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February 20, 2013

Via E-Mail and U.S. Mail

Janis Sigman
Program Manager
Washington State Department of Health
Certificate of Need Program
Mail Stop 47852
Olympia, WA 98504-7852

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JESSE WING
BOARD PRESIDENT

KATHLEEN TAYLOR
EXECUTIVE DIRECTOR

**Re: Certificate of Need Application relating to Catholic
PeaceHealth St. Joseph Medical Center lease and operation
of United General Hospital of Skagit County Public
Hospital District #304**

Dear Ms. Sigman,

The American Civil Liberties Union of Washington Foundation (ACLU) welcomes this opportunity to comment on the Certificate of Need Application filed by PeaceHealth St. Joseph Medical Center relating to its agreement concerning United General Hospital. The ACLU is a statewide, non-partisan, non-profit organization with over 20,000 members, dedicated to the preservation and defense of constitutional and civil liberties. We work to secure a world that respects everyone's right to form intimate relationships and to decide whether and when to have children. We also work to protect the right to privacy as it relates to end-of-life care. Through litigation, legislative advocacy, and public education, we strive to ensure that the government respects and supports these freedoms.

We understand that Skagit County Public Hospital District No. 304 has signed a letter of intent and master agreement with PeaceHealth, a Catholic health care corporation, regarding the operation and management of United General Hospital, a public hospital owned and operated by the Hospital District. We understand that under the proposed 50-year agreement, PeaceHealth will lease and operate United General Hospital for nominal rent, and the Hospital District will provide a tax payer-funded subsidy to PeaceHealth. We have sought documents related to the proposed affiliation pursuant to a public records request and understand that the necessary agreements have not yet been finalized.

While we recognize the pressures on the Hospital District to keep up with changes in healthcare and to increase efficiencies in the provision of health care services, we are

concerned about the impact the proposed agreement will have on health care services for District residents. We are deeply concerned that PeaceHealth's religiously-based policy of restricting of restricting access to reproductive and end-of-life health services violates the Washington Constitution and state law. Our concerns are exacerbated by the likelihood of increased restrictions should a proposed merger between PeaceHealth and Franciscan Health System, another Catholic health care corporation, go forward.

United General Hospital serves residents of Skagit and Whatcom Counties, and they have the right to expect that a tax-supported health care facility will not deny them basic, lawful and medically-proven health services on the grounds that such services conflict with religious doctrine.

As a government entity, the Skagit County Public Hospital District No. 304 is bound by the Washington Constitution. The Washington Constitution provides that "no public money or property" shall be used to support "any religious establishment." (Article I, Section II). By providing an annual subsidy to PeaceHealth and charging only nominal rent to lease United General Hospital and other public health facilities to PeaceHealth, the Hospital District is impermissibly supporting the religious restrictions on reproductive and end-of-life health services.¹

Under the proposed agreement, PeaceHealth appears to retain full discretion to determine the scope of services provided at United General Hospital, which must be consistent with PeaceHealth's religiously-based ethical policies and procedures. PeaceHealth appears to be free to amend its ethical policies at any time, which is of special concern in light of its proposed merger with Franciscan Health System, which adheres to the Ethical and Religious Directives for Catholic Health Care Services, promulgated by the U.S. Conference of Catholic Bishops. These directives impose even broader restrictions on a wide range of legal and medically-proven health services than PeaceHealth's asserted ethical policies. PeachHealth has stated that in the event of a merger, its health care facilities will continue to operate under PeaceHealth's ethical policies and not the even more restrictive directive of the US Conference of Catholic Bishops; however, the lack of any legally binding document to that effect fails to protect against the possibility of further restrictions on access to reproductive and end-of-life health care services in the future.

With respect to state law, the Reproductive Privacy Act, enacted by voters statewide in 1991, establishes as public policy of the state of Washington that "every individual has the fundamental right to choose or refuse birth control," and "every woman has the fundamental right to choose or refuse to have an abortion." The Reproductive Privacy Act prohibits the government from denying or interfering with a woman's

¹ The Hospital District also has obligations under Article V III, Section 7 of the Washington Constitution which prohibits state funds from being used to benefit private interests when the public interest is not primarily served. The subsidy amounts to an unconstitutional gift of taxpayer money to PeaceHealth for its benefit.

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fundamental rights and from discriminating against the exercise of these rights. As a government entity, the Hospital District should not subsidize religious health care facilities that discriminate against women's fundamental rights.

In sum, we believe that the government cannot subsidize health care facilities that deny reproductive health services and end-of-life medical care to the community based on religious views. We urge the Department of Health not to approve PeaceHealth's application unless the Hospital District and PeaceHealth enter into a legally binding agreement that requires PeaceHealth to provide access to reproductive and end of life care consistent with state law, and that their policies be based on medical ethics and state law, not religious doctrine.

Sincerely,

A handwritten signature in cursive script that reads "Sarah Dunne".

Sarah Dunne
Legal Director