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No. 86796-8

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

SKAGIT COUNTY PUBLIC HOSPITAL DISTRICT NO. 304, dba
UNITED GENERAL HOSPITAL,

Respondent,

v.

SKAGIT COUNTY PUBLIC HOSPITAL DISTRICT NO. 1, dba
SKAGIT VALLEY HOSPITAL,

Appellant.

STATEMENT OF GROUNDS FOR DIRECT REVIEW

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ORIGINAL

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INTRODUCTION

This appeal presents a question of first impression: may a Superior Court Judge issue a writ of prohibition to prevent one public hospital district from operating a clinic in a neighboring public hospital district? Snohomish County Superior Court Judge Ronald Castleberry concluded that Skagit Valley Hospital could not compete in United General Hospital's district without permission.

The law is that one hospital district cannot invade another hospital district's geographic boundaries without first obtaining permission or consent and United has not granted such permission or consent.

(Conclusion of Law ¶ 2.9; Attached as Appendix A). Judge Castleberry issued a writ, "prohibiting Skagit Valley Hospital District from operating health care facilities or providing health care services within the geographic boundaries of the United General Hospital District." (Conclusion of Law ¶ 2.11).

Skagit County Public Hospital District No. 1 (Skagit Valley Hospital) seeks direct review in the Supreme Court under RAP 4.2(a)(4). The authority of public hospital districts to compete wherever appropriate "is a fundamental and urgent issue of broad public import which requires prompt and ultimate determination." RAP 4.2(a)(4). Skagit Valley's appeal provides the Court with an

unqualified opportunity to define both the powers and duties of public hospital districts under RCW Ch. 70.44, and the limits of a Superior Court's authority to prohibit competition. No opinion from this Court has discussed these issues.

I. Nature of the Case and Decision.

This controversy involves two public hospital districts. Appellant Skagit Valley Public Hospital District No. 1 owns and operates Skagit Valley Hospital in Mount Vernon, Washington. District 1 encompasses most of Mount Vernon and areas southwest of the city of Burlington. (Finding of Fact ¶ 1.1; Appendix A).

Respondent Skagit County Public Hospital District No. 304 owns and operates United General Hospital in Sedro Woolley, Washington. District 304 includes Sedro Woolley, Burlington, areas west to and including the towns of Bayview, Samish Island, Bow and Alger; the eastern portion of Mount Vernon; and the communities of Lyman, Hamilton, Concrete, Marblemount, and Rockport. (Finding of Fact ¶ 1.2; Appendix A).

A. The Merger Of Skagit Valley Medical Center Into Skagit Valley Hospital

Skagit Valley and United General's dispute is over one office of the Skagit Valley Medical Center, a multi-specialty physician

group with offices throughout Skagit County and its main facility next to Skagit Valley Hospital. In 2006, the Medical Center decided to consolidate its operations in Sedro Woolley by building one office for its employees there. As Dr. John Bond, President of the Medical Center, stated,

to provide adequate practice space for the seven physicians and subsequent recruits and to meet the anticipated future community need for medical services provided by these physicians, in 2006 SVMC made the decision to invest in a medical office condominium unit (hereinafter the "Pavilion") situated directly across from UGH [United General Hospital]. UGH was an active supporter of SVMC's efforts to bring these new specialists into the area. SVMC financed acquisition and build out of the Unit 2 of the Pavilion through a multi-million dollar loan.

(Bond Dec. ¶ 5) (Attached as Appendix D).

The Pavilion, a condominium medical office building, sits on land that United General owns, and in March 31, 2006, United General signed a 99-year lease with a developer who built the Pavilion. By purchasing Unit 2, the Medical Center owned and operated a medical facility within United General's boundaries, supplementing its facilities within Skagit Valley Hospital's boundaries.

In 2009, the Medical Center began negotiations to sell its entire practice to Skagit Valley Hospital. (Bond Dec. ¶ 7) In early

2010, the parties reached a two-step agreement to merge the Medical Center into the Hospital. Both Skagit Valley Hospital and the Medical Center sought United General's cooperation before the merger took place. First, beginning in 2009 and culminating on February 25, 2010, officials from Skagit Valley Hospital met with United General's staff and Board of Commissioners to explain the purchase and to assure that the Medical Clinic in Sedro Woolley will operate as usual. (Davidson Dec. ¶¶ 2, 4). Skagit Valley Hospital officials answered all questions the Board had about the proposed merger.

Second, on June 14, 2010, the Medical Center offered United General the option to purchase Unit 2 of the Pavilion. As Dr. Bond stated,

on or about June 14, 2010, I on behalf of SVMC, offered UGH the option to match the price that SVH was willing to pay for condominium Unit 2 at the Pavilion. UGH declined to exercise that right, but did offer to purchase the facility for \$4.305 million, nearly a million dollars less than the amount SVH had agreed to pay.

(Bond Dec. ¶ 8)(Appendix D).

Despite these opportunities, United General refused to cooperate with the merger or provide a reasonable alternative. On May 27, 2010, United General's Board formally opposed the

merger by resolution, claiming that Skagit Valley must have the District's permission. (District 304 Resolution No. 2010-23) (Attached as Appendix E).

In July 2010, Skagit Valley Hospital purchased the assets of Skagit Valley Medical Center and took over its operations. (4/30/10 Integration Agreement; Exhibit A to Reed Dec.). The Medical Center physicians became Hospital employees, and the Hospital leased all Medical Center clinics, including Unit 2 of the Pavilion. Final merger of the entities will occur in 2012. Although United General terminated the hospital privileges of all Skagit Valley employees, the parties resolved the doctors' claims and reinstated the privileges. Only the dispute between the Hospitals remains.

B. United General Hospital Obtains A Writ Of Prohibition

On April 29, 2011, a year after the merger began, United General filed its complaint against Skagit Valley Hospital for declaratory judgment, writ of prohibition, and injunctive relief. United General then sought a show cause hearing, requesting the Superior Court to issue a writ of prohibition.

On September 12, 2011, visiting Snohomish Superior Court Judge Ronald Castleberry granted the writ. Judge Castleberry made two rulings that are central to this appeal. First, because

United General could not prove harm from the merger, it could not obtain an injunction.

In this case it may be argued that one should seek the remedy of injunctive relief. The problem with that approach is that the defendant, Skagit Valley, vehemently argues at this hearing and in its memorandum, that there is no harm, there is no detriment, and none can be established. And so if I were to deny the writ of prohibition and say, well, you have available to you the remedy of injunctive relief, it's a vicious circle because then when the injunctive relief is sought, the defendant turns around and says, well, there is no harm. That's what this hearing is all about. You can't establish harm. If you can't establish harm, you can't get an injunction. And if they can't get in the injunction, then there is no other plain, adequate remedy available to them.

(9/12/11 Transcript at 7; Attached as Appendix B).

Second, the court ruled that Skagit Valley Hospital could not own or operate a medical facility in United General's territory without permission.

To allow one district to operate in another district without an agreement would vitiate the entire purpose of the statute creating the districts...It would essentially mean that one district could openly compete with another district within its boundaries. And that might be very well and good if these were private corporations in which competition is encouraged. But in terms of public hospital districts, an entirely different approach has been taken by the legislature.

(9/12/11 Transcript at 12-13).

On November 9, 2011, the court entered Findings of Facts and Conclusions of Law. (Appendix A). Skagit Valley Hospital filed a timely notice of appeal and now seeks direct review in the Supreme Court.

II. Issues Presented For Review.

Skagit Valley's appeal presents two issues:

A. "Prohibition is a drastic remedy and may only be issued where (1) a state actor is about to act in excess of its jurisdiction and (2) the petitioner does not have a plain, speedy and adequate legal remedy." Brower v. Charles, 82 Wn. App. 53, 57, 914 P.2d 1202 (1996). On the second prong, the trial court concluded that because United General Hospital could not prove harm from Skagit Valley's actions, it could not obtain an injunction. (9/12/2011 Transcript at 7). Does United General's failure to provide facts sufficient for an injunction mean that it does not have a plain, speedy and adequate legal remedy?

B. Under RCW 70.44.060(3), a public hospital district may "provide hospital and other health care services for residents of said district by facilities located outside the boundaries of said district, by contract or in any other manner said commissioners may deem expedient or necessary under the existing conditions." Citing

a 1988 Attorney General's Opinion, the trial court concluded that Skagit Valley may not operate a health clinic inside United General's boundaries without permission. (Conclusion of Law ¶ 2.8) (Appendix A); AGO 1988 No. 15 (Attached as Appendix C). Did the trial court err by requiring Skagit Valley Hospital to obtain United General's permission before exercising its powers under RCW 70.44.060(3)?

III. Grounds for Direct Review.

On its own, a writ of prohibition is an unusual ruling. But a writ of prohibition preventing one public hospital from competing with another is unique in Washington caselaw. Direct Supreme Court review exists for cases that will define the law in areas currently undeveloped. Cf. Rental Housing Ass'n of Puget Sound v. City of Des Moines, 165 Wn.2d 525, 535, 199 P.3d 393 (2009) ("This case presents our first opportunity to address RCW 42.56.550(6)"). The Court should accept direct review of this opportunity to address RCW 70.44.060 – the powers and duties of public hospital districts.

A. The Trial Court Erred In Granting A Writ Of Prohibition

Skagit Valley Hospital seeks direct review on two issues, one procedural, one substantive. The procedural issue is whether

a writ of prohibition is appropriate when a party could apply for, but perhaps not win, an injunction. Under established caselaw, a court may issue a writ of prohibition in rare circumstances.

Interpreting statutes, we have long characterized the issuance of a writ of prohibition as a drastic measure, one to be used only when two factors coincide: (1) Absence or excess of jurisdiction, and (2) the absence of a plain, speedy, and adequate remedy in the course of legal procedure. The absence of either one precludes the issuance of the writ.

Kreidler v. Eikenberry, 111 Wn.2d 828, 838, 766 P.2d 438 (1989)
(citation omitted).

The trial court granted a writ of prohibition because it believed United General would not win an injunction. The court's ruling transforms a writ of prohibition into an injunction of last resort against governmental entities. If litigants believe an agency, or in this case, a municipal corporation, has acted illegally, they can seek a writ even though the Superior Court has subject matter and personal jurisdiction to issue an injunction. If litigants suffered harm, then the court may issue an injunction. If litigants have not suffered harm, under the trial court's ruling, they may still obtain a writ by proving the entity acted without jurisdiction. In essence, the two requirements for a writ collapse into one.

