



North Carolina Department of Health and Human Services
Division of Health Service Regulation

Pat McCrory
Governor

Aldona Z. Wos, M.D.
Ambassador (Ret.)
Secretary DHHS

Drexdal Pratt
Division Director

December 17, 2013

Michael Murchison
16 North Fifth Avenue
Wilmington, NC 28401

Exempt from Review – Acquisition of Facility


Facility: Wilmington Gastroenterology
Acquisition by: Wilmington Gastroenterology Endoscopy Center, Inc.
County: New Hanover
FID #: 070133


Dear Mr. Murchison:

In response to your letter of December 5, 2013, the above referenced proposal is exempt from certificate of need review in accordance with N.C.G.S 131E-184(a)(8). Therefore, Wilmington Gastroenterology Endoscopy Center, Inc may proceed to acquire the above referenced health service facility without first obtaining a certificate of need. However, you need to contact the Acute and Home Care Licensure and Certification Section of the Division of Health Service Regulation to obtain instructions for changing ownership of the existing facility. Note that pursuant to N.C.G.S. §131E-181(b): *“A recipient of a certificate of need, or any person who may subsequently acquire, in any manner whatsoever permitted by law, the service for which that certificate of need was issued, is required to materially comply with the representations made in its application for that certificate of need.”*

It should be noted that this Agency's position is based solely on the facts represented by you and that any change in facts as represented would require further consideration by this Agency and a separate determination. If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,


Gregory F. Yakaboski
Project Analyst


Craig R. Smith, Chief
Certificate of Need Section

cc: Acute and Home Care Licensure and Certification Section, DHSR



Certificate of Need Section

www.ncdhhs.gov

Telephone: 919-855-3873 • Fax: 919-733-8139

Location: Edgerton Building • 809 Ruggles Drive • Raleigh, NC 27603

Mailing Address: 2704 Mail Service Center • Raleigh, NC 27699-2704

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December 5, 2013

Received by
the CON Section
DEC 9 2013

WALLACE C. MURCHISON
(1919 - 2013)

Of Counsel:
CHRISTOPHER J. LEONARD

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WILMINGTON, NC 28401

TELEPHONE (910) 763-2426
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BY FEDERAL EXPRESS AND FACSIMILE

Craig R. Smith, Chief
Certificate of Need Section
N.C. Dept. of Health and Human Services
Division of Health Service Regulation
Edgerton Building
809 Ruggles Drive
Raleigh, NC 27603

Fax No. 919-733-8139

Re: Notice of Exempt Acquisition of Wilmington Gastroenterology
Associates, P.A.'s licensed ambulatory surgical center
(License No. AS0091)

Dear Mr. Smith:

I am writing on behalf of our client Wilmington Gastroenterology Associates, P.A. ("WGA"). The purpose of the letter is to provide the Certificate of Need ("CON") Section with prior written notice, pursuant to N.C.G.S. Section 131E-184(a)(8), that WGA is spinning off ownership of WGA's licensed ambulatory surgery center to a newly created entity, Wilmington Gastroenterology Endoscopy Center, Inc. ("WGEC"). The transaction is scheduled to occur December 31, 2013 at 11:59 p.m. and January 1, 2014 at 12:01 a.m.

WGA currently owns and operates an endoscopy center which is licensed as an ambulatory surgery center ("ASC"). We understand that the ASC was exempted from the requirement of securing a CON by N.C.G.S. § 130E-178(a). WGA is spinning off ownership of the ASC to WGEC in two steps.

The first step will be for WGA to contribute all of the assets necessary to run the

ASC to WGEC. The second step, which will occur immediately thereafter, is for WGA to distribute the stock of WGEC equally to the shareholders of WGA in a tax free spinoff under Sections 355 and 368(a)(1)(D) of the Internal Revenue Code. After the spinoff, each physician shareholder of WGA will also own the same number of shares of WGEC stock as such shareholder currently owns in WGA. The end result will be two separate companies, each owned by WGA's existing shareholders in the same proportion.

In sum, prior to this transaction, WGA shareholders owned the ASC through WGA. After the transaction is complete, WGA shareholders will own the ASC through WGEC. Thus, although WGEC will be acquiring the ASC, the effective ownership of the ASC will remain the same. In addition, there will no changes in location or manner of operation of the ASC. A diagram depicting the transaction as well as the ownership of the ASC before and after the transaction is enclosed for your review.

