



STATE OF WASHINGTON  
DEPARTMENT OF HEALTH

April 18, 2011

Philip Young, MD  
Aesthetic Facial Plastic Surgery, PLLC  
1810 – 116<sup>th</sup> Avenue Northeast, #102  
Bellevue, Washington 98004

Dear Dr. Young:

Thank you for your Ambulatory Surgical Center Determination of Non-Reviewability (DOR) Application received on April 1, 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**

- You own a solo practice operated and used only by you, Philip Young, MD.
- Your solo practice is currently located at 1810 – 116<sup>th</sup> Avenue Northeast in Bellevue within King County.
- You intend to establish an exempt ASC at the same site as the solo practice.
- The ASC will not be a separate legal entity from the solo practice.
- Only two physicians would have access to the proposed ASC. The two physicians are you, as the owner, and Lisa Mulligan, MD.
- Dr. Mulligan has her own practice located at 175 First Place Northwest in Issaquah and is not an employee or partner/owner in your practice. Approximately 10% of Dr. Mulligan's time would be spent at the ASC and the remaining 90% would be spent at her own practice in Issaquah.
- Procedures to be performed at the ASC include those surgeries typically associated with facial plastic surgery. A listing of typical surgeries is included within your DOR 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 within your application, the proposed ASC to be associated with your practice 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, Lisa Mulligan, MD is neither employed or a partner in your solo practice. Since one physician not part of the 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.

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:

Philip Young, MD  
Aesthetic Facial Plastic Surgery, PLLC  
DOR #11-27  
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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  
310 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:

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

Other Than By Mail

Adjudicative Clerk Office  
310 Israel Road SE, Building 6  
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