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4	IN THE CIRCUIT COURT OF THE STATE OF OREGON	
5	FOR THE COUNTY OF MARION	
6	NEWCO OREGON, INC. d/b/a Willamette Valley Behavioral Health,	Case No.
7 8	Petitioner,	PETITION TO COMPEL ADMINISTRATIVE ACTION
9	V.	(Administrative Procedure Act – ORS
10	OREGON HEALTH AUTHORITY and LYNNE SAXTON, in her official capacity as	183.490)
11	Oregon Health Authority Director	
12	Respondents.	
13		
14	Petitioner NEWCO Oregon, Inc. d/b/a Willamette Valley Behavior Health	
15	("Willamette Valley Behavioral Health") brings this petition pursuant to ORS 183.490 to compel	
16	Respondents Oregon Health Authority (OHA) and Lynne Saxton to complete all required actions	
17	on Certificate of Need Application #675 (Subject Application) in a timely fashion and in	
18	accordance with the established deadlines, including the issuance of the agency's final decision	
19	on the Petitioner's pending application	
20	PARTIES	
21	1.	
22	Petitioner Willamette Valley Behavioral Health is a Delaware business	
23	corporation registered to do business in the State of Oregon with its primary place of business in	
24	367 South Gulph Road, King of Prussia, PA, 19406 seeking a Certificate of Need to build a 100-	
25	bed freestanding psychiatric hospital to be located at 9500 SW Day Road in Wilsonville, Oregon	
26	2.	

Page 1 - PETITION TO COMPEL ADMINISTRATIVE ACTION

1	Respondent Oregon Health Authority (OHA) is the state agency responsible for	
2	reviewing and deciding applications for Certificates of Need. Lynne Saxton is the acting director	
3	of OHA.	
4	JURISDICTION AND VENUE	
5	3.	
6	This court has jurisdiction pursuant to ORS 183.490 and ORS 183.484. Venue is	
7	proper under ORS 183.484(1).	
8	FACTS	
9	4.	
10	Oregon's Certificate of Need program was instituted 1971 and arose out of the	
11	legislature's desire to achieve reasonable access to quality health care at a reasonable cost. Since	
12	that time, forty years of peer-reviewed academic research suggests that certificate of need laws	
13	have not only failed to achieve their goals but have in many cases led to the opposite of what was	
14	intended. Currently, Oregon ranks last in the nation for overall outcomes related to mental	
15	healthcare, and only OHA has the power and the authority to increase the availability of services	
16	for Oregonians.	
17	5.	
18	Pursuant to ORS 442.315(1) and (4), any new hospital shall obtain a Certificate of	
19	Need from OHS prior to an offering or development, and OHA shall be the decision-making	
20	authority for the purpose of Certificates of Need. Pursuant to ORS 442.315(5)(a), an applicant or	
21	any affected person who is dissatisfied with the proposed decision of OHA is entitled to an	
22	informal hearing in the course of review and before a final decision is rendered. The informal	
23	hearings are conducted pursuant to OAR 333-570-0070(7). OAR 333-570-0070(8) requires the	
24	OHA to render a final decision within ten days of the closing of the informal hearing.	
25	6.	
26	On January 5, 2016, Willamette Valley Behavioral Health filed Certificate of	

Page 2 - PETITION TO COMPEL ADMINISTRATIVE ACTION

1	Need application #675 with the required fee for a 100-bed freestanding psychiatric hospital to be	
2	located at 9500 SW Day Road in Wilsonville, pursuant to ORS 442.315(1) and (3). On October	
3	20, 2016, OHA determined the application complete and began reviewing the application on	
4	October 21, 2016.	
5	//	
6	//	
7	7.	
8	In a letter dated February 24, 2017, OHA issued a proposed decision to deny the	
9	Subject Application. Thereafter and in response to the same, Petitioner filed a timely request for	
10	an informal hearing. Petitioner participated in an informal hearing on March 17, 2017. At that	
11	time, the agency's final decision was due on April 6, 2017. On April 5, 2017, a Notice of Re-	
12	Opening the Record of The Informal Hearing was issued by OHA stating: 1) that the informal	
13	hearing record would be considered closed at 5:00 p.m. on May 5, 2017; and 2) that if the OHA	
14	did not request additional time, or if the parties are not agreeable to such an extension, OHA	
15	would issue a final decision by May 15, 2017. On May 5, 2017, Petitioner submitted	
16	supplemental evidence in the record for consideration with the application and in response to	
17	OHA's proposed denial of the Subject Application. On May 10, 2017, OHA through Dana S.	
18	Selover, MD, Section Manager, Health Care Regulation & Quality Improvement, emailed	
19	Petitioner and other affected parties requesting consent to an extension of 30 days, "which would	
20	mean issuing a decision no later than June 10, 2017." Petitioner agreed to such an extension,	
21	despite that fact that Petitioner continued to bear substantial out of pocket costs and burdens in	
22	continuing to wait for OHA to act. However, on June 9th, 2017, OHA sent a letter to Petitioner,	
23	advising Petitioner of its unilateral decision to further extend the deadline for its final decision,	
24	but without specifying when a decision would actually be made: "OHA anticipates issuing a fina	
25	decision no later than July 7, 2017."	
26	8	

