

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

Petitioner.

In the Matter of:

CERTIFICATE OF NEED APPLICATION OF  
SPRINGSTONE, a Delaware limited liability  
company, CN APPLICATION #15-20, AND  
COMMITMENT TO OR ISSUANCE OF  
CERTIFICATE OF NEED REGARDING SAME,

and

CERTIFICATE OF NEED APPLICATION OF  
SIGNATURE HEALTHCARE SERVICES, LLC,  
TO ESTABLISH A PSYCHIATRIC HOSPITAL IN  
CLARK COUNTY,

SIGNATURE HEALTHCARE SERVICES, LLC

Signature Healthcare Services, LLC (Signature), by  
Life Point Law, per  
Gregory A. McBroom, Attorney at Law

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

Springstone, LLC (Springstone), by  
Davis Wright Tremaine LLP, per  
Brad Fisher, Attorney at Law

PRESIDING OFFICER: John F. Kuntz, Review Judge

Springstone filed a Motion for Summary Judgment on March 4, 2016, in which  
Springstone requested an order stating there is no genuine issue of material fact  
regarding Springstone's certificate of need (CN) application meeting the criteria for a

PREHEARING ORDER NO. 5:  
INITIAL ORDER GRANTING MOTION  
FOR SUMMARY JUDGMENT AND  
DENYING CROSS-MOTION  
FOR SUMMARY JUDGMENT

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Master Case Nos. M2015-1260 and M2015-1417

APPEARANCES:

Master Case Nos. M2015-1260  
M2015-1417

PREHEARING ORDER NO. 5:  
INITIAL ORDER GRANTING  
MOTION FOR SUMMARY  
JUDGMENT AND DENYING  
CROSS-MOTION FOR  
SUMMARY JUDGMENT

psychiatric hospital project. Springstone also requested an order stating that there is no genuine issue of material fact that Signature's competing CN application failed to show site control and failed to meet the WAC 246-310-220(2) criterion (Signature's failure to show that cost of the project, including any construction cost, will probably not result in an unreasonable impact on the costs and charges for health services). The Program supports Springstone's Summary Judgment Motion.

Signature filed a Cross-Motion for Summary Judgment and Response to Intervenor's Motion for Summary Judgment on March 28, 2016. Signature argues that there are genuine issues of material fact regarding the Springstone application. Signature further argues there are no genuine issues of material fact regarding its application and that it is entitled to judgment on its cross-motion as a matter of law.

Springstone and the Program both oppose Signature's cross-motion for summary judgment.

### **ISSUES**

- A. Should Springstone's Motion for Summary Judgment be granted?
- B. Should Signature's Cross-Motion for Summary Judgment be granted?

### **PROCEDURAL HISTORY**

On October 6, 2014, Signature submitted a letter of intent to establish a psychiatric hospital in Clark County, Washington. On November 5, 2014, Signature filed a certificate

of need application to establish a 100-bed psychiatric hospital in Clark County, Washington.

On November 14, 2014, Springstone submitted a letter of intent to establish a psychiatric hospital in Clark County, Washington. On December 29, 2014, Springstone filed a certificate of need application to establish a 72-bed psychiatric hospital in Clark County, Washington.

The Program conducted a concurrent review of the two applications. The Program issued its evaluation on September 23, 2015, in which it conditionally awarded Springstone's 72-bed psychiatric hospital application if Springstone would meet the Program's conditions. Springstone agreed to the Program's specified conditions. AR 1904-1905. On October 6, 2015, the Program notified Springstone that it would not issue a certificate of need pending receipt of a Conditional Use Permit.<sup>1</sup> AR 1906-1907.

The Program denied the Signature 100-bed application. On October 21, 2015, Signature filed a Request for Adjudicative Proceeding to appeal the Program's evaluation approving the Springstone application and denying the Signature application.<sup>2</sup> On February 19, 2016, Springstone was granted an order to intervene in the matter. See Stipulation and Order to Intervene, signed February 22, 2016.

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<sup>1</sup> In general, a conditional use permit is proof that the land can be used for the stated purpose; here, that the land can be used for a psychiatric hospital.

Springstone filed a Motion for Summary Judgment on March 4, 2016, in which Springstone requested an order stating there is no genuine issue of material fact with respect to the integrity of Springstone's certificate of need project or the deficiencies in Signature's competing certificate of need application.<sup>3</sup> Signature opposed Springstone's Motion.

Signature filed a Cross-Motion for Summary Judgment and Response to Intervenor's Motion for Summary Judgment on March 28, 2016. Signature argues that there are genuine issues of material fact regarding the Springstone application and that it is entitled to judgment on its cross-motion as a matter of law. Signature argues that there are no genuine issues of material fact regarding its application. Springstone opposed Signature's Cross-Motion.<sup>4</sup>

<sup>2</sup> Signature also requested a reconsideration of the Program's decision on October 21, 2015. See AR 1915-1927. The Program denied this reconsideration request on October 27, 2015. AR 1928-1933. <sup>3</sup>

Both Signature and Springstone asserted in general that they met the CN requirements for their respective projects. See *generally* Springstone's Motion for Summary Judgment, pages 4-5 and Signature Healthcare's Cross-Motion for Summary Judgment and Response, page 2. The Presiding Officer concluded that a full analysis of the respective applications was therefore necessary. A more specific reference to summary judgment analysis is considered in the conclusions of law section.

<sup>4</sup> Springstone also filed a Motion to Strike Untimely and Improper "Reply" Motion of Petitioner Signature. The Presiding Officer denies this Motion, as he permitted Signature's late filing due to the stated family emergency.

## I. FINDINGS OF FACT

1.1 An applicant<sup>2</sup> for a certificate of need for psychiatric hospital beds must meet the criteria set forth in WAC 246-310-200. The criteria includes a determination whether the proposed project: (1) is needed; (2) will foster containment of the costs of health care; (3) is financially feasible; and (4) will meet the criteria for structure and process of care. WAC 246-310-200(1). An applicant must also meet the criteria set forth in WAC 246-310-210 through 240. WAC 246-310-200(2). Failure to comply with any one of the criteria will result in the failure of the application. In other words, an applicant's application may meet a majority of the WAC 246-310-200 criteria but its application will fail if it fails to meet one of the criterion.

