



STATE OF WASHINGTON
DEPARTMENT OF HEALTH

July 19, 2012

Ron Lahner, Attorney
Lahner and Associates, PC
12400 Kallgren Road
Bainbridge Island, Washington 98110

Dear Mr. Lahner:

Thank you for your June 15, 2012, application for an exemption from Certificate of Need for the merger of two practices, one with an exempt ambulatory surgery center (ASC). Your application was received in the Certificate of Need Program office on June 19, 2012, and you submitted additional documentation on July 18 and 19, 2012. Below are the facts relied upon by the Certificate of Need Program in reaching its conclusion regarding this project.

FACTS-Spokane Ear, Nose, & Throat Clinic, PS

- Spokane Ear, Nose & Throat Clinic, PS, is a group practice and a legal corporation registered with the Washington State Secretary of State.
- Spokane Ear, Nose & Throat Clinic, PS has three practice sites in Spokane County. The practice sites are identified below.

Address	City	Zip
217 West Cataldo Avenue	Spokane	99201
9922 North Nevada	Spokane	99218
13414 East Mission Avenue	Spokane	99216

- On January 12, 2000, Spokane Ear, Nose & Throat Clinic, PS obtained an exemption from Certificate of Need review for the establishment of an ASC associated with the group practice. At that time, the location of the practice and the ASC was 104 West 5th Avenue, #400 in Spokane.
- The practice with the ASC is currently located at the West Cataldo site identified in bold above.
- At this time, there are 12 physicians associated with the Spokane Ear, Nose & Throat Clinic, PS practice. Information related to the 12 physicians is in the table on the following page.

Name	Credential Status	Practice Status	% of Time Employed by Practice
Janet Sami Abadir	Active	Employed	100%
Karen K. Ahlstrom	Active	Member	100%
Jeffrey D. Bunn	Active	Member	100%
Jan Stuart Connelly	Active	Member	100%
Michael J. Cruz	Active	Member	100%
Neil A. Giddings	Active	Member	100%
John F. Hoffmann	Active	Member	100%
David S. Malone	Active	Member	100%
Brian J. Mitchell	Active	Member	100%
Michael J. Olds	Active	Member	100%
Alan T. Pokorny	Active	Member	100%
Carrie A. Roller	Active	Member	100%

FACTS-Surgical Specialists of Spokane

- Surgical Specialists of Spokane PS, is a group practice and a legal corporation registered with the Washington State Secretary of State.
- Surgical Specialists of Spokane PS has two practice sites in Spokane County. The practice sites are identified below.

Address	City	Zip
105 West 8 th Avenue, #7010	Spokane	99204
318 East Rowan, #227	Spokane	99207

- Surgical Specialists of Spokane PS does not have an exempt or Certificate of Need approved ASC associated with practice.
- At this time, there are 11 physicians associated with the Surgical Specialists of Spokane PS practice. Information related to the 11 physicians is in the table below.

Name	Credential Status	Practice Status	% of Time Employed by Practice
Rana N. Ahmad	Active	Member	100%
Timothy W. Bax	Active	Member	100%
Steven Ray Beyersdorf	Active	Member	100%
Jon Courtney Clyde	Active	Member	100%
Kimberly Lyn Hartnett	Active	Member	100%
Adam H. Juviler	Active	Member	100%
Paul H. Lin	Active	Member	100%
Mark P. MacFarlane	Active	Member	100%
Michael s. McNevin	Active	Member	100%
Michael Ryan Moore	Active	Member	100%
Jonathan M. Nickoloff	Active	Member	100%

FACTS-Merger of Spokane Ear, Nose & Throat Clinic, PS and Surgical Specialists of Spokane

