



STATE OF WASHINGTON
DEPARTMENT OF HEALTH

August 29, 2011

Roy Kussmann, Attorney
Kussmann & Lindstrom, PS
7350 Cirque Drive West, #102
University Place, Washington 98467

Dear Mr. Kussmann:

Thank you for your August 9, 2011, application for an exemption from Certificate of Need related to Pacific Northwest Eye Associates. Below are the facts relied upon by the Certificate of Need Program in reaching its conclusion regarding this project.

FACTS

- Pacific Northwest Eye Associates, PS and Aesthetic Surgery Centre, PLLC are currently the two members of Cedar Medical Specialties, PLLC. Cedar Medical Specialties, PLLC owns and operates an exempt ASC at 2202 South Cedar Street in Tacoma. Currently, Pacific Northwest Eye Associates, PS and Aesthetic Surgery Centre, PLLC use the ASC under a time share arrangement.¹ Pacific Northwest Eye Associates, PS and Aesthetic Surgery Centre, PLLC intend to separate their practices as of December 31, 2011. Aesthetic Surgery Centre, PLLC intends to retain the current ASC at the site. Pacific Northwest Eye Associates, PS is constructing a new ASC. This DOR is related to the Pacific Northwest Eye Associates, PS ASC.
- Pacific Northwest Eye Associates, PS is a group practice located at 3602 South 19th Street in Tacoma.
- The proposed ASC is under construction at the site of 3602 South 19th Street in Tacoma.²
- Four physicians are partners of the group practice and three physicians are employees of the group practice. Information related to the seven physicians is listed below.

Name	Relationship	Credential Status	% of Time Employed by Practice
Andrew B. Kopstein	Partner	Active	100%
Mark W. Taylor	Partner	Active	100%
John O. Goodin	Partner	Active	100%
Joseph T. Pham	Partner	Active	100%
Richard S. Dohoda	Employee	Active	100%
Victor WN Chiu	Employee	Active	100%
Charles D. Birnbach	Employee	Active	20%

¹ November 13, 2011, DOR #01-25

² ASF #60191358; CRS #60172090



- With the exception of Dr. Birnbach, all physicians listed above would have access to the proposed ASC. Dr. Charles Birnbach is 80% employed by Vitreoretinal Associates and does not intend to use the Pacific Northwest Eye Associates, PS ASC.
- The ASC will not be operated under a separate legal entity from the practice.
- Procedures to be performed at the ASC include those surgeries typically associated with eye surgery. A listing of the procedures is provided in the application.
- No management agreement for the ASC is proposed.

ANALYSIS

- Revised Code of Washington (RCW) 70.38.105(4) identifies the types of projects subject to prior Certificate of Need review and approval. Subsection (a) identifies that the construction, development, or other establishment of a new health care facility is subject to review.
- RCW 70.38.025(6) defines "health care facility" as *hospices, hospice care centers, hospitals, psychiatric hospitals, nursing homes, kidney disease treatment centers, ambulatory surgical facilities, and home health agencies, and includes such facilities when owned and operated by a political subdivision or instrumentality of the state and such other facilities as required by federal law and implementing regulations, but does not include any health facility or institution conducted by and for those who rely exclusively upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denomination, or any health facility or institution operated for the exclusive care of members of a convent as defined in RCW 84.36.800 or rectory, monastery, or other institution operated for the care of members of the clergy. In addition, the term does not include any nonprofit hospital: (a) Which is operated exclusively to provide health care services for children; (b) which does not charge fees for such services; and (c) if not contrary to federal law as necessary to the receipt of federal funds by the state.*
- Washington Administrative Code (WAC 246-310-010) defines "ambulatory surgical facility" as *any free-standing entity, including an ambulatory surgery center, that operates primarily for the purpose of performing surgical procedures to treat patients not requiring hospitalization. This term does not include a facility in the offices of private physicians or dentists, whether for individual or group practice, if the privilege of using such facility is not extended to physicians or dentists outside the individual or group practice.*

CONCLUSION

Based on the documents provided by you, the Certificate of Need Program concludes that the establishment of the ASC associated with the group practice known as Pacific Northwest Eye Associates, PS does not meet the definition of an ASC under the Certificate of Need provisions of Washington Administrative Code (WAC) 246-310-010. Therefore, the proposed ASC is not subject to Certificate of Need review.

Please note: This determination is not transferable and is based on the facts submitted in the exemption application. Prior Certificate of Need review and approval may be required under the

provisions of WAC 246-310-020 if changes occur in this project. Examples of such changes include the following. This list is not intended to be all inclusive.

- 1) should Pacific Northwest Eye Associates, PS decide to extend the privilege of using the ASC to physicians not part of the practice; OR
- 2) should Pacific Northwest Eye Associates, PS decide to expand the scope of services at the ASC to include services subject to Certificate of Need review under the provisions of WAC 246-310-020; OR
- 3) should Pacific Northwest Eye Associates, PS decide to organize the ASC as a separate legal entity from the group practice; OR
- 4) should Pacific Northwest Eye Associates, PS decide to operate the ASC under a management agreement; OR
- 5) should any entity other than Pacific Northwest Eye Associates, PS hold the Medicare certification; OR
- 6) should the ASC cease operations or relinquish its Medicare certification and then choose to resume services as an ASC; OR
- 7) should the Pacific Northwest Eye Associates, PS or ASC be purchased or leased.

This determination of non-reviewability does not constitute approval under any other local, federal, or state statute, or implementing rules and regulations. Examples where additional approval may be necessary include, but are not limited to, construction plan approval through the Construction Review Section of the Department of Health, facility licensing/certification through the Department of Social and Health Services or Department of Health, and other federal or local jurisdiction permits.

APPEAL OPTIONS

This decision may be appealed. The two appeal options are listed below.

Appeal Option 1:

You or any interested or affected person may request a public hearing to reconsider this decision. The request must state the specific reasons for reconsideration in accordance with Washington Administrative Code 246-310-560. A reconsideration request must be received within 28 calendar days from the date of the decision at one of the following addresses:

Mailing Address:

Department of Health
Certificate of Need Program
Mail Stop 47852
Olympia, WA 98504-7852

Other Than By Mail

Department of Health
Certificate of Need Program
310 Israel Road SE
Tumwater, WA 98501

Appeal Option 2:

You or any affected person with standing may request an adjudicative proceeding to contest this decision within 28 calendar days from the date of this letter. The notice of appeal must be filed according to the provisions of Revised Code of Washington 34.05 and Washington Administrative Code 246-310-610. A request for an adjudicative proceeding must be received within the 28 days at one of the following addresses:

Mailing Address:

Adjudicative Service Unit
Mail Stop 47879
Olympia, WA 98504-7879

Other Than By Mail

Adjudicative Clerk Office
310 Israel Road SE, Building 6
Tumwater, WA 98501

Please call me at (360) 236-2957 if you have any further questions as you proceed with establishment of the ASC.

Sincerely,



Karen Nidermayer, Analyst
Certificate of Need Program
Office of Certification and Technical Support

cc: Department of Health, Office of Customer Service
Department of Health, Construction Review Services