



STATE OF WASHINGTON  
DEPARTMENT OF HEALTH

December 27, 2011

John D. Goodin, MD  
PNW Eye, PLLC  
2202 South Cedar Street, #100  
Tacoma, Washington 98405

Dear Dr. Goodin:

Thank you for your December 6, 2011, application for an exemption from Certificate of Need for the establishment of an ambulatory surgery center (ASC) related to PNW Eye, PLLC. For background information, on August 29, 2011, Pacific Northwest Eye Associates, PS received an exemption from Certificate of Need review for an ASC located in Tacoma known as Pacific Northwest Eye Associates Surgery Center. Pacific Northwest Eye Associates, PS proposes to re-organize from a PS to a PLLC. The assets of Pacific Northwest Eye Associates, PS, including the exempt ASC, would all be operated under the new PLLC, known as PNW Eye, PLLC. The PS organization would cease to exist. This re-organization is expected to occur on January 1, 2012. This application requests an exemption for the ASC under the PNW Eye, PLLC organization. Below are the facts relied upon by the Certificate of Need Program in reaching its conclusion regarding this project.

**FACTS**

- On August 29, 2011, Pacific Northwest Eye Associates, PS received an exemption from Certificate of Need review for an ASC known as Pacific Northwest Eye Associates Surgery Center. The ASC is located at 3602 South 19<sup>th</sup> Street in Tacoma. Your December 6, 2011, application requests an exemption for the ASC under the PNW Eye, PLLC ownership.
- For this exemption application, there are six physicians associated with the practice. Four of the six physicians are partners and two are employees of the practice. Information related to the six physicians is below.

Name	Relationship	Credential Status	% of Time Employed by Practice
Andrew B. Kopstein	Partner	Active	100%
Mark W. Taylor	Partner	Active	100%
John O. Goodin	Partner	Active	100%
Joseph T. Pham	Partner	Active	100%
Victor WN Chiu	Employee	Active	100%
Pam Ziobro, MD	Employee	Active	2%



- With the exception of Dr. Ziobro, all physicians listed above would have access to the proposed ASC. Dr. Pam Ziobro is 2% employed by PNW Eye, PLLC and does not intend to use the ASC.
- The ASC will remain at the 3602 South 19<sup>th</sup> Street in Tacoma site.
- The ASC will not be operated under a separate legal entity from the practice.
- Procedures to be performed at the ASC include those surgeries typically associated with eye surgery and plastic surgery. A listing of the procedures is provided in the 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 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 documents provided by you, the Certificate of Need Program concludes that the establishment of the ASC associated with the group practice known as PNW Eye, 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 this project. Examples of such changes include the following. This list is not intended to be all inclusive.

- 1) should PNW Eye, PLLC decide to extend the privilege of using the ASC to physicians not part of the practice; OR
- 2) should PNW Eye, 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 PNW Eye, PLLC decide to organize the ASC as a separate legal entity from the group practice; OR
- 4) should PNW Eye, PLLC decide to operate the ASC under a management agreement; OR
- 5) should any entity other than PNW Eye, PLLC 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 PNW Eye, PLLC practice or ASC be purchased or leased.

This determination of non-reviewability 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.

### **APPEAL OPTIONS**

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:

<u>Mailing Address:</u>	<u>Other Than By Mail</u>
Department of Health	Department of Health
Certificate of Need Program	Certificate of Need Program
Mail Stop 47852	310 Israel Road SE
Olympia, WA 98504-7852	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 further questions as you proceed with establishment of the 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  
Roy Kussmann, Attorney, Kussmann & Lindstrom, PS