Page 3 - PETITION TO COMPEL ADMINISTRATIVE ACTION

1	Petitioner never consented to said extension and in fact was never asked for its	
2	consent. To date, the OHA has not rendered a final decision, and it is long overdue.	
3	9	
4	Petitioner was the named applicant on the Subject Application and has an interest	
5	in and is affected by Respondent's failure to provide the required final decision in a timely	
6	fashion.	
7	FIRST CLAIM FOR RELIEF	
8	(ORS 183.490)	
9	10.	
10	Petitioner incorporates paragraphs 1 through 9 as if fully stated herein.	
11	11.	
12	Respondents are the decision-making authority for the issuance of a Certificate of	
13	Need. Respondents are required to issue a final decision on a Certificate of Need application	
14	within 10 days after the close of an informal hearing record.	
15		
16	12.	
17	To date, Respondents have not issued a final decision, and the same is long	
18	overdue.	
19	13.	
20	Because Respondents have not issued a final decision as required by law,	
21	Petitioner has no authority to open a healthcare facility or file an appeal. Consequently, the	
22	development of Petitioner's facility has been unnecessarily delayed and costs have been and will	
23	continue to be increased, resulting in an exponentially higher development cost to Petitioner and	
24	increasing costs to patients as a result. Moreover, current research by the American Medical	
25	Association ("AMA") has established that:	
26		

Page 4 - PETITION TO COMPEL ADMINISTRATIVE ACTION

1	Certificate of Need (CON) laws have failed to achieve their intended goal of containing costs.	
2		
3	 The rather exhaustive literature on CON yields virtually no evidence that it has controlled health care costs. However, it 	
4	has kept hospital "profits" high and restricted the entry of new hospitals, hospital systems, and contract management	
5	firms.	
6	 Not only have CON laws been generally unsuccessful at 	
7	reducing health care costs, but they also impose additional costs of their own.	
8	CON laws are anticompetitive and a barrier to entry.	
9	 CON acts as an artificial barrier to entry stifling competition 	
10	and innovation in the healthcare market. The onerous cost	
11	and process of undergoing CON review has a distinct chilling effect on those seeking to undertake modernization,	
12		
13	■ CON regimes prevent new health care entrants from	
14	competing without a state-issued [CON], which is often difficult to obtain. This process has the effect of shielding	
15	incumbent health care providers from new entrants. As a result, CON programs may actually increase health care costs, as supply is depressed below competitive levels.	
16		
17	 CON may have increased costs because it protected 	
18	incumbent organizations from the competition of new entrants into the market.	
19	Fifteen (15) states have repealed CON laws altogether since 1987.	
20	14.	
21	ORS 183.490 grants this Court the authority to "compel an agency to act where	
22	has unlawfully refused to act or make a decision, or unreasonable delayed taking action or	
23	making a decision."	
24	15.	
25	Respondents have refused to act by not issuing a timely final decision on	
26		

Page 5 - PETITION TO COMPEL ADMINISTRATIVE ACTION

1	Petitioner's Certificate of Need application in accordance with applicable statutes, regulations,	
2	and/or OHA administrative rules and policies.	
3	16.	
4	Petitioner asks the Court to compel Respondents to forthwith issue a final	
5	decision on the Subject Application in accordance with the law.	
6	17.	
7	Pursuant to ORS 183.497, Petitioner requests an award of attorney fees and costs	
8	incurred in this matter.	
9	18	
10	Petitioner has no adequate remedy at law.	
11	//	
12	//	
13	PRAYER FOR RELIEF	
14	WHEREFORE, Petitioner prays that this Court, exercising its authority under	
15	ORS 183.490 and 183.497, issue a Judgment and Decree	
16	(a) Compel Respondents to forthwith issue a final decision on Petitioner's Subject	
17	Application for a Certificate of Need in accordance with applicable statutes,	
18	regulations, and/or policy;	
19	(b) Award Petitioner reasonable attorney fees and costs; and	
20	(c) Award Petitioner such relief as this Court deems just.	
21	Dated this 23 rd day of June, 2017.	
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Page 6 - PETITION TO COMPEL ADMINISTRATIVE ACTION

1	LYNCH CONGER McLane, LLP
2	
3	/s/ Gregory P. Lynch Gregory P. Lynch, OSB No. 752340
4	glynch@lynchconger.com
5	Shannon McCabe, OSB No. 143812 smccabe@lynchconger.com
6	Benjamin Becker, OSB No. 103358
7	bbecker@lynchconger.com 1567 SW Chandler Avenue, Suite 204
8	Bend, Oregon 97702 Telephone: 541-383-5857
9	Fax: 541-383-3968
10	Attorneys for Petitioner
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Page 7 - PETITION TO COMPEL ADMINISTRATIVE ACTION