



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

Drexdal Pratt
Division Director

September 15, 2014

Ms. Terrill Harris
300 N. Greene Street, Suite 1400
Greensboro, NC 27401

No Review

Facility or Business: Central Piedmont Surgery Center, LLC

Project Description: Change Central Piedmont Surgery Center, LLC from a separately licensed ambulatory surgical facility to a department under the Randolph Hospital license

County: Randolph
FID #: 090503

Dear Ms. Harris:

The Certificate of Need Section (CON Section) received your letters of August 22, 2014 and September 12, 2014 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. Further, please be advised that the existing operating rooms may not be licensed at a later date as an ambulatory surgical facility without first obtaining a new certificate of need.

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 a project can include, but are not limited to: (1) increase in the 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.



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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Ms. Harris
September 15, 2014
Page 2

In addition, you should contact the Acute and Home Care Licensure and Certification Section, Division of Health Service Regulation 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.

Sincerely,



Celia C. Inman, Project Analyst



Martha J. Frisone, Interim Chief
Certificate of Need Section

Attachments

cc: Acute and Home Care Licensure and Certification Section, DHSR
June Ferrell, Attorney General's Office

Received by
the CON Section
AUG 25 2014

300 N. Greene Street
Suite 1400
Greensboro, NC 27401

August 22, 2014

Martha Frisone, Interim Chief
Lisa Pittman, Assistant Chief
Certificate of Need Section
Division of Health Service Regulation
NC Department of Health and Human Services
2704 Mail Service Center
Raleigh, North Carolina 27699-2704

Re: Exemption Notice: Reorganization of Central Piedmont Surgery Center, LLC
FID 090503

Dear Martha and Lisa:

On behalf of our client, Randolph Hospital, Inc. ("Randolph"), we are providing prior written notice of Randolph's planned acquisition of the remaining ownership interests in Central Piedmont Surgery Center, LLC ("CPSC"), an existing, licensed ambulatory surgical facility.

CPSC obtained a certificate of need on January 23, 2010, to establish an ambulatory surgery facility with two operating rooms in Randolph County. CPSC was subsequently assigned Facility ID Number 090503 and License Number AS0133. CPSC is located at 724 Thomas Street¹ in Asheboro, Randolph County, North Carolina, and has been in continuous operation since its initial licensure.

As stated in its CON application, CPSC's initial members/owners were Randolph, individual physicians, and Nueterra, a management company. In January 2014, Randolph acquired the interest of Nueterra so that Randolph currently owns 83% of CPSC. Randolph now plans to acquire the remaining 17% from the physician members and to become the sole member of CPSC. Following the transaction, Randolph plans to merge CPSC into Randolph and operate the ambulatory surgical facility as a hospital outpatient department under Randolph's license. Randolph will lease the building from Asheboro Medical Properties, LLC, the current lessor.

As you know, N.C. Gen. Stat. § 131E-184(a)(8) provides that the Certificate of Need Section shall, upon receipt of prior written notice, exempt from review the acquisition of "an existing health service facility, including equipment owned by the health service facility at the time of acquisition." "Health service facility" is defined to include ambulatory surgical facilities. See N.C. Gen. Stat. § 131E-176(9b). Randolph has always held a majority ownership in CPSC

¹ The physical location listed on the certificate of need is 219 Foust Street, and a declaratory ruling was issued on August 24, 2010 approving the change in location to Thomas Street.

Martha Frisone, Interim Chief
Lisa Pittman, Assistant Chief
August 22, 2014
Page 2

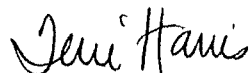
and the acquisition of the remaining ownership interests from individual physicians constitutes a reorganization, not a change of control or ownership. However, Randolph is providing this notice out of an abundance of caution.

Please let us know if you have any questions or need any other information. We expect to close this transaction on October 1, 2014. We look forward to receiving confirmation that this transaction is exempt from review.

With kindest regards, I am

Very truly yours,

SMITH MOORE LEATHERWOOD LLP



Terrill Johnson Harris

cc: Azzie Conley
Linda Johnson
Barbara Wolfe
Robert L. Wilson, Jr.



