

FILED

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

2008 JUN -6 AM SUPERIOR COURT DIVISION

WAKE COUNTY

08 CVS 007955

HOPE-A WOMEN'S CANCER CENTER,)
P.A., and RALEIGH ORTHOPAEDIC)
CLINIC, P.A.)

Plaintiffs)

MOTION TO DISMISS)
RULES 12(b)(1), (2) and (6))
(DISM))

STATE OF NORTH CAROLINA;)
MICHAEL F. EASLEY, Governor of the)
State of North Carolina, in his official)
capacity; NORTH CAROLINA)
DEPARTMENT OF HEALTH AND)
HUMAN SERVICES; DEMPSEY E.)
BENTON, Secretary of the North Carolina)
Department of Health and Human Services,)
in his official capacity; DAN A. MYERS, M.D.,)
Chairman of the North Carolina)
State Health Coordinating Council, in his)
official capacity; JEFF HORTON, Acting)
Director, Division of Health Service)
Regulation, North Carolina Department of)
Health and Human Services, in his official)
capacity; and LEE B. HOFFMAN, Chief of)
the Certificate of Need Section, Division of)
Health Service Regulation, North Carolina)
Department of Health and Human Services,)
in her official capacity,)

Defendants.)


NOW COME Defendants the State of North Carolina; Michael F. Easley, Governor of the State of North Carolina, in his official capacity; the North Carolina Department of Health and Human Services; Dempsey E. Benton, Secretary of the North Carolina Department of Health and Human Services, in his official capacity; Dan A. Myers, M.D., Chairman of the North Carolina State

Health Coordinating Council, in his official capacity; Jeff Horton, Acting Director of the Division of Health Service Regulation, North Carolina Department of Health and Human Services, in his official capacity; and Lee B. Hoffman, Chief of the Certificate of Need Section, Division of Health Service Regulation, North Carolina Department of Health and Human Services, in her official capacity (hereinafter "Defendants"), and respectfully move to dismiss Plaintiffs' Complaint in its entirety pursuant to Rules 12(b)(1),(2), and (6) of the North Carolina Rules of Civil Procedure based on lack of subject matter jurisdiction, lack of personal jurisdiction, and failure to state a claim upon which relief can be granted based on lack of standing; absence of a protected property interest; public official and sovereign immunity; failure to exhaust administrative remedies; estoppel; laches; waiver; and the absence of any constitutional bar to the North Carolina General Assembly's authority to enact the statutes referenced in the Complaint.

WHEREFORE, Defendants respectfully request that this Honorable Court grant their Motion to Dismiss and order any other relief it deems appropriate.

This the 6th day of June, 2008.

ROY COOPER
Attorney General



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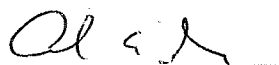
CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing MOTION TO DISMISS PURSUANT TO RULES 12(b)(1),(2) AND (6) on each party of record by mailing a copy of the document to each party's counsel of record by depositing the copy in an official depository under the exclusive care and custody of the United States Postal Service in a properly addressed postage-paid wrapper, unless personal service by hand delivery is indicated below.

The name and address of the counsel served is listed below:

Noah H. Huffstetler, III, Esquire
Denise M. Gunter, Esquire
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Raleigh NC 27612

This the 6th day of June, 2008.



Angel E. Gray
Assistant Attorney General