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

WEST VIRGINIA HEALTH CARE AUTHORITY,
RESPONDENT.

RESPONSE BRIEF ON BEHALF OF WEST VIRGINIA HEALTH CARE AUTHORITY

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STATEMENT OF THE CASE

I. Introduction.

This is an appeal of a Decision entered September 12, 2022, by the West Virginia Health Care Authority ("Authority"). D.R. 0003-0067. The Decision approved an application for a certificate of need submitted by Raleigh General Hospital ("Raleigh") for the provision of cardiac surgery; however, the Decision was conditioned upon Raleigh General Hospital submitting the required financial disclosure information. *Id.* Charleston Area Medical Center ("CAMC") had been granted affected party status in this matter.[1] *Id.*

Over the course of two days, March 21 and March 22, 2022, evidence was taken before B. Allen Campbell, Senior Assistant Attorney General, the designated Hearing Examiner by the Authority.[2] Rachel D. Ludwig, Esquire, appeared on behalf of Raleigh, and Thomas G. Casto, Esquire, appeared on behalf of CAMC. Parties submitted their Findings of Fact and Conclusions of Law along with proposed Orders in a timely fashion. Subsequently, the Authority issued its September 2022, Decision from which this appeal arises.[3]

II. Facts.

Since July 1977, the Certificate of Need ("CON") law in West Virginia provides that any proposed new health service, as defined therein, shall be subject to review by the Authority prior to the offering or development of the service. The Authority has jurisdiction over governing this program which is found at W. Va. Code § 16-2D-1 *et seq.*

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[1] Prior to the administrative hearing, Appalachian Regional Healthcare, Inc. d/b/a Beckley ARH Hospital was dismissed from the matter as an affected party. D.R. 0003-0067.

[2] There had been a pre-hearing conference held on March 14, 2022, in order to address any discovery and motions pending before the Authority; however, none of those ruling are at issue in the instant appeal. *See generally* D.R. 1487-1534.

[3] It should be noted that there is legislation that passed the West Virginia State Legislature this 2023 session, which if signed by the Governor, will effectively make this matter moot. *See* Senate Bill 613.

As such, Raleigh filed an application for a CON to provide cardiac surgery services at its facility on September 27, 2021. D.R. 0085-0256. In doing so, Raleigh has to meet certain criteria set forth in the CON standards for cardiac surgery in order to obtain the CON. CAMC, as an affected party, had the right to request a hearing to challenge the sufficiency of the application prior to the Authority making a decision. *See* W. Va. Code §§ 16-2D-2 and16-2D-12, and CON Standards for Cardiac Surgery at D.R. 1384-1397.

Evidence was taken during the two-day administrative hearing. *See generally* D.R. 1535-1835, 1838-2201. Raleigh is a 300-bed general acute care hospital located in Beckley, West Virginia. D.R. 0003-0067. Raleigh serves residents of Raleigh, Fayette, Summers, and Wyoming counties and the surrounding area. *Id.* It is owned and operated by Raleigh General Hospital, LLC. Raleigh's ultimate parent company is LifePoint Health(R) ("LifePoint"). LifePoint and its affiliates operate acute care hospitals, physician practices, post-acute care services, outpatient services, and wellness and prevention programs. *Id.*

Raleigh currently provides general acute care services and specialty services, including diagnostic and therapeutic cardiac catheterization services. D.R. 0003-0067. Raleigh has provided diagnostic and therapeutic cardiac catheterization services since 1987 and 2009, respectively. *Id.* The proposed project as stated by Raleigh will provide more accessible cardiac surgery services to the residents of the service area. D.R. 0085-0256. Raleigh contends it will work with another LifePoint hospital that is an experienced provider of invasive cardiac services to develop the proposed services. *Id.* The cardiac surgery program will be incorporated into the existing hospital's cardiology program and be directed by a cardiovascular surgeon certified by the American Board of Thoracic Surgery. *Id.* The director will serve as liaison between the

cardiology program, the clinical departments of the hospital, administration, the community, and primary care providers. *Id.*

Raleigh's CON application noted that the components of the project include acquisition of the needed equipment, employment of cardiac surgeons and other staff needed for the proposed cardiac surgery services, and development of policies and training staff. D.R. 0085-0256. The capital expenditure associated with the project is $1,150,000. *Id.*

