IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

CHARLESTON AREA MEDICAL CENTER, INC.,
Respondent Below,

Petitioner,

v. No. 22-ICA-169

RALEIGH GENERAL HOSPITAL,
Applicant Below,

Respondent,

and

THE WEST VIRGINIA HEALTH CARE AUTHORITY,

Respondent.

BRIEF ON BEHALF OF RESPONDENT RALEIGH GENERAL HOSPITAL

RACHEL D. LUDWIG
WV Bar # 12487
DLA Piper LLP (US)
500 Eighth Street, NW
Washington, DC 20004
T: (202) 799-4562
F: (202) 799-5562
Rachel.Ludwig@us.dlapiper.com

Counsel for Respondent,
Raleigh General Hospital, LLC

TABLE OF CONTENTS

Page

STATEMENT OF THE CASE 1

SUMMARY OF ARGUMENT 2

STATEMENT REGARDING ORAL ARGUMENT AND DECISION 3

STANDARD OF REVIEW 3

ARGUMENT 7

I. The Reviewing Court Must Reject this Appeal as Petitioner has Waived its Assignments of Error. 7

II. The Decision Contains Ample Findings of Fact and Conclusions of Law, and Therefore, is in Proper Form. 9

a. The Decision Clearly Articulates the Critical Issues in this Matter as Required by West Virginia Case Law. 10

b. Despite Petitioner's Contentions, the Decision is Only Required to Set Forth Critical Facts in Evidence and is Sufficient Without the Recitation of Every Single Fact in Evidence. 16

III. The Authority Clearly Independently Analyzed the Witness Testimony and Evidence Introduced at the Hearing as Reflected by the Decision. 18

IV. The Presence of a Member of the Board is not Required by Law nor is it a Common Practice. 19

a. The Absence of a Board Member at the Hearing is Inconsequential to the Board's Ability to Review Facts in Evidence and Issue the Decision. 20

b. Petitioner Waived its Right to Assert this Argument by not Raising Board Member Presence at the Hearing Prior to its Appeal 21

CONCLUSION 23

TABLE OF AUTHORITIES

Page(s)

Cases

Addair v. Bryant,
168 W. Va. 306 (1981) 7

Amedisys W. Va., LLC v. Personal Touch Home Care of W. Va. Inc.,
245 W. Va. 398 (2021) 21

Appalachian Power Co. v. State Tax Dep't of W Virginia,
195 W. Va. 573 (1995) 4, 5

Berlow v. W. Va. Bd. of Med.,
193 W. Va. 666 (1995) 4

Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.,
467 U.S. 837, 104 S.Ct. 2778 (1984).....4

Citizens Bank of Weirton v. W. Va. Bd. of Banking and Fin. Inst.,
160 W. Va. 224 (1977) 10, 11, 13, 16

Clower v. W. Va. Dep't of Motor Vehicles,
223 W.Va. 253 (2009) 7

Curry v. W. Va. Consolidated Pub. Ret. Bd.,
778 S.E.2d 637 (W. Va. 2015).....6

Family Medical Imaging, LLC v. W. Va. Health Care Auth.,
218 W. Va. 146 (2005) 22

Francis O. Day Co., Inc. v. Dir. of Env't Prot.,
191 W. Va. 134 (1994) 15

Frazier v. Talbert,
245 W. Va. 293 (2021) 4

Harrison v. Ginsberg,
169 W. Va. 162 (1982) 6, 14, 16

Jones v. Mullen,
166 W. Va. 538 (1981) 14

Leftwich v. Wesco Corp.,
146 W.Va. 196, 119 S.E.2d 401 (1961).....17

Lightner v. Cline,
2012 W.Va. Cir. LEXIS 4464 (Mar. 26, 2012) 6

Miller v. Epling,
229 W. Va. 574, 729 S.E.2d 896 (2012).....14, 17

Modi v. W. Va. Bd. of Med.,
195 W. Va. 230 (1995) 4, 13, 16, 17

Murray Energy Corp. v. Steager,
241 W. Va. 629 (2019) 4, 5

O'Neal v. Peake Operating Co.,
185 W. Va. 28, 404 S.E.2d 420 (1991).....22

Powell v. Paine,
221 W. Va. 458 (2007) 5

Princeton Cmty. Hosp. v. State Health Planning and Dev. Agency,
174 W. Va. 558 (1985) 3, 5, 15, 16

In re Queen,
196 W. Va. 442 (1996) 6

Rice v. Consolidated Pub. Ret. Bd. of State of W. Va.,
199 W.Va. 214 (1997) 15

Rodriguez v. Consolidation Coal Co.,
206 W. Va. 317 (1999) 7

State ex rel. Rubenstein v. Bloom,
235 W. Va. 70, 771 S.E.2d 717 (2015).....20

In re S.C.,
2015 WL 3755086 (2015).....21, 22

Shepherdstown Volunteer Fire Dep't v. W. Va. Human Rights Comm'n,
172 W. Va. 672 (1983) 4

St. Mary's Hosp. v. State Health Planning and Dev., and HCA Health Srvs. of W. Va. Inc.,
178 W. Va. 792 (1987) 13, 16

State Dep't of Health v. Robert Morris,
195 W. Va. 759 (1995) 8

State v. Grimes,
226 W. Va. 411 (2009) 7

State v. Honaker,
193 W.Va. 51 (1994) 8

State v. Miller,
194 W. Va. 3 (1995) 22

Tennant v. Callaghan,
200 W. Va. 756 (1997) 4

In re Tiffany Marie S.,
196 W. Va. 223 (1996) 6, 15, 16, 17

W. Va. Med. Imaging & Radiation Therapy Tech. Bd. of Examiners v. Harrison,
227 W. Va. 438 (2011) 4

Walker v. W. Va. Ethics Comm'n,
201 W. Va. 108 (1997) 5

Wilkinson v. Bowser,
199 W. Va. 92, 483 S.E.2d 92 (1996) 21

W. Va. Dep't of Health and Human Res. ex rel. Wright v. Doris S.,
197 W. Va. 489 (1996) 22

Young v. Apogee Coal Co.,
232 W.Va. 554, 753 S.E.2d 52 (2013) 20

Statutes

W. Va. Code §16-2D-16 3

W. Va. Code §16-29B-5 21

W. Va. Code §16-29B-12(c) 19

W. Va. Code §16-29B-12(e) 20

W. Va. Code §29A-5-3 16

W. Va. Code §29A-5-4(g) 3

W. Va. Code §29A-5-4(g)(1) 4

W. Va. Code §29A-5-4(g)(2), (3), and (4) 6

W. Va. Code §29A-5-4(g)(5) 5

W. Va. Code §29A-5-4(g)(6) 6

Other Authorities

W. Va. Rules of Appellate Procedure Rule 10(c)(4) 1

W. Va. Rules of Appellate Procedure Rule 10(c)(7) 7, 23

W. Va. Rules of Appellate Procedure Rule 10(d) 1

W. Va. Rules of Appellate Procedure Rule 19 3

W. Va. Rules of Appellate Procedure Rule 20 3

STATEMENT OF THE CASE

Respondent supplements Petitioner's statement of the case as follows:

