No. 24-750

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

State of West Virginia ex rel.
Stonewall Jackson Memorial Hospital Company,
Petitioner,

v.) No. 24-750

West Virginia Department of Health,
Health Care Authority, and
St. Joseph's Hospital of Buchannon, Inc.,
Respondents.

BRIEF OF RESPONDENT ST. JOSEPH'S HOSPITAL OF BUCHANNON, INC.

From The West Virginia Health Care Authority, CON File #24-7-13069-X

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III. INTRODUCTION

Stonewall Jackson Memorial Hospital Company, Inc. ("Stonewall") has filed a Petition for Writ of Prohibition and Writ of Mandamus against the West Virginia Health Care Authority (the "Authority") seeking to compel the Authority to issue a decision on Stonewall's request for a determination of reviewability ("RDOR") in CON File #24-7-13069-X and determine whether Stonewall's proposal to construct an ambulatory health care facility ("AHCF") on Staunton Drive in Weston requires a Certificate of Need ("CON").[2] The Authority has stayed proceedings in CON File #24-7-13069-X pending this Court's resolution of Case No. 24-347.[3]

In Case No. 24-347, St. Joseph's Hospital of Buckhannon, Inc. ("St. Joseph's") appealed the Authority's decision in CON File #23-7-12659-X determining that Stonewall could relocate its hospital to a new health care facility to be constructed on Staunton Drive without obtaining a CON, and this Court entered an order staying the proceedings below pending its resolution of St. Joseph's appeal.[4] Stonewall argues that the Stay Order entered by this Court in Case No. 24-347 "only applies to the complete relocation of a hospital",[5] not an AHCF[6] to be constructed on the same site, and that the Authority exceeded its legitimate powers by staying CON File #24-7-13069-X. This response is submitted by St. Joseph's pursuant to Rule 16(g) of the West Virginia Rules

[2] (Appx._0002).
[3] (Appx._0117-0118 (the Authority's order granting the stay). St. Joseph's would note that Stonewall should have put the Authority's order granting the stay at the beginning of the appendix. *See* W. Va. R.A.P. 16(e)(1).
[4] (Appx._0001).
[5] *See* Stonewall's Petition, p. 13.
[6] The CON law defines an "[a]mbulatory health care facility" or AHCF as "a facility that provides health services to noninstitutionalized and nonhomebound persons on an outpatient basis[.]" W. Va. Code § 16-2D-2(2). An AHCF is a type of health care facility. *See* W. Va. Code § 16-2D-2(16) ("'Health care facility' means a publicly or privately owned facility, agency or entity that offers or provides health services, whether a for-profit or nonprofit entity and whether or not licensed, or required to be licensed, in whole or in part[.]").

of Appellate Procedure and the Scheduling Order issued by the Court. As explained below, Stonewall's petition should be denied.

IV. RESPONSE TO QUESTIONS PRESENTED

1. Whether this Court has exclusive jurisdiction over its Stay Order entered on July 25, 2024, in *St. Joseph's Hospital of Buckhannon, Inc. v. Stonewall Jackson Memorial Hospital Company, et al*., Case No. 24-347.

St. Joseph's Answer: No, this Court does not have exclusive jurisdiction over the Stay Order. The Authority had a duty to determine whether or not ruling on Stonewall's RDOR in CON File #24-7-13069-X would violate the Stay Order. Conducting proceedings below in violation of the Stay Order would constitute contempt.

2. Whether the Authority has exceeded its legitimate powers and committed clear legal error by making a stay decision, without any written findings, that determined the scope of this Court's Stay Order and applied it to stay Petitioner Stonewall's August 21, 2024, RDOR with regard to the complete relocation of an AHCF located at 456 Market Place Mall in Weston, Lewis County, West Virginia to a separate and distinct medical office building to be constructed by Petitioner Stonewall on Staunton Drive in Weston, Lewis County, West Virginia.

St. Joseph's Answer: No. The Authority had a duty to determine whether or not ruling on Stonewall's RDOR in CON File #24-7-13069-X would violate the Stay Order. St. Joseph's submitted compelling evidence that ruling on Stonewall's RDOR would violate the Stay Order because, *inter alia*, the proposed AHCF was merely a subterfuge to begin construction on Stonewall's hospital, and the Authority could therefore have reasonably concluded that it needed to stay CON File #24-7-13069-X to comply with the Stay Order. Moreover, the Authority was not

required to set out findings of fact and conclusions of law in support of its stay determination, but Stonewall was required to ask for a more detailed order before filing its petition.

3. Whether Respondent Authority exceeded its legitimate powers and committed clear legal error by failing to act within 45 days on Stonewall's AHCF DOR application to comply with the requirements of W. Va. Code R. § 65-32-18.4, which regulation requires that the Respondent Authority "shall issue its ruling [on a DOR] within 45 days of its receipt of the request if all of the necessary information has been provided to the Authority in a timely manner[.]"

St. Joseph's Answer: No. The Authority had a duty to determine whether or not ruling on Stonewall's RDOR in CON File #24-7-13069-X would violate the Stay Order and that duty trumps W. Va. Code R. § 65-32-18.4's 45-day deadline. Additionally, W. Va. Code R. § 65-32-18.4's 45-day deadline is directory, not mandatory, and W. Va. Code R. § 65-32-18.4 expressly allows the Authority to forego ruling on an RDOR until it has all of the information that it deems necessary to do so. The Authority did not exceed its legitimate powers or commit clear legal error by staying CON File #24-7-13069-X pending this Court's resolution of Case No. 24-347.

4. Whether Respondent Authority failed to comply with its mandatory non-discretionary duty by failing to act within 45 days on Stonewall's AHCF DOR application to comply with the mandatory requirements of W. Va. Code R. § 65-32-18.4, which regulation requires that the Respondent Authority "shall" rule on a DOR application "within 45 days of its receipt of the request if all of the necessary information has been provided to the Authority in a timely manner[.]"

St. Joseph's Answer: No. The Authority had a duty to determine whether or not ruling on Stonewall's RDOR in CON File #24-7-13069-X would violate the Stay Order and that duty trumps W. Va. Code R. § 65-32-18.4's 45-day deadline. Additionally, W. Va. Code R. § 65-32-18.4's 45-

day deadline is directory, not mandatory, and W. Va. Code R. § 65-32-18.4 expressly allows the Authority to forego ruling on an RDOR until it has all of the information that it deems necessary to do so. The Authority did not fail to comply with a mandatory non-discretionary duty by staying CON File #24-7-13069-X.

V. STATEMENT OF THE CASE

Over the past few years, Stonewall has sought to obtain the Authority's approval to relocate its hospital campus to Staunton Drive near the I-79 Route 33 interchange. While Stonewall is fully aware that the location it has chosen for the construction of its new hospital will adversely impact the viability of St. Joseph's, Stonewall has made it abundantly clear that it does not care about such externalities and has obstinately refused to consider alternative locations for its project.

Originally founded in 1921, St. Joseph's is a 25-bed critical access hospital ("CAH") and the sole hospital located within and servicing the community of Buckhannon, Upshur County.[7] St. Joseph's became a CAH on April 2, 2014.[8] CAH status is a designation made by the Centers for Medicare & Medicaid Services ("CMS"), a federal agency within the United States Department of Health and Human Services, which enables qualified rural hospitals to be reimbursed on a cost-basis for providing services to Medicare patients, as opposed to being reimbursed under prospective payment systems. The CAH program was implemented to address a rash of closings of rural hospitals across the country.[9] Generally, to qualify for CAH status a hospital must, *inter alia*, be located more than 15 (mountainous terrain) miles from another hospital.[10] Importantly, Stonewall's move of its hospital campus to Staunton Drive will destroy St. Joseph's CAH status because the proposed site is located approximately 12 miles from St. Joseph's, closer than the 15-

[7] (Supp. Appx._0103-0105).
[8] (Supp. Appx._0080-0081; Supp. Appx._0103-0105).
[9] (Supp. Appx._0105-0107).
[10] *See* 42 C.F.R. § 485.610(c).

mile threshold necessary for St. Joseph's to qualify as a CAH.[11]

In the summer of 2022, the Authority denied Stonewall's application for a CON to build a replacement acute care health care facility and move its hospital campus to Staunton Drive, finding that the project was not a superior alternative as required by the CON law and would "cause [St. Joseph's] to lose its CAH status which would have a significant detrimental financial effect on [St. Joseph's.]"[12] The Intermediate Court of Appeals ("ICA") affirmed that decision.[13] Because "Stonewall failed to provide any independent evidence that it explored various alternatives . . . . or otherwise that alternative locations do not exist that would not affect St. Joseph's CAH status", the ICA held that "the Authority did not err in finding that Stonewall did not meet its burden of proving that superior alternatives to the services in terms of cost, efficiency, and appropriateness do not exist and that the development of alternatives is not practicable under W. Va. Code § 16-2D-12(b)(1) (2016)."[14]

Having failed to establish that its hospital relocation project is the superior alternative, Stonewall attempted to circumvent the CON review process altogether by filing an RDOR under W. Va. Code § 16-2D-7. Section 16-2D-7 provides that "[a] person may make a written request to the authority for it to determine whether a proposed health service is subject to the certificate of need or exemption process." Relying on the Legislature's recent increase of the CON law's expenditure minimum, Stonewall argued that the proposed construction of its new hospital no

[11] (Supp. Appx._0107-0108).
[12] *See In re: Stonewall Jackson Mem'l Hosp. Co.,* CON File #21-7-12157-H (Decision dated June 13, 2022).
[13] *Stonewall Jackson Mem'l Hosp. Co. v. St. Joseph's Hosp. of Buckhannon, Inc.,* No. 22-ICA-147, 2023 WL 4197305 (W. Va. App. June 27, 2023) (memorandum decision).
[14] *Id*. at *4.

longer requires a CON because the capital expenditure associated with the project ($56,000,000) is less than the expenditure minimum (raised to $100,000,000).[15]

St. Joseph's intervened to oppose Stonewall's RDOR, arguing that Stonewall's project requires a CON because, *inter alia*, (a) it involves the construction of a health care facility[16] and (b) the project contemplates a substantial change in bed capacity.[17] The Authority determined that the project did not require a CON and the ICA affirmed that decision.[18] The matter is currently pending before this Court (Case No. 24-347), which has issued a stay of the proceedings below.[19] Case No. 24-347 has been fully briefed by the parties.