1.2 An applicant "shall submit a certificate of need application in such form and manner and containing such information as the department has prescribed and published." WAC 246-310-090(1)(a). To meet the WAC 246-310-200(1) and (2) criteria, the applicant completes the certificate of need application form created by the Program. There is no application form specifically tailored for psychiatric hospital

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<sup>2</sup> Under WAC 246-310-010(6), an applicant is: (a) any person proposing to engage in any undertaking subject to review under chapter 70.38 RCW; or (b) any person or individual with a ten percent or greater financial interest in a partnership or corporation or other comparable legal entity engaging in an undertaking subject to review under chapter 70.38 RCW. <sup>6</sup> See AR 1727-1729.

applications. The form in use is the one created for acute care hospitals.<sup>6</sup> The Program has used the same application form for quite some time.<sup>3</sup>

### Signature Application

1.3 On November 9, 2014, Signature submitted a certificate of need application to establish a 100-bed psychiatric hospital in Clark County, Washington, at a capital cost of \$32,514,994. The legal name on the application was Signature Healthcare Services, LLC d/b/a Vancouver Behavioral Healthcare Hospital. Application Record (AR) 2. Signature was part of an organization owned by Dr. Soon K. Kim, M.D. Dr. Kim owns thirteen behavioral health hospitals. For this application, Dr. Kim created several limited liability companies as a part of his application to establish the psychiatric hospital. AR 55 (Attachment 2: Organization Structure of Signature Healthcare LLC).<sup>4</sup> Signature's project would include an adolescent treatment program for patients 13 to 18 years old.

1.4 In filing its application, Signature used the application form provided to it by the Program. The application form contained the following requirement:

8. Provide documentation that the applicant has sufficient interest in the site or facility proposed. Sufficient interest shall mean one of the following:

(a) Clear legal title for the proposed site; or

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<sup>3</sup> See Reply Re Springstone's Motion for Summary Judgment, Exhibit A (Nidermayer deposition at 18, lines 13-16). Ms. Nidermayer did not specifically identify the exact number of years.

<sup>4</sup> Note that the organizational structure showed that Vancouver Life Properties, LLC (the building owner) would enter into a lease agreement with Signature Health Services, LLC d/b/a Vancouver Behavioral Healthcare Hospital, LLC.

- (b) Lease for at least five years with options to renew for no less than a total of twenty years in the case of a hospital or psychiatric hospital, tuberculosis hospital or rehabilitation faculties; or
- (c) Lease for at least one year with options to renew for not less than a total of five years in the case of a freestanding kidney dialysis units, ambulatory surgical facilities, hospices or home health agencies; or
- (d) Legal enforceable agreement to give such title or such lease in the event that a certificate of need is issued for the proposed project.

See Application Record (AR) 11. To document that it had sufficient interest in the proposed site, Signature included the following documentation: (1) a purchase and sale agreement and receipt for earnest money for property in Clark County; (2) a legal description of the property; and (3) a seller's property form. AR 71-96 (Attachment 9).

1.5 On December 4, 2014, the Program sent Signature a screening letter pursuant to WAC 246-310-090(2)(c). AR 296-304. The Program requested Signature provide additional information regarding Signature's application. See AR 299. The Program requested supplemental information from Signature regarding its site control<sup>5</sup> response to item 8 in the application, namely to "[i]dentify where, within the Pro Forma Revenue and Expense Statements, the lease/rent costs for the site are included." In its response, Signature identified that the lease/rent costs for the facility were included in the Revenue and Expense statement under Operating Expenses because it purchased the site so did not

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<sup>5</sup> The term "site control" is not specifically defined in chapters 70.38 RCW and 246-310 WAC. It is understood to mean that the applicant can show it can use the site for the stated purpose and for the relevant time period set out in the Program's application form.

need to lease it. AR 315. It did not provide a proposed lease in response to this question

1.6 On March 30, 2015, the Program sent a second set of screening questions to Signature. The Program asked for a copy of the leaseback agreement between the to-be-formed Vancouver Life Properties, LLC and Rainier Springs, LLC.

The Program erroneously referred to Rainier Springs (the name of Springstone's facility) rather than Vancouver Behavioral Healthcare Hospital, LLC.<sup>6</sup> The Program notified Signature that a draft agreement would be acceptable if it identified all costs associated with the agreement. AR 199.

1.7 In response to that request, Signature provided a copy of a Facility Lease and Security Agreement between Vancouver Life Properties (the landlord), LLC and Vancouver Behavioral, LLC (the Tenant). AR 397-436. Signature's Lease Agreement was incomplete. The five-year Lease Agreement did not include any option to renew the lease. AR 399 (Paragraph 2.1.1). It did not include the amount of the rent in paragraph 3.2.1 of the Lease. AR 402 (Paragraph 3.2.1).

### Springstone Application

1.8 On December 29, 2014, Springstone submitted a certificate of need application to establish a 72-bed psychiatric hospital in Clark County, Washington, at a capital cost of \$26,843,706. The legal name of the applicant was Rainier Springs, LLC.

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<sup>6</sup> See Paragraph 1.3 above.

AR 649. Rainier Springs, LLC was one of several entities created by Springstone, LLC. See AR 860 (Attachment 1: Springstone Organizational Chart). The Program considered the parent company or corporation to be the applicant. See AR 1851 (Footnote 3). A financial investment corporation or company is not considered to be an applicant. It is also not considered as the parent company. AR 1851. Signature submitted a lease between Propstone, LLC and Rainier Springs, LLC, which indicated that the initial term of the lease was ten years, with one renewal option for two years.

AR 720 (Paragraphs 1.1 and 1.2). The section regarding the rent was blank. AR 722 (Paragraph 2.1).

1.9 On January 21, 2014 the Program sent a screening letter to Springstone pursuant to WAC 246-310-090(2)(c). The Program requested Springstone to clarify the name of the project (that is, Springstone LLC or Springstone, Inc.). AR 835. The Program also requested the registration for Rainier Springs, LLC. *Id.* The Program also requested a copy of the draft lease agreement between Propstone, LLC and Rainier Springs, LLC. to include any costs associated with the lease. AR 838 (paragraph 32). The Program noted the lease was for 10 years, with a two-year renewal. AR 838 (paragraph 33). The Program further requested clarification of Paragraph 4.3 of the lease, which implied that Rainier Springs, LLC would assign or transfer any issued certificate of need to Propstone, LLC after 12 years of operation. AR 838 (paragraph 33).

1.10 On March 9, 2015, Springstone submitted the requested information to the Program. It clarified that Springstone LLC, not Springstone, Inc., was the parent company. It further clarified that Rainier Springs, LLC was the limited liability company that would operate the hospital and that it was registered in Washington. AR 843. Springstone submitted a copy of the Rainier Springs, LLC registration. AR 863. It provided a letter that Welsh Carson Anderson & Stowe (an equity investment firm) would provide 100 percent of the capital investment. AR 848 and AR 1250.

Springstone provided a revised lease regarding the facility. See AR 1558-1600. The revised lease included the monthly and annual rental amounts for the proposed facility. AR 1561. The revised lease further provided the initial term of the lease was for 10 years. AR 1559. Rainier Springs, LLC could renew the lease for two additional terms of five years each, with the rent at “market value.” AR 1559.

1.11 In addition, Springstone described that its proposed project would have a 24-bed adult psychiatric unit, a 24-bed geropsychiatric (a psychiatric unit for dealing with mental illness of the elderly), and a 24-bed chemical dependency unit as a part of its project. AR 847. Springstone’s goal was to treat patients with dual diagnoses or co-occurring disorders. Id. Springstone’s application did not include provisions for treatment of adolescents. Given that Springstone intends to treat dual diagnosis patients, for need purposes, all 72 beds are considered as psychiatric beds.