Put differently, if United General had suffered harm from this merger, would it still qualify for a writ of prohibition?

The trial court erred by equating the availability of an injunction with the likelihood of winning one.

A remedy is not inadequate merely because it is attended with delay, expense, annoyance, or even some hardship. There must be something in the nature of the action that makes it apparent that the rights of the litigants will not be protected or full redress will not be afforded without the writ.

City of Kirkland v. Ellis 82 Wn. App. 819, 827-828, 920 P.2d 206 (1996). Injunctive relief fully protects United General's rights and would give full redress to any injuries it *proves*. The fact that obtaining an injunction may be difficult does not eliminate it as a remedy.

Twenty two years ago, this Court last examined the adequacy of a legal remedy in Kreidler v. Eikenberry, 111 Wn.2d 828, 839, 766 P.2d 438 (1989) ("the Superior Court had jurisdiction to hear the ballot title challenge, and the appellants had an adequate remedy in the course of legal procedure"). Given the trial court's legal error, and the lack of recent Supreme Court precedent, the Court should accept direct review of the adequacy of injunctive relief.

B. The Right of Public Hospitals To Compete Is A Fundamental And Urgent Issue of Broad Public Import

The substantive controversy in this appeal is whether one public hospital may compete in another public hospital's district. Under RCW 70.44.060(3), a public hospital may operate medical facilities and provide health care services outside its taxing boundaries. First, the Legislature authorized public hospitals,

to provide hospital and other health care services for residents of said district by *facilities located outside the boundaries of said district*, by contract or in any other manner said commissioners may deem expedient or necessary under the existing conditions; and said hospital district shall have the power to contract with other communities, corporations, or individuals for the services provided by said hospital district.

RCW 70.44.060(3) (emphasis added).

Second, the Legislature allowed public hospitals to

furnish proper and adequate services to *all persons not residents of said district* at such reasonable and fair compensation as may be considered proper: PROVIDED, That it must at all times make adequate provision for the needs of the district and residents of said district shall have prior rights to the available hospital and other health care facilities of said district, at rates set by the district commissioners.

RCW 70.44.060(3) (emphasis added). Therefore, a public hospital may own facilities outside the district's boundaries and provide services to both residents and non-residents.

The trial court acknowledged that "the statute does not expressly prohibit a district from operating within the borders of another hospital district without first obtaining the permission from that other hospital district so to operate." (9/12/11 Transcript at 10). But the court implied this restriction based on a 1988 Attorney General's Opinion. Why must one district obtain another district's permission?

There cannot be two municipal corporations exercising the same functions in the same territory at the same time. McQuillan states the purpose for this general rule:

This rule does not rest on any theory of constitutional limitation, but instead on the practical consideration that intolerable confusion instead of good government would obtain in a territory in which two municipal corporations of like kind and powers attempted to function coincidentally.

2 E. McQuillan, at § 7.08 (footnote omitted).

(1988 AGO No. 15) (Attached as Appendix C).

This reasoning has multiple flaws. First, Attorney General opinions are not binding on questions of statutory interpretation.

"This court gives little deference to attorney general opinions on issues of statutory construction." ATU Legislative Council of Washington State v. State, 145 Wn.2d 544, 554, 40 P.3d 656 (2002). Second, the primary case cited in the Opinion noted that the rule against municipal competition has been "emasculated".

Although this so-called general rule has been virtually emasculated by the case law of this state, it continues to serve as a touchstone in the sense that it expresses a public policy against duplication of public functions, and that such duplication is normally not permissible unless it is provided for in some manner by statute.

Alderwood Water Dist. v. Pope & Talbot, Inc., 62 Wn.2d 319, 321, 382 P.2d 639 (1963).

Third, cases subsequent to the Opinion and Alderwood have rejected this public policy argument. King County Water Dist. No. 75 v. Port of Seattle, 63 Wn. App. 777, 787, 822 P.2d 331 (1992) ("neither the port district statute nor the water district statute contains any express or implied statutory prohibition against overlapping authority to provide water services for the benefit of port-owned property located within a water district").

Fourth, open competition promotes rather than hurts public hospital districts. Public hospitals do not operate in isolation, but rather face increasing competition from public and private hospitals.

For example, both Swedish and Overlake Hospitals have built or will build major health care facilities within King County Public Hospital District No. 2. (Furlong Dec. ¶¶ 2-3). Furthermore, on June 27, 2011 United General announced an alliance with PeaceHealth, an outside provider. (Exhibit A to Supplemental Hillman Dec.). Only public hospitals, under the trial court's ruling, must seek permission to expand into another district. All other providers may expand and consolidate at will.

Rural public hospitals were once the only providers for miles. Now, health care consumers in rural areas may choose from public and private clinics. No public policy is served by limiting public hospital districts solely to facilities within their taxing borders. When an opportunity arises for a public hospital to expand or consolidate, both health care economics and Washington public policy support more efficient, rational operations. The days of "exclusive" territories are gone.

CONCLUSION

Providing effective health care dominates both national and local headlines. The dispute between Skagit Valley Hospital and United General Hospital presents an important piece of that debate. Do public hospital districts have the statutory right to compete

everywhere expedient or necessary, or must they ask permission before expanding into a neighboring district's territory?

Because this case presents a fundamental and urgent issue of broad public import which requires prompt and ultimate determination, Appellant Skagit Valley Hospital respectfully requests this Court to accept direct review.

DATED this 13th day of December, 2011.

BURI FUNSTON MUMFORD, PLLC

By



Philip Buri, WSBA #17637
Attorney for District 1.

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that on the date stated below, I mailed or caused delivery of Statement of Grounds For Direct Review to:

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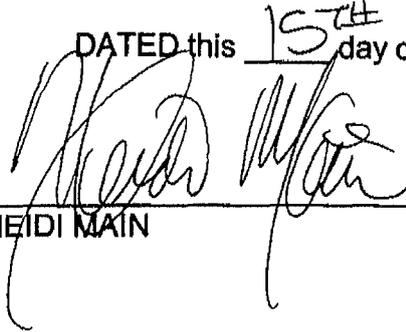
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DATED this 15th day of December, 2011.



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Cc: Philip Buri
Subject: Brief for Filing

Attached you will find the Statement of Grounds for Direct Review. The appendix exceeds 25 pages and will be sent via U.S. Mail today.

Cause no.: 86796-8

Skagit County Public Hospital District No. 304 et al v. Skagit County Public Hospital District No. 1 et al

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December 15, 2011

Supreme Court
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Re: Skagit County Public Hospital District No. 304 et al v. Skagit County
Public Hospital District No. 1 et al
Cause no.: 86796-8

Dear Clerk:

Here you will find two copies of the Appendix for our Statement of Grounds for
Direct Review for the above referenced matter submitted via email on December
15, 2011.

Sincerely,

BURI FUNSTON MUMFORD, PLLC


Heidi Main
Legal Assistant to Philip J. Buri

enclosures

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APPENDIX A

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GARVEY SCHUBERT BARER

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SUPERIOR COURT OF WASHINGTON FOR SKAGIT COUNTY

SKAGIT COUNTY PUBLIC HOSPITAL
DISTRICT NO. 304, dba United General
Hospital,

Plaintiff,

vs.

SKAGIT COUNTY PUBLIC HOSPITAL
DISTRICT NO. 1 and the BOARD OF
COMMISSIONERS THEREOF, dba Skagit
Valley Hospital,

Defendant.

No. 11-2-00816-1
(CONSOLIDATED)

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
JUDGMENT AND STAY

Dr. TEACKLE W. MARTIN, et al.

Plaintiffs,

vs.

SKAGIT COUNTY PUBLIC HOSPITAL
DISTRICT NO. 304 dba UNITED
GENERAL HOSPITAL,

Defendant.

This matter having come on for hearing and the Court having considered the pleadings, memoranda and declarations on file, and having heard argument of counsel, the Court hereby makes the following Findings of Fact, Conclusions of Law and enters the following judgment and stay:

FINDINGS OF FACT, CONCLUSIONS OF LAW,
JUDGMENT AND STAY - 1

AH:Doc No. 628501

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I. FINDINGS OF FACT

1.1 Skagit County Public Hospital District No. 1, dba Skagit Valley Hospital ("SVH"), is a Washington municipal corporation and public hospital district organized under Chapter 70.44 RCW. The jurisdictional boundary of SVH encompasses the majority of the City of Mount Vernon and areas southwest of the City of Burlington.

1.2 Skagit County Public Hospital District No. 304, dba United General Hospital ("United General") is a Washington municipal corporation and public hospital district organized under Chapter 70.44 RCW. The jurisdictional boundary of United General encompasses the Cities of Sedro-Woolley, Burlington, areas west to and including the towns Bayview, Samish Island, Bow and Alger; and areas including an eastern portion of the City of Mount Vernon and extending east to include the townships of Lyman, Hamilton, Concrete, Marblemount, and Rockport.

1.3 United General owns certain real property, located within its jurisdictional boundaries, with a physical address of 1990 Hospital Drive, Sedro Woolley, WA 98284. Subject to a long-term ground lease, a commercial office building (the "Pavilion") has been constructed on that property. The Pavilion was developed as a condominium, and Skagit Valley Medical Center, Inc., P.S., a multi-specialty physician group acquired Unit 2 of the Pavilion in October 2007.

1.4 Pursuant to an "Integration Agreement" dated April 30, 2010 (the "Integration Agreement") SVH has entered into arrangements with Skagit Valley Medical Center to acquire all or substantially all of the medical group's assets and hire most of its employees, including physicians. The assets SVH acquired in the merger included Pavilion Condominium Unit 2.

1.5 On May 27, 2010, the Board of Commissioners of United General adopted Resolution No. 2010-23 which specifically denied SVH's request to provide healthcare

1 services inside United General's jurisdictional boundaries following the SVH/SVMC
2 merger.

