

NO. 71258-6-I

**COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON**

SWEDISH HEALTH SERVICES,
a Washington nonprofit corporation,

Petitioner,

v.

DEPARTMENT OF HEALTH OF THE STATE OF
WASHINGTON,

Respondent.

DEPARTMENT OF HEALTH RESPONSE BRIEF

ROBERT W. FERGUSON
Attorney General

Richard A. McCartan
Senior Counsel Attorney General
WSBA No. 8323
PO Box 40109
Olympia, Washington 98504-0109
(360) 664-4998
richardm@atg.wa.gov

Attorney for Respondent
State of Washington Department of
Health

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I. INTRODUCTION

The Department of Health (Department) may issue a Certificate of Need (CN) for an entity to establish a healthcare facility in Washington. Swedish Health Services (Swedish) was granted a CN for an ambulatory surgery center in Issaquah. The CN had a two-year validity period ending on October 1, 2012. Failure by Swedish to “commence” the project by October 1, 2012, would cause the CN to expire. Swedish seeks judicial review under the Administrative Procedures Act of two Department orders related to the expiration of the CN.

The first contested order denied Swedish’s application for an extension of the two-year validity period beyond October 1, 2012. This order was based on Swedish’s failure to make the required progress towards commencing the project within the validity period.

The second contested order denied Swedish’s application to amend the CN to change the site of the ambulatory surgery center from Issaquah to Redmond. This order was based on the holding in the first case that the CN’s two-year validity period had expired on October 1, 2012 before the site change could be approved by the Department.

This Court should uphold both contested orders. It should be understood that enforcement of the two-year validity period is an integral part of the CN law. Timely commencement of a project within the two years is important because, in approving the project, the Department made a determination that the project was needed to serve area residents. RCW 70.38.115(2)(a). Moreover, approval of a project may prevent other

providers from gaining CN approval to offer the same service to area residents. Hence, undue delay in commencing a project is unfair to both the public and to other providers.

II. ISSUES

A. Validity Period

To receive a six-month extension of the two-year validity period, a CN holder must demonstrate that it made “substantial and continuing progress towards commencement of the project. WAC 246-310-580(1). When it applied for a validity-period extension on its CN for an ambulatory surgery facility in Issaquah, had Swedish demonstrated the required “substantial and continuing” progress to qualify for an extension?

B. Site Change

When a CN is approved by the Department, the CN holder must obtain an amended CN in order to change the site. WAC 246-310-570(1)(f). A CN-approved project may not be “commenced” after the expiration of the CN’s validity period. May Swedish be approved for a site change when (1) the CN’s two-year validity period had expired before the site change could be approved by the Department, and (2) the project at the new site could not have been commenced before the end of the validity period?

III. STATEMENT OF CASE¹

A. In The First Case, The Health Law Judge Ruled That Swedish Failed To Timely Commence The Issaquah ASC Project, Meaning The CN Expired

The Department administers the CN law under RCW 70.38 and WAC 246-310. The law requires healthcare providers to obtain a CN before they establish certain types of new facilities. RCW 70.38.105(4)(a). The CN process includes an application with information required by the Department, and an opportunity for public comment, followed by a decision by the Department on whether to approve or deny the application. RCW 70.38.115(6).² One type of review facility that requires a CN is an ambulatory surgery center. RCW 70.38.025(6). It is a facility where physicians perform surgery on patients without need for hospitalization. WAC 246-310-010(5).

In May 2008, the Department granted Swedish a CN for an ambulatory surgery center in Issaquah. AR-I at 112. Overlake Hospital (which operates an existing ambulatory surgery center in East King County) requested an adjudicative proceeding under RCW 34.05 to contest the CN. AR-I at 113. A Health Law Judge was assigned to hear the case.

¹ There are two Administrative Records (AR) in this case. AR-I is for the validity-period case, and AR-II is for the site-change case.

² For approval, an applicant must meet four criteria: Need (WAC 246-310-210); Financial Feasibility (WAC 246-310-220); Structure and Process of Care (WAC 246-310-230); and Cost Containment (WAC 246-310-240).

