

NC DEPARTMENT OF  
**HEALTH AND  
HUMAN SERVICES**

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

VIA EMAIL ONLY

January 27, 2021

Denise Gunter  
[Denise.gunter@nelsonmullins.com](mailto:Denise.gunter@nelsonmullins.com)

**No Review**

**Record #:** 3471  
**Date of Request:** January 4, 2021  
**Facility Name:** See Attachment A  
**Business Name:** Novant Health New Hanover Regional Medical Center, LLC  
**Business #:** 3330  
**Project Description:** Acquire the assets of affiliates and subsidiaries of New Hanover Regional Medical Center  
**County:** New Hanover

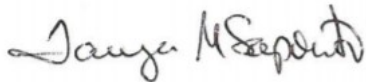
Dear Ms. Gunter:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency) received your correspondence regarding the project described above. Based on the CON law **in effect on the date of this response to your request**, the project as described is not governed by, and therefore, does not currently require a certificate of need. 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.

This determination is binding only for the facts represented in your correspondence. If changes are made in the project or in the facts provided in the correspondence referenced above, a new determination as to whether a certificate of need is required would need to be made by this office.

Please do not hesitate to contact this office if you have any questions. My direct line, if you have questions, is 919-855-3886.

Sincerely,



Tanya M. Saporito  
Project Analyst



Lisa Pittman  
Assistant Chief, Certificate of Need

cc: Construction Section, 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  
<https://info.ncdhhs.gov/dhsr/> • TEL: 919-855-3873

AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER

## ATTACHMENT A

### NHRMC Affiliates to be Acquired by Novant Health NHRMC, LLC

<b>FACILITY NAME</b>	<b>ADDRESS</b>	<b>DESCRIPTION</b>
Carolina Healthcare Associates, Inc.	2131 S. 17th Street, Wilmington, NC 28401	Wholly-owned subsidiary of NHRMC to be transferred to Novant Health NHRMC, LLC
Physician Quality Partners, LLC	2131 S. 17th Street, Wilmington, NC 28401	Wholly-owned subsidiary of NHRMC to be transferred to Novant Health NHRMC, LLC
New Hanover Health, LLC	2131 S. 17th Street, Wilmington, NC 28401	Wholly-owned subsidiary of NHRMC to be transferred to Novant Health NHRMC, LLC
Diagnostic Imaging Partners, LLC	2131 S. 17th Street, Wilmington, NC 28401	NHRMC owns 50% membership interest, to be transferred to Novant Health NRMC, LLC

Denise Gunter  
(336) 774-3322  
denise.gunter@nelsonmullins.com

The Knollwood, 380 Knollwood Street Suite 530  
Winston-Salem, North Carolina 27103  
T 336.774.3300 F 336.774.3299  
nelsonmullins.com

January 4, 2021

**VIA EMAIL**

Martha J. Frisone, Chief  
Healthcare Planning and Certificate of Need Section  
North Carolina Department of Health and Human Services  
Division of Health Service Regulation  
809 Ruggles Drive  
Raleigh, North Carolina 27603

Re: Notice of Exemption Acquisition and Notice of Good Cause Transfer  
New Hanover Regional Medical Center, its subsidiaries and affiliates  
New Hanover County  
Health Service Area V

Dear Ms. Frisone:

Pursuant to N.C. Gen. Stat. § 131E-184(a)(8), I am writing on behalf of Novant Health New Hanover Regional Medical Center, LLC (“Buyer”) to provide prior written notice of Buyer’s intention to acquire substantially all of the assets of New Hanover Regional Medical Center (“NHRMC”) (hereafter, the “Transaction”).<sup>1</sup> NHRMC is a public, nonprofit corporation providing health care services to residents of southeastern North Carolina through a health care system comprised of hospitals, outpatient clinics, physician offices and numerous other health care related entities. NHRMC is a component unit of New Hanover County, North Carolina (the “County”). The sellers in the Transaction are the County and NHRMC (collectively, the “Sellers”).

