

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY MITCHELL HOUSE)
HOLDINGS, LLC AND MITCHELL HOUSE) **DECLARATORY RULING**
ONE, LLC)
Project I.D. No. D-8159-08)**

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.

Mitchell House Holdings, LLC and Mitchell House One, LLC (collectively “Mitchell House” or the “Applicants”) have requested a declaratory ruling allowing for a change in location and change in the number of beds in its special care unit (“SCU”) for Project I.D. No. D-8159-08 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 Mitchell House 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. Susan K. Hackney of K&L Gates, LLP has requested this ruling on behalf of the Applicants and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Mitchell House filed a CON application to develop a new 80-bed adult care home with 24 SCU beds in Mitchell County, North Carolina. The application was approved by the CON Section, which issued a CON for the Project on December 28, 2008.

Mitchell House's application proposed a site for the project to be located at US 19E and Highland Avenue, Spruce Pine, Mitchell County, North Carolina (the "Original Site").

Due to the cost of grading and removing rocks from the original site, it is no longer a desirable location.

Mitchell House has located another site, located at 13582 Hwy 226 South, Spruce Pine, North Carolina (the "Alternative Site"), which was not available at the time the CON Application was filed.

While the Alternative Site is approximately \$30,000 more than the Original Site, Mitchell House believes that building the adult care home facility on the Alternative Site will not significantly increase the capital costs or operating costs of the project.

Regarding the 24 SCU beds, upon further investigation and re-evaluation of the community need and the number of SCU beds in Mitchell County, Mitchell House believes that the population would be served best by increasing the SCU component of the project from 24 to 48 beds, while keeping the total approved bed limit at 80.

This increase in SCU beds will not increase the capital cost of the project or require significant changes to the building plans.

ANALYSIS

The CON law would require a full review of Mitchell House's site relocation from the Original Site at US 19E and Highland Avenue to the Alternative Site at 13582 Hwy 226 South 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:

The Alternative Site at 13582 Hwy 226 South is 3.5 miles of the Original Site at US 19E and Highland Avenue and within Mitchell County.

The increase in the site cost does not significantly increase the capital costs or operating costs of the project or cause a risk of cost overrun because the cost increase is less than 1% of the approved capital cost.

Access to the medically underserved will be equivalent because the population to be served is the same due to the proximity of the two sites.

The CON law would require a full review of the Applicants' change in the number of SCU beds if the increase in SCU beds were to represent a material change in the scope of the project. N.C.G.S. § 131E-181(a). The proposed increase in SCU beds from 24 beds to 48 beds does not constitute a material change in the scope of Mitchell House's proposed project for the following reasons:

The increase in SCU beds does not change the total bed capacity of the facility.

The increase in SCU beds will not increase the capital cost of the project.

The building plans will not require significant changes to accommodate the increase in SCU beds.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw Mitchell House's CON if Mitchell House 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. Mitchell House 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 relocation from US 19E and Highland Avenue, Spruce Pine, Mitchell County, North Carolina to 13582 Hwy 226 South, Spruce Pine, North Carolina for Project I.D. No. D-8159-08 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 CON in violation of N.C.G.S. § 131E-189(b). In addition, the increase in Mitchell House's SCU from 24 beds to 48 beds will not constitute a material change in the 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 October, 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

K&L Gates, LLP
Susan K. Hackney, Esquire
430 Davis Drive, Suite 400
Morrisville, NC 27560

This the _____ day of November, 2010.

Jeff Horton
Chief Operating Officer