

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
08 CVS 007955

HOPE-A WOMEN'S CANCER CENTER, P.A.,)
et al.)

Plaintiffs)

v.)

STATE OF NORTH CAROLINA, et al.)

Defendants,)

and)

ASHEVILLE RADIOLOGY ASSOCIATES, P.A,)
et al.)

Defendant-Intervenors.)

**REPLY BRIEF IN SUPPORT
OF MOTION TO DISMISS**

I. THIS ACTION IS BARRED BY THE DOCTRINES OF ESTOPPEL AND LACHES.

A. PLAINTIFFS ARE ESTOPPED FROM CHALLENGING THE CONSTITUTIONALITY OF THE CON LAWS AS APPLIED TO THEM.

Plaintiffs' brief in response to the State's Motion to Dismiss (hereafter "Response Brief") does not dispute the fact that both named Plaintiffs have recently received CONs. Nor do they contest the applicability of the estoppel doctrine to parties who attempt to challenge the validity of statutes under which they have previously received benefits. Instead, Plaintiffs claim that estoppel should not apply because they are challenging only a portion of the CON Laws. This argument, however, is meritless.

Throughout this lawsuit, Plaintiffs have attacked the application to them of numerous aspects of the CON Laws - all of which were in place at the time they received the CONs that have been

issued to them. Indeed, they expressly state in their Response Brief that they are “attack[ing] a confluence of statutes in this litigation[,]” (Pl. Resp. Br. at 11), and on page 1 of their brief, they provide a lengthy representative list of statutes, administrative rules, and executive orders containing provisions which they are challenging. These assertions - along with their prior submissions - make clear that this action encompasses numerous aspects of the CON process, including the manner by which CONs are issued.

As such, their Complaint is properly characterized as a demand that they be exempted from the normal statutory process governing the issuance of CONs. Yet both named Plaintiffs have tangibly - and recently - benefitted from that statutory process through the award of CONs to them. *See Exs. A-B*) This is precisely the sort of inconsistent conduct our appellate courts have sought to prohibit through the application of the estoppel doctrine.

The purpose of invoking estoppel in this context is in recognition of the inherent unfairness of parties being allowed to benefit from a statutory mechanism and then later - when it seeks their purposes - attack the validity of that mechanism. This is precisely what Plaintiffs seek to do here. The collection of statutes comprising the CON Laws must be read *in pari materia* as a unified statutory procedure for obtaining approval from the State to offer health services to the public. Because Plaintiffs have directly benefitted from the CON Laws, principles of estoppel prohibit them from now claiming that the application of those laws to them violates their constitutional rights.

Plaintiffs attempt to avoid the bar of estoppel by relying on *Stegall v. Zoning Bd. of Adjustment*, 87 N.C. App. 359, 361 S.E.2d 309 (1987), *disc. review denied*, 321 N.C. 480, 364 S.E.2d 671 (1988), for the proposition that a party is not subject to estoppel where the benefit it has previously accepted is one “to which he is entitled in any event” *Id.* at 365-66, 361 S.E.2d at

313. However, the rule applied in *Stegall* does not apply here. In that case, the prior benefit received by the party sought to be estopped was the receipt of a special use permit to utilize its property as a cemetery. However, the party's use of the property for that purpose was already protected as a lawful nonconforming use under the applicable zoning ordinance. As such, the party would have been entitled to use its property for this purpose even without obtaining a special use permit. For that reason, the party's receipt of the special use permit "provided [the corporation] with no benefit to which it was not otherwise entitled." *Id.* at 366, 361 S.E.2d at 313.

Here, conversely, the CONs received by each of the named Plaintiffs were *not* benefits they were automatically entitled to receive. While the two proposed projects addressed by the CONs were not subject to Criterion One under N.C. GEN. STAT. § 131E-183(a) (because the projects at issue were not encompassed by the need determinations contained in the applicable SMFPs), they were still subject to review under the other relevant criteria contained in N.C. GEN. STAT. § 131E-183(a). Accordingly, Plaintiffs lacked any sort of common law right to the CONs (analogous to the party's right in *Stegall* arising from the doctrine of lawful nonconforming use) separate and apart from the CON Laws.

