

March 31, 2021

Ms. Fatimah Wilson, Team Leader  
Mr. Mike McKillip, Project Analyst

Healthcare Planning and Certificate of Need Section  
Division of Health Service Regulation  
2704 Mail Service Center  
Raleigh, NC 27699-2704

Dear Ms. Wilson and Mr. McKillip:

On behalf of my partners and our firm, and in accordance with N.C. GEN. STAT. § 131E-185(a1)(1), I hereby submit the following comments related to the Certificate of Need (“CON”) application filed by Duke University Health System, Inc. (“DUHS”) to develop a new hospital in Wake County known as Duke Green Level Hospital (Project ID #J-12029-21). My comments include *“facts relating to the representations made by the applicant in its application, and its ability to perform or fulfill the presentations made.”* See N.C. GEN. STAT. § 131E-185(a1)(1)(b). Of note, I am also a resident of Wake County, the service area for the proposed project.

As the Healthcare Planning and Certificate of Need Section (the “Agency”) is largely aware, Ascendient Healthcare Advisors (“Ascendient”) is a healthcare planning and strategy firm, with a 25-plus year history of serving providers and others in the healthcare industry. Part of those services include the preparation and submission of CON applications and related engagements. Given that history, I recognize that certain concepts and language are commonly used in CON applications. For example, applications filed by different applicants may use a methodology to project utilization with certain similar steps, such as the evaluation of historical growth, use rates, and market share, etc. Likewise, in describing the need for the project, applications filed by different applicants may refer to the same concepts of population growth, aging, the *State Medical Facilities Plan*, and the Hospital License Renewal Application database, etc. but apply those concepts to their own particular projects.

However, despite the common language used by applicants in CON applications, the use of specific language created by an organization for a specific application by another, unrelated organization for a completely different project with different circumstances is highly concerning, particularly when that language is used without the knowledge or permission of the party that created it.

Specifically, I note multiple instances in which language was used in the Duke Green Level Hospital application that is the creative work of Ascendient, developed for another application—the first page of which also bears a copyright notice—in another review for another service area for a particular set of circumstances. While I have had only limited time to review the DUHS application, the instances which I have noted to date are shown below, with the original Ascendient-created

work cited first, followed by the language from the Duke application that clearly appears to be copied from Ascendient's work.

Excerpt 1 (from Project ID # F-12009-21, submitted November 15, 2020):

Atrium Health Lake Norman will bridge the gap of CMHA hospital services in the Lake Norman service area by expanding geographic and timely access to the patients in the northern part of the county and will serve to provide a cost-effective and efficient point of care for patients that is closer to home and/or more conveniently located. (page 26)

Atrium Health Lake Norman will bridge the gap of Atrium Health hospital services in the Lake Norman service area and will serve to provide a cost-effective and efficient point of care for patients closer to home and/or more conveniently located. (page 47)

Atrium Health Lake Norman will bridge the gap of Atrium Health hospital services in the Lake Norman service area and will serve to provide a cost-effective and efficient point of care to patients closer to home and/or more conveniently located. (pages 60-61)

Atrium Health Lake Norman will bridge the gap of CMHA hospital services in the Lake Norman service area and will serve to provide a cost-effective and efficient point of care for patients closer to home and/or more conveniently located. (page 85)

Atrium Health Lake Norman will bridge the gap of CMHA hospital services in the Lake Norman service area by expanding geographic and timely access to the patients in the north/west part of the county and will serve to provide a cost-effective and efficient point of care to patients closer to home and/or more conveniently located. (page 86)

Language Copied from Excerpt 1 in DUHS application:

DGLH will similarly bridge the gap of DUHS acute care services in Wake County by expanding geographic and timely access to patients in the western part of the county and will serve to provide a cost-effective and efficient point of care for patients in a convenient and accessible location.

(page 44)

Excerpt 2 (from Project ID # F-12009-21, submitted November 15, 2020):

...when there is a sufficient number of patients who need and can support a new hospital in the service area....The proposed Atrium Health Lake Norman hospital will offer another, convenient choice to patients in the northwest area of the county. Further, while the status quo would not require the projected capital expenditure to develop the proposed hospital, it would also fail to expand geographic and timely access to the patients in the part of the county north/west of the interstate corridors. Therefore, maintaining the status quo was not considered a practical alternative. (page 84)

Language Copied from Excerpt 2 in DUHS application (page 75):

and enhanced geographic access. DUHS has identified a sufficient number of patients who need and can support a new hospital in western Wake County. DGLH will offer another, convenient choice to patients in the western area of the county. Further, while the status quo would not require the projected capital expenditure to develop the proposed hospital, it would also fail to expand geographic and timely access to community-based DUHS acute care services in Wake County. Therefore, maintaining the status quo was not considered a practical alternative.

Excerpt 3 (from Project ID # F-12009-21, submitted November 15, 2020):

...CMHA believes the proposed number and types of operating rooms, equipment, and services represent the minimum support necessary to complement the 30 acute care beds....CMHA believes the most effective approach, as well as the least costly, is to develop a conservatively-sized facility which can be expanded in the future as demand warrants. Additional services also can be added in the future, as the hospital and its medical staff mature and need to expand. (page 85)

Language Copied from Excerpt 3 in DUHS application:

DUHS believes the proposed number of beds and operating rooms, as well as the number and type of equipment, and services represent the minimum scope to support the proposed complement of 40 acute care beds. DUHS believes the most effective approach, as well as the least costly, is to develop a conservatively-sized facility that can be expanded in the future as patient demand warrants. Additional services also can be added in the future, as the hospital and its medical staff mature and need to expand.

