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**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

WASHINGTON STATE HOSPITAL
ASSOCIATION,

Plaintiff/Petitioner,

v.

STATE OF WASHINGTON;
SUSAN N. DREYFUS, in her official
capacity as SECRETARY OF THE
DEPARTMENT OF SOCIAL &
HEALTH SERVICES; DOUG
PORTER, in his official capacity as
DIRECTOR OF THE WASHINGTON
STATE HEALTH CARE
AUTHORITY; and JAMES L.
MCINTIRE, in his official capacity as
TREASURER OF THE STATE OF
WASHINGTON,

Defendants/Respondents.

NO. 11-2-24507-1 SEA

**ANSWER TO COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF AND
PETITION FOR A WRIT OF
MANDAMUS**

The State of Washington; Susan N. Dreyfus, in her official capacity as Secretary of the Department of Social and Health Services (“Department”); Doug Porter, in his official capacity as Director of the Health Care Authority (“Authority”); and James L. McIntire, in his official capacity as Treasurer of the State of Washington (collectively, “Defendants”), hereby submit this Answer to the Complaint for Declaratory and Injunctive Relief and Petition for a Writ of Mandamus (“Complaint”) filed and served on July 18, 2011.

1 **I. NATURE OF ACTION**

2 1. The entirety of Paragraph 1 contains a characterization of the case to which an
3 answer is not required, but to the extent that an answer is deemed required, the Defendants
4 deny.

5 **II. PARTIES**

6 2. With respect to Paragraph 2:

7 (a) The Defendants admit that the Washington State Hospital Association
8 (“WSHA”) was a nonprofit corporation registered with the Secretary of State through June 30,
9 2011. The Defendants are without sufficient information or knowledge to form a belief as to
10 the truth of the allegation that WSHA has been a nonprofit corporation since June 30, 2011,
11 and therefore deny the same.

12 (b) The Defendants admit that WSHA’s principal office is in Seattle.

13 (c) The Defendants are without sufficient information or knowledge to form
14 a belief as to the truth of the allegation that WSHA’s membership includes 97 hospitals and
15 therefore deny the same.

16 (d) The Defendants admit the allegations in the second sentence, regarding
17 WSHA’s purposes.

18 (e) The Defendants admit that WSHA was among the interested
19 stakeholders that participated in the 2010 legislative session with respect to House Bill 2956.
20 The assertion that WSHA “was instrumental in the conception, drafting, and support” for
21 House Bill 2956 is a characterization of the case to which an answer is not required, but to the
22 extent that an answer is deemed required, the Defendants deny.

23 (f) The Defendants deny that WSHA or any member of WSHA “will suffer
24 irreparable injury if HB 2069 is implemented.”

25 3. The Defendants admit the allegations in Paragraph 3.

26

1 12. With respect to Paragraph 12:

2 (a) The Defendants admit the accuracy of the quotes from
3 RCW 74.60.020(1) and RCW 74.60.150 but clarify that the chapter must be construed in its
4 entirety, not piecemeal.

5 (b) The remainder of the paragraph contains a characterization of the case to
6 which an answer is not required, but to the extent that an answer is deemed required, the
7 Defendants deny.

8 13. (a) With respect to the first sentence of Paragraph 13, the Defendants admit
9 there is a “surplus” in the Safety Net Assessment Fund. However, the Defendants do not know
10 what is meant by the phrase “state fiscal year 2010-11”; the phrase conceivably could mean
11 state fiscal year 2010 (the period of July 1, 2009, through June 30, 2010), state fiscal year 2011
12 (the period of July 1, 2010, through June 30, 2011), state fiscal year 2012 (the period of July 1,
13 2011, through June 30, 2012), or some combination of those years. The remainder of the
14 sentence contains a characterization of the case to which an answer is not required, but to the
15 extent that an answer is deemed required, the Defendants deny.

16 (b) With respect to the second sentence, the Defendants, as explained above,
17 do not know what is meant by the phrase “state fiscal year 2010-11.” In any event, this
18 sentence contains a characterization of the case to which an answer is not required, but to the
19 extent that an answer is deemed required, the Defendants deny.

20 (c) With respect to the third sentence, the Defendants admit that in 2011, the
21 Legislature, through Section 1 of House Bill 2069, amended RCW 74.60.020(3)(e) to specify
22 that \$199.8 million from the Safety Net Assessment Fund may be expended in lieu of state
23 general fund payments to hospitals during the period of July 1, 2011, through June 30, 2013.
24 The remainder of this sentence contains a characterization of the case to which an answer is not
25 required, but to the extent that an answer is deemed required, the Defendants deny.

