

FILED
MAR 22 2024
SIDDIK HAN CARR, CHANCERY CLERK
BY [Signature] D.C.
PLAINTIFF

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

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

v.

CIVIL ACTION NO. B2024-314H/3

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

DEFENDANTS

COMPLAINT FOR DECLARATORY JUDGMENT

COMES NOW, Jackson HMA, LLC d/b/a Merit Health Central (“Merit”), by and through undersigned counsel, and files this Complaint for Declaratory Judgment, and in support thereof, would show the following:

PARTIES

1. Plaintiff Jackson HMA, LLC d/b/a Merit Health Central (“Merit”) is a Mississippi limited liability company properly licensed to do business in the State of Mississippi and operates a hospital at 1850 Chadwick Drive, Jackson, Mississippi, 39204.

2. Defendant St. Dominic-Jackson Memorial Hospital (“St. Dominic”) is a Mississippi non-profit corporation which operates a hospital at 969 Lakeland Drive, Jackson, Mississippi, 39216. St. Dominic may be served through its authorized agent for service of process, Jonathan Werne, 969 Lakeland Drive, Jackson, Mississippi 39216.

3. Defendant Oceans Behavioral Hospital of Jackson (“Oceans”) is a Mississippi for profit limited liability company that proposes to open a new hospital providing psychiatric services at 2969 North Curran Drive, Jackson, Mississippi. Oceans may be served through its authorized agent for service of process, Registered Agent Solutions, Inc., 8927 Lorraine Road, Suite 204-A, Gulfport, Mississippi 39503.

4. Defendant Mississippi State Department of Health (“DOH”) is an agency of the State of Mississippi. DOH may be served through its agent for service of process, the Attorney General of the State of Mississippi, 550 High Street, Jackson, MS 39201.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this matter pursuant to Mississippi Code Ann. §§ 9-5-81 and 41-7-201(2), and Miss. Const. art. VI, §§ 159 and 160. Additionally, this Court has jurisdiction over this matter as it involves an administrative agency decision where there is no direct statutory scheme for appeal and Merit does not have a full, plain complete and adequate remedy at law. *Miss. Div. of Medicaid v. Alliance Health Center*, 174 So. 3d 254, 262 (Miss. 2015).

6. This Court has personal jurisdiction over the parties.

7. Venue is proper in this Court pursuant to Miss. Code Ann. § 11-11-3.

FACTS

8. Merit operates a hospital in Jackson, Mississippi, providing both acute care and psychiatric care to patients. Like similar hospitals, Merit is required to provide care to all patients that present at its emergency room regardless of whether the patient can pay for such services. Because it provides psychiatric services, Merit must provide those services to psychiatric patients with emergency psychiatric conditions within its capability and capacity regardless of their ability to pay.

9. Like Merit, prior to June 5, 2023, Defendant St Dominic, a then provider of psychiatric services, was required to provide psychiatric services at its hospital regardless of the patient’s ability to pay for such services.

10. However, on or about June 5, 2023, St. Dominic ceased to provide inpatient psychiatric services, which it previously provided on its campus in a building located at 2969 North Curran Drive, Jackson (“Building”).

11. Either prior to or sometime after this closing, St. Dominic entered into negotiations with Defendant Oceans to lease the Building to Oceans so that Oceans could open a new psychiatric hospital – one where St. Dominic would not have to admit psychiatric patients for inpatient treatment.

12. On October 3, 2023, Oceans filed with DOH a Notice of Intent to Apply for a Certificate of Need for the “Lease of Beds [from St. Dominic] and Establishment of New Psychiatric Hospital.” Ex. 1.

13. On October 20, 2023, Oceans filed the Certificate of Need Application to lease beds from St. Dominic and to “Establish[] [a] New Psychiatric Hospital” (the “Application”). Ex. 2. This Application was certified as true and correct.

14. DOH is required to follow state law and its own regulations in considering the approval of a CON application. The CON statute and DOH regulations require that, for a CON application to be approved, the applicant must demonstrate that it will provide care to indigent patients in the amount equal to the amount provided by like providers in the service area.

