



STATE OF WASHINGTON
DEPARTMENT OF HEALTH

February 5, 2013

Kevin Michels, MD
Northwest Eyelid and Orbital Specialists, PS
842 South Cowley Street, #4
Spokane, Washington 99202

Dear Dr. Michels:

Thank you for your January 14, 2013, application for an exemption from Certificate of Need for the establishment of an ambulatory surgery center (ASC) related to your solo practice. Your application was received in the Certificate of Need Program office on January 22, 2013. Below are the facts relied upon by the Certificate of Need Program in reaching its conclusion regarding this project.

FACTS

- Northwest Eyelid and Orbital Specialists, PS is a legal corporation registered with the Washington State Secretary of State. You operate your solo physician practice under this legal corporation.
- You have two practice sites in Washington State and no practice sites outside the state. Also, approximately once a month you practice at the Columbia River Eye Center in Richland. Your two practice sites are listed below.

Address	City	Zip
842 South Cowley Street, #4	Spokane	99202
835 Southeast Bishop Boulevard ¹	Pullman	99163

- You intend to relocate your Spokane practice to a new site and establish an exempt ASC with the practice. The address of the new site is 626 South Sheridan in Spokane [99202]. Once you relocate your practice, the Cowley Street site will close.
- The ASC would be in the office suite of your clinical practice at the new address.
- The proposed ASC would not be operated under a separate legal entity from your solo practice entity.
- At this time, only you intend to use the exempt ASC. Future owners or employees may have access to the ASC. Below is the specific credentialing information.

Name	Credential Status	Practice Status
Kevin Scott Michels	Active	Owner

¹ Located within the Pullman Regional Specialty Clinic on the Pullman Regional Hospital campus.



- Procedures to be performed at the ASC include those surgeries typically associated with oculoplastic surgery. A listing of common procedures was provided in your 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 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 your solo practice known as Northwest Eyelid and Orbital Specialists, 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 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 you 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 Northwest Eyelid and Orbital Specialists, 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.

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:

<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	111 Israel Road SE
Olympia, WA 98504-7852	Tumwater, WA 98501

Appeal Option 2:

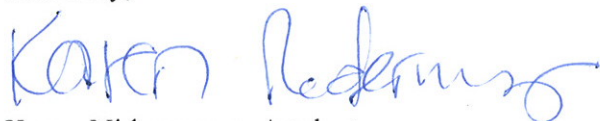
You or any affected person with standing may request an adjudicative proceeding to contest this decision within 28 calendar days from the date of this letter. The notice of appeal must be filed according to the provisions of Revised Code of Washington 34.05 and Washington Administrative Code 246-310-610. 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>
Department of Health	Department of Health
Adjudicative Service Unit	Adjudicative Service Unit
Mail Stop 47879	111 Israel Road SE
Olympia, WA 98504-7879	Tumwater, WA 98501

Kevin Michels, MD Northwest Eyelid and Orbital Specialists, PS
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Please call me at (360) 236-2957 if you have any further questions regarding the establishment of the exempt ASC.

Sincerely,



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

cc: Department of Health, Investigations and Inspections Office
Department of Health, Construction Review Services