

IN THE CHANCERY COURT OF HINDS COUNTY, MISSISSIPPI

**JACKSON HMA, LLC D/B/A MERIT
HEALTH CENTRAL**

PLAINTIFF

VS.

CAUSE NO.: 20-cv-426

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

DEFENDANTS

**DEFENDANT OCEANS BEHAVIORAL HOSPITAL OF JACKSON, LLC'S
MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS**

COMES NOW, Oceans Behavioral Hospital of Jackson, LLC (“Oceans”) and moves to dismiss Plaintiff Jackson HMA, LLC d/b/a Merit Health Central’s (“Merit”) Complaint, and would state as follows:

INTRODUCTION

On June 5, 2023, St. Dominic-Jackson Memorial Hospital (“St. Dominic’s”) 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. On September 15, 2023, St. Dominic’s and Oceans entered into a lease agreement under which Oceans seeks to provide the same health services formerly provided by St. Dominic’s, at the same location, using the same licensed beds, and in the same physical facility located at 2969 North Curran Drive, Jackson, Mississippi (the “Behavioral Health Building”). The Mississippi State Department of Health (“MSDH”) reviewed this proposal and determined that it could proceed as a “change of ownership” (“CHOW”) without the necessity of Certificate of Need (“CON”) review. Merit, seeking to prevent competition from Oceans, filed this suit seeking to overturn MSDH’s ruling and prevent Oceans from offering inpatient psychiatric services in the Behavioral Health Building.

As set forth below, MSDH acted within its express statutory and regulatory authority in determining that this transaction constituted a change of ownership and that a CON was not required. MSDH's decision approving the change of ownership was supported by substantial evidence and was not arbitrary and capricious. Finally, Merit has failed to show how MSDH has violated Merit's statutory or constitutional rights through MSDH's exercise of its statutory and regulatory authority in approving this change of ownership. Therefore, for the following reasons, Merit's Complaint lacks merit and should be dismissed with prejudice.

BACKGROUND

I. The Mississippi Certificate of Need Program

In 1974, in response to concerns regarding the overbuilding of hospitals caused by the federal Hill-Burton Act, Congress enacted legislation mandating states to adopt and implement Certificate of Need statutes to avoid the unnecessary replication of health care facilities. *See St. Dominic-Jackson Mem'l Hosp. v. Miss. State Dep't of Health et al.*, 782 So. 2d 81, 83 (Miss. 1998). Subsequently, in 1979, the Mississippi Legislature adopted the Mississippi Health Care Certificate of Need Law, which defined the legal framework for the state's Certificate of Need program. This law gave MSDH extensive authority and discretion, specifically authorizing 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) (2024).

Drawing upon MSDH's experience and expertise in these areas, the Mississippi Legislature explicitly granted MSDH the authority “to develop and implement a statewide health certificate of need program[]” and further empowered MSDH “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 developed 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>.

II. Background Facts and Allegations in Complaint

St. Dominic’s is an acute care hospital located in Jackson, Mississippi, which has offered inpatient psychiatric services, upon information and belief, since prior to the enactment of Mississippi’s Certificate of Need laws. *See Zumwalt v. Jones Co. Bd. of Supervisors*, 19 So. 3d 672 (Miss. 2009) (an entity “is allowed to exist without ever having had a CON issued because the [entity] existed before CONs were required”). St. Dominic’s has a licensed bed complement of 571 beds, consisting of: (1) 453 acute care beds; (2) 83 adult psychiatric beds; and (3) 35 chemical dependency unit (“CDU”) beds. St. Dominic’s operated its inpatient behavioral health service line in the Behavioral Health Building, which is located on the main campus of St. Dominic’s. St. Dominic’s holds one (1) license to provide acute care and psychiatric care. Compl., Exh. 5 [MEC 2 at 170].

On June 6, 2023, St. Dominic’s announced it would close its inpatient behavioral health service line and would no longer accept new patients, exacerbating an already critical shortage of acute inpatient psychiatric beds within the Jackson metropolitan area as well as the state as a whole.