On March 7, 2022, Charleston Area Medical Center ("CAMC" or "Petitioner") filed a motion to deny the Application. D.R. 0580-610. On March 11, 2022, Raleigh General Hospital ("RGH") filed a response to CAMC's motion to deny. D.R. 0706-716. At the pre-hearing conference held on March 14, 2022, the parties orally argued their positions. D.R. 1486-1534. The West Virginia Health Care Authority (the "Authority") refused to deny the Application and determined that the issues presented were "more appropriately a[dd]ressed [sic] at a hearing." D.R. 1515.

In accordance with the Amended Hearing Order in this matter, the public hearing was first convened on March 21, 2022 at the Authority's office. D.R. 1535-1836. The hearing reconvened the next day on March 22, 2022. D.R. 1837-2202. During the course of the two-day hearing, the Applicant, RGH, and affected person, CAMC, were present and afforded an opportunity to present testimony, introduce documentary evidence, and to otherwise be heard—including lodging objections. The hearing examiner appointed by the Board, Mr. B. Allen Campbell, presided over the hearing, which was also attended by the interim Director of the Authority, Mr. Tim Adkins. D.R. 1537, 1839, 2086, 2104.

Respondent also seeks to correct inaccuracies contained in the Petitioner's statement of the case as permitted by law. W. Va. R. App. Proc. 10(d). It is the position of the Respondent that certain characterizations and representations by the Petitioner in its Statement of the Case are inappropriate for this portion of its brief as they are not based in fact or procedural history, but rather upon unwarranted speculation or a summary of legal arguments. W. Va. R. App. Proc. R. 10(c)(4). Specifically, RGH objects to the inclusion of the following statements by the Petitioner in the Statement of the Case in this matter:

a) The Petitioner's commentary on the role of Mr. Campbell in the rendering of the Authority's Decision in this case: "It should be noted that, even though Mr. Campbell is listed on the transcript as a hearing examiner, he did not issue a decision and, based upon information and belief, he played no direct role in rendering the HCA's Decision in this case." Petr. Br. 5.

b) The Petitioner's assertions that the "HCA Decision is not in proper form as it fails to include proper findings of fact and conclusions of law related to the evidence adduced at the two-day hearing." Petr. Br. 5-6.

c) The Petitioner's allegations that the "HCA's Decision fail[ed] to analyze the evidence introduced by Petitioner CAMC and Respondent RGH at the hearing and therefore, the Authority did not properly determine whether RGH's CON Application should have been granted." Petr. Br. 6.

SUMMARY OF ARGUMENT

Preliminarily, Petitioner's appeal of this matter is deficient as a matter of law because it failed to properly preserve its assignments of error. Petitioner did not adequately cite to the record on appeal nor explain its legal arguments, including its allegations that the Authority failed to comply with the six (6) standards of review, thereby resulting in Petitioner's waiver of its assignments of error.

As a result of these deficiencies, CAMC is left with nothing but a request for this court to reweigh the facts upon appellate review—which exceeds this court's applicable scope of review in this matter. Notwithstanding the above, RGH responds to Petitioner's arguments, and finds that all six (6) of Petitioner's assignments of error fail for the following reasons:

1. West Virginia case law clearly supports that the Authority's Decision to grant RGH a CON for cardiac surgery services (the "Decision") contains ample findings of fact and conclusions of law.
2. The Authority made an independent analysis of witness testimony and evidence introduced at the hearing as reflected by its Decision.
3. The presence of any member of the Authority's board (the "Board") at CON hearings is not required by law nor is it common practice in these matters. Further, Petitioner did not raise this issue at hearing or in its initial briefing. Therefore, Petitioner failed to preserve, and has consequently waived, this argument on appeal.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

RGH requests oral argument and defers to the Court to determine whether oral argument should be held pursuant to Rule 19 or Rule 20 of the West Virginia Rules of Appellate Procedure. W. Va. R. App. Proc. 19-20.

STANDARD OF REVIEW

The standard of review for decisions appealed from the Authority is set forth in West Virginia Code §16-2D-16, which provides, in relevant part, that an appeal be processed "in accordance with the provisions governing the judicial review of contest administrative cases in article five, chapter twenty-nine-a of this code." *See also Princeton Cmty. Hosp. v. State Health Planning and Dev. Agency*, 174 W. Va. 558 (1985). The specific standard of review to be applied in this matter is set forth at West Virginia Code §29A-5-4(g), which provides:

> (g) The court may affirm the order or decision of the agency or remand the case for further proceedings. It shall reverse, vacate, or modify the order or decision of the agency if the substantial rights of the petitioner or petitioners have been prejudiced because the administrative findings, inferences, conclusions, decision or order are
>
> (1) In violation of the constitutional or statutory provision; or
> (2) In excess of the statutory authority or jurisdiction of the agency; or

(3) Made upon unlawful procedures; or
(4) Affected by other error of law; or
(5) Clearly wrong in view of the reliable, probative and substantial evidence of the whole record; or
(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

If such standards are not present, the reviewing court may affirm the order or decision of the agency or remand the case for further proceedings. *See e.g.*, *Shepherdstown Volunteer Fire Dep't v. W. Va. Human Rights Comm'n*, 172 W. Va. 672 (1983); *Berlow v. W. Va. Bd. of Med.*, 193 W. Va. 666 (1995); *Modi v. W. Va. Bd. of Med.*, 195 W. Va. 230 (1995); *W. Va. Med. Imaging & Radiation Therapy Tech. Bd. of Examiners v. Harrison*, 227 W. Va. 438 (2011). Generally, the reviewing court is bound by the statutory standards listed above for judicial review of contested cases and reviews questions of law presented *de novo*. *See Tennant v. Callaghan*, 200 W. Va. 756 (1997); *Frazier v. Talbert*, 245 W. Va. 293 (2021).

