



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

November 8, 2021

Kenneth Burgess  
[kburgess@bakerdonelson.com](mailto:kburgess@bakerdonelson.com)

**Exempt from Review**

**Record #:** 3723  
**Date of Request:** October 25, 2021  
**Facility Name:** Mission Hospital  
**FID #:** 943349  
**Business Name:** MH Mission Hospital, LLP  
**Business #:** 3045  
**Project Description:** Renovate patient rooms located in the west tower on the main campus  
**County:** Buncombe

Dear Mr. Burgess:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency), determined that the above referenced proposal is exempt from certificate of need review in accordance with G.S. 131E-184(g). Therefore, you may proceed to offer, develop or establish the above referenced project without a 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 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,

Ena Lightbourne  
Project Analyst

Micheala Mitchell  
Chief

cc: Construction Section, DHSR  
Acute and Home Care Licensure and Certification 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

**BAKER DONELSON**  
BEARMAN, CALDWELL & BERKOWITZ, PC

2530 MERIDIAN PARKWAY  
SUITE 200  
DURHAM, NORTH CAROLINA  
27713

[www.bakerdonelson.com](http://www.bakerdonelson.com)

KENNETH LEE BURGESS, SHAREHOLDER  
Direct Dial: 919-294-0802  
Direct Fax:  
E-Mail Address: [kburgess@bakerdonelson.com](mailto:kburgess@bakerdonelson.com)

October 25, 2021

VIA EMAIL

Micheala Mitchell, Chief  
Lisa Pittman, Assistant Chief  
N.C. Department of Health and Human Services  
N.C. Division of Health Service Regulation  
Certificate of Need Section  
809 Ruggles Drive, Raleigh, N.C. 27603  
Via email to: [micheala.mitchell@dhhs.nc.gov](mailto:micheala.mitchell@dhhs.nc.gov)  
[lisa.pittman@dhhs.nc.gov](mailto:lisa.pittman@dhhs.nc.gov)

Ena Lightbourne  
Project Analyst  
N.C. Department of Health and Human Services  
N.C. Division of Health Service Regulation  
Certificate of Need Section  
809 Ruggles Drive, Raleigh, N.C. 27603  
Via email to: [ena.lightbourne@dhhs.nc.gov](mailto:ena.lightbourne@dhhs.nc.gov)

RE: Notice of Exemption: Renovation of Existing Mission Hospital's  
West Tower Patient Rooms, Facility I.D. No. 943349

Dear Micheala, Lisa and Ena:

I am writing on behalf of our client MH Mission Hospital, LLLP ("Mission" or "the Hospital") to provide the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Certificate of Need Section ("the CON Section" or "the Agency") with prior written

Micheala Mitchell, Esq.  
October 25, 2021  
Page 2

notice of Mission's intent to renovate certain patient rooms located in the Mission Hospital West Tower which is located in the main building on the Mission Hospital main campus ("the Project"). We believe the proposed project is exempt from further CON Section review and does not require a certificate of need ("CON") pursuant to N.C. Gen. Stat. § 131E-184(g).

### **Background and Project Description**

The Project will involve the renovation of certain patient rooms in Mission Hospital's West Tower. The Project will involve renovations on five (5) floors and units of the West Tower, including one hundred and fifty-six (156) total beds. The renovations generally will include painting patient rooms, new room fixtures and furniture. More specifically, the Proposed Project will include:

- New paint
- New ceiling tiles
- New patient recliners
- New Acrovyn wall protection
- New critical branch circuits for TV, vitals monitors, and bathroom lights
- New privacy curtains
- New room signs
- The Project will not include new flooring, bathtubs, toilet replacements, or new headwall units

In two of the units involved in the Project, Mission will also install new vanity casework, sinks and lighting, new overbed lights and new general room lighting (3 West and 5 West). New doors and hardware will also be installed in one unit (5 West).

Total project costs are estimated at approximately \$5,500,000.000. See **Exhibits A** (Projected Capital Cost Form) and **B** (Affidavit of Mission's Chief Operating Officer), both documenting estimated project costs.<sup>1</sup>

---

<sup>1</sup> Because the statutory exemption under which Mission is proceeding is not dependent on Mission being above or below a designated capital expenditure, a Projected Capital Cost Form is technically not required for this Exemption but we are including one to provide a general cost overview of the Project.

Micheala Mitchell, Esq.  
October 25, 2021  
Page 3

We have included at **Exhibit C** photographs showing the West Tower location in the Mission Hospital main building where the planned renovations will occur. The West Tower is shown via a red circle on the attached photographs.

For the reasons stated below, we believe that the Proposed Project is exempt from CON Section review pursuant to N.C. Gen. Stat. § 131E-184(g), and thus Mission is not required to obtain a CON before proceeding with the Proposed Project.