15. Oceans’ proposal is to provide only 2% indigent/charity care, which represents only \$341,103.00 of its anticipated \$17,840,861.00 in revenue in its third year of operation. Ex. 2.

16. On November 20, 2023, Merit filed written comments to the Application with DOH in order to ensure DOH recognized that Oceans proposed to treat only 2% indigent/charity patients, which was substantially less than Merit and, on information and belief, less than other hospitals

providing psychiatric services to such patients. Thus, by its own regulations, DOH was prohibited from approving Ocean's Application. Ex. 3.

17. On December 4, 2023, DOH issued its staff analysis which recommended the State Health Officer approve the Application for "the lease of beds and the establishment of a new psychiatric hospital with the condition that Oceans will provide 17% of charity/indigent care." Ex. 4 (emphasis added).

18. The staff analysis recommendation demonstrates the acknowledgement by DOH that the State Health Plan ("Plan") requires DOH to disapprove CON applications that fail to confirm that the Applicant will provide a reasonable amount of indigent care, and the Plan requires that DOH consider the indigent care provided by other providers in the proximate, geographic area to determine if an applicant's projection of indigent care is reasonable. *See* 15 MS ADC Pt. 8, Subpt 90, Ch. 1, Sec. 102; *See also* 15 MS ADC Pt. 9, Subpt 91, R.1.1

19. Merit provides 22% indigent care to psychiatric patients.

20. As a Medicare-participating hospital with an emergency department, St. Dominic must comply with the Emergency Medical Treatment and Labor Act, 42 U.S.C. § 1395dd (2023) ("EMTALA"). The hospital must examine any individual who enters the hospital's emergency department, including psychiatric patients, and provide stabilizing treatment within its capabilities for any emergency medical condition without regard to the individual's ability to pay. Before St. Dominic ceased providing psychiatric services, such treatment might have included admission to an inpatient psychiatric bed even when the individual did not have a payment source.

21. Because St. Dominic has quit providing psychiatric services, St. Dominic no longer has the obligation to admit emergency psychiatric patients as inpatients. Instead, St. Dominic now

only stabilizes a patient within its capability in the emergency department or transfers patients with psychiatric emergencies to other hospitals.

22. 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.

23. With St. Dominic able to transfer emergent psychiatric patients for admission to other hospitals besides Oceans, this new hospital, separate from St. Dominic's emergency department, will experience a lower volume of indigent psychiatric patients than St. Dominic previously treated.

24. Oceans, by its own projections, does not propose to provide more than 2% indigent/charity care, and instead projects by its third year of operation that 42% of its revenue will be obtained from commercial insurance payors. Ex. 2.

25. If Oceans did provide the required level of indigent care at its new hospital, the project would not be financially feasible. This would have required DOH to deny Oceans' Application.

26. The result of St. Dominic's 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.

27. Following the staff analysis in December 2023, Merit, an affected person under CON Law (Miss. Code Ann. § 41-7-173(a)), timely requested a hearing during the course of review pursuant to Miss. Code Ann. § 41-7-197(2), along with St. Dominic and Oceans.

28. The administrative hearing during the course of review ("Hearing") was scheduled before the administrative hearing officer for April 2, 2024 to April 5, 2024. However, Oceans

determined that its Application had considerable problems and might not survive a Hearing or a subsequent appeal.

29. The previously scheduled administrative Hearing would have led to another recommendation by the administrative hearing officer to the State Health Officer to determine whether Oceans' Application for the "Lease of Beds and Establishment of New Psychiatric Hospital" should be approved or disapproved and whether a percentage of indigent/charity care should be required. From such a recommendation by the hearing officer, the State Health Officer would have then issued a final order on the Application. That decision would be appealable to this Court for a determination as to whether the decision of the State Health Officer was consistent with statutory requirements and the CON law.

30. This process did not occur due to the Defendants' actions, leaving Merit without an adequate remedy at law.

31. Instead of facing the potential that its CON application might be denied because it was inconsistent with DOH regulations, Oceans filed with DOH on February 23, 2024, a Notice of Intent to Change Ownership ("CHOW") for the same project it proposed in its Application. Ex. 5.