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

On September 15, 2023, St. Dominic's and Oceans entered into a lease agreement under which Oceans seeks to provide the same health services formerly provided by St. Dominic's, at the same location, using the same licensed beds, and in the same physical facility located at 2969 North Curran Drive, Jackson, Mississippi (the "Behavioral Health Building"). Section 7(a) of the lease agreement ("Lease Agreement") between Oceans and St. Dominic's provides that the term of the Lease Agreement will commence on the "Rent Commencement Date." Compl. Ex. 1 [MEC 2, at 60]. The "Rent Commencement Date" is defined as the earlier of the date that Oceans takes its first patient at the Behavioral Health Building or *thirty (30) days after* Oceans obtains "Final Approval of the Governmental Approvals." *Id.* at 58. "Governmental Approvals" include all regulatory permits and approvals, including certificate of need approvals, required for Oceans to start the operation of its business. "Final Approval" of the Government Approvals is defined, in pertinent part, as the date when all Government Approvals have been issued and made effective, the time has passed for appeal of all Governmental Approvals, and any appeals or litigation with respect to the Governmental Approvals have been resolved in a manner satisfactory to Oceans. *Id.* at 59.

On October 3, 2023, Oceans submitted a Notice of Intent to apply for a Certificate of Need to MSDH. *See* Compl. Ex. 1 [MEC 2 at 15-18]. On October 20, 2023, Oceans filed its Application for a Certificate of Need, indicating "Change of Ownership" as one of the project types under the Project Description category of the application for which it was applying. Compl. Ex. 2 [MEC 2 at 19-136]. On December 4, 2023, MSDH staff issued a staff analysis recommending approval of Oceans' application with conditions. Compl. Ex. 4 [MEC 2 at 140-

158]. An administrative hearing was scheduled for April 2-5, 2024, to consider Oceans' Application. Compl., ¶28.

However, before the scheduled hearing on Oceans' certificate of need application, attorneys for Oceans researched and determined that Oceans' desire to provide the same health services previously provided by St. Dominic's, at the same location, using the same licensed beds, and in the same physical facility, actually fell within MSDH's change of ownership regulations, which would allow MSDH, under its legislatively-granted authority, to approve this simple change of ownership between St. Dominic's and Oceans without a certificate of need hearing. As a result, on February 23, 2024, Oceans and St. Dominic's filed a Notice of Intent to Change Ownership (MSDH Form 802 E) with MSDH seeking approval for Oceans to reopen the Behavioral Health Building as a separately licensed inpatient psychiatric hospital to be called the "Oceans Behavioral Hospital of Jackson," which would involve: (1) St. Dominic's leasing the Behavioral Health Building to Oceans; (2) Oceans acquiring substantially all of the assets from St. Dominic's used in connection with its behavioral health service line; (3) St. Dominic's 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 establishing a new, separately licensed psychiatric hospital in the Behavioral Health Building utilizing 77 adult psychiatric beds, and providing the same services formerly provided by St. Dominic's. Compl. Ex. 5 [MEC 2 at 159-172].

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].

STANDARD OF REVIEW

A Rule 12(b)(6) motion assesses the legal sufficiency of a Complaint, accepting as true the pleaded allegations for purposes of deciding the motion. *See Bilbo v. Thigpen*, 647 So. 2d 678, 687 (Miss. 1994) (citations omitted). In evaluating the actions of an administrative agency, such actions are presumed to be correct, placing the onus on the challenger to prove otherwise. *See 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. MSDH Acted Within its Statutory and Regulatory Authority in Approving Oceans/St. Dominic's Change of Ownership and Determining a Certificate of Need was Not Required

The gravamen of Merit's Complaint is that MSDH acted outside its statutory and regulatory authority in approving the change of ownership from St. Dominic's to Oceans and ruling that a CON was not required for this project. Although Merit spends the majority of its complaint making conclusory allegations about purported deficiencies in Oceans' CON Application, these allegations are irrelevant and amount to little more than a "red herring" to distract this Court from the real issue: The MSDH properly determined that a CON is **not** required for this project. 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.” However, reviewing the CON regulatory and statutory scheme as a whole shows the deficiency of this argument. Specifically, Mississippi Code Section 41-7-187 explicitly grants MSDH the authority to establish, through rules and regulations, the standards to determine both: (1) when a person, facility, or organization must apply for a certificate of need; AND (2) when a change of ownership has occurred or will occur.

