STATE OF WASHINGTON
DEPARTMENT OF HEALTH
ADJUDICATIVE SERVICE UNIT

In the Matter of: CERTIFICATE OF NEED APPLICATION OF VIDELL HEALTHCARE MERCER ISLAND, L.L.C., DOH DECISION RETURNING CON APPLICATION, August 21, 2015, VIDELL HEALTHCARE MERCER ISLAND, L.L.C.; BD RENTON I, L.L.C. Petitioners, SECOND GENERATION PARTNERS, LLC, Intervenor.	Master Case No. M2015-1165 **CORRECTED** PREHEARING ORDER NO. 3: ORDER ON SUMMARY JUDGMENT

APPEARANCES:

Petitioner, Videll Healthcare Mercer Island, L.L.C., by
Davis Wright Tremaine, LLP, per
Lisa R. Hayward and Brad Fisher, Attorneys at Law

Petitioner, BD Renton I, LLC, by
Ryan, Swanson & Cleveland PLLC, per
Thomas H. Grimm, Attorney at Law

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

Intervenor, Second Generation Partners, LLC, by
Lane Powell, PC, per
Barbara J. Duffy and Jonathon Bashford, Attorneys at Law

PRESIDING OFFICER: Roman S. Dixon Jr., Health Law Judge

CORRECTION

This Order on Summary Judgment was originally issued February 23, 2016. On February 24, 2016, the Presiding Officer discovered that the Order did not contain the appropriate language to apprise the parties of their rights on appeal per RCW 34.05.461 and WAC 246-10-701. Under the rationale of Civil Rule (CR) 60(a) and the significant decision *In re Jantz*, OPS No. 90-07-31-065 MA (June 28, 1993), the correction is entered and the correction is in **bold** type.

INTRODUCTION

Videll Healthcare Mercer Island, L.L.C. ("Videll") and BD Renton I, LLC ("BD") (collectively "Videll") filed a Motion for Summary Judgment, seeking an order on summary judgment on several legal issues, including the Certificate of Need Program's ("the Program") failure to process Videll's Certificate of Need application to utilize 100 banked nursing home beds. Motion for Summary Judgment Denied in Part and Granted in Part.

The Program filed a Motion for Summary Judgment, seeking an order denying Videll's application for the failure to timely bank the nursing home beds. Motion for Summary Judgment Granted.

RELEVANT PROCEDURAL HISTORY

Summary Judgment

On July 30, 2014, Videll filed its Notice of Intent to Retain 100 Nursing Home Bed Allocation at the Mercer Island Facility.[1] Second Generation Partners, LLC ("SGP"), also filed a request with the Program to bank 100 beds at the Mercer Island Facility. Based on Videll's representation that the nursing home closure date was July 3, 2014,

[1] Videll identified BD Renton Properties I, LLC, and MidCap Funding IV, LLC, as several parties with a secured interest in the nursing home beds.

the Program indicated the beds were properly banked.

On July 6, 2015, Videll filed a certificate of need application to build a new facility in Renton, WA, utilizing the 100 full facility closure beds at the Mercer Island Facility. On August 21, 2015, the Program notified Videll that the Program was returning Videll's application to unbank the beds without further review, because the 100 beds were not properly retained under the applicable law. On September 11, 2015, Videll filed its Request for an Adjudicative Proceeding. SGP filed its Motion to Intervene on October 22, 2015. On November 25, 2015, Health Law Judge John F. Kuntz issued an Order granting intervention.[2]

On December 14, 2015, Videll filed a Motion for Summary Judgment. Videll argued that it timely reserved its right to bank the 100 licensed nursing home beds, and is therefore entitled to submit a certificate of need application utilizing the banked beds. In addition, Videll argued that the Program, who previously informed Videll that the beds were properly banked, should be estopped from changing its bed banking decision. Further, Videll argued that SGP has no legal interest in the bed rights.

On December 14, 2015, the Program also filed a Motion for Summary Judgment. The Program argued that its prior notice that the beds were properly banked was premised on the misbelief that the nursing home facility closure date was July 3, 2014 (information provided by Videll). Also, that it wasn't until August 10, 2015, that the Program learned that the Department of Social and Health Services ("DSHS") revoked Videll's nursing home license on June 5, 2014, which became effective on June 25,

[2] *See* Prehearing Order No. 1: Order on Motion to Intervene.