Plaintiffs devote a considerable portion of their Response Brief to the question of whether the Court can consider materials outside the pleadings in analyzing the estoppel defense. The documents attached to the State's briefs relating to this issue consist of certified copies of CONs which have been issued by DHHS. Because these are official documents, this Court can take judicial notice of them. *See Williams v. Seaboard Air Line Railroad Co.*, 187 N.C. 348, 354, 121 S.E. 608,

611 (1924) (taking judicial notice of commission's report as official document). The State has not offered any factual evidentiary matters in support of its estoppel argument.¹

Finally, Plaintiffs claim the State has failed to plead estoppel with the necessary degree of particularity. However, the State's motion to dismiss expressly put Plaintiffs on notice that estoppel served as one of the bases for its motion to dismiss. Moreover, our courts have held that even in cases - unlike here - where a party's motion actually fails to mention at all the existence of a specific affirmative defense, the court can still consider the defense where the non-moving party "has not been surprised and has full opportunity to argue and present evidence on the affirmative defense[.]" *See, e.g., Johnson v. North Carolina DOT.*, 107 N.C. App. 63, 66-67, 418 S.E.2d 700, 702 (1992). Here, given the fact that - by the time of the hearing on these cross-motions - Plaintiffs will have had the opportunity to address in multiple briefs its position in response to the State's estoppel defense and have already submitted documents relating to this issue, they cannot seriously contend that they have suffered prejudice.

In sum, both Plaintiffs have received CONs pursuant to the CON Laws, and those same parties are now claiming that these laws - as applied to them - operate unconstitutionally. As such, Plaintiffs are estopped from asserting this action.

¹ Moreover, the State would have no objection to the Court adjudicating the estoppel issue in the context of a motion for summary judgment. *See Rogerson v. Fitzpatrick*, 121 N.C. App. 728, 731, 468 S.E.2d 447, 449 (1996) ("[A] motion to dismiss for failure to state a claim is converted to a Rule 56 motion for summary judgment when matters outside the pleadings are presented to and not excluded by the court."). There is no dispute that the CONs were, in fact, received by Plaintiffs and, accordingly, the question of whether they give rise to the application of estoppel is a question of law for the Court. It is also worth noting that Plaintiffs have attempted to bolster their own arguments by attaching to their briefs a number of documents not attached to their Complaint.

B. PLAINTIFFS' CLAIMS ARE BARRED BY THE DOCTRINE OF LACHES.

As discussed on pp. 3-5 of the State's brief in opposition to Plaintiffs' Motion for Judgment on the Pleadings, this action is also barred on laches grounds. In their Response Brief, Plaintiffs state that the laws which they are challenging have "*at last* wandered outside the constitutional boundaries." (Pl. Resp. Br. at 24) (emphasis added) However, as noted in the State's earlier briefs, the SHCC was established 33 years ago, and it has been 22 years since the current process for creating the SMFP was enacted. Thus, the statutory framework which lies at the heart of this lawsuit has been in place for decades.

In their Response Brief, they note that the most current executive order relating to the SHCC - Executive Order No. 139 - was made effective in March of 2008. However, Plaintiffs ignore the fact that this is merely the latest in a string of executive orders dating back to Executive Order No. XIX, issued by Governor Holshouser in 1976. Attached hereto as Ex. C are copies of similar executive orders relating to the SHCC issued between 1976 and 2006. As these documents show, there is no substantive difference (for purposes of Plaintiffs' claims) between Executive Order No. 139 and its predecessors. Thus, Plaintiffs have failed to establish why laches does not apply here.

II. PLAINTIFFS CANNOT SHOW A CONSTITUTIONAL VIOLATION ARISING FROM THE APPLICATION OF THE CON LAWS TO THEM.

In their Response Brief, Plaintiffs fail to offer any meaningful response to the substantive constitutional arguments set out in the State's earlier briefs. Plaintiffs have fallen well short of rebutting the presumption of constitutionality existing with regard to the CON Laws at issue.

A. THE MANNER IN WHICH THE SMFP IS CREATED DOES NOT CONSTITUTE AN UNLAWFUL DELEGATION OF AUTHORITY FROM THE GENERAL ASSEMBLY.

On pp. 5-19 of the State's brief in opposition to Plaintiffs' Motion for Judgment on the Pleadings and pp. 9-13 of the brief in support of the State's Motion to Dismiss, the State has set out in detail why Plaintiffs' unlawful delegation claim lacks merit. Plaintiffs persist in ignoring the fact that the Governor - rather than the SHCC - has final authority over the contents of the SMFP. Moreover, despite having submitted briefs containing a combined total of over 75 pages, Plaintiffs have still neglected to even mention our Supreme Court's decision in *Frye Reg'l Med. Ctr., Inc. v. Hunt*, 350 N.C. 39, 510 S.E.2d 159 (1999) - the seminal case in North Carolina on this issue.