32. On information and belief, St. Dominic never operated its psychiatric services in the Building separate from its main hospital. On information and belief, St. Dominic held one acute care hospital license from DOH that licensed St. Dominic to provide acute care and psychiatric care at St. Dominic (both the main hospital and the Building). On information and belief, the psychiatric care provided at the Building was considered a part of St. Dominic for licensure, Medicare and Medicaid participation, and compliance with EMTALA. Thus, there is not a CON of which to change ownership.

33. Despite St. Dominic never operating the Building as a separately licensed healthcare facility or provider, on March 5, 2024, DOH's Director of the Division of Health Planning and Resource Development issued a letter approving the requested CHOW. Ex. 6.

34. The CHOW approval set out the "Transaction" as: (1) St. Dominic's lease of the Building; (2) St. Dominic's lease of eighty-three (83) adult psychiatric beds and thirty-five (35) chemical dependency beds to Oceans; and (3) Oceans providing acute adult psychiatric services in seventy-seven (77) inpatient psychiatric beds and placing the remaining six (6) adult psychiatric beds and thirty-five (35) chemical dependency beds¹ in abeyance. Ex. 6. This CHOW approval allowed Oceans and St. Dominic to proceed with the Transaction on or after March 5, 2024, without CON review. Ex. 6.

35. Further, DOH issued its CHOW approval on March 5, 2024, which was only eleven days after Oceans filed the CHOW, though CON law and DOH's own publication on its website shows the deadline as March 25, 2024. Ex. 7.

36. Oceans' CHOW filing and DOH's approval both contemplate the same project for which Oceans filed a Notice of Intent and CON Application – the lease of beds and the "establishment of a new psychiatric hospital." The CHOW filing and DOH approval of the Transaction are both factually and legally inconsistent and are nothing more than an "end run" around CON Law.

37. DOH's granting of Oceans' CHOW is a final decision from an administrative agency for which there is not an administrative remedy available to Merit to demonstrate to DOH, the administrative hearing officer, and/or the State Health Officer that DOH's approval of the

¹ The arguments contained herein also relate to the proposed chemical dependency services; however, since both the Application and Transaction contemplate that the 35 chemical dependency beds will not be used, Plaintiff has focused on psychiatric beds and the creation of a new psychiatric hospital.

CHOW, St. Dominic's and Oceans' completion of the Transaction, and Ocean's establishment of a new psychiatric hospital providing psychiatric services all violate CON Law.

LAW

38. DOH's approval of the CHOW violates Mississippi's CON law, Miss. Code Ann. §§ 41-7-171 *et. seq.*, the 2022 State Health Plan ("Plan") (3rd ed. 2023), the Certificate of Need Review Manual ("Manual") (eff. Nov. 2023), as well as the normal customs and procedures of DOH.

39. Mississippi Code Annotated §§ 41-7-171 *et seq.* together with DOH's administrative rules and regulations found in the Plan and CON Manual set forth CON Law.

40. CON law at Mississippi Code Ann. § 41-7-191(1)(a)(d) states as follows:

- (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;
 - (v) Licensed chemical dependency services: ...

(emphasis added).

41. CON law at Mississippi Code Ann. § 41-7-173(h)(i-iii) provides the definition for health care facility as follows:

- (h) "Health care facility" includes hospitals, psychiatric hospitals, chemical dependency hospitals ..."
 - (i) "Hospital" means an institution which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment and care of injured, disabled or sick person, or

rehabilitation services for the rehabilitation of injured, disabled or sick person. Such term does not include psychiatric hospitals.

(ii) "Psychiatric hospital" means an institution which is primarily engaged in providing to inpatients, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of persons with mental illness.

(iii) "Chemical dependency hospital" means an institution which is primarily engaged in providing to inpatients, by or under the supervision of a physician, medical and related services for the diagnosis and treatment of chemical dependency such as alcohol and drug abuse.