3 1.6 On July 1, 2010 SVH entered into contracts of employment whereby it is
4 now employing four full time and three part time health care providers who were formerly
5 employed by Skagit Valley Medical Center at Pavilion Unit 2. In the scope and course of
6 their current employment by SVH, those health care providers have continued to provide
7 health care services at Pavilion Condominium Unit 2.

8 1.7 SVH has stated that it intends to appeal this Court's judgment, set forth
9 below.

10 1.8 Implementation of this Court's judgment prior to resolution of such an
11 appeal, if any, would disrupt the health care provided to patients by the health care
12 providers at Pavilion Unit 2.

13 II. CONCLUSIONS OF LAW

14 2.1 Two conditions must be met to grant the writ of prohibition; (1) the party to
15 whom the writ is directed must be acting without or in excess of its jurisdiction; and (2)
16 there must be an absence of plain, speedy, and adequate remedy in the course of legal
17 procedure. The writ may be issued where it appears the person to whom it is directed is
18 about to act in excess of his or her jurisdiction. See, *Brower v. Charles*, 82 Wn. App. 53,
19 914 P.2d 1202 (1996).

20 2.2 The Court concludes that the second prong of the requirements for a writ of
21 prohibition has been met, i.e., there is no plain, speedy and adequate remedy available in
22 the course of legal procedure.

23 2.3 The Pavilion is a health care facility within the definition of the statute. (Ch.
24 70.44 RCW).

25
26

1 2.4 The health care providers employed by SVH who work at the Pavilion,
2 either on a full-time or part-time basis, are providing health care services within the United
3 General hospital district boundaries and accordingly, SVH is providing health care services
4 with the United General district boundaries.

5 2.5 Both SVH and United are hospital districts that are established pursuant to
6 RCW 7.44. Each is a municipal corporation. Each are established as rural hospital districts
7 with defined geographic boundaries. Each has the power to maintain health care facilities.
8 Each has the power to provide health care services. And within their respective districts as
9 municipal corporations, they are able to levy taxes, exercise power of eminent domain,
10 they are managed by a board of commissioners that are elected by the residents of the
11 respective districts.
12

13 2.6 Public Hospital districts are in a different category than private corporations.
14 The law is universal that municipal corporations may exercise only those powers which are
15 expressly granted or implied in the enabling statutes.
16

17 2.7 Reviewing the statute creating public hospital districts in its entirety, this
18 Court concludes that one rural hospital district may not invade the geographic limits of
19 another hospital district, by providing hospital or other healthcare services inside the
20 boundaries of the invaded district, without first obtaining the other district's permission
21 and/or consent.
22

23 2.8 To allow one district to operate in another district without such an agreement
24 would vitiate the entire purpose of the statute creating public hospital district, for the
25
26

1 reasons that are stated in AGO 1988 No. 15, as well as in the *Alderwood Water District vs.*
2 *Pope & Talbot*, 62 Wn. 2d 319, 382 P. 2d 639 (1963).

3 2.9 The law is that one hospital district cannot invade another hospital district's
4 geographic boundaries without first obtaining permission or consent and United has not
5 granted such permission or consent.

6 2.10 The Court hereby adopts and incorporates by reference the analysis and
7 conclusions from the Oral Opinion of the Court, dated September 12, 2011, as set forth in
8 Reporter's Transcript of same attached hereto as Exhibit "A."

9 2.11 Based upon the foregoing Findings of Fact and Conclusions of Law, the
10 Court will grant the Writ of Prohibition prohibiting Skagit Valley Hospital District from
11 operating health care facilities or providing health care services within the geographic
12 boundaries of the United General Hospital District.
13

14 III. JUDGMENT

15 IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS: Judgment be
16 and is hereby entered in favor of United General and a Writ of Prohibition is to be issued
17 directed to Defendant, Skagit Valley Hospital and said Defendant Skagit Valley Hospital is
18 hereby ORDERED to cease, desist and refrain from operating health care facilities or
19 providing health care services within the legal boundaries of Plaintiff United General,
20 including but not limited to providing health care services through its employed health care
21 providers at the premises referenced to herein as the Pavilion (1990 Hospital Drive, Sedro-
22 Woolley, WA).
23

24 IV. STAY

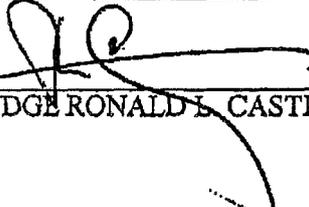
25 IT IS FURTHER ORDERED that the effective date of this Writ shall be stayed until
26 such time as the Court of Appeals (or the Supreme Court should direct review be sought

1 and granted) issues its decision and mandate (or until such other time as may be directed by
2 the Appellate Court), or until the expiration of the time for appeal, if no timely appeal is
3 taken.

4 IT IS FURTHER ORDERED that while the stay is in effect, there shall be no
5 further expansion of Defendant Skagit Valley Hospital's health care services or operations
6 -- either in terms of the number of health care providers, or the type, quantity or quality of
7 health care services provided -- within the boundaries of United General's hospital district.
8 Further, to the extent that any of Skagit Valley Hospital's health care health care providers
9 who are currently providing services within the boundaries of United General (set forth on
10 Exhibit "B") should cease to provide such services (through attrition, relocation or similar
11 change of practice), those health care personnel shall not be replaced (temporary coverage
12 for absences due to illness, bereavement, maternity/paternity leave, professional education
13 or vacation will be allowed).

14 The above is a Final Judgment on all claims of United General as against SVH in
15 the within action pursuant to RAP 2.2 (a) (1).

16 DONE IN OPEN COURT this 9 day of Nov, 2011.

17 
18 JUDGE RONALD L. CASTLEBERRY

19
20 Presented by:
21 ANDERSON HUNTER LAW FIRM P.S.

22 By 
23 Christopher J. Knapp, WSBA #19954
24 Attorneys for Plaintiff, United General Hospital

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Approved as to form, notice of presentation waived:

GARVEY SCHUBERT BARER

By 
Roger L. Hillman, WSBA #18643
Attorneys for Defendant, Skagit Valley Hospital

FINDINGS OF FACT, CONCLUSIONS OF LAW,
JUDGMENT AND STAY - 7
AH:Doc No. 628501

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APPENDIX B

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SKAGIT

SKAGIT COUNTY PUBLIC)
HOSPITAL DISTRICT 304,)
)
Plaintiff,)
)
vs.)
)
SKAGIT COUNTY PUBLIC)
HOSPITAL DISTRICT 1, et al.,)
)
Defendants.)

Cause No. 11-2-00816-1
REPORTER'S TRANSCRIPT

ORAL OPINION OF THE COURT

THE HONORABLE RONALD L. CASTLEBERRY
Department No. 9
Snohomish County Courthouse
September 12, 2011

A P P E A R A N C E S

For the Plaintiff: CHRISTOPHER KNAPP
DOUGLAS FERGUSON
Attorneys at Law

For the Defendants: ROGER HILLMAN
BRAD FURLONG
Attorneys at Law

For the Doctors: MICHAEL SUBIT
Attorney at Law

1 EVERETT, WASHINGTON, MONDAY, SEPTEMBER 12, 2011

2 AFTERNOON SESSION

3 --oo0oo--

4
5 THE COURT: Let's proceed on the other matter. 01:45

6 All right. Good afternoon. We're ready to proceed.

7 First, I want to thank all counsel for their professional
8 manner in which all of you have approached this case, not
9 only in terms, at least that I'm aware of, in terms of
10 your conduct towards each other, but towards the court. I 01:47
11 also want to commend you for the briefing and the
12 arguments that were provided to the court. I found them
13 to be most interesting and insightful.

14 Obviously I've had a chance to review all of the
15 materials, the memorandums, and the records and files 01:47
16 herein. For convenience, I'm going to refer to the Skagit
17 County Public Hospital District No. 304 as the United
18 General Hospital, and I'm going to refer to Skagit County
19 Public Hospital District No. 1 as Skagit Valley Hospital.

20 Skagit Valley operates its hospital district primarily 01:47
21 in the Mount Vernon area whereas the United General
22 Hospital operates primarily in Sedro Woolley. Both are
23 established pursuant to the statute as rural health
24 districts.

25 Obviously the memorandums that have been filed go into 01:48

1 an extensive recitation of the history of the hospital
2 districts and their involvement with the entity known as
3 Skagit Valley Medical Center. I'm not going to go into a
4 detailed review of that, but obviously for purposes of
5 adopting any sort of findings of facts or conclusions of
6 law, I would obviously adopt appropriate facts from those
7 memorandums.

01:49

8 Suffice it to say, sometime in July Skagit Valley
9 Hospital acquired the assets of an existing professional
10 corporation referred to as the Skagit Valley Medical
11 Center. The Skagit Valley Medical Center had a number of
12 different health care providers that historically had been
13 having privileges at both hospitals and they had referred
14 patients to both hospitals. As a result of acquisition,
15 those health care providers of the Skagit Valley Medical
16 Center became employees of the Skagit Valley Hospital.

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17 Skagit Valley also acquired the leases or subleases of
18 the various clinics that had been previously operated by
19 the medical center. One of those clinics, and only one,
20 is located apparently across the street from the United
21 General Hospital and is obviously within the United
22 General Hospital District.

01:50

23 I've been informed that approximately four of the
24 health care providers who work at that clinic do so on a
25 full-time basis and there is approximately three others

01:51

1 who work there on a part-time basis. The clinic has in
2 these proceedings been referred to as the Pavilion, and I
3 may use that term throughout the oral decision.

4 United General asserts that now that these health care
5 providers are employees of Skagit Valley, the referrals 01:51
6 from those health care providers to United General have
7 declined. And, furthermore, United General asserts that
8 these health care providers will be loyal to Skagit Valley
9 to the detriment of United General. Obviously United
10 General asserts that this is all going to be harmful and 01:52
11 detrimental to United General.

12 Skagit Valley, on the other hand, argues that this
13 arrangement of these health care providers is just a
14 continuation of the relationship that had existed while
15 these health care providers were employees of the medical 01:52
16 center and that nothing has changed.

17 Furthermore, they assert that any drop in the hospital
18 referrals is a product of independent causes and in fact
19 their hospital, Skagit Valley, has suffered a greater
20 decline in referrals for that same period of time as has 01:53
21 been suffered by United General.

