

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

SOUTH ANCHORAGE AMBULATORY
SURGERY CENTER JOINT VENTURE,

Appellant,

vs.

KARLEEN K. JACKSON, in her official capacity
as COMMISSIONER, ALASKA DEPARTMENT
OF HEALTH AND SOCIAL SERVICES,

Appellee.

RECEIVED

OCT 17 2007

ATTORNEY GENERALS OFFICE
JUNEAU

Case No. _____

NOTICE OF APPEAL

South Anchorage Ambulatory Surgery Center Joint Venture, by and through the undersigned counsel, hereby gives notice of its appeal to the Superior Court for the State of Alaska, Third Judicial District at Anchorage, of the October 5, 2007 decision by Karleen K. Jackson, in her official capacity as Commissioner, Alaska Department of Health and Social Services, denying appellants application for a Certificate of Need to construct an ambulatory surgery center in South Anchorage, Alaska. Pursuant to Alaska R. App. P. 602c(1), appellant submits the following information and attachments:

1. Party taking this appeal

Appellant is South Anchorage Ambulatory Surgery Center Joint Venture¹, P.O. Box 233889, Anchorage, Alaska 99523. Its individual members are:

¹ South Anchorage Ambulatory Surgery Center Joint Venture is the name used throughout the underlying administrative agency appeal process. The legal name of the joint venture on file with the Alaska Division of Corporations is Providence Surgery Centers, LLC, which was formed subsequent to the submission of the CON application to the Alaska Division of Health and Social Services.

Providence Health System-Washington d/b/a Providence Alaska Medical Center
Thomas P. Vasileff, M.D.
Adrian B. Ryan, M.D.
John Lapkass, M.D.
Leslie Dean, M.D.
Richard McEvoy, M.D.
George D. Rhyneer, M.D.
Gregory Polson, M.D.
Lawrence W. Stinson, Jr., M.D.
Grant Roderer, M.D.

2. Agency from which decision is appealed

Karleen K. Jackson, Commissioner
Alaska Department of Health and Social Services
350 Main Street
Juneau, AK 99801

3. Statement of Points on Appeal

Appellant's Statement of Points on Appeal is filed herewith.

4. Filing Fee

Appellant's filing fee required by Alaska R. Admin. P. 9(b)(8) is submitted herewith.

5. Bond for Costs on Appeal

Appellant's cash deposit in lieu of bond as required by Alaska R. App. P. 204(c)(1) and 602(e)(1), and as authorized by Alaska R. Civ. P. 80(g) is submitted herewith.

6. Copy of decision appealed from

A copy of the October 5, 2007 decision appealed from is attached as Ex. 1.

7. Proof of Service

Appellant's Certificate of Service of Notice of Appeal and Appellant's Statement of Points on Appeal is filed herewith.

Dated at Anchorage, Alaska this ____ day of _____, 2007

GRUENSTEIN & HICKEY
Attorneys for South Anchorage Ambulatory
Surgery Center Joint Venture

By 

Peter Gruenstein

LAW OFFICE OF
GRUENSTEIN & HICKEY
RESOLUTION PLAZA
1029 W. 3RD AVENUE, SUITE 510
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 258-4338
FAX (907) 258-4350

**BEFORE THE STATE OF ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON
REFERRAL FROM THE COMMISSIONER OF THE DEPARTMENT OF HEALTH
AND SOCIAL SERVICES**

In the Matter of the South Anchorage)
Ambulatory Surgery Center Joint Venture)
_____)

OAH No. 06-0152-DHS

DECISION

This matter is back before me following return to the administrative law judge under AS 44.64.060(e)(2) and remand to the Department of Health and Social Services' certificate of need program staff under my July 5, 2007 Decision and Order. Having considered the staff's report filed on October 5, 2007, and in light of the September 14, 2007 stipulation of the parties to the effect that the recalculation of need ordered by me on July 5, 2007, would have no effect on my decision, I hereby enter a final decision in this matter.

The final decision in this matter consists of (1) the May 24, 2007 proposed decision prepared by the administrative law judge, as modified by my July 5, 2007 Decision and Order; (2) my July 5, 2007 Decision and Order; and (3) this document. For the reasons stated in those documents, I affirm my January 19, 2006 denial of the South Anchorage Ambulatory Surgery Center Joint Venture's May 5, 2005 application for a certificate of need.

Pursuant to AS 44.62.520(a)(2), my final decision takes effect immediately.

DATED this 5th day of October, 2007.

By: _____

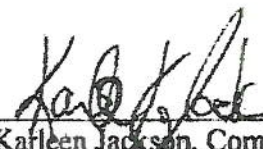

Karleen Jackson, Commissioner
Department of Health and Social Services

EXHIBIT 1
Page 1 of 1

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT

AMBULATORY SURGERY CENTER
JOINT VENTURE,

Appellant,
vs.

KARLEEN K. JACKSON, in her official
capability as COMMISSIONER, ALASKA
DEPARTMENT OF HEALTH AND
SOCIAL SERVICES,

Appellee.

Case No. _____

STATEMENT OF POINTS ON APPEAL

Appellant, South Anchorage Ambulatory Surgery Center Joint Venture, through the undersigned counsel, hereby submits its Statement of Points on Appeal regarding the decision by Kathleen K. Jackson, Commissioner of the Alaska Department of Health and Social Services, denying Appellant's application for a Certificate of Need to construct an ambulatory surgery center in South Anchorage.

Points on Appeal

1. Did the Commissioner err in rejecting the Chief Administrative Law Judge's finding that four additional general operating rooms ("ORs") and two shelled-in ORs were justified and needed, and thus erred in rejecting appellant's application for a Certificate of Need?
2. Was the Commissioner required by regulations to use a methodology, or formula, for determining future OR need that was admittedly statistically inferior and produced the "wrong" result? Did she err in rejecting the conclusion of two Administrative Law Judges that she was required to use the superior methodology?

STATEMENT OF POINTS ON APPEAL

OAH No. 06-0152-DHS

Page 1

3. If the Commissioner was correct that present regulations were not sufficiently flexible to allow her to use a more rational regression methodology in determining the need for additional ORs, was the regulation inconsistent with the statutory intent to match future supply to projected need, and thus void?

DATED this 15th day of October, 2007, at Anchorage, Alaska.

GRUENSTEIN & HICKEY
Attorneys for South Anchorage Ambulatory Surgery
Center Joint Venture

By: 

Peter Gruenstein, ABA #7910079

Certificate of Service

I HEREBY CERTIFY that a true and correct
copy of the foregoing was served by
e-mail this 15th day of ~~September~~, 2007 on:
Oct.

Stacie Kraly, Assistant Attorney General
Rebecca Polizzotto
Department of Law
Box 110300
Juneau, AK 99811-0300

Stephen D. Rose, Esq.
Preston Gates & Ellis, LLP
925 Fourth Avenue, Suite 2900
Seattle, Washington 98104