

OCT 03 2016

WASHINGTON STATE
SUPREME COURT

Supreme Court No. 93569-6

**IN THE SUPREME COURT
OF THE STATE OF WASHINGTON**

PROVIDENCE HEALTH & SERVICES – WASHINGTON, D/B/A
PROVIDENCE REGIONAL MEDICAL CENTER EVERETT, and
D/B/A PROVIDENCE SACRED HEART MEDICAL CENTER, and
SWEDISH HEALTH SERVICES, D/B/A SWEDISH MEDICAL
CENTER/FIRST HILL,

Petitioners-Appellants,

v.

DEPARTMENT OF HEALTH OF THE STATE OF WASHINGTON,

Respondent,

UNIVERSITY OF WASHINGTON MEDICAL CENTER,

Intervenor.

**INTERVENOR UNIVERSITY OF WASHINGTON MEDICAL
CENTER'S ANSWER TO PETITION FOR REVIEW**

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I. IDENTITY OF INTERVENOR

The University of Washington Medical Center (“UWMC”) applied for and received a Certificate of Need (“CN”) to add 79 acute care beds to the hospital. The three petitioners (collectively “Providence”) opposed UWMC’s CN application in written comments sent to the Department of Health’s CN Program, and at a public hearing. After the evaluation process was completed, the CN Program issued a CN to UWMC. Providence sought an administrative hearing challenging approval of the project. UWMC intervened in the administrative hearing and has since been a party to all administrative and judicial review proceedings related to this CN.

II. COURT OF APPEALS DECISION

Providence seeks discretionary review of a Court of Appeals decision filed on July 5, 2016, affirming a Department of Health Presiding Officer’s and subsequent Review Officer’s respective decisions approving issuance of UWMC’s CN. The Court of Appeals unanimous decision is attached to Providence’s petition for review as Appendix A.

III. COUNTER-STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

Providence does not claim the Court of Appeals decision conflicts with any decisions of this Court or the Court of Appeals, or that any questions of constitutional law are involved. Providence argues for further

review solely on the ground that its petition involves an issue of substantial public interest that should be determined by this Court.

Providence alleges the following five issues are of such substantial public interest that this Court should decide the issues in addition to the Court of Appeals:

A. The 1987 State Health Plan (“SHP”), which continues to be used by the CN Program and hospitals statewide, contains two alternative methods for determining need for hospital beds: (1) through use of a numeric need methodology that focuses on the needs of the population in the local planning area where the hospital is; and (2) in cases involving a tertiary care hospital that draws most of its patients from outside of the planning area, through use of the so-called “Criterion 2” methodology that focuses on the needs of the region-wide population who use the tertiary care hospital, rather than the population in the planning area who rarely use the hospital. There is no dispute UWMC is a tertiary care hospital and 89% of its patient days are provided to patients who reside outside of the local planning area. Did the Reviewing Officer act contrary to law by applying the SHP’s Criterion 2 to determine whether the region-wide population to be served has need for additional beds at UWMC?

B. Is there substantial evidence in the record supporting the

Reviewing Officer's findings and conclusions that the region-wide population to be served has need for UWMC's bed expansion project?

C. Is there substantial evidence in the record supporting the Reviewing Officer's findings and conclusions that UWMC's bed expansion project is financially feasible and does not unreasonably impact the costs and charges for health services?

D. Is there substantial evidence in the record supporting the Reviewing Officer's findings and conclusions that UWMC's project is a superior alternative to meet the needs of the population to be served, and would not result in unwarranted fragmentation of health services?

E. Did the Reviewing Officer abuse her discretion by agreeing with the Presiding Officer's evidentiary ruling excluding evidence that did not exist until after the close of the public comment period?

IV. COUNTER-STATEMENT OF THE CASE

The Court of Appeals decision accurately describes the material facts and procedure below.