Swedish's CN, issued in May 2008, was valid for two years. Swedish was required to "commence" the approved project within the two years. RCW 70.38.125(2); WAC 246-310-580(1). Swedish requested a stay of the validity period until after Overlake's appeal was resolved. On April 6, 2009, the Health Law Judge granted the stay. AR-I at 81-82. On October 1, 2010, following dismissal of Overlake's appeal, the Health Law Judge lifted the stay, meaning that the two-year validity period would end on October 1, 2012. AR-I at 85-86. Swedish had until that date to commence the project.

On May 29, 2012, Swedish requested a sixth-month extension of the validity period for the approved Issaquah project beyond October 1, 2012. AR-I at 882-900. The two-year validity period may be extended for an additional six months only if the CN holder demonstrates "substantial and continuing progress toward commencement of the project." WAC 246-310-580(1).

On August 30, 2012, the Department denied the extension because Swedish failed to demonstrate the required "substantial and continuing" progress towards commencement of the project. AR-I at 961-963. On September 19, 2012, Swedish requested an adjudicative proceeding to contest the denial of the extension. AR-I at 1-36.

On March 27, 2013, on summary judgment, the Health Law Judge upheld the Program's denial of the validity-period extension for six months beyond October 1, 2012, because of Swedish's failure to

demonstrate the required progress toward commencement of the approved Issaquah project. AR-I at 696-705.

B. In The Second Case, The Health Law Judge Denied Swedish A Site Change Because It Could Not Be Granted Prior To The CN Expiring On October 1, 2012

A CN is approved by the Department for a specific site. An “amended” CN must be obtained in order to change the site. WAC 246-310-570(1)(f). An amendment application is submitted to the Department under the procedure in WAC 246-310-090. WAC 246-310-570(3). The application is reviewed by the Department under the procedure in WAC 246-310-150, which includes a provision for public comment on the application. Finally, the Department under WAC 246-310-200 decides whether to approve or deny the application.

Swedish received its CN on May 7, 2008. Because of the stay of the two-year validity period, the CN was set to expire on October 1, 2012. In applying for a site change, Swedish stated that a relocated site outside Issaquah was necessary because in 2011 Swedish had opened a new hospital in Issaquah where surgeries were now being performed. Swedish Br. at 8; AR-II 765.³ Yet, Swedish waited until May 29, 2012 to apply for the site change to Redmond. AR-II at 500-502.

The Department reviewed the application under the timelines in WAC 246-310-090 and WAC 246-310-150. AR-II at 1012. Not only did Swedish wait until May 29 to file the application, it also prevented the

³ While opening in 2011, the new hospital required a long process for obtaining CN approval under RCW 70.38.105(4)(a) before construction could even begin.

Department from approving the amendment by October 1 by taking the 45-day maximum amount of time to respond to the Department's request for supplemental information about the application.⁴

The last step in the review – receipt of Swedish's rebuttal under WAC 246-310-150(1)(a) to the opposition to its application – did not occur until October 2, which was one day after the validity period expired. AR-II at 1001-1003. Swedish notes that this timeline could have been advanced by five days had the Department limited the public comment period (which started August 28) to the prescribed 30 days under WAC 246-310-170(1), rather than giving 35 days for comment. Swedish Br. at 12-13. Advancing the deadline five days would have ended the public comment period on September 28, instead of October 2.

⁴ Swedish contends that a decision could have been made by August 15. Swedish Br. at 11, n.5. This contention is premised on the Department starting review of its application on June 19. *Id.* However, on June 19, the Department had the right under WAC 246-310-090(2)(a) to ask "screening" questions about the application – which it did. AR II at 799-802. An applicant has up to 45 days to respond to the questions. WAC 246-310-090(2)(c). Swedish took the entire 45 days until August 3 to respond. AR-II at 803-808. This delay ultimately prevented the Department from being able to make a decision on the application by October 1. AR-II at 1014.

In the August 3 response, Swedish requested the Department to further screen the application for completeness. AR-II at 808. The Department had 15 working days to do so. WAC 246-310-090(2)(a). The Department determined on August 28 that no further questions were necessary. AR-II at 2012. This meant that review of the application began on August 28. Swedish complains that the Department took time after August 3 to further review the application for completeness. Swedish Br. at 12. However, as stated, Swedish requested the further review, and the law allowed the Department 15 working days to perform the review. Moreover, Swedish's complaint rings hollow, as on September 6, after review began, Swedish took advantage of a last opportunity to provide still more information about its application. AR-II at 925.