#### **Applicable Legal Authorities**

The CON Law precludes any person from offering or developing a “new institutional health service” without first obtaining a CON. N.C. Gen. Stat. § 131E-178(a). The definition of “new institutional health service” includes, inter alia, the following:

- Incurring an obligation for a capital expenditure that exceeds \$4,000,000.00<sup>2</sup> to develop or expand a health service or health service facility, or which “relates” to the provision of a health service.

N.C. Gen. Stat. §§ 131E-176(16)(b). However, the CON Law includes a specific exemption for health-related capital expenditures in excess of \$4,000,000.00 where the sole purpose of the capital expenditure is “to renovate, replace on the same site, or expand the entirety or a portion of an existing health service facility located on the main campus.” N.C. Gen. Stat. § 131E-184(g). That exemption, where applicable, eliminates the need to obtain a CON before incurring the capital expenditure. As described further below, the Proposed Project which is the subject of this Exemption Notice involves a capital expenditure in excess of \$4,000,000.00. However, the project is exempt from CON Section review based upon the exemption at N.C. Gen. Stat. § 131E-184(g). That exemption is described below.

#### **The Statutory Exemption For Renovation, Replacement Or Expansion Of An Existing Health Facility On The Main Campus**

N.C. Gen. Stat. § 131E-184(g) provides an express exemption from CON Section review for capital expenditures that exceed \$4,000,000.00 where:

1. The sole purpose of the capital expenditure is to renovate, replace on the same site, or expand the entirety or a portion of an existing health service facility located on the main campus;

---

<sup>2</sup> The new institutional health service capital cost threshold triggering the requirement for a CON was increased from \$2,000,000.00 to \$4,000,000.00 by Session Law 2021-129, effective October 1, 2021.

Micheala Mitchell, Esq.  
October 25, 2021  
Page 4

2. So long as the capital expenditure does not result in:
  - a. A change in bed capacity as defined in G.S. 131E-176(5); or
  - b. The addition of a health service facility or any other new institutional health service other than that allowed by G.S. 131E-176(16)b; and
  - c. The CON Section receives prior written notice of the planned expenditure along with documentation demonstrating that the provider meets the exemption.

**The Proposed Project Involves The Renovation And Expansion Of Existing Space On Mission's Main Campus**

The Proposed Project which is the subject of this Exemption Notice is projected to cost in excess of \$4,000,000.00. The total project cost is anticipated to be approximately \$5,500,000.00. Of that amount, \$3,934,715.00 will be expended on construction to renovate existing space in the West Tower in the main building at Mission Hospital. The remaining costs will be allocated to architect and engineering fees, furniture, consulting fees, permitting costs and a contingency. As previously noted, we have included an affidavit from Joseph R. Rudisill, Mission's Chief Operating Officer, attesting that the estimated total project costs are approximately \$5,500,000.00. See Exhibit B.

Even though total projected costs exceed \$4,000,000.00, the Proposed Project qualifies for the statutory exemption at N.C. Gen. Stat. § 131E-184(g) because the sole purpose of the project and related expenditure is to renovate or expand a portion of an existing health service facility on the hospital's main campus. The Proposed Project consists of renovating existing space located in the main hospital building at Mission Hospital on the hospital's main campus.

The term "campus" is defined at N.C. Gen. Stat. § 131E-176(2c) as "the adjacent grounds and buildings, or grounds and buildings not separated by more than a public right-of-way, of a health service facility and related health care entities." For the purposes of the exemption at N.C. Gen. Stat. § 131E-184(g), "main campus" is defined as:

- a. The site of the main building from which a licensed health service facility provides clinical patient services and exercises financial and administrative control over the entire facility, including the buildings and grounds adjacent to that main building; and
- b. Other areas and structures that are not strictly contiguous to the main building but are located within 250 yards of the main building.

N.C. Gen. Stat. § 131E-176(14n).

Micheala Mitchell, Esq.  
October 25, 2021  
Page 5

The Project will be developed in the main Mission Hospital building on the hospital's main campus at 509 Biltmore Avenue in Asheville, North Carolina. Mission's Chief Executive Officer, Chief Operating Officer and Chief Financial Officer are all located in the main hospital building. Together, they exercise all financial and administrative control over Mission Hospital and its services, which includes the West Tower. The main hospital building is also the location from which Mission provides clinical patient services. As such, the Proposed Project will be located in the main hospital building and so clearly is on the "main campus" within the meaning of N.C. Gen. Stat. § 131E-176(14n).

