service (acute adult psychiatric services), in the same location, using the same physical facility, and using the same licensed beds utilized by St. Dominic. The proposed transaction qualifies as a change of ownership in two ways: (1) it constitutes the change of ownership of an "institutional health service," because through the lease agreement, Oceans will acquire St. Dominic certificate of need *authority* and the ability to later operate those licensed beds to provide inpatient psychiatric services formerly provided by St. Dominic, and (2) it constitutes the change of ownership of a health care facility, because Oceans is leasing the Building where St. Dominic formerly provided its behavioral health services. Thus, MSDH was well within its authority to determine that this project constituted a "change of ownership" and that CON was not required.

Although Merit argues that "[t]he CHOW approval of the Transaction violates. . . § 41-7-191 because it purportedly changes ownership of a service which necessarily requires the establishment of a new healthcare facility," the Mississippi Supreme Court has expressly recognized MSDH's authority to determine when a CON is and is not required. In *Jackson HMA, LLC v. Miss. State Dep't of Health*, 98 So. 3d 980 (Miss. 2012), the University of Mississippi Medical Center ("UMMC") sought to acquire a linear accelerator, which would normally require CON review as an acquisition of major medical equipment under Mississippi Code Section 41-7-191(1)(f). UMMC initially filed a CON Application to acquire the equipment but withdrew its application after being challenged by other area hospitals. UMMC then sought a determination of

reviewability ruling from MSDH that it could acquire the linear accelerator without CON review. *Id.* Of particular importance here is the fact that the existence of a filed CON application by UMMC (which was later deemed unnecessary by MSDH) is *not* a barrier to MSDH approving a CHOW to accomplish the same transaction proposed in an erroneous or abandoned CON Application.

MSDH subsequently approved UMMC's request without a public hearing, relying on language in the Mississippi State Health Plan which provided that UMMC could acquire and operate stereotactic radiosurgery equipment as justified by UMMC's research and teaching mission. Similar to this case, Merit then filed a complaint against UMMC and MSDH seeking declaratory and injunctive relief, arguing that "MSDH ha[d] no authority to exempt UMMC from obtaining a CON." *Id.* The Mississippi Supreme Court rejected this argument:

> While at first blush it may appear that Section 41–7–191(1)(f) allows a person to acquire major medical equipment without obtaining a CON in only two situations—for research only and for the replacement of medical equipment for a facility already providing medical services—a closer reading reveals that these are exceptions for situations when MSDH has determined that a CON is required. A reading of Section 41–7–191(1)(f) together with the CON statutes as a whole shows that Section 41–7–191(1)(f) does not diminish the power of MSDH, delegated to it under Section 41–7–187, to adopt rules and regulations to determine when a CON is required.

Id. at 986. The Court went on to find that it was within the authority of MSDH to determine that UMMC did not require a CON for the proposed project, and upheld MSDH's ruling. *Id.* at 986.

This case presents a similar set of circumstances. Here, Oceans and St. Dominic

requested that MSDH approve the project as a change of ownership pursuant to MSDH's regulations. MSDH properly determined that no CON was required because this project is a change of ownership. Section 41-7-191(a) does not diminish the power of MSDH to adopt rules and regulations to determine when a CON is required. MSDH has done exactly this through its change of ownership regulations and procedure and determined that a CON is not required for this project. Therefore, Merit's contention that § 41-7-191(1)(a) requires Oceans to obtain a CON is erroneous.

In this respect, MSDH's determination that the CHOW request to transfer services is the appropriate regulatory mechanism to accomplish public health goals is legally correct and, more importantly, it is certainly a permissible interpretation of the statutes. MSDH's specialized interpretation of its governing statutes and regulations is entitled to deference and must be affirmed unless the agency's interpretation is so inaccurate as to be beyond any "permissible construction of the statute." *Barbour*, 974 So.2d 232 at 240. Here, MSDH's determination is not only a "permissible construction" of the statute, MSDH's conclusion should be properly classified as the "only" permissible read of the statute.

IV. The Mississippi State Department of Health's Determination that Oceans Behavioral Need Not Obtain a CON Before Seeking a License to Operate the Behavioral Hospital at Issue is Correct.

Merit asks this Court to prohibit Oceans from operating the behavioral hospital – because MSDH has not issued a CON to Oceans. In fact, MSDH has exercised its statutory authority and determined that a CON is not needed because St. Dominic's existing CON previously authorizes the existence of the facility. *See Zumwalt*, 19 So.

3d at 687-88. Further, the express regulations in this regard state clearly that an existing facility may be "leased" without the need for a new CON. Thus, Merit's argument that Oceans was required to secure a CON in this instance is incorrect. This Court may, and should, grant judgment for MSDH on this basis alone.

More specifically, MSDH has the statutory authority to promulgate the State Health Plan and the CON Manual (implementing regulations) which identifies priority state health needs and establishes standards and criteria for health-related activities which "require certificate of need review in compliance with Section 41-7-191." Miss. Code Ann. § 41-7-173(s). The CON statutes specifically authorize MSDH to "develop and implement a statewide certificate of need program", and, as a part of that program, MSDH is delegated the statutory authority to adopt by rule or regulation "**effective standards to determine when a person, facility or organization must apply for a certificate of need.**" Miss. Code Ann. § 41-7-187. MSDH, exercising its authority to promulgate the CON Manual and to "determine when a . . . facility . . . must apply for a certificate of need," duly promulgated:

> A **"change of ownership" includes, but is not limited to**, *inter vivos* gifts, purchases, transfers, **lease arrangements**, cash and/or stock transactions or other comparable arrangements whenever any person or **entity acquires or controls a majority interest of an existing health care facility**, **and/or the change of ownership of** major medical equipment, **a health service, or an institutional health service**. Changes of ownership from partnerships, single proprietorships or corporations to another form of ownership are specifically included.