September 28 would have given the Department just one working day to make a decision on the application by October 1. However, WAC 246-310-150(1)(b) gives the Department twenty days to make a decision. Counting twenty days from September 28 would have made the decision due on October 18, which was beyond the CN's expiration date of October 1.

On October 22, 2012, the Department decided to deny the site-change amendment based on the CN having already expired on October 1. AR-II at 1009-14. Swedish requested an adjudicative proceeding to contest the site-change denial. On July 1 2013, the Health Law Judge upheld the Department's denial of the site change. AR-II at 748-55. This denial was based on the fact that that the CN's validity period had expired on October 1, which was before the site change could have been approved by the Department.

In rebuttal, Swedish's central argument is that the CN had not expired on October 1 because the Health Law Judge had "tolled" the validity period, allowing Swedish extra time to obtain approval of a site change to Redmond. This central argument is easily refuted. As explained on pages 12-16 of this brief, the Health Law Judge expressly found that he had not granted Swedish a validity-period extension to pursue a site-change. Swedish has not assigned error to this finding.

C. The Superior Court Upheld Both Health Law Judge Decisions

Swedish filed two petitions for judicial review under RCW 34.05, contesting both the decision to deny the validity-period extension and to deny the site change. Clerk's Papers (CP) at 1-23. Judge Mariane C. Spearman of King County Superior Court consolidated the two petitions (CP 24-26), and upheld both orders by the Health Law Judge. CP 31-34. Swedish appealed to this Court.

IV. STANDARD OF REVIEW

A. Judicial Review Standard

In a petition for review under RCW 34.05, this Court is in the same position as the superior court and reviews the validity of the contested administrative decision. Wenatchee Sportsmen Ass'n v. Chelan County, 141 Wn.2d 169, 176, 4 P.3d 123 (2000). The party seeking judicial review has the burden of demonstrating the invalidity of the contested agency action. RCW 34.05.570(1)(a).

Swedish does not assign error to any specific factual finding of the Health Law Judge. Swedish Br. at 2. Unchallenged findings of fact are verities on appeal. Postema v. Pollution Control Hrgs. Bd., 142 Wn.2d 68, 11 P.3d 726 (2000).

Swedish challenges the Department's interpretation of the applicable law. A court may overturn an agency decision for "erroneously" interpreting the law. RCW 34.05.570(3)(d). However, in reviewing CN decisions, courts must accord "substantial deference" to the Department's legal interpretations, given its knowledge and expertise in

the area. Overlake Hosp. Ass'n v. Dep't of Health, 170 Wn.2d 43, 50, 239 P.3d 1095 (2010); Univ. of Wash. Med. Ctr. v. Dep't of Health, 164 Wn.2d 95, 102, 187 P.3d 243 (2008); Odyssey Healthcare v. Dep't of Health, 145 Wn. App. 131, 142, 185 P.3d 652 (2008).

B. Summary Judgment Standard

The two challenged Health Law Judge orders were made on summary judgment. The parties agree that the Civil Rule 56 standard applies, meaning that summary judgment is granted when there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. See: ASARCO v. Air Quality Control Coalition, 92 Wn.2d 685, 601 P.2d 501 (1979).

V. ARGUMENT⁵

A. The Health Law Judge's Decision To Deny A Validity-Period Extension Should Be Upheld Because Swedish Had Not Made Substantial And Continuing Progress Towards Commencing The Issaquah Project, And In Fact Had Made No Progress.

A CN must be commenced within two years. RCW 70.38.125(2). For Swedish's ambulatory surgery center CN in Issaquah, the two years ended October 1, 2012. On May 29, 2012, Swedish requested a six-month extension of the validity period under WAC 246-310-580(1). AR-I at 882-900. To qualify for the extension, Swedish was required to demonstrate "substantial and continuing progress toward commencement of the project." RCW 70.38.125(1); WAC 246-310-580(1).