Under North Carolina Certificate of Need law, the acquisition of "an existing health service facility, including equipment owned by the health service facility at the time of the acquisition" is exempt from CON review. N.C.G.S. § 131E-184(a)(8). An ASC falls within the definition of a "health service facility". See N.C.G.S. § 131E-176(9b).

It appears from review of the public record that on February 1, 2013, an identical transaction was given a no review letter. A copy of that February 1, 2013 no review letter and the underlying application is enclosed.

Incidentally, we have already been in touch with Azzie Conley at the Licensure and Certification section with respect to the necessary steps to finalize the transfer of the license.

Please confirm that the above described acquisition is exempt from CON review. Given the fact that the transaction is to occur at the end of the year, we would appreciate a prompt response.

Please do not hesitate to contact me with any questions or requests for further information.

Sincerely yours,

MURCHISON, TAYLOR & GIBSON, PLLC

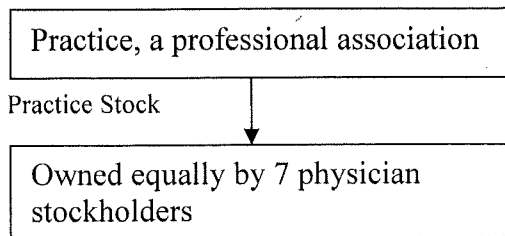


Michael Murchison

MM/jmb/118247
Enclosure

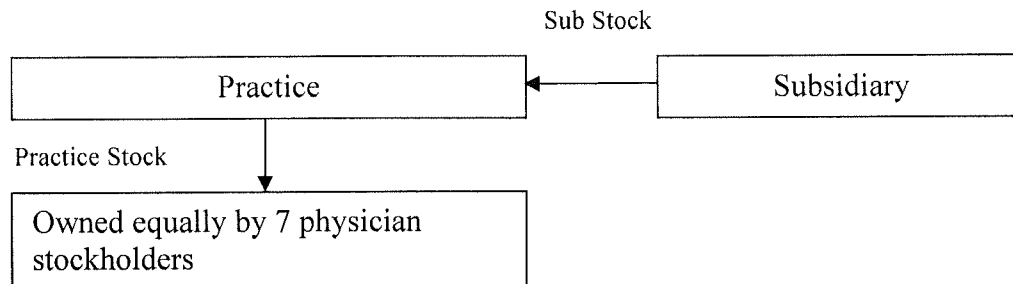
Tax Free Reorganization Structure

1. Current ownership of endoscopy business

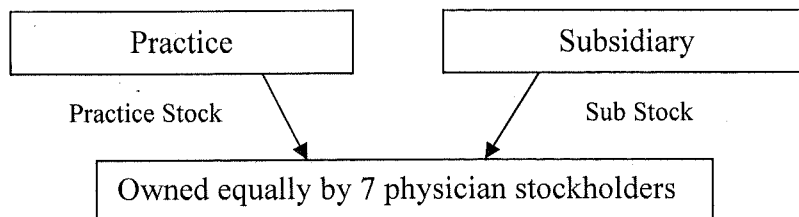


Practice currently owns an endoscopy center business and holds the ASC License

2. Practice forms Subsidiary to own and operate the endoscopy center



3. Practice spins off Subsidiary stock to Practice shareholders effective January 1, 2014 at 12:01 a.m.



Subsidiary will own endoscopy center business and hold the ASC License



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Division of Health Service Regulation

Pat McCrory
Governor

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Drexdal Pratt
Division Director

February 1, 2013

Sarah M. Johnson
Wyrick Robbins Yates & Ponton, LLP
PO Drawer 17803
Raleigh, NC 27619

Exempt from Review – Acquisition of Facility

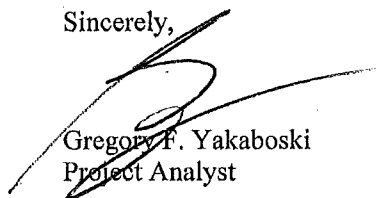
Facility: Cape Fear Center for Digestive Diseases, P.A.'s licensed ambulatory surgical center
Acquisition by: Digestive Health Endoscopy Center, LLC of the licensed ambulatory surgical center
County: Cumberland
License #AS0123
FID #: 080260