Stonewall has now filed another RDOR (CON File #24-7-13069-X), this time asking the Authority to rule that the construction of an AHCF on 1.9 acres of its Staunton Drive property does not require a CON because the capital expenditure associated with the project does not exceed the expenditure minimum.[20] Stonewall's RDOR in CON File #24-7-13069-X indisputably

[15] *Compare* 2023 West Virginia Laws Ch. 255 (S.B. 613) ('"Expenditure minimum' means the cost . . . above $100 million") *with* 2017 West Virginia Laws Ch. 185 (H.B. 2459) ('"Expenditure minimum' means the cost . . . above $5 million"). The expenditure minimum is adjusted annually to account for inflation; the expenditure minimum for calendar year 2025 is $107,637,600.00. (available at https://hca.wv.gov/Pages/default.aspx). Pursuant to W. Va. Code § 16-2D-8(3)(A), a CON is required for "[a]n obligation for a capital expenditure incurred by or on behalf of a health care facility in excess of the expenditure minimum[.]"

[16] W. Va. Code § 16-2D-8(a)(1) (providing that a CON is required for "[t]he construction, development, acquisition, or other establishment of a health care facility").

[17] W. Va. Code § 16-2D-8(a)(5) (providing that a CON is required for a substantial change in bed capacity associated with a capital expenditure); W. Va. Code § 16-2D-2 (45) ('"Substantial change to the bed capacity' of a health care facility means any change, associated with a capital expenditure, that increases or decreases the bed capacity or relocates beds from one physical facility or site to another, but does not include a change by which a health care facility reassigns existing beds.").

[18] *St. Joseph's Hosp. of Buckhannon, Inc. v. Stonewall Jackson Mem'l Hosp. Co.*, 903 S.E.2d 247, 250 (W. Va. App. May 23, 2024) (affirming *In re: Stonewall Jackson Mem'l Hosp. Co.*, CON File #23-7-12659-X (Amended Decision Dated July 12, 2023)).

[19] (Appx._0001).

[20] (Appx._0002).

encompasses the construction of a multi-million-dollar health care facility[21] on the same lot upon which Stonewall proposed to construct its hospital in CON File #23-7-12659-X.

St. Joseph's intervened to oppose Stonewall's RDOR, arguing, *inter alia*, that Stonewall's RDOR was a subterfuge for beginning construction on Stonewall's hospital in violation of the stay issued by this Court in Case No. 24-347.[22] Stonewall's statement that the AHCF proposed by the pending RDOR is "to be located on approximately 1.9 acres of the larger lot where the hospital is proposed to be located"[23] directly supports St. Joseph's argument that Stonewall's proposed AHCF is a subterfuge for constructing its hospital because a 1.9-acre building is approximately 82,764 square feet, very close to the 83,000 square foot hospital building previously proposed by Stonewall in its 2021 CON application.[24] In addition, St. Joseph's retained a professional engineer, Jessie O. Parker, to evaluate Stonewall's proposal, and Mr. Parker attested that it is not feasible for Stonewall to build both a 1.9 acre AHCF and put an 83,000 square foot hospital with associated parking on the remaining part of this property.[25] Stonewall did not retain its own expert and never submitted a declaration to rebut Mr. Parker's findings.

Even if Stonewall's RDOR was not a subterfuge to begin constructing Stonewall's hospital, St. Joseph's argued that a stay was still warranted because Stonewall's RDOR in CON File #24-7-13069-X and St. Joseph's appeal in Case No. 24-347 indisputably concern the same parties (*i.e.*, St. Joseph's and Stonewall), the same property (*i.e.*, Stonewall's Staunton Drive lot), and the same

[21] (*See* Appx._0002 ("The capital expenditure associated with the construction of the ambulatory health care facility . . .")); Appx._0052 ("The health care facility proposed in the DOR . . ."); Appx._0053 (explaining that the project has a "projected cost of approximately $10,000,000" and that "[t]he building is to be located on approximately 1.9 acres of the larger lot where the hospital is proposed to be located.")).
[22] (Appx._0011- 0034; Appx._0054-0059; Appx._0101-0112).
[23] (Appx._0053).
[24] (Appx._0058-0059). In briefing before the ICA, Stonewall has admitted that "the DOR in this matter proposed a similar hospital relocation project to the one proposed in the originally filed 2021 CON application[.]" (Appx._0072).
[25] (Appx._0104-0105 (Parker Declaration)).

legal issue (*i.e.*, whether the construction of a health care facility requires a CON pursuant to W. Va. Code § 16-2D-8(a)(1)).[26] On October 23, 2024, the Authority voted to stay CON File #24-7-13069-X.[27] In light of the unusual circumstances at play in this case, the Authority did not exceed its legitimate powers by foregoing further consideration of Stonewall's RDOR in CON File #24-7-13069-X until this Court resolves Case No. 24-347.

VI. SUMMARY OF ARGUMENT

Stonewall's petition must be denied for three independent reasons: (1) Stonewall failed to ask the Authority to issue findings of fact and conclusions of law supporting the Authority's stay determination before filing its petition;[28] (2) ruling on Stonewall's RDOR in CON File #24-7-13069-X would violate the stay issued by this Court in Case No. 24-347;[29] and (3) even if ruling on Stonewall's RDOR in CON File #24-7-13069-X would not technically violate the stay issued by this Court in Case No. 24-347, the Authority did not exceed its legitimate powers by staying CON File #24-7-13069-X.[30]

First, while Stonewall repeatedly admonishes the Authority for failing to provide any "written reasons" to support its stay decision,[31] this Court has made it abundantly clear that interlocutory orders do not have to contain findings of fact or conclusions of law and that it is the petitioner's duty to ask the lower tribunal for a more detailed order before seeking a writ from this Court.[32] Stonewall's petition should be denied because Stonewall has failed to ask the Authority

[26] (Appx._0015).
[27] (Appx._0117).
[28] *See* Section VIII.B, *infra.*
[29] *See* Section VIII.C, *infra.*
[30] *See* Section VIII.D, *infra.*
[31] *See* Stonewall's Petition, pp. 1, 6, 9, 19, 21, 24.
[32] *See, e.g., State ex rel. ERx, LLC v. Cramer*, 247 W. Va. 739, 743, 885 S.E.2d 870, 874 (2023); Syl. Pt. 8, *State ex rel. Vanderra Res., LLC v. Hummel*, 242 W. Va. 35, 38, 829 S.E.2d 35, 39 (2019).

for a more detailed order setting forth findings of fact and conclusions of law in support of the Authority's stay decision.

Second, Stonewall's assertion that the Authority has no power to determine whether Stonewall's RDOR in CON File #24-7-13069-X falls within the purview of the stay issued in Case No. 24-347 is simply nonsense. The Authority is a party to Case No. 24-347 and is bound by the stay issued by this Court. As such, the Authority has not only the power, but the duty, to ensure that its proceedings do not violate the stay. A lower tribunal cannot simply disregard a stay issued by this Court and tell the aggrieved party that it needs to seek relief elsewhere.[33]

St. Joseph's submitted compelling evidence that Stonewall's RDOR in CON File #24-7-13069-X was a subterfuge to begin constructing its hospital in violation of the stay.[34] At the very least, it would be nearly impossible to police this Court's stay if Stonewall were allowed to begin constructing a multi-million-dollar AHCF on the same lot upon which it intends to construct its new hospital. The Authority had ample cause for concern and would have been justified in concluding that it needed to forego any consideration of CON File #24-7-13069-X to ensure Stonewall's compliance with the stay issued by this Court.

Third, even if deciding Stonewall's RDOR and constructing an AHCF on the Staunton Drive lot would not technically violate the stay issued in Case No. 24-347, the Authority has the implied power to stay CON File #24-7-13069-X.[35] Contrary to Stonewall's assertions, W. Va.

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[33] *See, e.g., Oheda v. Reed*, 901 S.W.2d 604, 607 (Tex. App. 1995) ("The court further found that Judge Reed was guilty of violating this court's amended order dated February 17, 1995 by failing to stop the proceedings in the cause styled *The State of Texas v. John Michael Ojeda*, cause numbers 569072 and 574180, and by continuing with those proceedings in disregard of this court's amended order."); *State ex rel. Schwartz v. Lantz*, 440 So. 2d 446 (3rd District Court of Appeal of Florida 1983) (holding that trial court judge could be held in contempt for unintentionally violating a clear and unambiguous stay order of which he was aware).

[34] (Appx._0011- 0034; Appx._0054-0059; Appx._0101-0112).

[35] *See PNGI Charles Town Gaming, LLC v. W. Va. Racing Comm'n*, 234 W. Va. 352, 364, 765 S.E.2d 241, 253 (2014) (holding that the West Virginia Racing Commission had the implied power to stay a racetrack's

Code R. § 65-32-18.4's 45-day deadline is directory, not mandatory, and the Authority did not exceed its legitimate powers by staying Stonewall's RDOR.[36] Moreover, W. Va. Code R. § 65-32-18.4 expressly allows the Authority to forego ruling on an RDOR until "all of the necessary information has been provided[.]" The Authority is doing just that, preserving the *status quo* until this Court issues its mandate in Case No. 24-347 and the Authority has all of the information that it needs to properly decide Stonewall's RDOR.