⁵ To assist the court in following the Argument, the Appendix to this brief is a timeline of the two cases under review.

On March 27, 2013, the Health Law Judge upheld the Department's August 30, 2012 decision that Swedish was not entitled to the extension because it could not demonstrate the required substantial and continuing progress. AR-I at 696-705. This meant that the CN's validity period would have expired on October 1, 2012, unless Swedish somehow managed to commence the project by that date.

Under WAC 246-310-580(2), substantial and continuing progress is shown by submission of "working drawings" for Department approval. The Health Law Judge found Swedish had submitted no such drawings. AR-I at 700, ¶ 1.11. Swedish does not contest this finding.⁶

Moreover, "commencement" of a project is defined to include giving notice to proceed with construction to a contractor provided necessary permits had been obtained 60 days prior to notice. WAC 246-310-010(13). Swedish makes no argument that it had made any progress toward meeting this commencement criterion. In fact, the Health Law Judge found that Swedish did not even have an anticipatory date to start construction on the Issaquah project. AR-I at 700, ¶ 1.11. He found that the lack of progress at the Issaquah site stemmed from Swedish's plan to relocate the ASC to Redmond (AR 803-84), and from its focus on

⁶ In its May 2012 extension request, Swedish stated that in 2007 it had developed a preliminary floor plan for the Issaquah facility. AR-I at 883. This plan was developed even before Swedish's CN was approved in 2008. Swedish does not allege that this plan was ever submitted to the Department for approval. Nor does it claim that the plan constituted the required progress under WAC 246-310-580(2). Moreover, in the May 2012 extension request, Swedish admitted that it was no longer interested in developing an ASC at the Issaquah location. AR-I at 883.

developing another new ASC in Bellevue. AR-I at 700, ¶ 1.11. Swedish does not contest these findings.

Though contending that factual issues preclude summary judgment, Swedish fails to identify facts or offer argument to support its contention. Swedish Br. at 28. It is not the role of the court “to comb the record with a view towards constructing arguments for counsel.” In re Estate of Lint, 135 Wn.2d 518, 532, 957 P.2d 755 (1998). Moreover, as discussed above, the evidence actually showed no progress, and even showed that Swedish had abandoned the Issaquah project in favor of a site in Redmond.

In summary, the Health Law Judge correctly concluded under WAC 246-310-580(1) that Swedish was not entitled to an extension of the validity period, because it had not made “substantial and continuing progress” towards commencement of the Issaquah project. This conclusion is entitled to substantial deference, and should be upheld by this Court.⁷

⁷ As explained above, the Health Law Judge gave Swedish 12 days after his March 27, 2013 ruling to commence the Issaquah project. The superior court correctly found that the 12 days are no longer available to commence the Issaquah project, as Swedish (1) took no steps to commence after March 27, 2013, and (2) never sought a stay in the running of the 12-day period. CP 40. Instead, Swedish continued to attempt to obtain the right to relocate the facility to Redmond.

B. The Health Law Judge's Order Denying The Site-Change Should Be Upheld

1. A Site Change Could Not Be Approved Because The CN Had Expired Before The Change Could Be Approved

On the same day of May 29, 2012, when Swedish applied to a validity extension for the Issaquah project, it also applied to change the site to Redmond. As explained above at pages 5 and 6, Swedish's delays in filing its application, and then in responding to questions from the Department, did not allow time for the Department to issue a decision on the site-change application prior to the CN expiring on October 1, 2012. Because the CN had expired, the Department denied the site change on October 22, 2012. AR-II at 1009-14.

The Health Law Judge upheld the denial on July 1, 2013. AR-II at 748-755. He ruled that Swedish was not entitled to a validity-period extension beyond the two years ending October 1, 2012. AR-II at 750, ¶ 1.7. Hence, the Health Law Judge concluded that the site-change amendment could not have been approved by the Program on October 22, based on WAC 246-310-580(6), which states:

Commencement of a project shall not be undertaken after the expiration of the certificate of need unless a new certificate of need application has been reviewed and a new certificate of need has been issued by the secretary's designee. (Emphasis added.)

The Health Law Judge's conclusion to deny the site change as a matter of law under WAC 246-310-580(6) is entitled to substantial deference on judicial review, and should be upheld by this this Court.

