



STATE OF WASHINGTON  
DEPARTMENT OF HEALTH

June 15, 2012

Eric Cole, MD  
Cole Aesthetic Center  
9800 Levin Road, #101  
Silverdale, Washington 98383

Dear Dr. Cole:

Thank you for your May 22, 2012, application for an exemption from Certificate of Need for the establishment of an ambulatory surgery center (ASC) related to your solo practice. Below are the facts relied upon by the Certificate of Need Program in reaching its conclusion regarding this project.

**FACTS**

- Eric A. Cole, MD, PS is a solo practice owned by you. It is a legal corporation registered with the Washington State Secretary of State.
- You have two practice sites in Washington State and no out-of-state practice sites. The two practice sites are identified below

| Address                      | City              | Zip          | County        |
|------------------------------|-------------------|--------------|---------------|
| <b>9800 Levin Road, #101</b> | <b>Silverdale</b> | <b>98383</b> | <b>Kitsap</b> |
| 541 Eureka Way               | Sequim            | 98382        | Clallam       |

- You intend to establish an exempt ASC at the practice site in Silverdale, which is shown in bold above.
- The ASC would be in the office suite of your clinical practice.
- The proposed ASC would not be operated under a separate legal entity from your solo practice known as Eric A. Cole, MD, PS.
- At this time, only you 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 eye care. A listing of procedures was provided within the exemption 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 Eric A. Cole, MD, 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 Eric A. Cole, MD, 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:

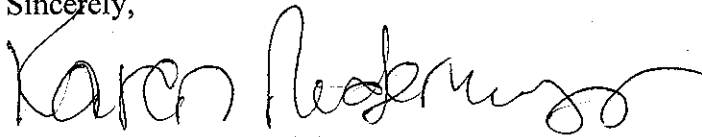
Department of Health  
Adjudicative Service Unit  
Mail Stop 47879  
Olympia, WA 98504-7879

Other Than By Mail

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

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, Office of Customer Service  
Department of Health, Construction Review Services