- By October 31, 2012, Spokane Ear, Nose & Throat Clinic, PS and Surgical Specialists of Spokane PS intend to merge the two practices. The surviving corporation will be Spokane Ear, Nose & Throat Clinic, PS.
- A copy of the proposed By-Laws to be used at Spokane Ear, Nose & Throat Clinic, PS after the merger was included in the exemption application materials.
- The practice and exempt ASC would continue to be located at the 217 West Cataldo Avenue site in Spokane.
- The exempt ASC would continue to be operated under the Spokane Ear, Nose & Throat Clinic, PS practice.
- At completion of the merger, there will be 23 physicians associated with the Spokane Ear, Nose & Throat Clinic, PS practice and five separate sites.
- At this time, only the 23 physicians intend to use the exempt ASC. Future owners or employees may have access to the ASC.
- Procedures to be performed at the ASC include those surgeries typically associated with ENT, including facial plastic surgery and correction of sinus / nasal disorders.
- No management agreement for the ASC is proposed.
- While the merger is expected to be complete by October 31, 2012, which includes all documentation and governing body approval, termination of the Surgical Specialists of Spokane, PS retirement plan is expected to occur on January 1, 2013.
- The dissolution of the Surgical Specialists of Spokane, PS corporation is also expected to occur by January 31, 2013. The delay in dissolution of this corporation is related to billing and collection procedures.

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 merger of the two group practices known as Spokane Ear, Nose & Throat Clinic, PS and Surgical Specialists of Spokane PS and subsequent operation of the currently exempt ASC associated with Spokane Ear, Nose & Throat Clinic, 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 ASC is not subject to Certificate of Need review, provided that Spokane Ear, Nose & Throat Clinic, PS agree to the three conditions of this exemption approval.

Conditions of Exemption Approval

- 1) Spokane Ear, Nose & Throat Clinic, PS will provide a copy of the final By-Laws to be used at Spokane Ear, Nose & Throat Clinic, PS after the merger. Provide the document by November 30, 2012.
- 2) Spokane Ear, Nose & Throat Clinic, PS will provide documentation verifying that the retirement plan for Surgical Specialists of Spokane PS has been terminated. Provide the documentation by February 28, 2013.
- 3) Spokane Ear, Nose & Throat Clinic, PS will provide documentation verifying the dissolution of the Surgical Specialists of Spokane, PS corporation. Provide the documentation by February 28, 2013.

Please note: This exemption 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 Spokane Ear, Nose & Throat Clinic, PS decide to extend the privilege of using the ASC to physicians not part of the practice; OR
- 2) should Spokane Ear, Nose & Throat Clinic, 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 Spokane Ear, Nose & Throat Clinic, PS decide to organize the ASC as a separate legal entity from the practice; OR
- 4) should Spokane Ear, Nose & Throat Clinic, PS decide to operate the ASC under a management agreement; OR

- 5) should any entity other than Spokane Ear, Nose & Throat Clinic, 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 practice or ASC be purchased or leased; OR
- 8) should the ASC be moved to a different site than identified in the exemption application.

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
111 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:

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

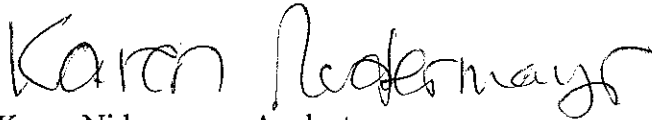
Other Than By Mail

Department of Health
Adjudicative Service Unit
111 Israel Road SE
Tumwater, WA 98501

Ron Lahner, Lahner and Associates, PC
Spokane Ear, Nose, & Throat Clinic, PS
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Please provide a response to this letter by August 1, 2012, from a representative of Spokane Ear, Nose & Throat Clinic, PS and Surgical Specialists of Spokane PS acknowledging acceptance of the conditions of this exemption approval. If you have any questions regarding the exemption approval, you may call me directly at 360-206-2957.

Sincerely,

A handwritten signature in black ink that reads "Karen Nidermayer". The signature is written in a cursive style with a large, stylized "K" and "N".

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

cc: Department of Health, Investigations and Inspections Office