Two points about the "Statement of the Case" in Providence's petition for review warrant mention. First, Providence's "Statement of the Case" is argumentative, contrary to RAP 10.3(a)(5), and ignores substantial evidence presented by UWMC. On judicial review of an administrative agency's decision, the evidence is reviewed in the light

most favorable to “the party who prevailed in the highest forum that exercised fact finding authority,” which is UWMC in this case. *Univ. of Wash. Med. Ctr. v. Dept. of Health*, 164 Wn. 2d 95, 104-05, 187 P.3d 243 (2008). Second, the Reviewing Officer’s final decision granting a CN to UWMC is the only agency action subject to judicial review. *DaVita, Inc. v. Dept. of Health*, 137 Wn. App. 174, 181, 151 P.3d 1095 (2007); *see also* RCW 34.05.518(1). Thus, Providence’s criticisms of the CN Program’s initial decision-making process and allegations of a conspiracy between two state agencies are irrelevant.¹

V. ARGUMENT FOR WHY REVIEW SHOULD BE DENIED

A. Review Is Limited and Deferential to the Agency’s Decision

The Court of Appeals properly recognized that judicial review of an agency’s final decision is limited in scope and deferential. This limited scope of review affects the determination of whether discretionary Supreme Court review is merited.

“The standard of review in CN cases is that the agency decision is presumed correct and that the challengers have the burden of overcoming that presumption.” *Overlake Hosp. Ass’n v. Dept. of Health*, 170 Wn.2d

¹ Providence’s theory that a government conspiracy underlies the Department of Health’s approval of UWMC’s bed expansion project is further dispelled by the fact that the Court of Appeals affirmed the same ultimate conclusions as the Department’s CN Program, Presiding Officer and Reviewing Officer, even though the Court of Appeals certainly cannot be said to be biased in favor of UWMC, nor party to a conspiracy.

43, 49-50, 239 P.3d 1095 (2010). Challengers must show the agency decision was contrary to law, arbitrary and capricious, or unsupported by substantial evidence. *Id.*; RCW 34.05.570(3).

“The error of law standard permits this court to substitute its interpretation of the law for that of the agency, but we accord substantial deference to the agency’s interpretation, particularly in regard to the law involving the agency’s special knowledge and expertise.” *Univ. of Wash.*, 164 Wn.2d at 102.

The arbitrary and capricious standard of review “is very narrow,” “highly deferential” to the agency and the party challenging an agency decision carries “a heavy burden.” *Alpha Kappa Lambda Fraternity v. Washington St. Univ.*, 152 Wn. App. 401, 418, 422, 216 P.3d 451 (2009). “An agency’s decision is arbitrary and capricious if the decision is the result of willful and unreasoning disregard of the facts and circumstances.” *Overlake*, 170 Wn.2d at 50. “Where there is room for two opinions, an action taken after due consideration is not arbitrary and capricious even though a reviewing court may believe it to be erroneous.” *Washington Indep. Telephone Ass’n v. Washington Utils. and Transp. Comm’n*, 148 Wn.2d 887, 904, 64 P.3d 606 (2003).

Findings of fact are reviewed under the substantial evidence standard of review. *Fox v. Dept. of Retirement Systems*, 154 Wn. App.

517, 523, 225 P.3d 1018, *rev. denied*, 169 Wn.2d 1012 (2010). “Evidence is substantial if it is of sufficient quantity to persuade a fair-minded person of the truth or correctness of the agency order.” *Id.* On appeal, “[i]t is not ... [the Court’s] function to reweigh the evidence in an effort to reach different conclusions than did the agency.” *Providence Hosp. v. Dept. of Soc. and Health Servs.*, 112 Wn.2d 353, 360, 770 P.2d 1040 (1989).

