



STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
*Olympia, Washington 98504*

August 15, 2014

James Rifenberg, MD  
Center for Minimally Invasive Surgery, PLLC  
1802 South Yakima, Street, #202  
Tacoma, Washington 98405

Troy Woodman, MD  
Aesthetic Surgery Center, PLLC  
2202 South Cedar Street, #150  
Tacoma, Washington 98405

RE: DOR #14-31 – Center for Minimally Invasive Surgery, PLLC  
DOR #14-32 – Aesthetic Surgery Center, PLLC

Dear Dr. Rifenberg and Dr. Woodman:

Thank you both for the Ambulatory Surgical Center Determination of Non-Reviewability (DOR) Applications received on June 16, 2014. Additionally, supplemental information was received on August 12, 2014. 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— Aesthetic Surgery Centre, PLLC**

- On June 25, 1999, Aesthetic Surgery Centre, PLLC was established as a Washington State perpetual corporation. [source: Secretary of State website]
- Aesthetic Surgery Centre, PLLC is governed by the following three individuals:

Name	Credential Status	Practice Status	% of Time Employed by Practice
Frederick W. Ehert	Active	Member/Manager	100%
David V. Pratt	Active	Member/Manager	100%
Troy J. Woodman	Active	Member/Manager	100%

- No other physician or entity has ownership interest in the Aesthetic Surgery Centre, PLLC practice.
- Aesthetic Surgery Centre, PLLC has two practice sites. Both sites are identified below.

Address	City	Zip Code
34503 – 9 <sup>th</sup> Avenue South, #230	Federal Way	98003
<b>2202 South Cedar Street, #300</b>	<b>Tacoma</b>	<b>98405</b>

- On September 12, 2011, Aesthetic Surgery Centre, PLLC received an exemption from Certificate of Need review for the establishment of an ASC at the South Cedar site [in bold above]. At that time, the ASC was known as Cedar Medical Specialists.<sup>1</sup>

**FACTS— Center for Minimally Invasive Surgery, PLLC**

- On August 4, 1995, James Rifenberg, MD established the Washington State perpetual corporation known as Center for Minimally Invasive Surgery, PLLC. [source: Secretary of State website]
- Dr. Rifenberg 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 Rifenberg, MD, no other physician or entity has ownership interest in the practice. Information related to Dr. Rifenberg is below.

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

- On March 12, 2013, Dr. Rifenberg received an exemption from Certificate of Need review for the establishment of a time-share ASC with Robert Wright, MD.<sup>2</sup> Under the agreement, Dr. Rifenberg would use Dr. Wright's ASC located in Puyallup. The time-share lease with Dr. Wright was terminated as of April 10, 2014.

**FACTS—Proposed Time-Share ASC**

- Center for Minimally Invasive Surgery, PLLC and Aesthetic Surgery Centre, PLLC propose to enter into time-share agreement for the ASC associated with Aesthetic Surgery Centre, PLLC practice.
- The ASC is located at 2202 South Cedar Street #150 in Tacoma [98405].
- Consistent with the time-share agreement / lease agreement provided in the application, only the physician(s) associated with Aesthetic Surgery Centre, PLLC would have access to the ASC every Tuesday through Friday of each week from 6:30 am to close.
- Procedures to be performed by Aesthetic Surgery Centre, PLLC physician(s) are those procedures typically associated with plastic surgeries, including face lifts, liposuction, and brow lifts. A description of typical surgeries was included in the exemption application.
- All billing for Aesthetic Surgery Centre, PLLC procedures would be done under Aesthetic Surgery Centre, PLLC billing number.
- Consistent with the time-share agreement / lease agreement provided in the application, the physician(s) associated with Minimally Invasive Surgery, PLLC would have access to the ASC on Monday from 6:30 am to 7:00pm.

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<sup>1</sup> DOR #12-03.

<sup>2</sup> DOR #13-30.

- Procedures to be performed by Minimally Invasive Surgery, PLLC include those procedures typically associated with general surgery, including hernia repair and gall bladder procedures. A listing of common procedures is provided with the DOR request.
- All billing for Minimally Invasive Surgery, PLLC procedures would be done under Minimally Invasive Surgery, PLLC billing number.
- Neither Center for Minimally Invasive Surgery, PLLC nor Aesthetic Surgery Centre, 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 totality of information considered, the Certificate of Need Program grants an exemption from Certificate of Need review for the establishment of the time-share ASC between Aesthetic Surgery Centre, PLLC and Minimally Invasive Surgery, PLLC. This exemption is not transferable and the conclusions reached concerning this proposed ASC are based on the facts about this time-share agreement and it should not be assumed the department would reach the same conclusion in future ASC exemption requests.

If changes are made in the operation or ownership of this proposed ASC, the ASC 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.

- The scope of services is expanded to include services subject to Certificate of Need review under the provisions of WAC 246-310-020.
- The provision of any procedure as identified under WAC 246-310-705(4).
- The ASC is operated under a management agreement.
- The ASC is organized as a separate legal entity from the practice.
- The ASC is moved to a different site than identified in the exemption application.
- Use of the ASC is extended to any physician who is not a member/owner or employed by either Aesthetic Surgery Centre, PLLC or Minimally Invasive Surgery, PLLC.
- The time-share agreement is revised to increase or decrease day of use by either Aesthetic Surgery Centre, PLLC or Minimally Invasive Surgery, PLLC
- The ASC ceases operations or relinquishes its Medicare certification and then chooses to resume services as an ASC.
- The ASC or the practice is purchased or leased.
- ASC patients are routinely transferred from the ASC for observation care at one of the area's hospitals.

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

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Please call me at (360) 236-2957 if you have any further questions as you proceed with the establishment of the time-share ASC.

Sincerely,

A handwritten signature in blue ink that reads "Karen Nidermayer". The signature is fluid and cursive, with a long horizontal stroke at the end.

Karen Nidermayer, Analyst  
Certificate of Need Program  
Community Health Systems

cc: Department of Health, Office of Investigations and Inspections  
Department of Health, Construction Review Services