As outlined below, in accordance with regulations properly promulgated by MSDH, Oceans and St. Dominic’s submitted a Notice of Intent to Change Ownership. Upon reviewing this filing, MSDH concluded that Oceans’ and St. Dominic’s proposal — for Oceans to offer the same psychiatric services formerly provided by St. Dominic’s, in the same location, using the same building, and using the same licensed beds — was properly characterized as and accurately constituted a “change of ownership.” Having made that determination as it was empowered to do under Mississippi law, MSDH was also legally authorized to determine that Oceans was not required to obtain a CON.

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).

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 detailed 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) (emphasis added). Therefore, both the CON statute and MSDH’s regulations authorize approval of “changes of ownership” without CON review, as long as the proper notice is given to MSDH.

In Mississippi’s CON law, a “change of ownership” is defined as follows:

“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).

Further, “health services” are defined as “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 Services” are 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’s, and proposed to be provided by Oceans, constitute an “institutional health service.”

In its statutory role of implementing and administering the CON Program, the legislature expressly granted 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) (2024) (emphasis added).

MSDH regulations provide that applicants proposing a change of ownership of existing health care facilities, a health service, major medical equipment, or an institutional health service must submit 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) provides further detailed instructions as to what constitutes a “change of ownership” for CON purposes, stating specifically that “this regulation defines what constitutes a change of ownership or control.” According to this guidance : “**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).

A. MSDH Properly Determined that this Project is a Change of Ownership and that no Certificate of Need was Required

In this instance, MSDH appropriately exercised its statutory and regulatory authority in determining that this proposed project was a change of ownership. Oceans intends to offer, through its lease arrangement with St. Dominic's, 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's. The proposed transaction meets the criteria for a change of ownership in two ways: (1) it is in fact a change of ownership of an "institutional health service," because, through the lease agreement, Oceans will simply acquire St. Dominic's certificate of need authority and the licensed beds to provide inpatient psychiatric services previously formerly provided by St. Dominic's, and (2) it is in fact a change of ownership of a health care facility, because Oceans is leasing the Behavioral Health Building where St. Dominic's previously delivered its behavioral health services. Thus, MSDH was fully and legal justified pursuant to its statutory authority to determine that this project constituted a "change of ownership" and that CON review was not required.

While Merit contends 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 definitively affirmed MSDH's statutory and regulatory 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. Normally, such an acquisition of major medical equipment would require CON review pursuant to Mississippi Code Section 41-7-191(1)(f). Initially, UMMC filed a CON Application to procure the equipment but withdrew its application after being challenged by other area hospitals.

Subsequently, UMMC requested a determination of reviewability ruling¹ from MSDH on whether it could acquire the linear accelerator without CON review. *Id.*

After considering UMMC's submission, MSDH approved UMMC's request, without a public hearing, based on provisions within the Mississippi State Health Plan that permitted UMMC to acquire and operate stereotactic radiosurgery equipment, as justified by UMMC's research and teaching mission. In a similar vein to the current case, Merit filed a complaint against UMMC and MSDH seeking declaratory and injunctive relief against MSDH's determination of reviewability ruling, 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 concluded that MSDH was well within its statutory authority to decide that UMMC was not required to secure a CON for the proposed project, affirming MSDH's decision.

Id. at 986.