NHRMC’s primary location is 2131 S. 17<sup>th</sup> Street, Wilmington, NC 28401. **Exhibit A** to this letter contains a complete list of all NHRMC health service facilities, as that term is defined in the CON Law at N.C. Gen. Stat. § 131E-176(9b), whose assets are being acquired pursuant to the Transaction. Other health care related assets that are not “health service facilities” under the CON Law will also be acquired. As part of the Transaction, NHRMC will also transfer its ownership, corporate membership or control rights in certain of its subsidiaries and affiliates to Buyer, as set forth in **Exhibit B**.

---

<sup>1</sup> Certain assets of the entities involved in the Transaction are “excluded assets,” meaning that they are not being acquired by Buyer. However, none of those excluded assets is pertinent to this Notice of Exempt Acquisition.

Pursuant to N.C. Gen. Stat. §§ 131E-181(a) and 189(c), I am also writing to request a good cause transfer of the CONs for NHRMC's CON projects that are under development, as set forth on **Exhibit C** to this letter (collectively, "NHRMC CONs Under Development").

As shown on **Exhibit C**, as of the date of this letter, NHRMC has one CON application still under review, Project I.D. No. O-11947-20, for NHRMC Scotts Hill, proposing a new acute care hospital in New Hanover County (the "Scotts Hill Project"). Since the 150-day review period for the Scotts Hill Project does not end until February 28, 2021, and Buyer intends to complete the Transaction before that date, we respectfully request that if a CON is issued for the Scotts Hill Project, the Agency should also find good cause transfer for that CON.<sup>2</sup>

### ***Notice of Exempt Acquisition***

N.C. Gen. Stat. § 131E-184(a)(8) provides that upon prior written notice, the Department shall exempt from CON review the acquisition of an existing health service facility, including equipment owned by the health service facility at the time of acquisition, which notice contains an explanation of why the new institutional health service is needed. "Health service facility" includes the following: hospitals, long-term care hospitals, psychiatric facilities, rehabilitation facilities, nursing homes, adult care homes, kidney disease treatment centers, intermediate care facilities for individuals with intellectual disabilities, home health agency offices, chemical dependency treatment facilities, diagnostic centers, hospice offices, hospice inpatient facilities, hospice residential facilities and ambulatory surgery centers. N.C Gen. Stat. § 131E-176(9b).

Through an Asset Purchase Agreement dated October 5, 2020 (the "Agreement"), Buyer intends to acquire numerous health service facilities and items of medical equipment from Sellers as set forth on **Exhibit A** (collectively, the "Health Service Facilities"). Buyer intends to continue to operate the Health Service Facilities at their present locations, and assuming the good case transfer is approved, Buyer will also operate the Health Service Facilities subject to the conditions on the CONs for those projects. The approval of this exemption will allow the Health Service Facilities to continue to serve patients under new ownership.

Pursuant to the Agreement, Buyer will also acquire Sellers' interests in the entities listed in **Exhibit B**. As part of the Transaction, Buyer will also acquire Sellers' interests

---

<sup>2</sup> According to the Agency's website, no other applicants applied for the beds in the 2020 New Hanover County bed need review, and no competitive comments were received against the CON application for the Scotts Hill Project. See <https://info.ncdhhs.gov/dhsr/coneed/pdf/ApplicationLogs/2020/ApplicationLog-October-1-2020-Reviews.pdf> and <https://info.ncdhhs.gov/dhsr/coneed/comments/index.html> (last visited 12/22/20).

in numerous other healthcare-related entities, including physician offices, that are not regulated by the CON Law.

### ***Good Cause Transfer***

As shown on **Exhibit C** to this letter, various CONs issued to NHRMC are under development. N.C. Gen. Stat. § 131E-181(a) provides:

A certificate of need shall be valid only for the defined scope, physical location, and person named in the application. A certificate of need shall not be transferred or assigned except as provided in G.S. 131E-189(c).

N.C. Gen. Stat. § 131E-181(a). In turn, N.C. Gen. Stat. § 131E-189(c) provides:

The Department may immediately withdraw any certificate of need if the holder of the certificate, before completion of the project or operation of the facility, transfers ownership or control of the facility, the project or the certificate of need. Any transfer after that time will be subject to the requirement that the service be provided consistent with the representations made in the application and any applicable conditions the Department has placed on the certificate of need. Transfers resulting from death or personal illness or other good cause, as determined by the Department, shall not result in withdrawal if the Department receives prior written notice of the transfer and finds good cause. Transfers resulting from death shall not result in withdrawal.