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

Drexdal Pratt
Division Director

September 3, 2014

Ms. Terrill Harris
300 N. Greene Street, Suite 1400
Greensboro, NC 27401

No Review

Facility or Business: Central Piedmont Surgery Center, LLC
Project Description: Acquire remaining 17% ownership of Central Piedmont Surgery Center, LLC
County: Randolph
FID #: 090503

Dear Ms. Harris:

The Certificate of Need Section (CON Section) received your letter of August 22, 2014 regarding the above referenced proposal. Based on the CON law **in effect on the date of this response to your request**, the ownership change described in your correspondence is not governed by, and therefore, does not currently require a certificate of need. Therefore, Randolph Hospital may proceed with acquiring the remaining 17% ownership of Central Piedmont Surgery Center, LLC without first obtaining a certificate of need. Note that pursuant to G.S. 131E-181(b): *"A recipient of a certificate of need, or any person who may subsequently acquire, in any manner whatsoever permitted by law, the service for which that certificate of need was issued, is required to materially comply with the representations made in its application for that 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.

Moreover, you need to contact the Acute and Home Care Licensure and Certification Section of the Division of Health Service Regulation to obtain instructions for changing ownership of the existing facility.

It should be noted that this determination is binding only for the proposal to acquire the remaining 17% ownership of Central Piedmont Surgery Center, LLC. Consequently, if other

Certificate of Need Section

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Ms. Harris
September 3, 2014
Page 2

changes are made in the Certificate of Need project developed as Central Piedmont Surgery Center, LLC, 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 a project can include, but are not limited to: (1) modifications in the design of the project; (2) change in location; and (3) material changes in proposed charges and reimbursement rates.

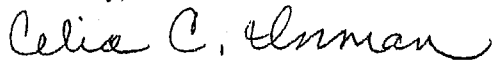
The Agency requires further review and additional information concerning Randolph Hospital's proposal to *"merge CPSC into Randolph and operate the ambulatory surgical facility as a hospital outpatient department under Randolph's license"*. N.C.G.S. §131E-178 provides that no person shall offer or develop "a new institutional health service without first obtaining a CON. N.C.G.S. §131E-176(16)u defines "new institutional health service" to include:

The construction, development, establishment, increase in the number, or relocation of an operating room or gastrointestinal endoscopy room in a licensed health service facility, other than the relocation of an operating room or gastrointestinal endoscopy room within the same building or on the same grounds or to grounds not separated by more than a public right-of-way adjacent to the grounds where the operating room or gastrointestinal endoscopy room is currently located. (emphasis added)

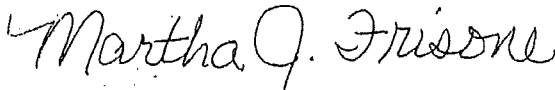
The proposal to *"merge CPSC into Randolph and operate the ambulatory surgical facility as a hospital outpatient department under Randolph's license"* would increase the number of operating rooms on Randolph Hospital's license.

It should be noted that this Agency's position is based solely on the facts represented by you and that any change in facts as represented would require further consideration by this Agency and a separate determination. If you have any questions concerning this matter, please feel free to contact this office. Also, in all future correspondence you should reference the Facility I.D. # (FID) if the facility is licensed.

Sincerely,



Celia C. Inman, Project Analyst



Martha J. Frisone, Interim Chief
Certificate of Need Section

cc: Acute and Home Care Licensure and Certification Section, DHSR
June Ferrell, Attorney General's Office

September 12, 2014

Martha Frisone, Interim Chief
Celia Inman, Project Analyst
Certificate of Need Section
Division of Health Service Regulation
NC Department of Health and Human Services
2704 Mail Service Center
Raleigh, North Carolina 27699-2704

Via E-mail and U.S. Mail

Re: Response to Request for Additional Information
Exemption Notice: Reorganization of Central Piedmont Surgery Center, LLC
FID 090503

Dear Martha and Celia:

This letter will respond to your letter dated September 3, 2014 requesting additional information regarding Randolph Hospital, Inc.'s plan to operate Central Piedmont Surgery Center as a hospital outpatient department. As stated in my August 22, 2014 letter, Randolph Hospital, Inc. ("Randolph") is acquiring the remaining ownership interests in Central Piedmont Surgery Center, LLC ("CPSC") and will be the sole owner of Central Piedmont Surgery Center as of October 1, 2014. We appreciate your very prompt response confirming that Randolph's acquisition of the remaining ownership interests in CPSC is not subject to CON review.

