

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

IN RE: REQUEST FOR)
DECLARATORY RULING BY) **DECLARATORY RULING**
SALEM GASTROENTEROLOGY)
ASSOCIATES, P.A.)

I, Robert J. Fitzgerald, Director of the Division of Facility Services (the “Department”), do hereby issue this Declaratory Ruling to Salem Gastroenterology Associates, P.A. (“Salem”) pursuant to N.C.G.S. § 150B-4 and 10A NCAC 14A .0310, and the authority granted to me by the Secretary of the Department of Health and Human Services. Salem is seeking a declaratory ruling that the four new gastrointestinal endoscopy rooms located at the new Salem Gastroenterology Endoscopy Center at 875 Bethesda Road in Winston-Salem be considered eligible for licensure as an ambulatory surgical facility without a certificate of need as provided in N.C.G.S. § 131E-178(a), based on the affidavit it submitted before October 31, 2005 stating that it had seven endoscopy rooms in operation as of August 31, 2005.

This ruling is binding on the Department and the person requesting it if the material facts stated in the request are accurate and no material facts have been omitted from the request. The ruling applies only to this request. Except as provided by N.C.G.S. § 150B-4, the Department reserves the right to change the conclusions which are contained in this ruling. Michael Crowell, of Tharrington Smith LLP, counsel for Salem, has requested this ruling on behalf of same and has provided the facts upon which this ruling is based.

STATEMENT OF THE FACTS

As of August 31, 2005, Salem has seven gastrointestinal endoscopy rooms in operation at its location at 1830 South Hawthorne Road in Winston-Salem. An affidavit to that effect was

submitted to the Division of Facility Services before October 31, 2005, thus meeting the initial requirement toward qualifying a gastrointestinal endoscopy room for licensing as an ambulatory surgical facility without the issuance of a certificate of need pursuant to N.C.G.S. § 131E-178(a). Salem is building a new endoscopy center adjoining the current location, with an entrance that is around the corner, and therefore with a different street address: 875 Bethesda Road.

The new facility, which is designed specifically for endoscopy purposes, will have four gastrointestinal endoscopy rooms. Salem represents that fewer rooms are needed because the rooms in the new endoscopy center will not be used for preparation or recovery, and that the seven gastrointestinal endoscopy rooms in the current facility will no longer be used once the four rooms in the new center are opened.

ANALYSIS

In essence, Salem's request for a declaratory ruling asks that, based on the affidavit submitted for the seven existing gastrointestinal endoscopy rooms at the current South Hawthorne location, it be allowed to seek licensing of the four gastrointestinal endoscopy rooms at the new Bethesda Road location without the issuance of a certificate of need.

In reviewing the request I have considered the purpose of the certificate of need law and the intent expressed by N.C.G.S. § 131E-178(a) concerning gastrointestinal endoscopy rooms, and I find that it is appropriate to grant the declaratory ruling that Salem has requested subject to the following condition:

The four gastrointestinal endoscopy rooms to be located at 875 Bethesda Road in Winston-Salem are to be developed *in place of* the seven gastrointestinal endoscopy rooms located at 1830 South Hawthorne Road in Winston-Salem and *not in addition to* the seven South Hawthorne Road gastrointestinal endoscopy rooms. At such time as the four gastrointestinal

endoscopy rooms located at 875 Bethesda Road become operational, the seven gastrointestinal endoscopy rooms located at 1830 South Hawthorne Road will be closed and no longer used as gastrointestinal endoscopy rooms.

CONCLUSION

For the foregoing reasons, and assuming the statements of fact in the request to be true, I conclude that the affidavit filed by Salem may be used to license the new site under construction, and that Salem may apply for an ambulatory surgical facility license for at 875 Bethesda Road in Winston-Salem without the issuance of a certificate of need, subject to all other applicable conditions for that license. I also conclude that once the new site is operational, Salem cannot continue to operate the seven gastrointestinal endoscopy rooms located at 1830 South Hawthorne Road in Winston-Salem, and shall not perform gastrointestinal endoscopy procedures in either a licensed or unlicensed room at 1830 South Hawthorne Road.

This ruling is not intended, and should not be interpreted, to authorize any increase in the number of gastrointestinal endoscopy rooms Salem owns or operates.

This is the _____ day of April, 2006.

Robert J. Fitzgerald, Director
Division of Facility 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 a first class, postage prepaid envelope addressed as follows:

CERTIFIED MAIL

Michael Crowell
Tharrington Smith, L.L.P.
P.O. Box 1151
Raleigh, NC 27602-1151

This _____ day of April, 2006.

Jeff Horton
Chief Operating Officer