Under West Virginia Code §29A-5-4(g)(1), the reviewing court applies the standards set forth by the United States Supreme Court in *Chevron U.S.A., Inc. v. Natural Res. Defense Council, Inc.*, 467 U.S. 837 (1984). In determining whether an administrative agency's position on a rule or regulation should be sustained, the court must first ask whether the Legislature has directly spoken to the precise question at issue. If the intention of the Legislature is clear, the agency's position can only be upheld if it conforms to the Legislature's intent. *Appalachian Power Co. v. State Tax Dep't of W. Va.*, 195 W. Va. 573 (1995); *see Murray Energy Corp. v. Steager*, 241 W. Va. 629 (2019). If, however, the "legislative intent is not clear, a reviewing court may not simply impose its own construction of the statute in reviewing a legislative rule. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute. A valid legislative rule is

entitled to substantial deference by the reviewing court." *Appalachian Power Co.*, 195 W. Va. at 579 (1995); *see also Murray Energy Corp.*, 241 W. Va. at 639.

Thus, an inquiring court, even a court empowered with *de novo* review, "must examine a regulatory interpretation of a statute by standards that include appropriate deference to agency expertise and discretion." *Appalachian Power Co.*, 195 W. Va. at 582. An agency's determination of matters within its area of expertise is entitled to substantial weight. *Princeton Cmty. Hosp.*, 174 W. Va. at 564 (1985). In fact, the reviewing court's function:

> [M]ust be performed with conscientious awareness of its limited nature. The enforced education into the intricacies of the problem before the agency is not designed to enable the court to become a superagency that can supplant the agency's expert decision-maker. To the contrary, the court must give due deference to the agency's ability to rely on its own developed expertise. The immersion in the evidence is designed solely to enable the court to determine whether the agency decision was rational and based on consideration of the relevant factors.

Princeton, 174 W. Va. at 564.

Additionally, under West Virginia Code §29A-5-4(g)(5), West Virginia courts review an agency's findings to determine whether such findings were "clearly wrong in view of the reliable, probative, and substantial evidence of the whole record." A "finding is clearly erroneous, when although there is evidence to support it, the reviewing court on the entire record is left with the definite and firm conviction that a mistake has been made." *See e.g., Powell v. Paine,* 221 W. Va. 458, 462 (2007). A reviewing court is thus required to "evaluate the record of an administrative agency's proceeding to determine whether there is evidence on the record as a whole to support the agency's decision." *Walker v. W. Va. Ethics Comm'n*, 201 W. Va. 108, 150 (1997). That evaluation is "conducted pursuant to the administrative body's findings of fact, regardless of whether the court would have reached a different conclusion on the same set of facts." *Id.* A

reviewing court must "affirm a finding if the [lower tribunal's] account of the evidence is plausible in light of the record viewed in its entirety." *In re Tiffany Marie S.*, 196 W. Va. 223, 231 (1996).

Further, West Virginia courts have analyzed West Virginia Code §29A-5-4(g)(6) and found that the scope of review under this "arbitrary and capricious" standard is narrow. That is, the issues are limited to whether the agency decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment. *See e.g., Harrison v. Ginsberg*, 169 W. Va. 162, 170 (1982). A court reviewing the factual findings of an administrative agency must not substitute its judgment for that of the hearing examiner. *Curry v. W. Va. Consolidated Pub. Ret. Bd.*, 778 S.E.2d 637 (W. Va. 2015). Rather, the "clearly wrong and arbitrary and capricious standards of review are deferential ones which presume an agency's actions are valid as long as the decision is supported by substantial evidence or by a rational basis." *In re Queen*, 196 W. Va. 442, 446 (1996). "Substantial evidence requires more than a mere scintilla. It is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. If an administrative agency's factual finding is supported by substantial evidence, it is conclusive." *Id.* An agency's exercise of discretion is deemed arbitrary and capricious where it "entirely fail[s] to consider an important aspect of the problem, offer[s] an explanation that [runs] counter to the evidence before [it], or offer[s] one that is so implausible that it could not be ascribed to a different in view or the product of [agency] expertise." *Id*. at 487.

There is additional West Virginia case law pertaining to the other three standards of review under West Virginia Code §§29A-5-4(g)(2), (3), and (4). *See e.g., Lightner v. Cline*, 2012 W.Va. Cir. LEXIS 4464 (Mar. 26, 2012) ("there is nothing in the record to support the contention that the Commissioner violated or acted in excess of statutory authority . . . The Court is of the opinion that this challenge is not well taken as the record reflects that the Commissioner's Order was

entered following an extensive investigation . . . which allowed for extensive factual development, and which satisfied all statutory and regulatory requirements"); *Clower v. W.Va. Dep't of Motor Vehicles,* 223 W. Va. 253 (2009) (finding that the hearing examiner was clearly wrong in concluding that the Defendant was arrested pursuant to lawful procedures).

ARGUMENT

I. The Reviewing Court Must Reject this Appeal as Petitioner has Waived its Assignments of Error.

Petitioner's appeal is wholly deficient because Petitioner categorically failed to appropriately cite to the record on appeal and to adequately explain its assignments of error beyond unfounded factual allegations, thereby resulting in Petitioner's waiver of its assignments of error. Under Rule 10(c)(7) of the West Virginia Rules of Appellate Procedure, an appellate brief must contain:

> [A]n argument clearly exhibiting the points of fact and law presented, the standard of review applicable, and citing the authorities relied on, under headings that correspond with the assignments of error. The argument must contain appropriate citations to the record on appeal, including citations that pinpoint when and how the issues in the assignments of error were presented to the lower tribunal. The *Intermediate Court and the Supreme Court may disregard errors that are not adequately supported by specific references to the record on appeal*.
>
> W. Va. R. App. Proc. 10(c)(7) (emphasis added).

