

LOCAL

Mission files lawsuit fighting state over Pardee decision, claimed threat of favoritism



Andrew Jones

Asheville Citizen Times

Published 5:11 a.m. ET Jan. 24, 2023

ASHEVILLE - Mission Hospital has filed a roughly 900-page legal intervention opposing a pending state-level decision which, according to Mission, would treat Pardee Hospital in Hendersonville with a kind of favoritism.

The lawsuit is steeped in the complex North Carolina laws regarding medical treatment expansion known as certificate of need or “CON.”

According to Mission’s complaint, filed Jan. 10 in Buncombe County Superior Court, the matter stretches back to 2019 and involves expansion of cardiac catheterization services.

Related: Mission's security approached union nurses handing out flyers: 'We're following orders'

Related: Document shows why Mission, Novant hospital CON bids were denied, AdventHealth approved

According to a definition from Mayo Clinic, “(c)ardiac catheterization (or ‘cath’) ... is a procedure in which a thin, flexible tube (catheter) is guided through a blood vessel to the heart to diagnose or treat certain heart conditions, such as clogged arteries or irregular heartbeats.”

In 2019, UNC Health-owned Pardee applied for and was approved to create an in-house, fixed cardiac cath unit. This fixed unit was supposed to replace a mobile unit Pardee operated in cooperation with Charlotte-based DLP Cardiac Partners.

Related: Mission signals intent to fight state's decision on AdventHealth's Buncombe hospital beds

According to the lawsuit, however, the legal procedure underneath that replacement did not go smoothly.

In a legal-filing seesaw that lasted through most of 2022, Pardee told the state that it actually wanted to keep the mobile cardiac cath unit instead of replacing it, citing market shifts, utilization and growth data.

Though the state initially denied this request, Pardee used the legal rights granted to health care providers through the CON process to contest its case. Mission got involved, urging the state to stick to its guns, preventing Pardee from having more cardiac cath services than it initially asked for in 2019.

Mission also argued that, if the state decided to give Pardee what it was asking for, it could result in a kind of favoritism.

“Granting Pardee’s request would treat Pardee differently than all other health service providers,” Mission argued.

On Dec. 22, however, Mission became barred from legal involvement in the case when a judge decided it could not intervene in the Pardee-cardiac-cath-unit case.

Barred from legal intervention in that case, Mission filed the Buncombe lawsuit.

“Pardee and DLP are attempting to circumvent the CON Law and to bypass the statutorily-mandated CON application and review process,” Mission’s lawsuit claims. “Rather than filing a change of scope CON or seeking approval from the (State Health Coordinating Council) and the (DHSR) Agency to continue employing both its approved fixed cath unit and the existing DLP mobile unit, Parde and DLP are attempting to make an end run around the requirements of the CON statute.”

Mission notes that it went through a similar process in 2019 for a cardiac cath unit.

“Mission has a right to intervene,” it argues in the complaint, citing CON law and noting that it is an “affected person” since it provides cardiac cath services in the same region as Pardee.

Mission attached roughly 850 pages in exhibits to its lawsuit.

The CON process, among other things, allows health care providers to show where and why

Department's Division of Health Service Regulation reviews expansion applications and decides whether or not to award the CON.

The lawsuit is unrelated to other, more high-profile CON matters affecting Mission in 2022. In June, Mission, AdventHealth and Novant Health each used the CON process to propose hundreds of millions of dollars to bring 67 new acute care beds to Buncombe that would also serve Graham, Madison and Yancey counties.

Novant and AdventHealth proposed building completely new hospital facilities in Buncombe, and Mission proposed expanding its 509 Biltmore Ave. campus in Asheville.

AdventHealth won conditional approval from the DHSR in November, provisionally committing it to open a new hospital by 2025. Mission and Novant have appealed the decision.

Pardee, though it was not applying to bring more beds to Buncombe, got involved by filing a document with the DHSR claiming that Mission had effectively made up the need for 67 new beds using data from surges during the COVID-19 pandemic.

The DHSR in explaining why it chose AdventHealth for the 67-bed expansion, effectively agreed with Pardee's assessment.

Thus, Pardee and Mission are at odds now in at least two legal disputes over which entities should be allowed to offer expanded health care services in Western North Carolina

Mission Health and Mission Hospital are plaintiffs in two class-action lawsuits claiming they and parent company HCA Healthcare are running a monopoly in WNC, driving up prices and tightening access to health care.

Andrew Jones is an investigative reporter for the Asheville Citizen Times, part of the USA TODAY Network. Reach him at @arjonesreports on Facebook and Twitter, 828-226-6203 or arjones@citizentimes.com. Please help support this type of journalism with a subscription to the Citizen Times.

