

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

WAKE COUNTY

08 CVS 007955

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

Plaintiffs)

v.)

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,)

and)

ASHEVILLE RADIOLOGY ASSOCIATES,)
P.A; BLUE RIDGE DAY SURGERY CENTER)
LIMITED PARTNERSHIP; THE)
CHARLOTTE-MECKLENBURG HOSPITAL)
AUTHORITY d/b/a CAROLINAS)
HEALTHCARE SYSTEM; CHARLOTTE)
SURGERY CENTER, LIMITED)
PARTNERSHIP; CUMBERLAND COUNTY)
HOSPITAL SYSTEM, INC. d/b/a CAPE FEAR)

BY _____

ORDER

FILED
2009 JAN -5 PM 3:17
WAKE COUNTY, C.S.C.

VALLEY HEALTH SYSTEM; GREENSBORO)
 SPECIALITY SURGERY CENTER, LIMITED)
 PARTNERSHIP; HIGH POINT REGIONAL)
 HEALTH SYSTEM; MISSION HOSPITAL,)
 INC.; THE MOSES H. CONE MEMORIAL)
 HOSPITAL OPERATING CORPORATION)
 d/b/a THE MOSES CONE HEALTH SYSTEM;)
 NORTH CAROLINA BAPTIST HOSPITAL;)
 NORTH CAROLINA HEALTH CARE)
 FACILITIES ASSOCIATION, INC; THE)
 NORTH CAROLINA HOSPITAL)
 ASSOCIATION; PITT COUNTY MEMORIAL)
 HOSPITAL, INC.; REX HOSPITAL, INC.;)
 SURGERY CENTER OF SOUTHERN PINES,)
 LLC; SURGICAL CARE AFFILIATES, LLC;)
 WAKE FOREST UNIVERSITY HEALTH)
 SCIENCES; and WAKEMED;)
)
 Defendant-Intervenors.)

The Court, having reviewed the pleadings and pending motions in this case and having met with counsel, ORDERS as follows:

1. The pending motions of the proposed intervenors seeking leave of Court to intervene in this action are hereby granted on a limited basis subject to the following restrictions:

a. The intervenors on behalf of *Plaintiffs* shall be permitted to file one joint brief in support of their position with regard to each of the following: Defendants' and Defendant-intervenors' Motions to Dismiss, Plaintiffs' Motion for Judgment on the Pleadings, and Defendants' Motion to Disqualify, and at each hearing shall select one attorney for plaintiff-intervenors who shall be permitted to argue in support of the plaintiff-intervenors' position at the hearings on said motions;

b. The intervenors on behalf of *Defendants* shall be permitted to file one joint brief in support of their position with regard to each of the following: Defendants' and defendant-intervenors' Motions to Dismiss, Plaintiffs' Motion for Judgment on the Pleadings, and Defendants'

Motion to Disqualify, and at each hearing shall select one attorney for said defendant-intervenors who shall be permitted to argue in support of the defendant-intervenors' position at the hearings on said motions.

2. Any additional intervenors in this case will be subject to the same limitations set out herein.

3. Defendants shall file an Answer without prejudice to their Motion to Dismiss on or before January 9, 2009, and Plaintiffs shall file a Motion for Judgment on the Pleadings on or before January 16, 2009.

4. The hearing on Defendants' and Defendant-Intervenors' Motions to Dismiss and on Plaintiffs' Motion for Judgment on the Pleadings shall take place before the undersigned on February 27, 2009 beginning at 2:00 p.m.

5. The briefing schedule for Defendants' and Defendant-Intervenors' Motions to Dismiss and Plaintiffs' Motion for Judgment on the Pleadings shall be as follows:

a. Briefs in support of Defendants' and Defendant-Intervenors' Motions to Dismiss and/or Plaintiffs' Motion for Judgment on the Pleadings shall be served on opposing counsel and opposing intervenors' counsel by January 23, 2009.

b. Briefs in opposition to Defendants' and Defendant-Intervenors' Motions to Dismiss and/or Plaintiffs' Motion for Judgment on the Pleadings shall be served on opposing counsel and opposing intervenors' counsel by February 13, 2009.

c. Reply briefs in support of Defendants' and Defendant-Intervenors' Motions to Dismiss and/or Plaintiffs' Motion for Judgment on the Pleadings shall be served on opposing counsel and opposing intervenors' counsel by noon on February 20, 2009.

6. By separate Order, this Court will set a hearing date and briefing schedule regarding Defendants' Motion to Disqualify.

7. Because the Court has concluded that this case hinges on legal issues capable of resolution by the Court without any factual development of the record, all discovery in this action is hereby stayed.

This the 5th day of JANUARY, 2009.


HONORABLE HOWARD E. MANNING, JR.