N.C. Gen. Stat. § 131E-189(c). Buyer has reviewed these CONs and the conditions placed upon them. Buyer commits to materially comply with the conditions placed upon these CONs. Buyer has also read the application for the Scotts Hill Project. Buyer commits to materially comply with the representations in the application for the Scotts Hill Project, and the conditions placed upon the CON, if one is issued. See N.C. Gen. Stat. § 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 is issued, is required to materially comply with the representations made in its application for that certificate of need.”).

Good cause exists to permit the transfer of the CONs because the transfer of the CONs is incidental to a larger Transaction in which the Sellers are selling their entire interest in NHRMC’s health system. Good cause has been found to exist in similar

circumstances. See **Exhibits D-F** attached hereto<sup>3</sup>. In **Exhibit D**, a July 2012 Declaratory Ruling issued to Novant Health, Inc., Same Day Surgery Center New Hanover, LLC and New Hanover Regional Medical Center, the Department found good cause for the transfer of an undeveloped ASF CON where the applicants were selling their existing and proposed businesses in New Hanover County. See also **Exhibit E**, a November 2009 Declaratory Ruling issued to WC-Albemarle, LLC, in which the Department approved the good cause transfer of a CON where the transfer was incidental to a larger transaction in which several facilities were sold; **Exhibit F**, a January 2008 Declaratory Ruling issued to Yancey Health Investors, LLC. (same). Similar to the 2012 Novant ruling, the Sellers have decided to sell their entire interest in NHRMC, and the transfer of the CONs are part of a larger transaction. Similar to WC-Albemarle and Yancey Health Investors, the primary purpose of the Transaction is to allow for the acquisition of NHRMC; the fact that NHRMC was approved for various CONs before the Transaction closes is peripheral to the purpose of the Transaction. The same logic also applies to the pending application for the Scotts Hill Project.

Moreover, Buyer will operate the services approved in the CONs in a manner consistent with the representations contained in the CON applications, and the conditions placed on the CONs, which Buyer expressly accepts.

Allowing the transfer of the CONs also ensures that the services approved in these CONs will be developed for the benefit of patients. Conversely, if the transfer of the CONs were not allowed, it is unclear how the projects proposed in the applications would be developed, as they are inextricably related to the Health Service Facilities that are being acquired by Buyer. “The fundamental purpose of the [CON] law is to limit the construction of health care facilities in this [S]tate to those that the public needs and that can be operated efficiently and economically for their benefit.” *Hope—A Women's Cancer Ctr., P.A. v. N.C. Dep't of Health & Human Servs.*, 203 N.C. App. 276, 281, 691 S.E.2d 421, 424 (2010), *rev. denied*, 365 N.C. 87, 706 S.E.2d 204 (2011). The transfer of the CONs to a purchaser who commits to materially comply with the CONs ensures that this purpose is served for the benefit of patients in the service area.

Accordingly, Buyer respectfully requests that the Department find that good cause exists for the transfer of the CONs for the projects identified on **Exhibit C**, including any CON issued for the Scotts Hill Project.

As Buyer expects to close this Transaction by February 1, 2021, we would appreciate your prompt response to this letter. Please let me know if you have any questions or need any additional information.

---

<sup>3</sup> Exhibits D-F are declaratory rulings obtained from the DHSR website.  
Exhibit D: <https://info.ncdhhs.gov/dhsr/declrule/2012/070212Novant.pdf>.  
Exhibit E: <https://info.ncdhhs.gov/dhsr/declrule/2009/20091123albemarle.pdf>.  
Exhibit F: <https://info.ncdhhs.gov/dhsr/declrule/2008/20080108Yancey.pdf>.