Evidentiary rulings are reviewed under an abuse of discretion standard. *Univ. of Wash.*, 164 Wn.2d at 104. An abuse of discretion occurs when the challenged “decision is manifestly unreasonable or based on untenable grounds or reasons.” *Yousoufian v. Ron Sims*, 168 Wn.2d 444, 458-59, 229 P.3d 735 (2010). A decision is “manifestly unreasonable” when a tribunal “adopts a view ‘that no reasonable person would take.’” *Id.* “The law gives considerable discretion to administrative law judges to determine the scope of admissible evidence.” *Univ. of Wash.*, 164 Wn.2d at 104. In CN cases, administrative law judges have broad discretion “to admit, or not admit, evidence that came into existence after the close of the public comment period.” *Id.*

B. The Court of Appeals Affirmance of the Use of the SHP’s Criterion 2 Methodology for Determining Need for Acute Care Hospital Beds Does Not Involve an Issue of Substantial Public Interest that Should Be Determined by the Supreme Court

Providence’s primary argument is two administrative tribunals and

the Court of Appeals uniformly erred as a matter of law by applying one of the SHP's two alternative methods for determining need for additional hospital beds. Yet, Providence is unable to cite any binding legal authority that requires use of the SHP's numeric need methodology, or prohibits use of the SHP's Criterion 2 methodology for determining hospital bed need. Instead, Providence argues use of the SHP's Criterion 2 need methodology is contrary to law because (1) Providence did not receive "advance notice" the Department might apply Criterion 2, and Criterion 2 is (2) "defunct," (3) inconsistent with past practice, and (4) "forever exempt[s] UWMC" from CN laws. These arguments lack merit and do not compel further review by this Court.²

1. The Court of Appeals Correctly Determined that Washington Law Supports Use of the Criterion 2 Method for Determining Hospital Bed Need

Washington CN law supports use of the SHP's Criterion 2 methodology for determining whether a hospital bed expansion project is needed by the population to be served by the project. The Legislature expressly recognized that CN criteria should be flexible, and "may vary

² Providence also suggests CN cases categorically involve issues of substantial public interest meriting Supreme Court review, citing to some CN cases where this Court granted review. Yet, this Court has denied review in other CN cases. *E.g., DaVita HealthCare Partners, Inc. v. Dep't of Health*, 192 Wn. App. 102, 365 P.3d 1283 (2015), *review denied*, 185 Wn.2d 1030 (2016); *Multicare v. Dep't of Health*, 118 Wn. App. 597, 77 P.3d 363 (2003), *review denied*, 151 Wn.2d 1023 (2004); *Children's Hosp. v. Dep't of Health*, 95 Wn. App. 858, 975 P.2d 567 (1999), *review denied*, 139 Wn.2d 1021 (2000). The grant or denial of review in prior CN cases does not support granting or denying review here.

according to the purpose for which the particular review is being conducted or the type of health service being reviewed.” RCW 70.38.115(5). With respect to evaluating need for a proposed project, RCW 70.38.115(2)(a) requires consideration be given to the “need that the population served or to be served by such services has for such services,” with no limitations to a specific geographic area. *See also* WAC 246-310-210(1) (in accord). Additionally, WAC 246-310-210(3)(a) requires consideration of the “special needs and circumstances” of medical schools that provide “a substantial portion of their services ... to individuals not residing in the health service areas in which the entities are located”³ Aside from this general guidance, however, neither chapter 70.38 RCW nor chapter 246-310 WAC establish a specific method for determining need for acute care hospital beds.

CN law permits use of non-statutory and non-regulatory standards

³ RCW 70.38.115(2)(d) similarly requires that when determining need, “[t]he department shall consider the application in terms of its impact on existing and proposed institutional training programs for doctors of ... surgery and medicine at the student, internship, and residency levels.” *See also* WAC 246-310-210(1)(c) (in accord). UWMC operates the fifth largest training program in the nation for physicians, dentists and other health professionals. RP 43. Annually, the UW School of Medicine has about 1,300 full-time residents and fellows, plus hundreds of medical students and interns. AR 3549, 4606. The Accreditation Council for Graduate Medical Education sets minimum volume standards for medical specialties and requires that training occur at a “primary clinical site” meeting standards for faculty, support services and other infrastructure. AR 4606, 4664-91; RP 81-83, 165-66, 176. The primary clinical site for the UW School of Medicine is UWMC. *See id.* Increasing the number of acute care beds at UWMC increases the number of patients UWMC is able to serve, which increases the training opportunities available for medical school students at the student, internship and residency levels. AR 3142, 4609; RP 175-76.