22 Quite frankly, that's about the only disputed fact
23 there is in this whole case of significance. Skagit
24 Valley, and the physicians affected, argue that the
25 granting of the writ of prohibition will ultimately harm 01:54

1 the residents and of the United General district. Those
2 people will not receive the same degree of care that they
3 have historically received. Quite frankly, if this were a
4 motion for injunctive relief, the court would be inclined
5 to deny the motion until at least a full hearing could be
6 had on those issues. As I say, they're hotly disputed and
7 this is not the forum in which I can decide as a matter of
8 law whether United General is correct or Skagit Valley is
9 correct.

01:54

10 However, this is a motion on a much more narrow basis.
11 United General seeks a writ of prohibition on the basis
12 that Skagit Valley cannot legally provide medical services
13 or operate health care facilities in United General's
14 health care district without first obtaining the consent
15 of United General.

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16 The answer to that issue turns on an issue of law and
17 not on equities, not on a balancing of harm. Both sides
18 have cited the case of *Spokane County v. AFSCE*, found at
19 76 Wn.App. 765, and it provides a clear history and
20 definition of the writ of prohibition. Quoting from
21 Page 768, without using the cites, it says as follows:
22 "The common law writ of prohibition is of ancient origin.
23 The writ was one of the extraordinary remedies, a coercive
24 writ issued by a court of law rather than equity. The
25 purpose of the common law writ is to restrain the exercise

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01:57

1 of unauthorized judicial or quasi judicial power. It does
2 not apply to acts of an executive, administrative, or
3 legislative nature.

4 "Washington has also enacted a statutory writ of
5 prohibition, RCW 7.16.290. A court's power under the 01:57
6 statutory writ are broader than under the common law writ.
7 Under the statutory writ, the actions of any tribunal,
8 corporation, board or person, whether they are acting in
9 judicial, legislative, executive or administrative
10 capacity, may be arrested, if acting in excess of their 01:58
11 power. Two conditions must be met to grant the writ; (1)
12 the party to whom the writ is directed must be acting
13 without or in excess of its jurisdiction; and (2) there
14 must be an absence of plain, speedy, and adequate remedy
15 in the course of legal procedure. The writ may be issued 01:59
16 where it appears the person to whom it is directed is
17 about to act in excess of his or her jurisdiction."

18 More or less the same thing is said in the case of
19 *Brower v. Charles*, found at 82 Wn.App. 53. At Page 57
20 that court stated: "Prohibition is a drastic remedy and 01:59
21 may be issued only where (1) a state actor is about to act
22 in excess of its jurisdiction and (2) the petitioner does
23 not have a plain, speedy and adequate legal remedy."

24 I want to address the second prong first, and that is
25 the petitioner does not have a plain, speedy and adequate 02:00

1 remedy. The cases are clear that if there is another
2 remedy available, that should first be used rather than
3 the writ of prohibition.

4 In this case it may be argued that one should seek the
5 remedy of injunctive relief. The problem with that 02:00
6 approach is that the defendant, Skagit Valley, vehemently
7 argues at this hearing and in its memorandum, that there
8 is no harm, there is no detriment, and none can be
9 established. And so if I were to deny the writ of
10 prohibition and say, well, you have available to you the 02:01
11 remedy of injunctive relief, it's a vicious circle because
12 then when the injunctive relief is sought, the defendant
13 turns around and says, well, there is no harm. That's
14 what this hearing is all about. You can't establish harm.
15 If you can't establish harm, you can't get injunction. 02:01
16 And if they can't get in the injunction, then there is no
17 other plain, adequate remedy available to them. So it
18 seems to me the second prong of the requirement has been
19 met.

20 The more fundamental vexing issue is whether Skagit 02:02
21 Valley is acting in excess of its authority in operating
22 the clinic at the Pavilion and using health care providers
23 who are its employees located at the Pavilion, obviously
24 both of those within the health care district of United
25 General. 02:03

1 As indicated in terms of the argument of counsel, I
2 think the first question that needs to be answered is, is
3 the Pavilion a health care facility and is the activity of
4 the health care providers therein providing health care
5 services? If they don't meet this definition, obviously
6 game over, no writ of prohibition can issue. But it does
7 appear to this court that the Pavilion is a health care
8 facility within the definition of the statute. It is even
9 more certain that the health care providers employed by
10 Skagit Valley who work at the Pavilion, either on a
11 full-time or part-time basis, are providing health care
12 services within the United General Hospital District.

02:03

02:04

13 So then it comes down to the question of can they
14 operate within that district without the permission of
15 United General? Both Skagit Valley and United are
16 hospital districts that are established pursuant to RCW
17 7.44. Each are municipal corporations. Each are
18 established as rural health care districts with defined
19 geographic boundaries. Each have the power to maintain
20 health care facilities. Each have the power to provide
21 health care services. And within their respective
22 districts as municipal corporations, they are able to levy
23 taxes, exercise power of eminent domain, they're managed
24 by a board of commissioners that are elected by the
25 residents of the respective districts.

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1 Obviously they are in a different category than simply
2 private corporations. They have the power, as I've said,
3 to levy taxes, eminent domain, election by the people.
4 And as such, the law is universal that municipal
5 corporations may exercise only those powers which are
6 expressly granted or implied in the enabling statutes.

02:07

7 Now, certainly within their district, as I've said, the
8 health care provider is able to operate facilities,
9 provide health care services, et cetera. Can they operate
10 outside of their district? Well, as stated in the
11 attorney general's opinion that has been cited by all
12 parties, they may operate outside of their district. RCW
13 70.44.060 gives the authority to hospital districts to
14 operate outside its boundaries when "necessary to provide
15 hospital and other health care services for the residents
16 of that district."

02:08

02:08

17 It then goes on to say: "It may, if not to the
18 detriment of its own district residents, provide health
19 care services to other residents outside of its district."

20 I agree with that opinion, that subject to the
21 conditions set forth in the statute, RCW 70.44, does give
22 authority to hospital districts to authorize hospital
23 facilities and provide health care outside of its
24 district.

02:09

25 I agree with the argument that has been put forth by

02:09

1 counsel representing the Skagit Valley that the statute
2 does not expressly prohibit a district from operating
3 within the borders of another hospital district without
4 first obtaining the permission from that other hospital
5 district to so operate.

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6 However, in stating that, that does not end the
7 analysis. As the attorneys know, the AG opinion that has
8 been cited goes on to conclude that this limitation to
9 operate in another hospital district's boundaries comes
10 not from RCW 70.44.060, but rather from the general rule
11 that there cannot be two municipal corporations exercising
12 the same functions or services in the same territory at
13 the same time.

02:10

14 The attorney general's opinion relies heavily upon the
15 *Alderwood Water District* case. Like hospital districts,
16 water districts have the authority, pursuant to the
17 applicable statute, to provide water services outside of
18 their districts. But the real question in that case came
19 as to whether the water district could invade the
20 territory of another water district to serve the residents
21 of that other water district. As is the situation with
22 hospital districts, there was no explicit or stated
23 geographic limitations on the water district's invading
24 the district of another water district.

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25 Nevertheless, the Supreme Court found that a limitation

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1 of providing services in another district was implicit in
2 the statute. I'll quote extensively from the Alderwood
3 case starting at Page 319. "The question presented is
4 whether a municipal water district of this state can
5 directly furnish water to the inhabitants of an area
6 located outside the boundaries of such district but within
7 the boundaries of another water district.

02:13

8 "An easy solution to that question could be formulated
9 by merely citing, out of context, some language from a
10 statute and then to proceeding to consider that language
11 as though it existed in the vacuum. For example, a
12 portion of RCW 57.08.050 could be cited and emphasized. A
13 water district may provide water services to property
14 owners outside the limits of the water district. After
15 parroting the above-quoted language, we could mechanically
16 conclude that water districts have the authority to
17 distribute water to individuals outside the boundaries or
18 the geographic limits of the district; and that, since
19 there is no geographic or other, limitations expressly
20 imposed upon that authority, one water district could
21 supply water to property owners or persons within the
22 boundaries of another district. However, such a
23 conclusion would sanction the rating of one water district
24 by another, which potentially might well lead to an
25 orderly and economically well-planned development and

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1 utilization of public water service in rapidly expanding
2 residential areas."

3 The court went on at Page 323 to state: "It seems
4 obvious, after considering the RCW in its entirety, that
5 the legislative purpose in permitting water districts to
6 supply water outside of their district was meant to extend
7 water services only to those individuals who were not
8 within the boundaries of any other water district."

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9 In other words, they looked to the statute as a whole
10 to determine the purpose behind it.

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11 In my review of the health care statute creating the
12 hospital districts in its entirety, this court concludes
13 that one rural hospital district may not invade the
14 geographic limits of another hospital district without
15 first obtaining their permission and/or consent.

02:16

16 To allow one district to operate in another district
17 without such an agreement would vitiate the entire purpose
18 of the statute creating the districts, and it's for the
19 same reasons that are stated in the attorney general's
20 opinion, as well as in the *Alderwood Water District* case.
21 It would essentially mean that one district could openly
22 compete with another district within its boundaries. And
23 that might be very well and good if these were private
24 corporations in which competition is encouraged. But in
25 terms of public hospital districts, an entirely different

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1 approach has been taken by the legislature. They've
2 established these districts with immense power, the power
3 to tax, the power to issue bonds, the power of elections.

4 In addition, if one looks at the legislative history
5 behind the RCW 7.44.250, which deals with the ability to 02:18
6 enter into interlocutory agreements without there being a
7 violation of the antitrust law, both the Senate bill and
8 the House bill had the following language in terms of
9 reports of the committees.

10 "Concerns have been expressed that public hospital 02:18
11 districts are susceptible to antitrust challenges if they
12 enter into interlocutory agreements. Competition among
13 hospitals, particularly in rural areas, is not
14 cost-effective, practical, or desirable in providing
15 quality health care to people in these areas. It has been 02:19
16 suggested that more interlocutory agreements between
17 public hospital districts would be created if there was a
18 clear statement in a statute encouraging these
19 agreements."

20 It's obvious that if one were to take the approach of 02:19
21 Skagit Valley, that as a matter of law we can operate a
22 health care facility, we can provide health care services
23 in a neighboring hospital district without getting their
24 permission, it would mean that they could in fact invade
25 that district, compete with that district, and at least 02:19

1 it's this court's conclusion that that was not the purpose
2 behind this law.

