



NC DEPARTMENT OF  
**HEALTH AND  
HUMAN SERVICES**  
Division of Health Service Regulation

**ROY COOPER** • Governor  
**MANDY COHEN, MD, MPH** • Secretary  
**MARK PAYNE** • Director

## **RESPONSE REQUIRED**

April 27, 2018

Cory Hess  
5200 Doughtymews Lane  
Fuquay-Varina, NC 27526

### **Conditional Approval**

Project ID #: O-11441-17  
Facility: Wilmington ASC  
Project Description: Develop a new multispecialty ambulatory surgical facility by developing one new OR pursuant to the need determination in the 2017 SMFP, developing three procedure rooms, and relocating three existing multispecialty GI endoscopy rooms from Wilmington Health  
County: New Hanover  
FID #: 170523

Dear Mr. Hess:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency) has conditionally approved the above referenced certificate of need application. This decision was made after a review of the applications submitted for this cycle and after consideration of the Certificate of Need Law, N.C. Gen. Stat. §131E-175 et. seq. and regulations promulgated there under, the State Medical Facilities Plan, and other applicable information. Written notice of all findings and conclusions upon which the decision was based will be provided to the applicants within five business days after the date of the decision in accordance with N.C. Gen. Stat. §131E-186. The applicant shall not proceed with the construction, offering or development of this project until the certificate of need is issued. Further, the Agency shall not issue the certificate of need until all applicable conditions of approval that can be satisfied before issuance of the certificate of need have been met pursuant to N.C. Gen. Stat. §131E-187(a). The conditions are as follows:

1. Wilmington ASC, LLC shall materially comply with all representations made in the certificate of need application.

**NC DEPARTMENT OF HEALTH AND HUMAN SERVICES • DIVISION OF HEALTH SERVICE REGULATION**

**HEALTHCARE PLANNING AND CERTIFICATE OF NEED SECTION**

LOCATION: 809 Ruggles Drive, Edgerton Building, Raleigh, NC 27603  
MAILING ADDRESS: 2704 Mail Service Center, Raleigh, NC 27699-2704  
www.ncdhhs.gov/dhsr/ • TEL: 919-855-3873

AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER

2. Wilmington ASC, LLC shall develop a new multispecialty ambulatory surgical facility with no more than one operating room, developing three procedure rooms, and relocating three existing multispecialty gastrointestinal endoscopy rooms from Wilmington Health.
3. Upon completion of the project, Wilmington ASC shall be licensed for no more than one OR, 3 multispecialty gastrointestinal endoscopy rooms and 3 procedure rooms.
4. Wilmington ASC, LLC shall not acquire as part of this project any equipment that is not included in the project's proposed capital expenditures in Section VIII of the application and that would otherwise require a certificate of need.
5. Wilmington ASC, LLC shall receive accreditation from the Joint Commission for the Accreditation of Healthcare Organizations, the Accreditation Association for Ambulatory Health Care or a comparable accreditation authority within two years following licensure of the facility.
6. For the first three years of operation following completion of the project, Wilmington ASC, LLC shall not increase charges more than 5% of the charges projected in Section X and Section XIII of the application without first obtaining a determination from the Healthcare Planning and Certificate of Need Section that the proposed increase is in material compliance with the representations in the certificate of need application.
7. The procedure rooms shall not be used for procedures that should be performed only in an operating room based on current standards of practice.
8. The procedure rooms shall not be used for procedures that should be performed only in a gastrointestinal endoscopy room based on current standards of practice.
9. Procedures performed in the procedure rooms shall not be reported for billing purposes as having been performed in an operating room and shall not be reported on the facility's license renewal application as procedures performed in an operating room.
10. Procedures performed in the procedure rooms shall not be reported for billing purposes as having been performed in a gastrointestinal endoscopy room and shall not be reported on the facility's license renewal application as procedures performed in a gastrointestinal endoscopy room.
11. Upon project completion, Wilmington ASC, LLC and Wilmington Health, PLLC, shall take the steps necessary to delicense the three existing multi-specialty gastrointestinal endoscopy rooms at Wilmington Health such that Wilmington Health Endoscopy Center shall not longer be licensed as an ambulatory surgical facility.
12. Wilmington ASC, LLC shall develop and implement an Energy Efficiency and Sustainability Plan for the project that conforms to or exceeds energy efficiency and water conservation standards incorporated in the latest editions of the North Carolina State Building Codes.

