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April 21, 2015

Larry Carbonneau, Program Manager  
CON Program  
Division of Licensing and Regulatory Services  
41 Anthony Avenue  
11 State House Station  
Augusta, Maine 04333

Re: Letter of Intent and Request for Determination of Non-Applicability/Re-location of Existing ASC Procedure Rooms

Dear Mr. Carbonneau:

We represent Portland Endoscopy Center, and its related physician practice group, Portland Gastroenterology (together the "Practice"). The Practice provides ambulatory surgical services at its endoscopy center located on the second floor of 1200 Congress Street, Portland, Maine. The Practice proposes to relocate to 161 Marginal Way, Portland, Maine. On behalf of the Practice, we submit this Letter of Intent and Request for Determination of Non-Applicability with respect to the proposed move. We believe the move is not subject to Certificate of Need and Review because (i) no new health services are being offered, and (ii) the costs associated with the move do not meet or exceed any of the potentially applicable financial thresholds.

This Letter of Intent fulfills the requirements of Chapter 6, Sections 1(A) and (B) of the CON Procedures Manual, and requests a determination of non-applicability consistent with Chapter 6, Section 2(4). We would be happy to provide additional information as necessary.

**Endoscopy Center**

The Practice owns and operates a state-of-the-art endoscopy center on the second floor of the building it leases at 1200 Congress, Street, Portland, Maine. The endoscopy center consists

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of 6 procedure rooms in which colonoscopies and upper endoscopies are performed, along with associated exam rooms and recovery beds. The endoscopy center is accredited by the Accreditation Association for Ambulatory Health Care. The endoscopy center pre-dates the 1998 CON law.

### **Description of the Move & Lease**

The Practice proposes to relocate to new leased space at 161 Marginal Way, Portland, Maine. The Marginal Way location is the former location of the Maine Department of Health and Human Services.

The new lease would encompass the third and fourth floors of 161 Marginal Way. Portland Gastroenterology's office practice would occupy the third floor, with all associated offices, exam rooms, and ancillary services. The endoscopy center would occupy the fourth floor, where the 6 procedure rooms and all associated exam rooms and recovery beds would be located. (The fourth floor would also include the infusion center and pathology lab, but these are owned by Portland Gastroenterology as part of the physician group practice.) Floor plans for the third and fourth floors are enclosed with this letter.

The terms of the new lease are not yet finalized, but it is expected the terms will approximate the following: 15 year lease, with options to renew for an additional 15 years; build out period of 7 – 8 months, with no base rent during some reasonable portion of the build out period; build out will be tenant's responsibility; landlord will not participate in the build out financing. The lease will not contain any provision to purchase the property. Base rent cost per square foot will be \$16.53/sq. ft.

The total cost of the build-out is projected to be approximately \$3,233,395 (which equals \$122.67/sq. ft. for fit-up). Of that total cost, only \$1,720,747 is allocated to the build-out of the fourth floor, which includes the endoscopy center. The remaining \$1,512,648 is allocated for build-out of the third floor, which will be used for physician group practice offices and exam rooms. The third floor does not include any space subject to CON review. Thus, we believe only the \$1,720,747 allocated to the fourth floor is relevant to the CON analysis (and not even all of that amount, since the infusion center and pathology lab are outside CON review). The Practice is not purchasing any new major medical equipment or new technology, but rather relocating medical equipment and technology from the Congress Street location to the Marginal Way location.

### **Analysis**

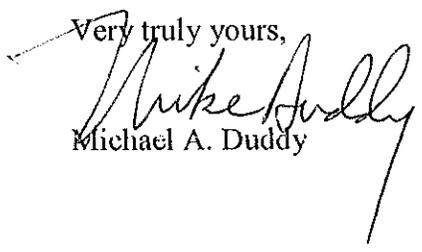
The Practice's move does not trigger CON approval. The total cost of the move, \$3,233,395 is well below the threshold for capital expenditures, and of that total only \$1,720,747 (or less) applies to the endoscopy center. No new health services will be offered as a result of the move. Rather, the existing endoscopy center currently being offered at Congress Street, will simply be relocated to Marginal Way. The endoscopy center to be built out at Marginal Way will not be a new health care facility, it will merely be a relocation of an existing health care facility into new leased space. Even if the endoscopy center were to be considered a new health care facility, since the build-out costs associated with the endoscopy center are only \$1,720,747

(or less), it falls well below the CON threshold for new health care facilities. For all of these reasons, we believe that the move does not require CON approval.

### Conclusion

Based on the information presented above, we believe that the move is not subject to CON review. In the event you agree the move does not require CON approval, we waive the technical assistance meeting. If you require any additional information, please do not hesitate to contact me. We look forward to receiving a non-applicability determination at your earliest opportunity.

Very truly yours,

  
Michael A. Duddy

MAD/kaj

Enclosures

cc: Melissa Gousse