With this Rule in mind, West Virginia courts have deemed a petitioner's assignment of error "waived" and precluded from appellate review in circumstances where the petitioner failed to adequately reference the record on appeal. *See e.g.*, *Rodriguez v. Consolidation Coal Co.*, 206 W. Va. 317, 327 (1999). That is, "issues not raised on appeal or merely mentioned in passing are deemed waived." *Addair v. Bryant,* 168 W. Va. 306, 284 (1981). Thus, assignments of error may be deemed waived if petitioners do not "argue these assignments of error nor direct the court's attention to the relevant portions of the record which sustain the propositions they raise." *Id.*; *see*

also State v. Grimes, 226 W. Va. 411, 422 (2009) ("[i]nasmuch as those matters were set forth in the appellant's brief in a cursory or tangential manner, they are not cognizable in [an] appeal"). West Virginia courts have found that these so-called, "skeletal argument[s]" are "really nothing more than an assertion, [and do] not preserve a claim . . . Judges are not like pigs, hunting for truffles buried in briefs." *State v. Honaker*, 193 W.Va. 51, 56 (1994); *State Dep't of Health v. Robert Morris*, 195 W. Va. 759, 765 (1995).

Petitioner failed to comply with the required rules of appellate procedure and left this reviewing court to guess the bases for its convoluted arguments. While Petitioner mentioned all six (6) relevant standards of review throughout its assignments of error, it did not identify nor discuss the legal parameters applicable to each of the six (6) standards of review it alleges were violated. Despite the plethora of available guidance from West Virginia courts as identified in Respondent's Standard of Review section in this brief, Petitioner generally ignored the legal requirements under each of the standards of review. Petr. Br. 7-9.

Instead, Petitioner collapsed all six (6) standards into simple, conclusory sentences at various points throughout its brief. *See e.g.*, Petr. Br. 7 ("CAMC asks the Court to reverse HCA's Decision finding that it is made in violation of statutory provisions, is clearly wrong in view of the reliable, probative, and substantial evidence on the whole record, and is arbitrary and capricious, characterized by an abuse of discretion"); *see also* Petr. Br. 12-13, 15, 21, 27, 28, 30. Petitioner provides nothing more than an assertion that the relevant standards of review were implicated, without any explanation or legal analysis demonstrating that they indeed were implicated. These skeletal arguments do not preserve Petitioner's claims.

Moreover, in its assignments of error, the Petitioner barely cited to the record on appeal. In fact, in Petitioner's 21-page section of its brief pursuant to which it laid out its six (6) assignments

of error, on average, Petitioner cited to the record on appeal *just twice per page*. Moreover, in several instances, Petitioner's meager citations to the record on appeal were to the same portion of the record and were used to stand for broad propositions. *See e.g.*, Petr. Br. 2, 12, 14, 22, 23, 24.

In fact, even for statements Petitioner made regarding the Authority's processes, analysis, and the Decision itself, in numerous instances, CAMC failed to make *any* citations to the record on appeal. *See e.g.*, Petr. Br. 13 ("Even a brief review of HCA's Decision demonstrates that the HCA Board members had little knowledge of the testimony of the witnesses for both parties"); Petr. Br. 14 ("No HCA Board member was present when [the cardiac surgeon's] critical adverse testimony was presented and based upon the total absence of discussion of this key testimony in HCA Decision, apparently no HCA Board member even read the transcript of the hearing to at least consider this important testimony"). Petitioner likely does not cite to the record in these instances because there is nothing within the record on appeal to support Petitioner's assignments of error. Therefore, Petitioner is left to make unfounded accusations against the Authority's decision-making ability and the validity of the Decision as the foundation of its assignments of error.

As a result of Petitioner's failure to explain or analyze the standards of review applicable to its assignments of error beyond mere assertions and to adequately cite to the record on appeal, Petitioner's ambiguous and unsupported assignments of error are waived, and this reviewing court is entitled to, and must, decline to address the merits of this appeal.

II. The Decision Contains Ample Findings of Fact and Conclusions of Law, and Therefore, is in Proper Form.

As clearly established by West Virginia precedent, the Authority is required to evaluate the significant issues attendant to a CON matter and set forth a reasonable conclusion within its decision such that a reviewing court can discern the bases of the decision. However, the

Authority's obligation under the law does not require the Authority to address every single fact or legal argument presented by the parties. Thus, as the Authority in the instant matter set forth in sufficient detail the facts in evidence that formed the basis of its Decision, and made a reasonable and articulate finding thereto, the Decision is in proper form, and must be affirmed.

a. The Decision Clearly Articulates the Critical Issues in this Matter as Required by West Virginia Case Law.

Petitioner cites to West Virginia case law, including *Citizens Bank of Weirton v. West Virginia Board of Banking and Financial Institutions*, in an attempt to support its argument that the Decision did not contain ample findings of fact and conclusions of law.[1] However, Petitioner's attempts have the opposite effect. A close review and analysis of the facts and circumstances of these West Virginia cases support a finding that the Decision contained proper findings of fact and conclusions of law, and must, as a result, be affirmed.

i. Petitioner's Reliance on *Citizens* is Wholly Incorrect Because the Facts and Circumstances of the Decision are Fundamentally Dissimilar to the *Citizens* Order.

In its brief, CAMC repeatedly cites to the West Virginia case, *Citizens Bank of Weirton v. West Virginia Board of Banking and Financial Institutions*, asserting that it set the standard for the Authority's findings of fact and conclusions of law. *See e.g.*, Petr. Br. 10, 26-27. However, the instant matter is fundamentally separate and distinct from *Citizens*. In *Citizens*, the issued order was only one page and contained a mere six findings of fact, one simple sentence each, and one

[1] Importantly, in support of its contentions, Petitioner relied on several West Virginia cases that are not precedential for the instant matter. Specifically, much of the West Virginia case law cited to by Petitioner are cases brought in front of other administrative agencies and boards, including the West Virginia Board of Banking and Financial Institutions and the West Virginia Board of Medicine, which have their own set of statutory procedures and rules that substantively differ from those applicable to CON matters presented to the Authority. Petitioner's reliance on these cases is misplaced. Nonetheless, even these cases with no precedential effect on the instant matter do not provide the support Petitioner seeks.

conclusion of law. *Citizens Bank of Weirton v. W. Va. Bd. of Banking and Fin. Inst*., 160 W. Va. 224, 233 (1977). The order in *Citizens* also contained no citations. *Id*.