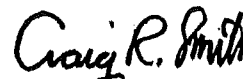
Dear Ms. Johnson:

In response to your letter of January 17th, 2013, the above referenced proposal is exempt from certificate of need review in accordance with N.C.G.S 131E-184(a)(8). Therefore, Digestive Health Endoscopy Center, LLC may proceed to acquire the above referenced health service facility without first obtaining a certificate of need. However, you need to contact the Acute and Home Care Licenser and Certification Section of the Division of Health Service Regulation to obtain instructions for changing ownership of the existing facility. Note that pursuant to N.C.G.S. §131E-181(b): *"A recipient of a certificate of need, or any person who may subsequently acquire, in any manner whatsoever permitted by law, the service for which that certificate of need was issued, is required to materially comply with the representations made in its application for that certificate of need."*

It should be noted that this Agency's position is based solely on the facts represented by you and that any change in facts as represented would require further consideration by this Agency and a separate determination. If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,


Gregory F. Yakaboski
Project Analyst


Craig R. Smith, Chief
Certificate of Need Section

cc: Acute and Home Care Licensure and Certification Section, DHSR



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SARAH M. JOHNSON
sjohnson@wyrick.com

January 17, 2013

VIA HAND DELIVERY

Mr. Craig R. Smith, Chief
Certificate of Need Section
Division of Health Service Regulation
North Carolina Department of Health & Human Services
809 Ruggles Drive
Raleigh, NC 27603

Re: Notice of Exempt Acquisition of Cape Fear Center for Digestive Diseases, P.A.'s
licensed ambulatory surgical center (License #AS0123)

Dear Mr. Smith:

This letter shall serve as prior written notice that Cape Fear Center for Digestive Diseases, P.A. ("CFCDD") is spinning off the ownership of its licensed ambulatory surgical center ("ASC") to a newly created entity, Digestive Health Endoscopy Center, LLC ("DHEC").¹ The spin-off transaction will have two steps: The first step will be for CFCDD to drop all of the assets of the ASC into DHEC in exchange for all of DHEC's equity interests. This will result in DHEC initially being a wholly-owned subsidiary of CFCDD.

The second step will be a distribution of CFCDD's equity interests in DHEC to CFCDD's shareholders. The end result will be two separate companies (CFCDD and DHEC), each owned by CFCDD's existing shareholders. Please note that this transaction is structured as a tax-free spin-off in a manner that satisfies the requirements for a nontaxable distribution under Section 355 of the Internal Revenue Code of 1986, as amended. Under N.C. Gen. Stat. § 55B-6(b), a professional corporation may temporarily have a subsidiary as part of a Section 355 spin-off.

¹ CFCDD's ASC became licensed without a certificate of need because it had two gastrointestinal endoscopy rooms in operation as of August 31, 2005. Please see the enclosed December 1, 2006 Declaratory Ruling setting forth CFCDD's history.

Mr. Craig R. Smith
January 17, 2013
Page 2

At the conclusion of the transaction, CFCDD's shareholders will receive an equity interest in DHEC that mirrors their interests in CFCDD. Prior to the transaction, CFCDD's shareholders will have owned the endoscopy center through CFCDD. After the transaction is complete, CFCDD's shareholders will own the endoscopy center through DHEC. Thus, although DHEC will be acquiring the ASC, the effective ownership of the ASC will remain the same. In addition, there will be no changes in the location or manner of operation of the ASC. A graphical representation depicting the transaction as well as the ownership of ASC before and after the transaction is enclosed for your reference.

Under North Carolina's certificate of need ("CON") law, the acquisition of "an existing health service facility, including equipment owned by the health service facility at the time of acquisition[,] is exempt from CON review. N.C. Gen. Stat. § 131E-184(a)(8). An ASC falls within the definition of a "health service facility." See N.C. Gen. Stat. § 131E-176(9b).

Please confirm that the above-described acquisition is exempt from CON review. Once we receive such confirmation, we will contact the Licensure and Certification Section and take the necessary steps to finalize the change of ownership. Please do not hesitate to contact me with any questions or requests for further information.

With best regards.

Sincerely,

WYRICK ROBBINS YATES & PONTON LLP



Sarah M. Johnson