As explained above, Stonewall's pending RDOR in CON File #24-7-13069-X and St. Joseph's appeal in Case No. 24-347 concern the same parties (*i.e.*, St. Joseph's and Stonewall), the same property (*i.e.*, Stonewall's Staunton Drive lot), and the same legal issue (*i.e.*, whether the construction of a health care facility requires a CON pursuant to W. Va. Code § 16-2D-8(a)(1)). Moreover, in Case No. 24-347, the Authority acknowledged that the unwritten relocation rule that Stonewall relies upon was "unlawful."[37] Under these circumstances, it was entirely reasonable for the Authority to stay CON File #24-7-13069-X pending this Court's resolution of Case No. 24-347. This not only ensures that Stonewall will adhere to the stay issued by this Court in Case No. 24-347, but also that the Authority's decision in CON File #24-7-13069-X will be consistent with this Court's mandate in Case No. 24-347.

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ejectment of a permit holder); *see also Landis v. North American Co*., 299 U.S. 248, 254, 57 S. Ct. 163, 166, 81 L. Ed. 153, 158 (1936) ("[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.").

[36] *See State ex rel. Bd. of Educ. v. Melton*, 157 W. Va. 154, 166, 198 S.E.2d 130, 136 (1973) ('"Generally the rule is where a statute specifies a time within which a public officer is to perform an act regarding the rights and duties of others, it will be considered as merely directory, unless the nature of the act to be performed or the language shows that the designation of time was intended as a *limitation of* power."'); *W. Va. Human Rights Comm'n v. Garretson*, 196 W. Va. 118, 126 n.11, 468 S.E.2d 733, 741 n.11 (1996).

[37] (Supp. Appx._0012).

VII. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Oral argument is unnecessary in this matter as it is apparent that the issuance of a writ is improper. Stonewall's petition is without substantial merit and the decisional process would not be significantly aided by oral argument.

VIII. ARGUMENT

A. Standard of Review

1. Standard of Review for a Writ of Prohibition

"A writ of prohibition is an extraordinary remedy reserved for extraordinary causes."[38] "Prohibition lies only to restrain inferior courts from proceeding in causes over which they have no jurisdiction, or, in which, having jurisdiction, they are exceeding their legitimate powers and may not be used as a substitute for writ of error, appeal or certiorari."[39] When considering a petition for writ of prohibition based on a claim that the lower tribunal exceeded its legitimate powers, this Court is guided by the following factors:

> "(1) whether the party seeking the writ has no other adequate means, such as direct appeal, to obtain the desired relief; (2) whether the petitioner will be damaged or prejudiced in a way that is not correctable on appeal; (3) whether the lower tribunal's order is clearly erroneous as a matter of law; (4) whether the lower tribunal's order is an oft repeated error or manifests persistent disregard for either procedural or substantive law; and (5) whether the lower tribunal's order raises new and important problems or issues of law of first impression. These factors are general guidelines that serve as a useful starting point for determining whether a discretionary writ of prohibition should issue. Although all five factors need not be satisfied, it is clear that the third factor, the existence of clear error as a matter of law, should be given substantial weight."[40]

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[38] *State ex rel. Yurish v. Faircloth*, 243 W. Va. 537, 542, 847 S.E.2d 810, 815 (2020); *see also State ex rel. W. Va. Fire & Cas. Co. v. Karl*, 199 W. Va. 678, 683, 487 S.E.2d 336, 341 (1997) ("This Court is restrictive in the use of prohibition as a remedy.").

[39] Syl. Pt. 1, *Crawford v. Taylor*, 138 W. Va. 207, 75 S.E.2d 370 (1953).

[40] Syl. Pt. 2, in part, *State ex rel. State of W. Va. v. Gwaltney*, 908 S.E.2d 192 (W. Va. 2024) (quoting Syl. Pt. 4, *State ex rel. Hoover v. Berger*, 199 W. Va. 12, 483 S.E.2d 12 (1996)).

Moreover, '"A writ of prohibition will not issue to prevent a simple abuse of discretion" and "will only issue where the trial court has no jurisdiction or having such jurisdiction exceeds its legitimate powers."'[41]

Generally, "the decision whether to grant a stay of proceedings pending resolution of another case is within the sound discretion of the trial court" and a writ of prohibition will not issue against a trial court's decision to stay a matter "because a writ of prohibition will not issue to prevent a simple abuse of discretion[.]"[42] The cases relied upon by Stonewall are inapposite.[43] In those cases, various Boards improperly attempted to take disciplinary action against licensees outside of the statutorily prescribed timeframe without holding a proper hearing. This is not a disciplinary case and the Authority is not attempting to impose sanctions on Stonewall.

2. Standard of Review for a Writ of Mandamus

Mandamus will not issue unless three elements coexist: "(1) a clear legal right in the petitioner to the relief sought; (2) a legal duty on the part of the respondent to do that thing which the petitioner seeks to compel; and (3) absence of another adequate remedy."[44] "Mandamus is a drastic remedy to be invoked only in extraordinary situations."[45] Moreover, "[s]ince mandamus is an 'extraordinary' remedy, it should be invoked sparingly."[46]

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[41] Syl. Pt. 1, *State ex rel. York v. W. Va. Office of Disciplinary Counsel*, 231 W. Va. 183, 744 S.E.2d 293 (2013) (quoting Syl. Pt. 2, *State ex rel. Peacher v. Sencindiver*, 160 W. Va. 314, 233 S.E.2d 425 (1977)).
[42] *State ex rel. Piper*, 228 W. Va. 792, 797, 724 S.E.2d 763, 768 (2012).
[43] *See* Stonewall's Petition, pp. 10-11 (citing *State ex rel. York v. W. Va. Real Estate Appraiser Licensing & Certification Bd.*, 236 W. Va. 608, 609, 760 S.E.2d 856, 857 (2014); *State ex rel. Fillinger v. Rhodes*, 230 W. Va. 560, 561, 741 S.E.2d 118, 119 (2013); *State ex rel. Miles v. W. Va. Bd. of Registered Prof'l Nurses*, 236 W. Va. 100, 102, 777 S.E.2d 669, 671 (2015)).
[44] *State ex rel. Kucera v. City of Wheeling*, 153 W. Va. 538, 170 S.E.2d 367 (1969); *see also Robb v. W. Va. Consol. Pub. Ret. Bd.*, No. 11-1650, 2013 WL 1301294, at *2 (W. Va. Mar. 29, 2013); Syl. Pt. 1, *Gribben v. Kirk*, 197 W. Va. 20, 475 S.E.2d 20 (1996); Syl. Pt. 3, *Cooper v. Gwinn*, 171 W. Va. 245, 298 S.E.2d 781 (1981).
[45] *McComas v. Bd. of Educ.*, 197 W. Va. 188, 192, 475 S.E.2d 280, 284 (1996); *see also State ex rel. Frazier v. Meadows*, 193 W. Va. 20, 31, 454 S.E.2d 65, 76 (1994).
[46] *State ex rel. Billings v. City of Point Pleasant*, 194 W. Va. 301, 303, 460 S.E.2d 436, 438 (1995).

"'To entitle one to a writ of mandamus, the party seeking the writ must show a clear legal right thereto and a corresponding duty on the respondent to perform the act demanded.'"[47] In addition, "the burden of proof as to all the elements necessary to obtain mandamus is upon the party seeking the relief."[48] In order to invoke mandamus, the evidence relied on to establish the clear right must be of clear and convincing character.[49]

As further explained below, Stonewall has failed to establish all three elements required to obtain a writ of mandamus. Accordingly, the writ of mandamus should be denied.

B. Stonewall's Petition Must be Denied Because Stonewall Failed to Ask the Authority to Enter a Detailed Order Supporting the Authority's Stay Determination.

Stonewall repeatedly complains that the Authority's order does not contain any factual findings or "written reasons" supporting the Authority's decision to stay the pending RDOR.[50] Contrary to Stonewall's assertions, this does not support Stonewall's petition but in fact cuts against it.

The Authority was not required to provide written findings to support its decision to stay CON File #24-7-13069-X. Indeed, courts almost never make findings or provide written reasons when granting or denying a motion for stay.[51] This Court did not provide any written reasons when it granted St. Joseph's motion to stay the underlying proceedings in Case No. 24-347,[52] and the

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[47] Syl. Pt. 3, *State ex rel. McLaughlin v. W. Va. Court of Claims*, 209 W. Va. 412, 549 S.E.2d 286 (2001); *Koebert v. City of Clarksburg*, 114 W. Va. 406, 171 S.E. 892 (1933) ("It is a cardinal rule that one who would invoke mandamus must show a clear legal right 'to have performance of the act he seeks to coerce performance of, and plain duty to perform it, on the part of the respondent.'").

[48] *State ex rel. Crist v. Cline*, 219 W. Va. 202, 209, 632 S.E.2d 358, 365 (2006) (quoting 52 Am. Jur.2d *Mandamus* § 3 at 271 (2000)).

[49] *See Koebert*, 114 W. Va. at 406, 171 S.E.2d at 893.

[50] *See* Stonewall's Petition, pp. 1, 6, 9, 19, 21, 24.

[51] *See* P. Pedro, *Stays*, 106 Calif. L. Rev. 869, 873 & 891 (2018) ("Compounding the absence of a uniform, principled stays standard, courts seldom offer reasoning or published opinions for stay determinations. This is nearly a law-free zone . . . . No federal court ever has to state the reasons why it granted or denied a motion or application for a stay.").

[52] (Appx._0001).

ICA did not provide any written reasons when it granted St. Joseph's motion to stay in Case No. 23-ICA-265.[53] A stay, unlike the Authority's decision on an RDOR, is not an appealable order. Only final orders are appealable.[54]

Moreover, "when a party seeks an extraordinary writ based upon a non-appealable interlocutory decision, the party must request . . . specific findings of fact and conclusions of law[.]"[55] In *Hummel*, for example, this Court denied petitioner's request for a writ of prohibition in the context of a trial court's denial of petitioner's summary judgment motion because the petitioner "should have informed the circuit court in advance that it intended to file a petition for a writ with this Court and requested a detailed order."[56] The Court explained that "trial courts should not be forced to routinely set out detailed findings in interlocutory orders because this requirement would be 'unduly burdensome and a waste of valuable judicial time.'"[57] Accordingly, it is the petitioner's duty to ask for a more detailed order before seeking an extraordinary writ.