Additional Background

During the early to mid-2000s, Randolph had multiple conversations with surgeons on its medical staff about the need for an outpatient surgery center that would be more convenient and efficient for both patients and surgeons than what is possible to achieve in a hospital setting. During those discussions, some surgeons mentioned that they felt patients were leaving town not just for convenience and efficiencies, but due to certain out of pocket cost benefits of having surgeries performed in a freestanding ambulatory surgical center. Together, Randolph and the physicians decided to work together to seek the State's approval to make such a center a reality for the region they serve.

Both the hospital and the physicians wanted this to be a partnership. Hence, they pursued a joint venture model. Recognizing that neither the hospital nor the surgeons had experience in running a freestanding ambulatory surgery center, they chose to bring a management company into their partnership.

Martha Frisone, Interim Chief
Celia Inman, Project Analyst
September 12, 2014
Page 2

Since opening, patient satisfaction with the center, the convenience Randolph was seeking for its patients, and the increased surgical capacity and access it was seeking have been achieved. Randolph also has realized that because many of the competing surgical centers in its area are hospital outpatient departments, the out of pocket cost differential to the patient was not the barrier Randolph originally thought it was.

While CPSC has been an asset to Randolph's community and attractive to its patients and surgeons, the business model and partnership originally envisioned have not produced necessary results and are not sustainable. Since opening, CPSC has lost \$3.9 million. The management company separated from the joint venture in January of this year. The surgeon partners no longer have the desire to have the financial risk associated with being a business partner in the venture. They have stopped participating in the capital contributions necessary to keep the center open, leaving Randolph as the lone entity financing the operating losses and capital needs.

Converting CPSC to a hospital outpatient department will allow Randolph to achieve financial viability equal to the improved patient convenience, access, and satisfaction already have achieved. Having one surgical service with two locations (Randolph Hospital and CPSC) will create the synergies and efficiencies needed for financial recovery and for CPSC to remain open. Common staffing, equipment and inventory sharing, and coordinated scheduling will not only address patient needs to an even greater extent than Randolph already has, it is instrumental to making CPSC financially viable. Without it, closure of CPSC is a very real possibility, which would be a significant blow to Randolph's patients, the medical community, and the community, in general.

Change in licensure status is not a new institutional health service

The proposed change in licensure status from freestanding to hospital outpatient department is not a new institutional health service and therefore is not subject to certificate of need review for the following reasons. First, the absorption of operating rooms located in an ambulatory surgical facility owned by a hospital into the hospital's license is not included in the list of activities that constitute the development of a new institutional health service. 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."). In particular, N.C. Gen. Stat. § 131E-176(16) does not cover this

Martha Frisone, Interim Chief
Celia Inman, Project Analyst
September 12, 2014
Page 3

proposed change. The ambulatory surgical operating rooms will remain in the current location and there will be no relocation of operating rooms. There will be no increase in the number of operating rooms in the ambulatory surgical facility location or in the Hospital.

Second, because Randolph will be the sole owner of the ambulatory surgical facility, including the two operating rooms, as of October 1, 2014, there is no change in ownership proposed by the change in licensure status. Third, no capital expenditures are being incurred to accomplish this change in licensure status.

The CON Section has approved similar no review requests over time, including a nearly identical request by UNC Hospitals following its acquisition of Chapel Hill Surgical Center. The CON Section issued a no review determination to UNC Hospitals dated May 2, 2013, in which it confirmed that changing the licensure status of the ambulatory surgical facility, including its operating rooms, following UNC Hospitals' acquisition was not subject to CON review. Copies of UNC Hospitals' request and the CON Section's no review determination are attached.

As an additional example, on December 20 2006, the CON Section issued no review determinations to Wesley Long Hospital permitting it to acquire the physician ownership interests in Wesley Long Surgery Center, an ambulatory surgical facility on its campus in Greensboro, to absorb the ambulatory surgical facility's operations into hospital operations, and to transfer the operating rooms to the hospital license. Copies of this correspondence are attached. Also on December 20, 2006, the CON Section issued no review determinations to Moses Cone Memorial Hospital in response to a request identical to that of Wesley Long Hospital permitting Moses Cone Memorial Hospital to acquire the physician ownership interests in Moses Cone Surgery Center, an ambulatory surgical facility on its campus in Greensboro, to absorb the ambulatory surgical facility's operations into hospital operations, and to transfer the operating rooms to the hospital license.