3 The purpose behind it was to create separate hospital
4 districts, and they can certainly encourage cooperation,
5 they can certainly encourage agreements, but they cannot 02:20
6 invade the other's district. And as I say, to do what
7 Skagit Valley wants to do would essentially mean that they
8 could compete with impunity against United General.

9 Now, I recognize that there may be perfectly valid
10 arguments as to why this very limited encroachment should 02:21
11 be allowed to remain in existence, and that's been a
12 strong argument at least put forth to the court that, you
13 know, we're only doing that which historically has been
14 done. We don't mean to do anything further.

15 Frankly, I hope that both sides would be able to craft 02:21
16 an agreement that would allow this to happen, that would
17 allow it to exist on this limited basis. But, as I
18 indicated at the start of this decision, this decision is
19 not based upon balancing harms, balancing equities. It is
20 based upon an interpretation of the law. And the law is 02:22
21 that one hospital district cannot invade the other
22 hospital district's geographic boundaries without first
23 obtaining permission or consent. And when Skagit Valley
24 embarked upon its plan, it knew that it was engaging in an
25 action that was going to be met with some resistance prior 02:22

1 to going into that plan.

2 Therefore, absent such an agreement, it would be the
3 ruling of the court that the court will grant the writ of
4 prohibition prohibiting Skagit Valley from operating
5 health care facilities or providing health care services 02:23
6 within the geographic limits of the United General
7 Hospital District.

8 As to the doctors' lawsuit, again, for the most part
9 the facts in that case are not in dispute. In it was
10 either May or April, but I believe it was May, United 02:23
11 General voted to terminate the medical staff privileges of
12 approximately 36 health care providers solely because
13 those health care providers had become employees of Skagit
14 Valley Hospital pursuant to this acquisition/merger
15 transaction that has been previously described. 02:24

16 Under that merger/acquisition agreement, Skagit Valley
17 acquired the clinics of Skagit Valley Medical Center.
18 Most of those clinics were located outside of the hospital
19 district of United General. Only one of them was within
20 the geographic boundaries of the hospital district of 02:25
21 United General, and that is the Pavilion. As I've already
22 indicated, there were approximately four full-time health
23 care providers and three part-time health care providers
24 at the Pavilion. But regardless of whether they were
25 within the district or without the district, United 02:25

1 General terminated anyone who was an employee of Skagit
2 Valley. The only reason for the termination was the
3 employment status. In fact, the letter was sent out to
4 all of the health care providers that they could reapply
5 for privileges at United General in the event that these
6 health care providers no longer were employed by another
7 public hospital district.

02:26

8 Many of the affected health care providers have filed
9 affidavits in opposition to their privileges being
10 terminated. One in particular, Dr. Mark, had had
11 privileges at United General Hospital since 1995. At one
12 time he'd been the chief of staff of medicine at United
13 General. His unrebutted testimony is that the criteria of
14 the credentials policy committee was that the only
15 criteria that ever was used in an accreditation decision
16 was that of the competency and the professional conduct of
17 the individual under question. The employer
18 identification of the provider was never listed among the
19 criteria of relevant issues for accreditation.

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20 United General doesn't dispute any of this. Rather,
21 United General asserts that it had the unfettered right to
22 terminate the privileges on the basis of an individual's
23 employment by Skagit Valley and points to the fact that
24 these decisions of accreditation are reviewed on the basis
25 of whether or not the decision was arbitrary and

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1 capricious.

2 The doctors assert that RCW 7.71.030(1) provides a new
3 express statutory remedy for health care providers whose
4 privileges are terminated for reasons other than
5 competence or professional qualification. In its argument
6 before this court, and at Page 3 of its reply memorandum,
7 counsel for the doctors admit that prior to this statute,
8 those deprived of privileges had to meet the arbitrary,
9 capricious test in order to overcome an adverse decision.

02:28

10 As I've said, they assert now, however, the statute
11 changes the game and it gives the doctors a statutory
12 right to sue for decisions that are not made on the basis
13 of competence or professional conduct. It would be a new,
14 independent cause of action that would almost be of strict
15 liability. In other words, if you revoked the privileges
16 of a doctor for anything other than competence or
17 professional conduct, the doctor has a cause of action. I
18 don't interpret the statute that way.

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02:30

19 The court concludes that the statute does not impose
20 any new substantial liability for privileged decisions.
21 The cases cited, *Perry v. Rado* case, 155 Wn.App. 626, and
22 the *Morgan v. PeaceHealth, Inc.*, 101 Wn.App. 750, support
23 the proposition that this statute is one that addresses
24 the limits of the remedy in case of wrongful revocation of
25 privileges. The remedies for wrongful revocation of

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1 privileges or denial of privileges are limited to
2 injunctive relief or lost wages. The statute does not
3 grant a new cause of action or create a new liability.

4 Quoting from *Perry v. Rado* at Page 636: "Dr. Perry
5 challenges the actions of the professional review body of 02:32
6 health care providers at KMC. Further, he concedes that
7 the action was based on matters not related to the
8 competence or professional conduct of a health care
9 provider. Accordingly, his remedy is limited to
10 injunctive relief or damages for lost wages. Dr. Perry 02:32
11 sought damages relating to breach of due process, breach
12 of duties of good faith and fair dealing, breach of
13 contract, breach of fiduciary duties, and declaratory
14 relief. These remedies associated with these causes of
15 action are outside the exclusive list of remedies as set 02:33
16 forth in the statute. Therefore, Dr. Perry cannot
17 establish a claim for these causes of action where relief
18 can be granted. The trial court properly concluded
19 otherwise and dismissed these claims under 12(b)(6)."

20 Under the plaintiff doctors' theory, Dr. Perry would 02:33
21 have been awarded a judgment because he asserted that he
22 was fired not for professional conduct or competency, and
23 under the plaintiff's theory, under 7.71, under strict
24 liability, he would have won. In point of fact, his case
25 was dismissed. He got zip. The statute is clearly one of 02:34

1 limiting of remedies.

2 Nothing in the statute effects the standard of
3 arbitrary and capricious that has been used to overturn an
4 adverse privilege decision. Now, having said that, that
5 doesn't necessarily conclude the case involving the
6 doctors. 02:34

7 I've reviewed carefully the cases that have been cited
8 for the arbitrary, capricious standard. Of interest is
9 the case in 1951 involving the *Group Health v. King County*
10 *Medical Society*. In that case, Group Health was just 02:35
11 getting started and they weren't very popular with the
12 King County Medical Society. As a matter of fact, King
13 County Medical Society excluded any physician or health
14 care provider who was in their view a contract type of
15 physician, and they listed a whole bunch of reasons why 02:35
16 they didn't think they were of equal merit, and they
17 denied their privileges.

18 In fact, when it went up to the Supreme Court, the
19 Supreme Court found that the denial of the privileges of
20 the Group Health providers solely on the basis that they 02:36
21 were practicing contract medicine was unreasonable and
22 arbitrary.

23 Again, I'll quote, this is at Page 669: "Courts will
24 not by injunction interfere with the exercise of
25 discretionary powers conferred by the state upon municipal 02:36

1 corporations acting through their duly pointed officers
2 merely because such action may be unwise or a mistake.

3 "However, where the act of public officials are
4 arbitrary, tyrannical, or predicted upon a fundamentally
5 wrong basis, then courts may interfere to protect the
6 rights of individuals. 02:36

7 "Having regard to the findings previously made, and to
8 the fact that we are concerned with a public hospital, it
9 is our conclusion that the exclusion of appellant
10 physicians from the staff of Renton Hospital upon the sole 02:37
11 grounds that they are practicing contract medicine in
12 substantially the manner now followed by appellants, is
13 unreasonable, arbitrary, capricious, and discriminatory."

14 It seems to this court that as to the practitioners who
15 are employed or work at the clinics outside of United 02:37
16 General's Hospital District, there is no good reason to
17 deny them their credentials or to deny them employment at
18 United General Hospital. It serves no purpose.

19 Now, and as to those individuals, the court would grant
20 a preliminary injunction. However, as to the individuals 02:38
21 who work at the Pavilion, the court will deny the request
22 for a preliminary injunction obviously for the reason that
23 it does make a logical difference, the court having
24 previously concluded that one district cannot work with
25 within the district of another without that district's 02:38

1 consent. The only way you can provide the health care
2 services is obviously through these individuals. To allow
3 these individuals to continue to work at the Pavilion
4 would vitiate the writ of prohibition. Therefore, it is
5 not arbitrary and capricious to make the decision that
6 those employed at the Pavilion will not. I'll deny the
7 injunction.

02:39

8 However, as to those individuals, if they were to
9 relocate their practice outside of the United General
10 Hospital District, or if they were to terminate their
11 relationship with Skagit Valley, there would be no reason
12 to revoke or to deny them their privileges.

02:39

13 So as to the request for preliminary injunction by the
14 doctors, it will be granted as to those doctors who
15 definitely work outside of the district of United General.
16 It will be denied as to those who work within.

02:40

17 That's the summary of the court's oral decision. I
18 expect counsel will write up an appropriate order, and
19 that will be up to you, Mr. Knapp.

20 MR. KNAPP: Yes, Your Honor, I appreciate that. I'll
21 go ahead and order the written transcript because it's
22 obviously a very detailed oral ruling.

02:40

23 THE COURT: I'm sure my court reporter will be happy.
24 Mr. Hillman.

25 MR. HILLMAN: Yes. Can I then assume that the

02:40

1 effective date of your decision with the regard to the
2 writ of prohibition will not be until an order is signed?

3 THE COURT: That's correct. Now, I'm also operating
4 under the premise that at least until I sign that writ of
5 prohibition, nobody's going to do anything. Now, it's 02:41
6 been my impression at least that everyone was operating
7 under some sort of, lack of a better term, "gentlemen's
8 agreement" that we were going to maintain the status quo.
9 And if so, if necessary, I would require the status quo to
10 remain in effect by all parties until such time as the 02:41
11 writ of prohibition is actually signed and entered by the
12 court.