B. PLAINTIFFS HAVE NOT BEEN DENIED DUE PROCESS OF LAW.

Plaintiffs' Response Brief also fails to provide any valid response to the analysis set out in the State's prior briefs showing why they have not been denied either procedural or substantive due process. Instead, they merely rehash the same invalid arguments they have previously asserted.

1. The Application of the CON Laws to Plaintiffs Has Not Resulted in a Denial of Their Procedural Due Process Rights.

Plaintiffs fail to cite any case law to rebut the fact that the availability of even one - much less seven - public hearings is sufficient procedural due process. For all of the reasons previously set out by the State, Plaintiffs' procedural due process argument fails.

2. Plaintiffs' Substantive Due Process Rights Have Not Been Violated.

Plaintiffs' substantive due process argument fails to withstand the analysis contained on pp. 23-30 of the State's brief in opposition to Plaintiffs' Motion for Judgment on the Pleadings and on pp. 23-25 of the brief in support of the State's Motion to Dismiss. In their Response Brief, Plaintiffs once again improperly describe the CON Laws as assaulting their "right to work." (Pl. Resp. Br. at 28) As the State has previously demonstrated in its earlier briefs, however, this characterization is simply incorrect. Plaintiffs have made clear that they are bringing this action solely on an "as-applied" basis. This means that they are challenging the above-referenced portions of the CON Laws only as they affect Plaintiffs themselves. *See Frye v. City of Kannapolis*, 109 F. Supp. 2d 436, 439 (M.D.N.C. 1999) ("[A]n as-applied challenge represents a plaintiff's protest against how a statute was applied in the particular context in which plaintiff acted or proposed to act[.]").

In this lawsuit, Plaintiffs are not arguing that they are being denied the right to practice medicine but, rather, that they should be allowed to utilize certain additional types of equipment and facilities in the course of their practice (regardless of whether a need determination exists for such items in the applicable SMFP). Thus, this lawsuit is not about Plaintiffs' "right to work." Rather, it is about Plaintiffs' desire for a special, and exclusive, entitlement to be free from the need determinations contained in the 2008 SMFP - at the expense of their competitors. As such, they seek not the "right to work" but, rather, the right to prevail over their competitors.

For this reason, Plaintiffs' citation to *Roller v. Allen*, 245 N.C. 516, 96 S.E.2d 851 (1957), and *State v. Ballance*, 229 N.C. 764, 51 S.E.2d 731 (1949), is inapposite. In *Roller*, the issue before the court concerned whether the Legislature had the power to require a license for any person

undertaking to lay or install ceramic tile or marble. The court held that the regulation at issue was not justified because it did not involve a significant public interest. *Roller*, 245 N.C. at 525, 96 S.E.2d at 859.

In *Ballance*, the defendant was charged with engaging in the practice of photography without a license in violation of a statute proscribing such conduct. The court held that because photography was a “legitimate and innocuous” profession that was “unaffected in a legal sense with any public interest,” the statute did not bear a rational relation to public morals or the general welfare. 229 N.C. at 770-72, 51 S.E.2d at 735-36. Here, conversely, the General Assembly’s efforts to ensure equal access to health care services throughout North Carolina - unlike photography or the installation of tile - directly affect the public interest.

While Plaintiffs still appear to resist the fact that their due process claim is subject to rational basis review, the cases cited in the State’s prior briefs make clear that this is so. Indeed, it is worth noting that both *Roller* and *Ballance* apply a rational relationship test. *See Roller*, 245 N.C. at 522, 96 S.E.2d at 856-57; *Ballance*, 229 N.C. at 769, 51 S.E.2d at 735. Likewise, the more modern cases cited in the State’s earlier briefs make even clearer the fact that rational basis review is, in fact, the appropriate standard. *See Affordable Care, Inc. v. North Carolina State Bd. of Dental Examiners*, 153 N.C. App. 527, 537, 571 S.E.2d 52, 60 (2002) (“The courts of this State have more recently emphasized that economic rules and regulations do not affect a fundamental right for purposes of due process . . .”) (citing cases). *See also Good Hope Hosp., Inc. v. North Carolina Dep’t of Health and Human Services*, 174 N.C. App. 266, 274-75, 620 S.E.2d 873, 881 (2005) (applying rational

basis review to claim by hospital joint venture alleging that DHHS' failure to exempt proposed facility from CON Laws violated Constitution).