Finally, declaratory rulings have been issued permitting hospitals to develop operating rooms within the hospital even though CONs were issued for freestanding ambulatory surgical facilities. In each case, the operation of the facility as freestanding was no longer feasible based on changes in reimbursement and lack of interested physicians See, e.g., Declaratory Ruling issued to Wayne Memorial Hospital, Inc. and Wayne Ambulatory Surgery Center, November 2011 (copy attached).

Exempt from Review

Assuming, for the sake of argument, that the proposed change in licensure status is deemed by the CON Section to be an acquisition under the CON law, such an acquisition is exempt from CON review. The General Assembly has chosen to exempt certain otherwise

Martha Frisone, Interim Chief
Celia Inman, Project Analyst
September 12, 2014
Page 4

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. N.C. Gen. Stat. § 131E-184(a)(8). Under N.C. Gen. Stat. § 131E-176(9b), an ambulatory surgical facility is a "health service facility."

In this case, if the CON Section views the proposed change in licensure status as an acquisition, Randolph will be acquiring an existing "health service facility" upon the change in the license to the hospital license. After the change in licensure, Randolph will keep the operating rooms in their current location and operate them as part of Randolph's acute care hospital. Accordingly, even if the CON Section 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.

We would like to schedule a meeting with you as soon as possible to discuss Randolph's no review request regarding the proposed change in licensure status for the ambulatory surgical facility. We appreciate your prompt attention to this request as Randolph would very much like to maintain its proposed timetable to close the acquisition of the physicians' ownership interests on October 1, 2014 and change the licensure status of the ambulatory surgical facility immediately following the closing. Please let us know if you have any other questions or need additional information.

With kindest regards, I am

Very truly yours,

SMITH MOORE LEATHERWOOD LLP



Terrill Johnson Harris

cc: Azzie Conley
Linda Johnson
June Ferrell
Barbara Wolfe
Robert L. Wilson, Jr.

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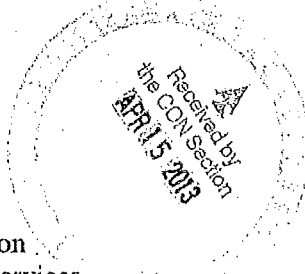
K&L Gates LLP
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Morrisville, NC 27560
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April 15, 2013

Gary S. Qualls
D 919.466.1182
F 919.516.2072
gary.qualls@klgates.com

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

Mr. Craig Smith, Chief
April 15, 2013
Page 2

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.

Mr. Craig Smith, Chief
April 15, 2013
Page 3

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).

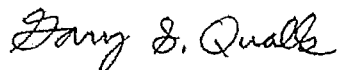
² See N.C. Gen. Stat. § 131E-176(16)(f).

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Mr. Craig Smith, Chief
April 15, 2013
Page 4

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,



Gary S. Qualls



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

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

Drexdal Pratt
Division Director

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.



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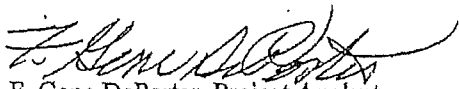
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Mailing Address: 2704 Mail Service Center • Raleigh, NC 27699-2704

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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

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

IN RE: REQUEST FOR DECLARATORY)
RULING BY WAYNE MEMORIAL)
HOSPITAL, INC. and WAYNE)
AMBULATORY SURGERY CENTER, LLC)
Project I.D. No. P-7554-06)

DECLARATORY RULING

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.

Wayne Memorial Hospital, Inc. (Wayne Hospital) and Wayne Ambulatory Surgery Center, LLC (Wayne ASC) have requested a declaratory ruling that would allow Wayne Memorial to retain two existing operating rooms (ORs) and develop one additional approved OR at the hospital, thereby dissolving Wayne ASC which was originally proposed to house the three ORs pursuant to the certificate of need issued for Project I.D. No. P-7723-06. Petitioners seek a ruling that this proposal is in material compliance with the certificate of need (CON) laws and related rules of the Department and would not constitute a material change of scope from the original project for purposes of N.C.G.S. § 131E-181 and N.C.G.S. § 131E-189(b). 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. Terrill Johnson Harris of Smith Moore Leatherwood LLP has requested this ruling on

behalf of Wayne Memorial and Wayne ASC and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

On March 30, 2007, Wayne Memorial and Wayne ASC were approved in a certificate of need review to establish a new multi-specialty ambulatory surgical facility with three ORs. Two operating rooms were to be relocated from Wayne Memorial and one operating room was to be developed in a new building on the campus of Wayne Memorial, located at 2700 Wayne Memorial Drive, Goldsboro, North Carolina.

