

**NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF HEALTH SERVICE REGULATION
RALEIGH, NORTH CAROLINA**

**IN RE: REQUEST FOR DECLARATORY)
RULING BY PIEDMONT OUTPATIENT)
SURGERY CENTER, LLC) DECLARATORY RULING
Project I.D. No. G-8477-10)**

I, Drexdal Pratt, as Director of the Division of Health Service Regulation, North Carolina Department of Health and Human Services (“Department” or “Agency”), do hereby issue this Declaratory Ruling pursuant to North Carolina General Statute § 150B-4 and 10A NCAC 14A .0103 under the authority granted to me by the Secretary of the Department of Health and Human Services.

Piedmont Outpatient Surgery Center, LLC (“POSC”) has requested a declaratory ruling allowing for a change in address for Project I.D. No. G-8477-10 on the grounds that the change does not constitute a material change in scope or physical location or a failure to materially comply with the representations made by POSC in its Certificate of Need (“CON”) application for its project. N.C.G.S. §§ 131E-181(a) and (b). This ruling will be binding upon the Department and the entity requesting it, as long as the material facts stated herein are accurate. This ruling pertains only to the matters referenced herein. Except as provided by N.C.G.S. § 150B-4, the Department expressly reserves the right to make a prospective change in the interpretation of the statutes and regulations at issue in this Declaratory Ruling. Penta Piedmont Ear Nose & Throat Associates, PA has requested this ruling on behalf of POSC and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

POSC was granted a CON on September 28, 2010 to develop a new ambulatory surgical facility with two operating rooms (ORs) for performance of ear, nose, and throat procedures pursuant to the demonstration project in the 2010 State Medical Facilities Plan. The approved address for the facility was Shepherd Street in Winston-Salem (Forsyth County). At the time the application was submitted, the City of Winston-Salem had not assigned a street number to the property. Since the CON has been granted, the city has assigned a street number and a new street name to the facility. The physical location of the facility has not changed.

POSC seeks to change the facility address from the previously approved address of Shepherd Street to the newly named address of 2465 Hanestown Lane, Winston-Salem, NC 27103.

ANALYSIS

The CON law would require a full review of POSC's site change, if that change were to represent a material change in the physical location or scope of the project. N.C.G.S. § 131E-181(a). The proposed site relocation does not constitute a material change in the physical location or the scope of the proposed project for the following reasons:

POSC states that the physical location of the ambulatory surgical facility has not changed. The City of Winston-Salem has changed the previously approved street name from Shepherd Street to Hanestown Lane.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw POSC's CON if POSC fails to develop the service in a manner consistent with the representations made in the application or with any conditions that were placed on the CON. POSC will not be developing its project in a manner that is materially different from the representations made in its application, nor will it be

developing its project in a manner that is inconsistent with any of the conditions that were placed on its CON, other than previously discussed.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the change of the host site address of POSC's ambulatory surgical facility from Shepherd Street to 2465 Hanestown Lane, Winston-Salem, NC 27703, Project I.D. No. G-8477-10 will not constitute a material change in the physical location or scope of the project, will not violate N.C.G.S. § 131E-181, and will not constitute a failure to satisfy a condition of the CON in violation of N.C.G.S. § 131E-189(b).

This the _____ day of August, 2011.

Drexdal Pratt, Director
Division of Health Service Regulation
N.C. Department of Health and Human Services

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Declaratory Ruling has been served upon the non-agency party by certified mail, return receipt requested, by depositing the copy in an official depository of the United States Postal Service in first-class, postage pre-paid envelope addressed as follows:

CERTIFIED MAIL

Cheryl C. Fatzinger
Practice Administrator
Piedmont Ear Nose & Throat Associates, P.A.
110 Charlois Blvd.
Winston-Salem, NC 27103

This the _____ day of August, 2011.

Jeff Horton
Chief Operating Officer