2014, thereby making July 25, 2014 the deadline to request to bank the beds. Based on Videll's failure to reserve the bed rights within 30 days of June 25, 2014, the request to bank the beds was not timely and the application was denied.

The parties and the Intervenor filed responsive pleadings to the Videll and Program Motions.

I. FINDINGS OF FACT

1.1 A "certificate of need" means a written authorization by the Program for a person to implement a proposal for one or more undertakings. WAC 246-310-010(11). Certificates of need shall be issued or denied in accordance with the provisions of chapter 70.38 RCW and the rules (chapter 246-310 WAC) of the Department of Health. RCW 70.38.115(1).

1.2 From November 2012 to June 2014, Petitioner, Videll Healthcare Mercer Island, L.L.C. (Videll), was the licensed operator of the Mercer Island Facility. The Mercer Island Facility was a 100 bed nursing home located at 7445 SE 24th St., Mercer Island, WA.

1.3 Between November 2012 and June 2014, Videll engaged in a lease agreement with Second Generation Partners (SGP) as SGP's tenant at the location that housed the Mercer Island Facility.

1.4 On June 5, 2014, DSHS notified the Administrator of the Mercer Island Facility, *via certified mail*, of the "**Appointment of (a) Temporary Manager, Emergency Closure and License Revocation**" of the facility's nursing home license.

Emphasis in original.[3] The letter explained that DSHS found it necessary to take emergency action to safeguard the health, safety, and welfare of the facility's residents and that a temporary manager had been appointed to oversee the orderly closure of the Mercer Island Facility. The letter further stated that the emergency closure and revocation of Videll's license was based on the violations of statutes and regulations identified in the May 29, 2014 Statement of Deficiencies and Videll's significant history of uncorrected violations. In addition, the letter informed Videll that it had the right to request an administrative hearing to appeal the state license revocation, appointment of a temporary manager, and emergency closure and state survey citations, but that any request for hearing must be filed within 20 calendar days of receipt of the June 5, 2014 letter.

1.5 The June 5, 2014 letter was addressed to the Administrator of the Mercer Island Care Center and Rehabilitation facility. Ms. Dawn Jacobs was the facility administrator on June 5, 2014. Ms. Jacobs signed the certified mail receipt, as having received the letter on June 7, 2014.

1.6 Videll did not request an administrative hearing to contest or appeal the state license revocation or any of the DSHS emergency actions identified in the June 5 letter. The last day to request such a hearing was June 27, 2014 (based on the June 7, 2014 date of receipt). As such, the DSHS emergency action revoking Videll's license became final on June 27, 2014.

[3] *See* Appointment of Temporary Manager, Emergency Closure, and License Revocation letter, dated June 5, 2014.

1.7 The last resident moved out of the Mercer Island Facility on July 3, 2014.

1.8 On July 11, 2014, Counsel for Videll (Attorney Thomas Grimm) contacted Department of Health, Certificate of Need Program Analyst, Karen Nidermayer, regarding the reservation of facility bed rights. Among other things, the parties discussed a facility shut down date of July 3, 2014, and that Videll was allowed 30 days to submit a notice of reservation of bed rights under RCW 70.38.115(13)(b). In addition, Attorney Grimm indicated that based on his calculation, the notice of bed banking must be given by August 1, 2014. *See* Declaration of Thomas Grimm, dated December 14, 2015.

1.9 On July 23, 2014, SGP submitted to the Program, SGP's request to bank 100 beds at the Mercer Island Facility.

1.10 On July 30, 2014, Videll filed its Notice of Intent to Retain Nursing Home Bed Allocation at the Mercer Island Facility. Videll represented that full facility closure had occurred on July 3, 2014, when the last resident left the facility. *See* Declaration of Karen Nidermayer, dated December 14, 2015.

1.11 On August 1, 2014, Program Analyst Nidermayer informed both Videll and SGP that the Department had received two requests to bank beds and that according to documentation provided by DSHS, the facility closed on July 3, 2014. The letter also stated that since both requests and fees were received in the Certificate of Need Program office by 5:00 pm, Friday, August 1, 2014, both were valid requests.

1.12 On August 22, 2014, the Program notified SGP and Videll that the Program received two full facility closure bed banking requests submitted for the Mercer

Island Facility.[4] In addition, the Program notified SGP and Videll that the "Department of Health will not issue a Certificate of Need to un-bank these 100 beds until documentation is presented that verifies uncontested ownership of the beds rights." *Id*. Further, the letter states:

> According to information provided by the Department of Social and Health Services, Mercer Island Care and Rehabilitation Center's last resident left July 3, 2014. Therefore, the effective date of Mercer Island Care and Rehabilitation Center's closure is July 3, 2014.