When the project was originally proposed, Wayne Memorial anticipated that the formation of Wayne ASC would provide the opportunity for physician ownership in the company. Changes in reimbursement rates after the CON was issued have changed the landscape with respect to operating a free-standing ambulatory surgical facility and the physicians' desire for ownership. Following the issuance of the CON, the Centers for Medicare and Medicaid Services (CMS) lowered Medicare reimbursement rates for most of the procedures performed in an ASC setting. According to Petitioners, the change in reimbursement resulted in eliminating the feasibility of physician ownership in Wayne ASC.

As represented by Petitioners, the proposal would not materially change the holder, location, or scope of the original project. Wayne Memorial would remain the holder of the CON while Wayne ASC would cease to exist. The operating rooms would remain at the originally proposed location and address, though within the hospital rather than a separate new building at the same location. In addition, the total capital expenditure for the revised project is expected to be less than the capital expenditure originally approved by the Department when the CON was issued.

ANALYSIS

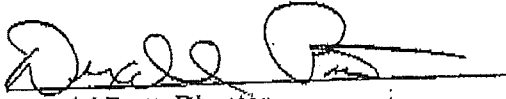
N.C.G.S. § 131E-181(a) provides that "[a] certificate of need shall be valid only for the defined scope, physical location, and person named in the application." The recipient of the CON must also materially comply with the representations made in the CON application. N.C.G.S. § 131E-181(b). If Petitioners' proposal were to represent a material change in the scope of the project, the CON law would require a full review of OSC's site relocation. N.C.G.S. § 131E-181(a). For the reasons discussed below, the proposal does not constitute a material change in scope of the project.

When Wayne Memorial and Wayne ASC applied for the CON in 2006, ASC reimbursement rates were more favorable. Changes in Medicare regulations required Wayne Memorial to consider alternatives to the original project in order for the project to be financially feasible. The proposed revision to the project does not affect the type, availability or utilization of the surgical services of Wayne Memorial in the county or in its service area, nor does the proposed revision increase the cost of those services. Additionally, as described above, the proposal would not materially change the holder, location, or scope of the original project.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that Wayne Memorial's retention of two existing ORs and the development of one additional OR within the hospital will not constitute a material change in the scope of the project, will not violate N.C.G.S. § 131E-181, and will not constitute a failure to satisfy a condition of the certificate of need in violation of N.C.G.S. § 131E-189(b).

This the 29th day of November, 2011.



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

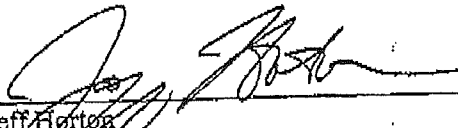
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Declaratory Ruling has been served upon the nonagency party by certified mail, return receipt requested, by depositing the copy in an official depository of the United States Postal Service in a first-class, postage pre-paid envelope addressed as follows:

CERTIFIED MAIL

Terrill Johnson Harris
Smith Moore Leatherwood, LLP
Post Office Box 21927
Greensboro, NC 27420

This the 29th day of November, 2011.



Jeff Horton
Chief Operating Officer

SMITH MOORE LLP

ATTORNEYS AT LAW

November 22, 2006

Revised December 19, 2006

Ms. Lee B. Hoffman, Chief
Certificate of Need Section
Division of Facility Services
North Carolina Department of Health
and Human Services
701 Barbour Drive
Raleigh, North Carolina 27603-2008

VIA HAND DELIVERY

Re: The Wesley Long Surgery Center

Dear Lee:

The entities involved in the Wesley Long Surgery Center would like to undertake a corporate reorganization of the Wesley Long Surgery Center. We represent each of the entities involved in the Wesley Long Surgery Center concerning this letter to you.