AR 847 (Footnote 3).

## **WAC 246-310-210 “Determination of Need”**

1.12 Under WAC 246-310-210(1), a CN applicant must demonstrate there is a need for the proposed services. Chapter 246-310 WAC does not specifically provide for a psychiatric bed forecasting method. RCW 70.38.115(5) and the State Health Plan<sup>7</sup> allow for discretion in selecting and applying evaluation methods to determine psychiatric bed need. The applicant examines what is the appropriate number of psychiatric beds needed per every 100,000 persons in the population. This figure is known as the use rate. Currently the use rate is 27.25 beds per 100,000 individuals of population.<sup>8</sup> Need is calculated by multiplying the use rate times the anticipated population growth of the area. The anticipated need is then deducted from the known existing bed number. Given the size of hospital projects, the projection for need for a hospital project covers a longer period of time than other certificate of need projects. Hospital need projections can measure out at least six, and sometimes as many as fifteen, years into the future depending on the size of the project.

1.13 Springstone calculated the bed need using a ten-year planning horizon.

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<sup>7</sup> The forecasting methods and definitions contained in the 1987 Washington State Health Plan are traditionally used in calculating bed need. While the State Health Plan was “sunset” in 1989, the concepts and methodology it contains remains a reliable tool for managing the growth of health care services such as psychiatric beds.

<sup>8</sup> This use rate figure represents the average use rate of the Northwest states (Alaska, Idaho, Montana, and Oregon). The use rate in the 1987 State Health Plan is 13 beds per 100,000 individuals. This use rate is now considered too low.

AR 669-672. It used the (medium) population forecast from the Office of Financial Management released in May 2012, the 27.25 use rate per 100,000 individuals of population, and the current psychiatric bed capacity (16 psychiatric beds currently located at PeaceHealth Southwest Washington Medical Center in Vancouver, Washington). Springstone projected a 75-bed need by the tenth year (2025). See AR 677-678 and AR 1865.

1.14 Signature calculated bed need using a 15-year planning horizon. AR 21. Signature calculated bed need for the period 2018 through 2021, and two additional years (2024 and 2029). Signature used the Office of Financial Management population forecast released in May 2012, the 27.25 use rate per 100,000 individuals per population, and the current psychiatric bed capacity (16 psychiatric beds currently located in the PeaceHealth Southwest Medical Center). See AR 18-34 and AR 1859. Signature projected at least 91 psychiatric beds by 2020, which increased to 103 beds by 2029.

1.15 Signature argues that Springstone did not provide an appropriate need methodology, as at least 24 of the beds were characterized as chemical dependency beds.<sup>9</sup> Characterizing the 24 beds as chemical dependency beds affected the accuracy of Signature's pro forma statement, as Springstone made no showing that there was need for a 24-bed chemical dependency facility and the 48 psychiatric bed facility would not meet the actual need for beds in Clark County. Signature argues this would preclude

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<sup>9</sup> See Signature Cross-Motion for summary Judgment and Response, page 23.

Springstone from meeting the WAC 246-310-220 financial feasibility criteria. Springstone disagrees with Signature's argument, and contends all of the beds could be operated as psychiatric beds.<sup>10</sup> Springstone shows that offering geropsychiatric and chemical dependency beds within the complement of available beds does not reduce the 72 psychiatric beds available within the facility to meet the community's needs. A complete review of Springstone's project shows that the application was for 72 psychiatric beds and not for a 48-bed psychiatric bed project along with a 24-bed chemical dependency project. Signature's argument to the contrary fails here.

1.16 Based on information contained in the Application Record, there is no genuine issue of material fact that Springstone and Signature both meet the need criterion under WAC 246-310-210(1).

1.17 Under WAC 246-310-210(2), a CN applicant must show that it will provide services to all residents of the service area, including low-income, racial and ethnic minorities, women, handicapped persons, the elderly, and other underserved groups.

Springstone is currently not a provider in Clark County. To show compliance with the WAC 246-310-210(2) criterion, Springstone submitted copies of its proposed admission and charity care policies. See AR 760-771 (Exhibit 7). It also provided the projected sources of revenue by payor. Springstone anticipated projected Medicare revenues of

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<sup>10</sup> See Reply Re Springstone's Motion for Summary Judgment, at 9-10.

27 percent and Medicaid revenues of 22 percent of total hospital revenue. See AR 773 (Exhibit 8) and AR 1870. Springstone projects its charity care percentage of total revenue at 5.14 percent and adjusted revenue at 10.08 percent. These figures will exceed the Southwest Regional Averages of 3.41 percent (Total Revenue) and 8.57 percent (Adjusted Revenue).

1.18 Signature is currently not a provider in Clark County. Signature provided a copy of its admission policy that showed that it would admit patients without regard to race, color, religion, sex and national origin. AR 241, AR 328 and AR 1869. Signature also provided the projected source of revenue, including Medicare (27 percent of total hospital revenue) and Medicaid (19 percent) revenues. AR 10, AR 40 and AR 1870.

Signature provided a draft charity care policy to show compliance with this criterion. AR 243-244, AR 328 and AR 1869-1870.

1.19 There is no genuine issue of material fact that Springstone and Signature both meet the criterion under WAC 246-310-210(2), subject to the acceptance of a condition to provide final versions of the charity care policy for review by the Department's Hospital and Patient Data System office.<sup>11</sup>

**WAC 246-310-220 "Financial Feasibility"**

1.20 WAC 246-310-220 requires a psychiatric bed CN applicant must

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<sup>11</sup> RCW 70.38.115(4) provides that a conditional certificate of need may be issued under specific conditions.

demonstrate that the project is financially feasible. Specifically, an applicant must demonstrate that the capital and operating costs can be met; that the costs of the project will probably not result in an unreasonable impact on the costs for health services; and that the project can be appropriately financed.

1.21 As stated above, under WAC 246-310-220(1), a CN project must show that the immediate and long range capital and operating costs of the project can be met. At a minimum, this requires an examination of the applicant's pro forma statement and a financial ratio analysis by the Department of Health's Hospital and Patient Data System office. The ratio analysis examines the applicant's immediate and long-term ability to finance the proposed project. The examination covers the first three years of operation.

1.22 Springstone anticipated it would provide psychiatric services by 2018. This would make 2018 year one and 2020 year three. Springstone provided its pro forma statement as a part of its application.<sup>12</sup> Examining the projected revenues and expenses for this 2018-2020 timeline, Springstone anticipated a net loss in 2018, but a net profit in 2019 and 2020. AR 775 (Exhibit 8) and AR 1876. The Department's Hospital and Data System's office further examined a number of current and projected debt ratios<sup>13</sup> for the project. See AR 1878 (Table 15) and AR 1991. An examination

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<sup>12</sup> The term pro forma is not defined in chapter 70.38 RCW or 246-310 WAC. "Pro forma" is used to describe accounting, financial, and other statements or conclusions based upon assumed or anticipated facts. See Black's Law Dictionary, Sixth Edition, page 1212 (1990).