C. THE APPLICATION OF THE CON LAWS TO PLAINTIFFS HAS NOT DENIED THEM ACCESS TO THE COURTS.

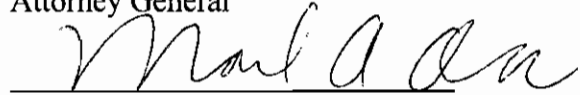
Plaintiffs' Response Brief also offers nothing new with regard to their claim alleging that they have been denied access to the courts. As the State has previously shown, Plaintiffs' argument fails to recognize that with regard to statutory mechanisms such as the CON Laws, the General Assembly has the prerogative to establish an appeals process in the manner it deems most appropriate. The Legislature has properly exercised that power here.

CONCLUSION

For the reasons set out above, the State submits that its Motion to Dismiss should be granted and that Plaintiffs' Motion for Judgment on the Pleadings should be denied.

Respectfully submitted, this the 20th of February, 2009.

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Attorney General



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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing **REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS** in the above titled action upon all other parties to this cause by:

- Hand-delivering a copy hereof to each said party or to the attorney thereof;
- Transmitting a copy hereof to each said party via email; or
- Depositing a copy hereof, first-class postage pre-paid, in the United States mail, properly addressed to:

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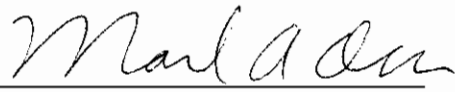
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***THE NORTH CAROLINA
HEALTHCARE FACILITIES
ASSOCIATION***

This the 20th day of February, 2009.

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GRIFFIN, P.A.
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SURGERY, EYE SURGERY CENTER,
CHARLOTTE SURGERY, AND
ASHEVILLE RADIOLOGY***



Mark A. Davis
Special Deputy Attorney General

EXHIBIT A

STATE OF NORTH CAROLINA

Department of Health and Human Services

Division of Facility Services

CERTIFICATE OF NEED

for

Project Identification Number J-7757-06

FID#041020

ISSUED TO: Raleigh Orthopaedic Clinic, P.A.
3515 Glenwood Avenue
Raleigh, NC 27612

Pursuant to N.C. Gen. Stat. § 131E-175, et. seq., the North Carolina Department of Health and Human Services hereby authorizes the person or persons named above (the "certificate holder") to develop the certificate of need project identified above. The certificate holder shall develop the project in a manner consistent with the representations in the project application and with the conditions contained herein and shall make good faith efforts to meet the timetable contained herein. The certificate holder shall not exceed the maximum capital expenditure amount specified herein during the development of this project, except as provided by N.C. Gen. Stat. § 131E-176(16)e. The certificate holder shall not transfer or assign this certificate to any other person except as provided in N.C. Gen. Stat. § 131E-189(c). This certificate is valid only for the scope, physical location, and person(s) described herein. The Department may withdraw this certificate pursuant to N.C. Gen. Stat. § 131E-189 for any of the reasons provided in that law.

SCOPE: Acquire a mobile MRI scanner to serve sites in Wake County

CONDITIONS: See Reverse Side

PHYSICAL LOCATION: Raleigh Orthopaedic Clinic, P.A.
3515 Glenwood Avenue
Raleigh, NC 27612

MAXIMUM CAPITAL EXPENDITURE: 1,275,551

TIMETABLE: See Reverse Side

FIRST PROGRESS REPORT DUE: August 15, 2007

This certificate is effective as of the 30th day of May, 2007.



