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**SUPERIOR COURT OF THE STATE OF WASHINGTON  
THURSTON COUNTY**

WASHINGTON STATE HOSPITAL  
ASSOCIATION,

Petitioner,

vs.

WASHINGTON STATE DEPARTMENT  
OF HEALTH,

Respondent.

NO. 14-2-00285-5

ANSWER TO PETITION FOR  
DECLARATORY JUDGMENT  
AND INJUNCTIVE RELIEF  
PURSUANT TO RCW 34.05

Respondent, Washington State Department of Health, by and through its attorneys,  
Joyce A. Roper, Sr. Assistant Attorney General, and Richard McCartan, Senior Counsel, in  
answer to the Petitioner's Petition for Declaratory Judgment and Injunctive Relief Pursuant to  
RCW 34.05, admits, denies and alleges as follows:

1. Respondent admits the Department of Health ("Department") adopted amendments  
to WAC 246-310-010, effective January 23, 2014, clarifying that change in control of a  
hospital, whether by sale, purchase, lease, affiliations, corporate restructuring, mergers, and  
other arrangements are subject to [Certificate of Need] review. Respondent lacks knowledge

1 or information about Petitioner's status or membership and, therefore, denies the same.

2 Respondent denies the remainder of the allegations set forth in Paragraph 1 of the Petition.

3 2. Respondent admits this Court has jurisdiction over this action, and that venue is  
4 proper in this Court, but denies the remainder of the allegations set forth in Paragraph 2 of the  
5 Petition.  
6

7 3. Respondent is without sufficient knowledge or information to form a belief as to  
8 the truth of the allegations set forth in Paragraph 3 of the Petition, and, therefore, denies the  
9 same.

10 4. Respondent is without sufficient knowledge or information to form a belief as to  
11 the truth of the allegations set forth in Paragraph 4 of the Petition, and, therefore, denies the  
12 same.  
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14 5. Respondent admits the allegations in Paragraph 5 of the Petition.

15 6. Respondent, in answer to Paragraph 6, admits that WSHA has not requested an  
16 adjudicative proceeding under chapter 34.05 RCW related to this Petition.

17 7. Respondent admits that WAC 246-310-010 was amended by adding subsection 54  
18 defining "sale, purchase, or lease," and filed on December 23, 2013 under WSR 14-02-040, a  
19 true and correct copy of which is attached to the Petition. WSR 14-01-040 speaks for itself.  
20

21 8. Respondent admits the allegations of Paragraph 8 of the Petition.

22 9. The statute, partially quoted in Paragraph 9 of the Petition, speaks for itself.

23 10. The allegation in Paragraph 10 is a legal argument and no answer is required.

24 11. Respondent admits that some of its prior decisions have applied a narrow reading  
25 of the terms "sale, purchase, or lease," which resulted in hospitals using terminology other  
26

1 than "sale, purchase, or lease" in their transactional documents, but which resulted in the same  
2 outcome as a "sale, purchase, or lease." The decisions speak for themselves, so no further  
3 answer is required.

4  
5 12. Respondent admits that, in 2000, a transaction between Swedish and Providence  
6 involving Providence Seattle Medical Center was not subject to Certificate of Need review.  
7 The decision speaks for itself. Respondent is without sufficient knowledge or information to  
8 form a belief as to the truth of the allegations characterizing the transaction, and, therefore,  
9 denies the same. The last two sentences in Paragraph 12 are legal arguments and no answer is  
10 required.

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12 13. Respondent admits the existence of the prior Department decisions referenced in  
13 Paragraph 13 of the Petition and the decisions speak for themselves.

14  
15 14. The legislative history of RCW 70.38.105 and chapter 70.38 RCW speak for  
16 themselves.

17  
18 15. Respondent admits the Governor issued Directive 13-12 on June 28, 2013. The  
19 Directive speaks for itself.

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21 16. Respondent denies the allegations in Paragraph 16 of the Petition.

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23 17. Respondent admits that WSHA posed a series of questions to the Department, as  
24 alleged in Paragraph 17. RCW 34.04.328 speaks for itself. Respondent denies the remainder  
25 of the allegations in Paragraph 17 of the Petition.

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27 18. Respondent denies the allegations in Paragraph 18 of the Petition.

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29 19. Respondent denies the allegations in Paragraph 19 of the Petition.

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31 20. Respondent denies the allegations in Paragraph 20 of the Petition.

1           21. Respondent is without sufficient knowledge or information to form a belief as the  
2 truth of the allegations in Paragraph 21, and, therefore, denies the same.

3           22. Respondent incorporates by reference its response to Paragraphs 1 through 21 of  
4 the Petition.

5           23. Respondent denies the allegations in Paragraph 23 of the Petition.

6           24. Respondent denies the allegations in Paragraph 24 of the Petition.

7           25. Paragraph 25 of the Petition contains requests for relief to which no response is  
8 required.  
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1 **REQUEST FOR RELIEF**

2 Respondent requests that this Court:

- 3 1. Dismiss Petitioner's Petition with prejudice; and  
4  
5 2. Award such further relief to Respondent as the Court deems equitable and just.

6 DATED this 5<sup>th</sup> day of March, 2014.

7 ROBERT W. FERGUSON  
8 Attorney General

9 s/ Joyce A. Roper  
10 JOYCE A. ROPER, WSBA No. 11322  
11 Sr. Assistant Attorney General  
12 7141 Cleanwater Drive SW  
13 PO Box 40109  
14 Olympia, WA 98504-0109  
15 Telephone: (360) 664-4968  
16 Facsimile: (360) 586-3564  
17 JoyceR@atg.wa.gov  
18 ahdolyef@atg.wa.gov

19 ROBERT W. FERGUSON  
20 Attorney General

21 s/ Richard A. McCartan  
22 RICHARD A. MCCARTAN, WSBA No. 8323  
23 Senior Counsel  
24 7141 Cleanwater Drive SW  
25 PO Box 40109  
26 Olympia, WA 98504-0109  
Telephone: (360) 586-4998  
Facsimile: (360) 586-3564  
RichardM@atg.wa.gov  
ahdolyef@atg.wa.gov

Attorneys for Respondent, Washington State  
Department of Health

1 **PROOF OF SERVICE**

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

4 Douglas C. Ross  
5 Brad Fisher  
6 Davis Wright Tremaine, LLP  
7 1201 Third Avenue, Suite 2200  
8 Seattle, WA 98101

- 9  U.S. Mail Postage Prepaid  
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 Electronic Service Agreement  
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 Hand delivered by \_\_\_\_\_

11 Barbara A. Shickich  
12 Riddell Williams, PS  
13 1001 Fourth Avenue, Suite 4500  
Seattle, WA 98154

- 14  US Mail Postage Prepaid via Consolidated Mail Service  
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 E-mail Service Pursuant to Agreement  
16  State Campus Delivery  
 Hand delivered by \_\_\_\_\_

17  
18 I certify under penalty of perjury under the laws of the state of Washington that the  
19 foregoing is true and correct.

20 DATED this 5<sup>th</sup> day of March, 2014, at Olympia, WA.

21  
22 s/ Krystle A. Berry  
23 KRYSTLE A. BERRY  
24 Legal Assistant  
25  
26