<sup>13</sup> The ratios are: long-term debt to equity; current assets/current liabilities; assets funded by liabilities; operating expenses/operating revenue; and debt service coverage. See AR 1878.

showed four of the five applicable ratios in Springstone's proposed CN project were within the appropriate range. Springstone would need to produce a determination of non-significance or a final environmental impact statement. There is no genuine issue of material fact that Springstone can meet the criterion under WAC 246-310-220(1).

1.23 Signature anticipated it would provide psychiatric services in Clark County by January 2018. Under this timeline, 2018 would be year one; 2020 would be year three. Signature provided a pro forma statement as a part of its application. AR 378-381 (Attachment F) and AR 1873. Signature anticipates a net loss in 2018, but anticipates a net profit in years 2019 and 2020. The Department's Hospital and Data System's office further examined a number of current and projected debt ratios<sup>14</sup> for the project. See AR 1875 (Table 11).<sup>15</sup> The Hospital and Data System's office did not examine two of the ratios (long-term debt to equity; debt service coverage) because Signature's hospital would not have debt. Dr. Kim intends to fund the project using a combination of bank loans and a not-yet-formed real estate company. AR 1875. Based on the Hospital and Data Systems office evaluation, Signature could meet the immediate

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<sup>14</sup> The ratios are: long-term debt to equity; current assets/current liabilities; assets funded by liabilities; operating expenses/operating revenues; and debt service coverage.

<sup>15</sup> The Program indicates that the information for Table 11 was obtained from page three of Hospital and Data System evaluation report. See AR 577-580. However, page 3 of that report was not included in the Application Record. See AR 578-579.

and long-range operating costs of its proposed project. AR 1875. There is no genuine issue of material fact that Signature meets the criterion under WAC 246-310-220(1).

1.24 Under WAC 246-310-220(2), a CN applicant must show that the costs of the proposed project, including any construction costs, will probably not result in an unreasonable impact on the cost and charges for health services.

1.25 Springstone proposed its new 72-bed psychiatric hospital in Clark County at a capital cost of \$26,843,706. To show it complied with the WAC 246-310-220(2) criterion, Springstone submitted a number of documents in its application:

- (1) a purchase and sales agreement (Attachment 4);
- (2) an email exchange with Clark County indicating that the proposed site is zoned as “general commercial” and permits development of a hospital (Attachment 5);
- (3) maps of the site (Attachments 6 and 1);
- (4) a cost estimator letter from the construction company, which identified the relevant construction costs;
- (5) a single line drawing (Attachment 17 and 2);
- (6) documentation from the Clark County Assessor’s Office (Attachment 18);
- (7) a draft lease agreement between Propstone, LLC, and Rainier Springs, LLC (Attachment 18).

See AR 1881-1882. The size of the construction project will require Springstone to provide either a determination of non-significance or a final environmental impact statement.

1.26 Signature proposed its new 100-bed psychiatric hospital in Clark County at a capital cost of \$32,541,994. To show that it complied with the WAC 246-310-220(2) criterion, Signature submitted the following documents:

- (1) a purchase and sales agreement (Attachment 9 and Attachment E);
- (2) a land use document showing that the proposed site is zoned “office commercial industrial” (Attachment 12);
- (3) a cost estimator letter (Attachment 8);
- (4) single line drawings (Attachment 7); and
- (5) a draft lease between Vancouver Life Properties, LLC (lessor) and Vancouver Behavioral Healthcare, LLC, (lessee) that identified the roles and responsibilities of the parties (Attachment 1).

See AR 10-12, and AR 1879-1880.

1.27 Signature provided a purchase and sale agreement that confirms that it has site control over the property (that is the property on which the project will be built). Signature submitted a draft lease showing a Facility Lease and Security Agreement between Vancouver Life Properties, LLC, (the landlord) and Vancouver Behavioral, LLC, (the Tenant). AR 397-436. However, Signature’s draft Lease Agreement was incomplete. The Lease Agreement was for a five-year period with no option to renew beyond that period. AR 399 (Paragraph 2.1.1). It did not include the amount of the rent in paragraph 3.2.1 of the Lease. AR 402 (Paragraph 3.2.1).

1.28 Signature did not show that it has control over the proposed hospital facility (the building for the project) for twenty years as the application form requires. According to Signature, the Vancouver Behavioral Hospital will be owned by Vancouver Life Properties, LLC. AR 55. Signature Healthcare Services, LLC (the applicant), will not have any control over the site. Signature Healthcare Services, LLC, will only have the right to use the building (i.e., site control) through

the lease between Signature Healthcare Services, LLC, and Vancouver Life Properties, LLC. There is no genuine issue of material fact that Signature failed to show that its project would not result in an unreasonable impact on the cost and charges for health services. Without a valid lease, there is no way to reasonably judge whether there is any impact, either reasonable or unreasonable. Signature therefore does not meet the WAC 246-310-220(2) criterion.

1.29 Under WAC 246-310-220(3) a CN applicant must show it can appropriately finance its project. As stated above, the capital expenditure (purchase of the land; constructing and equipping the building; all construction and consultation fees; and Washington sales tax) associated with Springstone's CN project is \$26,843,706. The entire project will be funded by Welsh, Carson, Anderson & Stowe, XI, LP, which is an investment company. Springstone submitted a copy of the 2014 Independent Auditor's Report for the investment firm, which report shows the Welsh, Carson, Anderson & Stowe firm has more than \$40 million in cash or cash equivalents as of December 2014. AR 1884. The firm also has a net worth of at least \$3 billion. The Welsh, Carson, Anderson & Stowe firm has sufficient funds to finance the Springstone project, including the necessary startup funds. AR 1884.

1.30 As stated above, the capital expenditure (purchase of the land; construction and equipping the building; all construction and consultation fees; and Washington sales tax) associated with the Signature CN project is \$32,541,994.

Signature intends to finance \$21,152,296 of the amount using bank loans at 5 percent interest over 25 years. The remaining \$11,389,698 will be funded by the real estate company known as Vancouver Life Properties, LLC, which is a to-be-formed and wholly owned subsidiary of Signature created specifically for this project. Vancouver Life Properties, LLC, will receive an initial capitalization of the amount from Dr. Soon K. Kim, the owner. He owns all of the real estate. Dr. Kim will also provide the startup costs for the hospital project in an amount of \$500,000. AR 311, AR 361-363 and AR 1882-1883. Signature provided audited financial statements for 2011, 2012, and 2013 to show that it had sufficient assets for the proposed project.

1.31 There is no genuine issue of material fact that Springstone and Signature both meet the WAC 246-310-220(3) criterion.