1.13 On July 6, 2015, the Department of Health received a Certificate of Need application from Videll to unbank 100 full facility closure beds at the Mercer Island Facility.

1.14 On August 21, 2015, the Program notified Videll that the Program was returning Videll's application to unbank the beds without further review, because the 100 beds were not properly retained under the applicable law.[5] Although it originally represented that Videll's July 30, 2014 request to retain beds was timely, the Program now held:

> However, in its request to retain beds, Videll failed to disclose to DOH that its license had been revoked by DSHS effective June 25, 2014. DOH was not aware of the revocation. Under WAC 246-310-010(19), the June 25, 2014 revocation date-which was earlier than when the last resident left the facility on July 3, 2014-started running the 30 day period in which to file a bed-retention request.
> . . . .

[4] *See* DOH's Letter to Mary Jane Hynes and Steve LeForte, Re: 15-01 Full Facility Closure Bed Banking-Building Owner, 15-02 Full Facility closure Bed Banking-Licensee, dated August 22, 2014.
[5] *See* Program Manager Janis Sigman's letter, dated August 21, 2015.

Hence, when Mercer Island Care Center and Rehabilitation failed to request a hearing, the June 5, 2014, revocation became final by operation of law on June 25, 2014.

1.15 On September 11, 2015, Videll filed its Request for an Adjudicative Proceeding.

1.16 On October 22, 2015, SGP filed its Motion to Intervene. Intervention was granted on November 25, 2015.

1.17 On December 14, 2015, Videll filed its Motion of Petitioners for Summary Judgment. In its Summary Judgment Motion, Videll makes the following arguments:

1. The Videll notice of reservation of bed rights was timely, based upon the time that it received the letter;

2. The Department had no authority to repudiate its bed banking decision;

3. The Department is estopped from changing its bed banking decision;

4. The Department has erroneously applied WAC 246-310-396(1) and DSHS Regulations in making its decision in this case;

    a. The Center could not be, and was not, operated without a license;
    b. Videll was not served with a revocation order, and its conduct results in a violation of due process; and
    c. The Intervenor failed to demonstrate it had an interest in the Mercer Island bed rights.

1.18 On December 14, 2015, the Program filed its Motion for Summary Judgment. In short, the Program argued that Videll's notice to DOH to bank the 100 beds upon facility closure was not timely, and therefore the beds were never properly banked.

II. CONCLUSIONS OF LAW

Certificate of Need

2.1 RCW 70.38.115(13)(b) states that when a nursing home ceases operation, the licensee may reserve (or bank)[6] the beds for eight years or until a Certificate of Need is issued to replace them. Specifically, RCW 70.38.115 (13)(b) provides:

> (b) When an entire nursing home ceases operation, the licensee or any other party who has secured an interest in the beds may reserve his or her interest in the beds for eight years or until a certificate of need to replace them is issued, whichever occurs first. **However, the nursing home, licensee, or any other party who has secured an interest in the beds must give notice of its intent to retain the beds to the department of health no later than thirty days after the effective date of the facility's closure**. Certificate of need review shall be required for any party who has reserved the nursing home beds except that the need criteria shall be deemed met when the applicant is the licensee who had operated the beds for at least one year, who has operated the beds for at least one year immediately preceding the reservation of the beds, and who is replacing the beds in the same planning area. RCW 70.38.115 (13)(b). *Emphasis* added. *See also* WAC 246-310-396.

2.2 The effective date of facility closure means:

a) The date on which the facility's license was relinquished, revoked or expired; or,

b) The date the last resident leaves the facility, *whichever comes first*.

See WAC 246-310-010(19) (*Emphasis added*).

[6] "Bed banking" means the process of retaining the rights to nursing home bed allocations which are not licenses as outlined in WAC 246-310-395. WAC 246-310-010(7).

Summary Judgment

2.3 The presiding officer shall rule on motions. WAC 246-10-403(1).

2.4 Administrative tribunals are vested with the authority to rule by summary judgment. *ASARCO v. Air Quality Coalition*, 92 Wn.2d 685 (1979). Summary judgment shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. Civil Rule (CR) 56(c).

