



STATE OF WASHINGTON
DEPARTMENT OF HEALTH

November 15, 2012

Bruce Ballon, MD, & CEO
Cascade Regional Eye Center, Inc. PS
903 Medical Drive
Arlington, Washington 98223

Dear Dr. Ballon:

Thank you for your October 2, 2012, application and supplemental documents submitted on November 13, 2012, requesting an exemption from Certificate of Need for the ambulatory surgery center (ASC) associated with Cascade Regional Eye Center, Inc. PS. Below are the facts relied upon by the Certificate of Need Program in reaching its conclusion regarding this project.

FACTS

- On April 19, 1993, Cascade Regional Eye Center received an exemption from Certificate of Need review for the establishment of an ASC at its current site in Arlington, within Snohomish County.
- In 1993, ownership of the ASC and practice was a physician partnership between R. Lee Harman and Dennis P. Breene.
- Sometime after 1993, the ownership of Cascade Regional Eye Center changed from the two physicians, to a sole ownership by Bruce Ballon, MD. With the change in ownership, a new exemption from Certificate of Need review must be obtained.
- Your October 2 application and November 13 supplemental information focus on the current ownership and operations of the practice and ASC.
- At this time, Cascade Regional Eye Center, Inc. PS also employs two additional physicians. Below is an identification of each physician and the relationship to the practice.¹

Name	Credential Status	Practice Status
Bruce J. Ballon	Active	Owner
Bruce E. Wietharn	Active	Employee
Natalia V. Bajenova	Active	Employee

- Documents obtained from the Secretary of State website verify that Cascade Regional Eye Center, Inc. PS is a registered corporation.
- Cascade Regional Eye Center, Inc. PS has one practice site at 903 Medical Center Drive in Arlington, within Snohomish County [98223].

¹ After the ownership change, Drs. Harman and Breene are no longer associated with the practice or ASC.

- Cascade Regional Eye Center, Inc. PS intends to continue operations of the ASC at the site. The ASC is in the same building, separated from the practice by a firewall. The address for the ASC is 903 Medical Center Drive, #200, Arlington [98223].
- The ASC is not operated under a separate legal entity from the Cascade Regional Eye Center, Inc. PS practice. The ASC operates under the dba name of The Harmon Eye Clinic.
- The Harmon Eye Clinic is not a separate corporation registered with the Washington State Secretary of State
- At this time, only the three physicians identified above have access to the ASC. Future owners/partners or employees may have access to the ASC.
- Procedures performed at the ASC include those typically associated with ophthalmic surgeries, including various laser procedures. A listing of typical procedures was provided within the exemption application.
- No management agreement for the ASC is used now or proposed to be used.

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 above factual information provided by you, the Certificate of Need Program concludes that the establishment of the ASC associated with the practice known as Cascade Regional Eye Center, Inc. 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 exemption 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 Cascade Regional Eye Center, Inc. PS decide to extend the privilege of using the ASC to physicians not part of the practice; OR
- 2) should Cascade Regional Eye Center, Inc. PS 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 Cascade Regional Eye Center, Inc. PS decide to organize the ASC as a separate legal entity from the practice; OR
- 4) should Cascade Regional Eye Center, Inc. PS decide to operate the ASC under a management agreement; OR
- 5) should any entity other than Cascade Regional Eye Center, Inc. PS 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 practice or ASC be purchased or leased; OR
- 8) should the ASC be moved to a different site than identified in the exemption application.

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 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:

Bruce Ballon, MD, & CEO
Cascade Regional Eye Center, Inc. PS
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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
111 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:

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

Please call me at (360) 236-2957 if you have any further questions regarding the establishment of the exempt 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