



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

**Department of
Health and Social Services**
OFFICE OF RATE REVIEW

Certificate of Need Program
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May 24, 2018

Mr. Peter Diemer, Attorney at Law
Clayton & Diemer, LLC
500 L Street, Suite 200
Anchorage, AK 99501

RE: Request for Reconsideration of Decision issued February 20, 2018, dated March 21, 2018

Dear Mr. Diemer,

The Certificate of Need (CON) office has forwarded the request for reconsideration you submitted on behalf of Muldoon ASC, LLC (Muldoon), ASC North, LLC (North), and South Anchorage Surgery Center, LLC (SASC).

I have reviewed the department's decision that a CON was required, your request for reconsideration and additional documents submitted, along with the original request for determination and follow-up communication. After review, I have determined that it is appropriate to grant the request for reconsideration. I find that the proposed reorganization and relocation falls within the broad exception to the CON laws allowed by the legislature in enacting Alaska Statute 18.07.031(c).

It is my understanding that Muldoon, North and SASC are all currently licensed ambulatory surgery centers within Anchorage. North and SASC have one operating room each and Muldoon operates as a co-located but temporally separated facility from North. Muldoon, North and SASC desire to engage in a business reorganization and upon completion of the business reorganization desire to relocate and the new facility would be comprised of two operating rooms and would perform the same categories of health services as currently provided by all three entities. None of these ambulatory surgery centers currently holds a CON because they did not spend an amount over the threshold requiring a CON when they opened.

While it may be the case that the legislature did not intend to allow the merger of the three ambulatory surgery centers in this manner under Alaska Statute 18.07.031(c), I see nothing that would prohibit them from doing so. Furthermore, the CON program is interested in the amount of services overall within a service area. Therefore, if all three facilities already had obtained CON's, then it would be consistent to allow the merger. In conclusion, I am reversing the decision that a CON is required for this merger and relocation. The project as described in the Request for Reconsideration may proceed without first obtaining a CON.

This decision is a final agency decision pursuant to 7 AAC 07.033. If you wish to appeal this decision, you must file an appeal with the Superior Court within 30 days of the date of this letter as provided in Alaska Rule of Appellate Procedure 601.

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Respectfully,



Valerie Nurr' araaluk Davidson
Commissioner

Cc: Jon Sherwood, Deputy Commissioner
Donna Steward, Executive Director ORR
Alexandria Hicks, CON Program