42. The CHOW approval allows the creation of a new healthcare facility operated by a new provider of psychiatric services without the requisite CON, and it allows the change of ownership of psychiatric services which are not currently licensed because they were closed in June 2023.

43. A certificate of need is issued to a CON applicant for the healthcare facility proposed and/or the CON covered services proposed. Certificates of Need are both site and person/entity specific. Miss. Code Ann. § 41-7-195(1).

44. CON law requires that Oceans file a CON application to be reviewed by DOH. *See* Miss. Code Ann. § 41-7-191. DOH regulations further require that "No CON shall be issued unless the action proposed in the application ... has been reviewed for consistency with the specifications and criteria established by the Department and substantially complies with the projection of need as reported in the State Health Plan..." 15 MS ADC Pt. 8, Subpt 90, Ch. 1. Sec. 102; 15 MS ADC Pt. 9, Subpt 91, R. 1.1.

45. The Plan also requires that DOH disapprove CON applications that fail to confirm that an applicant will provide a reasonable amount of indigent care. 15 MS ADC Pt. 8, Subpt 90, Ch. 1, Sec. 102; *See also* 15 MS ADC Pt. 9, Subpt 91, R. 1.1.

46. As stated above, Oceans intends to provide only 2% indigent care (or stated another way only \$341,103.00 of its projected \$17,840,861.00 in revenue will be attributed to indigent care). *See* Ex. 2. CON law requires that DOH consider the indigent care provided by other providers in the proximate, geographic area to determine if an applicant's projection of indigent care is reasonable. 15 MS ADC Pt. 8, Subpt 90, Ch. 1, Sec. 102; 15 MS ADC Pt. 9, Subpt 91, R. 1.1. As stated above, currently Merit provides 22% indigent care to psychiatric patients..

47. By approving the Transaction versus requiring Oceans to proceed on the Application, DOH failed to enforce its own requirement that the new hospital provide a reasonable amount of indigent care.

48. As stated above, DOH issued its CHOW approval on March 5, 2024, only eleven days after the CHOW was filed. However, the statute for changes of ownership requires at least a thirty (30) day notice period (Miss. Code Ann. § 41-7-191(g)), and DOH's own publication on its website shows the deadline as March 25, 2024. Ex. 7.

49. Oceans filing of the CHOW, and DOH's acceptance and approval of the same, allows Oceans to circumvent CON Law and basically approves Oceans' project as stated in its Application for a "*new* psychiatric hospital" without the statutorily required CON review.

50. DOH approval of the Transaction violates the clear, unambiguous language of Miss. Code Ann. § 41-7-191.

DECLARATORY JUDGMENT

51. Merit incorporates the allegations contained in paragraphs 1-50 of this Complaint as if fully alleged herein.

52. Merit requests a declaratory judgment that DOH violated CON law by approving the CHOW and has allowed Oceans to violate CON law as well by not requiring Oceans'

Application for a “New Psychiatric Hospital” to follow the CON process to ensure compliance with the controlling statutes, Plan, and CON Manual.

53. DOH’s actions must be in compliance with the CON statutes and DOH’s Plan and CON Manual.

54. The CHOW approval of the Transaction violates Miss Code Ann. § 41-7-191 because it purportedly changes ownership of a service which necessarily requires the establishment of a new healthcare facility to provide the service.

55. DOH must review a project for what it actually is, not what the applicant tries to argue it is, and here, it is a new hospital. *St. Dominic-Jackson Mem’l Hosp. v. Miss. State Dep’t of Health*, 87 So. 3d 1040, 1048 (Miss. 2012). Both the Application and Transaction are for the same project – a new psychiatric hospital. Further, DOH’s own Staff Analysis stated Oceans’ project was a new psychiatric hospital, recommending approval for the lease of beds and “the establishment of a new psychiatric hospital” conditioned upon Oceans providing 17% charity/indigent care. Ex. 4.

56. CON Law does not permit DOH to allow one provider, such as St. Dominic, to split its CON authority and create a new provider (Oceans) through the change of ownership procedure. St. Dominic most likely could change ownership of its entire healthcare facility under the change of ownership procedure, but it cannot pick pieces of the services provided (or in this case, previously provided but now closed) in its healthcare facility to lease to other providers and create a new facility.