Chief, Certificate of Need Section
Division of Facility Services

CONDITIONS

1. Raleigh Orthopaedic Clinic, P.A. shall materially comply with all representations made in its certificate of need application.
2. Raleigh Orthopaedic Clinic, P.A. shall acquire one mobile MRI scanner with transporting equipment that will result in establishment of a mobile diagnostic program. The mobile MRI scanner shall be moved each week to provide MRI services to at least two host sites.
3. The mobile MRI shall not, at any time, be converted to a fixed MRI scanner and such equipment shall not, at any time, serve less than two host sites each week. The acquisition of the mobile MRI scanner shall not result in the creation of a diagnostic center located at any of the host sites or any other facility owned, operated or otherwise affiliated with Raleigh Orthopaedic Clinic, P.A.
4. Raleigh Orthopaedic Clinic, P.A. shall not change or add host sites unless it first obtains a declaratory ruling authorizing the change in location of the equipment pursuant to North Carolina Statute 150B-4 and the rules of the Department of Health and Human Services, Division of Facility Services.
5. Raleigh Orthopaedic Clinic, P.A. shall not acquire, as part of this project, any equipment that is not included in the project's proposed capital expenditure in Section VIII of the application or that would otherwise require a certificate of need.
6. Prior to the issuance of the certificate of need, Raleigh Orthopaedic Clinic, P.A. shall acknowledge acceptance of and agree to comply with all conditions stated herein, in writing to the Certificate of Need Section.

A letter acknowledging acceptance of and agreeing to comply with all conditions stated in the conditional approval letter was received by the Certificate of Need Section on May 25, 2007.

TIMETABLE

Obtaining funds necessary to undertake project _____	May 30, 2007
Contract Award _____	June 1, 2007
25% completion of construction _____	June 15, 2007
50% completion of construction _____	July 1, 2007
75% completion of construction _____	July 15, 2007
Completion of construction _____	August 1, 2007
Order Equipment _____	June 15, 2007
Operation of Equipment _____	January 1, 2008



North Carolina Department of Health and Human Services
 Division of Facility Services
 Certificate of Need Section
 2704 Mail Service Center Raleigh, North Carolina 27699-2704

Michael F. Easley, Governor
 Dempsey Benton, Secretary

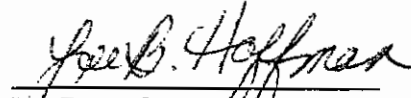
www.ncdhhs.gov/dhsr

Lee Hoffman, Section Chief
 Phone: 919-855-3873
 Fax: 919-733-8139

CERTIFICATION OF COPIES

State of North Carolina

I certify that the attached documents are true and exact copies of the certificates of need in the possession of the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Certificate of Need Section, that were issued to Hope-A- Women's Cancer Center on July 13, 2005 and Raleigh Orthopaedic Clinic on May 30, 2007.


 Lee B. Hoffman, Section Chief

Sworn to and subscribed before me
 this 22nd day of July, 2008


 Notary Public

My commission expires: 2-17-10

MARY H. BRINCEFIELD
 NOTARY PUBLIC
 WAKE COUNTY, NC
 MY COMMISSION EXPIRES 2-17-10



EXHIBIT B

STATE OF NORTH CAROLINA

Department of Health and Human Services

Division of Facility Services

CERTIFICATE OF NEED

for

Project Identification Number B-7047-04

FID# 040570

ISSUED TO: Hope-A Women's Cancer Center, P.A.
100 Ridgefield Court
Asheville, NC 28806

Pursuant to N.C. Gen. Stat. § 131E-175, et. seq., the North Carolina Department of Health and Human Services hereby authorizes the person or persons named above (the "certificate holder") to develop the certificate of need project identified above. The certificate holder shall develop the project in a manner consistent with the representations in the project application and with the conditions contained herein and shall make good faith efforts to meet the timetable contained herein. The certificate holder shall not exceed the maximum capital expenditure amount specified herein during the development of this project, except as provided by N.C. Gen. Stat. § 131E-176(16)e. The certificate holder shall not transfer or assign this certificate to any other person except as provided in N.C. Gen. Stat. § 131E-189(c). This certificate is valid only for the scope, physical location, and person(s) described herein. The Department may withdraw this certificate pursuant to N.C. Gen. Stat. § 131E-189 for any of the reasons provided in that law.

SCOPE: Acquire a mammography unit, stereotactic breast biopsy unit, bone densitometry unit, and x-ray equipment resulting in the establishment of a diagnostic center and an oncology treatment center/Buncombe County

CONDITIONS: See Reverse Side

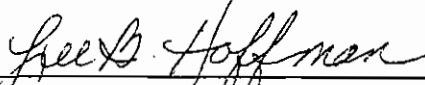
PHYSICAL LOCATION: Hope-A Women's Cancer Center, P.A.
100 Ridgefield Court
Asheville, NC 28806

MAXIMUM CAPITAL EXPENDITURE: \$565,723

TIMETABLE: See Reverse Side

FIRST PROGRESS REPORT DUE: November 15, 2005

This certificate is effective as of the 13th day of July, 2005.