Martha J. Frisone, Chief  
January 4, 2021  
Page 5

Sincerely,

Electronically submitted by Denise M. Gunter

Denise M. Gunter

Enclosures

**EXHIBIT A**

**LIST OF HEALTH SERVICE FACILITIES TO BE ACQUIRED**

<b>Name of Health Service Facility</b>	<b>Address</b>	<b>License Number</b>
NHRMC – Main Campus	2131 S. 17 <sup>th</sup> Street, Wilmington, NC 28401	H0221
NHRMC Orthopaedic Hospital	5301 Wrightsville Avenue, Wilmington, NC 28403	H0221
NHRMC Behavioral Health Hospital	2131 S. 17 <sup>th</sup> Street, Wilmington, NC 28401	H0221
NHRMC Rehabilitation Hospital	2131 S. 17 <sup>th</sup> Street, Wilmington, NC 28401	H0221
NHRMC Betty H. Cameron Women’s and Children’s Hospital	2131 S. 17 <sup>th</sup> Street, Wilmington, NC 28401	H0221
NHRMC Surgical Pavilion	2131 S. 17 <sup>th</sup> Street, Wilmington, NC 28401	H0221
NHRMC Zimmer Cancer Center	2131 S. 17 <sup>th</sup> Street, Wilmington, NC 28401	H0221
NHRMC Heart Center	2131 S. 17 <sup>th</sup> Street, Wilmington, NC 28401	H0221
NHRMC Emergency Department North	151 Scotts Hill Medical Drive, Wilmington, NC 28411	H0221
NHRMC Atlantic Surgicenter (Provider-Based Ambulatory Surgery Center)	9104 Market St. Wilmington, NC 28411	H0221
Carolina Healthcare Associates, Inc. d/b/a Endoscopy Center NHRMC Physician Group	1520 Physicians Drive, Wilmington, NC 28401	AS0100
NHRMC Home Care	2131 S. 17 <sup>th</sup> Street, Wilmington, NC 28401	HC0532



**EXHIBIT B**

**NHRMC LIST OF SUBSIDIARIES AND AFFILIATES**

<b>Name</b>	<b>Location</b>	<b>Description</b>
Carolina Healthcare Associates, Inc.	2131 S. 17 <sup>th</sup> Street, Wilmington, NC 28401	Wholly-owned subsidiary of NHRMC that will be transferred to Buyer at closing
Physician Quality Partners, LLC	2131 S. 17 <sup>th</sup> Street, Wilmington, NC 28401	Wholly-owned subsidiary of NHRMC that will be transferred to Buyer at closing
New Hanover Health, LLC	2131 S. 17 <sup>th</sup> Street, Wilmington, NC 28401	Wholly-owned subsidiary of NHRMC that will be transferred to Buyer at closing
Atlantic Surgicenter, LLC	2131 S. 17 <sup>th</sup> Street, Wilmington, NC 28401	Wholly-owned subsidiary of NHRMC that will be transferred to Buyer at closing
South Atlantic Radiation Oncology, LLC ("SARO")	1988 S. 16th Street, Wilmington, NC 28401	NHRMC owns a 50% membership interest in SARO that will be transferred to Buyer at closing
Porters Neck Imaging, LLC ("PNI")	1025 Medical Center Drive, Wilmington, NC 28401	NHRMC owns a 50% membership interest in PNI that will be transferred to Buyer at closing
Pender Memorial Hospital ("PMH")	507 East Fremont Street, Burgaw, NC 28425	NHRMC is the sole corporate member of PMH, a critical access hospital, and will be assigning such corporate membership to Buyer at closing
NHRMC Home Care	2131 S. 17th Street, Wilmington, NC 28401	Wholly-owned subsidiary of PMH
Diagnostic Imaging Partners, LLC ("DIP")	2131 S. 17 <sup>th</sup> Street, Wilmington, NC 28401	NHRMC owns a 50% membership interest in DIP that will be transferred to Buyer at closing