The present case is a comparable scenario. Oceans and St. Dominic's sought MSDH approval for their project as a change of ownership pursuant to MSDH's regulations. MSDH correctly concluded that a CON was not necessary because this project qualified as a change of ownership. Just as the Mississippi Supreme Court did in *Jackson HMA*, when reading Section 41-

¹ A "Determination of Reviewability" is a separate process from a CHOW whereby an application may request a ruling from MSDH regarding whether a CON is required for a project. Miss. Code Section 41-7-205.

7-191 together with the CON statutes as a whole, Section 41-7-191(a) does not diminish the power of MSDH to establish 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. Because the Mississippi Supreme Court has previously upheld MSDH's statutory authority to make such determinations, through the reading of Mississippi's CON statutes as a whole, Merit's contention that § 41-7-191(1)(a) requires Oceans to obtain a CON is erroneous.

B. The Change of Ownership Application was Timely Filed

Merit also complains that MSDH issued its approval on March 5, 2024, eleven (11) days after the change of ownership application was filed. Compl. ¶ 35, 48. This argument misses the mark, because the applicable statute and regulation specify the amount of notice to be provided *by the applicant*, not the time for MSDH to process a request. As set forth above, § 41-7-191(f) provides that a certificate of need is required for “Changes of ownership . . . 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.” The CON Review Manual similarly requires at least fifteen (15) days' notice to MSDH prior to a change of ownership occurring. CMSR 15-009-091 Rule 2.1.8 (2024).

As set forth above, the term of the Lease Agreement (and the corresponding date for the “change of ownership to occur”) does not commence until the earlier of either of the following conditions being satisfied: (1) Oceans treating its first patient in the Behavioral Health Building, or (2) thirty (30) days after Oceans obtains “Final Approval of the Governmental Approvals” as defined in the Lease Agreement. Merit does not allege that either of these conditions has occurred (and indeed, neither has occurred as of the date of the filing of this Motion). Because more than thirty (30) days have elapsed since the Change of Ownership Application was filed and the change

of ownership has yet to occur, Oceans and St. Dominic provided timely notice to MSDH. Merit cites no authority which provides that MSDH must consider a change of ownership application for some minimum period of time prior to issuing a ruling. Therefore, MSDH acted within its authority to approve the change of ownership ruling eleven (11) days after it was filed.

C. Merit’s Reliance on Cases Involving Certificate of Need Standards Relating to Hospital Relocations are Misplaced

In its Complaint, Merit cites the cases of *St. Dominic-Jackson Mem’l Hosp. v. Miss. State Dep’t of Health*, 728 So. 2d 81 (Miss. 1998) (“*St. Dominic I*”) and *St. Dominic-Jackson Mem’l Hosp. v. Miss. State Dep’t of Health*, 87 So. 3d 1040 (Miss. 2012) (“*St. Dominic II*”) in support of its argument that because Oceans seeks to establish a “new” hospital, CON Review is required. These cases show no such thing, and are readily distinguishable from this case.

First, both of these cases involved a proposal to “relocate” unused hospital beds from a hospital’s main campus to establish a satellite hospital campus in a different location. In each case, there was no dispute that a CON was required for each project—instead, the parties disputed the appropriate CON criteria which should be applied. Here, MSDH has ruled that a CON is **not** required and therefore these cases are inapposite.

Even if these cases were applicable, they are clearly factually distinguishable. The substantive question in these cases was whether MSDH should apply more stringent CON standards applicable to “new” hospital facilities versus a more lenient standard for relocated hospital facilities. In both cases, the Mississippi Supreme Court held that each project constituted the establishment of a “new hospital” instead of a relocation based on an analysis of numerous factors, including the fact that each project required the construction of a new building, required the purchasing of new equipment (rather than the relocation of existing equipment), required the hiring of new staff (rather than relocating existing hospital staff), and did not involve any

corresponding reduction in services at the main hospital location.² This project is factually distinguishable from these cases in numerous respects, including (1) Oceans will provide the same services as formerly provided by St. Dominic's at the same physical location in the Behavioral Health Building, and (2) there will be a corresponding reduction of services at St. Dominic's (*i.e.*, St. Dominic's will no longer provide acute psychiatric services and its licensed beds will be transferred to Oceans). Because MSDH acted well within the scope and power provided to it by the Legislature to determine when a change of ownership occurs and when a certificate of need is required, and properly exercised its statutory and regulatory authority in approving the change of ownership here, the court should dismiss Merit's Complaint with prejudice.

