

AUG 29 2019



CERTIFICATE OF NEED PROGRAM  
DEPARTMENT OF HEALTH

DOR 20-03

**Certificate of Need  
Determination of Reviewability  
Ambulatory Surgical Facility and Ambulatory Surgery Center  
(Do not use this form for any other type of ASC/F project)**

Certificate of Need submissions must include a fee in accordance with Washington Administrative Code (WAC) 246-310-990.

The Department of Health (department) will use this form to determine whether my ambulatory surgical center or facility requires a Certificate of Need under state law and rules. Criteria and consideration used to make the required determinations are Revised Code of Washington (RCW) 70.38 and Washington Administrative Code (WAC) 246-310. I certify that the statements in the submissions are correct to the best of my knowledge and belief. I understand that any misrepresentation, misleading statements, evasion, or suppression of material fact in this application may be used to take actions identified in WAC 246-310-500.

My signature authorizes the department to verify any responses provided. The department will use such information as appropriate to further program purposes. The department may disclose this information when requested by a third party to the extent allowed by law.

Owner/Operator Name of the surgical facility as it appears on the UBI/Master Business License Acute Pain Management, PLLC	
Clinical Practice UBI #: 604004648 Surgery Center UBI #: 604004648	Federal Tax ID (FEIN) # 813123328
Mailing Address 5595 NW Konigs Ct Issaquah, WA 98027	Surgery Center Address 13033 Bel-Red Road Bellevue, Washington 98005
Website Address: www.acutepaintherapies.com	
Phone number (10-digit): 4254403351	Email Address: zatropolis@gmail.com
Name and Title of Responsible Officer (Print): Zachary Fisk MD	Signature of Responsible Officer:  Date of Signature: 8/17/2019
Identify the purpose of your request:	
<input type="checkbox"/> New Facility	<input type="checkbox"/> Facility Expansion – Operating Room Increase
<input type="checkbox"/> Change of Ownership	<input type="checkbox"/> Facility Expansion – Service Increase
<input checked="" type="checkbox"/> Facility Relocation	<input type="checkbox"/> Other (please provide a letter describing)

**Existing Facility Status**, complete for all applications concerning existing facilities

1. The CN Program previously determined the facility was not subject to CN Review (if yes, attach DOR letter)

Yes                       No

**Surgical Facility Owner/Operator Information**

2. Provide a copy of any applicable governance documents, including operating agreements, shareholder agreements or corporate governing documents.  
Single owner, single member - no governance documents

**Facility Information**

3. Although you are not required to apply for an ASF license before a CN determination is issued, have you or do you intend to, apply for a license?\*

Yes                       No

\*Your answer to this question will allow the CN program to effectively coordinate the licensure process with other DOH offices.

4.

Number of existing operating and procedure rooms:	2
Number of new operating and procedure rooms:	0
Total:	2

**Clinical and Surgical Services**

5. Check all surgical procedures currently performed in the facility.

- |   |   |  |
|---|---|--|
| <input type="checkbox"/> Ear, Nose, & Throat  | <input type="checkbox"/> Gynecology                 | <input type="checkbox"/> Oral Surgery    |
| <input type="checkbox"/> Plastic Surgery  | <input type="checkbox"/> Gastroenterology           | <input type="checkbox"/> Maxillo facial  |
| <input type="checkbox"/> Orthopedics  | <input type="checkbox"/> Podiatry                   | <input type="checkbox"/> General Surgery |
| <input type="checkbox"/> Ophthalmology  | <input checked="" type="checkbox"/> Pain Management | <input type="checkbox"/> Urology         |
| <input type="checkbox"/> Other (describe)   |   |  |
| <input type="checkbox"/> This is a new facility, no surgical procedures are currently performed |   |  |

Check all new surgical procedures proposed to performed in the facility

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> Ear, Nose, & Throat | <input type="checkbox"/> Gynecology       | <input type="checkbox"/> Oral Surgery    |
| <input type="checkbox"/> Plastic Surgery     | <input type="checkbox"/> Gastroenterology | <input type="checkbox"/> Maxillo facial  |
| <input type="checkbox"/> Orthopedics         | <input type="checkbox"/> Podiatry         | <input type="checkbox"/> General Surgery |
| <input type="checkbox"/> Ophthalmology       | <input type="checkbox"/> Pain Management  | <input type="checkbox"/> Urology         |
| <input type="checkbox"/> Other (describe)    |   |  |

6. A facility that receives more than 50% of their income or 50% of their visits from surgeries is subject to CN requirements. In order to determine if your project is subject to CN review, please provide the current (existing facility) or proposed (new facility) percentages of income and visits for clinical and surgical services. Include all assumptions used to determine the percentages provided.