2. The Validity Period Never Was Tolloed To Allow Swedish Extra Time To Obtain Approval Of A Site Change

There is no dispute that, under WAC 246-310-580(6), a site-change amendment cannot be approved when the CN's validity period has already expired. To avoid application of this rule, Swedish contends that the validity period had been "tolled" beyond October 1, 2012, to allow extra time for approval of a site change. Swedish Br. at 23.

Understanding Swedish's "tolling" contention in the site-change case requires a review of the earlier validity-period case. As explained above, on September 19, 2012, Swedish requested an adjudicative proceeding to contest the Department's decision to deny the validity-period extension. On November 7, 2012, in that case, on motion by Swedish (AR-I at 40-91), the Health Law Judge "tolled" the validity period. AR-I at 112-17.

However, Swedish's brief fails to acknowledge that when the Program moved for reconsideration (AR-I at 118-22), the Health Law Judge on January 9, 2013 *significantly* clarified his November 7, 2012 order. AR-I at 354-61. He ruled that if he found that Swedish was not entitled to a six-month validity-period extension beyond October 1, 2012, Swedish would be given 12 days to commence the Issaquah project. AR-I at 360, ¶ 2.4. The 12 days represented the amount of time between Swedish's appeal of the Program's validity-period extension denial (September 19, 2012) and the expiration of the two-year validity period (October 1, 2012). The Health Law Judge made clear that he simply

intended to “maintain the status quo . . . as of the date of the September 19, 2012 [validity period] appeal.” AR-I at 360, ¶ 2.4.

As stated, the 12-day preservation order was entered in the validity-period case. The Health Law Judge ruled ultimately against Swedish in the validity-period case on March 27, 2013. Swedish, therefore, argues that the validity period did not expire until 12 days after March 27, which was April 9, 2013. This contention leads Swedish to argue that the Department’s decision – denying the site-change amendment on October 22, 2012 because the CN had expired on October 1, 2012 – was mistaken because the validity period allegedly had been extended until April 9, 2013. Swedish Br. at 23.

In making this argument, Swedish fails to acknowledge the true facts. The 12-day extension occurred in the validity-period case – not the site-change case. AR-I at 365-361. Moreover, the Health Law Judge actually found that he had not extended the validity period beyond October 1, 2012, to allow Swedish extra time to gain approval of a site change. AR-II at 751, ¶ 1.6-7.⁸ Because Swedish does not assign error to this finding, it is a verity on appeal. The Health Law Judge also concluded that he lacked legal authority to extend validity after it had expired on

⁸ Swedish requested that the validity-period extension apply to the site-change case. AR-II at 571, ¶ 1.6. In denying the request, the Health Judge found: “The record shows that the two-year validity period for CN #1330R [the Issaquah project] expired on October 1, 2012. The Program’s site-change amendment was issued on October 22, 2012. No six-month extension was granted in this case. Swedish does not refute these facts.” AR-II at 571 at ¶ 1.7.

October 1, 2012, in order to allow extra time to gain approval of a site change. *Id.* at 754, ¶ 2.7.⁹

Hence, contrary to Swedish's argument, the Health Law Judge's order in the validity-period case – preserving the 12 remaining days to commence the Issaquah project if he denied a six-month extension of the validity period ending on October 1, 2012 – had no effect on the Redmond site-change case. The order simply did not allow Swedish extra time to gain approval of a site change.

Swedish also fails to acknowledge another important fact: after failing to get the Health Law Judge to toll the validity period, Swedish on April 15, 2013 moved in superior court (in the validity-period appeal) to toll the validity period to gain extra time for the Health Law Judge to approve the site change. CP 96-107. The Department opposed the motion. CP 108-27. On May 15, 2013, the superior court denied the tolling motion. CP 128-29. Swedish did not appeal the denial.

⁹ Swedish's statement of the case (Swedish Br. at 10) includes a footnote on the Kennewick General Hospital (KGH) case, where the Secretary of Health under RCW 43.70.280(2) extended a non-expired validity period to allow KGH additional time to gain approval of a financing-change amendment to its CN. AR-II at 507. This extension was issued by the Secretary herself outside the context of an adjudicative proceeding.