Effective October 1, 2002, the Certificate of Need Section issued a certificate of need for Project ID No. G-6549-02 to the Moses Cone Health System (lessor) and North Elam Surgery Center, LLC (lessee). The CON application identified The Moses H. Cone Memorial Hospital (parent) and The Moses H. Cone Memorial Hospital Operating Corporation d/b/a Moses Cone Health System as lessor and The Day Surgery Center of Greensboro, LLC d/b/a North Elam Surgery Center as lessee. The d/b/a name was later changed to The Wesley Long Surgery Center.

The Moses H. Cone Memorial Hospital is the owner of the bricks and mortar. The Moses H. Cone Memorial Hospital Operating Corporation is the lessee of the facility and the lessee of the bricks and mortar. North Elam Surgery Center, LLC is the owner of the equipment, the sublessee and the current licensed operator.

North Elam Surgery Center, LLC is a joint venture comprised of The Moses H. Cone Memorial Hospital Operating Corporation and multiple physicians. The Moses H. Cone Memorial Hospital Operating Corporation has always owned 51% or more of the shares of North Elam Surgery Center, LLC.

The Wesley Long Surgery Center is located on the campus of Wesley Long Community Hospital. There is no public right of way between the Hospital and the Wesley Long Surgery Center. The Wesley Long Surgery Center is licensed for five operating rooms.

Because of changing business interests, The Moses H. Cone Memorial Hospital Operating Corporation and the physicians would like to restructure North Elam Surgery Center, LLC joint venture. North Elam Surgery Center, LLC would continue to be the owner of all equipment located at the Wesley Long Surgery Center. North Elam Surgery Center, LLC would continue to lease all the equipment to the Wesley Long Surgery Center. The physicians would increase their ownership of the equipment and the reorganized North Elam Surgery Center, LLC, and The Moses H. Cone Memorial Hospital Operating Corporation would decrease its ownership interest in the equipment and the reorganized North Elam Surgery Center, LLC.

Rather than the joint venture operate the facility, The Moses H. Cone Memorial Hospital Operating Corporation would operate the facility as the lessee of the facility and eliminate a sublease to North Elam Surgery Center, LLC. The Moses H. Cone Memorial Hospital Operating Corporation would acquire a 100% ownership interest in the facility operation, and the physicians would no longer have an ownership interest in the operation. Because The Moses H. Cone Memorial Hospital Operating Corporation would become a 100% owner of the operation and because of reimbursement regulations and requirements, the parties would like to redesignate the facility to be hospital based rather than freestanding and to include the five operating rooms on the license issued to The Moses H. Cone Memorial Hospital Operating Corporation, rather than on a separate license.

There would be no change in the ownership of the bricks and mortar. There would be no change in the number of operating rooms. The operating rooms would remain in the same physical location. The same entities would be involved in the facility.

The Certificate of Need Section has determined on numerous occasions that a change in the licensed operator of an existing health service facility is not subject to certificate of need review. For example, we have enclosed copies of the following no review letters where the Certificate of Need Section made this same determination:

1. No Review/Willowbrook Health Care Center/Change of Lessee from Transitional Health Partners d/b/a Transitional Health Services to FCSCD Properties II, LLC, which will in turn sublease operation of the facility to Willowbrook Health Care, LLC/Yadkin County, FID# 923563, June 4, 2004
2. No Review/Davie County Hospital/Change Lessee from Davie County Healthcare Corporation, a subsidiary of Novant Health, Inc., to Davie County Emergency Health Corporation/Davie County, FID# 943133

Ms. Lee B. Hoffman, Chief
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3. No Review/Change of Lessee of Pinewood Forest Assisted Living Facility from Pinewood Associates to CareAmerica of Pink Hill, Inc./Lenoir County, FID#: 920943, June 12, 2002
4. No Review/Associated Medical Affairs, Inc./Change Lessee of North Carolina Specialty Hospital from North Carolina Eye and Ear, PA to North Carolina Specialty Hospital, LLC/Durham County, FID# 943374, February 9, 1999

The Certificate of Need Section has also decided on numerous occasions that the acquisition of an existing health service facility is not subject to certificate of need review pursuant to N.C. Gen. Stat. § 131B-184(a)(8). Furthermore, the CON Section has also determined in multiple instances that reorganization of corporate entities that own or operate existing health service facilities is not subject to certificate of need review, such as when Beverly Enterprises reorganized its North Carolina long term care facilities.

