

STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
OFFICE OF THE SECRETARY

In the Matter of:

DETERMINATION OF REVIEWABILITY  
#13-30 REGARDING THE AMBULATORY  
SURGERY FACILITY EXEMPTION FOR  
PROVIDENCE MEDICAL PARK IN SPOKANE  
VALLEY

ROCKWOOD HEALTH SYSTEM d/b/a  
VALLEY HOSPITAL

Petitioner.

Master Case No. M2013-614

**CORRECTED**  
**FINAL ORDER ON SUMMARY**  
**JUDGMENT**  
(Master Case Number Only)

This matter has come before the Review Officer on delegation by the Secretary of Health for administrative review of Providence Physician Services Co.'s Petition for Administrative Review (Petition) of Health Law Judge John F. Kuntz's Prehearing Order No. 2: Order on Summary Judgment (Initial Order) dated February 20, 2014.

The Initial Order granted the Certificate of Need (CN) Program's Motion for Summary Judgment and Rockwood Health System's (Rockwood) Motion for Summary Judgment. The Initial Order denied Providence Physician Services Co.'s (PPSC) Motion for Summary Judgment finding that the Determination of Reviewability #13-03 granted to PPSC on March 26, 2013<sup>1</sup> does not apply and PPSC's proposed

<sup>1</sup> The Program initially determined that, even though PPSC was a hospital owned physician group (See Determination of Reviewability #13-03), the proposed PPSC ASF project was not subject to CN review. Rockwood requested an adjudicative proceeding to contest the determination. The Program subsequently changed its position and determined that the PPSC project is subject to CN review. Even if the Program's initial decision was binding on the Program, it is not now. Once an adjudicative proceeding is commenced the outcome of the adjudicative proceeding resolves the case.

ambulatory surgical facility does not qualify for an exemption from CN review under WAC 246-10-010(5).

PPSC asks that the Review Officer reverse the Initial Order and affirm the Program's initial determination that CN review is not required for the proposed construction of an ambulatory surgical facility at the Providence Medical Park in Spokane, Washington, or, in the alternative, reverse the Initial Order and remand the matter to the Health Law Judge to conduct an evidentiary hearing to determine whether PPSC may rely on the exemption from CN review given the specific circumstances of PPSC's ownership and/or PPSC's lease of its space.

The Program and Rockwood filed responses to PPSC's Petition requesting that the Initial Order be upheld.

#### **REVIEW OFFICER'S CONSIDERATION**

1.1 The Secretary has jurisdiction over the subject matter of this case. Chapter 70.38 RCW.

1.2 PPSC's Petition for Administrative Review of the Initial Order, the Program's Memorandum Opposing Petition for Administrative Review, and Rockwood's Response to Petition for Administrative Review were timely filed. WAC 246-10-701.

1.3 The Secretary is authorized to designate a Review Officer to review initial orders and to enter final orders. RCW 43.70.740.

1.4 Based on a review of the record in this case<sup>2</sup>, PPSC's Petition provides no basis for reversing the Initial Order or remanding the case for hearing.

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<sup>2</sup> Including the Petition, Program's Response, Rockwell's Response, the Summary Judgment Motions and Reply briefs, PPSC's CN application, and the Program's Determination of Reviewability #13-03.

Material facts in this case are not in dispute and summary judgment is appropriate. 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).

PPSC has requested an exemption from CN review for its proposed ambulatory surgical facility (ASF) at Providence Medical Park in Spokane, Washington. ASFs are health care facilities subject to CN review.<sup>3</sup> No exemptions from CN requirements for an ASF exist in the CN statute, chapter 70.38 RCW.

Under WAC 246-310-010(5), an ASF is defined as any freestanding entity "that operates primarily for the purpose of performing surgical procedures to treat patients not requiring hospitalization," but does not include "a facility in the offices of private physicians or dentists, whether for individual or group practice, if the privilege of using the facility is not extended to physicians or dentists outside the individual or group practice." It is based on the latter part of this definition that PPSC contends its proposed ASF is not subject to CN review.