KGH had already started to construct the approved hospital, and merely wanted to change the project's financing. AR-II at 507, 511-14. The Health Law Judge further distinguished KGH from Swedish's case on grounds that Swedish never sought or obtained an extension from the Secretary prior to the October 1, 2012 CN expiration, outside the context of an adjudicative proceeding. AR-II at 754, ¶ 2.7.

In any event, RCW 43.70.280(2) allows an extension only when necessary for the "economical or efficient operation of state government." Swedish makes no argument that it would have qualified for an extension under that criterion, even if it had requested an extension from the Secretary prior to the expiration date.

In summary, there is no dispute that, under WAC 246-310-580(6), a site change cannot be approved on an expired CN. Accordingly, the Health Law Judge correctly concluded that, under WAC 246-310-580(6), the Department could not have approved a site change in its October 22, 2012 decision, given that the CN's validity period had already expired on October 1. The validity period never tolled to allow Swedish extra time to gain approval of a site change. The Health Law Judge's conclusion of law under WAC 246-310-580(6) is entitled to substantial deference, and should be upheld by this Court.

C. Even If The Site Change Had Been Approvable, Swedish Could Not Have “Commenced” The Project Within The Two-Year Validity Period

The Health Law Judge denied the site change because the validity period expired October 1, 2012, which was before the change could be approved by the Program in its decision on October 22. Swedish contests this denial by arguing that (1) the Program could have made its decision prior to October 1; and (2) the validity period had been tolled to April 9, 2013 following the denial of a validity-period extension beyond two years.

If either argument is somehow valid, the validity period would have ended on October 1, 2012 or April 19, 2013. Swedish would have been required to “commence” the Redmond project by the end date. WAC 246-310-580(6). However, as explained below, there was not sufficient time for Swedish to do so.

The Redmond project involved construction inside an existing Swedish building to provide space for ambulatory surgery. AR-II at 765. Any construction plan would have required pre-approval by the Department.¹⁰ Then, to commence the project, Swedish would have had to give notice by the end of the validity period to a contractor to proceed with construction 60 days after applying for permits. WAC 246-310-010(13). Swedish could not have possibly taken these required steps to timely “commence” the project, even if (1) the Department had been able to rule on the site-change application by the end of the validity period on October 1, 2012, or (2) the two-year validity period had been tolled and ended April 9, 2013.¹¹

In the final analysis, the denial in this case had only one cause: Swedish’s failure to plan ahead to allow sufficient time to obtain approval of the site change to Redmond, and then “commence” the Redmond project, by the end of the two-year validity period.

There are no grounds for reversing the Health Law Judge’s decision to deny the site change. However, for argument sake, if Swedish

¹⁰ It is unknown whether Swedish would have licensed the Redmond ASC as part of its hospital, or as a separate facility. Either way, approval of construction plans would have been required. WAC 246-320-500 and WAC 246-320-505 (hospital construction); WAC 246-330-500 and WAC 246-330-505 (ambulatory surgery center construction).

¹¹ In denying the site change amendment, the Health Law Judge did not specifically conclude that the Redmond project could have been timely commenced if the site-change amendment had been approvable. However, this Court may uphold a decision on grounds not cited by the agency. Heidgerken v. Dep’t of Natural Resources, 99 Wn. App. 380, 388, 993 P.2d 934 (2000), citing LaMon v. Butler, 112 Wn.2d 193, 200-01 (1989); Wendle v. Butler, 102 Wn.2d 380, 382, 686 P.2d 480 (1984).

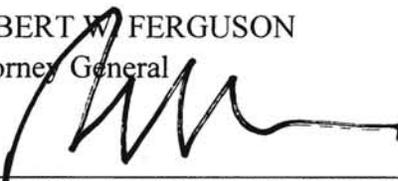
somehow prevailed, this Court cannot order the Department to issue a CN for the Redmond site, as Swedish requests. Swedish Br. at 21. In denying the site change because of the validity-period expiration, the Department never determined whether the site change would be approvable on the merits. A decision on the merits would include a determination of financial feasibility under WAC 246-310-220; cost containment under WAC 246-310-240; and a review of charity care that would be offered at the Redmond facility. AR-II at 1012. Hence, reversal would require this Court to remand the case under RCW 34.05.574(1)(b) for the Department to determine whether the site-change application should be approved on the merits.

