



STATE OF WASHINGTON
DEPARTMENT OF HEALTH

March 12, 2013

Robert Wright, MD
208 – 17th Avenue Southeast, #201
Puyallup, Washington 98372

James Rifenberg, MD
1802 South Yakima, Street, #202
Tacoma, Washington 98405

RE: DOR #13-29 – Robert Wright, MD
DOR #13-30 – James Rifenberg, MD

Dear Dr. Wright and Dr. Rifenberg:

Thank you both for the Ambulatory Surgical Center Determination of Non-Reviewability (DOR) Applications received on February 5, 2013. Additionally, supplemental information was received on March 8, 2013. 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.

FACTS—ROBERT WRIGHT MD

- On February 14, 2007, Robert Wright, MD established the Washington State perpetual corporation known as Robert C. Wright, MD, PS. [source: Secretary of State website]
- On March 4, 2011, Robert Wright, MD obtained a solo practice exemption from Certificate of Need review for the establishment of an ASC known as Meridian Surgery Center.¹
- Meridian Surgery Center is not a separate legal entity from Robert C. Wright, MD, PS.
- On November 1, 2011, Dr. Wright 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 On January 30, 2013, the timeshare arrangement was terminated.
- Meridian Surgery Center continues to be located at 208 – 17th Avenue Southeast, #202 in Puyallup [98372], within Pierce County.
- Other than Robert Wright, MD, no other physician or entity has ownership interest in the practice or access to the ASC. Information related to Dr. Wright is below.

Name	Credential Status	Practice Status	% of Time Employed by Practice
Robert Charles Wright	Active	Member	100%

¹ See DOR #11-18A

² See DOR #12-04.



FACTS—JAMES RIFENBERY, MD

- On August 4, 1995, James Rifkenbery, MD established the Washington State perpetual corporation known as Center for Minimally Invasive Surgery, PLLC. [source: Secretary of State website]
- Dr. Rifkenbery operates his solo medical practice under that corporation.
- The solo practice is located at 1802 South Yakima Street, #202 in Tacoma [98405], within Pierce County.
- Other than James Rifkenbery, MD, no other physician or entity has ownership interest in the practice. Information related to Dr. Rifkenbery is below.

Name	Credential Status	Practice Status	% of Time Employed by Practice
James Dale Rifkenbery	Active	Member	100%

FACTS—PROPOSED TIME-SHARE ASC

- Dr. Wright and Dr. Rifkenbery propose to enter into time-share agreement for the ASC associated with Dr. Wright’s practice known as Meridian Surgery Center located at 208 – 17th Avenue Southeast, #202 in Puyallup [98372].
- Consistent with the time-share agreement / lease agreement provided in the application, the physician(s) associated with Robert C. Wright, MD, PS [Robert Wright] would have access to the ASC all day on Monday, Tuesday, Thursday, and Friday.
- Procedures to be performed by Robert C. Wright, MD, PS include those procedures typically associated with general surgery, include hernia repair and thyroid procedures. A listing of common procedures is provided with the DOR request.
- All billing for Robert C. Wright, MD, PS procedures would be done under Robert C. Wright, MD, PS billing number.
- Consistent with the time-share agreement / lease agreement provided in the application, only the physician(s) associated with Center for Minimally Invasive Surgery, PLLC [James Rifkenbery] would have access to the ASC every Wednesday from 5:00 am to 8:00 pm/close.
- Procedures to be performed by Center for Minimally Invasive Surgery, PLLC physician(s) [James Rifkenbery] are those procedures typically associated with general surgery, including hernia repair and gall bladder procedures.
- All billing for Center for Minimally Invasive Surgery, PLLC procedures would be done under Center for Minimally Invasive Surgery, PLLC billing number.
- Neither Robert C. Wright, MD, PS nor Center for Minimally Invasive Surgery, PLLC propose a management agreement with any entity for management of the ASC.

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 grants an exemption from Certificate of Need review for the establishment of the time-share ASC between Robert C. Wright, MD and Center for Minimally Invasive Surgery, PLLC.

Please note: This exemption is not transferable and is based on the facts submitted in each 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 Robert C. Wright, MD, PS or Center for Minimally Invasive Surgery, PLLC later decide to extend the privilege of using the ASC to physicians not part of their respective practice; OR
- 2) should either Robert C. Wright, MD, PS or Center for Minimally Invasive 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 Robert C. Wright, MD, PS decide to organize the ASC as a separate legal entity from his practice; OR
- 4) should either Robert C. Wright, MD, PS or Center for Minimally Invasive Surgery, PLLC decide to operate the ASC under a management agreement; OR
- 5) should any entity, other than Robert C. Wright, MD, PS or Center for Minimally Invasive Surgery, PLLC hold their respective Medicare certification; OR
- 6) should either Robert C. Wright, MD, PS or Center for Minimally Invasive Surgery, PLLC cease operations or relinquish their 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 Center for Minimally Invasive Surgery, PLLC; or Robert C. Wright, MD, PS; or the time-share ASC; OR
- 8) should the ASC be moved to a different site than identified in the exemption application;
OR
- 9) should either Robert C. Wright, MD, PS or Center for Minimally Invasive Surgery, PLLC decide to revise the time-share agreement to increase or decrease days of use.

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 appeal option is listed below.

Appeal Option:

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