(page 76)

Excerpt 4 (from Project ID # F-12009-21, submitted November 15, 2020):

...despite the proximity of Novant Health Huntersville Medical Center and Lake Norman Regional Medical Center to the residents of the proposed PSA and SSA, a significant number of patients [are choosing not to access (*i.e.*, choose not to go to or to use) either of these two hospitals, but rather] are choosing to travel to Atrium Health facilities to access hospital services provided by physicians who practice there. (page 97)

Language Copied from Excerpt 4 in DUHS application:

in Zone 2 of the DGLH catchment area. WakeMed North is located on the eastern border of Zone 3. Despite the proximity of these facilities to the residents in the catchment area, a significant number of patients are choosing to travel to DUHS facilities to access hospital services provided by physicians who practice there. The need for the proposed project is therefore based on DUHS's identified need to redistribute its existing CON-regulated assets to

Excerpt 5 (from Project ID # F-12009-21, submitted November 15, 2020):

The impetus for the proposed project is to improve accessibility by locating Atrium Health inpatient services closer and/or more conveniently located to patients from the Lake Norman service area that have historically chosen existing Atrium Health hospitals in Mecklenburg County. In addition to providing a more convenient site of care for patients, [Atrium Health Mecklenburg County hospitals are experiencing significant capacity constraints and] Atrium Health Lake Norman will enable CMHA to shift many of those patients that do not require tertiary/quaternary services from CMC, for example, freeing up resources to accommodate the patients whose acuity and service needs do require care at the more advanced facilities. (pages 52 and 53)

Language Copied from Excerpt 5 in DUHS application:

The objective for the proposed project is to improve access by locating DUHS inpatient services closer or more conveniently located to patients from the Green Level catchment area that have historically chosen DUHS hospitals for care. In addition to providing a more convenient site of care for patients, Duke Green Level Hospital will enable DUHS to shift a portion of those patients that do not require tertiary/quaternary services from other DUHS facilities, thereby freeing up resources to accommodate the patients whose acuity and service needs do require more highly specialized care. As discussed in detail in the following pages, DUHS has reasonably and conservatively projected the utilization for Duke Green Level Hospital based on a shift of appropriate patients that historically have accessed DUHS facilities.

(page 126)

Excerpt 6 (from Project ID # F-12009-21, submitted November 15, 2020:

CMHA expects that most members of the Atrium Health University City medical staff will have privileges and practice at Atrium Health Lake Norman. As a result, CMHA expects that the Atrium Health Lake Norman medical staff will have the same practice patterns as Atrium Health University City. For example, if the medical staff at Atrium Health University has clinical protocols for the use of observation beds or the ordering of imaging or lab studies, CMHA believes it is reasonable to assume that the same medical staff will perform similarly at Atrium Health Lake Norman. Given these factors, CMHA believes it is reasonable to utilize the historical experience of Atrium Health University City to project the utilization of Atrium Health Lake Norman for a number of services including observation bed services. (Form C Assumptions and Methodology, page 19)

Language Copied from Excerpt 6 in DUHS application:

DUHS expects that many members of the DRAH medical staff will also have privileges and practice at Duke Green Level Hospital, and that the Duke Green Level Hospital medical staff will have similar practice patterns as DRAH. For example, if the medical staff at DRAH has clinical protocols for the use of observation beds or the ordering of imaging or lab studies, DUHS believes it is reasonable to assume that the medical staff will perform similarly at Duke Green Level Hospital. Given these factors, DUHS believes it is reasonable to utilize the historical experience of DRAH to project the utilization of Duke Green Level Hospital for a number of services including observation bed services.

(page 141)

While it is not clear whether the DUHS application was prepared by DUHS itself or by a third party, it is apparent by a simple comparison of these excerpts that someone took language directly from Ascendient's work produced on behalf of another client, altered it only slightly to change a detail like the name of the applicant or relevant geography and inserted it into the DUHS application.

Aside from the obvious implications to Ascendient's creative work and violation of Ascendient's copyright, from a CON perspective, the use of language in DUHS' application that was originally created to describe a different service area, applicant, and situation raises serious concerns about DUHS' intentions regarding its project, particularly whether the language actually reflects what DUHS believes or proposes to do, since the language was not originally created by or for DUHS or the proposed project. While I recognize that DUHS may not amend its application, and therefore could only fully remedy this situation by withdrawing its application and refiling it at a later time with narrative it created, I request that the Agency consider the unapproved use of Ascendient's creative work in its review of the DUHS application, particularly as that relates to the veracity of DUHS' representations in its application.

Please let me know if I can provide any additional information for your review.

Best regards,

A handwritten signature in black ink that reads "Dan Carter". The signature is written in a cursive, flowing style.

Daniel Carter  
Vice President

CC: Dawn Carter, President, Ascendient Healthcare Advisors  
Brian Ackerman, Vice President, Ascendient Healthcare Advisors