2.5 A material fact is one upon which the outcome of the litigation depends. *Tran v. State Farm Fire & Casualty Co*., 136 Wn.2d at 223. By filing cross motions for summary judgment, the parties concede there were no material issues of fact. *Pleasant v. Regence Blue Shield*, 181 Wash. App. 252 (2014). In ruling on a motion for summary judgment, a court must consider "[a]ll facts and reasonable inferences. . . in the light most favorable to the non-moving party, and all questions of law are reviewed de novo." *Sundquist Homes v. Snohomish PUD #1*, 140 Wn.2d 403, 406 (2000) (citations omitted).

DSHS Issued an Order Revoking Videll's License on June 5, 2014.

2.6 DSHS may suspend, revoke or refuse to renew a license, order stop placement or appoint temporary management to oversee the operation of the facility, and ensure the health of the facilities residents while orderly closure of the facility occurs, in any case in which DSHS finds that a licensee, or any partner, officer, director,

or managing employee failed or refused to comply with the standards, rules, and regulations governing nursing homes. *See* RCW 18.51.060.

2.7 Here, there is no genuine issue of material fact: the June 5, 2014 DSHS letter revoked Videll's license. First, the face of the June 5, 2014 letter is written in bold type and is sufficient to inform Videll of the "**Appointment of (a) Temporary Manager, Emergency Closure and License Revocation**" of the facility's nursing home license. *Emphasis in original*. Second, the letter used plain and unambiguous language to inform Videll that the emergency closure and revocation of Videll's license was based on Videll's violations of statutes and regulations identified in the May 29, 2014 Statement of Deficiencies and Videll's significant history of uncorrected violations. Third, the June 5, 2014 letter explained that DSHS found it necessary to take emergency action to safeguard the health, safety, and welfare of the facility's residents and that a temporary manager had been appointed to oversee the orderly closure of the Mercer Island Facility. Lastly, the June 5, 2014 letter informed Videll that it had the right to request an administrative hearing to contest the license revocation, appointment of a temporary manager, emergency closure and state licensing deficiencies described on the state survey report, but that any request for hearing had to be filed within 20 calendar days of receipt of the June 5, 2014 letter.

Moreover, Videll failed to provide support, either in rule or case law, for its argument that the appointment of a temporary manager to oversee the orderly closure of the facility precluded DSHS from revoking Videll's license. This is especially true in light of DSHS' plain and unambiguous language to the contrary. As such, Videll's

argument that the June 5, 2014 letter did not revoke its license is without merit and must fail.

The June 5, 2014 Revocation Order became Effective on June 7, 2014.

2.8 The June 5, 2014 letter provided that, "[i]n accordance with RCW 18.51.065 and WAC 388-97-4440," Videll had 20 days from the date of receipt of the letter to request an administrative hearing to contest the license revocation, etc. The June 5, 2014 letter was sent to Dawn Jacobs, Mercer Island Care Center Facility Administrator. Ms. Jacobs was the facility administrator on June 5, 2014. Ms. Jacobs signed the certified mail receipt, as having received the letter on June 7, 2014. Service, by certified mail, on Ms. Jacobs, the facility administrator, was reasonably calculated to provide Videll with notice of the DSHS revocation.[7] *See also* RCW 43.20a.205; WAC 388-02-0050, WAC 388-02-0060, and WAC 388-97-4430. As such, the effective date of the June 5, 2014 letter was June 7, 2014, when it was received by the facility administrator.

Videll had 20 days to Request an Administrative Hearing.

2.9 Pursuant to DSHS agency rules, parties adversely affected by agency certain actions have a limited time to request a hearing. *See* WAC 388-02-0085(3). The deadline to request a hearing varies by the DSHS program involved. *Id*. In cases involving nursing homes, the appeal process is governed by the Administrative Procedures Act (chapter 34.05 RCW), RCW 18.51.065 and 74.42.580,

[7] *Duffy v. State, Department of Social and Health Services*, 90 Wash.2d 673 (1978)([d]ue process requires notice reasonably calculated to apprise a party of proceedings which will affect him).

chapter 388-02 WAC and chapter 388-97 will govern. *See* WAC 388.97.4440. All DSHS orders denying, suspending, or revoking the license or assessing a monetary penalty shall become final **twenty days** after the same has been served upon the applicant or licensee unless a hearing is requested. RCW 18.51.065 (*as amended by* 1989 c 372).[8] *Emphasis added*.

