



STATE OF WASHINGTON
DEPARTMENT OF HEALTH

February 9, 2011

Robert Wright, MD
Meridian Surgical Services
1703 South Meridian, #304
Puyallup, Washington 98371

Dear Dr. Wright:

Thank you for your Ambulatory Surgical Center Determination of Non-Reviewability (DOR) Application received on January 19, 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 your solo practice.

FACTS

- Currently, you have a solo practice located at 1703 South Meridian, #304 in Puyallup, within Pierce County.
- Currently, you perform surgeries in a Certificate of Need exempt ASC under a time share agreement with Cascade Eye and Skin Centers. The ASC is located at 1703 South Meridian, #201 in Puyallup. The time share exemption was obtained on May 14, 2001.
- Your January 19, 2011, DOR application states that you are in the process of building a medical office building with an attached ASC. You intend to relocate your entire practice to the new site when it is complete.
- The new site is 208 – 17th Avenue Southeast, #201 in Puyallup.
- Once relocated, two physicians would have access to the ASC. Since you are the owning physician, you would have access to the ASC. The other physician—Blynn Shidler, MD—is 1% employed by you and 98% employed by SonnoBello located in Sacramento California. The remaining 1% is shared with Pacific Surgeons in Olympia¹ and an entity in Monterey California.
- The proposed ASC will not be structured as a separate legal entity from your solo practice.
- Procedures to be performed at the ASC include those surgeries typically associated with cancers, surgical emergencies, and diseases. These surgeries could include gallbladder, hernia, breast, heartburn and reflux procedures, stomach, thyroid, colon/rectum/anus, small intestine, and lymph nodes.
- No management agreement is proposed.

¹ According to Certificate of Need Program records, Pacific Surgeons does not have approval to operate a CN exempt or CN approved ASC in Washington State.

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 within your application, the proposed ASC to be associated with Meridian Surgical Services requires prior Certificate of Need review and approval. This conclusion is reached based on the physicians that would have access to the ASC.

As defined within WAC 246-310-010 above, an exemption from Certificate of Need review is allowed, if the privilege of using such facility is not extended to physicians or dentists outside the individual or group practice. [emphasis added] Specifically, one physician—Blynn Shidler, MD—is employed only 1% by Meridian Surgical Services. In fact, a review of the Department of Health’s physician licensing database reveals that Dr. Shidler does not hold a current Washington State physician license. Given one physician not part of the Meridian Surgical Services practice would have access to the proposed ASC, prior Certificate of Need review and approval is required before the ASC can be established.

Enclosed is a copy of the Certificate of Need rules, (WAC 246-310), regulations (RCW 70.38), and a blank application form should you wish to pursue this project.

Robert Wright, MD
Meridian Surgical Services
DOR #11-18
February 9, 2011
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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

Please call me at (360) 236-2957 if you have any questions regarding this determination.

Sincerely,



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

Enclosure

cc: Department of Health, Investigations and Inspections Office