

LFISK
appeals

FILED
FEB 28 2012
SUPERIOR COURT
BETTY J. GOULD
THURSTON COUNTY CLERK

1 EXPEDITE
2 No Hearing Set
3 Hearing is Set
4 Date:
5 Time:
6 The Honorable Christine Pomeroy

7 STATE OF WASHINGTON
8 THURSTON COUNTY SUPERIOR COURT

9 KADLEC REGIONAL
10 MEDICAL CENTER,
11 a Washington nonprofit
12 corporation,
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Petitioner,

NO. 11-2-01523 5
ORDER DENYING PETITION
FOR JUDICIAL REVIEW

vs.

DEPARTMENT OF HEALTH OF
THE STATE OF
WASHINGTON,,
Respondent.

THIS MATTER came before the Court December 16, 2011 on a Petition for Judicial Review filed by Kadlec Regional Medical Center (Kadlec). Appearing were Richard A. McCartan, Assistant Attorney General, for the Department of Health (Department); Brian W. Grimm, Attorney-at-Law, for Kadlec; and Christopher G. Emch, Attorney-At-Law, for Intervenor Kennewick Public Hospital District. Having considered the pleadings, the administrative record, and the briefing and argument of counsel, the Court finds and concludes:

1. Filed under RCW 34.05, this Petition for Judicial Review challenges a June 14, 2011, Health Law Judge decision dismissing the adjudicative

ORDER DENYING PETITION
FOR JUDICIAL REVIEW

ATTORNEY GENERAL OF WASHINGTON
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1 proceeding requested by Kadlec with respect to the Department Certificate of
2 Need decision under RCW 70.38 and WAC 246-310 to approve Kadlec's request
3 to add 55 beds (and to deny Kadlec's request to add 114 or 75 beds) to its
4 Richland, Washington hospital.¹
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6 2. Kadlec contends that the approval should have been for 114 or 75
7 beds. However, Kadlec's Certificate of Need application requested approval for
8 55, 75, or 114 beds. For this reason:

9
10 a. The Department's approval of the requested 55-bed
11 alternative did not constitute the "denial" of a Certificate of Need application
12 which could be challenged by Kadlec under RCW 70.38.115(10)(a); and

13 b. Kadlec lacks standing under RCW 34.05.530 to challenge the
14 Department's decision to approve only the requested 55 beds.

15 BASED ON THE FOREGOING, under RCW 34.05.574(1)(a), the
16 Department's June 14, 2011 decision is AFFIRMED.
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18 ORDERED This 28 day of February, 2012.

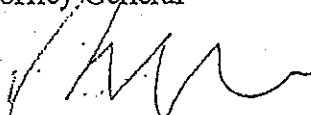
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21 JUDGE CHRISTINE POMEROY
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26 ¹ Kadlec asserted that its Petition for Judicial Review also challenged the underlying November 3, 2010, Certificate of Need Program decision on Kadlec's application.

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Presented by

ROBERT M. MCKENNA
Attorney General



RICHARD A. MCCARTAN, WSBA No. 8323
Assistant Attorney General
Attorneys for Respondent State of Washington
Department of Health

Approved as to form by

Notice of Presentation waived:

Brian W. Grimm

Signature authorized per e-mail

BRIAN W. GRIMM, WSBA No. 29619
Attorney for Petitioner Kadlec Regional Medical Center

Notice of Presentation waived:

Christopher G. Emch

Signature authorized per e-mail

CHRISTOPHER G. EMCH, WSBA No. 26457
Attorney for Intervenor Kennewick Public Hospital District