This Court has routinely denied writs where petitioners challenging interlocutory orders have failed to request specific findings of fact and conclusions of law.[58] There is no reason to

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[53] (Supp. Appx._0057-0058).

[54] *See* W. Va. Code § 16-2D-16a (providing that an appeal may be made from "a final decision in a certificate of need review[.]"); *see also* W. Va. Code § 16-29B-13 ("A final decision of the board . . . shall . . . be reviewed . . . ."); *Dye v. W. Va. Bd. of Architects*, No. 23-ICA-273, 2024 W. Va. App. LEXIS 98, *7 (W. Va. App. Ct. 2024) (holding that "a 'final order' is defined as '[a]n order that is dispositive of the entire case."').

[55] *Cramer*, 247 W. Va. at 743, 885 S.E.2d at 874; Syl. Pt. 8, *Hummel*, 242 W. Va. at 38, 829 S.E.2d at 39.

[56] *Hummel*, 242 W. Va. at 44, 829 S.E.2d at 44.

[57] *Id*.

[58] *See, e.g., id*.; *Cramer*, 247 W. Va. at 744, 885 S.E.2d at 875 ("Consistent with our ruling in *Gaughan*, *Vanderra*, and multiple cases decided since *Vanderra*, we find that without a detailed order, we are unable to sufficiently evaluate whether the circuit court committed clear legal error for purposes of granting the extraordinary relief requested. Therefore, the petition for a writ of prohibition must be denied."); *State ex rel. Cherian v. Wilson*, No. 21-0763, 2022 W. Va. LEXIS 282, 2022 WL 1124916 at *6 (W. Va., April 15, 2022) (memorandum decision) ("In light of petitioners' failure to ensure that the circuit court's order contained findings of fact and conclusions of law explaining its decision to deny their motion to rescind their consent for respondents to supplement their expert witness disclosure and to limit expert testimony, we are unable to determine whether the court's ruling constitutes clear legal error or otherwise warrants a writ of prohibition under the factors set forth in *Hoover*."); *State ex rel. Chafin v. Tucker*, No. 20-0685,

apply a different rule to petitions challenging an interlocutory ruling made by an administrative agency. "[W]ithout a detailed order, [this Court is] unable to sufficiently evaluate whether the [Authority] committed clear legal error for purposes of granting the extraordinary relief requested."[59]

In sum, the Authority was not required to provide any written findings or reasons in its order. Stonewall, however, was required to request a more detailed order before it filed its petition. Because Stonewall failed to ask the Authority for a more detailed order,[60] its writ must be denied.

C. The Authority Had a Duty to Adhere to the Stay Issued by the Court and Ruling on Stonewall's RDOR Would Have Violated the Stay.

As an initial matter, Stonewall argues that "[t]he Court's Stay Order only applies to the complete relocation of a hospital [to a health care facility to be constructed on Staunton Drive]" and "[o]nly this Court can determine if its stay of the complete relocation of a hospital applies [to

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2021 W. Va. LEXIS 90, 2021 WL 1030320 at *5 (W. Va., Mar. 17, 2021) (memorandum decision) ("The failure of petitioners to inform the circuit court of their intent to file a petition for extraordinary relief and their failure to request a detailed order has left this Court with no ability to conduct a meaningful appellate review."); *State ex rel. Navient Solutions, LLC v. Wilson*, No. 19-0874, 2020 W. Va. LEXIS 328, 2020 WL 2765857, at *5 (W. Va., May 27, 2020) (memorandum decision) ("[I]t is impossible to determine whether the lower court's action [denying a motion for summary judgment] is 'clearly erroneous' for purposes of issuing a writ of prohibition, where it has presented the Court with no analysis beyond a summary conclusion that there are disputed facts.").

[59] *Cramer*, 247 W. Va. at 744, 885 S.E.2d at 875. Accordingly, the Court cannot properly review an order that does not have findings of fact and conclusions of law, and this is particularly problematic in an administrative context because "court's may not accept appellate counsel's *post hoc* rationalizations for agency action", and "an agency's discretionary order [must] be upheld, if at all, on the same basis articulated in the order by the agency itself[.]" *Webb v. W. Va. Bd. of Med.*, 212 W. Va. 149, 158, 569 S.E.2d 225, 234 (2002) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168-69, 83 S. Ct. 239, 246, 9 L. Ed. 2d 207, 216 (1962)).

[60] On December 2, 2024, Stonewall informed the Authority that it intended to appeal the Authority's stay decision and that it believed that the 30-day appeal period should begin to run from December 2, 2024, because that is when it claimed to have received the Authority's written order. (Appx._0119 (Stonewall's appendix contains two pages numbered Appx._0119; this citation references the second of those pages)). St. Joseph's objected to Stonewall's December 2, 2024 letter, explaining that the Authority's stay decision was not an appealable order. (Appx._0120 (Stonewall's appendix contains two pages numbered Appx._0120; this citation references the second of those pages)). Thereafter, Stonewall never informed the Authority of its intention to file its petition and never asked the Authority for a more detailed order.

the construction of an AHCF on the same lot.]"[61] Stonewall contends that "[t]his Court has sole and exclusive jurisdiction to determine the scope of its July 25, 2024, Stay Order."[62] Not so. The Authority did not exceed its jurisdiction by construing and attempting to comply with the Order.

1. This Court Does Not Have Exclusive Jurisdiction to Construe and Enforce the Stay Order Issued in Case No. 24-347.

Contrary to Stonewall's assertions, the Authority is subject to the stay issued in Case No. 24-347 and is not at liberty to violate it.[63] Stonewall, likewise, is a party to the stay issued in Case No. 24-347 and is bound by it. A stay is a kind of injunction.[64] "Any action or proceeding in defiance of a supersedeas or stay may constitute a contempt of the appellate or lower court."[65] The Authority may not, as Stonewall suggests, ignore this Court's Stay Order and plow forward as if the stay did not exist. The Authority had a duty to construe and apply the Stay Order to the facts at hand, and if the Authority concluded that ruling on Stonewall's RDOR would violate this Court's stay, ruling on the RDOR would have been entirely inappropriate regardless of whether the Authority had any independent power to stay its consideration of the RDOR.

Similarly, Stonewall's argument that St. Joseph's "sole remedy was to bring the issue to this Court for resolution" is wrong. Had the Authority refused to grant St. Joseph's motion to stay St. Joseph's could have brought the matter to the attention of this Court, but there was no need to trouble this Court when St. Joseph's had an opportunity to obtain the relief it needed from the Authority. Indeed, some courts have held that "a party must lodge a timely objection in the trial

[61] Stonewall's Petition, pp. 13, 14.
[62] Stonewall's Petition, p. 14.
[63] *See*, note 33, *supra*.
[64] *See, e.g., Hill v. McDonough*, 547 U.S. 573, 578–580, 126 S. Ct. 2096, 2100-02, 165 L. Ed. 2d 44, 50-53 (2006) (injunction to staying death row inmate's execution); *McMillen v. Anderson*, 95 U.S. 37, 42, 24 L. Ed. 335, 336 (1877) ("[Petitioner] can, if he is wrongfully taxed, stay the proceeding for its collection by process of injunction"); *Nivens v. Gilchrist*, 319 F.3d 151, 153 (4th Cir. 2003) (denial of "injunction" to "stay [a] trial"); *Jove Eng., Inc. v. IRS*, 92 F.3d 1539, 1546 (11th Cir. 1996) (explaining that an automatic stay is "essentially a court-ordered injunction").
[65] 4 C.J.S. *Appeal and Error* § 555.

court to preserve a complaint about a trial court's actions in violation of a stay."[66] This Court should not have to micromanage the proceedings below, and litigants ought not to have to come running to the Court every time a filing is lodged below in violation of a stay issued by this Court.

Under Stonewall's theory, a subpoena could be filed before a trial court in direct violation of this Court's stay of those proceedings and the trial court would be powerless to quash the subpoena because, according to Stonewall, only this Court would have jurisdiction to enforce the stay. That is absurd. A trial court can and should stay, deny, strike or otherwise dispose of filings made in violation of a stay issued by this Court and does not exceed its legitimate powers by doing so.

Stonewall's reliance on *State ex rel. W. Va. Dep't of Health & Human Res. v. Bloom*,[67] is misplaced.[68] In *Bloom*, this Court simply stated that ""[w]hen this Court grants a stay of proceedings, the circuit court no longer has the authority to preside over the matter unless it receives permission to proceed from this Court."[69] *Bloom* does not suggest that a trial court cannot deny or refrain from ruling on a motion filed in violation of a stay issued by this Court, and in fact, that is exactly what the trial court is supposed to do. Even where a pending appeal has deprived a trial court of its jurisdiction over a matter, it is not improper for the trial court to deny or forego ruling on a motion on that basis.[70]

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[66] *Roach v. Ingram*, 557 S.W.3d 203, 214 (Tex. App. 2018).
[67] 247 W. Va. 433, 446 n.12, 880 S.E.2d 899, 912 n.12 (2022) ("When this Court grants a stay of proceedings, the circuit court no longer has the authority to preside over the matter unless it receives permission to proceed from this Court.").
[68] *See* Stonewall's Petition, pp. 13-14.
[69] 247 W. Va. at 446 n.12, 880 S.E.2d at 912 n.12.
[70] *See, e.g., Rosenbaum v. Bank of Am., NA.*, No. CV-22-02072-PHX-JAT, 2024 U.S. Dist. LEXIS 205837, at *1-2 (D. Ariz. Nov. 13, 2024) (denying motion for reconsideration "because Plaintiff filed a notice of appeal", and "this Court does not have jurisdiction over the motion."); *Kersey v. Trump*, Civil Action No. 24-10556-IT, 2024 U.S. Dist. LEXIS 189881, at *2 (D. Mass. Oct. 18, 2024) (denying motion to reopen because "jurisdiction over this case now lies with the First Circuit", and "the court has no jurisdiction to grant the requested relief."); *see also Redden v. Ballard*, No. 2:17-cv-01549, 2019 U.S. Dist. LEXIS 51313, at *2 (S.D. W. Va. Mar. 27, 2019) (explaining that the court did not have jurisdiction to rule on plaintiff's

Similarly, *Asbury Park Bd. of Educ. v. N.J. Dep't of Educ.*,[71] does not support Stonewall's argument. In that case, an appeal was filed in the Superior Court of New Jersey challenging preliminary budget figures approved by the New Jersey Department of Education ("DOE") on the grounds that the approval conflicted with an order previously entered by the Supreme Court of New Jersey.[72] *Asbury Park* is distinguishable because the Authority, unlike the Superior Court, is a party to the order at issue. The Superior Court did not suggest that appellants improperly challenged the DOE's approval by asserting their claims that the approval would violate the Supreme Court's order before the DOE. And, while the Superior Court questioned why the appellants did not take their concerns to the Supreme Court instead of filing an appeal when the DOE approved the figures over their objections,[73] it did in fact decide the issue.[74]

2. The Authority Could Have Reasonably Concluded that Granting Stonewall's RDOR Would Violate the Stay Order Because Stonewall's Proposed AHCF Is a Subterfuge to Begin Construction on Stonewall's Hospital.