**EXHIBIT C**

**NHRMC CONs UNDER DEVELOPMENT**

<b>Project I.D.</b>	<b>Facility</b>	<b>Facility Type</b>	<b>Applicant</b>	<b>Project Type</b>	<b>CON Issued?</b>
O-11042-15	NHRMC	Hospital	NHRMC	Hospital	Yes
O-11189-16	NHRMC	Hospital	NHRMC	COR/Change in scope	Yes
O-11714-19	NHRMC	Hospital	NHRMC	ORs	Yes
O-11748-19	NHRMC	Hospital	NHRMC	Major Medical Equipment	Yes
O-11805-20	NHRMC	Hospital	NHRMC	CATH	Yes
O-11856-20	NHRMC	Hospital	NHRMC	LINAC	Yes
O-11947-20	NHRMC- Scotts Hill	Hospital	NHRMC	Hospital	No – under review



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

**IN RE: REQUEST FOR DECLARATORY )  
RULING BY NOVANT HEALTH, INC., )  
SAME DAY SURGERY CENTER NEW )     **DECLARATORY RULING**  
HANOVER, LLC AND NEW HANOVER )  
REGIONAL MEDICAL CENTER.         )**

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.

Petitioners Novant Health, Inc. (“Novant”), Same Day Surgery Center New Hanover, LLC (“SDSC New Hanover”) and New Hanover Regional Medical Center (“NHRMC”) (collectively, “Petitioners”) request that the North Carolina Department of Health and Human Services, Division of Health Service Regulation (the “Department”) issue a declaratory ruling as to whether NHRMC may acquire from Novant all of Novant’s membership interests in SDSC New Hanover. This ruling will be binding upon the Department and the entities 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. Denise M. Gunter has requested this ruling on behalf of the Petitioners and has provided the material facts upon which this ruling is based.



## STATEMENT OF THE FACTS

On October 11, 2007, the CON Section awarded SDSC New Hanover a CON to develop a two-room ambulatory surgery center as set forth in Project I.D. No. O-7671-06 (the "Project"). Novant is the parent company of SDSC New Hanover, and has not yet developed the Project.

On June 1, 2007, the CON Section issued Novant and Brunswick Community Hospital, LLC a CON to develop a replacement hospital for Brunswick Community Hospital ("BCH"). The replacement BCH, known as Brunswick Novant Medical Center ("BNMC"), opened in Summer 2011.

Novant has decided to divest all of its existing and approved projects in New Hanover County so that it can concentrate on making BNMC a success.

NHRMC, which operates two hospital campuses in Wilmington, has offered to buy Novant's membership interests in SDSC New Hanover, a limited liability company. The divestiture of Novant's membership interests in SDSC New Hanover is part of a larger transaction in which Novant will sell its interests in all of its existing and proposed New Hanover operations.

## ANALYSIS

N.C. Gen. Stat. § 131E-181 provides:

(a) A certificate of need shall be valid only for the defined scope, Physical location, and person named in the application. A Certificate of need shall not be transferred or assigned except as provided in G.S. 131E-189(c).

(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 the certificate of need was issued, is required to materially comply with the representations made in its application for that certificate of need.

N.C. Gen. Stat. § 131E-189(c) provides:

The Department may immediately withdraw any certificate of Need if the holder of the certificate, before completion of the project or operation of the facility, transfers ownership or control of the facility, the project, or the certificate of need. Any transfer after that time will be subject to the requirement that the service be provided consistent with the presentations made in the application and any applicable conditions the Department placed on the certificate of need. Transfers resulting from death or personal illness or other good cause, as determined by the Department, shall not result in withdrawal if the Department receives prior written notice of the transfer and finds good cause. Transfers resulting from death shall not result in withdrawal.

The Department has previously determined that the acquisition of membership interests in a limited liability company does not require a CON. *See, e.g.*, Declaratory Ruling issued to Wake PET Services, LLC, et al.; Declaratory Ruling issued to Wake Radiology Oncology Services, PLLC; Declaratory Ruling issued to Alliance Oncology; Declaratory Rulings issued to the Charlotte Mecklenburg Hospital Authority; Declaratory Ruling issued to JRH Ventures, LLC. In this case, NHRMC will be acquiring membership interests in SDSC New Hanover; SDSC will remain intact as the same LLC, but with a different membership composition. The entity to whom the CON was issued (SDSC New Hanover) does not change as a result of this transaction. SDSC New Hanover will be the entity that develops the operating rooms.