13. No later than three months after the last day of each of the first three full years of operation following initiation of the services authorized by this certificate of need, Wilmington ASC, LLC shall submit, on the form provided by the Healthcare Planning and Certificate of Need Section, an annual report containing the:
  - a. Payor mix for the services authorized in this certificate of need.
  - b. Utilization of the services authorized in this certificate of need.
  - c. Revenues and operating costs for the services authorized in this certificate of need.
  - d. Average gross revenue per unit of service.
  - e. Average net revenue per unit of service.
  - f. Average operating cost per unit of service.
14. Wilmington ASC, LLC shall acknowledge acceptance of and agree to comply with all conditions stated herein to the Agency in writing prior to issuance of the certificate of need.

**Response to the above conditions should be submitted to the Agency no later than 35 days from the date of the decision. Failure to respond within this time period may result in the CON Section making a determination not to issue a certificate of need for the project referenced above.**

The conditional approval is valid only for a capital expenditure of **\$13,387,950**. If a cost overrun occurs that exceeds the approved capital expenditure amount, a new certificate of need may be required as determined by N.C. Gen. Stat. §131E-176(16)(e).

The applicant should be aware that according to the Certificate of Need Law any affected person shall have thirty (30) days after the date of decision to file a petition for a contested case on this approval. Further, if you are aggrieved by the conditions of the decision you may file a petition for a contested case hearing in accordance with N.C. Gen. Stat. §150B, Article 3, as amended. This petition must be filed with the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, North Carolina 27611-7447 within thirty (30) days of the date of this decision. [Note: Effective October 1, 2009, OAH requires a filing fee with submittal of petitions for contested cases. Please direct all questions regarding this fee to OAH Clerk's Office (919-431-3000).]

N.C. Gen. Stat. §150B-23 provides that a party filing a petition must also serve a copy of the petition on all parties to the petition. Therefore, if you file a petition for a contested case hearing, you must serve a copy of the petition on the Department of Health and Human Services by mailing a copy of your petition to:

Lisa G. Corbett  
Department of Health and Human Services,  
Office of Legal Affairs,  
Adams Building – Room 154  
2001 MSC  
Raleigh, North Carolina, 27699-2001

It is requested that a copy of the petition also be served on the Agency.

The certificate of need will not be issued before the completion of this 30 day period ending **May 29, 2018**. If a contested case request is received within the thirty (30) day period, the certificate will not be issued until the appeal is resolved (10A NCAC 14C .0208).

The timetable for completion of the project is the timetable outlined in the certificate of need application, unless an adjustment has been made by the Agency because the review period was extended. The timetable for this project is as follows:

1. Drawings Completed \_\_\_\_\_ September 28, 2018
2. Construction/Renovation Contract(s) Executed \_\_\_\_\_ November 18, 2018
3. 25% of Construction/Renovation Completed  
(25% of the cost is in place) \_\_\_\_\_ December 17, 2018
4. 50% of Construction/Renovation Completed \_\_\_\_\_ February 25, 2019
5. 75% of Construction/Renovation Completed \_\_\_\_\_ May 18, 2019
6. Construction/Renovation Completed \_\_\_\_\_ August 9, 2019
7. Equipment Ordered \_\_\_\_\_ August 23, 2019
8. Equipment Installed \_\_\_\_\_ September 3, 2019
9. Equipment Operational \_\_\_\_\_ December 28, 2019
10. Building/Space Occupied \_\_\_\_\_ November 12, 2019
11. Licensure Obtained \_\_\_\_\_ January 1, 2020
12. Services Offered \_\_\_\_\_ January 1, 2020
13. Medicare and/or Medicaid Certification Obtained \_\_\_\_\_ April 1, 2020
14. Facility or Service Accredited \_\_\_\_\_ April 1, 2020
15. Final Annual Report Due \_\_\_\_\_ May 1, 2020

If the decision is appealed, the timetable set forth in this letter will be adjusted accordingly before the certificate of need is issued. Please contact us if any clarification of this decision is required.

Please refer to the Project ID # and Facility ID # (FID) in all correspondence.

Sincerely,

Gregory F. Yakaboski  
Project Analyst

Fatimah Wilson  
Team Leader, Certificate of Need

Attachment

cc: Construction Section, DHSR  
Acute & Home Care Licensure & Certification Section, DHSR  
Amy Craddock, Assistant Chief, Healthcare Planning, DHSR

**CERTIFICATE OF SERVICE**

I hereby certify that I have served the foregoing notice of **conditional approval** on the following person by placing a copy in an official depository of the United States Postal Service in a postage-paid, first class envelope addressed as follows:

Cory Hess  
5200 Doughtymews Lane  
Fuquay-Varina, NC 27526

This the 27<sup>th</sup> day of April, 2018.

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Gregory F. Yakaboski  
Project Analyst, Certificate of Need