

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

**IN RE: REQUEST FOR DECLARATORY )  
RULING BY DIGESTIVE HEALTH )  
SERVICES, P.A. )           DECLARATORY RULING  
Project I.D. No. G-8366-09 )**

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.

Digestive Health Specialists, P.A. d/b/a Digestive Health Endoscopy Center of Thomasville (“DHS”) has requested a declaratory ruling allowing for a change in location for Project I.D. No. G-8366-09 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 DHS 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. Joy Health of LAW OFFICE OF JOY HEALTH has requested this ruling on behalf of DHS and has provided the material facts upon which this ruling is based.

## **STATEMENT OF THE FACTS**

DHS was granted a Certificate of Need on January 8, 2010 to develop a new ambulatory surgical facility with two gastrointestinal (GI) endoscopy rooms. The approved location for the facility was 351 Old Greensboro Road in Thomasville, NC (Davidson County). DHS seeks to change the facility site to a new location at the intersection of Mt. Calvary Road and Business 85, also in Thomasville, NC (Davidson County).

## **ANALYSIS**

The CON law would require a full review of DHS's site relocation, if that relocation 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 relocation does not constitute a material change in the physical location or the scope of the proposed project for the following reasons:

In the CON issued in 2010, the approved location was in Davidson County. The change in host site is within the originally approved county, approximately five miles or seven minutes driving time from the originally approved location. By changing locations within the approved area, the patient population for which the need was originally demonstrated, will continue to be served.

The change in location will not increase capital costs, operating costs or charges proposed in the approved CON application. The proposed change is in material compliance with the CON for the project.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw DHS's CON if DHS 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. DHS 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, other than previously discussed.

### **CONCLUSION**

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the change of location for the facility from 351 Old Greensboro Road in Thomasville, NC (Davidson County), Project I.D. No. E-7066-04 to a new location at the intersection of Mt. Calvary Road and Business 85, also in Thomasville, NC (Davidson County) 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, 2011.

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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**

Joy Heath  
LAW OFFICE OF JOY HEATH  
N.C. State Bar # 182  
Raleigh, North Carolina 27605  
Telephone: (919) 599-3904  
Attorney for DHS

This the \_\_\_\_\_ day of July, 2011.

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Jeff Horton  
Chief Operating Officer