The *Citizens* order is a far cry from the 63-page Decision in the instant matter, which cited to various materials, including the hearing transcript, hearing exhibits, briefs from both parties, and the controlling statutes and regulations. D.R. 0003-67. The Decision clearly and sufficiently addressed the necessary facts in evidence and set forth reasonable findings of fact that supported its conclusions of law. Specifically, by way of example, the Decision extensively analyzed each of the following substantial issues involved in this matter, including the attendant facts in evidence, and made reasonable conclusions thereto:

(1) The Authority analyzed the applicable study area for RGH's cardiac surgery program inclusive of a detailed discussion of arguments from both parties on the inclusion of Monroe County in the study area as part of the need calculation. In the Decision, the Authority weighed RGH's inclusion of Monroe County based upon the plain language of the Standards and prior, approved applications against CAMC's removal of Monroe County based upon its own legal interpretation of the Standards. After its deliberation of the facts in evidence and each party's position on the inclusion of Monroe County in the service area, the Authority made a reasonable and clear conclusion that it is appropriate to include Monroe County in the study area in accordance with the written Standards. D.R. 0013-21.

(2) Similarly, the Authority extensively evaluated the financial feasibility of RGH's proposed cardiac surgery program in the Decision. D.R. 0045-54. Yet again, the Authority contemplated the facts presented and the opposing arguments from RGH and Petitioner, including CAMC's contention, now extensively reiterated in its appellate

brief, that RGH's pro forma improperly determined salary expenses, costs of locum tenens employees, sign-on bonuses, and the payor mix. Thereafter, the Authority logically concluded in its Decision that RGH's proposed program was financially feasible given the evidence in the record and the requirements imposed by the Standards. D.R. 0054.

(3) In addition, the Decision analyzed the "superior alternatives to the services in terms of cost, efficiency, and appropriateness" of RGH's proposed cardiac surgery program. D.R. 0056-60. Once again, the Authority weighed the positions and evidence presented by both parties. For example, the Decision addressed Petitioner's arguments that the proposed project could not be the superior alternative as it would cause accessibility to be decreased because "larger centers [could not] have the specialists." Petr. Br. 29. After the Authority weighed this evidence, the Authority reasonably concluded in its Decision that superior alternatives did not exist based upon evidence presented that "study area patients must travel two to three-plus hours to access care under the status quo...[,] travel-related wait times [could] be eliminated by increased geographic access to care...[and,] in terms of appropriateness, continuity of care from diagnosis to surgery to aftercare present[ed] a superior alternative to the status quo." D.R. 0059-60.

Contrary to Petitioner's assertions, the Decision does not "blindly [accept] RGH's Application" but rather makes a series of factual findings by considering evidence and testimony presented by both parties and comes to a reasonable conclusion based upon the applicable laws and facts in evidence. Petr. Br. 27. Thus, as the Authority made appropriate findings of fact and conclusions of law, unlike the *Citizens* case, the Decision must be upheld in accordance with West Virginia precedent.

ii. Petitioner's Citations to West Virginia Precedent in Support of its Assignments of Error Conversely Support a Finding that the Decision contained Ample Findings of Fact and Conclusions of Law.

Similarly, in its brief, Petitioner cited to several other West Virginia cases as support for its assertion that the Decision did not contain sufficient findings of fact and conclusions of law. Petr. Br. 11. However, Petitioner's brief conveniently used only snippets of these cases to try to put forth this argument. In doing so, Petitioner's brief wholly mischaracterized these cases and their similarity to the instant matter. Nonetheless, the cases cited by Petitioner merely provide further support that the Decision was legally and factually appropriate. As evidence thereto, the relevant facts and findings from these courts, which were omitted by CAMC, are addressed in turn below.

In *Modi v. West Virginia Board of Medicine*, 195 W. Va. 230 (1995), the West Virginia Board issued a 12-page order with extensive changes to the report from the hearing examiner. The Board's order offered "no explanation for those changes. [Instead,] [t]he changes were accomplished by references in the Board order to pages in the examiner's report, excising certain material by such references and adding other material. The Board excised over 21-pages of the hearing examiner's report and added perhaps a page or two of material." *Id*. at 236. The Board's order "cobbled together by the expedient of additions to and excisions from the hearing examiners report, is barely intelligible, if at all." *Id*. at 240. As a result, the Court was "unable to discern from the Board order 'a reasoned, articulate decision which sets forth the underlying evidentiary facts which lead the agency to its conclusion.'" *Id*. (citing *Citizens Bank of Weirton*, 160 W. Va. at 233 (1977)).

In *St. Mary's Hospital v. State Health Planning & Development Agency, et al.*, 178 W. Va. 792 (1987), the Court found that the agency's "remand opinion [made] no attempt to rule on the parties' proposed findings." *St. Mary's Hosp.*, 178 W. Va. at 796. The Court noted that the

agency's 12-page decision was insufficient because it fell "short of the 'reasoned explanation of the ultimate conclusion reached,' which is required by basic principles of administrative law." *Id*. at 799 (citing *Harrison v. Ginsberg*, 169 W. Va. 162, 170 (1982)). The Court noted that the agency's decision failed to sufficiently address crucial factors attendant to the CON process. *Id*. at 798. For example, as to financial feasibility, the Court stated that the "state agency cited only the initial capital investment [and] [n]othing in the remand decision discuss[ed] financial feasibility in operating the facility, which [is] a crucial factor." *Id*. As a result, without sufficient factual findings by the state agency on the issue of financial feasibility, the Court could not determine whether the state agency's decision was "supported by substantial evidence or was clearly wrong." *Id*.

In *Jones v. Mullen*, 166 W. Va. 538 (1981), the issued order was barely 2-pages and contained no citations to any evidence in the record. Furthermore, the *Jones* Court found that the agency "had completely misunderstood the evidence which was presented." *Id*. at 543.

As evidenced by the language of the courts cited directly above, the Decision in the instant matter is materially distinct. The Decision was neither "cobbled together" nor "barely intelligible." Rather, in accordance with West Virginia precedent, the Authority crafted "a reasoned, articulate decision which set[] forth the underlying evidentiary facts" that clearly formed the basis of the Authority's conclusions of law. *See supra* Section III(a)(i). The Decision in this matter was extensive and contained numerous citations to the evidence in the record. *See e.g.*, *Miller v. Epling*, 229 W. Va. 574 (2012) (finding that a "sufficiently articulate decision setting forth the underlying evidentiary facts which lead the agency to its conclusion is crucial for purposes of meaningful appellate review"). Furthermore, there is no indication, nor any assertion by Petitioner, that the Authority "misunderstood the evidence" presented. *Jones*, 166 W. Va. at 543. As a result, these

precedential West Virginia cases support the validity of the Decision, including a clear finding that the Decision appropriately set forth sufficient findings of fact and conclusions of law.

iii. As the Decision Contains Sufficient Findings of Fact and Rational Conclusions of Law, the Decision Must be Afforded Deference and Affirmed.