The scope of the project does not change as a result of this transaction. The transaction will not result in a change in the scope of services, costs to patients or the number of operating rooms that were determined to be needed in the 2006 SMFP.

The Department has also previously found a basis for a good cause transfer under N.C. Gen. Stat. § 131E-189(c) in two similar situations. In November 2009, the Department issued a declaratory ruling to WC-Albemarle, LLC, et al. which found good cause for the transfer of Albemarle House (and an undeveloped CON for 12 additional beds) to a third party. Similarly, in January 2008, the Department issued a declaratory ruling to Yancey Health Investors, LLC, et

al. in which a third party proposed to acquire an LLC's membership interests in a facility that had been approved for, but had not yet developed, 10 additional adult care home beds.

In this case, NHRMC's acquisition of the membership interests in SDSC New Hanover is part of a larger transaction involving Novant's decision to sell its existing and proposed operations in New Hanover County. Second, the transaction will not result in a change in the scope of services, costs to patients or the number of operating rooms that were determined to be needed in the 2006 SMFP.

### CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that NHRMC may acquire from Novant all of Novant's membership interests in SDSC New Hanover. This proposed change does not constitute a change in the scope of the project, would not violate N.C. Gen. Stat. § 131E-181, or N.C. Gen. Stat. § 131E-189, or any of the rules of the Department.

This the \_\_\_\_\_ day of July, 2012.

---

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 first-class, postage pre-paid envelope addressed as follows:

**CERTIFIED MAIL**

Denise M. Gunter  
NELSON MULLINS RILEY & SCARBOROUGH LLP  
380 Knollwood Street  
Suite 530  
Winston-Salem, North Carolina 27103

This the \_\_\_\_\_ day of July, 2012.

\_\_\_\_\_  
Dr. Patsy Christian, Assistant Director  
Healthcare, Quality and Safety



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

<b>IN RE: REQUEST FOR DECLARATORY</b>	)	
<b>RULING BY WC-ALBEMARLE, LLC,</b>	)	
<b>ALBEMARLE HOUSE HOLDINGS, LLC</b>	)	<b>DECLARATORY RULING</b>
<b>d/b/a ALBEMARLE HOUSE, AND</b>	)	
<b>ALBEMARLE HCRE, LLC</b>	)	
<b>Project I.D. No. F-8131-08</b>	)	

I, Jeff Horton, as Acting 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.

WC-Albemarle (“WC-Albemarle”), LLC, Albemarle House Holdings, LLC d/b/a Albemarle House (“Albemarle House LLC”), and Albemarle HCRE, LLC, (collectively “the Applicants”) have requested a declaratory ruling finding that the Applicants have satisfied the requirements for a “good cause” transfer of ownership of Albemarle House, pursuant to Section 131E-181(a) and Section 131E-189(c). 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. Gary S. Qualls of K&L Gates, LLP has requested this ruling on behalf of Albemarle House LLC, Renee Montgomery of Parker Poe Adams & Bernstein LLP has requested this ruling on behalf of Albemarle HCRE, and they provided the material facts upon which this ruling is based.



## **STATEMENT OF THE FACTS**

On October 24, 2008 the Certificate of Need Section (“CON Section”) conditionally approved Albemarle House’s Certificate of Need (“CON”) Application, identified as Project I.D. # F-8131-08 (the “Albemarle House Application”) to relocate 12 adult care home beds from The First Baptist Church of Oakboro d/b/a Oakboro Baptist Church Home For The Aged (“Oakboro”) to the existing adult care facility known as Albemarle House (the “Facility”) for a complement of 44 adult care home (“ACH”) beds and 32 Special Care Unit adult care home beds. On November 4, 2008 the applicants for the Albemarle House Application (the “CON Applicants”) notified the CON Section in writing of their acceptance of the conditions placed upon its CON, and it has now been issued.

At the time of the Albemarle House Application filing and approval, WC-Albemarle was the owner/lessor of the Facility and Albemarle House LLC was the licensee and operator of the Facility.

On December 1, 2009 Albemarle HCRE, LLC will be acquiring ownership of the Facility from WC-Albemarle, the current lessor and building owner. The current lessee/license holder, Albemarle House LLC will continue to operate the Facility as the licensee after the December 1 transaction.

