



STATE OF WASHINGTON
DEPARTMENT OF HEALTH

December 27, 2011

Emily Studebaker, Attorney
Garvey Schubert Barer
1191 Second Avenue
Seattle, Washington 98101-2939

Dear Ms. Studebaker:

Thank you for your December 2, 2011, application for an exemption from Certificate of Need for the establishment of an ambulatory surgery center (ASC) related to Proliance Surgeons, Inc. PS. For background information, on October 4, 2010, Vitreoretinal Associates, PLLC received an exemption from Certificate of Need review for an ambulatory surgery center (ASC) located in Bellevue known as The Retina Surgery Center. Proliance Surgeons, Inc. PS proposes to acquire the Vitreoretinal Associates, PLLC, practice, which includes the ASC located in Bellevue. The acquisition is expected to close on January 1, 2012. This application requests an exemption for the ASC under the Proliance Surgeons, Inc. PS ownership.

Below are the facts relied upon by the Certificate of Need Program in reaching its conclusion regarding this project.

FACTS

- On October 4, 2010, Vitreoretinal Associates, PLLC received an exemption from Certificate of Need review related to the ambulatory surgery center (ASC) known as The Retina Surgery Center. The ASC is located at 1750 – 112th Avenue Northeast in Bellevue.
- At that time, there were seven physicians associated with Vitreoretinal Associates that would have access to The Retina Surgery Center. The seven physicians are listed below.

A. Samuel Barloon, MD
Charles Birnbach, MD
Robert Francis, MD
Robert Nash, MD

David Saperstein, MD
Christopher Singh, MD
Craig Wells, MD

- Your December 2, 2011, application proposes acquisition of Vitreoretinal Associates, PLLC, by Proliance Surgeons, Inc. PS and this application requests an exemption for the ASC under the Proliance Surgeons, Inc. PS ownership.
- The practice and the ASC will remain at the 1750 – 112th Avenue Northeast in Bellevue site.
- The ASC will not be a separate legal entity from the Proliance Surgeons, Inc. PS group practice.



- Primarily the same seven physicians will have access to the ASC. The seven physicians are listed below.

A. Samuel Barloon, MD
Charles Birnbach, MD
Robert Francis, MD
Robert Nash, MD

David Saperstein, MD
Christopher Singh, MD
Craig Wells, MD

- All seven physicians hold current Washington State licenses and have no recorded sanctions or conditions attached to their respective licenses.
- Six of the seven physicians listed above will have ‘shareholder’ status with Proliance Surgeons, Inc. PS. The remaining physician—Christopher N. Singh, MD—will have ‘associate’ status. All seven physicians will be 100% employed with Proliance Surgeons, Inc. PS.
- A copy of the Amended and Restated Bylaws of Proliance Surgeons, Inc., PS are provided with the DOR request. The document includes the seven physicians formerly associated with Vitreoretinal Associates, PLLC.
- The primary procedures to be performed at the ASC include those surgeries typically associated with ophthalmic surgery.
- 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 CON 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 above factual information provided by you, the Certificate of Need Program concludes that the establishment of the ASC associated with the group practice known as Proliance Surgeons, Inc., PS after its acquisition of Vitreoretinal Associates, PLLC 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 your project. Examples of such changes include the following. This list is not intended to be all inclusive.

- 1) should Proliance Surgeons, Inc., PS decide to extend the privilege of using the ASC to physicians not part of the practice; OR
- 2) should Proliance Surgeons, Inc., 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 Proliance Surgeons, Inc., PS decide to organize the ASC as a separate legal entity from the group practice; OR
- 4) should Proliance Surgeons, Inc., PS decide to operate the ASC under a management agreement; OR
- 5) should any entity other than Proliance Surgeons, Inc., 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 group practice or ASC be purchased or leased.

This exemption approval 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.

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:

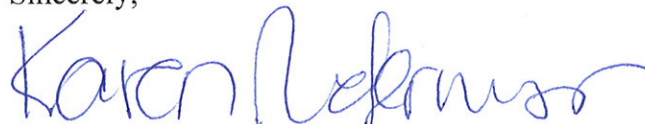
Adjudicative Service Unit
Mail Stop 47879
Olympia, WA 98504-7879

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 the acquisition of Vitreoretinal Associates, PLLC, by Proliance Surgeons, Inc. PS and the 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