



STATE OF WASHINGTON
DEPARTMENT OF HEALTH

August 17, 2012

John Conrad, MD
South Sound Surgery, PLLC
Post Office Box 1409
Auburn, Washington 98071

Geoffrey E. Sultana, MD
Sound Interventional Pain Management, PLLC
202 North Division Street, #400
Auburn, Washington 98001

Dear Dr. Conrad and Dr. Sultana:

Thank you both for the Ambulatory Surgical Center Determination of Non-Reviewability (DOR) Applications received on June 13, 2012. 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) time-share arrangement. The time-share arrangement would be between South Sound Surgery, PLLC and Sound Interventional Pain Management, PLLC.

FACTS-SOUTH SOUND SURGERY, PLLC

- On June 2, 2010, John Conrad, MD obtained a solo practice exemption from Certificate of Need review for the establishment of an ASC known as South Sound Surgery, PLLC.¹
- On February 15, 2011, Dr. Conrad obtained an exemption from Certificate of Need review for the establishment of an ASC time-share arrangement with Nancy Becker, DO of Auburn Outpatient Surgery Center, LLC.²
- In October 2011, the timeshare arrangement was terminated. At this time, Dr. Conrad continues to use his ASC under his June 2, 2010, solo practice exemption.
- South Sound Surgery, PLLC continues to be located at 101 Second Avenue Southeast in Auburn [98002], within King County. The site includes the exempt ASC that is operated within the legal entity of South Sound Surgery, PLLC
- Other than John Conrad, MD, no other physician or entity has ownership interest in the practice or access to the ASC. Information related to Dr. Conrad is below.

Name	Credential Status	Practice Status	% of Time Employed by Practice
John R. Conrad	Active	Member	100%

¹ See DOR #11-18A

² See DOR #11-14.



FACTS-SOUND INTERVENTIONAL PAIN MANAGEMENT, PLLC

- Sound Interventional Pain Management, PLLC is an existing group practice with three practice sites in King County.

ADDRESS	CITY	ZIP
202 Division Street, #400	Auburn	98001
400 – 108 th Avenue NE, #100	Bellevue	98004
1801 Pine Street, #100	Seattle	98101

- Currently there are two physicians associated with the practice, Geoffrey Sultana, MD and Jason Attaman, OP.
- No other physician or entity has ownership interest in the practice. Information related to Drs. Sultana and Attaman is below.

Name	Credential Status	Practice Status	% of Time Employed by Practice
Geoffrey E. Sultana	Active	Member	100%
Jason G. Attaman	Active	Member	100%

FACTS--PROPOSED TIME-SHARE ASC

- Dr. John Conrad [South Sound Surgery, PLLC] and Drs. Geoffrey Sultana and Jason Attaman [Sound Interventional Pain Management, PLLC] have entered into time-share agreement for the ASC associated with South Sound Surgery, PLLC in Auburn.
- Consistent with the time-share agreement / lease agreement provided in the application, only the physician(s) associated with Sound Interventional Pain Management, PLLC would have access to the ASC every Tuesday morning from 7:00 am to 12:00 noon.
- Consistent with the time-share agreement / lease agreement provided in the application, only South Sound Surgery, PLLC physicians (John Conrad, MD) would have access to the ASC all day on Monday, Wednesday, Thursday, and Friday. Dr. Conrad would also have access to the ASC on Tuesday afternoon from 12:00 noon to closing.
- Procedures to be performed by South Sound Surgery, PLLC physicians (John Conrad, MD) are those procedures typically associated with treatment of general surgery, including hernia repair and wound care. A listing of common procedures is provided with the DOR request.
- All billing for South Sound Surgery, PLLC procedures would be done under South Sound Surgery, PLLC billing number.
- Procedures to be performed by Sound Interventional Pain Management, PLLC include those procedures typically associated with pain management. A listing of common procedures is provided with the DOR request.
- All billing for Sound Interventional Pain Management, PLLC procedures would be done under Sound Interventional Pain Management, PLLC billing number.

- No management agreement is proposed for the management of the ASC for Sound Interventional Pain Management, PLLC or South Sound Surgery, PLLC.

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 both of you, the Certificate of Need Program concludes that the establishment of the time-share ASC associated with Sound Interventional Pain Management, PLLC and South Sound Surgery, PLLC 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 determination 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 the project. Examples of such changes include the following. This list is not intended to be all inclusive.

- 1) should Sound Interventional Pain Management, PLLC or South Sound Surgery, PLLC later decide to extend the privilege of using the ASC to physicians not part of the practice; OR
- 2) should either Sound Interventional Pain Management, PLLC or South Sound Surgery, PLLC 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 South Sound Surgery, PLLC decide to organize the ASC as a separate legal entity from the practice; OR
- 4) should Sound Interventional Pain Management, PLLC or South Sound Surgery, PLLC decide to operate the ASC under a management agreement; OR
- 5) should any entity, other than Sound Interventional Pain Management, PLLC or South Sound Surgery, PLLC hold the Medicare certification; OR
- 6) should Sound Interventional Pain Management, PLLC or South Sound Surgery, PLLC cease operations or relinquish its Medicare certification and then choose to resume services at the ASC; OR
- 7) should any of the following be purchased or leased: the practice of Sound Interventional Pain Management, PLLC, South Sound Surgery, PLLC; or the time-share ASC.
- 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:

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| <u>Mailing Address:</u>
Department of Health
Certificate of Need Program
Mail Stop 47852
Olympia, WA 98504-7852 | <u>Other Than By Mail</u>
Department of Health
Certificate of Need Program
111 Israel Road SE
Tumwater, WA 98501 |
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John Conrad, MD, South Sound Surgery, PLLC
Geoffrey E. Sultana, MD, Sound Interventional Pain Management, PLLC
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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 establishment of the time-share 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, Office of Customer Service