**WAC 246-310-230 “Structure and Process of Care”**

1.32 Under WAC 246-310-230, an applicant must show that it can provide for adequate staffing; appropriate organizational structure and support; conformity with licensing requirements; continuity of health care; and the provision of safe and adequate care.

1.33 Under WAC 246-310-230(1), an applicant must show it has adequate staffing for the CN project. As stated above, Springstone expects all 72 psychiatric beds to become operational by January 2018. Under this timeline 2018 represents the first full year of operation; 2020 represents the third full year of operation. In projecting supplemental staffing needs, Springstone projects a 43 percent occupancy rate in 2018,

62 percent in 2019, and 83 percent in 2020. AR 1886. Springstone intends to recruit the majority of the staff in 2018. Springstone currently operates eight psychiatric hospitals in Indiana, Ohio, and Texas, so it is both familiar and experienced in staff recruitment and retention.

1.34 Springstone intends to enter contracts with the physicians, psychiatrists, and psychologists, including the medical director. Draft contracts were provided in support of the application. Springstone will need to provide executed copies of those contracts prior to beginning the operation of the hospital.

1.35 Signature expected all 100 beds of its hospital would become operational in January 2018. Using this timeline, year one is 2018 and year three is 2020.

Signature anticipates 29 percent occupancy in 2018, 68 percent in 2019, and 79 percent in year three. AR 321 and AR 1884. Given those occupancy targets, Signature projects its nursing, clinical and administrative staffing to increase over the three-year period. Signature currently operates 13 psychiatric hospitals in several states (Arizona, California, Illinois, Nevada and Texas), which provides Signature with experience in the recruitment and retention of staff.

1.36 Given that it is a new psychiatric hospital, Signature has not yet identified the medical director and physicians. It provided draft agreements for the roles and responsibilities. AR 330-357 and AR 1886. Signature must provide executed contracts as a condition of receiving the CN.

1.37 There is no genuine issue of material fact that Springstone and Signature both meet the WAC 246-310-230(1) criterion, subject to production of executed medical director agreements.

1.38 Under WAC 246-310-230(2), a CN applicant must show that its proposed project will provide the necessary ancillary and support services needed to support the project's health services (here psychiatric beds). Springstone anticipates that it will support its 72-bed psychiatric hospital by providing on-site pharmacy, dietary, and therapy patient services. It will enter into a contract for laboratory and radiology services with local providers. As this is a new facility, Springstone has not provided a list of ancillary and support services. Springstone will be required to provide a final listing of those vendors prior to beginning operation of the hospital.

1.39 Signature anticipated that its new psychiatric hospital would become operational in January 2018. In its application Signature provided a listing of the common ancillary and support services necessary for a 100-bed psychiatric hospital but did not have contracts in place. AR 313 and AR 1888. It has not yet established the formal and informal working relationships with the area providers necessary to comply with this criterion. Signature will create the necessary relationships with area providers and be required to provide a list of ancillary and support agreements with the local area hospitals if its CN is granted.

1.40 There is no genuine issue of material fact that Springstone and Signature can both meet the WAC 246-310-230(2) criterion.

1.41 Under WAC 246-310-230(3), a CN applicant must show that the project will conform with all applicable licensing requirements, including any applicable Medicare and Medicaid program requirements.

1.42 Because Springstone is new to Washington state, there is no history of Department or Medicare certifications or inspections in Washington. Springstone does operate eight psychiatric hospitals in Indiana, Ohio and Texas. AR 663 and AR 696 (Exhibit 1) and AR 1890. The Joint Commission website provides information regarding the quality of services provided in Springstone's eight other psychiatric hospitals.<sup>16</sup> A review of the Joint Commission website regarding the eight Springstone hospitals does not show any adverse licensing actions.

1.43 Signature also is new to Washington State so there is no history of Department or Medicare certifications or inspections in Washington. It has 13 psychiatric hospitals in other states which have a history of compliance with Medicare and Medicaid requirements. AR 1889-1890. The Joint Commission website provides access to that history. All 13 of Signature's out of state facilities have Joint Commission accreditation and 12 of the facilities have national patient safety and quality improvements goals measured on the website. These 12 facilities do not have any adverse licensing

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<sup>16</sup> The Joint Commission is an independent, not-for-profit organization that accredits and certifies hospitals and other health care organizations in the United States. The Joint Commission accreditations and certifications are a nationwide measurement of quality.

actions based on the available surveys. AR 1889-1890. Based on the history of Signature's out of state facilities, it is reasonable to assume that Signature can operate the Clark County facility in compliance with Medicare and Medicaid requirements.

1.44 There is no genuine issue of material fact that Springstone and Signature both meet the WAC 246-310-230(3) criterion and can provide assurances that the facilities will operate in conformance with applicable state and federal licensing and certification requirements.

1.45 WAC 246-310-230(4) requires a CN applicant show that the proposed project will promote continuity in the provision of health care. The continuity criterion requires the applicant show the proposed project will not result in an unwarranted fragmentation of services and will have an appropriate relationship to the service area's existing health system.

1.46 Springstone anticipates that its new psychiatric hospital will become operational in January 2018. Because it has not yet become operational, Springstone provided a draft transfer agreement in the event one of its psychiatric patients requires transferring to an acute care hospital. AR 313 (Attachment 4) and AR 1891. As a condition of receiving a certificate of need, Springstone would need to provide an executed transfer agreement with a local acute care hospital.

1.47 Signature did not provide a draft transfer agreement or other evidence on this issue. Given its experience in operating the other 13 out-of-state hospitals, Signature

does not anticipate it will be difficult to establish the necessary working relationships in Washington. Signature would need to produce an executed transfer agreement as a condition of receiving a CN for its psychiatric project.

1.48 There is no genuine issue of material fact that Springstone and Signature would both meet the criterion under WAC 246-310-230(4), subject to the production of executed agreements.

1.49 WAC 246-310-230(5) requires a CN applicant to provide reasonable assurances that its proposed project will provide safe and adequate care services to the public. This requirement includes a showing that it will provide services in accordance with in any applicable state and federal laws, rules and regulations. Based on the Joint Commission evaluations mentioned in Paragraphs 1.42 and 1.43 above, there is no genuine issue of material fact that Springstone and Signature both meet the criterion under WAC 246-310-230(5).

#### **WAC 246-310-240 “Cost Containment”**

1.50 WAC 246-310-240 requires a CN applicant to show that: there are no superior alternatives in terms of cost, efficiency, or effectiveness available; where the project involves construction, that the costs, scope, and methods of construction and energy conservation are reasonable; and where the project involves construction, that the project will not have an unreasonable impact on the healthcare costs and charges.

1.51 Springstone examined a number of options for its hospital, including leasing space in an existing hospital and identifying existing buildings that could be converted into a hospital. AR 692. Springstone did not choose to use either of these options. Rather, it chose to build a one-story, 72-bed hospital on 13.3 acres in Salmon Creek, Clark County, Washington. AR 692. Springstone believed this was the most cost-effective of the available choices.