## **ANALYSIS**

The CON law allows the transfer of a CON for good cause: “A certificate of need shall not be transferred or assigned except as provided in G.S. § 131E-189(c).” N.C. Gen. Stat. § 131E-181(a). “Transfers resulting from death or personal illness or other good cause, as determined by the Department, shall not result in withdrawal [of the CON] if the Department

receives prior written notice of the transfer and finds good cause.” N.C. Gen. Stat. § 131E-189(c).

Good cause exists for the transfer of ownership from WC-Albemarle, LLC to Albemarle HCRE, LLC because the transaction at issue here is part of a larger refinancing transaction in which 18 ACH’s owned and operated by related entities are being sold by the current Facility owners to the owners of Albemarle HCRE, LLC. Additionally, the primary purpose of the transaction is to allow for the refinancing of these 18 facilities. The fact that the Facility was approved for a CON for twelve additional beds is peripheral to the objective of the transaction.

The transaction will have no impact on the Facility’s ability to develop the project in a manner consistent with the representations made in the application and with any conditions imposed by the Agency.

The current lessor, WC-Albemarle, as a party to this Request for a Declaratory Ruling, agrees that it shall not impede or impair the ability of Albemarle HCRE, LLC and lessee Albemarle House LLC to develop the proposed project.

There will be no change in the administration or day-to-day health care operations of the Facility or this project.

### **CONCLUSION**

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that pursuant to Section 131E-181(a) and Section 131E-189(c), good cause exists for the transfer of the ownership of the Facility from WC-Albemarle, LLC to Albemarle HCRE, LLC.

This the \_\_\_\_\_ day of November, 2009.

---

Jeff Horton, Acting 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:

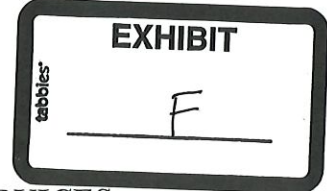
**CERTIFIED MAIL**

K&L Gates, LLP  
Gary S. Qualls  
Susan K. Hackney  
430 Davis Drive, Suite 400  
Morrisville, NC 27560

Parker Poe Adams & Bernstein LLP  
Renee J. Montgomery  
150 Fayetteville Street, Suite 1400  
Raleigh, NC 27601

This the \_\_\_\_\_ day of November, 2009.

\_\_\_\_\_  
Jesse Goodman  
Acting Chief Operating Officer



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

**IN RE: REQUEST FOR )  
DECLARATORY RULING BY YANCEY )  
HEALTH INVESTORS, LLC, YANCEY )     **DECLARATORY RULING**  
HOUSE, LLC, AND WC-YANCEY, LLC, )  
Project I.D. No. D-7915-07 )**

I, Robert J. Fitzgerald, Director of the Division of Health Service Regulation (the “Department”), hereby issue this declaratory ruling to Yancey Health Investors, LLC (“Yancey Health Investors”), Yancey House, LLC (“Yancey House”), and WC-Yancey, LLC (“WC-Yancey”) (collectively “Petitioners”) pursuant to N.C.G.S. § 150B-4, 10A NCAC 14A.0103, and the authority delegated to me by the Secretary of the North Carolina Department of Health and Human Services. Petitioners have filed a Declaratory Ruling Request (the “Request”) asking the Department to issue a ruling as to the applicability of N.C.G.S. Chapter 131E, Article 9 to the facts described below.

This ruling is binding on the Department and the person requesting it if the material facts stated in the Request are accurate and no material facts have been omitted from the request. The ruling applies only to this request. Except as provided by N.C.G.S. § 150B-4, the Department reserves the right to change the conclusions which are contained in this ruling. Gary S. Qualls and Gina L. Bertolini of Kennedy Covington Lobdell & Hickman, L.L.P., counsel for Petitioners, have requested this ruling on behalf of Petitioners and have provided the statement of facts upon which this ruling is based. The material facts as provided by counsel for Petitioners are set out below.