2.10 DSHS determined that Videll Healthcare was unable to correct deficiencies at the Mercer Island Care and Rehabilitation Center and DSHS had to take emergency action to safeguard the health, safety, and welfare of residents. *See* June 5, 2014 Revocation Letter. As such, DSHS gave Videll 20 days to contest the revocation and other adverse actions taken by DSHS. *Id*. Videll failed to request a hearing or otherwise contest the DSHS revocation detailed in the June 5, 2014 letter by June 27, 2014. The DSHS Revocation Order became final on June 27, 2014.

2.11 Videll failed to request a hearing to contest the June 5, 2014 revocation. By operation of law, the revocation of Videll's license became final on June 27, 2014. Once final, administrative determinations are not subject to collateral attack in subsequent proceedings and courts cannot relitigate the issue and substitute their

[8] To the extent, there was conflict between RCW 18.51.065 (as amended by 1989 c 175) and 18.51.065 (as amended by 1989 c 372), the Presiding Officer applied the rule of construction concerning sections amended more than once during the same legislative session. As such, the act last filed in the office of the secretary of state in point of time, shall control. RCW 1.12.025. In this case, RCW 18.51.065 (as amended by 1989 c 372) controls. However, to the extent the rules are capable of being harmoniously applied, the Presiding Officer finds that RCW 43.20a.205 allows DSHS to make the date a revocation is effective sooner than 28 days after receipt when necessary to protect the public health, safety, or welfare. RCW 18.51.065 (as amended by 1989 c 175) *referencing* RCW 43.20a.205(2)(b).

judgment for that of the administrative agency. *See Duffy v. State, Dept. of Social and Health Services*, 90 Wash.2d 673 (1978).[9]

Videll Failed to Timely Bank the 100 Beds.

2.12 RCW 70.38.115(13)(b) states that when a nursing home ceases operation, the licensee may reserve (or bank) the beds for eight years or until a Certificate of Need is issued to replace them. It further states that the licensee must give banking notice to the Department of Health (DOH) no later than 30 days after the "effective date of the facility's closure. *Id*. Among other things, notice to DOH must include the name of the facility ceasing operation, the number of beds in the bed allocation to be retained, and documentation of the effective date of the facility closure. *See* WAC 246-310-396. *Emphasis added*. The central issue in this case involves application of WAC 246-310-010(19), which defines facility closure, which triggers the 30-day appeal period, as:

> (a) The date on which the facility's license was relinquished, revoked or expired; or,
>
> (b) The date the last resident leaves the facility, whichever comes first.

2.13 As stated above, Videll's license was revoked on June 27, 2014. Since the revocation occurred prior in time to the last resident leaving the facility on July 3, 2014, Videll had until July 27, 2014, to provide the Department of Health with written notice of its intent to bank beds. Videll did not file its written notice of intent to bank

[9] *See also*, *Charles Pankow, Inc., v. Holman Properties, Inc*., 13 Wash. App.537 (1975)([i]t is a general rule that the order or determination of an administrative body acting with jurisdiction and under authority of law is not subject to collateral attack in the absence of fraud or bad faith).

beds until July 30, 2014.[10] Therefore, the issue of whether Videll filed its notice on July 29th or July 30th is a distinction without a difference as the 'no later than date' was July 27, 2014. Hence, neither form of notice was timely.

Equitable Estoppel

2.14 Equitable estoppel is based on the principle that a party should be held to a representation made or position assumed where inequitable consequences would otherwise result to another party who justifiably and in good faith relied thereon. *Kramarevcky v. Dept. of Social and Health Services*, 122 Wash.2d 738 (1993). In Washington, when equitable estoppel is asserted against the government, the party asserting estoppel must establish five elements by clear, cogent, and convincing evidence:

1. A statement, admission, or act by the party to be estopped, which is inconsistent with its later claim;
2. The asserting party acted in reliance upon the statement or action;
3. Injury would result to the asserting party if the other party were allowed to repudiate its prior statement or action;
4. Estoppel is "necessary to prevent a manifest injustice; and
5. Estoppel will not impair governmental functions.