Contrary to Stonewall's assertions, there is no evidence that the Authority "unlawfully expand[ed] the scope of this Court's July 25, 2024, Stay Order."[75] Even if one were to accept Stonewall's narrow view that "[t]he practical effect of this Court's Stay Order was to stop Petitioner Stonewall from constructing a new hospital pending this Courts consideration of [St. Joseph's] appeal in Case No. 23-347 [sic]", the Authority could still have been justified in concluding that Stonewall's RDOR was a subterfuge to begin constructing its hospital in violation

motion to amend the complaint while plaintiff's appeal was pending but that it now has jurisdiction to take up the motion because plaintiff's appeal was dismissed).

[71] 369 N.J. Super. 481, 489, 849 A.2d 1074, 1079 (Super. Ct. App. Div. 2004).

[72] *Id*. at 486, 849 A.2d at 1077.

[73] *Id.* at 486, 849 A.2d at 1077.

[74] *Id.* at 499-500, 849 A.2d at 1085 ("DOE is directed to redetermine the Abbott districts' preliminary maintenance budget figures in conformity with paragraph four of the Supreme Court's July 23rd order and to issue revised figures to the Abbott districts within ten days of the filing of this opinion.").

[75] Stonewall's Petition, p. 13.

of the Stay Order. There is nothing in the RDOR that would prevent Stonewall from building a facility essentially identical to its proposed hospital. Stonewall could construct a hospital facility on Staunton Drive, shell off certain hospital space, and operate discrete non-shelled portions of the facility as an "AHCF" during the pendency of St. Joseph's appeal.

Stonewall's statement that the AHCF proposed by the pending RDOR is "to be located on approximately 1.9 acres of the larger lot where the hospital is proposed to be located"[76] directly supports St. Joseph's argument that Stonewall is constructing a shell hospital because a 1.9-acre building is approximately 82,764 square feet, very close to the 83,000 square foot hospital building previously proposed by Stonewall in its 2021 CON application.[77] In addition, because of the slope of the land on the proposed hospital construction site, Stonewall's schematic for the construction of the hospital in its previous CON application showed only a 7.8-acre construction pad site.[78] Stonewall is now claiming that more than 24% of the site is going to be taken up by the proposed AHCF.[79] St. Joseph's retained a professional engineer, Jessie O. Parker, to evaluate Stonewall's proposal.[80]. As attested to by Mr. Parker, it is not feasible for Stonewall to put an 83,000 square foot hospital with associated parking on the remaining part of this property,[81] and Stonewall never retained its own expert to rebut Mr. Parker's findings.

Stonewall's Staunton Drive property is largely undeveloped and will require the commitment of significant funds to be prepared for the construction of an AHCF. Roads and

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[76] (Appx._0053).
[77] (Appx._0058-0059). In briefing before the ICA, Stonewall has admitted that "the DOR in this matter proposed a similar hospital relocation project to the one proposed in the originally filed 2021 CON application[.]" (Appx._0072).
[78] (Appx._0101-0102).
[79] (Appx._0103 (Aerial View of Property with 1.9 Acre Plot for Reference)).
[80] (Appx._0104-0105 (Parker Declaration)).
[81] (Appx._0104 (Parker Declaration, ¶ 5 ("Based upon my review of Stonewall's Site Plan, it will not be possible to construct both a 1.9-acre medical office building and the proposed 83,000 square foot hospital on the 7.8-acre pad contemplated by the Plan."))).

parking lots will need to be built; storm drainage, sewage, water, electric and other utilities will need to be installed. These costs are not insignificant. In its 2021 CON application, Stonewall provided "Site Preparation Costs" for its hospital relocation project totaling $4,400,000. These costs include, among other things, $2,532,000 for "Earthwork", $670,000 for "Site Utilities", and $923,000 for "Road, Parking and Walks[.]"[82] As Mr. Parker explained, "[i]ncreasing the size of the pad to the extent necessary to support both a 1.9-acre medical office building and the proposed 83,000 square foot hospital will require Stonewall to move significantly more earth, incurring additional costs."[83] Moreover, "creat[ing] a larger pad will likely also require earth to be removed from the site and disposed of elsewhere, leading to diminishing returns in terms of cost per unit of additional space."[84] And,"[s]ince 2021, the cost of earthwork and related expenses has increased by 30 to 50 percent."[85]

Stonewall's contention that "[t]he road to the lot is paved" misses the point.[86] While Staunton Drive is currently paved, the 400 plus foot road to the top of the 50 plus foot hill where Stonewall proposes to construct its hospital/AHCF is not.[87] Indeed, Stonewall's 2021 CON Application allocates $923,000 for "Road, Parking and Walks[.]"[88] Stonewall's insistence that the road is paved and that St. Joseph's argument is misleading is a red herring.

3. The Authority Could Also Have Reasonably Concluded That Granting Stonewall's RDOR Would Violate the Stay Order Because Stonewall's Proposal Encompasses the Construction of a Health Care Facility on The Same Property That is the Subject of the Stay Issued in Case No. 24-347.

At the very least, it will be impossible to cabin Stonewall's AHCF project in such a way

[82] (Appx._0113 (Section C of Stonewall's 2021 CON Application, p. 8)).
[83] (Appx._0104 (Parker Declaration, ¶ 6)).
[84] (Appx._0104 (Parker Declaration, ¶ 6)).
[85] (Appx._0104 (Parker Declaration, ¶ 7)).
[86] Stonewall's Petition, p. 5 (quoting Appx._0053).
[87] (Appx._0103).
[88] (Appx._0113 (Section C of Stonewall's 2021 CON Application, p. 8)).

that it will not violate this Court's stay. Essentially all of the infrastructure that is installed to support the proposed AHCF would benefit the hospital. The AHCF's parking lot would be part of the proposed hospital's parking lot, and the AHCF's drive way would be the hospital's drive way. The hospital and the AHCF would be built on the same pad. It will be nearly impossible to police this Court's July 25, 2024, Stay Order if Stonewall is allowed to begin constructing a multi-million-dollar AHCF on its Staunton Drive lot.

The Authority could also have reasonably concluded that approving the project proposed by Stonewall in its RDOR would violate the stay issued in Case No. 24-347 because Stonewall is proposing to construct a health care facility on Staunton Drive, just as it did in Case No. 24-347. The issue of whether the construction of a replacement health care facility on Staunton Drive requires a CON pursuant to W. Va. Code § 16-2D-8(a)(1) was one of the primary issues presented to this Court in St. Joseph's motion for stay.[89] The distinction Stonewall attempts to draw between an AHCF and a hospital is not relevant. Both an AHCF and a hospital are health care facilities as defined by the CON law.[90]

Accordingly, the Authority would have been more than justified in concluding that it needed to stay its consideration of Stonewall's RDOR to comply with this Court's Stay Order. The Authority also could have concluded that a stay was warranted for a host of other valid reasons that have nothing to do with the Court's Stay Order, such as the need to ensure that its ruling on the pending RDOR is consistent with this Court's mandate in Case No. 24-347. Ultimately, we do not know exactly why the Authority granted the stay because Stonewall failed to ask the Authority

[89] (Appx._0040-0045).
[90] *See* W. Va. Code § 16-2D-2(16) ('"Health care facility' means a publicly or privately owned facility, agency or entity that offers or provides health services, whether a for-profit or nonprofit entity and whether or not licensed, or required to be licensed, in whole or in part[.]").

for findings of fact and conclusions of law before filing its petition.[91] Regardless, if the Authority concluded that Stonewall's RDOR proposal was a subterfuge to begin construction on Stonewall's hospital or that ruling on the RDOR would otherwise violate this Court's July 25, 2024, Stay Order, its conclusion was not clearly wrong, and therefore, Stonewall's writ must be denied.

D. The Authority has the Power to Stay Proceedings Before It and Did not Exceed Its Legitimate Powers by Staying Stonewall's RDOR.

The Authority has the power to stay a matter pending before it. "[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants."[92] This power extends with equal dignity to administrative agencies.[93] For example, in *PNGI Charles Town Gaming*[94] this Court held that the Racing Commission had "the implied authority to grant a stay" of a racetrack's ejection of a permit holder from the racetrack's premises even though the statute did not expressly allow the Racing Commission to order a stay of a racetrack's decision. Accordingly, the Authority had the implied power to stay Stonewall's RDOR even if ruling on the RDOR would not technically violate this Court's July 25, 2024, Stay Order.

