

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY SAME DAY SURGERY)
CENTER NEW HANOVER, LLC AND) DECLARATORY RULING
NEW HANOVER REGIONAL MEDICAL)
CENTER)**

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.

Same Day Surgery Center New Hanover, LLC (“SDSC New Hanover”) and New Hanover Regional Medical Center (“NHRMC”) (collectively, “Petitioners”) have requested a declaratory ruling seeking approval for NHRMC to develop the operating rooms approved in Project I.D. No. O-7671-06 inside NHRMC’s hospital facility at 2131 S. 17th Street in Wilmington, North Carolina (the “17th Street Campus”) instead of developing a separate, freestanding ambulatory surgical facility. 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. Denise Gunter of Nelson Mullins Riley & Scarborough LLP has requested this ruling on behalf of the Petitioners and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

On October 11, 2007, the CON Section awarded SDSC New Hanover a CON to develop an ambulatory surgery center with two operating rooms as set forth in Project I.D. No. O-7671-06 (the “Project”). The approved capital cost of the Project was \$7,320,646. Pursuant to a declaratory ruling dated July 2, 2012, NHRMC was permitted to acquire all of Novant Health’s membership interests in the SDSC New Hanover limited liability company.

After further study, NHRMC has determined that Autumn Hall, the original location planned for SDSC New Hanover, is no longer feasible.

NHRMC believes the best option is to seek to move the ORs inside the hospital. Both NHRMC campuses (17th Street and Cape Fear) maintain a combined average surgical volume of 28,146 surgeries per year. Due to higher surgical volumes at the 17th Street Campus, NHRMC seeks to develop the ORs at the 17th Street Campus rather than at Cape Fear.

Under the new plan the ORs would be under NHRMC’s license and NHRMC intends to operate them as part of the hospital and not as a separate entity.

The cost savings compared to NHRMC’s estimates for development at Autumn Hall is between \$1.1 million and \$2.1 million.

ANALYSIS

The CON law would require a full review of NHRMC’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:

The proposed new site will be within New Hanover County, approximately fifteen minutes from the original site identified in the CON. The proposed new site is in close proximity to key support services, and NHRMC will be developing its project in a manner that is consistent with the conditions and cost limitations on its certificate of need.

NHRMC will develop no more than two operating rooms pursuant to the CON, and the holder of the CON will not change.

The proposal as outlined above will not result in a change in the scope of services, or the number of operating rooms that were determined to be needed in the 2006 SMFP.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw NHRMC's CON if NHRMC 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. NHRMC 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 NHRMC may develop the project proposed in Project I.D. No. O-7671-06 at NHRMC's hospital facility located at 2131 S. 17th Street in Wilmington, North Carolina. The operating rooms in Project I.D. No. O-7671-06 may be used for both inpatient and outpatient surgical cases. Good cause exists to transfer the CON from SDSC New Hanover to NHRMC. These changes do not constitute a material change in the physical location or scope of the

project, do not violate N.C.G.S. § 131E-181, and do 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 June, 2013.

Drexdal Pratt, Director
Division of Health Service Regulation
N.C. Department of Health and Human Services

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Declaratory Ruling upon the nonagency party by certified mail, return receipt requested, by causing a copy of same to be placed in the United States Mail, first-class, postage pre-paid envelope addressed as follows:

CERTIFIED MAIL

Denise M. Gunter
380 Knollwood Street
Suite 530
Winston-Salem, North Carolina 27103

This the _____ day of June, 2013.

Cheryl Ouimet
Chief Operating Officer