Raleigh presented testimony in support of its CON application through Simon Rutliff, Chief Executive Officer for Raleigh; Raymona Kinneburg, expert in Healthcare Planning; Rick Knapp, expert in healthcare accounting and financial feasibility; and Dr. Kenan Yount and Dr. Prasad Polisetty. *See generally* D.R. 1535-1835. In turn, CAMC presented evidence in opposition to the CON application through CAMC's Chief operating Officer, Dr. Glen Croddy Jr.; Dr. E. Michael Robey; Dr. Kitscher; Jeff Good, Vice-President of Ambulatory services; Merdith Rice Jr., expert in hospital finances; and David Jarrett, planning analyst. *See generally* D.R. 1837-2201.

The Authority's Decision aptly details the evidence as heard during the two-day hearing along with its conclusions of law. The Decision entered on September 12, 2022, found that Raleigh had met the criteria and was granted a certificate of need to provide cardiac surgery services with the condition that Raleigh provide all required financial disclosure information. D.R. 0003-0067.

CAMC, the affected party in this matter, filed a timely appeal of this Decision claiming the Authority's Decision is flawed due to its failure to comply with W. Va. Code § 29A-5-3 in that it failed to make appropriate findings of fact and conclusions of law and that the Authority inappropriately held an administrative hearing.

SUMMARY OF THE ARGUMENT

Petitioner has failed to show that the Authority's Decision violated any provision of W. Va. Code § 29A-5-4(g). Instead, Petitioner argues that the appropriate findings of fact and conclusions of law were not properly made by the Authority in its Decision. The Authority made proper findings of fact and conclusions of law. The Administrative Procedures Act does not require each and every fact brought forth during a two-day administrative hearing be recited in the Authority's Decision. The Authority's Decision enables this Court to make a meaningful review. Further, the Authority has its own statutory and regulatory requirements for the conduct of a hearing and issuance of a decision which are different from chapter 30 boards, including the West Virginia Board of Medicine. However, Petitioner failed to preserve its objection to the conduct of the hearing.

Petitioner also failed to preserve any objection to an alleged discovery violation. Most importantly, Petitioner failed to demonstrate that the Authority's Decision violated the Administrative Procedures Act, but instead merely states it did not take into account its arguments. The Authority's Decision made all the required findings pursuant to the relevant statutes and regulations, including the need for the project and its conformity with the state health care plan, including the standards as approved by the Governor for cardiac surgery services. The Authority's Decision has given this Court an opportunity for a meaningful review of its Decision.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

This case raises no substantial questions of law, and the Petitioner fails to identify any prejudicial error. Consequently, oral argument is not necessary, and a memorandum decision affirming the ruling below is appropriate. *See* W. Va. R.A.P. 21.

STANDARD OF REVIEW

The standard of review governing appeals for contested cases is set forth in West Virginia Code § 29A-5-4(g) which states as follows:

> (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.

Moreover, the standard of review of administrative decisions was set forth by the West Virginia Supreme Court of Appeals in *Modi v. W. Va. Bd. of Med.*, 195 W. Va. 230, 465 S.E.2d 230 (1995). In this case, the Court stated that "findings of fact made by an administrative agency will not be disturbed on appeal unless such findings are contrary to the evidence or based on a mistake of law." *Id.* at 239. "[T]he findings must be clearly wrong to warrant judicial interference." *Id.* at 239.

The West Virginia Supreme Court of Appeals reiterated this standard of review in *Adkins v. W. Va. Dep't of Educ.*, 210 W. Va. 105, 556 S.E.2d 72 (2001) (*per curiam*). In this case, the Court ruled that "the clearly wrong and the 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." *Id.* at 108, 75. "[A] court is not to substitute its judgment for that of the hearing examiner." *Id.* at 108, 75. *See also Walker v. W. Va. Ethic Comm'n*, 201 W. Va. 108, 492, S.E.2d 167 (1997) (stating that "[a] court may set aside an agency's findings of fact only if such findings are clearly or plainly wrong.").

As such, courts generally give deference to an administrative agency's factual findings and review an agency's legal determinations de novo. Most West Virginia cases involving judicial review of administrative agency decisions hold that the agency's factual findings should be reversed if they are clearly wrong or are not supported by substantial evidence. Where there are mixed questions of law and fact, such as a misapplication of law to the facts, the agency's decision should be reviewed de novo. See *Healy v. W. Va. Bd. of Med.*, 203 W. Va. 52, 506 S.E.2d 89 (1998) (*per curiam*).

