



North Carolina Department of Health and Human Services
Division of Health Service Regulation

Pat McCrory
Governor

Aldona Z. Wos, M.D.
Ambassador (Ret.)
Secretary DHHS

May 2, 2013

Drexdal Pratt
Division Director

Gary S. Qualls
430 Davis Drive, Suite 400
Morrisville, NC 27560

No Review

Facility: Chapel Hill Surgical Center, Inc.
Project Description: University of North Carolina Hospitals at Chapel Hill to license the three-operating rooms at Chapel Hill Surgical Center, Inc. under the license UNC Hospitals' Hospital.
County: Orange
FID #: 923089

Mr. Qualls:

The Certificate of Need Section (CON Section) received your letter on April 15, 2013 regarding the above referenced proposal. Based on the CON law in effect on the date of this response to your request, the proposal described in your correspondence is not governed by, and therefore, does not currently require a certificate of need. However, please note that if the CON law is subsequently amended such that the above referenced proposal would require a certificate of need, this determination does not authorize you to proceed to develop the above referenced proposal when the new law becomes effective.

It should be noted that this determination is binding only for the facts represented by you. Consequently, if changes are made in the project or in the facts provided in your correspondence referenced above, a new determination as to whether a certificate of need is required would need to be made by the Certificate of Need Section. Changes in project include, but are not limited to: (1) increase in capital cost; (2) acquisition of medical equipment not included in the original cost estimate; (3) modifications in the design of the project; (4) Change in location; and (5) any increase in the number of square feet to be constructed.

In addition, you should contact the Licensure and Certification Section, DHSR to determine if they have any requirements for the proposed project. Please contact the CON Section if you have any questions. Also, in all future correspondence you should reference the Facility I.D. # (FID) if the facility is licensed. Thank you for the opportunity to be of assistance.



Certificate of Need Section

www.ncdhhs.gov

Telephone: 919-855-3873 • Fax: 919-733-8139

Location: Edgerton Building • 809 Ruggles Drive • Raleigh, NC 27603

Mailing Address: 2704 Mail Service Center • Raleigh, NC 27699-2704

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Sincerely,



F. Gene DePorter, Project Analyst
Certificate of Need Section



Craig R. Smith, Chief
Certificate of Need Section

cc: Licensure and Certification Section, DHSR
Medical Facilities Section, DHSR

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April 15, 2013

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VIA HAND DELIVERY

Mr. Craig Smith, Chief
Certificate of Need Section
Division of Health Service Regulation
Department of Health and Human Services
809 Ruggles Drive
Raleigh, NC 27603



Re: No Review Letter, Alternative Exemption Notice for Chapel Hill Surgical Center, Inc.
License No. AS0010; Facility ID 923089

Dear Mr. Smith:

The purpose of this letter is to provide notice to the North Carolina Department of Health and Human Services, Division of Health Service Regulation (“DHSR”), Certificate of Need Section (the “CON Section”) that our client, the University of North Carolina Hospitals at Chapel Hill (“UNC Hospitals”), a North Carolina governmental agency, is planning to absorb the three-operating room multispecialty ambulatory surgical facility known as Chapel Hill Surgical into UNC Hospitals’ hospital license.

We are requesting that the Agency confirm that this change in the licensure status of Chapel Hill Surgical is either not reviewable as a new institutional health service under the North Carolina Certificate of Need (“CON”) law or (in the alternative) exempt from review under the CON law’s exemption provisions in N.C. Gen. Stat. § 131E-184(a)(8).

I. THE TRANSACTION

By letter dated December 21, 2012, the Agency confirmed that UNC Hospitals’ proposed acquisition of the existing ambulatory surgical facility known as Chapel Hill Surgical did not require a CON. As evidenced in the prior correspondence regarding UNC’s acquisition of Chapel Hill Surgical, Chapel Hill Surgical is a multispecialty ambulatory surgical facility that has three-operating rooms.

On December 21, 2012, UNC Hospitals acquired the multispecialty ambulatory surgical facility, including the three-operating rooms. Also, on December 21, 2012, UNC Hospitals leased back to Chapel Hill Surgical substantially all of the assets of the ambulatory surgical facility. Accordingly, even after the acquisition of the ambulatory surgical facility by UNC

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Hospitals, Chapel Hill Surgical remained the licensed operator. Therefore, the ambulatory surgical facility and its three-operating rooms have remained separately licensed from UNC Hospitals' hospital license.