for determining need in the absence of CN statutes or regulations requiring use of a specific methodology for making the need determination. WAC 246-310-200(2)(a)(ii) provides that if there is no specific method in chapter 246-310 WAC for determining need for a particular type of health service, “the department may consider standards not in conflict with ... [WAC 246-310-210 through -240] in accordance with subsection (2)(b) of this section.” Subsection (2)(b) then lists six potential sources that may be considered when making CN determinations. Among those sources are “[s]tandards developed by professional organizations in Washington state” and “[a]pplicable standards developed by other individuals, groups, or organizations with recognized expertise related to a proposed undertaking” WAC 246-310-200(2)(b)(ii) and (v).

The Court of Appeals correctly determined the SHP qualifies as one of these approved sources (Ct. App. Opinion, p. 12). The SHP was formally adopted by the State Health Coordinating Council, approved by the Governor, and provides detailed statewide standards developed by a professional organization with recognized expertise related to health care planning. *See* Administrative Record (AR) 5253-373.

The SHP provides two alternative methods for forecasting hospital bed need (AR 5320-61): the numeric need methodology that fixates on the needs of a local planning area’s patient population (AR 5339-41); and the

Criterion 2 methodology that fixates on the needs of a region-wide patient population (AR 5325-26). Consistent with the focus in RCW 70.38.115(2)(a) and WAC 246-310-210(1) on “the population served or to be served” by the project, the SHP’s Criterion 2 provides in pertinent part:

Hospital services and beds should be planned according to the needs of specific groups of people. ... It is not appropriate to assume that the people within the area use or should use the hospitals within the area, nor should they assume that hospitals in the area serve only the people in the area. ... Hospital planning should be based on sound evidence about the actual patterns of use by the public. ... Hospital bed need forecasts [*e.g.*, the SHP’s numeric need methodology] are only one aspect of planning hospital services for specific groups of people. Bed need forecasts by themselves should not be the only criterion used to decide whether a specific group of people or a specific institution should develop additional beds, services, or facilities. Even where the total bed supply serving a group of people or a planning area is adequate, it may be appropriate to allow an individual institution to expand. ... Under certain conditions, institutions may be allowed to expand even though the bed need forecasts indicate that there are underutilized facilities in the area. The conditions might include the following:

- the proposed development would significantly improve the accessibility or acceptability of services for underserved groups; or
- the proposed development would allow expansion or maintenance of an institution which has staff who have greater training or skill, or which has a wider range of important services, or whose programs have evidence of better results than do neighboring and comparable institutions; or
- the proposed development would allow expansion of a crowded institution which has good cost, efficiency, or productivity measures of its performance while underutilized services are located in neighboring and comparable institutions with higher costs, less efficient

operations or lower productivity.
In such cases, the benefits of expansion are judged to outweigh the potential costs of possible additional surplus.

AR 5325-26.

The SHP also states “[s]eparate planning area hospital bed need forecasts should be made in each planning area which contains both hospitals providing basic community-oriented services and hospitals providing region-wide tertiary care services.”⁴ AR 5331-32. The explanation for this SHP standard is that regional tertiary hospitals “serve a relatively widespread clientele with a large proportion of their patients being drawn from outside of the planning area.” AR 5332.

The North King County planning area where UWMC is located fits the SHP’s description of the type of planning area where a bed need forecast for a regional tertiary facility like UWMC should be made independently from community hospitals in the planning area. There is no dispute UWMC is a regional tertiary hospital and that 89% of UWMC’s patient days are provided to people who reside outside the North King planning area. *E.g.*, AR 3515, 3533; RP 46-47, 1166-67. UWMC is the only non-trauma, non-pediatric hospital in the state that consistently treats adult patients from all 39 counties in Washington State. AR 4605. All of those people comprise “the

⁴ The SHP acknowledges hospital staff and acute care beds are not fungible: “All decisions should recognize that beds, even those within a particular facility, and medical staffs may not be inter-changeable” AR 5334.

population served or to be served” by UWMC’s bed addition project, not just the small portion from within the planning area that Providence focuses on contrary to RCW 70.38.115(2)(a) and WAC 246-310-210(1).