13 MR. HILLMAN: Would Your Honor anticipate that the
14 effective date of the prohibition would then be the date
15 it was signed? The reason I'm asking is we have an in 02:41
16 excess of 10,000 patients whose care is going to be
17 disrupted, and some of whom get care at the Pavilion in
18 specialties not readily available within District 304, and
19 obviously our primary concern is continuity of care for
20 these people to not either have to go to a different 02:42
21 doctor midstream, particularly if they've been cared for
22 for years, or not to have go to Mount Vernon or outside --

23 THE COURT: Let me hear from United General in that
24 regard.

25 MR. FERGUSON: I'm Doug Ferguson, counsel for United 02:42

1 General.

2 The United General decision, at least with regard to
3 the practitioners, was contingent on the court's ruling.
4 So it wouldn't become effective until that date.
5 Certainly we can talk to the client about working it out. 02:42
6 I don't think we want to see --

7 THE COURT: Let me suggest this. In all fairness to
8 everybody, what I would like to see from you is, number
9 one, can we work out an agreement as to how this can be
10 done in an orderly fashion? 02:43

11 Number two, if there is not an agreement, I would like
12 to see from Skagit Valley some sort of proposal, specific
13 proposal in terms of when can this go into effect and be
14 implemented in an orderly fashion. And so I don't want to
15 just off the top of my head say, well, yeah, I'll grant 02:43
16 it, but the devil's in the details.

17 I'm certainly amenable to some orderly transition. But
18 having said that, I don't want to go any further. I mean,
19 if you came back and said, well, you know, it's going to
20 take us a year to go through these patients, I might say 02:44
21 that's unreasonable. If you were to say, well, it's going
22 to be 60 days, I don't know.

23 So I don't want to get into that game at least at this
24 point in time without hearing specifics, but I'm amenable
25 to some sort of plan that would be set forth in the order. 02:44

1 MR. HILLMAN: Would it be anticipated then that when
2 Mr. Knapp and Mr. Ferguson prepare their order, it be
3 noted for presentation, and that prior to that time we
4 would honor Your Honor's request for a plan, and also if
5 we were to make any motions directed towards a stay, we
6 would do so at that time as well? 02:44

7 THE COURT: That's correct. It's a two-part thing.
8 Number one, can you work out an agreement as to the
9 implementation? If you can and it can be incorporated
10 into the writ, that's fine. 02:45

11 Number two, if you can't work out an implementation
12 agreement, I certainly want one presented, be able to hear
13 a response from them, et cetera. Then the other issue is
14 of course any request for a stay if in the event you want
15 to take an appeal. I'll take that up at that time as
16 well. 02:45

17 MR. HILLMAN: Thank you, Your Honor.

18 MR. SUBIT: I think you just addressed the concern
19 about the seven people, and so it sounds like rather than
20 trouble the court any further, we can work that detail out
21 as part of the larger discussions. So I don't think I
22 have anything further. 02:45

23 THE COURT: Anything else? Thank you all very much.
24 Court will be in recess.

25 (Proceedings concluded.) 02:45

APPENDIX C



PUBLIC HOSPITAL DISTRICTS -- MUNICIPAL CORPORATIONS --
EXTRATERRITORIAL OPERATIONS

1. A public hospital district organized under chapter 70.44 RCW has the authority to construct and operate a drug and alcohol treatment center located outside the boundaries of the district, where the primary purpose is to provide services for the residents of the district, but a district may not operate inside the boundaries of another public hospital district without the second district's agreement.

[Share](#)

July 1, 1988

Honorable Clyde Ballard
House Minority Leader
418 Legislative Building
Olympia, Washington 98504

Cite as: AGO 1988 No. 15

Dear Representative Ballard:

By letter previously acknowledged, you have requested our opinion on the following question:

Does a public hospital district organized under chapter 70.44 RCW have the authority to construct and operate a drug and alcohol treatment center located outside the boundaries of that district?

We answer your question in the qualified affirmative.

ANALYSIS

Public hospital districts are creatures of statute. See chapter 70.44 RCW. As such, they enjoy only those powers expressly granted or necessarily implied in the statutes that authorize their creation. Pacific First Fed. Sav. & Loan Ass'n v. Pierce Cy., 27 Wn.2d 347, 353, 178 P.2d 351 (1947).

Additionally, municipal corporations generally are not authorized, in the absence of a legislative grant of authority, to operate beyond their own boundaries.

[[Orig. Op. Page 2]]

In accordance with the principle applicable to countries and states, it is the general rule that, while it has jurisdiction over the territory embraced within its corporate limits, a municipal corporation cannot, without legal authorization exercise its powers beyond its own corporate limits

2 E. McQuillin, Municipal Corporations § 7.02 (3d ed. rev. 1979) (footnotes omitted).^{1/}

With the foregoing rules and limitations in mind, we turn now to an analysis of chapter 70.44 RCW to determine whether the Legislature has expressly granted a public

hospital district the authority to construct and operate a health care facility beyond its boundaries or whether such authority can be necessarily implied.

The purpose of chapter 70.44 RCW is to "authorize the establishment of public hospital districts to own and operate hospitals and other health care facilities and to provide hospital services and other health care services for the residents of such districts and other persons." RCW 70.44.003. To accomplish their stated purposes, public hospital districts are expressly authorized

to provide hospital or other health care services for residents of said district by facilities located outside the boundaries of said district, by contract or in any other manner said commissioners may deem [[Orig. Op. Page 3]]

expedient or necessary under the existing conditions

RCW 70.44.060(3) (emphasis added). Hospital districts are further authorized

to take, condemn and purchase, lease, or acquire, any and all property, and property rights, ... and any and all other facilities necessary or convenient, and in connection with the construction, maintenance, and operation of any such hospitals and other health care facilities ...

RCW 70.44.060(4) (emphasis added).

We believe these statutes, particularly RCW 70.44.060(3), authorize a public hospital district to construct and operate health care facilities located outside the boundaries of the district, when necessary to provide hospital and other health care services for residents of the district.

The wording of RCW 70.44.060 suggests that the principal way in which a hospital district would utilize out-of-district hospitals and other health facilities would be by contracting with presently existing facilities. But the statute is very clear that services from out-of-district facilities may be obtained "in any other manner" the district deems expedient or necessary. If the district deems it expedient or necessary to obtain such services by constructing and operating its own facility, then it appears to us that the district is authorized to do so. Any other result would, in our opinion, be contrary to the plain meaning of RCW 70.44.060(3). See, e.g., Davis v. Department of Empl. Sec., 108 Wn.2d 272, 277-78, 737 P.2d 1262 (1987) (words of statute should be accorded their ordinary meaning); State v. Malone, 106 Wn.2d 607, 610, 724 P.2d 364 (1986) (same).

Having concluded that a hospital district is authorized to provide hospital and other health care services by constructing and operating facilities located outside the boundaries of the district, we must point out that such authority is subject to at least two significant limitations.

First, a public hospital district can operate beyond its boundaries only for the purpose of providing hospital and health care services "for residents of said district." RCW 70.44.060(3). This limit on the purposes for which a district can operate extraterritorially is also implied in the proviso at the end of RCW 70.44.060(3) that a district "must at all times make adequate provision for the needs of the district and residents of said district shall have prior rights to the" [[Orig. Op. Page 4]] available hospital and other health care facilities of said district"

Thus, although a district clearly is permitted to provide hospital services and other health care services for nonresidents, e.g., RCW 70.44.003, a district's primary focus and emphasis must be on adequately providing for the needs of its residents.

The second limitation on a hospital district's extraterritorial authority follows from the general rule that there cannot be two municipal corporations exercising the same functions in the same territory at the same time. McQuillin states the purpose for this general rule:

This rule does not rest on any theory of constitutional limitation, but instead on the practical consideration that intolerable confusion instead of good government would obtain in a territory in which two municipal corporations of like kind and powers attempted to function coincidentally.

2 E. McQuillin, at § 7.08 (footnote omitted).

Although this second general rule has been significantly weakened by the case law of this state,

it continues to serve as a touchstone in the sense that it expresses a public policy against duplication of public functions, and that such duplication is normally not permissible unless it is provided for in some manner by statute.

Alderwood Water Dist. v. Pope & Talbott, Inc., 62 Wn.2d 319, 321, 382 P.2d 639 (1963). In a sense, this general rule should alert courts, in situations where a literal reading of a statute would appear to authorize duplication of public functions, "to the necessity of closely examining in toto statutory provisions conferring authority upon the potentially competing municipal corporations." Id.

In Alderwood Water District, the entrepreneur of a residential real estate development located within the Alderwood Water District arranged for connection of the water lines in the development to water mains operated by the neighboring Silver Lake Water District. The Alderwood Water District sued to enjoin the Silver Lake Water District from supplying water to the development in question. Silver Lake Water District offered a defense that there was actual statutory authorization, RCW 57.08.045, for water districts to "provide water services to property owners outside the limits of the water district." [[Orig. Op. Page 5]] Despite that language, the court held that the statute, taken in context, permitted water districts to serve property owners outside the district only when they were not within the boundaries of another water district. 62 Wn.2d at 323.

The Alderwood court concluded that the statutory prohibition against geographical overlapping of water districts, RCW 57.04.070, "obviously carries with it an implication that one water district should not infringe upon the territorial jurisdiction of another water district by extending services to individuals therein." 62 Wn.2d at 322.

This implication was reinforced by the statutory requirement that commissioners of a water district formulate a comprehensive plan sufficient to fulfill the foreseeable needs of the district for making improvements or incurring any indebtedness. RCW 57.16.010. In formulating such a plan, the commissioners were required to, among other things, project into the future the probable changes in water consumption per inhabitant, population fluctuations, and the availability of water to the district. According to the court,

[t]he careful consideration of these factors in creating a comprehensive plan could be rendered meaningless if another district is permitted to purloin potential customers from a water district by invading its territory.

62 Wn.2d at 322.

The court also focused on the financing of water districts. Water districts are financed by property tax levies, revenue bonds, creation of local improvement districts, connection charges, and the sale of water. Referring to the property tax, the court said:

[I]t makes no difference who supplies water to the individual property owner because the tax is levied upon all property within the water district. However, the other methods of financing are dependent upon the district's supplying of water Permitting one water district to "raid" another could result in a serious impairment of the "raided" district's financial position.