VI. CONCLUSION

Based on the foregoing, the Department of Health respectfully requests this Court under RCW 34.05.574(1) to affirm its decisions to (1) deny Swedish the validity-period extension on its Certificate of Need beyond October 1, 2012, and (2) to deny Swedish a Certificate of Need site-change amendment from Issaquah to Redmond.

RESPECTFULLY SUBMITTED this 20th day of March, 2014.

ROBERT W. FERGUSON
Attorney General



RICHARD A. MCCARTAN, WSBA No. 8323
Senior Counsel

APPENDIX

CASE TIMELINE

10/1/2010	Health Law Judge (HLJ) rules that the two-year validity period on Swedish's Issaquah CN expires 10/1/12. AR-I 85-86.
5/29/2012	Swedish applies for a six-month extension of the validity period beyond 10/1/12. AR-I 882-900.
	Swedish applies for site-change from Issaquah to Redmond. AR-II 756-97.
8/30/12	Department denies validity period extension beyond 10/1/12, for Swedish's lack of progress toward commencing the project. AR-I 961-63. Swedish requests hearing to contest denial. AR-I 1-36.
9/19/12	With 12 days remaining, Swedish requests the HLJ to toll the validity period. AR-I 68-69.
10/1/12	Two-year CN validity period expires.
10/22/12	Department denies site-change amendment because the validity period had expired on 10/1/12. AR-II 1009-14. Swedish requests hearing to contest denial.
1/9/13	HLJ rules that, if he decides to deny the validity-period extension, Swedish will have 12 days in which to commence the Issaquah project. AR-I 354-61.
3/27/13	HLJ denies extension of validity period beyond 10/1/12, for Swedish's lack of progress toward commencement. AR-I 696-705. (Judicial Appeal # 1)
	Swedish elects not to commence the Issaquah project 12 days after the 3/27/13 order, as would have been allowed under the 1/9/13 order.
	Instead, Swedish continues to pursue site-change amendment on expired CN.
5/15/13	In validity period case, superior court denies Swedish's motion to toll validity period beyond October 1, 2012, to allow Swedish additional time to pursue site-change amendment. CP 128 -129. Denial not appealed by Swedish.
7/1/13	HLJ denies site-change amendment because validity period expired on 10/1/12 before amendment could be approved by the Program on 10/22/12. HLJ declines to extend validity period to allow Swedish extra time to gain approval of the site change. AR-II 748-55. (Judicial Appeal # 2)

PROOF OF SERVICE

I certify that I served a copy of this document on all parties or their
counsel of record on the date below as follows:

Gregory A. McBroom
Livengood, Fitzgerald & Alskog, PLLC
121 3rd Avenue, P.O. Box 908
Kirkland, Washington 98083
Attorney for King County Public Hospital
District No. 2 d/b/a Evergreen Health
mcbroom@lfa-law.com

- U.S. Mail Postage Prepaid
- ABC/Legal Messenger
- Electronic Service Agreement
- State Campus Delivery
- Hand delivered by

Roger L. Hillman
Garvey Schubert Barer
1191 2nd Avenue, Suite 1800
Seattle, Washington 98101
Attorney for Eastside Endoscopy Center, LLC
RHillman@gsblaw.com
PYurko@gsblaw.com

- U.S. Mail Postage Prepaid
- ABC/Legal Messenger
- Electronic Service Agreement
- State Campus Delivery
- Hand delivered by _____

Brian W. Grimm
Perkins Coie LLP
1201 Third Ave., Ste 4900
Seattle, Washington 98101-3099
Attorneys for Petitioner,
Swedish Health Services
bgrimm@perkinscoie.com

- U.S. Mail Postage Prepaid
- ABC/Legal Messenger
- Electronic Service Agreement
- State Campus Delivery
- Hand delivered by _____

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 20th day of March, 2014, at Olympia, Washington.



ANGIE L. SMITH-BABBIT, ACP
Legal Assistant