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STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

SWEDISH HEALTH SERVICES, a
Washington nonprofit corporation,

Petitioner,

v.

DEPARTMENT OF HEALTH OF THE
STATE OF WASHINGTON,

Respondent.

NO. 13-2-15721-7 SEA
NO. 13-2-26269-0 SEA
Consolidated

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER DENYING PETITION
FOR JUDICIAL REVIEW**

THIS MATTER CAME before the Court on November 8, 2013, on consolidated Petitions for Judicial Review by Swedish Health Services (Swedish), contesting two Certificate of Need decisions made by the Washington State Department of Health (Department). Appearing were Brian W. Grimm, Attorney-At-Law, representing Swedish; Richard A. McCartan, Senior Counsel, Office of the Attorney General, representing the Department; Gregory A. McBroom, Attorney-At-Law, representing Intervenor King County Public Hospital District No. 2 (d/b/a EvergreenHealth); and Roger L. Hillman, Attorney-At-Law, representing Intervenor Eastside Endoscopy Center, LLC.

Having reviewed the pleadings, and the memoranda and argument of counsel, the court finds and concludes:

1. Jurisdiction. The court has jurisdiction over these two Petitions for Judicial Review under RCW 34.05.

1 2. Validity Period Issue. Swedish received Certificate of Need #1330R to
2 establish an ambulatory surgery center (ASC) in Issaquah, Washington. The Certificate of
3 Need had a two-year validity period. RCW 70.38.125(1). The validity period ended on
4 October 1, 2012. Swedish contests two related decisions by a Department Health Law Judge
5 concerning the validity period.

6 3. Case No. 13-2-15721-7 SEA (Validity-Period Extension). This Petition
7 contests the Order of the Department's Health Law Judge, dated March 27, 2013, denying
8 Swedish a six-month extension of the two-year validity period on its Certificate of Need to
9 establish its Issaquah ASC.

10 a. The Health Law Judge correctly denied the extension because Swedish
11 failed to demonstrate the required "substantial and continuing" progress toward
12 "commencement" of the approved Issaquah project. RCW 70.38.125(1);
13 WAC 246-310-580(1)-(2).

14 b. By order dated January 9, 2013, the Health Law Judge ruled that if he
15 denied the extension, Swedish would be given 12 days, following his ruling, to commence the
16 project at the Issaquah site. After the Health Law Judge denied the extension on
17 March 27, 2013, Swedish took no steps to commence the project at the Issaquah site.
18 Following the denial, neither the Health Law Judge, nor the Court, further extended the time
19 for Swedish to commence the Issaquah project beyond the additional 12 days allowed by the
20 Health Law Judge in his January 9, 2013 Order. Hence, the two-year validity period of
21 Swedish's Certificate of Need for the Issaquah ASC has expired, and the Certificate is no
22 longer valid.

23 4. Case No. 13-2-26269-0 SEA (Site Change). An approved CN may be amended
24 to authorize a change in the facility's location. WAC 246-310-570. In this Petition, Swedish
25 contests the Order of the Health Law Judge, dated July 1, 2013, denying its request for an
26 amended Certificate of Need to allow a change of site of the ASC from Issaquah to Redmond.

1 a. Applications for site changes proceed under WAC 246-310-570(3) and
2 246-310-090. Swedish did not apply for a site change until May 29, 2013, and then delayed
3 responding to "screening" questions until August 28, 2013. This timing did not allow the
4 Department to rule on the site-change application prior to expiration of the Certificate of Need
5 on October 1, 2013. The Health Law Judge correctly denied the site-change under
6 WAC 246-310-580(6), which states that "[c]ommencement of the project shall not be
7 undertaken after the expiration of the certificate of need."

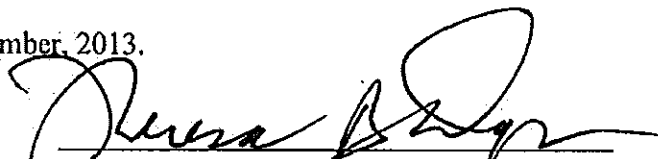
8 b. The Health Law Judge did not extend the validity period beyond
9 October 1, 2012, to allow Swedish extra time to obtain a location change. On May 15, 2013,
10 this Court denied Swedish's motion to "toll" the validity period beyond October 1, 2012, to
11 give Swedish the opportunity to argue in the location-change case that the validity period had
12 not expired on October 1, 2012.

13 5. Standard of Review. Because the challenged orders were entered in an
14 adjudicative proceeding, they are subject to judicial review under the standards in
15 RCW 34.05.570(3). The Health Law Judge's application of the relevant statutes and rules is
16 entitled to substantial deference, and should be upheld under the legal-error review standard in
17 RCW 34.05.570(3)(d). The Health Law Judge's decisions were not made in willful and
18 unreasoned disregard of the facts and circumstances, and therefore may not be overturned
19 under the "arbitrary or capricious" review standard in RCW 34.05.570(3)(i).

20 NOW THEREFORE IT IS HEREBY ORDERED that the two challenged decisions of
21 the Health Law Judge are AFFIRMED under RCW 34.05.574(1).

22 IT IS FUTHER ORDERED that Swedish's Certificate of Need #1330R is expired and
23 no longer valid.

24 DATED this 12 day of November, 2013.

25 
26 HONORABLE THERESA B. DOYLE

1 **Presented by:**

2 ROBERT W. FERGUSON
3 Attorney General

4 s/ Richard A. McCartan

5 RICHARD A. MCCARTAN, WSBA No. 8323
6 Senior Counsel
7 Attorney for Respondent
8 State of Washington Department of Health

9 **GARVEY SCHUBERT BARER**

10 *Authorized by email*

11 s/ Roger L. Hillman

12 ROGER L. HILLMAN, WSBA No. 18643
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17 s/ Gregory A. McBroom

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