Stonewall's reliance on W. Va. Code R. § 65-32-18.4 is misplaced. W. Va. Code R. § 65-32-18.4 provides that "[u]pon receipt of a request for declaratory ruling or a ruling regarding reviewability, the Authority shall issue its ruling within 45 days of its receipt of the request if all of the necessary information has been provided to the Authority in a timely manner." Because W.

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[91] *See* Section VIII.B, *supra*.
[92] *Landis*, 299 U.S. at 254, 57 S. Ct. at 166, 81 L. Ed. at 158.
[93] *See, e.g., In Re City of Carmel*, No. 42725, 2005 WL 673332 (Feb. 2, 2005) (Indiana Utility Regulatory Commission); *Petition of Nstar Elec. Co. d/b/a Eversource Energy for Approval by the Dep't of Pub. Utilities of Two Long-Term Conts. for Procurement of Offshore Wind Energy Generation*, No. 22-70, 2022 WL 16900545, at *3 (Nov. 4, 2022) (Massachusetts Department of Public Utilities); *In the Matter of the Application of Cholla Prod., LLC*, No. 18-CONS-3350-CUIC, 2018 WL 3012147, at *4 (June 13, 2018) (Kansas State Corporation Commission).
[94] 234 W. Va. at 364, 765 S.E.2d at 253.

Va. Code R. § 65-32-18.4 "specifies a time within which [the Authority] is to perform an act regarding the rights and duties of others", it would generally be "considered as merely directory[.]"[95]

"While courts justifiably commence their analyses with the premise that the use of the word 'shall' forecloses the exercise of discretion, detailed evaluation often reveals that the use of 'shall' is not determinative or that other language in the statute reveals a contrary intent."[96] "'There is an important distinction between directory and mandatory statutes"', and '"[t]he violation of a directory statute is attended with no consequences, since there is a permissive element."'[97] "Whether a statute is mandatory or directory is determined from the intention of the Legislature."[98] '"Generally, the rule is where a statute specifies a time within which a public officer is to perform an act regarding the rights and duties of others, it will be considered as merely directory, unless the nature of the act to be performed or the language shows that the designation of time was intended as a *limitation of* power."'[99]

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[95] *See Melton*, 157 W. Va. at 166, 198 S.E.2d at 136; *see also, e.g., Lightner v. Cline*, No. 10-AA-76, 2012 W.V. Cir. LEXIS 4464, *24-25 (W. Va. Cir. Ct. 2012) ("the forty-five (45) day deadline by which a hearing is supposed to be held is directory and not mandatory.") *aff'd*, 233 W. Va. 573, 574, 760 S.E.2d 142, 143 (2014); *Hughes v. Dep't of Envtl. Quality*, No. 312902, 2014 Mich. App. LEXIS 250, at *7 (Ct. App. Feb. 11, 2014) ("Here, Rule 324.81 is directory because it does not contain any language compelling or prohibiting a certain outcome on a request for a declaratory ruling when defendant fails to take action on the request within 60 days. While Rule 324.81(2) uses the word 'shall,' the absence of any language prohibiting defendant from issuing a declaratory ruling beyond the 60-day period shows that defendant is not prohibited from doing so."); *State ex rel. Rodgers v. Cuyahoga Cty. Court of Common Pleas*, 83 Ohio App. 3d 684, 686, 615 N.E.2d 689, 690 (1992) ("The rule may impose upon the trial court the duty to rule upon motions within one hundred twenty days for purposes of efficient court administration. That, however, does not necessarily mean that a corresponding right is created for litigants to force a trial judge to rule upon any motion within one hundred twenty days, regardless of the posture of the litigation.").

[96] *Thomas v. McDermitt*, 232 W. Va. 159, 168, 751 S.E.2d 264, 364 (2013).

[97] *Garretson*, 196 W. Va. at 126 n.11, 468 S.E.2d at 741 n.11 (quoting 1A Norman J. Singer, *Sutherland Statutory Construction*, § 25.03 at 449 (5th Ed. 1991)).

[98] *Melton*, 157 W. Va. at 165, 198 S.E.2d at 136.

[99] *Id.* at 166; 198 S.E.2d 136 (quoting *Nelms v. Vaughan*, 84 Va. 696, 699, 5 S.E. 704, 706 (1888)); *see also Brock v. Pierce Cty.*, 476 U.S. 253, 262, 106 S. Ct. 1834, 1840, 90 L. Ed. 2d 248, 257 (1986) ("We hold, therefore, that the mere use of the word 'shall' in § 106(b), standing alone, is not enough to remove the Secretary's power to act after 120 days.").

There is no penalty provided for failing to comply with W. Va. Code R. § 65-32-18.4's 45-day deadline or anything else suggesting that it was intended to place a limitation on the Authority's power, and therefore the 45-day deadline is directory. Generally, the Authority's regulatory deadlines provide the Authority with broad discretion.[100] A notable exception to this trend is W. Va. Code R. § 65-32-8.31, which provides that "[t]he Authority shall review an uncontested certificate of need application within 60 days from the date the application is batched", and "[a]n uncontested application is deemed approved if the Authority does not issue a decision within this time period[.]" Because W. Va. Code R. § 65-32-18.4, unlike W. Va. Code R. § 65-32-8.31, fails to provide any consequences for failing to meet the prescribed deadline, W. Va. Code R. § 65-32-18.4's deadline is directory, not mandatory, in nature.

The statutes upon which W. Va. Code R. § 65-32-18 draws its authority, W. Va. Code §§ 16-2D-7 and 29A-4-1, further establish that W. Va. Code R. § 65-32-18.4 is directory in nature. Nothing in W. Va. Code §§ 16-2D-7 and 29A-4-1 requires the Authority to issue a ruling within a prescribed time frame. W. Va. Code § 16-2D-7 merely provides that "[a] person may make a written request to the authority for it to determine whether a proposed health service is subject to the certificate of need or exemption process." It does not place any obligations upon the Authority with respect to such a request. Similarly, W. Va. Code § 29A-4-1 merely provides that "[o]n petition of any interested person, an agency ***may*** issue a declaratory ruling . . . ."[101] A determination

[100] W. Va. Code R. § 65-32-13.1 (stating that a progress report could be required "at any other time directed by the Authority"); W. Va. Code R. § 65-32-13.11 (stating that for good cause shown, the Authority may waive the effect of this subsection); W. Va. Code R. § 65-32-16.3 (stating that the Authority has the discretion to extend the period for submitting final cost figures for the substantial compliance review).

[101] W. Va. Code § 29A-4-1(emphasis added); *see also* Alfred Neely, IV, *Administrative Law in West Virginia*, 165 (1982) ("[i]t is significant that this provision is discretionary and not mandatory. An agency has no obligation to issue a declaratory ruling unless it is inclined to do so.").

of reviewability is really just a type of declaratory ruling.[102] Certainly, "the nature of the act to be performed" is not such that it suggests that "the designation of time was intended as a *limitation of* power."[103]

The disciplinary cases cited by Stonewall are inapposite.[104] W. Va. Code § 30-1-5(c) requires licensing boards to issue an interim status report within six months of the filing of a complaint, at which point the Board has one year to resolve the complaint unless an extension is obtained as prescribe. "These requirements are unquestionably mandatory and therefore, jurisdictional, as pertains to these types of proceedings" and, "[t]his determination is borne out by the fairly explicit legislative history seeking to establish specific time requirements for resolution of such complaints."[105] RDORs and other declaratory rulings, unlike disciplinary hearings, are not generally construed to be mandatory and this distinction is borne out by the applicable statutes.[106]

Clearly, the Authority did not construe W. Va. Code R. § 65-32-18.4's deadline to be mandatory, and the Authority's construction of W. Va. Code R. § 65-32-18.4 is entitled to substantial deference. "Because applying an agency's regulation to complex or changing circumstances calls upon the agency's unique expertise and policymaking prerogatives," it is generally "presume[d] that the power authoritatively to interpret its own regulations is a

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[102] *See St. Joseph's Hosp. of Buckhannon, Inc.*, 903 S.E.2d at 252, n.4 (holding that the court had jurisdiction over an appeal of a determination of reviewability issued by the Authority because, *inter alia*, "declaratory rulings by an agency are 'subject to review before the court and in the manner hereinafter provided for the review of orders or decisions in contested cases.'").
[103] *Melton*, 157 W. Va. at 166, 198 S.E.2d at 136.
[104] *See* Stonewall's Petition, pp. 10-11 (citing *York*, 236 W. Va. at 609, 760 S.E.2d at 857; *Fillinger*, 230 W. Va. at 561, 741 S.E.2d at 119; *Miles*, 236 W. Va. at 102, 777 S.E.2d at 671).
[105] *Miles*, 236 W. Va. at 105, 777 S.E.2d at 674.
[106] *Compare* W. Va. Code § 29A-4-1 *and* W. Va. Code § 16-2D-7 *with* W. Va. Code § 30-1-5(c).

component of the agency's delegated lawmaking powers."[107] In recent years, this doctrine has become known as *Auer* deference.[108]

In 2019, the United States Supreme Court revisited *Auer* deference, clarifying the proper application of the doctrine.[109] The *Kisor* Court reaffirmed *Auer*'s "important role in construing agency regulations" while "reinforc[ing] its limits" and "cabin[ing] . . . its scope."[110] The Court explained that *Auer* was "rooted in a presumption . . . that Congress would generally want the agency to play the primary role in resolving regulatory ambiguities."[111] Accordingly, the Court held that *Auer* deference applies "only if a regulation is genuinely ambiguous" and that to determine whether ambiguity exists, courts "must [first] exhaust all the 'traditional tools' of construction."[112] "If uncertainty does not exist" after applying these tools, "there is no plausible reason for deference."[113] If, on the other hand, "genuine ambiguity remains", the agency's interpretation should be upheld if it is "reasonable", "official", "implicate[s] the [agency's] substantive expertise", and reflects the agency's "fair and considered judgment."[114] *Kisor* remains good law and it continues to be applied by federal courts in the wake of *Loper Bright*.[115]

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[107] *See Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410, 65 S. Ct. 1215, 89 L. Ed. 1700 (1945) (holding that an administrative agency's construction of its own regulations should be afforded "controlling weight unless it is plainly erroneous or inconsistent with the regulation.").