ARGUMENT

I. The Authority's Decision does not fail to include proper findings of fact and conclusions of law nor was there error when no member of the Authority's Board attended the administrative hearing.

Petitioner has failed to show the Authority's Decision does not contain the proper findings of fact and conclusions of law and is in violation of W. Va. Code § 29A-5-4. Pursuant to W. Va. Code § 29A-5-4(a), "[a]ny party adversely affected by a final order or decision in a contested case is entitled to judicial review thereof under this chapter . . . ." Moreover, at subsection (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 constitutional or statutory provisions;
> (2) In excess of the statutory authority or jurisdiction of the agency;
> (3) Made upon unlawful procedures;
> (4) Affected by other error of law;
> (5) Clearly wrong in view of the reliable, probative, and substantial evidence on the whole record; or
> (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

The Authority conducted its administrative hearing pursuant to W. Va. Code § 16-2D-13(g)(3), which states "[t]he authority shall conduct the administrative hearing in accordance with administrative hearing requirements in section twelve, article twenty-nine-b of this chapter and article five, chapter twenty-nine-a of this article." At W. Va. Code § 16-29B-12(c), "[a]ny hearing may be conducted by members of the board or by a hearing examiner appointed by the board for such purpose . . . ." Further, pursuant to W. Va. Code § 16-29B-12(e), "[a]fter any hearing, after due deliberation, and in consideration of the testimony, the evidence and the total record made, the board shall render a decision in writing. The written decision shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code . . . ." *See also* W. Va. Code R. § 65-32-10. Lastly, W. Va. Code § 29A-5-5, states "[e]very final order or decision rendered by any agency in a contested case shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law."

The Authority conducted its administrative hearing in accordance with these statutory requirements.[4] There is no statutory or regulatory requirement that an Authority board member attend an administrative hearing. Moreover, there was no objection by the Petitioner as to manner of how the administrative hearing was being conducted in March 2022. "Our general rule is that nonjurisdictional questions . . . raised for the first time on appeal, will not be considered. *Shaffer v. Acme Limestone Co., Inc.,* 206 W. Va. 333, 349 n. 20, 524 S.E.2d 688,

[4] It should be noted that it is the practice of the Authority to have the analyst who is assigned the review of the CON application be present for the entirety of the hearing, including the pre-hearing conference as well. In the instant matter, Timothy Adkins was present for both the pre-hearing and administrative hearing.

704 n. 20 (1999)." *Noble v. W. Va. Dep't of Motor Vehicles*, 223 W. Va. 818, 821, 679 S.E.2d 650, 653 (2009).

Should this Court determine otherwise, Petitioner's argument is pure speculation. Petitioner has presented no evidence as to what the Authority board reviewed in makings its decision. Instead, Petitioner argues that because facts that are deemed important to Petitioner are not included in the Decision then it must mean that the Authority did not read the transcript or consider the testimony. This argument is pure speculation based on no credible evidence. The Authority made its findings of fact based upon what it found to be credible and significant facts in its decision making process. There is no statutory or regulatory requirement that all the facts that were heard during the administrative hearing must be fully recited in the findings of fact.

Moreover, Petitioner argues that the Authority's hearing procedure is "very different from that utilized by the West Virginia Board of Medicine. . . ." *Petitioner Charleston Area Med. Ctr.'s Br.* at Fn. 3. The West Virginia Board of Medicine's ("BOM") procedure is different because the statutory requirements are different as BOM is part of the "Chapter 30 boards" which include licensing boards such as the BOM, Physical Therapy, and Veterinary Medicine.[5] These Chapter 30 boards have governing statutory constructions at W. Va. Code § 30-1-8 *et seq.*, which apply to all the boards found at chapter 30. Then, the BOM's article is found at W. Va. Code § 30-3-1 *et seq.* with its accompanying regulations. At W. Va. Code R. § 11-3-14, it details how the hearing examiner hears contested cases for BOM and makes a recommended

[5] It should be noted when a contested case is heard by a hearing examiner that the boards have already made a disciplinary or licensing decision regarding a licensee when the case goes before a hearing examiner. In the instant case, the Authority had not made a decision regarding the CON application yet.

decision that the BOM may either adopt in its entirety, reject in its entirety, or modify.[6] There is no requirement that BOM members attend the contested case hearings held by the hearing examiner either.

