



October 4, 2024

Eric Hernandez, Manager
Department of Health
Certificate of Need Program
P.O. Box 47852
Olympia, WA 98504-7852
e.hernandez@doh.wa.gov

**RE: Whatcom ASC, LLC's Planned Acquisition of Bellingham Ambulatory Surgery Center—
Determination of Non-Reviewability**

Dear Mr. Hernandez,

Pursuant to WAC 246-310-050, and on behalf of Proliance Surgeons, Inc., P.S., I am requesting a certificate of need ("CN") applicability determination regarding the planned acquisition of the ambulatory surgery facility ("ASF") located at 2075 Barkley Blvd., Suite 101, Bellingham, WA 98226, which is owned and operated by Northwest Ambulatory Surgery Services, LLC d/b/a Bellingham Ambulatory Surgery Center (operator referred to hereinafter as "NASS" and the facility as "BASC ASF"). We understand the department's position is that a change of ownership of an ASF does not require CN review.¹ Review is required only for those actions identified in statute.² The proposed change of ownership does not establish a new ASF and thus does not require CN review, which has been confirmed by the department in many recent applicability determinations.³ Pertinent facts include:

1. Current CN holder: Northwest Ambulatory Surgery Services, LLC d/b/a Bellingham Ambulatory Surgery Center.⁴
2. Business Name of the ASF: Bellingham Ambulatory Surgery Center.
3. Address of BASC ASF: 2075 Barkley Blvd, Suite 101, Bellingham, WA 98226.
4. BASC ASF licensure: ASF.FS.60102997, expiring 7/1/2027.
5. Certificate of Need #1213, September 8, 2000, as modified by DOR #13-13, December 13, 2012, attached as Exhibit 1, issued to NASS.

¹ See, for example, letter to Ms. Kobberstad from Mr. Hernandez, Program Manager, Office of Community Health Systems., DOR#24-06, January 8, 2024; letter to Ms. Kobberstad from Mr. Hernandez, Program Manager, Office of Community Health Systems, DOR #23-25, July 3, 2023; and letter to Ms. Cara Waller from Mr. Hernandez, Program Manager, Office of Community Health Systems, DOR #22-16R, April 6, 2022.

² See RCW 70.38.105(3), (4). See also WAC 246-310-020.

³ See, for example, a number of recent approvals, including: DOR #24-06, January 8, 2024; DOR #23-21, May 5, 2023; DOR #23-22, June 30, 2023; DOR #23-25, July 3, 2023; DOR #22-16R, April 6, 2022; DOR #22-07, December 3, 2021; DOR #21-03, August 8, 2020; DOR #21-06, November 5, 2020; DOR #17-06, November 5, 2020; DOR #21-20, December 20, 2020; DOR #17-13, March 28, 2017.

⁴ See DOR #13-13, attached as Exhibit 1, and history related to current ownership of BASC ASF provided in Item 7 of this Request..



6. Certificate of Need approval, as modified by DOR #13-13, includes: Three operating suites (“ORs”).
7. History related to current ownership of BASC ASF: BASC ASF, as it exists today, is the result of a 2013 merger and relocation of existing ASFs operated by Bellingham Surgery Center, Inc. (BSC) and Northwest Ambulatory Surgery Services, LLC (NASS), in which NASS was the surviving entity. The merger was approved by the department and confirmed to not require CN review pursuant to DOR #13-13, attached as Exhibit 1. Prior to the merger, BSC held CN #1002, which authorized operation of a 4-room ASF; NASS held CN #1213, which authorized operation of a 2-room ASF. ARC of Bellingham, LP acquired and consolidated BSC and NASS. The merger resulted in a 3-room ASF operated by NASS located at 2075 Barkley Blvd, Suite 101, under the authority of CN #1213, as amended by DOR #13-13. ARC of Bellingham, LP, NASS’s parent company, was a wholly owned subsidiary of Symbion Healthcare, which was purchased by Surgery Partners, Inc., on June 16, 2014. We note that while the conclusions of DOR #13-13 are correct (the merger of legal entities Bellingham Surgery Center, Inc. and Northwest Ambulatory Surgery Services, LLC in 2013 did not require CN review), we believe the DOR #13-13 misstates the outcome of the merger because the DOR characterizes ARC of Bellingham, LP as the surviving, licensed entity. This is incorrect (see page 2, “ARC of Bellingham will hold the ASC license.”). The DOR does not clearly identify the entity that survived the 2013 merger, though in fact Northwest Ambulatory Surgery Services, LLC survived the merger and has operated the 3-room ASF at 2075 Barkley Blvd., Suite 101, since that time under its currently effective license.
8. Current CN holder details include:
 - a. Ownership: BASC ASF is owned and operated by NASS. NASS, in turn, is wholly owned by ARC of Bellingham, LP (“Parent Company”). Surgery Partners, Inc., through its wholly owned subsidiaries, holds a collective 77.59% interest in Parent Company. The remainder of Parent Company’s ownership interests, totaling 22.41%, are held by individual physicians.
 - b. Address: 340 Seven Springs Way, Suite 600, Brentwood, TN 37027.
 - c. Certificate of Need #1213, September 8, 2000, as modified by DOR #13-13, December 13, 2012.
 - d. Name and title of responsible Seller Representative: Madison Santana, Holland & Knight, LLP, Counsel to Seller, 511 Union Street, Suite 2700, Nashville, TN 32719.
9. Certificate of Need #1213, September 8, 2000, as modified by DOR #13-13, December 13, 2012 approval, includes the following:
 - a. Approved to operate 3 ORs.
 - b. Care is provided to persons eight years of age and older.
10. Purchaser: Post-transaction, Whatcom ASC, LLC will own and operate BASC ASF. Its UBI Number is 605 591 653 and its EIN is 99-446941.
11. Planned transaction details.
 - a. No capital expenditure by Purchaser anticipated.
 - b. No change in # of ORs.
 - c. No change in specialties, which include General Surgery, Gynecology, Orthopedics, Ophthalmology, Otolaryngology, Pain Management, Plastic Surgery and Podiatry.
 - d. No change in address.
 - e. No change in Medicare certification
 - f. No disruption in service, pre- and post-transaction.