## STATEMENT OF THE FACTS

On 10 October 2007, the Certificate of Need Section conditionally approved the application of Yancey Health Investors and Yancey House for a Certificate of Need ("CON") (identified as Project I.D. No. D-7915-07) to develop and operate an additional 10 adult care home ("ACH") beds at their existing 60-bed ACH facility, known as Yancey House, located in Burnsville, North Carolina, (hereafter, "the Facility"). Upon approval and completion of the project, the Facility was to have a total of 70 ACH beds, 40 of which would be designated as a Special Care Unit for patients with Alzheimer's Disease. On 29 October 2007, Yancey Health Investors and Yancey House notified the CON Section in writing of their acceptance of the conditions placed upon the CON.

On 29 October 2007, WC-Yancey provided notice to the Agency, pursuant to N.C. Gen. Stat. § 131E-184(a)(8), of its intent to acquire the ownership interest of Yancey Health Investors in the Facility.

Petitioners represent that on 30 October 2007, through an Asset Purchase Agreement, WC-Yancey acquired Yancey Health Investors' interest, replacing Yancey Health Investors as the lessor of the Facility. They state that this transaction was part of a larger acquisition involving the refinancing and acquisition of six ACH facilities with common ownership interests. Petitioners represent that in each acquisition, only the lessor changed, while the lessee/licensee remained the same. According to Petitioners, Yancey House has been and will continue to be the lessee, operator, and licensee of the Facility, and WC-Yancey will have no involvement in any operational issues related to the Facility. Petitioners now request approval for a "good cause" transfer of the CON for Project I.D. No. D-7915-07, pursuant to N.C. Gen. Stat. § 131E-189(c) and 10A N.C. Admin. Code 14C.0502.

Petitioners state that the transaction will have no impact on the Facility's ability to develop the project in a manner consistent with the representations made in the application and with any conditions imposed by the Agency. Moreover, Petitioners assert that WC-Yancey, as a party to this Request for a Declaratory Ruling, agrees that it shall not impede or impair the ability of the lessee, Yancey House, to develop the proposed project. They also assert that while the ownership of the Facility was transferred, the operational control of the Facility and the project remain with Yancey House, which will continue to be the licensee.

### ANALYSIS

N.C.G.S. § 131E-181(a) provides that a CON “shall be valid only for the defined scope, physical location, and person named in the application. A certificate of need shall not be transferred or assigned except as provided in G.S. 131E-189(c).”

N.C.G.S. § 131E-189(c) provides:

The Department may immediately withdraw any certificate of need if the holder of the certificate, before completion of the project or operation of the facility, transfers ownership or control of the facility, the project or the certificate of need. . . . Transfers resulting from death or other good cause, as determined the Department, shall not result in withdrawal if the Department receives prior written notice of the transfer and finds good cause. . . .

Petitioners have shown good cause for the transfer of the CON because (1) the operations and operational control of the Facility will remain unchanged for both its currently licensed beds and the ten additional beds approved in the CON for Project I.D. No. D-7915-07, (2) WC-Yancey’s acquisition of the assets of Yancey Health Investors is part of a larger acquisition involving the refinancing and acquisition of six ACH facilities with common ownership interests, and the transfer of the CON is merely incidental to that transaction, and (3)

the transfer will not result in any failure by Yancey House to materially comply with the representations of its CON application or the conditions of its CON.

**CONCLUSION**

For the foregoing reasons, assuming the statements of fact in the Request to be true and subject to the condition set out below, I conclude that on the facts presented here Petitioners have shown good cause to transfer the CON for Project I.D. No. D-7915-07 from Yancey Health Investors to WC-Yancey. This transfer is subject to the condition that WC-Yancey and Yancey House comply with all conditions in the CON for Project I.D. No. D-7915-07.

This the \_\_\_\_ day of January, 2008.

---

Robert J. Fitzgerald, 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 prepaid envelope addressed as follows:

**CERTIFIED MAIL**

Gary S. Qualls  
Gina L. Bertolini  
Kennedy Covington Lobdell & Hickman, L.L.P.  
430 Davis Drive, Suite 400  
Morrisville, NC 27560

This \_\_\_\_\_ day of January, 2008.

---

Jeff Horton  
Chief Operating Officer