In the instant case, there are no regulations that detail any type of recommended decision to the Authority's board. Instead, W. Va. Code R. § 65-32-8 outlines the Application Review Procedure, including the procedural requirements of the hearing process which do not include the statutory nor the regulatory construction of chapter 30 boards.

Further, Petitioner relies heavily on the West Virginia Supreme Court of Appeal's decision in *Citizens Bank of Weirton v. W. Va. Bd. of Banking & Fin. Inst.*, 160 W. Va. 220, 233 S.E.2d 719 (1977). The Court's decision in *Citizen's Bank* found that a "simple restatement in its order of the statutory language . . .without more . . ." was not sufficient findings of fact. *Id.* at 223, 722. The *Citizen's Bank* case involved a request to the Board of Banking and Financial Institutions ("Board") for a name change of a financial institution and a change of its nature of business from a savings and loan institution to a corporation with general banking powers. Another financial institution intervened as a party protesting said request. The Board granted the request and an appeal was filed. Ultimately, the *Citizen's Bank* Court found that the approximately one page Order did not contain sufficient findings of fact or conclusions of law. *Id.* The Order failed to allow the appellate court to determine whether the evidence supported the findings of fact and whether the findings supported the conclusions. *Id.*

The *Citizen's Bank* Court found that:

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[6] As such, the *Modi v. W. Va. Bd. of Med.*, 195 W. Va. 230, 465 S.E.2d 230 (1995) is not applicable in the instant case matter as the Authority does not have statutory or regulatory requirements for a recommended decision.

> Whenever an agency may be permitted to state its findings of fact in bare statutory language, the decision may be rendered by a clerk or secretary who has been given the agency's ultimate conclusion, i.e., in this case, "application granted," and assigned the task of filling in the appropriate form. This is not rational thought process contemplated by the Administrative Procedures Act. (Footnote omitted.)

Id. at 231, 727.

In the instant case, the Authority's Decision is not a mere recitation of the statutory language. The 65 page Decision does list the statutory criteria, including the language along with the CON standards language that must be met in order to obtain a CON. However, it also lists the salient findings of fact and conclusions of law it found for each requirement which included Petitioner's arguments and Raleigh's arguments as findings of fact. *See Minnie Hamilton Health Care Ctr. v. Hosp. Dev. Co., and W. Va. Heath Care Authority*, 22-ICA-169, March 9, 2023 (memorandum decision) (finding sufficiency of the West Virginia Health Care Authority's decision).

II. The Authority did not err in making its findings of fact and conclusions of law regarding Raleigh's evidence for meeting the standards for need methodology.

There are statutory criteria that must be met in order to obtain a CON. Pursuant to W. Va. Code § 16-2D-12(a), "a certificate of need may only be issued if the proposed health service is (1) [f]ound to be needed; and (2) [c]onsistent with the state health plan . . . ." Further, the Authority adheres to its standards for cardiac surgery which were approved by the Governor on May 3, 2007, and section four addresses the need methodology for establishing a cardiac surgery unit.

The Authority's Decision sets forth each of the standards' criteria and then sets forth how Raleigh met each of these criteria. *See generally* Decision at D.R. 0013-0038. Petitioner's primary substantive argument with the Authority's Decision is that Raleigh wrongly included Monroe County in its study area which in turn skewed the results showing a need for cardiac surgery services in the service area.

The standards state that the service area consists of the county of proposal and any county significantly impacted. A significantly impacted county is a county where at least 25% of the residents rely or will rely on the diagnostic cardiac catheterization services in the county of proposal, or the county generates at least 10% of Raleigh's patient load. Raleigh showed that 25% of residents in the counties that Raleigh listed as significantly impacted counties will utilize catheterization services. Petitioner takes exception to the inclusion of Monroe County because it claims 50% of its residents travel out of state for services, and as such, Monroe cannot meet the 25% threshold.

