



STATE OF WASHINGTON  
DEPARTMENT OF HEALTH

Certificate of Need Program  
111 Israel Road Southeast – MS 4-7852  
Olympia, Washington 98504

April 17, 2018

Dave Fitzgerald  
Proliance Surgeons  
805 Madison Street Suite 901  
Seattle, WA 98104

RE: Determination of Reviewability [DOR] 17-19

Dear Mr. Fitzgerald:

The Department of Health has completed its review of your exemption request regarding the establishment of an ambulatory surgery facility (ASF) in Tacoma, within Pierce County. For the reasons stated below, the ambulatory surgical facility located at 502 South M Street in Tacoma, Washington and operating exclusively as an ASF on Wednesdays each week does not meet the definition of an ASF requiring a Certificate of Need. The same location will operate exclusively as a clinical practice on Mondays, Tuesdays, Thursdays, and Fridays.

Below is the information considered and the facts relied upon by the Department of Health's Certificate of Need Program in reaching its conclusion regarding your project.

**INFORMATION CONSIDERED**

- Ambulatory Surgery Center (ASC) exemption application received May 17, 2017
- Supplemental information received August 21, 2017, November 16, 2017, February 14, 2018, and April 13, 2018.
- Revised Code of Washington (RCW) 70.38
- Washington Administrative Code (WAC) 246-310
- Department of Health's Office of Community Health Systems Interpretive Statement #CN 01-18
- Washington Secretary of State and Department of Revenue information obtained from the respective websites
- Department of Health external provider look-up
- Department of Health Integrated Licensing and Regulatory System (ILRS)
- Proliance Surgeons website: [www.proliancesurgeons.com](http://www.proliancesurgeons.com)
- Certificate of Need historical files

**FACTS CONSIDERED**

- Proliance Surgeons, Inc. P.S. has been registered with the Washington Secretary of State’s office since 1993.
- Proliance Surgeons, Inc. P.S. has been registered with the Department of Revenue since 1994.
- St Marks Micro Surgery Center Inc. has been registered with the Washington Secretary of State’s office since 1993.
- St Marks Micro Surgery Center Inc. has been registered with the Department of Revenue since 1995.
- In August 2014, Dr. Andrew Kopstein acquired all of the shares of St Mark’s Micro Surgical Center, and merged with his clinical practice, Tacoma Eye Surgeons, PS. Dr. Kopstein received an exemption from Certificate of Need for the facility under DOR 15-38.
- Currently, St Mark’s Micro Surgery Center operates a 2-OR exempt surgery center located at 502 South M Street in in Tacoma [98405], within Pierce County. St Mark’s Micro Surgery Center Inc. is currently licensed with the Department of Health. [ASF.FS.60433684]
- With this application, Proliance Surgeons, Inc. P.S. intends to purchase the practice and surgical center known as St Mark’s Micro Surgery Center from its physician owner Andrew Kopstein, MD. The purchase includes the assets, hiring of the employees, and assuming of its site lease.
- Following the transaction, Dr. Andrew Kopstein will be employed by Proliance Surgeons, Inc., P.S.
- Once purchased, two physicians intend to use the facility. Future owners or employees may have access to the surgery center.<sup>1</sup> A table with specific physician credentialing information and practice association is shown below.

Name	Credential Status	Practice Status	Percent of Time
Andrew Kopstein, MD	Active	Employee	100%
Alex Grigalunas, MD	Active	Employee	100%

- The procedures proposed at the surgery center include those typically associated with ophthalmology, such as cataracts, eyelid surgery, refractive surgeries, and LASIK. A listing of common procedures was included with the application request.
- The ASF will not be operated as a separate legal entity from the Proliance Surgeons, Inc., P.S. practice.
- Hours of operation for the surgery center are to be Wednesdays from 8:00 AM to 5:00 PM. The clinic will be open from 8:00 am to 5:00 pm Mondays, Tuesdays, Thursdays, and Fridays.
- No management agreement is proposed.

**CONCLUSION**

Based on the totality of information considered, the department concludes the proposed ASF would be exempt from Certificate of Need review. This exemption is not transferable and the conclusions reached concerning this proposed ASF are based on the facts about this facility and it should not be assumed the department would reach the same conclusion in future exemption requests for other future ASFs.

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<sup>1</sup> Employed physicians must be employed by St. Mark’s Micro Surgery Center a minimum of 75% and perform their full range of services through St. Mark’s Micro Surgery Center.

### **CHANGES THAT MAY AFFECT THIS DECISION**

If changes are made in the operation or ownership of this proposed ASF, the ASF may no longer be eligible for this exemption. In that case, prior Certificate of Need review and approval or new exemption would be required. Examples of such changes include the following. This list is not intended to be all inclusive.

- Changes in hours or days the site is used exclusively as an ASF.
- The scope of services is expanded to include services subject to Certificate of Need review under the provisions of WAC 246-310-020.
- The number of operating rooms increases.
- The scope of services is expanded beyond the services as identified in the Certificate of Need exemption application.
- The provision of any procedure as identified under WAC 246-310-705(4).
- The ASF is operated under a management agreement.
- The ASF is organized as a separate legal entity from the practice or obtains a separate UBI number from Proliance Surgeons, Inc., P.S.
- The ASF is moved to a different site than identified in the exemption application.
- Use of the ASF is extended to any physician who is not a member/owner or employed by Proliance Surgeons, Inc., P.S.<sup>2</sup>
- Use of the ASF is extended to any physician that is an independent contractor.
- The ASF obtains a new or separate Medicare certification from the clinical practice.
- The ASF ceases operations or relinquishes its Medicare certification and then chooses to resume services as an ASF.
- The ASF or the practice is purchased or leased.
- A joint venture is formed that includes the ASF.
- ASF patients are routinely transferred from the ASF for observation care at one of the area's hospitals.
- Information provided within the ASF license application and future annual updates must be consistent with the information in this determination. The department is aware of a pending change of ownership application [ASF.FS.60779058]. This pending application should be amended to ensure the ORs, specialties, and surgical schedule are consistent with this determination.

### **APPEAL OPTION**

This decision may be appealed. You or any 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 addresses listed on the following page.

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<sup>2</sup> Employed physicians must be employed by St. Mark's Micro Surgery Center a minimum of 75% and perform their full range of services through St. Mark's Micro Surgery Center.

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Mailing Address:

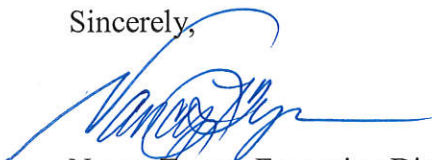
Department of Health  
Adjudicative Service Unit  
Mail Stop 47879  
Olympia, WA 98504-7879

Physical Address

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

If you have any questions or would like to arrange for a meeting to discuss this decision, please call our office at (360) 236-2955.

Sincerely,



Nancy Tyson, Executive Director  
Health Facilities and Certificate of Need  
Community Health Systems