



North Carolina Department of Health and Human Services  
Division of Health Service Regulation

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January 14, 2013

Stephen M. Schuster, Jr.  
43220 Braxton Terrace  
Ashburn VA 20148

**Exempt from Review – Acquisition of Facility**

Facility: Wake Forest Endoscopy Center  
Acquisition by: Wake Endoscopy Center, LLC  
County: Wake  
FID #: 100398

Dear Mr. Schuster:

In response to your letter of December 27, 2012, the above referenced proposal is exempt from certificate of need review in accordance with N.C.G.S 131E-184(a)(8). Therefore, Wake Endoscopy Center, LLC may proceed to acquire the above referenced health service facility without first obtaining a certificate of need. However, you need to contact the Acute and Home Care Licensure and Certification Section of the Division of Health Service Regulation to obtain instructions for changing ownership of the existing facility. Note that pursuant to N.C.G.S. §131E-181(b): *“A recipient of a certificate of need, or any person who may subsequently acquire, in any manner whatsoever permitted by law, the service for which that certificate of need was issued, is required to materially comply with the representations made in its application for that certificate of need.”*

It should be noted that this Agency's position is based solely on the facts represented by you and that any change in facts as represented would require further consideration by this Agency and a separate determination. If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,

Michael J. McKillip  
Project Analyst

Craig R. Smith, Chief  
Certificate of Need Section

cc: Acute and Home Care Licensure and Certification Section, DHHSR

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*Mike*

**STEPHEN M. SCHUSTER, JR., Esq.**

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December 27, 2012



**VIA HAND DELIVERY**

Mr. Craig Smith, Chief  
Certificate of Need Section  
Division of Health Service Regulation  
Department of Health and Human Services  
809 Ruggles Drive  
Raleigh, NC 27603

Re: Exemption Notice for Wake Forest Endoscopy Center -- Gastroenterology & Hepatology Consultants, P.A  
License No. AS0131; Facility ID 100398

Dear Mr. Smith:

The purpose of this letter is to provide notice to the North Carolina Department of Health and Human Services, Division of Health Service Regulation ("DHSR"), Certificate of Need Section (the "CON Section") that our client, Wake Endoscopy Center, LLC ("WEC"), a North Carolina limited liability company, is planning to acquire a 51% ownership interest in Wake Forest Endoscopy Center ("Center") through a two-part transaction described below. The Center is a licensed two (2) operating room single specialty (endoscopy) ambulatory surgical facility located in Wake Forest, Wake County and is currently owned and operated by Gastroenterology & Hepatology Consultants, P.A. ("GHC"). It is our understanding that the proposed transaction is exempt from certificate of need ("CON") review under N.C. Gen. Stat. § 131E-184(a)(8).

**I. THE TRANSACTION**

As of this date, GHC operates a two (2) operating room single specialty ambulatory surgical facility, providing endoscopy services, and such facility is an existing "health service facility," as that term is defined in N.C. Gen. Stat 131E-176(9b). Effective on or about December 28, 2012 (the "Effective Date"), GHC will contribute one hundred percent of the assets of the Center to a new entity, WF Endoscopy Center, LLC ("NewCo"), a North Carolina limited liability company solely owned at that time by WEC. In exchange, GHC will receive a forty-nine percent (49%) interest in NewCo and additional cash consideration. At the conclusion of this transaction, NewCo will be the sole owner of the Center, and

fifty-one percent (51%) of NewCo will be owned by WEC and forty-nine percent (49%) will be owned by GHC. NewCo will be the licensed operator of the Center after the transaction.

## II. EXEMPTION NOTICE

Under North Carolina law, a certificate of need ("CON") is required only prior to offering or developing a "new institutional health service." "New institutional health service" includes a variety of services and activities, including the establishment of an ambulatory surgical facility or a capital expenditure exceeding \$2 million to develop a health service facility. N.C. Gen. Stat. § 131E-176(16)(a) & (b). However, the North Carolina General Assembly has exempted certain types of proposals from CON review, pursuant to N.C. Gen. Stat. § 131E-184, including the acquisition of an existing health service facility, including equipment owned by the health service facility at the time of acquisition.

This transaction involves only the acquisition of an existing ambulatory surgical facility, which falls within the purview of the statutory definition of "health service facility." NewCo's acquisition of the Center from GSC does not entail the purchase of any major medical equipment or any *per se* reviewable equipment as defined in N.C. Gen. Stat. §§ 131E-176(14o) and (16)(f1). Likewise, the transaction does not include the offering of any *per se* reviewable services except those already licensed to be provided by the ASF. N.C. Gen. Stat. § 131E-176(16)(f). Thus, given that the transaction involves only the acquisition of an existing health service facility, it is exempt from CON review.

## III. CONCLUSION

Based on the foregoing information, we are hereby providing notice that the transaction described above is exempt from CON review, pursuant to N.C. Gen. Stat. § 131E-184(a)(8).

Gastroenterology & Hepatology Consultants, P.A., represented by Dean M. McCord, Esq., has authorized the submission of this letter.

If you require additional information, please contact me at the above number.

Sincerely,



Stephen M. Schuster, Jr., Esq.

Cc: Dean M. McCord, Esq., Wyrick Robbins Yates & Ponton LLP