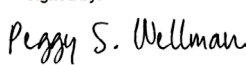
12. Planned transaction timing. Targeted closing date: November 30, 2024, or upon receipt of all regulatory approvals required to close the transaction, if sooner.

Enclosed, please find check number 42842 in the amount of \$1,925 as our filing fee. Please let me know if there is any other information that is necessary to provide the requested determination. Otherwise, we would appreciate you providing this determination as soon as practicable. I can be reached at 206.838.3767 or at p.wellman@proliancesurgeons.com

Thank you for your assistance.

Sincerely,

Signed by:


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Peggy Wellman, Chief Administrative Officer
Proliance Surgeons, Inc., P.S.
805 Madison Street, #901
Seattle, WA 98104



EXHIBIT ONE
Determination of Reviewability #13-13, December 13, 2012



STATE OF WASHINGTON
DEPARTMENT OF HEALTH

December 13, 2012

Jennifer Baldock, Counsel
Symbion Healthcare
40 Burton Hills Boulevard, #500
Nashville, Tennessee 37215

Dear Ms. Baldock:

Thank you for your letter of November 5, 2012, requesting a determination of reviewability regarding the potential consolidation and relocation of Bellingham Surgery Center and Northwest Ambulatory Surgery Services, LLC. Your letter was received in the Certificate of Need (CN) program office on November 6, 2012, and subsequent documentation was received on December 11, 2012. Below, are the facts relied upon by the Certificate of Need Program in reaching its conclusion regarding your consolidation and relocation project.

FACTS-BELLINGHAM SURGERY CENTER

- On November 29, 1989, CN #1002 was issued to Bellingham Surgery Center, Inc. approving the establishment of an ambulatory surgery center (ASC) to be located at 2980 Squalicum Parkway in Bellingham [98225], within Whatcom County.
- Bellingham Surgery Center was established with four operating rooms (ORs), recovery space, and administration/reception space.
- On April 14, 1999, the Certificate of Need Program concluded that the purchase of Bellingham Surgery Center by Ambulatory Resource Centres, Inc. did not require prior CN review and approval.¹ Currently Bellingham Surgery Center operates under ARC of Bellingham, LP.
- According to Department of Health files, Bellingham Surgery Center has remained in continuous operation at its current site since its inception.

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FACTS-NORTHWEST AMBULATORY SURGERY SERVICES

- On September 8, 2000, CN #1002 was issued to Northwest Ambulatory Surgery Services, LLC approving the establishment of an ASC to be located at 2075 Barkley Boulevard in Bellingham [98226], within Whatcom County.
- Northwest Ambulatory Surgery Services was established with two ORs, recovery space, and administration/reception space.

¹ Ambulatory Resource Centres, Inc. is wholly owned by Symbion Healthcare. Symbion Healthcare is the managing partner of Ambulatory Resource Centres, Inc. Symbion Healthcare develops, acquires, operates, and manages ASCs in partnership with physicians, physician groups, practice management companies, payers, hospital, and hospital networks. After the 1999 acquisition of Bellingham Surgery Center, Symbion has owned and operated the ASC since that time.

