



STATE OF WASHINGTON  
DEPARTMENT OF HEALTH

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

November 17, 2014

David Fitzgerald, CEO  
Proliance Surgeons, PS  
805 Madison Street, #901  
Seattle, Washington 98104

RE: DOR 15-11

Dear Mr. Fitzgerald:

The Department of Health (department) has completed the review of your request under Washington Administrative Code (WAC) 246-310-050 for a determination that Edmonds Center for Outpatient Surgery may expand its number of Certificate of Need (CN)-approved operating rooms, *without* CN review and approval.

**INFORMATION CONSIDERED**

- CN Application #06-21 submitted on March 2, 2006, by Proliance Surgeons, PS.
- CN #1337 issued to Proliance Surgeons, PS on October 3, 2006.
- August 12, 2014 Determination of Reviewability request from Proliance Surgeons received on August 20, 2014.
- Notes from the April 29, 2014, meeting between Certificate of Need staff and representatives of Proliance Surgeons, PS.
- Revised Code of Washington (RCW) 70.38
- Washington Administrative Code (WAC) 246-310
- Certificate of Need historical files

**FACTS CONSIDERED**

- On October 3, 2006, CN #1337 was issued to Proliance Surgeons, PS approving the establishment of an ambulatory surgery center to be located at 7320 – 216<sup>th</sup> Street Southwest in Edmonds [98026]. The project was deemed complete on January 26, 2007.
- CN #1337 approved two operating rooms within the surgery center. This approval was based on documents and statements provided in the application.
- On March 21, 2014, the CN Program notified you CN review is required before Edmonds Center for Outpatient Surgery can expand its operating room capacity beyond the two approved under CN #1337.

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### **CONCLUSION**

Based on these facts, the department continues to conclude that any expansion of operating rooms at Edmonds Center for Outpatient Surgery would be the “*construction, development, or other establishment of a new health care facility,*” requiring CN review and approval under RCW 70.38.105(4)(a).<sup>1</sup>

### **APPEAL OPTION**

This decision is subject to judicial review provisions in RCW 34.05.

If you have any questions regarding this conclusion, please call me at 360-236-2955.

Sincerely,



Janis R. Sigman, Manager  
Certificate of Need Program  
Community Health Systems

cc: Richard McCartan, Assistant Attorney General  
Emily Studebaker, Attorney w/ Garvey Schubert Barer

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<sup>1</sup> In a different case, a Thurston County Superior Court judge recently held that the department could not require CN review of a particular operating-room expansion without first adopting the requirement in a “rule” promulgated under the Administrative Procedures Act. *Polyclinic v. Dep’t of Health*, No. 14-2-01413-6. The department respectfully disagrees with this lower-court holding, and plans to appeal. On appeal, the department will continue to argue that it need not adopt a rule in order to require review of expansions. Hence, in your case, the department declines to follow the *Polyclinic* holding.

Upon request within 10 days of the mailing of this letter, the department will grant reconsideration to postpone its decision in your case until after a final appellate decision in the *Polyclinic* case.