



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

Pat McCrory
Governor

Richard O. Brajer
Secretary DHHS

Mark Payne
Assistant Secretary for Audit and
Health Service Regulation

June 1, 2016

Catharine W. Cummer
3100 Tower Blvd
Suite 1300
Durham, NC 27707

Exempt from Review – Acquisition of Facility

Record #: 1951
Facility Name: Triangle Endoscopy Center
Type of Facility: Ambulatory Surgery
FID #: 061486
Acquisition by: Duke University Health System
Business #: 639
County: Durham

Dear Ms. Cummer:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency) determined that based on your letter of May 23, 2016, the above referenced proposal is exempt from certificate of need review in accordance with G.S 131E-184(a)(8). Therefore, Duke University Health System may proceed to acquire the above referenced health service facility without first obtaining a certificate of need. However, you need to contact the Agency’s Acute and Home Care Licensure and Certification Section to obtain instructions for changing ownership of the existing facility. Note that pursuant to 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,

Bernetta Thorne-Williams
Bernetta Thorne-Williams
Project Analyst

Martha J. Frisone
Martha J. Frisone,
Assistant Chief, Certificate of Need

cc: Acute and Home Care Licensure and Certification Section, DHSR
Paige Bennett, Assistant Chief, Healthcare Planning, DHSR



Healthcare Planning and Certificate of Need Section

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

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

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No Review # 1951
Business # 639 ..

Duke University Health System

Catharine W. Cummer
Regulatory Counsel, Strategic Planning

May 23, 2016

Via Electronic Mail



Ms. Martha Frisone
Ms. Bernetta Thorne-Williams
Certificate of Need Section
Division of Health Service Regulation
2704 Mail Service Center
Raleigh, NC 27699-2704

Re: Notice of acquisition/change in ownership – Triangle Endoscopy Center
License No. AS00085

Dear Ms. Frisone and Ms. Thorne-Williams:

The purpose of this letter is to provide prior written notice of the purchase of an equity interest in the limited liability company that owns the Triangle Endoscopy Center, a licensed ambulatory surgery center with four endoscopy rooms located in Durham, North Carolina, and the subsequent corporate reorganization of that LLC. We request confirmation that this set of transactions is exempt from or otherwise does not require certificate of need review.

Duke Affiliations Network, Inc., a subsidiary of Duke University Health System, plans to purchase a controlling interest in Triangle Endoscopy Center, LLC, which owns the Triangle Endoscopy Center. Upon closing or shortly thereafter, that corporate entity, which is currently organized in Tennessee, will be converted to a North Carolina limited liability company and renamed Duke Triangle Endoscopy Center. The facility itself will continue to operate as it does presently under the ownership of this new corporate entity.

We understand that the CON Section has historically interpreted the acquisition of an equity interest in the owner of a health service facility not to constitute a new institutional health service requiring a CON. Furthermore, to the extent that the subsequent reorganization of Triangle Endoscopy Center, LLC, as a North Carolina LLC would constitute the acquisition of the endoscopy ambulatory surgery facility by a new owner, North Carolina law provides that 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. Gen. Stat. § 131E-184(a)(8).

Ms. Martha Frisone
Ms. Bernetta Thorne-Williams
May 23, 2016
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As a licensed ambulatory surgery center, Triangle Endoscopy Center is an existing health service facility. N.C. Gen. Stat. § 131E-176(9b). Therefore, we understand that these transactions do not constitute a new institutional health service and/or are exempt from certificate of need review. We will separately communicate with the Acute and Home Care Licensure and Certification Section regarding this change in ownership.

The parties currently plan to close the equity acquisition transaction on or about June 1, 2016. It would be very helpful if you could provide written confirmation that these transactions do not require a CON as soon as possible. If you have questions about this information, please let me know. Thank you for your attention to this request.

Very truly yours,



Catharine W. Cummer