PPSC's proposed ASF project is subject to CN review because the ASF will not be in the "offices of private physicians". First, the proposed ASF will be in the Providence Medical Park, a mixed used ambulatory health care facility that Providence Health and Services – Washington (Providence) is building in Spokane, Washington. Secondly, PPSC physicians are not "private" physicians. PPSC is ultimately owned by Providence - PPSC is a subsidiary of Providence.<sup>4</sup> PPSC is wholly owned by

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<sup>3</sup> RCW 70.38.105(4)(a) and RCW 70.38.025(6).

<sup>4</sup> AR 9.

Providence Health Care Ventures, Inc., which in turn is wholly owned by Providence.<sup>5</sup>

While the term "private" is not defined in the CN statutes or rules, the term "private practice" is commonly understood to mean the "practice of a profession (as medicine) independently and not as an employee."<sup>6</sup> PPSC physicians are not in an independent, or private, practice.<sup>7</sup>

Even if Providence does not characterize PPSC physicians as direct employees of Providence,<sup>8</sup> PPSC is ultimately owned by Providence, and therefore, PPSC physicians are part of a large non-physician health care facility.<sup>9</sup> Providence owns and operates approximately eight hospitals or medical centers across Washington State.<sup>10</sup> And although PPSC physicians would have exclusive use of the operating rooms in Providence's Medical Park, to consider this type of arrangement, or project, to be in the offices of private physicians and exempt from CN review would undermine the statutory requirement that ASFs be subject to CN review.

### FINAL ORDER

This Final Order, along with the Review Officer's Consideration above, adopts and incorporates by reference the Procedural History and Findings of Fact, Conclusions of Law and Initial Order as the Final Order in this case and hereby orders that:

2.1 The PPSC Motion for Summary Judgment is DENIED. The Determination of Reviewability #13-03 granted to PPSC on March 26, 2013 does not

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<sup>5</sup> See Declaration of Peter H. Kim, January 21, 2014.

<sup>6</sup> Merriam Webster's on-line dictionary.

<sup>7</sup> Not only because of its relationship with Providence, but PPSC itself characterized its practice as neither a solo nor group practice. AR 9.

<sup>8</sup> See Declaration of Peter H. Kim, January 21, 2014.

<sup>9</sup> Based on the materials collected by the Program during the review process, the PPSC physicians are characterized as employees of Providence. AR 6.

<sup>10</sup> See Program 12/31/13 SJ Motion at App. 4.

apply and PPSC's proposed ASF project does not qualify for an exemption from CN review under WAC 246-10-010(5).

2.2 Rockwood Health System's Motion for Summary Judgment is GRANTED.

2.3 The Program's Motion for Summary Judgment is GRANTED.

Dated this 1<sup>st</sup> day of July, 2014

JOHN WIESMAN, DrPH, MPH  
SECRETARY OF HEALTH

  
By Kristin Peterson  
REVIEW OFFICER

**NOTICE TO PARTIES:**

Either Party may file a petition for reconsideration. RCW 34.05.461(3); RCW 34.05.470. The petition must be filed within ten (10) days of service of this Order with:

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

and a copy must be sent to:

State of Washington Department of Health  
Office of Legal Services  
P.O. Box 47873  
Olympia, WA 98504-7873

The petition must state the specific grounds upon which reconsideration is requested and the relief requested. WAC 246-10-704. The petition for reconsideration

is considered denied twenty (20) days after the petition is filed if the Adjudicative Clerk Office has not responded to the petition or served written notice of the date by which action will be taken on the petition.

A petition for judicial review must be filed and served within thirty (30) days after service of this Order. RCW 34.05.542. The procedures are identified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. A petition for reconsideration is not required before seeking judicial review. If a petition for reconsideration is filed, the thirty (30) day period for requesting judicial review does not start until the petition is resolved. RCW 34.05.470(3).

The Order remains in effect even if a petition for reconsideration or petition for judicial review is filed. "Filing" means actual receipt of the document by the Adjudicative Clerk Office. RCW 34.05.010(6). This Order was "served" upon you on the day it was deposited in the United States mail. RCW 34.05.010(19).

Final Orders will be reported to the National Practitioner Data Bank (45 CFR Part 60) and elsewhere as provided by law. Final orders will be placed on the Department of Health's website, otherwise disseminated as required by the Public Records Act, (chapter 42.56 RCW) and the Uniform Disciplinary Act. RCW 18.130.10. All orders are public documents and may be released.