1.52 In its examination of options, Signature considered postponing action on the need for additional psychiatric beds. It also considered contracting and shared operations of behavioral health services with existing Clark County-based healthcare systems. AR 47. After considering these options, Signature then considered what size psychiatric hospital would best fit the need in Clark County. They considered a 100-bed option; an 80-bed option, or a 120-bed option. Signature anticipated each of the options would open in 2018. AR 47. After considering the three options, Signature decided on a 100-bed psychiatric hospital. See AR 48-49. Signature believed this was the most cost-effective of the available choices.

1.53 As there are currently no superior alternatives available in terms of cost, efficiency or effectiveness, the choice here is simple. Either Clark County goes without needed psychiatric beds or approval is given to create the needed psychiatric beds to one of the applicants. Given that there is a clear need for psychiatric beds in Clark County, the question is whether either project could meet that need. From a need standpoint, either Springstone or Signature could meet that need.

1.54 The next step is to examine each of the CN applications to determine if either the Springstone or Signature project is a superior alternative in terms of cost, efficiency, or effectiveness when compared to each other. See RCW 70.38.115(7). Springstone has provided all of the necessary information to consider whether its application meets the WAC 246-310-200 criteria. Signature, because it has failed to provide a completed (but unexecuted) lease, has not. From a cost perspective there is no genuine issue of material fact that Springstone is the superior applicant under the WAC 246-310-240(1) criterion. Springstone's costs can be measured; Signature's cannot be measured.

1.55 Under WAC 246-310-240(2), when a project requires construction, it is evaluated to determine: (1) if the costs, scope and methods of construction and energy conservation are reasonable; and (2) that the project will not have an unreasonable impact on the costs and charges to the public of providing health services by other persons.

1.56 Springstone has provided evidence that it has developed 10 hospitals since 2010. AR 693. In so doing, Springstone has been actively involved in the design, architectural planning and engineering methods to produce efficient and highly effective physical plants. AR 693-694. This includes integrating elements of the *Green Guide for Health Care and LEED for Healthcare rating system*. AR 694. Springstone meets the WAC 246-310-240(2)(a) and (b) criteria.

1.57 Signature has developed 12 hospitals and has opened two in the past year. AR 50. As a new facility, Signature's facility will be required to meet industry standards and Washington State licensing and construction review standards. AR 50. It will also meet the Center for Medicare and Medicaid Services standards for construction. AR 50. Signature meets the WAC 246-310-240(2)(a) and (b) criteria.

## II. CONCLUSIONS OF LAW

2.1 The Department of Health is authorized and directed to implement the certificate of need program. RCW 70.38.105(1). Establishment of a psychiatric hospital requires a certificate of need. RCW 70.38.105(4)(a). The applicant must show or establish that its application meets all of the applicable criteria. WAC 246-10-606. An applicant "shall submit a certificate of need application in such form and manner and containing such information as the department has prescribed and published as necessary to such a certificate of need." WAC 246-310-090(1)(a). Admissible evidence in certificate of need hearings is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. RCW 34.05.452(1).

2.2 The Presiding Officer (on delegated authority from the Secretary of Health) is the agency's fact finder and decision maker. *DaVita v. Department of Health*, 137 Wn. App. 174, 182 (2007) (*DaVita*). The Presiding Officer engages in a de novo review of the record. See *University of Washington Medical Center v. Department of*

*Health*, 164 Wn. 2d 95 (2008). The Presiding Officer may consider the Program’s written analysis in reaching his decision but is not required to defer to the Program analyst’s decision or expertise. *DaVita*, 137 Wn. App. at 182-183.

### Summary Judgment

2.3 The Presiding Officer shall rule on motions. WAC 246-10-403(1). An administrative agency may employ summary procedures, and may enter an order summarily disposing of a matter if there is no genuine issue of material fact. *Asarco v. Air Quality Coalition*, 92 Wn.2d 685, 697, 601 P.2d 501 (1979).

2.4 Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” CR 56(c). See also *State Farm General Ins. Co. v. Emerson*, 102 Wn.2d 477 (1984). In a summary judgment motion, the moving party bears the initial burden of demonstrating there is no genuine dispute as to any material fact. *Young v. Key Pharmaceuticals*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989). If the moving party meets its initial burden, the burden shifts to the non-moving party to set forth specific facts showing the existence of a genuine issue of material fact. *Id.* All facts submitted and all reasonable inferences from them must be viewed in the light most favorable to the nonmoving party. *Id.* at 226. In performing a summary judgment analysis, the evidence

is not weighed for the truth of the matter; the only question is whether there is a genuine issue of material fact. *Arreygue v. Lutz*, 116 Wn. App.

938-940-841 (2003).

Springstone Motion for Summary Judgment

2.5 The department shall specify information to be required for certificate of need applications. RCW 70.38.115(6). The department's application form "prescribes and publishes" the information the applicant must submit to obtain a certificate of need. See WAC 246-310-090(1)(a). The prescribed and published language in the certificate of need application form states:

8. Provide documentation that the applicant has sufficient interest in the site or facility proposed. Sufficient interest shall mean one of the following:
  - (a) Clear legal title for the proposed site; or
  - (b) Lease for at least five years with options to renew for no less than a total of twenty years in the case of a hospital or psychiatric hospital, tuberculosis hospital or rehabilitation faculties; or
  - (c) Lease for at least one year with options to renew for not less than a total of five years in the case of a freestanding kidney dialysis units, ambulatory surgical facilities, hospices or home health agencies; or
  - (d) Legal enforceable agreement to give such title or such lease in the event that a certificate of need is issued for the proposed project.

2.7 The applicant must show that its CN application meets all of the criteria. WAC 246-10-606. That includes meeting the WAC 246-310-090(1)(a) requirement to complete the Program's prescribed and published application form. For a psychiatric hospital, that means showing sufficient interest (that is, site control) in both the property and the

facility.<sup>17</sup> Here Signature provided sufficient site control of the property by providing a purchase and sale agreement. However, Vancouver Life Properties, LLC, owns the hospital. The only way that Signature Healthcare Services, LLC (the applicant) can exercise site control is by leasing the facility from Vancouver Life Properties, LLC. Signature failed to provide a completed (but not executed) copy of the lease. In its second set of screening questions, the Program specifically asked Signature to provide a copy of the referenced leaseback agreement between the to-be-formed entities. AR 199. The Program clearly advised Signature that a draft lease would be acceptable *if it identified all costs associated with the agreement*. AR 199 (Emphasis added). The lease Signature provided did not identify all costs associated with the agreement and was therefore incomplete. AR 402. The incomplete Signature lease showed a five-year term (paragraph 2.1.1) but did not provide for renewal that would provide for another 15 years. AR 399.