II. MSDH's Decision was Supported by Substantial Evidence

Similarly, 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 Env'tl. 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 received and considered substantial evidence to prove that this proposal constitutes a change of ownership, including the Notice of Intent to Change Ownership Application, which contained a detailed description of the transaction and a copy of the Lease

² For example, in *St. Dominic I*, the Court stated, "The North Campus project does not constitute a 'relocation' in any ordinary sense of the word. The record is clear that a completely new building was constructed in northeast Jackson, and this building has been staffed with new medical workers and new equipment. There was no corresponding decrease in services at the main hospital . . . the facility is, for all practical purposes, a new hospital." *St. Dominic I* at 85.

Agreement. Compl. Ex. 5 [MEC 2 at 161-172]. The record before MSDH shows that, through the Lease Agreement, Oceans intended to provide the same services previously offered by St. Dominic's, using the same licensed beds, in the same building, and using the same CON authority. After reviewing these documents and materials, MSDH correctly determined that this transaction qualified as a change of ownership. Therefore, given the substantial evidence supporting MSDH's decision, Merit's Complaint must be dismissed.

III. MSDH's Decision was Not Arbitrary or Capricious

Furthermore, MSDH's approval of Oceans and St. Dominic's Notice of Intent to Change Ownership Application 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). In this case, MSDH's change of ownership ruling letter illustrates that MSDH thoroughly evaluated the description of the transaction and the Lease Agreement provided by Oceans and St. Dominic to determine that the transaction could proceed as a change of ownership. Compl. Ex. 6 [MEC 2 at 173-176]. MSDH's decision was made with adequately determined principle, reason and judgment, relying upon its regulations and its statutory authority. MSDH meticulously reviewed Oceans and St. Dominic's Notice, the details of the ownership change, and the relevant factors in determining that a change of ownership should be approved and that a

certificate of need was not required. Merit has not presented any facts to demonstrate that MSDH's decision was arbitrary or capricious, and thus Merit's Complaint must be dismissed.

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

Lastly, Merit has not substantiated (or at the very least, even alleged) any claims of violations of its statutory or constitutional rights. The central argument of Merit's Complaint is that MSDH overstepped the boundaries of its authority in approving the change of ownership. However, as noted earlier, MSDH is explicitly authorized by Mississippi law to establish rules and regulations that determine when a change of ownership has occurred and when a CON is required. Merit has not shown how MSDH's action, which was a mere exercise of its statutory and regulatory authority, violated any statutory or constitutional right of Merit. Given that MSDH acted within its legal statutory and regulatory authority, Merit has not and cannot successfully allege a violation of its statutory and constitutional rights.

CONCLUSION

The MSDH properly determined that this transaction could proceed as a change of ownership without a certificate of need, consistent with its statutory and regulatory authority. The MSDH's decision was supported by substantial evidence, was not arbitrary or capricious, and does not violate Merit's statutory or constitutional rights. For all of the above reasons, Merit's complaint should be dismissed with prejudice.

Dated: April 24, 2024

Respectfully submitted,

/s/ Candace W. Gregory

Candace W. Gregory (MSB No. 104014)

D. Michael Hurst, Jr. (MSB No. 99990)

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CERTIFICATE OF SERVICE

I hereby certify that I have this date caused a true and correct copy of the foregoing to be served *via* the Court's MEC system, which sent notice of the foregoing to all MEC counsel of record in this action.

Dated: April 24, 2024

/s/ Candace W. Gregory
Candace W. Gregory (MSB # 104014)