The North King planning area includes two other adult acute care hospitals: Swedish Ballard and Northwest Hospitals. These are community hospitals that do not provide region-wide tertiary care (although Northwest provides some limited tertiary care locally). *See, e.g.*, AR 3536-38, 4133-41, 4603-06; RP 42-47, 185-89, 197-203, 258-62, 556-59, 580-83, 904-17, 1166-73, 1178-79, 1225. These two neighboring hospitals are not available and accessible, with the necessary facilities, equipment, specialized staff and infrastructure, to meet the needs of the majority of patients cared for at UWMC. *E.g.*, AR 3744-47, 4007-14 (Providence’s bar charts showing Northwest Hospital provides little tertiary care as compared to other hospitals statewide), 4123 (Northwest Hospital’s Executive Director’s letter stating “we are not staffed, equipped or programmatically designed to provide care to the growing tertiary/quaternary patient populations served by UWMC”), 4238 (Providence’s admission that Swedish Ballard is a community hospital with no tertiary services). Over 60% of Northwest Hospital’s 36,470 total patient days in 2011 were from residents of the North King planning area, while only 11% of UWMC’s 95,031 total patient days in 2011 were from North King residents. AR 4603.

Based on the above-summarized applicable law, the Court of Appeals correctly affirmed the administrative tribunals' ruling that the SHP's Criterion 2 may properly be considered in cases where the population to be served by a tertiary hospital's bed expansion project is region-wide. This ruling is in harmony with the CN law's focus on improving access to health services for the population to be served by a project, which is a region-wide population in UWMC's case. *See Overlake Hosp.*, 170 Wn.2d at 55 (the overriding purpose of CN law, as expressed in RCW 70.38.015(1), is to promote and maintain "access to health care services for all citizens").

Rather than attempting to rebut the above-summarized law supporting use of the SHP's Criterion 2 need methodology, Providence instead claims Criterion 2 is contrary to law because (1) Providence did not receive "advance notice" the Department might apply Criterion 2, and Criterion 2 is (2) "defunct," (3) inconsistent with past practice, and (4) "exempts" UWMC from CN laws. As explained below, each of these arguments lack merit and do not present issues of substantial public interest that should be decided by this Court.

2. Providence had advance notice the Department would likely consider applying Criterion 2 as requested in UWMC's CN application

As the Court of Appeals recognized (Ct. App. Opinion, p. 15),

Providence had advance notice from the outset of this proceeding that UWMC's CN application relied on the SHP's Criterion 2 need methodology to show need for its bed expansion project. AR 28-31 (quoting and applying Criterion 2). Before requesting an administrative hearing in this case, and contrary to its current position, Providence agreed the SHP's Criterion 2 may be used to determine need, even if numeric need is absent under the SHP's alternative methodology. In response to UWMC's reliance on Criterion 2, Providence stated in its written public comments to the CN Program (before the CN Program completed its evaluation of UWMC's application) as follows: "We agree the Department has the latitude to approve applications in the absence of numeric bed need." AR 4434; *see also* AR 3917 (same).⁵

After the CN Program granted UWMC's application, however, Providence changed its position and argued in opening statement at the administrative hearing that use of Criterion 2 is contrary to law because only the SHP's numeric methodology may be used to determine need for hospital beds. RP 18-19, 25-27, 34-36. This change in position put the use