[108] *See Auer v. Robbins*, 519 U.S. 452, 461, 117 S. Ct. 905, 911, 137 L. Ed. 2d 79, 90 (1997). ("[b]ecause the salary-basis test is a creature of the Secretary's own regulations, his interpretation of it is, under our jurisprudence, controlling unless 'plainly erroneous or inconsistent with the regulation.'").

[109] *Kisor v. Wilkie*, 588 U.S. 558, 564, 139 S. Ct. 2400, 2409, 204 L. Ed. 2d 841, 851 (2019).

[110] *Id*. at 563-64; 139 S. Ct. at 2408, 204 L. Ed. 2d at 851.

[111] *Id*. at 569, 139 S. Ct. at 2412, 204 L. Ed. 2d at 854.

[112] *Id*. at 573-75, 139 S. Ct. at 2414-15, 204 L. Ed. 2d at 857-58.

[113] *Id*. at 574-75, 139 S. Ct. at 2415, 204 L. Ed. 2d at 858.

[114] *Id*. at 575-78, 139 S. Ct. at 2415-17, 204 L. Ed. 2d at 858-60.

[115] *See, e.g., United States v. McIntosh*, No. 23-1899, 2024 U.S. App. LEXIS 32465, at *4 n.3 (3d Cir. Dec. 23, 2024) ("*Loper Bright* did not cast doubt on the deference *Kisor* afforded to an agency's reasonable interpretation of its own genuinely ambiguous regulation."); *United States v. Peralta*, No. 23-13647, 2024 U.S. App. LEXIS 27422, at *6 n.2 (11th Cir. Oct. 29, 2024) ("It's worth noting, however, that while the Supreme Court mentioned *Kisor* several times in *Loper Bright*, it never said it had overruled it, which is unsurprising since the two cases involve different types of deference"); *United States v. Boler*, 115 F.4th 316, 322 n.4 (4th Cir. Aug. 23, 2024) ("Since *Loper Bright* dealt specifically with ambiguities in statutory

In *Loper Bright*,[116] the United States Supreme Court overruled *Chevron*,[117] holding that "Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority[.]" [118] "*Loper Bright* dealt specifically with ambiguities in statutory directives to agencies and did not address the issue of agency interpretations of their own regulations[.]"[119] *Auer*/*Kisor* deference, on the other hand, applies to agencies' interpretations of their own regulations.[120]

While this Court has not expressly applied *Auer*/*Kisor*, it has given significant deference to the Authority's predecessor, the State Health Planning and Development Agency, when reviewing disputes concerning the State Health Plan Standards developed by the Agency.[121] This Court's decision in *Princeton* predates its adoption of the *Chevron* framework [122] and, like *Auer*/*Kisor*, affords substantial deference to an administrative agency's interpretation of rules and/or regulations developed by the agency. Accordingly, even if this Court decides to follow *Loper Bright* and abandon the *Chevron* framework, *Princeton* would remain good law, entitling the Authority's construction of W. Va. Code R. § 65-32-18.4 to substantial deference.

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directives to agencies and did not address the issue of agency interpretations of their own regulations, we will apply the Supreme Court's recent guidance in *Kisor* to address the issue before us today."); *United States v. Trumbull*, No. 23-912, 2024 WL 3894526, at *3 n. 2 (9th Cir. Aug. 22, 2024) ("The Supreme Court did not call *Kisor* into question in *Loper Bright* (and in fact cited it, *see id.* at 2261), and as the concurrence acknowledges did not overrule it, so we continue to apply it.").

[116] *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2273, 219 L. Ed. 2d 832, 867 (2024).

[117] *Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837, 104 S. Ct. 2778, 81 L. Ed. 694 (1984).

[118] *Loper Bright*, 144 S. Ct. at 2273, 219 L. Ed. 2d at 867.

[119] *Boler*, 115 F.4th at 322 n.4.

[120] In Case No. 24-347, St. Joseph's asked this Court to abandon the *Chevron* framework and follow *Loper Bright*. St. Joseph's does not ask that the Court apply *Chevron* deference here. *Auer/Kisor* deference is not dependent upon the *Chevron* framework.

[121] *See Princeton Cmty. Hosp. v. State Health Plan.*, 174 W. Va. 558, 328 S.E.2d 164 (1985).

[122] In February of 1995, the Court first applied the *Chevron* framework in reviewing the propriety of an administrative decision. *Sniffin v. Cline*, 193 W. Va. 370, 374, 456 S.E.2d 451, 455 (1995). And, in September of 1995, the Court specifically incorporated the *Chevron* analysis into three new syllabus points. Syl. Pts. 2-4, *Appalachian Power Co. v. State Tax Dep't*, 195 W. Va. 573, 579, 466 S.E.2d 424, 430 (1995).

Additionally, W. Va. Code R. § 65-32-18.4 expressly allows the Authority to forego ruling on an RDOR until "all of the necessary information has been provided[.]" That is precisely what the Authority is doing. Until the Court rules on Case No. 24-347, the Authority will not possess all of the information that it needs to rule on Stonewall's RDOR in CON File #24-7-13069-X. The Authority's stay merely preserves the *status quo* until the Authority has the information necessary to reliably rule upon Stonewall's RDOR.

In sum, the Authority had the implied power to stay Stonewall's RDOR in CON File #24-7-13069-X. The 45-day deadline prescribed by W. Va. Code R. § 65-32-18.4 is directory, not mandatory, and the Authority did not exceed its legitimate power by issuing a stay of CON File #24-7-13069-X.

E. The Factors for a Writ of Prohibition Have Not Been Met.

1. Stonewall Could Have Asked This Court to Expedite Its Decision of St. Joseph's Appeal, Affording It Relief from The Stay.

While it is true that the Authority's stay decision is an interlocutory order from which a direct appeal is unavailable, it is not true that Stonewall has no other means to obtain relief from the Authority's stay because Stonewall could file a motion to expedite this Court's consideration of Case No. 24-347. Such motions have been routinely granted by the Court.[123] And, expediting this Court's consideration of Case No. 24-347 is a more practical way to ensure that the pending RDOR is promptly resolved because, unlike a writ of prohibition or mandamus, it will also ensure that the Authority's decision on the pending RDOR is consistent with this Court's mandate in Case

[123] *See, e.g., Davis v. Pannell*, No. 24-223, 2024 W. Va. LEXIS 194, at *1 (May 3, 2024) (memorandum decision) ("we grant a motion filed by Ms. Davis to expedite our consideration of her appeal."); *Neilan v. Yeager*, No. 14-1340, 2015 W. Va. LEXIS 162, at *2 (Mar. 12, 2015) (memorandum decision) ("The Court does hereby grant the motion to expedite."); *Moltis v. Adams*, No. 13-0920, 2014 W. Va. LEXIS 205, at *1 n.1 (Mar. 14, 2014) (memorandum decision) ("Petitioner also moves this Court to consider his appeal on an expedited basis. After careful consideration, the Court grants the motion and considers the appeal forthwith.").

No. 24-347. Indeed, in its response to St. Joseph's motion for stay in Case No. 24-347, the Authority clearly stated that "Stonewall need only ask the Court to expedite [this case] to limit the term of the stay, *see* W. Va. R. App. P. 29(c)[.]"[124] Stonewall was put on notice that it could ask the Court to expedite its consideration of St. Joseph's appeal, but has chosen not to pursue this remedy.

Stonewall, it seems, hopes to obtain a decision on its RDOR on favorable terms before this Court issues an opinion that may foreclose that opportunity, and while that may be an optimal result for Stonewall, it invites contradiction and is not an efficient use of judicial resources. Stonewall's attempt to get out ahead of an adverse ruling in Case No. 24-347 by filing another RDOR to construct a health care facility on its Staunton Drive property is improper. Stonewall needs to obtain a CON.

2. Stonewall Has Submitted No Evidence That It Will Be Prejudiced by The Stay.

Stonewall will not be damaged or prejudiced in a way that is not correctable on appeal because the stay merely maintains the *status quo* until this Court decides Case No. 24-347. Stonewall can continue to serve its patients as it has done for many years. The stay will not preclude patients from continuing to access Stonewall's services in the same manner and to the same extent as they have previously. If Stonewall would like to obtain relief from the stay, it can file a motion to expedite this Court's consideration of Case No. 24-347.

Stonewall's contentions that "it, the Weston medical community and the community at large, will be damaged by the delay in construction of the medical office building" unjustifiably presumes that the Authority will determine that Stonewall's project is not subject to CON review and that that determination should be upheld.[125] As Stonewall acknowledged, the Authority's

[124] (Supp. Appx._0051).
[125] *See* Stonewall's Petition, p. 19.

August 28, 2024 decision was not properly noticed,[126] and therefore, St. Joseph's did not have an opportunity to weigh in. The August 28, 2024 decision is void.[127] There is no reason to presume that the Authority will grant Stonewall's RDOR now that St. Joseph's has been given an opportunity to present its case to the Authority, and even if it did, the propriety of that decision may hinge on this Court's resolution of Case No. 24-347.

3. The Authority's Decision is Not Clearly Erroneous.

Stonewall argues that the "Authority's stay is clearly erroneous" because "[f]irst and foremost, Respondent Authority knows full well that, as a matter of law, a DOR should have been granted[.]"[128] Not so. The Authority has stated that the unwritten relocation rule upon which Stonewall relies is "unlawful" and that it now agrees that the construction of a health care facility requires a CON regardless of whether cost associated with the project exceed the expenditure minimum.[129] Absent this Court's resolution of Case No. 24-347 in Stonewall's favor, it is far from clear that the pending RDOR will or should be granted, and that is simply another reason why the Authority's stay was reasonable.