Effective June 1, 2013, UNC Hospitals proposes to absorb the facility and its three-operating rooms into the hospital license of UNC Hospitals and continue to operate the operating rooms as multispecialty operating rooms at their current location. As detailed below, UNC Hospitals believes that this proposal to change the licensure status from freestanding to hospital-based is either not reviewable because it is not a new institutional health service or, in the alternative, is exempt from review under N.C. Gen. Stat. § 131E-184(a)(8).

II. NO REVIEW REQUEST

The proposed change in the licensure status is not expressly addressed in N.C. Gen. Stat. § 131E-176(16). The absorption of a hospital's operating rooms located in an ambulatory surgical facility into the hospital's license is not included in the list of activities that constitute the development of a new institutional health service, requiring a CON. Pursuant to the maxim of statutory construction *expressio unius est exclusio alterius*, those transactions not included in N.C. Gen. Stat. § 131E-176(16) do not require a CON. See, e.g., In re Miller, 357 N.C. 316, 325, 584 S.E.2d 772, 780 (2003) (stating that "[u]nder the doctrine of *expressio unius est exclusio alterius*, when a statute lists the situations to which it applies, it implies the exclusion of situations not contained in the list"); see also Jackson v. A Woman's Choice, Inc., 130 N.C. App. 590, 594, 503 S.E.2d 422, 425 (1998) (internal citations omitted) ("[W]here a statute is explicit on its face, the courts have no authority to impose restrictions that the statute does not expressly contain.").

Moreover, as UNC Hospitals is the current owner of the ambulatory surgical facility, including the three-operating rooms, there is no change in ownership proposed by the change in licensure status. Furthermore, no capital expenditures are being incurred to accomplish this change in licensure status.

III. EXEMPTION NOTICE

For the reasons described above, we do not think that notice under N.C. Gen. Stat. § 131E-184(a)(8) is technically required. The change in licensure status does not involve an acquisition under the CON law or otherwise involve a transfer of any assets. However, to the extent that you disagree, please accept this letter as the required notice under N.C. Gen. Stat. § 131E-184(a)(8) for an exemption.

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The General Assembly has chosen to exempt certain otherwise reviewable events from CON review, including the acquisition of an existing health service facility and the equipment owned by the health service facility at the time of the acquisition.¹ Under N.C. Gen. Stat. § 131E-176(9b), an ambulatory surgical facility is a “health service facility.”

Assuming that the proposed change in licensure status is deemed by the Agency to be an acquisition under the CON law, upon the change in the license to the hospital license of UNC Hospitals, UNC Hospitals will be acquiring an existing “health service facility,” including all equipment owned at the time of acquisition. After the change in licensure, UNC Hospitals will keep the operating rooms in their current location and operate them as part of UNC’s acute care hospital (instead of as an ambulatory surgical facility).

Furthermore, should the Agency view the proposed change in licensure status as an acquisition, the change does not entail the acquisition of any major medical equipment or any *per se* reviewable equipment as defined in N.C. Gen. Stat. §§ 131E-176(14)(o) and (16)(f1), except in conjunction with the acquisition of the entire existing health service facility. Likewise, the proposal does not include the offering of any *per se* reviewable services except those already offered by the existing health service facility.²

Accordingly, if the Agency views the change in licensure status as an acquisition under the CON law, the proposal is exempt under N.C. Gen. Stat. § 131E-184(a)(8) because it is the acquisition of an existing health service facility.

IV. CONCLUSION

In light of the foregoing, your confirmation in writing is requested confirming that the proposed change in the licensure status of Chapel Hill Surgical and its three-operating rooms from a freestanding ambulatory surgical facility to the hospital license of UNC Hospitals does not require or trigger CON review, or alternatively, is exempt from CON review. UNC Hospitals currently is the owner of Chapel Hill Surgical and its three-operating rooms. This proposal is only to absorb the facility and its three-operating rooms into the hospital license of UNC Hospitals.

¹ See N.C. Gen. Stat. § 131E-184(a)(8).

² See N.C. Gen. Stat. § 131E-176(16)(f).

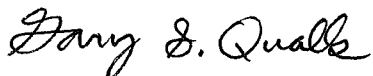
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Thank you for your assistance in regard to this matter. If you require additional information, please contact me at the above number as soon as possible.

Sincerely,

A handwritten signature in cursive script that reads "Gary S. Qualls".

Gary S. Qualls