1 (d) With respect to the fourth sentence, the Defendants admit that in
2 Section 2 of House Bill 2069, the Legislature in 2011 adjusted payment rates to hospitals for
3 the services they provide to Medicaid recipients. The remainder of this sentence contains a
4 characterization of the case to which an answer is not required, but to the extent that an answer
5 is deemed required, the Defendants deny.

6 14. The entirety of Paragraph 14 contains a characterization of the case to which an
7 answer is not required, but to the extent that an answer is deemed required, the Defendants
8 deny.

9 **V. CLAIMS**

10 15. The Defendants incorporate by reference all previous answers given.

11 16. The Defendants deny the allegations in Paragraph 16.

12 17. The Defendants deny the allegations in Paragraph 17.

13 **VI. RELIEF REQUESTED**

14 The Defendants incorporate by reference all previous answers given.

15 Paragraphs 18 through 20 constitute the Plaintiff's prayer for relief, to which no answer
16 is required, but to the extent an answer is deemed required, the Defendants deny. The
17 Defendants deny that there is any legal basis for any of the relief requested by the Plaintiff.

18 **DEFENDANTS' AFFIRMATIVE DEFENSES**

19 1. By way of FURTHER ANSWER and FIRST AFFIRMATIVE DEFENSE, the
20 Plaintiff advocates for illegal spending in violation of RCW 43.135.

21 2. By way of FURTHER ANSWER and SECOND AFFIRMATIVE DEFENSE,
22 all actions alleged by the Plaintiff as wrongful manifest a reasonable exercise of judgment and
23 discretion by authorized public officials. Such actions were made in the exercise of
24 governmental authority entrusted to the Defendants by law and are not wrongful or actionable.
25 The named Defendants in their official capacities are entitled to discretionary immunity.

1 3. By way of FURTHER ANSWER and THIRD AFFIRMATIVE DEFENSE, the
2 Plaintiff has failed to state a claim upon which relief may be granted.

3 4. By way of FURTHER ANSWER and FOURTH AFFIRMATIVE DEFENSE,
4 the Plaintiff lacks standing and/or capacity to bring some or all of the claims.

5 5. By way of FURTHER ANSWER and FIFTH AFFIRMATIVE DEFENSE, the
6 Plaintiff should be estopped from pursuing any recovery against the Defendants.

7 6. By way of FURTHER ANSWER and SIXTH AFFIRMATIVE DEFENSE,
8 attorneys' fees are not justified under any law.

9 7. By way of FURTHER ANSWER and SEVENTH AFFIRMATIVE DEFENSE,
10 the Court lacks jurisdiction over the subject matter.

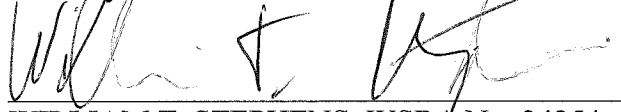
11 8. By way of FURTHER ANSWER and EIGHTH AFFIRMATIVE DEFENSE,
12 venue in this Court is improper.

13 The Defendants reserve the right to amend this Answer, including amendment to assert
14 additional affirmative defenses.

15 The Complaint should be dismissed with prejudice. The Defendants are entitled to
16 costs and reasonable attorneys' fees.

17 DATED this 4th day of August, 2011.

18 ROBERT M. MCKENNA
19 Attorney General

20 
21 WILLIAM T. STEPHENS, WSBA No. 24254
22 ANGELA COATS MCCARTHY, WSBA No. 35547
23 Assistant Attorneys General

24 Attorneys for Defendants/Respondents
25
26

1 **PROOF OF SERVICE**

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

4 ABC Legal Services

5 PHILIP A. TALMADGE
6 ATTORNEY AT LAW
7 18010 SOUTHCENTER PKWY.
8 TUKWILA, WA 98188-4630

9 MICHAEL F. MADDEN
10 ATTORNEY AT LAW
11 1700 SEVENTH AVENUE, STE. 1900
12 SEATTLE, WA 98101-1355

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

15 DATED this 4th day of August, at Tumwater, WA.

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17 _____
18 Sharon Paakkonen, Legal Assistant
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