62 Wn.2d at 322-23.

After considering Title 57 RCW in its entirety, it was obvious to the court

[[Orig. Op. Page 6]]

[t]hat the legislative purpose in permitting water districts to supply water to individuals outside of their districts ... was meant to extend water services only to those individuals who were not within the boundaries of any other water district.

62 Wn.2d at 323.

We have reviewed the Alderwood Water District case in some detail because we believe the prohibition on one water district operating inside the boundaries of another water district applies equally to public hospital districts. As with water districts, the development and operation of health care facilities by one district within the boundaries of another district would be contrary to the statutory scheme as a whole.

First, the construction and operation of health care facilities by one district within the boundaries of another district would be inconsistent with the statutory emphasis on district planning. For example, the hospital district superintendent is required to prepare yearly estimates of district expenses and yearly recommendations to the hospital commission regarding what development work should be undertaken. RCW 70.44.090. Also, whenever a district acquires, constructs, or improves a hospital or other health care facility, the hospital district commission must adopt a plan dealing with the work proposed, declare the estimated costs thereof, and provide for the method of financing. RCW 70.44.110.

In engaging in these planning functions, a hospital district must necessarily project into the future the probable health care needs of the residents of the district, population changes and demographics, and the availability of resources to the district. To paraphrase the court in Alderwood Water District, "the careful consideration of these factors in creating a comprehensive plan could be rendered meaningless if another district is permitted to purloin potential customers from a [hospital] district by invading its territory." 62 Wn.2d at 322.

Second, the ability of a district to finance its facilities and programs would likely be compromised by permitting hospital districts to develop and operate facilities within the boundaries of another district. Hospital districts are financed by property tax levies, revenue bonds, general obligation bonds, interest-bearing warrants, assignment or sale of accounts receivable, and borrowing money on the credit of the district or the revenues of the district's hospitals. RCW 70.44.060(5), (6). Except for the property tax, these methods of financing are dependent in one degree or another upon the district's operation of hospital and other health care facilities and by the revenue derived from those facilities. Permitting one hospital district to "invade" [[Orig. Op. Page 7]] another

could result in a serious impairment of the invaded district's financial position. See Alderwood Water District, 62 Wn.2d at 322-23.

Third, there are sound policy reasons why one district should not be allowed to construct and operate a health care facility within the boundaries of another district, absent express statutory authorization. The ability of residents of a hospital district to identify and respond to the health care needs of their district could be significantly undermined if another district could, without the first district's approval, develop and operate a health care facility within the first district's boundaries. Furthermore, local control is closely related to local accountability. As long as the health care facilities in a district are operated by the elected representatives of the residents of that district, those representatives are accountable to the residents. The representatives of the "invading" district would not be similarly accountable to the residents of the invaded district.

One option a local district would have to retain local control in the face of a potential "invasion" by another district would be to try to fend off the invasion by constructing, purchasing, leasing, or otherwise acquiring its own facility. This could easily result in premature district action and unnecessary or unwise public investment in facilities and programs. We do not see that the public good would be served by any rule promoting this result.

After considering chapter 70.44 RCW in its entirety, it is our opinion that the extraterritorial authority granted hospital districts by RCW 70.44.060(3) does not extend to the development or operation of facilities that are within the boundaries of any other hospital district.2/

[[Orig. Op. Page 8]]

To summarize our answer to your question, we conclude that a public hospital district has the authority to construct and operate a hospital or other health care facility outside the boundaries of its district but that such authority is limited at least in two ways. First, a district cannot operate beyond its boundaries unless its primary purpose is to provide services for the residents of its own district. Second, a district cannot operate inside the boundaries of another district, without the other district's approval.

We trust that the foregoing will be of assistance to you.

Very truly yours,
KENNETH O. EIKENBERRY
Attorney General

MARK S. GREEN
Assistant Attorney General

*** FOOTNOTES ***

1/McQuillin suggests there may be a distinction between the general exercise of sovereignty or authority outside municipal boundaries and the specific act of acquiring or owning property outside corporate limits when incident to the exercise of authority inside the boundaries. He says that, in the absence of express statutory authority, a municipal corporation may have greater authority to acquire property outside its limits when such acquisition is directly related to the fulfillment of an in-district purpose than it has to generally exercise its sovereignty beyond its borders. 10 E. McQuillin, at § 28.05 (3d ed. rev. 1981). We do not believe this distinction applies here, however, because in constructing and operating a health care facility outside its boundaries, a hospital district will almost certainly service the health care needs of both residents and nonresidents of its district. RCW

70.44.060(3). Thus, a hospital district's extraterritorial activity would be both incident to an in-district purpose and an extraterritorial exercise of authority.

2/The limit on the authority of a district to operate a hospital or other health care facility within the boundaries of another district applies only to situations in which the district is operating without the consent of the other district. The Legislature has granted hospital districts broad authority to operate joint facilities or to contract with another district for services. RCW 70.44.240; see also RCW 39.34 [chapter 39.34 RCW] (Interlocal Cooperation Act). Where one district operates a joint facility with another district, one of those districts will necessarily be operating "outside" the boundaries of the district. This particular type of extraterritorial operation has clearly been permitted by the Legislature.

APPENDIX D

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SUPERIOR COURT OF WASHINGTON FOR SKAGIT COUNTY

SKAGIT COUNTY PUBLIC HOSPITAL
DISTRICT NO. 304, dba United General
Hospital,

Plaintiff,

v.

SKAGIT COUNTY PUBLIC HOSPITAL
DISTRICT NO. 1 and the BOARD OF
COMMISSIONERS THEREOF, dba Skagit
Valley Hospital

Defendants.

No. 11-2-00816-1
(CONSOLIDATED)

DECLARATION OF JOHN BOND, M.D IN
SUPPORT OF SVMC, PLLC'S MOTION TO
INTERVENE.

DR. TEACLE W. MARTIN, et al.

Plaintiffs,

v.

SKAGIT COUNTY PUBLIC HOSPITAL
DISTRICT NO. 304, dba United General
Hospital,

Defendant.

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I, JOHN BOND, M.D., make this declaration on personal knowledge and am otherwise qualified to testify hereto.

1. I am the current president of SVMC, PLLC formerly known as Skagit Valley Medical Center, Inc., P.S. (hereinafter "SVMC").

2. I joined SVMC in the early 1990s as a physician specializing in urgent care. I became president of SVMC in 2003.

3. SVMC has a long history as a physician group providing medical services in the Skagit Valley region, including the communities of Mount Vernon, Sedro Woolley and surrounding areas.

4. As part of its efforts to meet the growing community need for physician services in the region, SVMC hired physicians based in Sedro Woolley starting in the early 1990's. The group of SVMC physicians based in Sedro Woolley grew to as many as 7 physicians over time. SVMC has long worked with Skagit County Public Hospital District No. 304, dba United General Hospital (hereinafter "UGH") to identify patient needs, especially in specialty practices. UGH was anxious for SVMC to add specialty practices that would meet the needs of its patient population.

5. In order to provide adequate practice space for the seven physicians and subsequent recruits and to meet the anticipated future community need for medical services provide by these physicians, in 2006 SVMC made the decision to invest in a medical office condominium unit (hereafter the "Pavilion") situated directly across from UGH. UGH was an active supporter of SVMC's effort to bring these new specialists into the area. SVMC financed acquisition and build out of the Unit 2 of the Pavilion through a multi-million dollar loan from Whidbey Island Bank ("WIB").

6. The Pavilion is subject to a long-term ground lease with UGH. The lease requires that the facility be used for the practice of medicine and ancillary health care related activities and services. The lease prohibits any use that would compete with UGH's services. Under separate agreement, SVMC is required to offer UGH a right of first refusal in the event that it desires to sell Unit 2 of the Pavilion.

1 7. Given challenges in reimbursement rates for rural physicians, and other factors
2 impacting independent medical practices in through the last decade, in order to ensure that adequate
3 physician services would remain available in the Skagit Valley region, SVH and SVMC began
4 discussions in 2009 that culminated in an agreement to integrate SVMC and its medical practice with
5 SVH (the "Integration Agreement"). The structure of the transaction includes a two step integration
6 process commencing in July of 2010 (the "Effective Date") and culminating with a merger of the two
7 entities and final closing set for July 1, 2012 (the "Closing Date"). During the interim two year
8 period between the Effective Date and the Closing Date, SVH agreed to employ SVMC physicians
9 and lease assets, including the Pavilion, as necessary to operate the medical practice. As part of this
10 transaction, SVH agreed to acquire SVMC assets including the Pavilion. The value to be received by
11 SVMC from SVH for the Pavilion is \$5.3 million.

12 8. On or about June 14, 2010, I on behalf of SVMC, offered UGH the option to match
13 the price that SVH was willing to pay for condominium Unit 2 at the Pavilion. UGH declined to
14 exercise that right, but did offer to purchase the facility for \$4.305 million, nearly a million dollars
15 less than the amount SVH had agreed to pay. SVMC declined to accept this lowball offer.

16 9. In July 2010, as contemplated by the Integration Agreement, SVH began making
17 lease payments on the Pavilion and other SVMC assets. Such payments are currently sufficient to
18 cover SVMC's obligations to Whidbey Island Bank. Further, all of the physicians and staff resigned
19 from SVMC and all but one took employment with SVH. Thus, while SVMC still exists as a
20 distinct legal entity and it owns certain property, it no longer operates or maintains the staff and other
21 infrastructure necessary to run a medical practice.

22 10. Following the Effective Date of the SVMC-SVH Integration Agreement, SVMC was
23 informed that UGH and SVH were in discussions regarding the Pavilion and the scope and operation
24 of the clinic in Sedro Woolley. SVMC encouraged the parties to keep the best interests of patient
25 care in mind, with the hope that SVH and UGH would be able to come to mutual agreement that
26 would preserve the ability of SVMC physicians to continue to provide care to their long term patients
27 directly within Sedro Woolley.

28

1 11. SVMC was subsequently informed that UGH decided to pursue legal action against
2 SVH. SVMC did not seek to intervene earlier, however, because SVH adequately represented
3 SVMC's interest with regard to arguing that SVH was permitted to operate the clinic at the Pavilion.
4 Shortly after September 12, 2011, SVH learned that this court had orally indicated that it would grant
5 UGH's request for Writ of Prohibition. SVMC understood that the court had urged SVH and UGH
6 to cooperate in coming up with the transition plan. SVMC was surprised that rather than working
7 cooperatively as urged by the court, UGH filed a motion on September 28, 2011 to enter an order
8 requiring SVMC to remove all medical staff and personnel from the Pavilion by January 2, 2012.

