



STATE OF WASHINGTON
DEPARTMENT OF HEALTH

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

April 4, 2018

Timothy Whitney, MD
Blackburn & Whitney, MD PS
2500 Squalicum Parkway, #1A
Bellingham, Washington 98225

RE: Determination of Reviewability [DOR] 17-10

Dear Dr. Whitney:

The Department of Health has completed its review of your exemption request regarding the establishment of an ambulatory surgery facility (ASF) in Bellingham, within Whatcom County. For the reasons stated below, the ambulatory surgery facility to be located at 2500 Squalicum Parkway, #1A, in Bellingham, Washington and operating exclusively as an ASF Thursday and Friday, from 8:00 am to 5:00 pm, for a total of 16 hours each week does not meet the definition of an ASF requiring a Certificate of Need. The same location will operate exclusively as a clinic Monday through Wednesday 8:00 am to 5:00 pm for a total of 28 hours.

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 November 14, 2016
- Supplemental information received January 26, 2017, April 6, 2017, September 27, 2017, October 2, 2017, February 6, 2018, and March 20, 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 external provider look-up
- Department of Health Integrated Licensing and Regulatory System (ILRS)
- Department of Health Construction Review Services project #60739883
- Blackburn and Whitney website: www.plasticsurgerybellingham.com
- Certificate of Need historical files

FACTS CONSIDERED

- Blackburn & Whitney, MD PS has been registered with the Washington Secretary of State's office since April 24, 2002. The professional service corporation is governed by two physicians with 50% ownership each. The two physicians are James H. Blackburn, II and Timothy M. Whitney.
- Blackburn & Whitney, MD PS has been registered with the Department of Revenue since December 5, 2002.
- With this application, Blackburn & Whitney, MD PS, LLC intends to establish an ambulatory surgery facility (ASF) under the corporation.
- Blackburn & Whitney, MD PS is located at 2500 Squalicum Parkway in Bellingham [98225]. The ASF would be located at the same site, in suite 1A.
- The practice and ASF would be operated under the corporation and Unified Business Identifier [UBI] number of Blackburn & Whitney, MD PS.¹
- Two physicians intend to use the ASF. Future owners or employees may have access to the surgery center. A table with specific physician credentialing information and practice association is in the table below.

Name	Credential Status	Practice Status	Percent of Time
James H. Blackburn, II	Active	Owner	100%
Timothy M Whitney	Active	Owner	100%

- The procedures proposed at the surgery center include those typically associated with plastic surgery, such as abdominoplasty, cosmetic breast surgeries, liposuction, and all hand surgeries. A listing of common procedures was included with the application request.
- The ASF will not be operated as a separate legal entity from the Blackburn & Whitney, MD, PS practice.
- Hours of operation for the ASF are to be Thursday and Friday from 8:00am to 5:00pm, for a total of 16 hours each week. The clinic will be open from 8:00 am to 5:00 pm Monday through Wednesday for a total of 28 hours each week.
- No management agreement is proposed.

CONCLUSION

Based on the totality of information considered, the department concludes the proposed ASF would be exempt from Certificate of Need review. This exemption is not transferable and the conclusions reached concerning this proposed 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 this proposed ASF, 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.

¹ Blackburn & Whitney, MD, PS's UBI number is 602199916.

- 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 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).
- The ASF is operated under a management agreement.
- The ASF is organized as a separate legal entity from the practice or obtains a separate UBI number from Blackburn & Whitney, MD, PS.
- The ASF is moved to a different site than identified in the exemption application.
- Use of the ASF is extended to any physician who is not a member/owner or employed by Blackburn & Whitney, MD, PS.²
- Use of the ASF is extended to any physician that is an independent contractor.
- The ASF obtains a new or separate Medicare certification from the clinical practice.
- The ASF ceases operations or relinquishes its Medicare certification and then chooses to resume services as an ASF.
- The ASF or the practice is purchased or leased.
- A joint venture is formed that includes the ASF.
- ASF 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

² Employed physicians must be employed by Blackburn & Whitney, MD, PS a minimum of 75% and perform their full range of services through Blackburn & Whitney, MD, PS.

Timothy Whitney, MD, Blackburn & Whitney, MD PS
Determination of Reviewability #17-10
April 4, 2018
Page 4 of 4

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,

A handwritten signature in blue ink that reads "Janis R. Sigman". The signature is written in a cursive style with a large initial 'J' and 'S'.

Janis Sigman, Manager
Certificate of Need Program
Community Health Systems