Chief, Certificate of Need Section
Division of Facility Services

Conditions:

1. Hope - A Women's Cancer Center, P.A. shall materially comply with all representations made in its certificate of need application, identified as Project I.D.#B-7047-04 and the supplemental documents provided to the Agency on April 21, 2005. In those instances in which any of these representations conflict, Hope shall materially comply with the last-made representations.
2. Hope - A Women's Cancer Center, P.A. shall not acquire, as part of this project, any equipment that is not included in the project's proposed capital expenditure in Section VIII of the application or that would otherwise require a certificate of need.

Timetable:

Obtaining funds Necessary to Undertake Project	08/15/2005
Order Equipment	08/15/2005
Operation of Equipment	09/30/2005



North Carolina Department of Health and Human Services
 Division of Facility Services
 Certificate of Need Section
 2704 Mail Service Center Raleigh, North Carolina 27699-2704

Michael F. Easley, Governor
 Dempsey Benton, Secretary

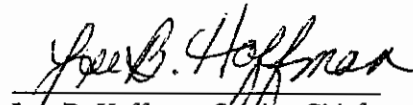
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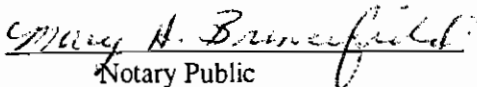
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State of North Carolina

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 Lee B. Hoffman, Section Chief

Sworn to and subscribed before me
 this 22nd day of July, 2008


 Notary Public

My commission expires: 2-17-10

MARY H. BRINCEFIELD
 NOTARY PUBLIC
 WAKE COUNTY, NC
 MY COMMISSION EXPIRES 2-17-10



EXHIBIT C

State of North Carolina



JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER 43 NORTH CAROLINA STATE HEALTH COORDINATING COUNCIL

By the authority vested in me as Governor by the laws and constitution of North Carolina, IT IS ORDERED:

Section 1. Establishment.

The North Carolina State Health Coordinating Council is hereby established.

Section 2. Duties.

The Council shall have the following duties and functions:

- (a) Serve as a forum for hearing regional concerns and recommendations relating to health planning.
- (b) Compile a list of state health needs and advise the Department of Human Resources.
- (c) Advise the Department of Human Resources on issues related to state health needs, giving attention to local, regional and statewide needs.
- (d) Review and comment on contents of documents related to health planning and make recommendations concerning them to the Secretary of Human Resources and the Governor.
- (e) Advise the Department of Human Resources on cost effective mechanisms for achieving health needs.

- (f) Prepare the Annual State Medical Facilities Plan and present the plan to the Governor.

Section 3. Membership.

The Council shall consist of 27 members who shall be appointed by the Governor as follows:

- (a) One member from the academic medical centers.
 - (b) One member from the area health education centers.
 - (c) Two members from business and industry (at least one individual representing small business and one representing large business).
 - (d) One member from the health insurance industry.
 - (e) One member from the North Carolina Association of County Commissioners.
-
- (f) One member from the North Carolina Health Care Facilities Association.
 - (g) One member from the North Carolina Hospital Association.
 - (h) One member from the North Carolina Association for Home Care.
 - (i) One member from the North Carolina Association of Long Term Care Facilities.
 - (j) One member from the North Carolina Association of Local Health Directors.
 - (k) One member from the North Carolina Medical Society.
 - (l) One member from the North Carolina House of Representatives.
 - (m) One member from the North Carolina Senate.
 - (n) One member from the United States Department of Veterans Affairs (non-voting).

- (o) Twelve at-large members to represent other health professional associations and to ensure regional representation.

Section 4. Terms of Membership.

The terms of membership of the Council shall be staggered so that the terms of approximately one-third of the members shall expire in a single calendar year. Eight members shall be designated to serve initial terms of one year, eight to serve initial terms of two years, and nine to serve initial terms of three years. After the first three years, all members shall be appointed for a term of three years. Terms shall expire on December 31 and new terms shall begin on January 1.

Section 5. Vacancies.

~~A vacancy occurring during a term of appointment is filled in the same manner as the original appointment and for the balance of the unexpired term.~~

Section 6. Travel Expenses.