	Most recent full year of operation at current surgical site	Projected first full year of operation after the change in location
Total revenue for clinical services provided at this site.	\$902,000	\$1,200,000*
Total revenue for this site.	\$902,000	\$1,840,000**
Total clinical patient visits for this site.	2600	3458*
Total surgical visits at this site.	0	640**
Total patient visits at this site.	2600	4098

\*Assume will increase clinical revenue from increasing clinic volume by 33%

\*\*Assume will generate revenue from introduction of surgical services amounting to approx. 25% of total revenue. Calculated by anticipated avg revenue of \$1000 per percutaneous-only pain procedure \* 2 days of surgery per 5 day week (3 clinic days per week) \* 8 surgeries per day \* 40 weeks per year

## Certificate of Need Program Revised Code of Washington (RCW) and Washington Administrative Code (WAC)

Certificate of Need Program laws [RCW 70.38](#)

Certificate of Need Program rules [WAC 246-310](#)

<b>WAC Reference</b>	<b>Title/Topic</b>
<a href="#">246-310-010</a>	Certificate of Need Program —Definitions
<a href="#">246-310-270</a>	Certificate of Need Program —Ambulatory Surgery

### **Licensing Resources:**

[Ambulatory Surgical Facilities Laws, RCW 70.230](#)  
[Ambulatory Surgical Facilities Rules, WAC 246-330](#)  
[Ambulatory Surgical Facilities Program Web Page](#)

### **Construction Review Services Resources:**

[Construction Review Services Program Web Page](#)  
Phone: (360) 236-2944  
Email: [CRS@doh.wa.gov](mailto:CRS@doh.wa.gov)





STATE OF WASHINGTON  
DEPARTMENT OF HEALTH

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

July 12 2018

Zachary Fisk, MD  
Acute Pain Management, PLLC  
1310 – 116th Avenue NE, Ste A  
Bellevue, WA 98004

RE: Determination of Reviewability #18-18

Dear Dr. Fisk:

The Department of Health has completed its review of your exemption request regarding Acute Pain Management, PLLC. For the reasons stated below, Acute Pain Management, PLLC located at 1310 – 116th Avenue NE, Suite A in Bellevue [98004] does not meet the definition of an ASF requiring a Certificate of Need. This facility will be available to offer surgical services and operate as an ASF from 7:30 AM to 10:30 AM on weekdays. The facility will operate exclusively as a clinic from 10:30 AM to 6:00 PM on weekdays.

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 February 20 15, 2018
- Supplemental information received April 11, 2018; April 24, 2018; May 24, 2018; July 2, 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 Integrated Licensing and Regulatory System (ILRS)
- Acute Pain Management, PLLC website: <https://acutepaintherapies.com/>
- Certificate of Need historical files

**FACTS CONSIDERED**

- Acute Pain Management, PLLC has been registered with the Washington Secretary of State's office since June 2016. The professional service corporation is governed by Dr. Zachary Fisk, MD.
- Acute Pain Management, PLLC has been registered with the Department of Revenue since January 2017.
- Acute Pain Management, PLLC does business as Acute Pain Therapies
- Acute Pain Therapies is located at 1310 – 116th Avenue NE, Suite A in Bellevue [98004]

**FACTS CONSIDERED, CONTINUED**

- At the time of this decision, one physician intends to use the ASF. Future owners or employees may have access to the surgery center. Specific physician credentialing information and practice association is in the table below.

Name	Credential Status	Practice Status	Percent of Time
Zachary Fisk, MD	Active	Owner	100%

- Acute Pain Therapies has two operating rooms.
- The ambulatory surgical portion of the business will not be operated as a separate legal entity from the Acute Pain Therapies clinical practice.
- Clinical and surgical services provided at Acute Pain Management, PLLC include those typically associated with interventional pain management. A listing of common interventional pain surgical services was included in the determination of non reviewability application.
- The facilities' hours of operation are Monday through Friday from 7:30 am to 6:00 pm, for a total of 10.5 hours per day and 52.5 hours per week. The surgery center will only be available from 7:30 AM until 10:30 AM, for a maximum of 15 hours per week..
- No management agreement is proposed.

**CONCLUSION**

Based on the totality of information considered, the department concludes Acute Pain Management, PLLC is exempt from Certificate of Need review. This exemption is not transferable and the conclusions reached concerning this 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.

**CHANGES THAT MAY EFFECT THIS DECISION**

If changes are made in the operation or ownership of Acute Pain Management, PLLC, 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 beyond two.
- 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).
- Acute Pain Management, PLLC is operated under a management agreement.
- Acute Pain Management, PLLC is organized as a separate legal entity from the practice or obtains a separate UBI number from Acute Pain Management, PLLC
- Acute Pain Management, PLLC - Seattle is moved to a different site than identified in the exemption application.



**CHANGES THAT MAY EFFECT THIS DECISION, CONTINUED**

- Use of the Acute Pain Management, PLLC is extended to any physician who is not a member/owner or employed by Acute Pain Management, PLLC.<sup>1</sup>
- Use of the Acute Pain Management, PLLC is extended to any physician that is an independent contractor.
- Acute Pain Management, PLLC obtains a new or separate Medicare certification from the clinical practice.
- Acute Pain Management, PLLC ceases operations or relinquishes its Medicare certification and then chooses to resume services as an ASF.
- Acute Pain Management, PLLC or the practice is purchased or leased.
- A joint venture is formed that includes the ASF.
- Acute Pain Management, PLLC patients are routinely transferred from the ASF for observation care at one of the area's hospitals.

