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Attorneys for Respondents Providence Health
System-Washington d/b/a Providence Health
System in Alaska and/or Providence Alaska Medical
Center and Imaging Associates of Providence, LLC

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. _____

NOTICE OF DEFENSE

Respondents, Providence Health System-Washington d/b/a Providence Health System in
Alaska and Imaging Associates of Providence, LLC, by and through counsel, Choquette &
Farleigh, LLC, hereby submits their Notice of Defense as follows:

I. REQUEST FOR HEARING

Respondents hereby request a hearing pursuant to AS 44.62.390 and 7 AAC 07.080.

II. ADMISSIONS

Respondents admit the following allegations contained in the accusation:

1. Respondent Karleen Jackson is the Commissioner of the Department of Health & Social Services. The Department is obligated to administer the certificate of need program, which includes the adoption of regulations and making determinations with respect to whether a certificate of need is required.

2. 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 did construct a 6400 Square foot building at 2280 South Woodward Loop in Palmer, Alaska on property it owned (the "Palmer building"). The expenditures for the Palmer building exceeded \$1,050,000. Providence leased the building to Imaging Associates of Providence, LLC ("IAP") to be utilized solely as a medical office space by radiologists who are in private group practice at the site.

3. Respondent IAP is a limited liability company organized under the laws of the State of Alaska. Its members consist of Providence (with a member's percentage interest of 50%) and Interventional & Diagnostic Radiology Consultants, LLC (with a member's percentage interest of 50%). Interventional & Diagnostic Radiology Consultants, LLC ("IDRC") is an Alaska limited liability company whose members are Erik Maurer, M.D.; Leonard Sisk, M.D.; David Moeller, M.D.; Denise Farleigh, M.D.; Charki Inampudi, M.D., and Christopher Kottra, M.D. All the members of IDRC are Board Certified radiologists who provide professional

services to their patients. The practice at the Palmer building is fully managed by the radiologists. The Palmer building currently has no use except these radiologists practicing in a group at the site.

4. Petitioner did submit a request to Commissioner Jackson for determination of whether a Certificate of Need was required for the Palmer facility and Commissioner Jackson properly issued a determination that IAP was exempt from the Certificate of Need process. Mat-Su Regional sought reconsideration of the Commissioner's determination and the Commissioner did affirm the decision that a Certificate of Need was not required.

6. All other factual allegations and all of Petitioner's Statements of Points on Appeal are denied.

III. ADDITIONAL MATTERS BY WAY OF DEFENSE

1. The relevant private practice of radiology by IAP and the Palmer building (jointly, the "Palmer practice") is not a "health care facility" for purposes of provisions of AS 18.07.031. The Palmer practice consists of a building (the Palmer building) being used as office space by private physicians practicing in a group and, as such, is exempt from the Certificate of Need process under AS 18.07.111(8)(B). For purposes of the exemption from obtaining a Certificate of Need, there is no difference between the Palmer practice and the practices of cardiologists or other private physicians who are exempt from obtaining a Certificate of Need when constructing a building or leasing and improving office space and practicing therein as an office of private physicians in individual or group practice – even if the expenditures exceed the limit stated in AS 18.07.031. The construction of medical office space has not been and is not now subject to Certificate of Need review in Alaska.

2. The Palmer practice is not an Independent Diagnostic Testing Facility under applicable statutes and regulations. See 7 AAC 07.012. The Palmer practice would not be required to be enrolled as an Independent Diagnostic Testing Facility for purposes of Medicare or Medicaid reimbursement under 42 CFR 410.33 in that it meets the conditions stated by the Centers for Medicare & Medicaid Services to establish that it is not required to enroll as an Independent Diagnostic Testing Facility. The Palmer practice is owned by radiologists and Providence. The owning radiologists and any employed or contracted radiologists regularly perform physician services (e.g., test interpretations and minor procedures) at the location (Palmer building) where the diagnostic tests are performed. The billing patterns of the Palmer practice indicate that it is organized to provide the professional services of radiologists. The Palmer practice will not be billing for a significant number of purchased interpretations. It will rarely bill for a technical component of a diagnostic test. It will bill for a substantial percentage of all interpretations of the diagnostic test performed by the practice. A substantial majority of the radiological interpretations are performed at the practice location where the diagnostic tests are performed.

3. Neither IAP nor Providence were required to apply for a Certificate of Need before commencing construction of the Palmer building or commencing practice by the radiologists in the Palmer building. DHSS properly interpreted the statutes and regulations by not requiring IAP and/or Providence to comply with the Alaska Certificate of Need program with respect to either constructing the Palmer building or operating the Palmer practice.

4. 7 AAC 07.012 was properly adopted and the definition of “independent diagnostic testing facility” contained there is consistent with the intent of the Alaska Legislature

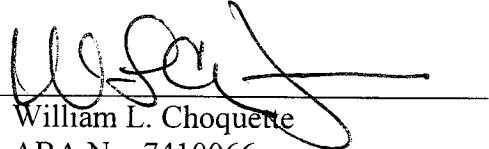
in adopting the Certificate of Need statutes.

5. DHSS adequately investigated the factual basis for the assertions by IAP and/or Providence that the Palmer practice is exempt from the requirements of AS 18.07.031, *et seq.* Many of the questions raised by Petitioner were related to financial interests; terms of leases and other matters that are not relevant to the determination sought and obtained.

DATED at Anchorage, Alaska, this 26 day of July, 2006.

CHOQUETTE & FARLEIGH, LLC
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Imaging Associates of Providence, LLC

By



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