57. Hospitals, such as St. Dominic, have previously tried to create new hospitals through the relocation of unused beds. *St. Dominic-Jackson Mem’l Hosp. v. Miss. State Dep’t of*

Health, 728 So. 2d 81, 85 (Miss. 1998); *St. Dominic-Jackson Mem'l Hosp. v. Miss. State Dep't of Health*, 87 So. 3d 1040 (Miss. 2012).

58. While the cases above involved the relocation of unused beds to create a new hospital, the same is true in the present case (though proposed as part of the Transaction through a lease of unused beds) the project is for a “new” hospital and must be reviewed as such.

59. The Supreme Court has provided examples for determining whether a proposed project is a new hospital – including new staff and new equipment – and using unused beds. *St. Dominic-Madison Co. Med. Ctr. v. Madison Co. Med. Ctr.*, 928 So. 2d 822, 830. Here, Oceans proposes to purchase \$1,235,026 of new equipment; hire 122 new employees; and use psychiatric beds which have been unused by St. Dominic since June 2023. *See Ex. 2.*

60. CON law at Miss. Code Ann. § 41-7-191(1)(a) specifically requires a CON for the establishment of a new health care facility. DOH’s approval of Oceans’ Transaction violates the clear, unambiguous language of the governing statute.

61. The Court should review the statutes, rules, and regulations along with the Supreme Court’s prior rulings and determine that DOH’s approval of the Transaction violates the controlling statute and DOH’s regulations.

62. DOH’s approval of the Transaction for the CHOW of unused, unlicensed psychiatric services from St. Dominic, which necessarily requires the establishment of a new healthcare facility, is not entitled to deference and should be reviewed de novo. *See King v. Miss. Military Dep’t*, 245 So. 3d 404, 407 (Miss. 2018) (stating court’s review of administrative agency’s interpretation of a statute is a matter of law that is reviewed de novo, without deference to agency interpretation); *Miss. Methodist Hospital and Rehab. Ctr., Inc. v. Miss. Div. of Medicaid*, 319 So.

3d 1049, 1055 (stating court will review agency interpretation of rules and regulations de novo, without deference to agency's interpretation).

63. Merit seeks an appeal and declaratory judgment that DOH's decision approving the CHOW Transaction violates CON law by allowing Oceans to establish a new healthcare facility through a change of ownership of a portion of St. Dominic's CON authority for closed psychiatric services. This new healthcare facility can only be established after the State Health Officer approves a CON Application that has been reviewed in compliance with CON law.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that that Court will:


- a. Find that DOH's CHOW approval is invalid;
- b. Find that Oceans and St. Dominic cannot circumvent CON law through the CHOW procedure;
- c. Find that prior to the issuance of a CON to Oceans, DOH must follow normal CON review and procedures to ensure compliance with CON law with regards to the Application;

And, issue a final judgment:

- 1) Declaring DOH's CHOW approval invalid;
- 2) Declaring Oceans and St. Dominic cannot circumvent CON law through the CHOW procedure;
- 3) Declaring that prior to the issuance of a CON to Oceans, DOH must follow normal CON review and procedures to ensure compliance with CON law with regards to the Application;
- 4) Ordering attorneys' fees be paid by Oceans and St. Dominic to Plaintiff; and
- 5) Granting such other, further and general relief to which the Court finds Plaintiff may be entitled.

RESPECTFULLY SUBMITTED, this the 22 day of March, 2024.

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



Thomas L. Kirkland, Jr. (MBN 4181)
W. Davis Frye (MBN 10671)
BUTLER SNOW, LLP

OF COUNSEL:

Thomas L. Kirkland, Jr. (MBN 4181)
W. Davis Frye (MBN 10671)
BUTLER SNOW, LLP
1020 Highland Colony Parkway
Suite 1400
Ridgeland, Mississippi 39157
(P) (601) 985-4470
(F) (601) 985-4500