Silverstreak Inc., v. Dept. of Labor and Industries, 159 Wn.2d 868, 887 (2007) (*citing Kramarevcky v. Dept. of Social and Health Services*, 122 Wn.2d 738, 743 (1993)). Equitable estoppel against the government is not favored. *Kramarevcky v. Dept. of Social and Health Services*, 122 Wn.2d 738, 743 (1993). In addition, reliance is justified

[10] On July 29, 2014, Videll emailed a copy of its notice of reservation of bed rights to the Program. The same was delivered via overnight delivery on July 30, 2014. *See* Decl. of Walker, Ex. 1 and 2 (the "July 29 Notice").

only when the party claiming estoppel did not know the true facts and had no means to discover them. *Maraski v. Lannen*, 55 Wn.App. 820, 824-825 (1989).

2.15 Here, Videll has failed to establish by clear, cogent, and convincing evidence that equitable estoppel should be applied in this case. First, the Program's notice that the beds were properly banked was based on an erroneous closure date supplied by Videll. Videll was aware that its license was revoked by DSHS, but failed to provide that information to Ms. Nidermayer (There is no evidence that the revocation was referenced in either the July 11, 2014 conversation or Videll's Notice of Intent to Retain Nursing Home Bed Allocation, filed on July 30, 2014). The Program's lack of knowledge concerning the revocation is further supported by Ms. Nidermayer's August 1, 2014 letter, which stated that, "[a]ccording to documentation provided by DSHS, Mercer Island Care and Rehabilitation closed on July 3, 2014." When an agency decision is based on a "misconception of facts," the agency may correct the decision, so long as affected persons are given notice. *St. Joseph Hospital v. Dept. of Health*, 125 Wn.2d 733, 743-744, 887 P.2d 891 (1995). Here, the Program learned on August 10, 2015, that Videll's license was revoked and notified Videll. *See* Declaration of Karen Nidermayer, dated December 14, 2015. Thus, the Program should be allowed to correct the decision without penalty.

Second, Videll cannot claim to have relied on the notice of proper bed banking, which was based on a July 3, 2014 closure date. Reliance is justified only when the party claiming estoppel did not know the true facts and had no means to discover them. *Maraski v. Lannen*, 55 Wn. App. 820, 824-825 (1989). Here, Videll had knowledge of

the true facts. Next, Videll also failed to establish that a manifest injustice would occur. Based on the misconception of facts, a manifest injustice would occur if the Program were not allowed to correct its August 2014 decision. In addition, estoppel would impair the Program's governmental function of approving bed-banking only when a nursing home makes a timely request. Lastly, equitable estoppel cannot be applied against an agency when the new agency position is supported by a proper interpretation of applicable law. *Dept. of Ecology v. Campbell & Gwinn, L.L.C*., 146 Wn.2d 1 (2002). For the aforementioned reasons, Videll has failed to establish by clear, cogent and convincing evidence that equitable estoppel should be applied in this case.

SGP Has No Legal Interests in the Bed Rights.

2.16 In a summary judgment proceeding, the moving party has the initial burden of showing that there is no dispute as to any material fact and the facts must be interpreted in a light most favorable to the non-moving party. *Hiatt v. Walker Chevrolet Co*., 120 Wn.2d 57, 837 P.2d 618 (1992). When a motion for summary judgment is supported by evidentiary matter, the burden shifts and the adverse party may not rest on mere allegations in the pleadings, but must set forth specific facts showing that there is a genuine issue for trial. *LaPlante v. State,* 85 Wn.2d 154 (1975); *see also Brame v. St. Regis Paper Co*., 97 Wash.2d 748 (1982).

Here, Videll argues that SGP has no interest in the bed rights at issue. Videll supported its argument with evidentiary matter. However, SGP failed to provide documentation or set forth specific facts which might rebut Videll's argument or demonstrate that SGP have an interest in the Mercer Island bed rights. Accordingly,

Videll's Motion for Summary Judgment as to SGP's interest rights in the 100 beds should be granted.

III. ORDER

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

3.1 Videll's Motion for Summary Judgment is **DENIED IN PART** as to the following: Videll's request for an order finding that Videll timely reserved its right to bank the 100 nursing home beds is **DENIED.** However, Videll's Motion for Summary Judgment as to SGP's interest rights in the 100 beds is **GRANTED.**

3.2 The Program's Motion for Summary Judgment is **GRANTED.**

Dated this __26__ day of February, 2016.

/s/
ROMAN S. DIXON JR., Health Law 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 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 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 Assistant Attorney General in this case, the mailing address is:

Agriculture and Health Division
Office of the Attorney General
PO Box 40109
Olympia, WA 98504-0109

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 C.F.R. 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