Mississippi Code Ann. § 41-7-173)(d); CMSR 15-009-091 Rule 1.14(i) (emphasis added). Merit's contention that Oceans must secure a "new" CON before leasing or operating

the behavioral hospital at issue is wholly incorrect in light of the above.

VI. MSDH's Decision was Supported by Substantial Evidence

Likewise, MSDH's approval of the change of ownership application was supported by substantial evidence. "Substantial evidence" is defined as "evidence that a reasonable person would accept as adequate to support a conclusion." *Tucker v. Prisock*, 791 So. 2d 190, 192 (Miss. 2001); *see also Titan Tire of Natchez, Inc. v. Miss. Comm 'n on Env 't Quality*, 891 So. 2d 195, 200 (Miss. 2004). Substantial evidence is something "'more than a mere scintilla of evidence' or 'something less than a preponderance of the evidence but more than a scintilla or glimmer.'" *Miss. Dep 't of Envtl. Quality v. Weems,* 653 So. 2d 266, 280-81 (Miss. 1995); *accord Falco Lime, Inc. v. Mayor* & *Aldermen of Vicksburg,* 836 So. 2d 711, 721 (Miss. 2002).

MSDH has substantial evidence before it that this proposal constituted a change of ownership, including the Notice of Intent to Change Ownership Application, which included a description of the transaction and a copy of the Lease Agreement. Compl. Ex. 5 [MEC 2 at 161-172]. The record before MSDH shows that through the Lease Agreement, Oceans sought to offer the same services formerly provided by St. Dominic, using the same licensed beds, in the same building, and using the same CON authority. MSDH reviewed these materials and properly determined that this transaction could proceed as a change of ownership. Thus, because there was substantial evidence supporting its decision, Merit's Complaint must be dismissed.

VII. MSDH's Decision was Not Arbitrary or Capricious

Next, MSDH's decision granting Oceans' and St. Dominic Notice of Intent to

Change Ownership was not arbitrary or capricious. The Mississippi Supreme Court has recognized that:

> An act is arbitrary when it is done without adequately determining principle; not done according to reason or judgment, but depending upon the will alone-absolute in power, tyrannical, despotic, non-rational-implying either a lack of understanding of or a disregard for the fundamental nature of things . . . . An act is capricious when it is done without reason, in a whimsical manner, implying either a lack of understanding of or a disregard for the surrounding facts and settled controlling principles.

Elec. Data Sys. Corp. v. Miss. Div. of Medicaid, 853 So. 2d 1192, 1205 (Miss. 2003) (citations omitted). Here, MSDH's change of ownership ruling letter demonstrates that MSDH carefully considered the description of the transaction and the Lease Agreement provided by Oceans in determining that this transaction could proceed as a change of ownership. Compl. Ex. 6 [MEC 2 at 173-176]. MSDH's decision was done with adequately determined principle, reason, and judgment, relying upon its regulations and its statutory authority. MSDH carefully considered Oceans and St. Dominic Notice, its description of the change in ownership, and the factors in determining that a change of ownership should be approved and that a CON was not required. Merit has failed to allege any facts demonstrating that this action was arbitrary or capricious, and thus Merit's Complaint must be dismissed.

VIII. Merit has Failed to Allege a Violation of a Vested Statutory or Constitutional Right

Finally, Merit has failed to allege a violation of its statutory or constitutional rights. As set forth above, the main thrust of Merit's Complaint is that MSDH exceeded its authority in approving the change of ownership. However, as previously

stated, MSDH is expressly authorized under Mississippi law to adopt rules and regulations to both determine when a change of ownership has occurred and when a CON is required. Merit has failed to demonstrate how MSDH, by simply exercising its statutory and regulatory authority, has violated any statutory or constitutional right of Merit. Because MSDH was authorized to take the action it did, Merit does not—and cannot successfully—allege a violation of its statutory and constitutional rights.

CONCLUSION

For the foregoing reasons, this Court should find that the Petition should be dismissed. Initially, Merit lacks standing or a private right of action/appeal. Rule 57 relief is inappropriate here. Assuming arguendo, the court moves to the merits of the Petition, MSDH is still entitled to judgment in its favor. There has been no erroneous interpretation or application of statute or regulation. MSDH carefully applied the facts to the Regulations and made the correct determination that this transaction could be accomplished via a CHOW. That was neither arbitrary nor capricious. As demonstrated, that determination was based on substantial evidence. As such, Merit's Petition is due to be dismissed and MSDH is instead entitled to a declaratory judgment in its favor upholding that its interpretations and determinations are correct in this instance.

Respectfully submitted, this the 24th day of April 2024.

MISSISSIPPI STATE DEPARTMENT OF HEALTH

BY: Lynn Fitch, ATTORNEY GENERAL
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CERTIFICATE OF SERVICE

This is to certify that I, Stephen Schelver, Special Assistant Attorney General for the State of Mississippi, that on the below date I filed the above documents via MEC and all counsel of record were provided an electronic copy.

THIS the 24th day of April, 2024.

/s/ Stephen Schelver
Stephen Schelver