Jennifer Baldock, Counsel
Symbion Healthcare
DOR #13-13
December 13, 2012
Page 2 of 4

- Ownership of Northwest Ambulatory Surgery Services is 53.333% physician owned (Way Yin, MD) and 45.557% non-physician owned.
- According to Department of Health files, Northwest Ambulatory Surgery Services has remained in continuous operation at its current site since its inception.

FACTS--PROPOSED CONSOLIDATION

- ARC of Bellingham, LP proposes to acquire 100% ownership of Northwest Ambulatory Surgery Services, in two separate, but sequential transactions.
 - ▶ Transaction #1: Northwest Ambulatory Surgery Services will sell 100% of the non-physician owner shares and approximately ½ of the physician owner shares to Ambulatory Resource Centres, Inc. Resulting ownership of Northwest Ambulatory Surgery Services will be 22.58% Way Yin, MD and 77.32% Ambulatory Resource Centres, Inc.
 - ▶ Transaction #2: All members of Northwest Ambulatory Surgery Services will sell 100% of the shares to ARC of Bellingham, LP. Resulting ownership of Northwest Ambulatory Surgery Services will be 100% ARC of Bellingham. This transaction is expected to occur immediately after the closing of Transaction# 1.
- After consolidation of Northwest Ambulatory Surgery Services and Bellingham Surgery Center, both will continue to operate at their current, respective locations until early 2013. Both will operate under ARC of Bellingham.
- In summary, the ARC of Bellingham entity will increase by one physician and two sites in Bellingham.

FACTS--PROPOSED RELOCATION

- In early 2013, the new, consolidated ARC of Bellingham will close the Northwest Ambulatory Surgery Services site at 2075 Barkley Boulevard in Bellingham. All physicians will operate within the four ORs located at the Squalicum Parkway site.
- Also in early 2013, ARC of Bellingham will begin to remodel the former Northwest Ambulatory Surgery Services space. During the remodel, the OR space will increase from two to three. The remodel is expected to be complete in the fall of 2013.
- In the fall of 2013, ARC of Bellingham will relocate from the Squalicum Parkway site to the newly remodeled site at 2075 Barkley Boulevard in Bellingham.
- In summary, ARC of Bellingham will consolidate from two locations with a combined total of six ORs to one location at 2075 Barkley Boulevard with three ORs.
- There are no expected changes in the types of procedures performed by Bellingham Surgery Center or Northwest Ambulatory Surgery Services. After consolidation, the new ARC of Bellingham will begin providing pain management cases that were solely provided by Northwest Ambulatory Surgery Services.
- ARC of Bellingham will hold the ASC license.

Jennifer Baldock, Counsel
Symbion Healthcare
DOR #13-13
December 13, 2012
Page 3 of 4

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) not contrary to federal law as necessary to the receipt of funds by the state.*

CONCLUSION

Based on the above factual information provided by you, the Certificate of Need Program concludes that the consolidation and relocation proposed in your letter does not require Certificate of Need review as the establishment of a new health care facility under Washington Administrative Code (WAC) 246-310-010.

Please note: This determination is not transferable and is based on the facts submitted in your letter and subsequent documentation. Prior Certificate of Need review and approval may be required under the provisions of WAC 246-310-020 if changes occur in the project. Examples of such changes include the following. This list is not intended to be all inclusive.

- 1) should ARC of Bellingham decide to expand the scope of services to include services subject to Certificate of Need review under the provisions of WAC 246-310-020; OR
- 2) should any entity, other than ARC of Bellingham, hold the Medicare certification; OR
- 3) should ARC of Bellingham cease operations or relinquish its Medicare certification and then choose to resume services as an ASC; OR
- 4) should ARC of Bellingham be moved to a different site than identified in your letter.

This letter 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 Health, and other federal or local jurisdiction permits.

Jennifer Baldock, Counsel
Symbian Healthcare
DOR #13-13
December 13, 2012
Page 4 of 4

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

Please call me at (360) 236-2957 if you have any further questions as you proceed with the consolidation and relocation project.

sincerely,



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

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

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This Certificate Is granted under the authority of RCW 70.38. Issuance of this Certificate does not constitute approval under any other local, federal or state statute, implementing rules and regulations. Examples where additional approval may be necessary include, but are not limited to, construction plan approval through the Construction Review Unit 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.

Certificate of Need #1213 Is Issued to:

Legal Name of Applicant:	<i>Northwest Ambulatory Surgery Services, LLC</i>
Address of Applicant:	<i>Post Office Box 30977 Bellingham, Washington 98228-2977</i>
Type of Service:	<i>Ambulatory Surgery Center</i>
Facility Name:	<i>Northwest Ambulatory Surgery Services, LLC</i>
Facility Address:	<i>Barkley Medical Services Building 2075 Barkley Boulevard Bellingham, Washington</i>

Description/Services to be Provided

Establish a freestanding ambulatory surgery center.