**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.

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 me at (360) 236-2955.

Sincerely,



Janis Sigman, Manager  
Certificate of Need Program  
Community Health Systems

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<sup>1</sup> Employed physicians must be employed by Acute Pain Management, PLLC a minimum of 75% and perform their full range of services through Acute Pain Management, PLLC.



## Ambulatory Surgery Center/Facility Certificate of Need Determination of Reviewability Packet

### Contents:

1.	260-014	Contents List/Mailing Information.....	1 Page
2.	260-014	Definitions.....	2 Pages
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5.	RCW/WAC and Website Links.....		1 Page

### Submission Instructions:

Provide either a paper or electronic version of the form.

### To be accepted, the form must include:

- A completed and signed Certificate of Need form, including the face sheet
- A check or money order for the review fee of **\$1,925** payable to **Department of Health**.
- Mail or deliver the form and review fee to:

#### Mailing Address:

Department of Health  
Certificate of Need Program  
P O Box 47852  
Olympia, Washington 98504-7852

#### Other Than By Mail:

Department of Health  
Certificate of Need Program  
111 Israel Road SE  
Tumwater, Washington 98501

### Contact Us:

Certificate of Need Program Office 360-236-2955



## Definitions

The Certificate of Need (CN) Program will use the information you provide to determine if your project meets the applicable review criteria. These criteria are included in state law and rules. Revised Code of Washington (RCW) 70.38 and Washington Administrative Code (WAC) 246-310.

**“Primary purpose”** is defined as the majority of income or patient visits for the site,\* inclusive of all clinical services provided at the site, are derived from the specialty or multi-specialty surgical services. Department of Health website, frequently asked questions, informed by the licensing rules definition for ambulatory surgical facility.

\*The site subject to a determination of reviewability is limited to a specific, physical address where an entity under single ownership provides or will provide specialty or multispecialty surgical services. A site whose “primary purpose” is specialty or multispecialty surgical services is required to obtain a certificate of need.

**“Ambulatory surgical facility”** or **“ASF”** means 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 the facility is not extended to physicians or dentists outside the individual or group practice. WAC 246-310-010(5)

**“Ambulatory surgical center”** or **“ASC”** is also a term for a facility that provides ambulatory surgical procedures. The Centers for Medicare and Medicaid use this term for billing purposes. CN review is not required for an ambulatory surgical center unless it also fits the definition of an ambulatory surgical facility in WAC 246-310-010(5).

**“Ambulatory surgical facility”** or **“ASF”** as defined by licensing rules, and relied on by the CN Program for consistency, means any distinct entity that operates for the primary purpose of providing specialty or multispecialty outpatient surgical services in which patients are admitted to and discharged from the facility within twenty-four hours and do not require inpatient hospitalization, whether or not the facility is certified under Title XVIII of the federal Social Security Act. An ambulatory surgical facility includes one or more surgical suites that are adjacent to and within the same building as, but not in, the office of a practitioner in an individual or group practice, if the primary purpose of the one or more surgical suites is to provide specialty or multispecialty outpatient surgical services, irrespective of the types of anesthesia administered in the one or more surgical suites. An ambulatory surgical facility that is adjacent to and within the same building as the office of a practitioner in an individual or group practice may include a surgical suite that shares a reception area, restroom, waiting room, or wall with the office of the practitioner in an individual or group practice. WAC 246-330-010(5)

**“Change of ownership”** as defined by licensing rules, and relied on by the CN Program, is defined as (a) A sole proprietor who transfers all or part of the ambulatory surgical

facility's ownership to another person or persons; (b) The addition, removal, or substitution of a person as a general, managing, or controlling partner in an ambulatory surgical facility owned by a partnership where the tax identification number of that ownership changes; or (c) A corporation that transfers all or part of the corporate stock which represents the ambulatory surgical facility's ownership to another person where the tax identification number of that ownership changes. WAC 246-330-010(8)

**“Person”** means an individual, a trust or estate, a partnership, any public or private corporation (including associations, joint stock companies, and insurance companies), the state, or a political subdivision or instrumentality of the state, including a municipal corporation or a hospital district. WAC 246-310-010(42)

## Instructions

### General Instructions:

- Include a table of contents for sections and appendices/exhibits
- Number **all** pages consecutively
- **Do not** bind or 3-hole punch the application.
- Make the narrative information complete and to the point.
- If any sections are not large enough to contain your response, please attach additional pages as necessary. Ensure that any attached pages are clearly labeled with the applicable question or section.
  
- If any of the documents provided in the form are in draft format, a draft is acceptable only if it includes the following elements:
  - a. identifies all entities associated with the agreement,
  - b. outlines all roles and responsibilities of all entities,
  - c. identifies all costs associated with the agreement, and
  - d. includes all exhibits that are referenced in the agreement.
  - e. any agreements in draft form must include a document signed by both entities committing to execute the agreement as submitted following CN approval.

**Do not skip any questions. If you believe a question is not applicable to your project, provide rationale as to why it is not applicable.**