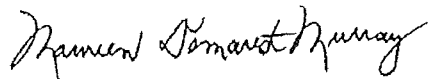
Pursuant to N.C. Gen. Stat. § 131B-184(a)(8) and 10A N.C.A.C. 14C.0201, The Moses H. Cone Memorial Hospital, The Moses H. Cone Memorial Hospital Operating Corporation and North Elam Surgery Center, LLC give prior written notice that this proposed reorganization of the Wesley Long Surgery Center is exempt from certificate of need review and does not require a certificate of need. The parties would appreciate receiving written confirmation from you that the proposed reorganization is not subject to certificate of need review and does not require a certificate of need.

The parties would like to consummate the reorganization by December 31, 2006 and, therefore, would appreciate your response by December 22, 2006. If you have any questions or need any further information, please let us know. We appreciate your consideration.

With kindest personal regards, I am

Very truly yours,

SMITH MOORE LLP



Maureen Demarest Murray

MDM/tmp

cc: Mr. Jim Roskelly



North Carolina Department of Health and Human Services
 Division of Facility Services
 Certificate of Need Section
 2704 Mail Service Center ■ Raleigh, North Carolina 27699-2704

Michael F. Hasley, Governor
 Carmen Hooker Odom, Secretary

<http://facility-services.state.nc.us>

Lee Hoffman, Section Chief
 Phone: 919-855-3873
 Fax: 919-733-8139

December 20, 2006

Maurcen Demarest Murray
 Smith Moore LLP
 P.O. Box 21927
 Greensboro, NC 27401

RE: Exempt from Review/ Project I.D. #G-6549-02/ Acquisition of the existing ambulatory surgical facility, Wesley Long Surgery Center, by The Moses H. Cone Memorial Hospital Operating Corporation/ Guilford County

FID #: 020171

Dear Ms. Murray:

In response to your letter of November 22, 2006, the above referenced proposal is exempt from certificate of need review in accordance with N.C.G.S 131E-184(a)(8). Therefore, the corporation may proceed to acquire the ambulatory surgical facility without first obtaining a certificate of need. However, you need to contact the Acute and Home Care Licensure and Certification Section of the Division of Facility Services to obtain instructions for changing ownership of the existing facility. Note that pursuant to N.C.G.S. §131E-181(b): *"A recipient of a certificate of need, or any person who may subsequently acquire, in any manner whatsoever permitted by law, the service for which that certificate of need was issued, is required to materially comply with the representations made in its application for that certificate of need."*

It should be noted that this Agency's position is based solely on the facts represented by you and that any change in facts as represented would require further consideration by this Agency and a separate determination. If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,

Martha J. Frisone, Project Analyst

Lee B. Hoffman, Chief
 Certificate of Need Section

cc: Acute and Home Care Licensure and Certification Section, DFS





North Carolina Department of Health and Human Services
 Division of Facility Services
 Certificate of Need Section
 2704 Mail Service Center ■ Raleigh, North Carolina 27699-2704

Michael F. Easley, Governor
 Carmen Hooker Odom, Secretary

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Lee Hoffman, Section Chief
 Phone: 919-855-3873
 Fax: 919-733-8139

December 20, 2006

Maureen Demarest Murray
 Smith Moore LLP
 P.O. Box 21927
 Greensboro, NC 27401

RE: No Review/ Project I.D. #G-6549-02/ Change Wesley Long Surgery Center from a separately licensed ambulatory surgical facility to a department under The Moses H. Cone Memorial Hospital Operating Corporation's hospital license as a result of the exempt acquisition of the facility/ Guilford County

FID #: 020171

Dear Ms. Murray:

The Certificate of Need Section (CON Section) received your letter of November 22, 2006 regarding the above referenced proposal. The proposal described in your correspondence is not governed by, and therefore, does not currently require a certificate of need. However, 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. Further, please be advised that the five existing operating rooms may not be licensed at a later date as an ambulatory surgical facility without first obtaining a new certificate of need.

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 a project include, but are not limited to: (1) increases in the 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 Acute and Home Care Licensure and Certification Section to determine if they have any requirements for development of 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.

Sincerely,

Martha J. Frisone
 Martha J. Frisone
 Project Analyst

Lee E. Hoffman
 Lee E. Hoffman, Chief
 Certificate of Need Section

cc: Medical Facilities Planning Section, DFS
 Acute and Home Care Licensure and Certification Section, DFS