As explained above, the Authority is bound by this Court's stay in Case No. 24-347 and had a duty to determine whether or not the Court's stay precluded its consideration of Stonewall's RDOR.[130] Stonewall's contention that "[o]nly this Court has the legal jurisdiction to determine the scope of its July 25, 2024, Stay Order" is incorrect.[131] The Authority had a duty to assess whether or not ruling on Stonewall's RDOR would violate the stay. There was ample evidence presented

[126] *See* Stonewall's Petition, p. 21 ("But for the overlooked public notice provision, this decision would have stood, and this Writ would not have been filed."); *see also* (Appx._0009).
[127] Stonewall's Petition, p. 24 ("That approval was voided because the meeting was not properly noticed.").
[128] Stonewall's Petition, p. 20.
[129] (Supp. Appx._0012; Supp. Appx._0034).
[130] *See* Section VIII.C, *supra*.
[131] *See* Stonewall's Petition, p. 21.

before the Authority to justify a finding that Stonewall's RDOR would violate this Court's stay. There were also good reasons for the Authority to stay its consideration of Stonewall's RDOR even if the RDOR did not technically violate the stay issued by this Court. Either way, the Authority's decision to stay the RDOR was not clearly erroneous.

While it is true that the Authority did not provide any "written reasons" for staying CON File #24-7-13069-X, that must be charged against Stonewall, not the Authority.[132] Interlocutory orders do not need to set forth findings of fact and conclusions of law, and it is the petitioner's duty to ask for a more detailed order before seeking a writ challenging an interlocutory ruling.[133]

As explained above, Stonewall's reliance on W. Va. Code R. § 65-32-18.4 is misplaced. Because W. Va. Code R. § 65-32-18.4 is directory, not mandatory, the Authority had the power to stay Stonewall's RDOR.[134] Moreover, W. Va. Code R. § 65-32-18.4 expressly allows the Authority to hold off on ruling on an RDOR until it has all the information necessary to do so. The disciplinary cases cited by Stonewall are inapposite.[135] CON File #24-7-13069-X is not a disciplinary case, and the Authority is not attempting to sanction Stonewall.

4. This Is a Rare Case That Does Not Embody an Oft Repeated Error.

Contrary to Stonewall's assertions,[136] the circumstances underlying the Authority's stay decision in this case are extremely rare and unlikely to recur. The Authority's stay was issued, in large part, because this Court stayed proceedings in Case No. 24-347, which concerns the same legal issue (whether the construction of a health care facility requires a CON), the same property (the Staunton drive lot), and the same parties (St. Joseph's & Stonewall) as Stonewall's pending

[132] *See* Section VIII.B, *supra*.
[133] *See* Section VIII.B, *supra*.
[134] *See* Section VIII.D, *supra*.
[135] *See* Section VIII.D, *supra*.
[136] Stonewall's Petition, pp. 23-25.

RDOR. Additionally, the Authority confessed error in Case No. 24-347 and explained that it now agrees with St. Joseph's that a CON is required for the construction of a health care facility regardless of whether the capital expenditure associated with the project exceeds the expenditure minimum.[137] These are exceptional circumstances. The Authority's stay both ensures Stonewall's continued compliance with this Court's Stay Order and that the Authority will resolve Stonewall's pending RDOR in a manner that is consistent with this Court's mandate in Case No. 24-347. Stonewall's argument, which focuses on the procedural history of the case, misses the point.[138] One decision in one case does not manifest persistent disregard for either procedural or substantive law and cannot amount to an "oft repeated error."[139]

5. *The Authority's Decision does not raise new and important problems or issues of first impression.*

Stonewall argues that the "Authority's decision to stay its AHCF DOR application presents two important legal problems and issues of first impression for this Court."[140] "First and foremost, Petitioner Stonewall has argued that the Respondent Authority had no jurisdiction to consider the scope of this Court's July 25, 2024, Stay Order" and "if Respondent SJH wanted to contend that Petitioner Stonewall's AHCF DOR application was in violation of this Court's July 25, 2024, Stay Order, its sole remedy was to bring that issue to this Court for resolution."[141] Stonewall also argues that the "Authority clearly exceeded its legitimate powers . . . by failing to act within 45 days on Stonewall's AHCF DOR application." As explained above,[142] neither of these arguments has any

[137] (Supp. Appx._0012; Supp. Appx._0034).
[138] Stonewall's Petition, p. 24.
[139] *See State ex rel. Parker v. Keadle*, 235 W. Va. 631, 639, 776 S.E.2d 133, 141 (2015) (holding that circuit court's decision to grant defendant's motion for a new trial based on alleged juror bias did not amount to an oft-repeated error or manifest persistent disregard to either procedural or substantive law).
[140] Stonewall's Petition, p. 25.
[141] Stonewall's Petition, p. 25.
[142] *See* Section VIII.C & D, *supra*.

merit. The Authority clearly had a duty to comply with the Court's Stay Order and did not exceed its legitimate powers by considering the Stay Order. Moreover, W. Va. Code R. § 65-32-18.4's 45-day deadline is directory, not mandatory, and the Authority did not exceed its legitimate powers by failing to act on Stonewall's application within 45 days.

F. The Factors for a Writ of Mandamus Have Not Been Met.

1. Stonewall Does Not Have a Clear Legal Right to the Relief Sought, and the Authority Does Not Have a Legal Duty to Lift the Stay and Rule on Stonewall's RDOR.

"Mandamus lies to require the discharge by a public officer of a nondiscretionary duty."[143] "The importance of the term 'nondiscretionary' cannot be overstated – the judiciary cannot infringe on the decision-making left to the executive branch's prerogative."[144]

Again, Stonewall's reliance on W. Va. Code R. § 65-32-18.4 is misplaced. "While courts justifiably commence their analyses with the premise that the use of the word 'shall' forecloses the exercise of discretion, detailed evaluation often reveals that the use of 'shall' is not determinative or that other language in the statute reveals a contrary intent."[145] '"Generally, the rule is where a statute specifies a time within which a public officer is to perform an act regarding the rights and duties of others, it will be considered as merely directory, unless the nature of the act to be performed or the language shows that the designation of time was intended as a *limitation of* power."'[146]

As explained above, there is no penalty provided for failing to comply with W. Va. Code R. § 65-32-18.4's 45-day deadline, a holistic analysis of the Authority's regulations and the statutes upon which they are based does not suggest that W. Va. Code R. § 65-32-18.4's 45-day deadline

[143] Syl. Pt. 3, *Wiseman Constr. Co. v. Maynard C. Smith Constr. Co.*, 236 W. Va. 351, 353, 779 S.E.2d 893, 895 (2015).
[144] *McComas*, 197 W. Va. at 193, 475 S.E.2d at 285.
[145] *Thomas*, 232 W. Va. at 168, 751 S.E.2d at 364.
[146] *Melton*, 157 W. Va. at 166, 198 S.E.2d at 136.

is mandatory, and the Authority's construction of W. Va. Code R. § 65-32-18.4 as nonmandatory is entitled to deference.[147] Additionally, W. Va. Code R. § 65-32-18.4 expressly allows the Authority to forego ruling on an RDOR until "all of the necessary information has been provided[.]" The Authority will not possess all of the information that it needs to rule on Stonewall's RDOR until this Court decides Case No. 24-347.

Finally, even if W. Va. Code R. § 65-32-18.4 were mandatory (it is not), the Authority could not rule on Stonewall's RDOR if doing so would violate this Court's stay in Case No. 24-347. Because the Authority could have reasonably concluded that Stonewall's proposal would violate the stay issued by this Court in Case No. 24-347, the Authority's decision to forego ruling on Stonewall's RDOR pending this Court's resolution of Case No. 24-347 was both necessary and proper.

2. *Stonewall Should Have Asked This Court to Expedite Its Consideration of St. Joseph's Appeal If It Wanted Relief from The Stay.*

The general rule is that mandamus will not lie if another adequate remedy is available.[148] As explained above,[149] Stonewall is not without another adequate remedy because Stonewall could file a motion to expedite this Court's consideration of Case No. 24-347. Such motions have been routinely granted by the Court.[150] Expediting this Court's consideration of Case No. 24-347 is a more practical way to ensure that the pending RDOR is promptly resolved because, unlike a writ of prohibition or mandamus, expediting Case No. 24-347 would also ensure that the Authority's decision on the pending RDOR is consistent with this Court's mandate in Case No. 24-347. As the Authority's response to St. Joseph's motion for stay in Case No. 24-347 plainly explained,

[147] *See* Section VIII.D, *supra.*
[148] *Walls v. Miller*, 162 W. Va. 563, 565, 251 S.E.2d 491, 495 (1978); *State ex rel. Gooden v. Bonar*, 155 W. Va. 202, 210, 183 S.E.2d 697, 702 (1971).
[149] *See* Section VIII.E.1, *supra.*
[150] *See* note 123, *supra*.

"Stonewall need only ask the Court to expedite [this case] to limit the term of the stay, *see* W. Va. R. App. P. 29(c), an option it elected not to take[.]"[151]

IX. CONCLUSION

Because Stonewall has failed to establish the prerequisites for the extraordinary remedies of mandamus and prohibition, St. Joseph's respectfully requests that this Court deny Stonewall's Verified Petition for Writ of Prohibition and Writ of Mandamus.

Respectfully submitted,

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[151] (Supp. Appx._0051).

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

State of West Virginia ex rel.
Stonewall Jackson Memorial Hospital Company,
Petitioner,

v.) No. 24-750

West Virginia Department of Health,
Health Care Authority, and
St. Joseph's Hospital of Buchannon, Inc.,
Respondents.

CERTIFICATE OF SERVICE

I, Alaina N. Crislip, do hereby certify that I have served the foregoing ***Brief of Respondent St. Joseph's Hospital of Buckhannon, Inc.*** on this 22nd day of January, 2025, via the Court's electronic filing system, unless otherwise specified below, and have caused a true and exact copy of the same to be served upon counsel of record:

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