2.8 Signature argues that the Program knew that Dr. Kim has an undisputed 100 percent ownership and control of the affiliated entities. See AR 55 (the organizational chart of the Signature organization). Signature further argued that it provided the rental amount (\$2,113,980 per year) in response to the Program's first supplemental screening

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<sup>17</sup> See Signature Healthcare's Cross-Motion for Summary Judgment and Response, Exhibit B (Nidermayer Deposition) page 37, lines 2-10.

questions. AR 315 and AR 378. Dividing that amount by 12 months would equal \$176,165 per month. While this information allows the calculation of the monthly rental amount, it does not answer whether Signature provided sufficient evidence of its control of the proposed facility as required. It is not a question of what the Program knows or should know; it is a question whether Signature's application proves or does not prove that it meets all the required criteria. See WAC 246-10-606. Signature did not adequately respond to the Program's request for

additional information necessary to the application. RCW 70.38.115(6) reads:

The department shall specify information to be required for certificate of need applications. Within fifteen days of receipt of the application, the department shall request additional information considered necessary to the application or start the review process. Applicants may decline to submit requested information through written notice to the department, in which case review starts on the date of receipt of the notice. Applications may be denied or limited because of failure to submit required and necessary information.

As stated above, the Program requested that Signature provide complete information on the issue of site control. Signature failed to do so. There is no genuine issue of material fact regarding Signature's lack of site control, and Springstone's Motion should be granted as a matter of law.<sup>18</sup>

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<sup>18</sup> Signature provided evidence regarding the Program's different treatment of the lease issue in similar psychiatric hospital CN applications in Pierce and Spokane Counties. See Signature Healthcare's CrossMotion for Summary Judgment and Response, pages 9-11. Signature argues that the Program's treatment was arbitrary and capricious, given that other applicants were treated differently, including third supplemental screening questions and declaring pivotal unresolved issues. The evidence Signature relies on took place after the September 23, 2015 date of the evaluation. However, this evidence is not admissible

2.9 WAC 246-310-220(2) reads: “The cost of the project, including any construction costs, will probably not result in an unreasonable impact on the costs and charges for health services.”

WAC 246-310-220(2) can be broken down into two questions:

- (1) Will the project costs have an impact on the costs and charges for health services?
- (2) If there is an impact on the costs and charges, is the impact a reasonable or an unreasonable one?

The need for a completed (but not executed) draft lease is one factor in deciding if the project will have an impact on the costs and charges of health care. Absent Signature providing that information, the Presiding Officer cannot determine whether the project will have a reasonable or unreasonable impact on the cost and charges for health services.

2.10 Signature argues that it did provide the rent expense in its pro forma response to the Program’s first set of supplemental screening questions. See AR 378 (annual rent expense of \$2,113,980). A review of the incomplete draft lease shows that the figure Signature provided was subject to adjustments, such that the rental amount in the pro forma statement would fluctuate annually. See AR 402 (Paragraphs 3.2.1 through 3.3). So, even though Signature provided a rental amount, the Presiding Officer concludes it is not enforceable given the incomplete nature of the draft lease.

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as it is outside the snapshot of facts used by the Program in the evaluation. A court cannot consider inadmissible evidence when ruling on a motion for summary judgment. *Pacific Northwest Shooting Park Ass’n v. City of Sequim*, 158 Wn.2d 342, 351 (2006) (citation omitted); *Life Designs Ranch, Inc. v. Sommers*, 191 Wn. App. 320, 334-335 (2015).

Given the above, there is no genuine issue of material fact regarding Signature's failure to provide a complete lease as required under WAC 246-310-220(2) to enable a determination of the reasonableness of the project cost.<sup>19</sup> Springstone's Motion is granted.

### Signature Cross-Motion for Summary Judgment

2.11 In its Cross-Motion for Summary Judgment, Signature identifies four issues regarding Springstone's certificate of need application. They are: (1) whether Springstone, LLC, is the applicant; (2) whether Springstone has sufficient site control based upon Propstone, LLC's, failure to register in Washington under RCW 23.95.505 (Propstone is a Delaware limited liability company)<sup>20</sup>; (3) whether genuine issues of material fact exist on the Department's CN regulatory criteria; and (4) *if* the sufficient site control issue requires an applicant to provide a detailed lease, whether Springstone's lease, which provides for two five-year renewals at "fair market value," meets the sufficient site control requirement.

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<sup>19</sup> Signature argued that it met financial feasibility criteria based on it receiving passing marks on the debt ratio analysis performed by Richard Ordos of the Hospital and Data Systems. See AR 577-580. Mr. Ordos's analysis only reviewed the Signature pro forma statement in reaching this conclusion. He did not review the other factors relating to Signature's application.

<sup>20</sup> The RCW 23.95.105 definition of an "entity" includes a limited liability company. RCW 23.95.105(10) defines "foreign," with respect to an entity, as "governed as to its internal affairs by the law of a jurisdiction other than this state."

2.12 Who is the applicant for the Springstone application? An “applicant” is defined as:

- (a) Any person proposing to engage in any undertaking subject to review under chapter 70.38 RCW; or
- (b) Any person or individual with a ten percent or greater financial interest in a partnership or corporation or other comparable legal entity engaging in any undertaking subject to review under chapter 70.38 RCW.

WAC 246-310-010(6). Signature argues that Springstone cannot show that it has site control because Springstone interchangeably identifies itself as Springstone, LLC, and Springstone, Inc. *Compare* AR 1669 and *contrast* AR 649 and AR 651.

2.13 Rainier Springs, LLC, was the name of the applicant appearing on the application form. See AR 649. It is the individual proposing to engage in the undertaking that is operating a 72-bed psychiatric hospital.<sup>21</sup> Rainier Springs, LLC, is the applicant.

2.14 Springstone, LLC, was the ultimate parent or owner of Rainier Springs, LLC.<sup>22</sup> Springstone, LLC, formed Rainier Springs, LLC, and Rainier Springs, LLC, will own and operate the psychiatric hospital that is the subject of the certificate of need application. Technically, if anyone besides Rainier Springs, LLC, were the applicant, it would be Springstone, LLC. Therefore, Springstone,

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<sup>21</sup> A review of both applications shows that applicants structure their applications using a number of limited liability companies. The applicants clearly obtain tax or other business benefits from doing so. It is to be expected that Signature’s application (AR 1-647) and Springstone’s application (AR 648-1658) will contain some errors.

<sup>22</sup> See Signature Healthcare’s Cross-Motion for Summary Judgment and Response, Exhibit B (Nidermayer deposition, page 121, lines 18-22).

Inc., Springstone Holdings, Inc., or Propstone, LLC (the other entities on the Springstone organizational chart) are *not* the applicant. The Presiding Officer concludes there is no genuine issue of material fact on the question of the applicant. Signature's Cross-Motion is denied.