9 12. Granting UGH's request for such an expedited and rushed transition will cause great
10 harm to SVMC and to the patients that use the clinic at the Pavilion.

11 13. The Integration Agreement contains a provision that would enable SVH to terminate
12 the Pavilion lease, exclude the Pavilion as an asset to be transferred as part of the merger and reduce
13 the merger consideration to be paid to SVMC by \$5.3 million if SVH is unable to provide medical
14 services in Sedro Woolley. Thus, on the issue of the timing for a transition plan, SVH does not
15 adequately represent SVMC's interests because SVH may elect to terminate its lease with SVMC
16 and remove the Pavilion from the underlying transaction. Yet, SVMC is still obligated to its lender
17 Whidbey Island Bank to make monthly payments. SVMC is unsure whether its lender will consider
18 the vacation of the premises an event of default. SVMC no longer operates as a medical practice as
19 all but one of its health care providers took employment with SVH.

20 14. I understand from commercial real estate professional Jim Koetje that he estimates it
21 will take two to three years to find a suitable tenant and/or a suitable purchaser. His opinion matches
22 my experience opening and working with medical practices in Skagit County.

23 15. In the event that SVMC were to hire doctors and begin actively practicing medicine
24 again as a means of generating income at Unit 2 of the Pavilion, I estimate it would take 18 to 36
25 months. SVMC no longer has any infrastructure relating to billing, risk management and the like.
26 Previously these functions were handled from a central location for the practice located at the
27 Pavilion. Now, however, SVMC would either need to devote space at the Pavilion for these
28 functions, or locate another entity to outsource these functions. Further, I've been active in

1 recruiting physicians to the Skagit Valley area for the past 8 years. Unfortunately, it is very difficult
2 to locate and recruit physicians in rural counties such as Skagit County. In my experience, it is
3 difficult for a small entity to recruit more than one or two physicians in a calendar year. I estimate it
4 would take eight practitioners operating full time to allow the clinic to at least make the mortgage
5 payment. I believe it would take substantially more than 8 to break even. Again, I estimate it would
6 take a minimum of 18 months and more likely 36 months to locate sufficient qualified medical
7 providers to get even 8 providers to at least make the mortgage payment.

8 16. Finally, I want the court to understand that since 2006 patients have been seeking and
9 receiving care at the Pavilion. For many patients this is their primary care facility. Additionally, the
10 specialties offered at that facility are not available elsewhere within a reasonable distance. It will be
11 enormously disruptive to the patients if the court orders the clinic to cease operations on January 2,
12 2012, as requested by UGH. SVH simply does not have room to relocate these physicians and their
13 practices. Even if it found room, it would be a substantial trip for many of the current patients and
14 would pose a great hardship. As noted elsewhere in this declaration there is already a dearth of
15 qualified physicians willing to practice in the Skagit County and forcing the physicians located at the
16 Pavilion to relocate without allowing sufficient time to find suitable facilities will substantively and
17 negatively impact patient care.

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

20 DATED this 4th day of October, 2011 at Mt. Vernon, WA.
21 Skagit County

22 John Bond
23 John Bond, M.D.

24
25 **DECLARATION OF SERVICE**

26 I hereby declare that I sent a copy of the document on
27 which this declaration appears via fax/mail/messenger
28 service to Dr. P. Taylor; Dr. Williams; M. Sub
I declare under penalty of perjury of the laws of the
State of Washington that the foregoing is true and correct.
Executed at Seattle, WA on 10/5/11
Signed by: [Signature]

APPENDIX E

SKAGIT COUNTY PUBLIC HOSPITAL DISTRICT NO. 304
BOARD OF COMMISSIONERS
RESOLUTION NO. 2010-23

A resolution denying request by Skagit County Hospital District No. 1 d/b/a Skagit Valley Hospital ("SVH") to operate and conduct its business within the corporate municipal boundaries of Skagit County Public Hospital District No. 304, d/b/a United General Hospital ("United General").

I. RECITALS

1.1 The United General Board of Commissioners met on May 27, 2010 at a Regular meeting duly noticed at which a quorum was present and at which a majority affirmed this Resolution as set forth below, delivering same to be in the best interests of United General and residents of its District.

1.2 United General and SVH are each Washington municipal corporations and public hospital districts organized under Chapter 70.44 RCW, each operating in Skagit County, Washington, within the exclusive boundaries designated as their respective public hospital districts.

1.3 SVH encompasses the majority of the City of Mount Vernon and areas west of Sedro-Woolley, and United General encompasses the Cities of Sedro-Woolley, Burlington, areas west to and including the towns Bayview, Samish Island, Bow and Alger; and areas including an eastern portion of the City of Mount Vernon and extending east to include the townships of Lyman, Hamilton, Concrete, Marblemount, and Rockport, *as well as areas of Whatcom County. CK of PMS*

1.4 Each of said hospital districts is established, under Washington law, to own and operate hospitals and other healthcare facilities and to provide hospital services and healthcare services to the persons residing within their districts and other persons. ...

1.5 Under Washington law, as construed by the Washington State Attorney General, relying upon opinion(s) of the Washington State Supreme Court, a public hospital district is limited in at least two ways with regard to operating outside the boundaries of its district: (a) a public hospital district may not operate beyond its boundaries unless the primary purpose is to provide services for the residents of its own district; and (b) a public hospital district cannot operate inside the boundaries of another district without the other district's approval.¹

1.6 SVH has informed United General that it has entered into arrangements with Skagit Valley Medical Center, Inc., P.S. ("SVMC"), a multi-specialty physician group, to acquire all or substantially all of the assets of SVMC and hire most of its employees, including, physicians, *to be effective July 1, 2010 CK of PMS*

1.7 SVMC maintains an office for physicians and other staff within the corporate municipal boundaries of United General and SVH has requested permission to

operate within the boundaries of United General upon its acquisition of the assets of SVMC and its employment of the SVMC physicians and staff. The SVH request includes the ability to operate in other areas of the district. SVH has indicated that its request for an agreement with United General contains certain terms and conditions, which include, among other things, that United General would be required to subsidize and reimburse SVH for a portion of any financial loss suffered by SVH due to its inability to profitably manage and operate physician practices within United General's boundaries.

1.8 The United General Board of Commissioners is committed to providing quality and cost-effective hospital and other healthcare services to its residents within the available resources and is committed to being good stewards of those resources.

1.9 To be good stewards of the United General resources, including tax revenues paid by its residents, it is the judgment of the Board of Commissioners that revenues should not be diverted to another public hospital district whose authority to operate outside of its own boundaries is limited to providing services for its own residents (SVH residents) who, necessarily, reside outside the corporate municipal boundaries of United General. To that end, it is the judgment of the Board of Commissioners that paying any form of subsidy to SVH in conjunction with granting it permission to operate within United General's corporate municipal boundaries will tend to increase the tax burden on the residents of United General and diminish the resources it has available to provide hospital and other healthcare services to its own residents.

1.10 Moreover, as the Washington Attorney General, relying upon the opinion(s) of the Washington Supreme Court, has noted:ⁱⁱ

(a) The ability of a public hospital district to finance its facilities and programs would likely be compromised by permitting hospital districts, such as SVH, to develop and operate facilities within the boundaries of another district, such as United General. Hospital districts are financed by property tax levies, revenue bonds, general obligation bonds, interest-bearing warrants, assignment or sale of accounts receivable, and borrowing money on the credit of the district or the revenues of the district's hospitals. Except for the property tax, these methods of financing are dependent in one degree or another upon the district's operation of hospital and other health care facilities and by the revenue derived from those facilities. Permitting one hospital district to 'invade' another could result in a serious impairment of the invaded district's financial position.

(b) The ability of residents of a hospital district to identify and respond to the health care needs of their district could be significantly undermined if another district could, without the first district's approval, develop and operate a health care facility within the first district's boundaries. Furthermore, local control is closely related to local accountability. As long as the health care facilities in a district are operated by the elected representatives of the residents of that district, those representatives are accountable to the residents. The representatives of the 'invading' district would not be similarly accountable to the residents of the invaded district.

1.11 It is the judgment of the Board of Commissioners that it is in the best interests of United General and the residents of its district, to deny the SVH request.

1.12 It is the further judgment of the Board of Commissioners that United General should continue reasonable efforts to recruit, attract, and retain qualified physicians, either as independent practitioners, or perhaps, as employees of United General, to provide and deliver the necessary physician services to meet the needs of its residents.

II. RESOLUTION

NOW, THEREFORE, BE IT RESOLVED by the United General Board of Commissioners, as follows:

1. The request by SVH for permission to operate and conduct business within the corporate municipal boundaries of United General is denied;

2. The District's Superintendent/CEO is hereby authorized and directed to communicate the foregoing denial to the SVH Board of Commissioners and its Superintendent/CEO, by delivery thereto of a copy of this Resolution; and

3. The United General Superintendent/CEO is hereby authorized and directed to continue reasonable and appropriate measures to recruit, attract and retain qualified physicians to practice within the United General corporate municipal boundaries appropriate to meet the needs of its residents.

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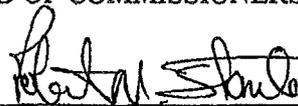
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CERTIFICATION

The foregoing Resolution was duly adopted at the meeting of the Board of Commissioners ("Board") of Skagit County Hospital District No. 304 on May 27, 2010, by a majority of the Board. There being 5 votes cast in favor, 0 votes cast against and 0 votes abstaining.

DATED this 27th day of May 2010.

SKAGIT COUNTY PUBLIC HOSPITAL DISTRICT NO. 304
d/b/a UNITED GENERAL HOSPITAL, BOARD OF COMMISSIONERS



By: Robert M. Stanley
Its: Chairperson

[Handwritten Signature]

[Handwritten Signature]

[Handwritten Signature]

ATTEST:

[Handwritten Signature]

¹ Washington Attorney General's Opinion, AGO 1988 No. 15 (1988).
² Id.