Members of the Council shall receive necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

Section 7. Chairman.

The Chairman and Vice Chairman of the Council shall be appointed by the Governor. The term of office for the Chairman and Vice Chairman shall be two calendar years. The Council may elect other such officers as it deems necessary.

Section 8. Meetings.

The Council shall meet quarterly and at other times at the call of the Chairman or upon written request of at least ten (10)

of its members. All business meetings of the Council, its committees and subcommittees, or special task forces shall be open to the public.

Section 9. Staff Assistance.

The Department of Human Resources shall provide clerical support and other services required by the Council.


Section 10.

Executive Order Number 13, as amended by Executive Orders 51, 93 and 185, of the Martin Administration is hereby rescinded.

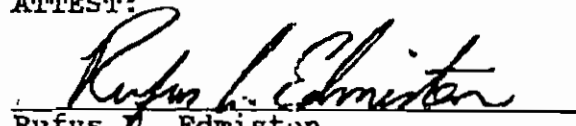
This Executive Order shall be effective immediately.

Done in Raleigh, North Carolina, this the 15th day of

April, 1994.


James B. Hunt Jr.
Governor

ATTEST:


Rufus L. Edmisten
Secretary of State



State of North Carolina



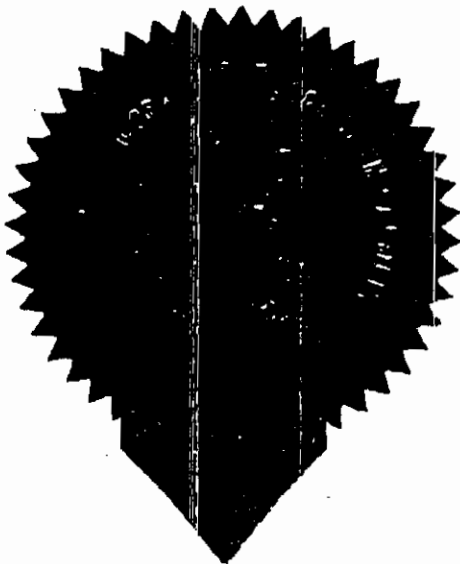
MICHAEL F. EASLEY
GOVERNOR

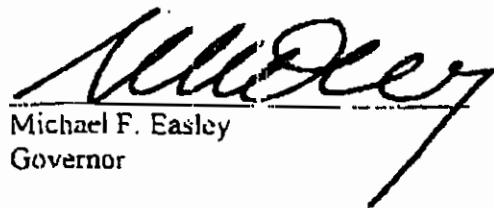
EXECUTIVE ORDER NO. 16 EXTENDING THE NORTH CAROLINA STATE HEALTH COORDINATING COUNCIL

By the power vested in me as Governor by the Constitution and laws of the State of North Carolina, IT IS ORDERED THAT:

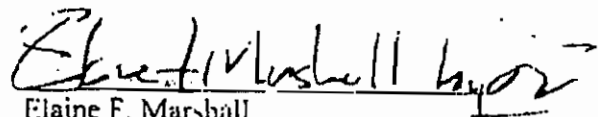
The North Carolina State Health Coordinating Council, authorized by Governor James B. Hunt, Jr. in Executive Order No. 43 and later extended by Governor Hunt in Executive Order No. 166, is hereby extended for an additional two years from this date. This order is effective immediately.

Done in Raleigh, North Carolina, this the 31st day January, 2002.




Michael F. Easley
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

State of North Carolina



MICHAEL F. EASLEY
GOVERNOR

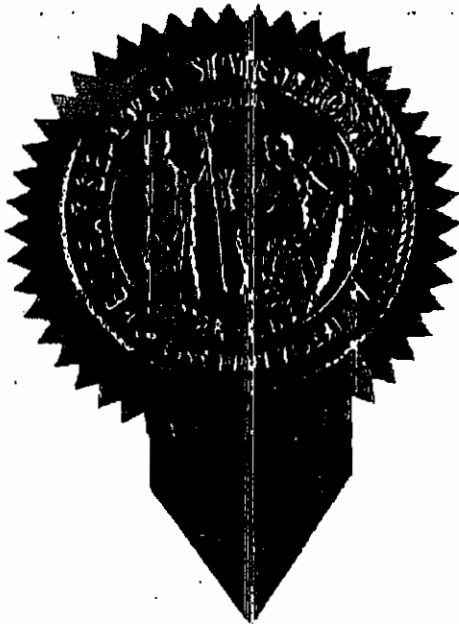
EXECUTIVE ORDER NO. 55 EXTENDING THE NORTH CAROLINA STATE HEALTH COORDINATING COUNCIL