As set forth in Section III(a)(i) above, it is evident that the Decision contained ample findings of fact and resulting conclusions of law that are supported by the findings of fact for which the reviewing court can evaluate the critical issues before the Authority and determine the reasonableness of the Decision. It is the role of the reviewing court to "determine whether the agency decision was rational and based on consideration of the relevant factors." *Princeton,* 174 W. Va. at 564. In reviewing a contested case, the reviewing court is required to examine the record of the proceeding below to ascertain whether there is evidence to support the administrative agency's decision. Such examination is to be conducted pursuant to the administrative body's findings of fact, regardless of whether the reviewing court would have reached a different conclusion on the same set of facts. *Rice v. Consolidated Pub. Ret. Bd. of State of W. Va*., 199 W.Va. 214 (1997). Thus, the reviewing court is required to afford deference to the Authority unless the findings are "clearly wrong in view of the reliable, probative, and substantial evidence on the whole record." *Muscatell*, 196 W. Va. at 590; *Francis O. Day Co., Inc. v. Dir. of Env't Prot.*, 191 W. Va. 134 (1994); *In Re Tiffany Marie S*., 196 W. Va. 223 (1996).

Given the Decision's extensive findings of fact and the reasonable conclusions thereto, this reviewing court is required to give substantial deference to the Authority unless this court determines the Decision was "clearly wrong." There is no indication that the Authority's findings were "clearly wrong" nor that the Authority's account of the evidence is implausible in light of the record on appeal and facts in evidence. *Muscatell*, 196 W. Va. at 590. Rather, the Decision clearly

sets forth a rational determination based upon sufficient findings of fact. *See supra* Section III(a)(i). As a result, this reviewing court is required by law to afford the Authority great deference and may not overturn the Authority's findings "simply because it would have decided the case differently." *In Re Tiffany Marie S.*, 196 W. Va. 223 (1996). Thus, this court is required to and must affirm the Decision as a reasonable and plausible finding of fact and law.

b. Despite Petitioner's Contentions, the Decision is Only Required to Set Forth Critical Facts in Evidence and is Sufficient Without the Recitation of Every Single Fact in Evidence.

In its brief, CAMC specifically asserted that certain items were not "discussed, analyzed, or ruled upon" by the Decision, including those matters pertaining to superior alternatives, payor mix, quality, and accessibility. However, CAMC's arguments are merely thinly veiled attempts to improperly raise the bar for the Decision in this matter. Petr. Br. 30.

An administrative agency, including the Authority, "does not need to extensively discuss each proposed finding, [rather] such rulings must be sufficiently clear to assure a reviewing court that all those findings have been considered and dealt with, not overlooked or concealed." *Modi*, 195 W. Va. at 230; *see also Citizens Bank of Weirton*, 160 W. Va. at 233 ("an agency need [not] make a Federal case out of every simple, contested matter. The complexity of the agency opinions should be in keeping with the complexity of the case"); *St. Mary's Hosp.*, 178 W. Va. at 792. Thus, the state agency must rule on all proposed findings and must accompany any findings set forth in statutory language with "a concise and explicit statement of the underlying facts supporting the findings." W. Va. Code §29A-5-3; *see also Harrison v. Ginsberg*, 169 W. Va. 162, 170 (1982). Thereafter, a reviewing court "must give due deference to the agency's ability to rely on its developed expertise" and determine only "whether the agency decision was rational and based on consideration of the relevant factors." *Princeton*, 174 W. Va. at 564.

Although the Authority is required to address "direct conflict[s] in the critical evidence," it is not required to address every single fact or legal argument raised by the parties. *Muscatell*, 196 W. Va. 588. Despite Petitioner's allegations, the Decision is not required to address in extensive detail each item and argument presented at the hearing or in briefing. Rather, the Decision is merely required to "be sufficiently clear to assure a reviewing court that all those findings have been considered and dealt with." *Modi*, 195 W. Va. 230. The Decision in this matter complied with the requirements set forth by West Virginia case law - the Decision "sufficiently articulate[d]" and set "forth the underlying evidentiary facts which lead the [Authority] to its conclusion" and issued a finding appropriately clear for the reviewing court to evaluate. *Miller v. Epling*, 229 W. Va. 574 (2012). Contrary to Petitioner's assertions, the Authority was required to do no more.

Nonetheless, in making these repeated contentions, Petitioner, in effect, demands this reviewing court to reconsider factual evidence reviewed by the Authority. For example, Petitioner seeks to force this reviewing court to reweigh the payor mix evidence, a wholly factual issue, already evaluated by and dismissed in the Decision.[2] Petr. Br. 22-23. However, the factual evidence is not eligible for appellate review, and it is not within the purview of the reviewing court to reconsider the facts presented to the Authority. *See Muscatell*, 196 W. Va. 588.

[2] Furthermore, aside from being a factual issue, certain payor mix evidence discussed by Petitioner, specifically RGH's past payment data available to the Authority in its own files, is also otherwise inappropriate for review by this Court. Petr. Br. 22. The Authority itself was not bound to consider this evidence in the Decision because CAMC failed to present this specific payor mix evidence at the hearing. Rather, the evidence presented by CAMC related to RGH's projected payor mix based on the Authority's data was introduced for the first time at the briefing stage – the RGH payor mix percentages referenced by CAMC in its brief below do not appear in CAMC's discovery responses, hearing exhibits, or the hearing transcript. As a result, the Authority was not required to evaluate this evidence that Petitioner introduced for the first time on initial briefing. *Leftwich v. Wesco Corp*., 146 W.Va. 196, 119 S.E.2d 401 (1961) ("If the matter was not in evidence, counsel had no right to comment on it, and the court should have so instructed the jury and told them not to consider such statement [in closing arguments]").