The Authority found in its Decision that it does not include out-of-state data in its calculations, thus finding that Monore County data was properly included in the need methodology calculation. The Decision found that,

> There is no implicit requirement to use out-of-state data to calculate in-state study areas. The Standards do not say applicants should not use out-of-state data. Nevertheless, the absence of a prohibition does not create an embedded requirement to include such data. If the Standards always required the inclusion of out-of-state data, the identification of certain study areas where out-of-state data must be consulted would be meaningless. Therefore, RGH's [Raleigh] 25/10 calculation adheres to the written Standards and Monroe County is properly included in RGH's study area.

Decision at D.R. 0021

Further, the Authority did not amend the Standards as argued by Petitioner, but instead interpreted these Standards as it has since 2007. *See W. Va. Health Care Cost Review Auth. v. Boone Mem'l Hosp.*, 196 W. Va. 326, 472 S.E.2d 411 (1996).

Petitioner alleges other problems with the need methodology calculations such as the use rate for cardiac surgery. However, these allegations are merely a rehash of Petitioner's arguments below already rejected by the Authority. These arguments were adequately addressed in the Decision below. D.R. 0023-0034. The Decision properly makes findings of fact and

conclusions of law regarding this use rate issue by again covering each criteria within the standards.

III. There was no error with the Authority's Decision when making its findings of fact and conclusions of law regarding Raleigh's evidence for meeting the standards for financial feasibility.

Again, there are statutory criteria that must be met in order to obtain a CON. Pursuant to W. Va. Code § 16-2D-12(a), "a certificate of need may only be issued if the proposed health service is (1) [f]ound to be needed; and (2) [c]onsistent with the state health plan . . . ." Further, the Authority adheres to its standards for cardiac surgery which were approved by the Governor on May 3, 2007, and section seven addresses financial feasibility for establishing a cardiac surgery unit.

The Authority's Decision sets forth each of the standards' criteria and then sets forth how Raleigh met each of these criteria. *See generally* Decision at D.R. 0045-0053. Petitioner's argument with the Authority's Decision is threefold: 1) Petitioner argues that the Authority failed to discuss or analyze evidence presented by CAMC; 2) the Authority failed to properly assess the evidence; and 3) the Authority failed to address a "major discovery violation."

The standards require that applicants "demonstrate the financial feasibility of the proposed cardiac surgery services by presenting projections which show that revenues will equal expenses by the end of the third year of operation." Raleigh did just that to the satisfaction of the Authority. CAMC argues that the Authority did not make a proper analysis of the evidence. The Administrative Procedures Act requires findings of fact and conclusions of law be made. A reviewing court must be able to make a meaningful review. *See Knotts v. Ames, Superintendent, Mt. Olive Corr. Complex,* No. 20-0715 (W. Supreme Court, January 18, 2022) (memorandum decision) and *In Re K.B.-R and L.R.,* No. 20-0734 (W. Va. Supreme Court, March 16, 2021) (memorandum decision).

The Authority's Decision properly made the required findings of fact and conclusions of law in order that this Court could make its meaningful review. Moreover, not every argument or fact put forth by an opposing party need to be listed or even addressed. The Authority makes findings of fact and conclusions of law based upon what it determines to be salient and needs to be addressed. The Authority did just that with its Decision when finding that Raleigh's proposed project was financially feasible pursuant to the standards. The Authority addressed CAMC's concerns as noted in its brief in its Decision; however, the Authority did not find CAMC's evidence or argument for these alleged deficiencies to be credible and found Raleigh's financial data to be accurate.

CAMC argues that the Hearing Examiner's failure to address an earlier discovery issue in the Decision to be fatal and requires reversal. Raleigh stated in its answers to discovery that it would hire a critical care intensivist and, at the hearing, testimony was presented that a critical care intensivist would be hired after approximately three years should the CON be approved and the program successful. D.R. 2077-2081. CAMC argues that it was "ambushed" at the hearing when presented with this evidence.

CAMC did not formally object to this testimony, and as such, failed to preserve this objection. Consequently, it is unable to bring any objection to it now. Instead, CAMC's counsel stated "I don't know whether I'm raising an objection here, but I have a question." D.R. 2077. Then, a discussion ensued between the parties and the Hearing Examiner regarding the truthfulness of discovery answers submitted by Raleigh. The Hearing Examiner then stated to CAMC counsel "[w]ell you can inquire about that. Or you can raise it in your findings and conclusions that there's an inconsistency. But there, you have an objection or we move on. ATTORNEY CASTO: We'll move on. I'll ask the question." D.R. 2078-2079. "Our general rule is that nonjurisdictional questions . . . raised for the first time on appeal, will not be considered.

