

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY HIGH POINT ENDOSCOPY)
CENTER) **DECLARATORY RULING**
Project I.D. No. G-8156-08)**

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

High Point Endoscopy Center, Inc. (“Petitioner”) has requested a declaratory ruling which would allow it to add a previously approved gastrointestinal (“GI”) endoscopy room to its existing facility, build an addition to the facility and renovate the existing space. The additional GI endoscopy room at issue was originally approved pursuant to the Certificate of Need (“CON”) issued for Project I.D. No. G-8156-08. 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. Robert V. Bode of Bode, Call & Stroupe, LLP has requested this ruling on behalf of Petitioner and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

On June 1, 2010, Petitioner was issued a CON for one (1) additional GI endoscopy procedure room for a total of four rooms and to relocate the facility from Building C at its current address to Building E at the same address in High Point, Guilford County, at a capital cost of \$1,058,726. After Petitioner was awarded the CON, Building E was acquired by a third

party. Petitioner underwent negotiations to purchase Building E from the third party, but then determined that Building E was no longer an appropriate location for the project.

After consulting with an architect, Petitioner determined that it would be most effective to keep the project in Building C by building an addition and renovating the space. The location is identified as 624 Quaker Lane, Suite E100, High Point, North Carolina, 27262. Building C and Building E are situated approximately 100 yards apart. Petitioner estimates that this change will reduce the capital cost for the development of the CON to approximately \$851,193.

ANALYSIS

N.C.G.S. § 131E-181(a) provides that “[a] certificate of need shall be valid only for the defined scope, physical location, and person named in the application.” The recipient of the CON must also materially comply with the representations made in the CON application. N.C.G.S. § 131E-181(b). If Petitioner’s proposal were to represent a material change in the scope of the project, the CON law would require a full review of the proposal. N.C.G.S. § 131E-181(a).

Petitioner states its intent to materially comply with all other terms of the CON, i.e., that there will be no change in service area, service offerings, or volume projections or charges. The scope of the project will not change. The anticipated capital expenditure for renovation at the existing location is not expected to exceed the proposed capital cost set forth in the approved CON application. N.C.G.S. § 131E-189(b) allows the Agency to withdraw the Petitioners’ CON if the Petitioners fail 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. Petitioners 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.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that Petitioner's proposal will not violate N.C.G.S. § 131E-181, and will not constitute a failure to satisfy a condition of the certificate of need in violation of N.C.G.S. § 131E-189(b).

This the _____ day of February, 2013.

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 nonagency 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

Robert V. Bode
Bode, Call & Stroupe, LLP
3105 Glenwood Avenue, Suite 300
Raleigh, North Carolina 27612

This the _____ day of February, 2013.

Cheryl Ouimet
Chief Operating Officer