

BANKSTON GRONNING O'HARA

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
601 W. 5TH AVENUE, SUITE 900
ANCHORAGE, ALASKA 99501
(907) 276-1711
FACSIMILE (907) 279-5358
WWW.BANKSTON.TO

SHAREHOLDERS

WILLIAM M. BANKSTON
JON T. GIVENS
CHRIS D. GRONNING
CHRISTOPHER J. HEAPHY
BARBRA Z. NAULT
STEVEN T. O'HARA

Hand Delivered**RECEIVED****JUL 13 2006**

Office of the Commissioner
DHSS - Juneau

ASSOCIATES

BRIAN J. STIITZ
D. KEVIN WILLIAMS

July 13, 2006

The Honorable Karleen Jackson, Commissioner
Department of Health and Social Services
State of Alaska
350 Main Street, Room 404
Juneau, Alaska 99801

via Personal Service


Dear Commissioner Jackson:

This letter is written on behalf of Mat-Su Regional Medical Center ("Mat-Su Regional") in connection with its March 21, 2006 request for determination of whether a certificate of need is required for a new independent diagnostic testing facility located in a Palmer medical office building constructed and owned by Providence Health Systems of Alaska and operated by Imaging Associates of Providence, LLC, an entity that is also owned, at least in part, by Providence. Our office has been retained by Mat-Su Regional to appeal the May 4, 2006 determination that a certificate of need is not required for this project and the June 14, 2006 decision to deny Mat-Su Regional's request for reconsideration. Please consider this letter a request for hearing and appeal of these rulings pursuant to 7AAC 07.033(f) and 7 AAC 07.080. Please also accept for filing the enclosed accusation and statement of issues as required by AS 44.62.330 *et seq.*

Please do not hesitate to contact me if you have any questions or need further information regarding this appeal.

Sincerely,

BANKSTON GRONNING O'HARA, P.C.


Barbra Z. Nault

BZN/jmv

cc: Client

Attorney General, State of Alaska
Registered Agent for Providence Health System-Washington
Registered Agent for Imaging Associates of Providence, LLC
M415701\LTR\REQadminhearing

**BEFORE THE COMMISSIONER
DEPARTMENT OF HEALTH AND SOCIAL SERVICES**

MAT-SU REGIONAL MEDICAL CENTER, LLC,)

Petitioner,)

vs.)

KARLEEN JACKSON, in her capacity as)
COMMISSIONER OF THE DEPARTMENT OF)
HEALTH AND SOCIAL SERVICES,)
STATE OF ALASKA; PROVIDENCE HEALTH)
SYSTEM-WASHINGTON d/b/a PROVIDENCE)
HEALTH SYSTEM IN ALASKA; and)
IMAGING ASSOCIATES OF PROVIDENCE, LLC,)

Respondents.)

) Case No. _____

**ACCUSATION AND
STATEMENT OF POINTS ON APPEAL**

Petitioner Mat-Su Regional Medical Center, LLC ("Mat-Su Regional"), by and through counsel Bankston Gronning O'Hara, P.C., and pursuant to 7 AAC 07.033(f) and 7 AAC 07.080, hereby appeals the May 4, 2006 and June 14, 2006 decisions issued by the Department of Health and Social Services in connection with Mat-Su Regional's request for a determination of whether a Certificate of Need is required for the independent diagnostic testing facility located at 2280 South Woodworth Loop, Palmer, Alaska. In accordance with AS 44.62.360 and 44.62.370, Mat-Su Regional submits the following accusation and statement of points on appeal against Respondents:

ACCUSATION

1. Petitioner Mat-Su Regional Medical Center, LLC ("Mat-Su Regional") is an Alaska limited liability company doing business in the Matanuska-Susitna Valley of Alaska as Mat-Su Regional Medical Center. For purposes relevant to this lawsuit, Mat-Su Regional is a "health care facility" as defined in AS 18.07.111(8), subject to the

BANKSTON GRONNING O'HARA, P.C.

Attorneys at Law

601 W. 5th Avenue, Suite 900

Anchorage, Alaska 99501

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www.bankston.to

provisions of AS 18.07.031 with respect to the requirements of Alaska's Certificate of Need ("CON") program.

2. Respondent Karleen Jackson is the Commissioner of the Department of Health and Social Services, State of Alaska ("DHSS"). It is the responsibility of DHSS to administer and enforce the CON statutes, AS 18.07.021 *et seq.*, and to adopt lawful regulations as necessary to interpret and implement those statutes.

3. Respondent Providence Health System-Washington d/b/a Providence Health System in Alaska and/or Providence Alaska Medical Center ("Providence") is a non-profit corporation doing business in Alaska. Providence is a "health care facility" as defined in AS 18.07.111(8), subject to the provisions of AS 18.07.031 with respect to the requirements of Alaska's CON program.

4. Respondent Imaging Associates of Providence, LLC ("IAP") is a limited liability company organized under the laws of Alaska. It is a for-profit company in the business of providing medical diagnostic testing. Upon information and belief, IAP is owned by a group of unidentified physicians and Providence.

5. Sometime prior to June 2006, Providence constructed a building at 2280 South Woodworth Loop in Palmer, Alaska, to serve as the location for IAP's operations (the "Palmer facility"). Upon information and belief, the expenditures for the Palmer facility exceed \$1,050,000. Providence continues to own the building and leases space to IAP.

6. Because the Palmer facility meets the monetary threshold for application of AS 18.08.031 and qualifies as an independent diagnostic testing facility as that term is used in AS 18.07.111(8), IAP and/or Providence were required to apply for a CON before commencing construction or operations. Neither IAP nor Providence submitted the required CON application.

