



STATE OF WASHINGTON  
DEPARTMENT OF HEALTH

July 5, 2011

Mahadeep Virk, DMD MSD  
VP Surgery Center of Auburn  
6981 Coal Creek Parkway  
Renton, Washington 98058

Dear Dr. Virk:

Thank you for your request for reconsideration related to the Certificate of Need Program's June 23, 2011, conclusion that your Ambulatory Surgical Center required prior review and approval before its establishment. Below are the facts relied upon by the Certificate of Need Program in reaching its reconsidered conclusion regarding your interest in establishing an Ambulatory Surgical Center (ASC) associated with your practice.

**FACTS**

- You and another physician—Ellen Polsky—each have 50% ownership in a group practice known as Polsky DDS & Virk DMD, MS, PS (the Practice).
- The practice currently has three sites, which are listed below.

Location	Address	City
Puyallup Clinic	9317 -113 <sup>th</sup> Street East	Puyallup
Tukwila Clinic	505 Strander Boulevard	Tukwila
Tacoma Clinic	3402 South 18 <sup>th</sup> Street	Tacoma

- An additional practice site at 1102 – 15<sup>th</sup> Street Southwest, #200 in Auburn is under construction.<sup>1</sup>
- You intend to establish an exempt ASC at the Auburn site currently under construction.
- The ASC will not be operated under a separate legal entity from the practice.
- Six physicians would have access to the proposed ASC. The six physicians, along with a practice credential status summary, are listed below.

Name	Credential Status	Name	Credential Status
Bo Martin Davidson	Active	Ellen B. Polsky	Active
Mariella T. Garcia dba Fulle	Active	Julia Richman	Active
Dorothy Yuling Nelson	Active	Mahadeep S. Virk	Active

<sup>1</sup> CRS #60228715



- Procedures to be performed at the ASC include those surgeries typically associated with pediatric dentistry. General anesthesia will be used at the proposed ASC.
- 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 reconsideration documents provided by you, the Certificate of Need Program concludes that the establishment of the ASC associated with the group practice known as Polsky DDS & Virk DMD, MS, PS 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 your project. Examples of such changes include the following. This list is not intended to be all inclusive.

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

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:

Mailing Address:

Department of Health  
Certificate of Need Program  
Mail Stop 47852  
Olympia, WA 98504-7852

Other Than By Mail

Department of Health  
Certificate of Need Program  
310 Israel Road SE  
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:

Mahadeep Virk, DMD MSD  
VP Surgery Center of Auburn  
July 5, 2011  
Page 4 of 4

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