

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY CENTRAL PIEDMONT)
SURGERY CENTER, LLC) **DECLARATORY RULING**
Project I.D. No. G-8370-09)**

I, Drexdal Pratt, as Director of the Division of Health Service Regulation, North Carolina Department of Health and Human Services (“Department” or “Agency”), do hereby issue this Declaratory Ruling pursuant to North Carolina General Statute § 150B-4 and 10A NCAC 14A .0103 under the authority granted me by the Secretary of the Department of Health and Human Services.

Central Piedmont Surgery Center, LLC (hereinafter “CPSC”) has requested a declaratory ruling allowing for a change of site for Project I.D. No. G-8370-09 on the grounds that the change does not constitute a material change in scope or physical location or a failure to materially comply with the representations made by CPSC 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.G.S. § 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. Steven E. Eblin has requested this ruling on behalf of CPSC and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

CPSC was granted a certificate of need on January 23, 2010 to develop a new ambulatory surgery center with two operating rooms in Asheboro, which is in Randolph County.

The approved site for the ASC, 219 Foust Street, is directly across the street from Randolph Hospital and is the current site of the hospital's helipad.

Subsequent planning revealed that it is not reasonable to build the center so close to the helipad, nor is it feasible to relocate the helipad at this time.

The applicants seek a change from the previously approved site location of the ASC to a site located on the corner of Dublin Square Road and Thomas Street in Asheboro.

The newly proposed site is 1.6 miles away from the originally approved site and has equal access for physicians and patients.

ANALYSIS

The CON law would require a full review of CSPC's request for a change of site from the Foust Street site to the site at Dublin Square Road and Thomas Street if that change were to represent a material change in the physical location or scope of the project. N.C.G.S. § 131E-181(a). The proposed site change does not constitute a material change in the physical location or the scope of the proposed project for the following reasons:

The proposed site is located 1.6 miles from the originally approved site.

Access to citizens in the proposed service area will not change.

EMS services are slightly farther away in distance (3.4 miles v. 2.8 miles), but estimated to be slightly closer in time (about 5 minutes v. about 6 minutes).

The pro forma financial statements, including capital costs, remain unchanged.

No delay is expected in the project building schedule.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw CSPC's CON if CSPC 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. CSPC will not be developing its project in a manner that is materially different from the representations 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 the site change of CSPC's ASC from the Foust Street site to the site at Dublin Square Road and Thomas Street for Project I.D. No. G-8370-09 will not constitute a material change in the physical location or scope of the project, will not violate N.C.G.S. § 131E-181, and will not constitute a failure to satisfy a condition of the CON in violation of N.C.G.S. § 131E-189(b).

This the _____ day of August, 2010.

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

Steven E. Eblin
VP-Randolph Hospital
Chairman, Central Piedmont Surgery Center
P.O. Box 1048
Asheboro, NC 27204-1048

This the _____ day of August, 2010.

Jeff Horton
Chief Operating Officer