Service Area

Whatcom County

Approved Capital Expenditures

Category	Cost
Fixed Equipment	\$65,000
Fixed Equipment	\$340,000
Equipment	\$27,880
Fees	<u>\$38,350</u>
Total Costs	\$471,230

Conditions

1. Before Northwest Ambulatory Surgery Services, LLC accepts patients for services, board approved copies of the admission policy, consistent with the draft policy, will be provided to the Department for review and approval.
2. Before Northwest Ambulatory Surgery Services, LLC accepts patients for services, board approved copies of charity care policy that identifies the amount of charity care to be granted, will be provided to the Department for review and approval.
3. Before Northwest Ambulatory Surgery Services, LLC accepts patients for services, executed copies of ancillary agreements, with costs included consistent with those costs identified in the application, will be provided to the Department for review and approval. Ancillary agreements include, but are not limited to, agreements for pharmacy, laundry, and hazardous waste disposal.
4. Before Northwest Ambulatory Surgery Services, LLC accepts patients for services, executed copies of the medical director agreement and the staffing agreement will be provided to the Department for review and approval.
5. The level of charity care provided by Northwest Ambulatory Surgery Services, LLC shall not be lower than the most recent three-year average percentage of charity care for adjusted revenue provided and reported to the Department by St. Joseph Hospital In Bellingham. In the event that the percentage falls below the three-year average of the hospital, Northwest Ambulatory Surgery Services, LLC shall maintain adequate records to demonstrate that it has followed its charity care policy and provided care to all eligible individuals.

This Certificate will be in effect until September 8, 2002, unless extended, withdrawn, suspended, or revoked in accordance with applicable sections of the Certificate of Need law and regulations.

Date Issued: September 8, 2000


 GARY BENNETT, Director
 Facilities and Services Licensing

This Certificate is not transferable.

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CERTIFICATE OF NEED# 1002

State of Washington
Department of Health
Certificate of Need Program

CERTIFICATE OF NEED

In accordance with RCW 70.38 and Rules and Regulations adopted by the Department of Social and Health Services, this CERTIFICATE OF NEED is issued to:

Legal Name of Applicant Be_l_lingham Sugery Center, Inc_.
Address of Applicant 2980 Squalicum Parkwat, Beiliogbam1 W sbjngtoa 98225
Type of Facility Ambulatory rgical Facility
Facility Name BELLINGHAM SURGERY CENTER
Facility Address 2980 Squalicum Parkway, Bellingham, Washington

DESCRIPTION OF PROJECT: Establishment of an ambulatory surgical facility. No capital expenditure will be made for the project. This Certificate of Need is issued with the following conditions:

1. The percentage of Bellingham Surgery Center's yearly revenue utilized to finance charity care shall be equal to or greater than the average percentage of rate setting revenue that hospitals in Whatcom County utilize to provide charity care, in the last available reporting year. To verify that this condition is met, Bellingham Surgery Center shall provide the following to the department at the end of each year of operation:
 - a. The yearly revenue of Bellingham Surgery Center, Inc.
 - b. The number of charity patients served in that year.
 - c. The amount of funds spent to provide charity care. Charity care does not include bad debt and contractual allowances.
2. Within one month of beginning operations, Bellingham Surgery Center, Inc., shall establish written policies for determining those patients from whom no payment is required, those patients from whom a discounted payment is required and the amount of that discount, and those patients who qualify for extended payment schedules. A copy of the written policies shall be provided to the department.
3. No cardiac catheterization procedures shall be performed at Bellingham Surgery Center, Inc.

The project described above shall be commenced no later than November 29, 1991 unless extended, suspended, or revoked in accordance with applicable sections of the Certificate of Need rules (Chapter 248-19 WAC). Any conditions which are attached shall remain in effect until released or modified by **the Secretary's designee.**

Date Issued November 29, 1989

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D irector
Certificate of Need Program

This Certificate is not transferrable or assignable to another person without written approval of the Secretary's designee.

Washington State Department of Health

This organization

Bellingham Ambulatory Surgery Center,

**is authorized by RCW 70.230 to have an
Ambulatory Surgical Facility License**

Washington State Department of Health

Operated by: Northwest Ambulatory Surgery Services LLC

Medicare # **50C0001189**

Located at: 207 Barkley Blvd Ste 101
Bellingham, WA 98226-6614

Accreditation Association for Ambulatory HealthCare

Credential Number

ASF.FS.60102997

Secretary

Status

ACTIVE

Effective Date

07/02/2024

Expiration Date

07/01/2027

THIS LICENSE IS NON-TRANSFERABLE