



STATE OF WASHINGTON
DEPARTMENT OF HEALTH

February 14, 2011

Devin Harrison, MD President
Full Spectrum Eye Center dba
The Columbia River Eye Surgery Center
475 Bradley Boulevard
Richland, Washington 99352

Dear Dr. Harrison:

Thank you for your Ambulatory Surgical Center Determination of Non-Reviewability (DOR) Application received on February 2 and the supplemental information provided on February 11, 2011. Below are the facts relied upon by the Certificate of Need Program in reaching its conclusion regarding your interest in establishing an Ambulatory Surgical Center (ASC) associated with the group practice.

FACTS

- On June 11, 2001, Columbia River Eye Surgery Center obtained an exemption from Certificate of Need review for its establishment. At that time it was owned and operated by Michael Dietz, MD.
- According to Department of Health files, you purchased the ASC from Dr. Dietz on June 1, 2009, and your February 2 application requests an exemption from Certificate of Need for the ASC under your ownership.
- Full Spectrum Eye Center is a group practice with one location at 475 Bradley Boulevard in Richland, within Benton County.
- The ASC, known as The Columbia River Eye Surgery Center, is physically attached to the Full Spectrum Eye Center practice located in Richland.
- The ASC is not a legally structured as a separate entity from the group practice.
- Currently there are two physicians associated with Full Spectrum Eye Center dba The Columbia River Eye Surgery Center. Those physicians are you, Dr. Devin Harrison, and your employee, Paul Quentin Smith, MD.
- No other physician would have access to the Columbia River Eye Surgery Center ASC. (Future member/partners or employees of the group practice would be allowed access to the ASC.)
- Procedures to be performed at the ASC include those surgeries typically associated with ophthalmologic procedures. A listing of common procedures was provided as an attachment with the DOR request.
- No management agreement for the ASC is proposed.
- Billing for the ASC is provided through the group practice.

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 (The Columbia River Eye Surgery Center) associated with the Full Spectrum Eye Center 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 you later decide to extend the privilege of using the ASC to physicians not part of the practice; OR
- 2) should you 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 you decide to organize the ASC as a separate legal entity from the practice; OR
- 4) should you decide to operate the ASC under a management agreement; OR

- 5) should any entity, other than Full Spectrum Eye Center dba Columbia River Eye Surgery Center 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 practice 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.

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:

<u>Mailing Address:</u>	<u>Other Than By Mail</u>
Department of Health	Department of Health
Certificate of Need Program	Certificate of Need Program
Mail Stop 47852	310 Israel Road SE
Olympia, WA 98504-7852	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:

<u>Mailing Address:</u>	<u>Other Than By Mail</u>
Adjudicative Service Unit	Adjudicative Clerk Office
Mail Stop 47879	310 Israel Road SE, Building 6
Olympia, WA 98504-7879	Tumwater, WA 98501

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The Columbia River Eye Surgery Center
DOR #11-19
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Please call me at (360) 236-2957 if you have any further questions as you proceed with establishment of the ASC.

Sincerely,

A handwritten signature in blue ink that reads "Karen Nidermayer". The signature is fluid and cursive, with the first name "Karen" being larger and more prominent than the last name "Nidermayer".

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

cc: Department of Health, Investigations and Inspections Office
Department of Health, Office of Customer Service