

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

<b>IN RE: REQUEST FOR DECLARATORY</b>	)	
<b>RULING BY HOSPICE OF GASTON</b>	)	
<b>COUNTY, INC.</b>	)	<b>DECLARATORY RULING</b>
	)	
<b>Project I.D. No. F-8208-08</b>	)	

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.

Hospice of Gaston County, Inc. d/b/a Gaston Hospice (“Gaston Hospice”) has requested a declaratory ruling for Project I.D. No. F-8208-08 (“Project”) allowing for a change in facility location, a deletion of five residential care beds and a timetable extension. Gaston Hospice requests these changes on the grounds that they do not constitute either (1) a material change in scope or physical location or (2) a failure to materially comply with the representations made by Gaston Hospice in its certificate of need application for its project or the conditions imposed upon the certificate of need. 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. Franklin Scott Templeton and Wallace C. Hollowell, III of Nelson Mullins Riley & Scarborough LLP

have requested this ruling on behalf of Gaston Hospice and have provided the material facts upon which this ruling is based.

### **STATEMENT OF THE FACTS**

Effective March 31, 2009, the CON Section issued a certificate of need for Project I.D. No. F-8208-08 authorizing Gaston Hospice to develop a second hospice facility with no more than seven hospice inpatient and five hospice residential care beds to be constructed at 700 West Catawba Avenue, Mount Holly, North Carolina.

Since issuance of the certificate of need, Gaston Hospice's planned land purchase at 700 West Catawba Avenue in Mount Holly fell through. Due to economic conditions and other factors, Gaston Hospice now proposes developing the Project at 5005 Shepherds Way Drive in Dallas, North Carolina, where Gaston Hospice currently operates its existing hospice facility, the Robin Johnson House. The alternative site at 5005 Shepherds Way Drive in Dallas is already owned by Gaston Hospice and is centrally located within Gaston County. Using the new site would result in substantial costs savings by eliminating the need to acquire land and has the potential for additional cost savings through shared staffing with the Robin Johnson House and other infrastructural efficiencies.

The Project was proposed upon a need determination in the 2008 State Medical Facilities Plan ("SMFP") for seven additional hospice inpatient beds. Gaston Hospice originally proposed seven inpatient hospice beds and five residential hospice beds. The certificate of need for the Project authorizes Gaston Hospice to develop "no more than" five residential hospice beds. In light of economic considerations, Gaston Hospice now seeks deletion of the five residential beds from the project.

Due to obstacles encountered in acquiring a physical site for the Project among other things, Gaston Hospice requests that the dates in the timetable on page 113 of its certificate of need application be advanced such that the May 1, 2009 preliminary design date is advanced to December 1, 2010 and all subsequent dates are adjusted accordingly.

### **ANALYSIS**

The CON law would require a full review of Gaston Hospice's proposed changes if they were to represent a material change in the physical location or scope of the project. N.C.G.S. § 131E-181(a).

The proposed changes do not constitute a material change in the physical location or the scope of the proposed project. The new site is centrally located within Gaston County, is accessible within Gaston County, is appropriately zoned, offers necessary utilities and is slightly closer to Gaston Hospital than the original site. In addition, the new site offers an appropriate environment for hospice, and the change will not affect the scope of services or projected inpatient utilization. Gaston Hospice states that it will save more than \$300,000 by using the new site where the Robin Johnson House is already located. Gaston Hospice further states that there will be no increase in charges or operating costs as a result of the changes.

There was no need determination for the five residential care beds and no requirement that Gaston Hospice include those residential beds in its certificate of need application. The deletion of the residential beds does not affect the conformity with any criteria. The residential hospice beds were projected to operate at a substantial loss during the first three years of operation, and Gaston Hospice believes that the financial feasibility of the project will be improved as a result of the deletion. Furthermore, patients needing hospice residential care in Gaston County are cared for by alternate means.

Gaston Hospice has encountered delays due to the site selection issue and requests that all dates on the approved timetable be advanced. Specifically, Gaston Hospice requests that the May 1, 2009 preliminary design date be advanced to December 1, 2010 and all subsequent dates be adjusted accordingly.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw Gaston Hospice's certificate of need if Gaston Hospice 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 certificate of need. Gaston Hospice 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 certificate of need.

#### **CONCLUSION**

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the substitution of 5005 Shepherds Way Drive, Dallas, North Carolina as the site for Gaston Hospice's new hospice facility, Project I.D. No. F-8208-08, 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 certificate of need in violation of N.C.G.S. § 131E-189(b). I further conclude that the deletion of five residential beds and timetable adjustments described herein 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 certificate of need in violation of N.C.G.S. § 131E-189(b)

This the \_\_\_\_\_ day of September, 2010.

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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**

Franklin Scott Templeton  
Nelson Mullins Riley & Scarborough LLP  
380 Knollwood, Suite 530  
Winston-Salem, NC 27103

This the \_\_\_\_\_ day of September, 2010.

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Jeff Horton  
Chief Operating Officer