⁵ Persuasive precedent is in accord. *See, e.g., Irvington Gen. Hosp. v. Dept. of Health*, 374 A.2d 49, 52-53 (N.J. 1977) (improper to rely solely on a numeric need methodology when analyzing a hospital's CN application to add acute care beds); *Fairfield Nursing Home v. Whalen*, 64 A.D. 2d 802, 407 N.Y.S.2d 923, 924 (1978) (rejection of a CN application based on "a preset, rigid numerical policy (not contained in the statute) which foredoomed the application ... precluded a fair review and resulted in an arbitrary determination").

of Criterion 2 squarely at issue. The administrative tribunals could not willfully disregard the parties' opposing arguments and evidence concerning use of Criterion 2. *See Overlake Hosp.*, 170 Wn.2d at 50. Thus, Providence's alleged lack of advance notice is baseless because Providence knew from the beginning of the CN process the Department could not willfully disregard UWMC's CN application and evidence urging Criterion 2 applied, nor Providence's later opposing arguments.

3. There is no merit to Providence's argument that one portion of the SHP is "defunct" and cannot be used, but another portion of the "defunct" SHP must be used

The Court of Appeals properly rejected (Ct. App. Opinion, pp. 13-14) Providence's inconsistent argument that it is unlawful to apply the SHP's Criterion 2 alternative for determining need because the SHP is "defunct." This claim is fundamentally inconsistent with Providence's argument that the SHP's numeric need methodology must be used. Providence cannot have it both ways: either no portion of the "defunct" SHP can be considered, or all portions may be considered. Providence's inconsistent argument about the allegedly "defunct" status of one section of the SHP, but not other sections, does not involve an issue of substantial public interest that justifies granting further review.⁶

⁶ If the SHP cannot be considered because it is "defunct," need would be determined by relying on the general guidance in RCW 70.38.115(2)(a) and WAC 246-310-210(1) that looks to the needs of the population to be served by a proposed project.

4. There is no merit to Providence’s claim that the Department’s past practice limits consideration to only the SHP’s numeric need methodology

The Court of Appeals correctly rejected Providence’s inaccurate claim that the Department has rigidly adhered to the SHP’s numeric need methodology to the exclusion of any other method for determining need for hospital acute care beds (Ct. App. Opinion, pp. 10-13). The Court noted the record shows the Department has previously approved hospital requests to add acute care beds despite the absence of need under the SHP’s numeric need methodology. Ct. App. Opinion, p. 13 (referencing AR 2357-58).

Moreover, even if Criterion 2 had not been previously invoked, no authority prohibits application of this alternative method for determining need. Providence mistakenly relies on a Presiding Officer’s ruling in *In re Sacred Heart* to claim the Department has previously stated only the SHP’s numeric methodology may be used. However, the Presiding Officer in *Sacred Heart* actually stated that, although the CN Program and hospital CN applicants continue to use the SHP’s numeric need

UWMC’s evidence showing the region-wide population to be served has need for UWMC’s bed expansion project would still be admissible to support approval of UWMC’s application under RCW 70.38.115(2)(a) and WAC 246-310-210(1). On the other hand, since there is no numeric need methodology for bed expansion projects in statute or regulation, Providence’s reliance on the SHP’s “defunct” numeric need methodology would be baseless.

methodology, “[t]his does not prohibit an applicant from submitting an alternative approach to show need exists.” AR 2454-55.

5. There is no merit to Providence’s arguments that Criterion 2 is available only to UWMC, and effectively “exempts” UWMC from CN requirements

Providence is incorrect that the Court of Appeals effectively held Criterion 2 is available only to UWMC. Any hospital, not just UWMC, may apply for additional beds using the SHP’s Criterion 2 need methodology or, as the Presiding Officer stated in the *Sacred Heart* case, using some other “alternative approach to show need exists” among the population to be served by the project. Nothing in the Court of Appeals decision limits Criterion 2’s applicability to UWMC.

Contrary to Providence’s hyperbole, Criterion 2 also does not “exempt” UWMC from CN requirements to which other hospitals are held. A hospital attempting to prove need under Criterion 2 still must show that it is operating at capacity with a growing population to be served, and satisfies one or more of the Criterion 2 conditions that justify the need for additional beds. Additionally, all CN applicants still must prove their proposed project meets all other CN requirements, including financial feasibility, structure of care, and cost containment. *See* WAC 246-310-200 through -240.