Shaffer v. Acme Limestone Co., Inc., 206 W.Va. 333, 349 n. 20, 524 S.E.2d 688, 704 n. 20 (1999)." *Noble v. W. Va. Dep't of Motor Vehicles,* 223 W. Va. 818, 821, 679 S.E.2d 650, 653 (2009).

At the conclusion of the questioning of the witness, the Hearing Examiner states that the parties may address the issue in their findings of fact and conclusions of law, and it would then be addressed in the decision. D.R. 2081. Yet, it was not addressed in the Decision, and now CAMC argues that it is a fatal error requiring reversal. As CAMC referenced earlier in Footnote 3, the Hearing Examiner does not decide this matter, but it is the Authority who decides the matter. Nor does the Hearing Examiner draft the Decision, it is the Authority's staff that drafts the Decision. If there is any error, it is harmless error. *See Tennant v. Marion Health Care Found., Inc.*, 194 W. Va. 97, 111, 459 S.E.2d 374, 388 (1995) ("Under West Virginia law, when substantial rights are not affected, reversal is not appropriate."). This one piece of evidence was so obviously not critical to the Authority's Decision that any error due to its handling is harmless error. If the Authority believed it to be critical, it would have addressed this issue in the Decision, and if CAMC believed it critical, it would have made the proper objection to the admission of the witness's testimony regarding the discovery issue.

IV. The Authority addressed all the standards as noted for cardiac surgery and sufficient evidence was presented to meet the state health plan, including the proper findings of fact and conclusions of law.

This issue has been addressed by the Authority in its Decision. D.R. 0013-0055. CAMC argues that Standard IV has not been met by Raleigh, and again argues that Raleigh's program is not financially feasible. However, these issues have been addressed in Sections II and III of this Brief regarding the need methodology and financial feasibility standards. The Authority has properly detailed in its Decision the findings of fact and conclusions of law as

necessary to find that Raleigh's cardiac surgery program meets the state health plan as shown in the Standards for Cardiac Surgery.

V. The Authority properly found sufficient evidence that Raleigh met all the necessary requirements for obtaining a certificate of need for its cardiac surgery program, including that no superior alternatives are available.

The Authority may not grant a certificate of need unless . . . "superior alternatives to the services in terms of costs, efficiency and appropriateness do not exist within this state and the development of alternatives is not practicable . . . ." W. Va. Code § 16-2D-12(b)(1).

The Authority's Decision discusses in detail how there was no superior alternative to Raleigh's proposed cardiac surgery service. D.R. 0056-0060. The Decision found that Raleigh presented sufficient evidence that its program presents a "local, cost-effective option superior to the status quo." D.R. 0059. Further, it found that "study area patients as a whole still bear increased costs to access cardia care under the status quo. In terms of efficiency, the evidence demonstrates that some study area patients must travel two to three-plus hours to access care under the status quo." *Id.* The Authority found that "[t]ravel time of this magnitude form an impediment to care." *Id.* Also, the Authority found that "travel-related wait times can be eliminated by increased geographic access to care." Moreover, "continuity of care from diagnosis to surgery to aftercare presents a superior alternative to the status quo."

The Authority's Decision adequately and properly makes findings of fact and conclusions of law which explain that Raleigh's proposed cardiac surgery service has no superior alternatives available.

CONCLUSION

The Authority has made no errors in finding and issuing a certificate of need for Raleigh's proposed cardiac surgery service, and as such, should deny CAMC's appeal and affirm the Authority's issuance of a certificate of need to Raleigh. In the alternative, should this Court find any error with the findings of fact and conclusions of law, then remand the matter to the Authority for the limited purpose of issuing additional findings of fact and conclusions of law based upon the previous administrative hearing.

Respectfully Submitted,

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WEST VIRGINIA HEALTH CARE AUTHORITY,
RESPONDENT.

CERTIFICATE OF SERVICE

I, Katherine A. Campbell, Assistant Attorney General, counsel for the West Virginia Health Care Authority, do hereby certify that on the 13th day of March, 2023, I electronically filed a true copy of the foregoing *Response Brief on Behalf of West Virginia Health Care Authority* with the Court, thereby serving all parties via email as follows:

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