



NC DEPARTMENT OF HEALTH AND HUMAN SERVICES

ROY COOPER • Governor
MANDY COHEN, MD, MPH • Secretary
MARK PAYNE • Director, Division of Health Service Regulation

January 14, 2019

Anthony Brett
One West Fourth Street
Winston-Salem, NC 27101

Exempt from Review-Acquisition of an existing mobile DX program

Record #: 2831
Business Name: National Mobile X-Ray, LLC
Business #: 2987
Project Description: Acquisition of Carol Lloyd, Inc.
County: Buncombe

Dear Mr. Brett:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency), determined that based on your letter of 12/27/2018, the above referenced proposal is exempt from certificate of need review in accordance with N.C. Gen. Stat. §131E-184(a)(8). Therefore, you may proceed to offer, develop or establish the above referenced project without a certificate of need.

However, you need to contact the Agency's Radiation Protection Section to determine if they have any requirements for development of the proposed project.

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 Agency. 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.

If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,

Signature of Ena Lightbourne
Ena Lightbourne
Project Analyst

Signature of Martha J. Frisone
Martha J. Frisone
Chief, Healthcare Planning and Certificate of Need Section

cc: Radiation Protection Section, DHSR
Melinda Boyette, Administrative Assistant, Healthcare Planning, DHSR

NC DEPARTMENT OF HEALTH AND HUMAN SERVICES • DIVISION OF HEALTH SERVICE REGULATION

HEALTHCARE PLANNING AND CERTIFICATE OF NEED SECTION

LOCATION: 809 Ruggles Drive, Edgerton Building, Raleigh, NC 27603
MAILING ADDRESS: 809 Ruggles Drive, 2704 Mail Service Center, Raleigh, NC 27699-2704
www.ncdhhs.gov/dhsr • TEL: 919-855-3873

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## Lightbourne, Ena

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**From:** Brett, Anthony <Anthony.Brett@wbd-us.com>  
**Sent:** Thursday, December 27, 2018 9:26 AM  
**To:** Hale, Gloria  
**Cc:** Lightbourne, Ena  
**Subject:** RE: [External] The CON question that I discussed with you last week.

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The equipment would continue to service the mobile sites on the routes of the current owners initially, and it may add additional mobile sites in the future. It would not be located at a fixed site in any event. The current and future business model is to go to nursing homes, physician clinics, etc.—facilities that need access to imaging equipment that they do not have.

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**From:** Hale, Gloria [mailto:gloria.hale@dhhs.nc.gov]  
**Sent:** Thursday, December 27, 2018 8:41 AM  
**To:** Brett, Anthony; Lightbourne, Ena  
**Subject:** RE: [External] The CON question that I discussed with you last week.

Good morning, Mr. Brett. What is the plan for the mobile equipment? Will it continue to be operated at the sites they are currently operated at? Or, will the equipment be combined and operated at a fixed site?

**Gloria C. Hale, MPH**  
Team Leader, Certificate of Need  
Division of Health Service Regulation, Healthcare Planning and Certificate of Need Section  
NC Department of Health and Human Services

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**From:** Brett, Anthony [mailto:Anthony.Brett@wbd-us.com]  
**Sent:** Wednesday, December 26, 2018 3:43 PM  
**To:** Lightbourne, Ena <ena.lightbourne@dhhs.nc.gov>  
**Cc:** Hale, Gloria <gloria.hale@dhhs.nc.gov>  
**Subject:** [External] The CON question that I discussed with you last week.

**CAUTION: External email. Do not click links or open attachments unless verified. Send all suspicious email as an attachment to Report Spam.**

Since you mentioned in our call that you had discussed this matter with your supervisor, I have copied Ms. Hale on this email. A response from either of you at your earliest convenience would be greatly appreciated (recognizing we are in the midst of the holiday season). If there are questions or if you need anything further from me, please let me know when would be convenient time for one or both of you to discuss this by telephone.

Our firm's client is National Mobile X-Ray LLC ("National"). National will acquire essentially all of the described operating assets of two corporations which are currently in Chapter 11 bankruptcy proceedings in the Raleigh Division of the U. S. Bankruptcy Court for the Eastern District of North Carolina. The two sellers are MMDS of North Carolina, Inc. ("MMDS"), which is Case No. 17-01749-5-DMW, and Carol Lloyd, Inc. ("Carol Lloyd"), which is Case No. 18-04943-5-DMW. As both sellers maintain their registered offices in Buncombe County, I contacted you as the Analyst for HSA I.

Both sellers operate mobile imaging equipment in North Carolina consisting of a truck and low-tech imaging equipment within the truck (e.g., x-ray, ultrasound). No expensive equipment (e.g., CT) (i.e., no major medical equipment as defined by N.C. Gen. Stat. 131E-176(14o) is involved) or imaging equipment specifically regulated by N.C. Gen. Stat. 131E-176(16)f1 (e.g., MRI, PET) will be acquired. Each truck and the equipment within it operates as a fully-functional unit which does not require other resources in order to provide the mobile imaging services. A certificate of need was not obtained (and was not required) for the sellers units (trucks and imaging equipment) when they were acquired by the sellers. However, many units will be acquired from each seller.

The fair market value of each unit is well below the \$500,000 threshold of a diagnostic center as defined in N.C. Gen. Stat. 131E-176(7a). However, due to the fact that many units will be acquired from each seller, it should be assumed that the total fair market value of all units acquired by National from each seller in the respective transactions with MMDS and Carol Lloyd shall each exceed \$2,000,000 (N.C. Gen. Stat. 131E-176(16)b).

It is our position that the transactions should be viewed as the acquisition of the individual units (however many may be acquired from a seller) such that the transactions are not subject to review based upon the facts stated above. Please confirm that the CON Section's position is the same as ours, as we discussed by phone (subject, of course, to the accuracy of the facts as presented).

In the alternative, if the CON Section does not determine that the transactions as described are not subject to review, please accept this communication in writing as notification that the transactions are exempt from review pursuant to N.C. Gen. Stat. 131E-184(a)(8). Please provide written confirmation of your receipt of this notice; a formal letter of exemption can be provided as your schedule permits.

**Anthony Brett**

Partner

Womble Bond Dickinson (US) LLP

d: 336-721-3620

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