

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY UNIVERSITY SURGERY)
CENTER, LLC) DECLARATORY RULING
Project I.D. No. F-8543-10)**

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.

University Surgery Center (“USC”) requested a declaratory ruling allowing for a site relocation for Project I.D. # F-8543-10 on the grounds that the site relocation does not constitute a material change in scope or physical location or a failure to materially comply with the representations made by USC 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. Gen. Stat. § 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. Joy Heath of Heath Law Firm, PLLC has requested this ruling on behalf of USC and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

USC was issued a CON, Project I.D. # F-8543-10 to develop a single-specialty (orthopedic) ambulatory surgical facility (“ASF”) in Charlotte with two operating rooms and one

procedure room. The approved site for the ASF was to be located adjacent to the OrthoCarolina University Medical Office Building on North Tryon Street and Mallard Creek Church Road, Charlotte, in Mecklenburg County. No problems with the approved site were stated, however, numerous advantages have been identified for constructing ASF at the alternate site. These advantages include: (1) the alternate site is located in an area which is zoned for medical use, such as a surgery center; (2) water and sewer services are available for this property and (3) the alternate site is located approximately the same distance from the support services in the community as was the original site.

In this request, USC is requesting authorization to construct the new ASF for Project I.D. # F-8543-10 on an alternate site. USC seeks to relocate the site of the new facility from North Tryon Street and Mallard Creek Church Road in Charlotte to 9848 North Tryon Street in Charlotte, in Mecklenburg County. USC determined that the surgery center can be built most effectively at the site of the OrthoCarolina University office as a second floor to the existing office building. The alternate site is adjacent to the site originally proposed and is currently zoned for medical use.

ANALYSIS

The CON law would require a full review of CHS's proposed site relocation if that change were to represent a material change in the physical location or scope of the project. *See* N.C. Gen. Stat. § 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:

The alternate site at 9848 North Tryon Street is adjacent to the site originally proposed by USC which is also located on North Tryon Street within Mecklenburg County. The alternate site is easily accessible to emergency services, support services, ancillary services and public

transportation. USC states that building the AFS on the alternate site will not exceed 115% of the capital expenditures authorized by CON for Project I.D. # F-8543-10. The size of the USC facility will be within approximately 1,000 square feet of the original size proposed in its application and USC will offer exactly the same services as described in the application. USC states that development and operation of the facility at the alternate site will not entail any significant additional capital costs. USC will be administratively and financially separate from OrthoCarolina University. OrthoCarolina will provide specific management services at the new site based on a written management services agreement as specified in the original proposal. USC contends that the development and operation of the new surgery center at 9848 North Tryon Street in Charlotte will not constitute a material change in the implementation of the certificate of need for Project I.D. # F-8543-10.

N.C. Gen. Stat. § 131E-189(b) allows the Department to withdraw USC's CON if USC 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. USC will not be developing its project in a manner that is materially different from the representation 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 USC's proposed relocation of the ASF from North Tryon Street and Mallard Creek Church Road in Charlotte to 9848 North Tryon Street in Charlotte, in Mecklenburg County will not violate N.C. Gen. Stat. § 131E-181 and will not constitute a failure to satisfy a condition of the certificate of need in violation of N.C. Gen. Stat. § 131E-189(b).

This the _____ day of January, 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

Joy Heath, Esq.
Ruth Levy, Esq.
Heath Law Firm, PLLC
514 Daniels Street #182
Raleigh, NC 27605

This the _____ day of January, 2013.

Dr. Patsy Christian
Assistant Director of Healthcare Quality and Safety