Based upon the foregoing, none of the Decision's findings of fact or conclusions of law were "clearly wrong" or "hopelessly incredible," nor did they "flatly contradict either the law of nature or undisputed documentary evidence." *See In re Tiffany Marie S.*, 196 W. Va. at 226. Instead, the Authority sufficiently set forth the facts in evidence, replete with citations to the record, that led to the Authority's reasonable conclusions in this matter. The Decision contained ample findings of fact and conclusions of law, such that this court could review and be assured that all relevant evidence was considered by the Authority. Despite Petitioner's unfounded assertions, the Authority was not required to analyze every fact in evidence, especially where the basis for the Decision did not hinge on such facts or arguments. Thus, the Decision is clearly in the proper form, and must be affirmed by this reviewing court.

III. The Authority Clearly Independently Analyzed the Witness Testimony and Evidence Introduced at the Hearing as Reflected by the Decision.

Petitioner makes a series of unfounded accusations regarding the Authority's supposed failure to independently analyze the witness testimony and facts in evidence. *See e.g.*, Petr. Br. 5 ("Mr. Campbell is listed on the transcript as a hearing examiner, he did not issue a decision and, based upon information and belief, he played no direct role in rendering the Decision in this case"); Petr. Br. 13 ("the HCA Board members had little knowledge of the testimony of the witnesses for both parties"); Petr. Br. 14 ("apparently no HCA Board member even read the transcript of the hearing"); Petr. Br. 27 ("[the Authority] totally [accepts] RGH's Application and [ignores] the evidence introduced by CAMC in the record"). Petitioner made no citations to the record on appeal to support these allegations, nor can it. Petitioner's accusations that the Authority did not have knowledge of the testimony presented at hearing or that the Authority did not "even read the transcript of the hearing" have no basis in fact. Petr. Br. 14. Rather, the very fact that there was a hearing, and a Decision was issued – signed by the Board members – which cited to the hearing

transcript, exhibits, and the parties' briefs necessarily required that the Authority considered the evidence presented.

Further, even a cursory review of the Decision completely refutes Petitioner's assertions that the Authority did not independently review and analyze the facts in evidence. As explained in detail in Section III(a)(i) of this brief, the 63-page Decision in this matter contained extensive discussion and analysis of the arguments and evidence presented by both parties on various issues, including the calculation of the study area, financial feasibility, and superior alternatives. *See e.g.*, D.R. 0018, 0029-30. The Decision clearly and repeatedly referenced evidence within the record, citing to the hearing transcript, hearing exhibits, and the parties' briefs in numerous places, which in and of itself indicates that the Authority reviewed the necessary facts in evidence. *See e.g.*, D.R. 0019-21, 0026, 0029.

Petitioner's introduction of evidence into the record does not mean that Petitioner has met its burden of proof or that the Authority is required to accept Petitioner's arguments. The Decision in the instant matter clearly considered Petitioner's legal and factual points and plainly disposed of them. Therefore, the Authority's decision not to dwell on arguments that only Petitioner found persuasive does not in any way indicate that the Authority did not fulfill its legal obligations to review the record or that the Authority's "[b]oard members had little knowledge of the testimony of the witnesses of both parties." Petr. Br. 14. As a result, it is clear from the Decision, replete with citations to the record, that the Authority independently analyzed the witness testimony and evidence introduced at hearing.

IV. The Presence of a Member of the Board is not Required by Law nor is it a Common Practice.

The presence of the members of the Board at the hearing in a CON matter is not required by law. Importantly, Petitioner omits from its brief section (c) of West Virginia Code §16-29B-12,

which specifically states that "any *hearing may be conducted by members of the board or by a hearing examiner appointed by the board* for such purpose" (emphasis added). Importantly, "a cardinal rule of statutory construction is that significance and effect must, if possible, be given to every section, clause, word or part of the statute." *Young v. Apogee Coal Co.*, 232 W.Va. 554 (2013). The Supreme Court of Appeals of West Virginia "has often stated that, where the disjunctive 'or' is used, it ordinarily provides an alternative between the two clauses it connects." *State ex rel. Rubenstein v. Bloom*, 235 W. Va. 70, 75 (2015).

By its plain language, the CON law does not require the presence of a member of the Board in conducting the hearing. Rather, the law mandates that a member of the board "render a decision in writing" with due "consideration of all the testimony, the evidence, and the total record made." W. Va. Code §16-29B-12(e). Furthermore, the West Virginia rules of statutory construction require this Court to give effect to the disjunctive "or" connecting "by members of the board" and "by a hearing examiner." That is, the plain language of this statute issues an alternative: that either (1) members of the board *or* (2) the appointed hearing examiner may conduct hearings. Such interpretation is required pursuant to the plain language of the CON law and the canons of statutory construction. Thus, as the hearing in this matter was conducted by a hearing examiner appointed by the Board as permitted by the law, the hearing was proper.[3]

a. The Absence of a Board Member at the Hearing is Inconsequential to the Board's Ability to Review Facts in Evidence and Issue the Decision.

In its brief, Petitioner clearly states that the absence of a Board member at the hearing necessarily indicates that the Board did not properly review the facts in evidence or act as an independent factfinder. However, these assertions are entirely inaccurate for several reasons.

[3] Moreover, not only is the presence of the members of the Board at the hearing in a CON matter not required by law, the presence of Board members at hearings has not been common practice since the law changed in 2017.

For one, Petitioner notably omitted from its brief any discussion of any other person, including Mr. Timothy Adkins, the Interim Director of the West Virginia CON program, who attended the hearing in this matter. D.R. 1537, 1839, 2086, 2104. Mr. Adkins plays a crucial role in the CON process and actively participated in the hearing where he is permitted, and often expressly solicited by the hearing examiner, to question witnesses presented by the parties. D.R. 1537, 1839, 2086, 2104.

Additionally, Petitioner overlooks the statutory requirement that the Board hold meetings to, in part, evaluate pending CON applications. *See* W. Va. Code §16-29B-5. In this matter, prior to issuing the Decision on September 12, 2022, the Authority held two separate board meetings on August 10, 2022 and August 24, 2022.

In addition, the Decision was signed by four members of the Board. The members' signatures on the Decision clearly indicate that Board members played a crucial role in evaluating and issuing the Decision.

b. Petitioner Waived its Right to Assert this Argument by not Raising Board Member Presence at the Hearing Prior to its Appeal.