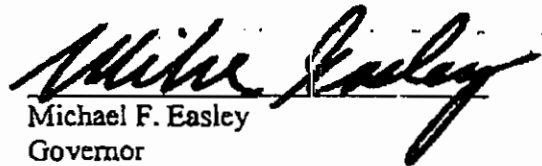
By the power vested in me as Governor by the Constitution and laws of the State of North Carolina, IT IS ORDERED THAT:

Executive Order No. 16 is hereby extended for an additional two years from this date.

~~This order is effective immediately.~~

Done in Raleigh, North Carolina, this the 12th day January, 2004.




Michael F. Easley
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

State of North Carolina



MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 98 NORTH CAROLINA STATE HEALTH COORDINATING COUNCIL

By the power vested in me as Governor by the Constitution and laws of the State of North Carolina, IT IS ORDERED THAT:

Section 1. Establishment.

The North Carolina State Health Coordinating Council is hereby established.

Section 2. Duties.

The Council shall have the following duties and functions:

- a. serve as a forum for hearing regional concerns and recommendations relating to health planning;
- b. compile a list of state health needs and advise the Department of Human Resources;
- c. advise the Department of Human Resources on issues related to state health needs, giving attention to local, regional, and statewide needs.
- d. review and comment on contents of documents related to health planning and make recommendations concerning them to the Secretary of Human Resources and the Governor;
- e. advise the Department of Human Resources on cost-effective mechanisms for achieving health needs;

- f. prepare the Annual State Medical Facilities Plan and present the plan to the Governor.

Section 3. Membership.

The Council shall consist of 27 members who shall be appointed by the Governor as follows:

- a. one member from the academic medical centers;
- b. one member from the area health education centers;
- c. two members from business and industry (at least one individual representing small business and one representing large business);
- d. one member from the health insurance industry;
- e. one member from the North Carolina Association of County Commissioners;
- f. one member from the North Carolina Health Care Facilities Association;
- g. one member from the North Carolina Hospital Association;
- h. one member from the North Carolina Association for Home Care;
- i. one member from the North Carolina Association of Long-Term Care Facilities;
- j. one member from the North Carolina Association of Local Health Directors;
- k. one member from the North Carolina Medical Society;
- l. one member from the North Carolina House of Representatives;
- m. one member from the North Carolina Senate;
- n. one member from the United States Department of Veterans Affairs (non-voting);

- o. twelve at-large members to represent other health professional associations and to ensure regional representation.

Section 4. Terms of Membership.

The terms of membership of the Council shall be staggered so that the terms of approximately one-third of the members shall expire in a single calendar year. Eight members shall be designated to serve initial terms of one year, eight to serve initial terms of two years, and nine to serve initial terms of three years. After the first three years, all members shall be appointed for a term of three years. Terms shall expire on December 31 and new terms shall begin on January 1.

Section 5. Vacancies.

A vacancy occurring during a term of appointment is filled in the same manner as the original appointment and for the balance of the unexpired term.

Section 6. Travel Expenses.

Members of the Council shall receive necessary travel and subsistence expenses in accordance with the provisions of G.S. §138-5.

Section 7. Chairman.

The Chairman and Vice Chairman of the Council shall be appointed by the Governor. The term of office for the Chairman and Vice Chairman shall be two calendar years. The Council may elect other such officers as it deems necessary.

Section 8. Meetings.

The Council shall meet quarterly and at other times at the call of the Chairman or upon written request of at least ten (10) of its members. All business meetings of the Council, its committees and subcommittees, or special task forces shall be open to the public.

Section 9. Staff Assistance.

The Department of Human Resources shall provide clerical support and other services required by the Council.

Section 10.

Executive Order Number 43, as amended by Executive Order 166 of the Hunt Administration and as amended by Executive Orders 16 and 55 of the Easley Administration are hereby rescinded.

This order is effective immediately.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in Raleigh, this the 18th day of January 2006.



Michael F. Easley
Michael F. Easley
Governor

ATTEST:

Elaine F. Marshall
Elaine F. Marshall
Secretary of State