

**STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
ADJUDICATIVE SERVICE UNIT**

In Re:

Certificate of Need Evaluation of the  
PUGET SOUND KIDNEY CENTERS  
APPLICATION PROPOSING TO  
ESTABLISH A NINE STATION  
DIALYSIS CENTER IN SKAGIT  
COUNTY and DAVITA APPLICATION  
PROPOSING TO ESTABLISH A NINE  
STATION DIALYSIS CENTER IN  
SKAGIT COUNTY,

DAVITA INC.,

Petitioner.

Master Case No. M2012-1073

ORDER APPROVING  
CERTIFICATE OF NEED AWARD

**APPEARANCES:**

Puget Sound Kidney Centers (PSKC), by  
Davis Wright Tremaine LLP, per  
Brad Fisher and Lisa Rediger Hayward, Attorneys at Law

DaVita Inc. (DaVita), by  
Perkins Coie LLP, per  
Brian W. Grimm, Anastasia Anderson, Attorneys at Law, and  
Law Office of James M. Beaulaurier, per  
James M. Beaulaurier, Attorney at Law

Department of Health Certificate of Need Program (Program), by  
Office of the Attorney General, per  
Richard A. McCartan, Assistant Attorney General

**PRESIDING OFFICER:** Frank Lockhart, Health Law Judge

**PROCEDURAL HISTORY**

In November 2011, both PSKC and DaVita applied for a Certificate of Need (CN) to establish a nine-station dialysis facility in Skagit County. In July 2012, the Program awarded the CN to PSKC. DaVita filed a petition for an adjudicative hearing.

ORDER APPROVING  
CERTIFICATE OF NEED AWARD

Page 1 of 5

Master Case No. M2012-1073

The Presiding Officer conducted the hearing on April 30, 2013 - May 1, 2013, and subsequently issued an Order awarding the nine stations to PSKC. DaVita appealed the decision to the Thurston County Superior Court.

On September 5, 2014, Judge Christine Schaller issued a Judicial Review Order remanding the case back to the Department with instructions to “approve both facilities and award stations as equally as possible without exceeding the total number of stations projected for the planning area, pursuant to WAC 246-310-288.”

On October 6, 2014, the Presiding Officer issued an Order of Remand instructing the Program to “issue Certificates of Need to both PSKC and DaVita consistent with Judge Schaller’s ruling.”

On October 9, 2014, the Program, PSKC, and DaVita submitted a joint Stipulation and Proposed Order Dismissing Adjudicative Proceedings (Stipulation) which stated only that the parties had entered into a settlement agreement and asking that the adjudicative proceeding be dismissed. No agreement was attached to the Stipulation.

The Orders of both Judge Schaller and the Presiding Officer did not include any instruction (or prohibition) regarding settlement; rather, both Orders instructed the Program to issue Certificates of Need to both PSKC and DaVita. Thus, in the Second Order of Remand, issued October 9, 2014, the Presiding Officer declined to sign the Stipulation. Because the content of any agreement was undisclosed, the Second Remand Order contained language indicating “If the parties have entered into a settlement agreement, the normal course of action would be to reduce that agreement to writing and submit it to the Presiding Officer for review and signature.”

On October 17, 2014, the Program submitted a Motion and Order of Dismissal with a copy of a Certificate of Need Dispute Resolution Agreement, which is the subject of this Order.

### **DISCUSSION**

The Presiding Officer has reviewed the Dispute Resolution Agreement and finds that the content comports with Judge Schaller's instructions. Subsequently, the Presiding Officer APPROVES the Dispute Resolution Agreement. The document lacks a signature line for the Presiding Officer to sign, which is assumed to be a mere oversight, and is cured by this Order.

However, the significance of the Dispute Resolution Agreement must be kept in perspective. The instructions were for the Program to issue two Certificates of Need. To the extent entering into an agreement helps the Program execute those instructions by (1) resolving issues regarding details of executing the Certificates of Need, or (2) gaining cooperation of the parties, or (3) waiving appeal issues, or (4) expediting the provision of much needed services to the public, then such agreements are a vital part of the process. But such agreements do not drive the Certificate of Need decision; they facilitate the Program's ability to manage the CN process and to make CN decisions that comport with the law and serve the public need.

It is clear from the content of the Dispute Resolution Agreement that the Program, in carrying out Judge Schaller's instructions, has decided to grant a CN to PSKC to operate five dialysis stations in Anacortes, and a CN to DaVita to operate four dialysis stations in Burlington. The factual basis, financial details, and timeframe of



DECLARATION OF SERVICE BY MAIL

I declare that today I served a copy of this document upon the following parties of record:

**BRAD FISHER, LISA HAYWARD, BRIAN GRIMM, ANASTASIA ANDERSON, AND JIM BEAULAUER, ATTORNEYS AT LAW AND RICHARD MCCARTAN, AAG** by mailing a copy properly addressed with postage prepaid.

DATED AT OLYMPIA, WASHINGTON THIS \_\_\_\_ DAY OF OCTOBER, 2014.

\_\_\_\_\_  
Adjudicative Service Unit

cc: **JANIS SIGMAN**

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