7. On March 21, 2006, Mat-Su Regional submitted a request to Commissioner Jackson under 7 AAC 07.031 for a determination of whether a CON was required for the Palmer facility.

8. On May 4, 2006, Commissioner Jackson issued a determination concluding that IAP was not an independent diagnostic testing facility but rather was "an office of private physicians in group practice" and therefore exempt from the CON process. The Commissioner's determination did not address the need for a CON associated with the construction of the building.

9. On June 1, 2006, Mat-Su Regional sought reconsideration of the Commissioner's determination pursuant to 7 AAC 07.033.

10. On June 14, 2006, Commissioner Jackson affirmed her earlier refusal to apply the CON statutes to the Palmer facility, this time relying on a newly adopted regulation, 7 AAC 07.012, which defines "independent diagnostic testing facility" in part by reference to the requirements for Medicare or Medicaid reimbursement under federal law, 42 C.F.R. 410.33, rather than by reference to the intent of the Alaska legislature.

11. Mat-Su Regional has standing to appeal the Commissioner's May 4, 2006 determination and June 14, 2006 decision as a member of the public and the holder of a CON substantially and adversely affected by the unpermitted construction and operation of an independent diagnostic testing facility / health care facility in Palmer by IAP and/or Providence.

STATEMENT OF POINTS ON APPEAL

Mat-Su Regional submits the following statement of points on appeal:

1. DHSS violated the provisions of AS 18.07.021 *et seq.*, including AS 18.07.031, by failing to require IAP and/or Providence to comply with the Alaska CON program prior to constructing or operating the Palmer facility.

2. DHSS violated its own regulations applicable to the administration and enforcement of the Alaska CON program by failing to require IAP and/or Providence to comply with the Alaska CON program prior to constructing or operating the Palmer facility.

3. DHSS erred by failing to find that Providence's building as constructed and equipped by Providence is an "independent diagnostic testing facility" and/or a "health care facility" as defined in AS 18.07.111(8), subject to the provisions of AS 18.07.031 with respect to the requirements of the Alaska CON program.

4. DHSS erred by failing to find that IAP is an "independent diagnostic testing facility" and a "health care facility" as defined in AS 18.07.111(8), subject to the provisions of AS 18.07.031 with respect to the requirements of the Alaska CON program.

5. DHSS erred by failing to find that IAP is a "health care facility" as defined in AS 18.07.111(8), subject to the provisions of AS 18.07.031 with respect to the requirements of Alaska's CON program by virtue of being owned by Providence, itself a health care facility.

6. DHSS erred by adopting a definition of "independent diagnostic testing facility" in 7 AAC 07.012 which is directly contrary to the express intent of the Alaska legislature in enacting HB 511, the bill which, in 2004, added "independent diagnostic testing facility" to the definition of "health care facilities" in AS 18.07.111(8).

7. DHSS erred by failing to adequately investigate the factual basis of the assertions by IAP and/or Providence that the Palmer facility is exempt from the requirements of AS 18.07.031 *et seq.*

8. DHSS erred by failing to adequately investigate the nature and extent of Providence's direct financial interest in IAP and/or Providence's indirect financial interest in the operations of IAP, including the terms of any space and equipment leases.

9. DHSS erred by failing to adequately investigate or substantiate the factual basis for its conclusion that the Palmer facility constitutes an office of private physicians in group practice, including its failure to investigate or determine the identity of the physicians purportedly in the group practice and the extent to which such physicians actually provide services from the Palmer facility.

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10. DHSS erred by failing to require IAP and/or Providence to fully and accurately respond to the requests for information issued by DHSS on April 4, 2006 and April 19, 2006, including the DHSS request for:

- 1) A clear, complete and current description of the proposed activity, including a description of each component of the activity proposed to be undertaken;
- 2) A certified estimate of the total cost of each proposed component of the activity listed in 7 AAC 07.010(a), as applicable, for the entire activity; and
- 3) An estimate starting date and completion date for the proposed activity.

See, April 4, 2006 Request for Information at p. 3 and April 19, 2006 Request for Information at pp. 3-4.

11. Respondent Providence violated AS 18.07.031 *et seq.* by failing to apply for a certificate of need prior to constructing and/or operating the Palmer facility.

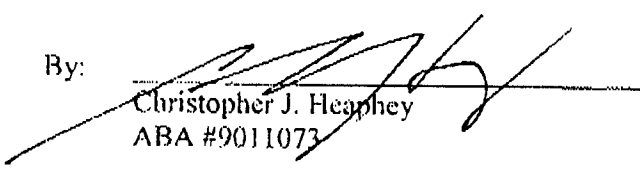
12. Respondent IAP violated AS 18.07.031 *et seq.* by failing to apply for a certificate of need prior to constructing and/or operating the Palmer facility.

13. Mat-Su Regional reserves the right to supplement this Statement of Points on Appeal.

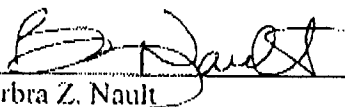
DATED at Anchorage, Alaska this 13th day of July, 2006.

BANKSTON GRONNING O'HARA, PC
Attorneys for Mat-Su Regional Medical Center, LLC

By:


Christopher J. Heaphey
ABA #9011073

By:


 Barbra Z. Nault
 ABA #9807037
VERIFICATION

STATE OF ALASKA)
) ss.
 THIRD JUDICIAL DISTRICT)

I, Norman Stephens, say on oath that I am Chief Executive Officer of Mat-Su Regional Medical Center LLC and am authorized to act on behalf of said corporation; that I have read the foregoing document and believe all statements made in the document are true.

DATED this ____ day of _____, 2006.

 Norman Stephens

SUBSCRIBED AND SWORN to before me this ____ day of _____,
 2006.

 Notary Public in and for Alaska
 My Commission Expires: _____

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