2.15 Signature's next argument is that Springstone cannot show site control because Propstone, LLC, (the Delaware limited liability lessor that purchased the property) was not registered under RCW 23.95.505. Propstone, LLC, is the lessor in this project and Rainier Springs, LLC, is the lessee. See *generally* AR 1558-1599

(Revised Lease Agreement). Propstone, LLC, purchased the land from Ridgefield Self Storage, LLC, and Salmon Creek Park, LLC. See AR 969-993 (Ridgefield) and AR 994-1017 (Salmon Creek). Propstone, LLC, is not registered in Washington under RCW 23.95.505. See AR 720-756 (the initial draft lease) and AR 1559-1595 (the completed but unexecuted draft lease). Rainier Springs, LLC, is registered in Washington. See AR 863 (Rainier Springs, LLC Certificate of Registration).

2.16 RCW 32.95.505 provides in relevant part:

(1) A foreign entity may not do business in this state until it registers with the secretary of state under this chapter.

RCW 23.95.505 further provides:

(6) The failure of a foreign entity to do business in this state does not: (a) impair the validity of a contract or act of the foreign entity; (b) impair the right of any other party to the contract to maintain any action, suite, or proceeding on the

contract; or (c) preclude the foreign entity from defending an action or proceeding in this state.

However, conducting an isolated transaction is not “business in this state.” See RCW 23.95.520(1)(i). The mere purchase of property by an entity does not constitute “doing business” and the entity therefore is not required to be registered with the Secretary of State. There is no genuine issue of material fact regarding Propstone’s control over the property or Propstone’s ability to lease the property to Rainier Springs, LLC. There is no genuine issue of material fact that Propstone had control over the site that it leased to Rainier Springs, LLC. Registration under RCW 23.95.505 is not an issue here.

2.17 Signature next argues that Springstone did not have site control because the two five-year renewal options were made at “fair market value” and not at a specific rental price. See AR 1559.<sup>23</sup> The reason that it is important for the applicant to submit fixed and knowable information regarding the rent at the outset (that is, within the first three years) is to enable an analysis of the financial feasibility of the project. The determination is whether the project will cover its costs by the third full year of operation. It is not to determine the existence of site control. The issue of site control beyond the initial lease period is determined by the existence of enforceable renewal terms within the lease agreement. Once the lease agreement is executed (a condition required of the successful

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<sup>23</sup> See Signature Healthcare’s Cross-Motion for Summary Judgment and Response, page 29.

CN applicant) the terms of the lease control the site. It is less important legally to determine the rate of rent and more important for the lease to contain the enforceable renewal terms. There is no genuine issue of material fact regarding site control for Springstone's lease. Therefore Signature's Cross-Motion is denied on this issue.

2.18 Finally, Signature argues that Springstone's "financials" were not properly reviewed under WAC 246-310-220. It argues that too much emphasis was placed on Springstone's equity provider (Welsh Carson Anderson & Stowe) without consideration of any limitations on its investment and which of the entities in Springstone's organizational chart would receive the investment. Signature's argument is there is no clear indication which of Springstone's entities would be receiving the equity investment.<sup>24</sup>

2.19 Signature's argument fails to recognize that it is the project's financial feasibility (not that of the equity investors) that is at issue:

The determination of financial feasibility of a *project* shall be based on the following criteria.

- (1) The immediate and long-range capital and operating costs of the *project* can be met.
- (2) The costs of the *project*, including any construction costs, will probably not result in an unreasonable impact on the costs and charges for health services.
- (3) The *project* can be appropriately financed.

WAC 246-310-240 (emphasis added); see *also* WAC 246-310-210 through

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<sup>24</sup> See Signature Healthcare's Cross-Motion for Summary Judgment and Response, pages 24-28.

WAC 246-310-230 (which criteria speak to the need, financial feasibility, and structure and process (quality) of the *project*). Springstone's pro forma statement for the Rainier Springs LLC psychiatric hospital bed project met the Hospital and Data System office ratio analysis.<sup>25</sup> There is no genuine issue of material fact regarding Springstone's application meeting the financial feasibility criterion. The Presiding Officer denies Signature's Cross-Motion for Summary Judgment on this issue.

2.20 There is no genuine issue of material fact regarding Springstone meeting all of the criteria for its psychiatric bed CN. Springstone's Motion for Summary Judgment regarding its CN application is granted.

### III. ORDER

Based on the foregoing Procedural History and Findings of Fact, and Conclusions of Law, it is ORDERED:

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<sup>25</sup> See Signature Healthcare's Cross-Motion for Summary Judgment and Response, Exhibit C (Ric Ordos deposition, pages 27-28).

3.1 Springstone's Motion for Summary Judgment, which requests summary judgment to conclude Signature failed to meet its burden of proving site control, financial feasibility and cost control, is GRANTED.

3.2 Springstone's Motion for Summary Judgment, which requests summary judgment that its 72-bed psychiatric bed CN meets all of the relevant criteria, is GRANTED.

3.2 Signature's Cross-Motion for Summary Judgment is DENIED.

Dated this 21st day of April, 2016.

/S/  
JOHN F. KUNTZ, Review Judge Presiding  
Officer

#### **NOTICE TO PARTIES**

When signed by the presiding officer, this order shall be considered an initial order. RCW 18.130.095 (4); Chapter 109, law of 2013 (Sec. 3); WAC 246-10-608.

Any party may file a written petition for administrative review of this initial order stating the specific grounds upon which exception is taken and the relief requested. WAC 246-10-701(1). A petition for administrative review must be served upon the opposing party and filed with the Adjudicative Clerk Office within twenty-one (21) days of service of the initial order. WAC 246-10-701(3).

"Filed" means actual receipt of the document by the Adjudicative Clerk Office. RCW 34.05.010(6). "Served" means the day the document was deposited in the United States mail. RCW 34.05.010(19). The petition for administrative review must be filed within twenty-one (21) calendar days of service of the initial order with:

Adjudicative Clerk Office  
Adjudicative Service Unit  
PO Box 47879  
Olympia, WA 98504-7879

and a copy must be sent to the opposing party. If the opposing party is represented by counsel, the copy should be sent to the attorney. If sending a copy to the Staff Attorney in this case, the mailing address is:

Department of Health  
Legal Services Unit  
PO Box 47873  
Olympia, WA 98504-7873

**Effective date: If administrative review is not timely requested as provided above, this initial order becomes a final order and takes effect, under WAC 246-10-701(5), at 5:00 pm on \_\_\_\_\_. Failure to petition for administrative review may result in the inability to obtain judicial review due to failure to exhaust administrative remedies. RCW 34.05.534.**

Final orders will be reported to the National Practitioner Databank (45 CFR Part 60) and elsewhere as required by law. Final orders will be placed on the Department of Health's website, and otherwise disseminated as required by the Public Records Act (Chap. 42.56 RCW) and the Uniform Disciplinary Act. RCW 18.130.110. All orders are public documents and may be released.

For more information, visit our website at:

<http://www.doh.wa.gov/PublicHealthandHealthcareProviders/HealthcareProfessionsandFacilities/Hearings.aspx>