In summary, Providence is unable to cite to any binding or

persuasive authority supporting its claim that use of Criterion 2 is contrary to law. Thus, Providence's petition challenging the use of the SHP's Criterion 2 does not involve an issue of substantial public interest that should be decided by this Court.

C. Case-Specific Challenges to the Sufficiency of the Evidence in an Administrative Record Do Not Involve Issues of Substantial Public Interest that Should Be Determined by the Supreme Court

Three of the remaining four issues for which Providence seeks Supreme Court review are challenges to the sufficiency of the evidence supporting the administrative law judges' findings of fact. The issues of whether substantial evidence in the record supports the Review Officer's final decision on need, financial feasibility, structure of care, and cost containment do not present issues of substantial public importance justifying Supreme Court review. These are narrow, case-specific issues going to the weight of the evidence contained in an individual administrative record.

These types of case-specific factual issues routinely arise in challenges to decisions made by administrative tribunals. Whether a particular administrative record contains sufficient evidence to support a finding of fact has little, if any, precedential value in future cases involving other case-specific administrative records.

The Court of Appeals is well suited to determine whether the evidence in the record was “of sufficient quantity to persuade a fair-minded person of the truth or correctness of the agency order.” *See Fox*, 154 Wn. App. at 523. The Court of Appeals application of the substantial evidence standard of review to a case-specific administrative record does not involve an issue of substantial public importance best decided by the Supreme Court.

D. A Case-Specific Challenge to Whether a Review Judge Abused Her Discretion in Making an Evidentiary Ruling Does Not Involve an Issue of Substantial Public Interest that Should Be Determined by the Supreme Court

The fifth and final issue for which Providence seeks Supreme Court review involves an evidentiary ruling reviewed under the abuse of discretion standard of review. *See Univ. of Wash.*, 164 Wn.2d at 104. The issue is whether the administrative tribunals abused their discretion by declining to consider new data that was unavailable at the close of the public comment period, and was not analyzed or used by the Department, Providence or UWMC before the CN Program completed its evaluation approving issuance of UWMC’s CN. *See Ct. App. Opinion*, pp. 28-29.

This Court has already established that administrative law judges in CN cases have broad discretion “to admit, or not admit, evidence that came into existence after the close of the public comment period.” *Univ. of*

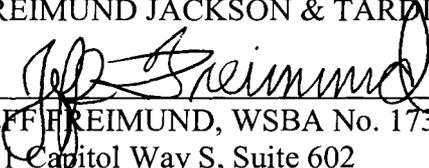
Wash., 164 Wn.2d at 104. The Court of Appeals correctly analyzed this evidentiary issue consistent with this Court's ruling in *Univ. of Wash.*, and found no abuse of discretion. Ct. App. Opinion, pp. 28-29. Application of the *Univ. of Wash.* precedent in a particular case does not involve an issue of substantial public importance justifying this Court's review.

VI. CONCLUSION

Based on the foregoing reasons, Providence's petition for review should be denied. The growing population to be served by UWMC's bed expansion project needs improved access to the health services offered at UWMC. The law and substantial evidence amply support the Court of Appeals affirmance of the Reviewing Officer's final decision that UWMC's project met all applicable CN requirements. Further review by this Court is unnecessary.

RESPECTFULLY SUBMITTED this 3rd day of October, 2016.

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CERTIFICATE OF SERVICE

On said day below, I emailed a courtesy copy and deposited in the U.S. Postal Service for service a true and accurate copy of the Intervenor University of Washington Medical Center’s Answer to Petition For Review to the following parties:

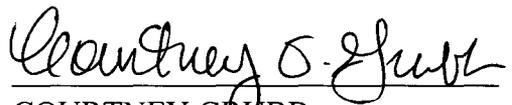
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I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 3rd day of October, at Olympia, Washington.


COURTNEY GRUBB