Petitioner has waived its right to argue that a Board member must have been present at the hearing by not raising it at hearing or in briefing. Although Petitioner's allegations are contained, for the first time, in its appellate brief, "it is a bedrock principle of appellate jurisprudence that 'representations in an appellate brief do not constitute a part of the record on appeal.'" *Amedisys West Virginia, LLC v. Personal Touch Home Care of West Virginia Inc*., 245 W. Va. 398 (2021) (citing *Pearson v. Pearson,* 200 W. Va. 139, 152 (1997) (Workman, J., dissenting); *see also Wilkinson v. Bowser*, 199 W. Va. 92 (1996). That is, issues raised for the first time on appeal are not permitted to be considered by the reviewing court. *In re S.C.*, 2015 WL 3755086 (2015) (citing

Noble v. W.Va. Dep't of Motor Vehicles, 223 W. Va. 818, 821 (2009)); *see also O'Neal v. Peake Operating Co*., 185 W. Va. 28 (1991).

It is the duty of the parties to "make sure that evidence relevant to a judicial determination be placed in the record before the lower [tribunal] so that [it] may properly [be] considered on appeal." *West Virginia Dep't of Health and Human Res. ex rel. Wright v. Doris S.*, 197 W. Va. 489, 494 (1996); *Family Medical Imaging, LLC v. W. Va. Health Care Auth.,* 218 W. Va. 146 (2005) (citing *In re Michael Ray T*., 206 W. Va. 434 (1999)) ("[t]he responsibility and burden of designating the record is on the parties, and appellate review must be limited to those issues which appear in the record presented to [the] Court'"). Thus, where "an appellant [has] spurn[ed] his or her duty and drape[d] an inadequate or incomplete record around this Court's neck, this Court, in its discretion, either has scrutinized the merits of the case insofar as the record permits or has dismissed the appeal if the absence of a complete record thwarts intelligent review." *State v. Miller*, 194 W. Va. 3, 14 (1995). Any "failure to object constitutes a waiver of the right to raise a matter on appeal." *In re S.C.*, 2015 WL 3755086 (2015) (citing *State v. Asbury*, 187 W. Va. 87, 91 (1992)).

Until its appellate brief, Petitioner never once raised the issue of Board member presence. That is, at neither the two-day hearing in this matter nor in initial briefing did CAMC ever contend that the absence of a Board member at hearing was prejudicial or otherwise constituted error. Thus, CAMC inexplicably, and despite ample opportunity, failed to ensure that evidence of Board member presence was placed on the record at hearing or in briefing and preserved for this reviewing Court. As a result, Petitioner's new allegations regarding Board member presence cannot be considered by this Court.

West Virginia law also requires arguments asserted by petitioners on appellate review to contain "appropriate and specific citations to the record on appeal, including citations that pinpoint

when and how the issues in the assignments of error were presented to the lower tribunal." W. Va. R. App. Proc. 10(c)(7). Petitioner's appellate brief contains no specific citations to the record regarding its contention that Board member presence is required – nor can it, because, as stated above, Petitioner's contentions were not presented until submission of its appellate brief. Thus, if CAMC asserts that it was prejudiced by the absence of a Board member at the hearing, it was obligated to preserve that objection for appeal. As Petitioner never objected at hearing nor in its initial briefing, Petitioner has waived its argument.

As a result, Petitioner's arguments regarding the supposed requirement of Board member presence at CON hearings necessarily fall apart due to CAMC's failure to preserve its arguments for appeal and upon a reading of the law itself.

CONCLUSION

Petitioner's appeal of this instant matter is wholly and completely deficient and must be denied as a matter of law. At the outset, Petitioner's appeal collapses because Petitioner failed to adequately cite to the record on appeal or explain its legal arguments, including its mere, unfounded allegations that the Authority failed to comply with undefined standards of review. These failures, in and of themselves, constitute a waiver of the Petitioner's assignments of error.

Nonetheless, Petitioner's appeal and all six (6) assignments of error otherwise fail because of the clear evidence that the Authority independently analyzed witness testimony and the facts in evidence, resulting in the issuance of the Decision containing ample findings of fact and reasonable conclusions of law as required by West Virginia precedent.

Based upon the foregoing, Petitioner's assignments of error and related arguments are wholly without merit, and this Court should affirm the Authority's Decision granting RGH's CON Application to initiate cardiac surgery services.

Respectfully submitted,

Raleigh General Hospital, LLC

By Counsel

DLA PIPER LLP (US)

/s/ Rachel D. Ludwig
Rachel D. Ludwig
WV Bar # 12487
500 Eighth Street, NW
Washington, DC 20004
T: (202) 799-4562
F: (202) 799-5562
Rachel.Ludwig@us.dlapiper.com

Attorney for Respondent Raleigh General Hospital

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

CHARLESTON AREA MEDICAL CENTER, INC.,
Respondent Below,

Petitioner,

v. No. 22-ICA-169

RALEIGH GENERAL HOSPITAL,
Applicant Below,

Respondent,

and

THE WEST VIRGINIA HEALTH CARE AUTHORITY,

Respondent.

CERTIFICATE OF SERVICE

I, Rachel D. Ludwig, do hereby certify that the foregoing **BRIEF ON BEHALF OF RESPONDENT RALEIGH GENERAL HOSPITAL, LLC** was served upon the following counsel of record via Electronic Filing System and First-Class Mail, postage prepaid, on this March 10, 2023, addressed as follows:

Thomas G. Casto
Lewis Glasser PLLC
300 Summers Street
BB&T Square, Suite 700
Charleston, WV 25326
tcasto@lewisglasser.com
Via US Mail & E-Filing
Attorney for Charleston Area Medical Center, Inc.

Katherine Campbell
Asst. Attorney General
Office of the Attorney General
812 Quarrier Street, 6th Floor
Charleston, West Virginia 25301
katherine.a.campbell@wvago.gov

Via US Mail & E-Filing
Attorney for West Virginia Health Care Authority

DLA PIPER LLP (US)

*/s/ Rachel D. Ludwig*_____
Rachel D. Ludwig
WV Bar # 12487
500 Eighth Street, NW
Washington, DC 20004
T: (202) 799-4562
F: (202) 799-5562
Rachel.Ludwig@us.dlapiper.com

Attorney for Respondent Raleigh General Hospital