The Proposed Project does not involve a change in bed capacity as defined by N.C. Gen. Stat. § 131E-176(5). That section defines "change in bed capacity" in pertinent part as: (i) any relocation of health service facility beds from one licensed facility or campus to another, or (ii) any redistribution of health service facility bed capacity among the categories of health service facility beds defined in N.C. Gen. Stat. § 131E-176(9c), or (iii) any increase in the number of health service facility beds. The Proposed Project involves only the renovation of existing space on Mission's main campus. The Project does not involve any relocation of health service facility beds from one licensed campus to another, any increase in the number of health service beds or any redistribution of health service facility beds among the categories identified at N.C. Gen. Stat. § 131E-176(9c). Further, the Project does not involve the development or addition of any bed capacity, operating rooms, health services or facilities that fall within the definition of "new institutional health services" at N.C. Gen. Stat. section 131E-176(16).

**The Project Does Not Involve the Acquisition of Equipment Which Qualifies as Major Medical Equipment Under The CON Statute**

The CON Statute treats as a "new institutional health service" requiring a CON the acquisition of major medical equipment. N.C. Gen. Stat. § 131E-176(16)p. Major medical equipment is defined as "a single unit or single system of components with related functions which is used to provide medical and other health services and which costs more than two million dollars ("2,000,000)." N.C. Gen. Stat. 131E-176(14o).

Mission's Proposed Project does not involve the acquisition of medical equipment which meets the definition of "major medical equipment" under the CON Statute. See **Exhibits A** (Projected Capital Cost Worksheet) and **B** (Affidavit of Mission's Chief Operating Officer).

Also, the Proposed Project does not include the acquisition of any of the equipment defined at N.C. Gen. Stat. § 131E-176(16)f1 as a "new institutional health service" which, if listed there, would require Mission to obtain a CON before acquiring the equipment.

Micheala Mitchell, Esq.  
October 25, 2021  
Page 6

**Mission's Proposed Project Is Not A New Institutional Health Service Under Any Other Provision Of N.C. Gen. Stat. § 131E-176(16)**

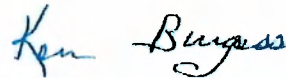
The Proposed Project does not qualify as a "new institutional health service" under any other provision of the CON Statute, specifically including N.C. Gen. Stat. § 131E1-17(16). The Proposed Project does not involve a change in bed capacity, the construction or other development of a new health service or health service facility, the acquisition of major medical equipment or any other item or service which qualifies as a new institutional health service. Other than the proposed project expenditure which exceeds \$4,000,000.00, and from which Mission qualifies for an exemption pursuant to N.C. Gen. Stat. 131E-184(g), there are no other "new institutional health service" definitional elements that apply to the Proposed Project.

**Conclusion**

For the reasons recited herein, the proposed project qualifies under the exemption from CON Section review set forth at N.C. Gen. Stat. § 131E-184(g). Please allow this letter to serve as the advance written notice required by N.C. Gen. Stat. § 131E-184(g). We would appreciate the CON Section acknowledging at its earliest opportunity that the proposed project, as described herein, is not subject to CON Section Review and that Mission may proceed with the project without first obtaining a CON.

Please let me know if you have questions or need further information regarding this notice.

Very truly yours,



Kenneth Lee Burgess, Shareholder

KLB:jdm  
Encls.

cc: Joseph R. Rudisill  
Cathi Durham  
Sondra Smith

Exhibits

## Exhibit A



**Projected Capital Cost Form  
Mission Hospital West Tower Renovation**

Building Purchase Price	\$0.00
Purchase Price of Land	\$0.00
Closing Costs	\$0.00
Site Preparation	\$0.00
Construction/Renovation Contract(s)	\$3,934,715.00
Landscaping	\$0.00
Architect / Engineering Fees	\$450,000.00
Medical Equipment	\$0.00
Non-Medical Equipment	\$0.00
Furniture	\$480,200.00
Consultant Fees ( <b>environmental testing</b> )	\$25,000.00
Financing Costs	\$0.00
Interest during Construction	\$0.00
Other ( <b>permits, contracted moving &amp; cleaning, contingency</b> )	\$610,085.00
<b>Total Capital Cost</b>	<b>\$5,500,000.00</b>

**CERTIFICATION BY A LICENSED ARCHITECT OR ENGINEER**

I certify that, to the best of my knowledge, the projected capital cost for the proposed project is complete and correct.



Date Signed: 10/4/2021

\_\_\_\_\_  
Signature of Licensed Architect or Engineer

**CERTIFICATION BY AN OFFICER OR AGENT FOR THE PROPONENT**

I certify that, to the best of my knowledge, the projected total capital cost for the proposed project is complete and correct and that it is our intent to carry out the proposed project as described.



Date Signed: 10/05/2021

\_\_\_\_\_  
Signature of Officer/Agent

Director, Facility Planning, Design & Construction  
Title of Officer/Agent

## Exhibit B

---

**STATEMENT OF JOSEPH R. RUDISILL**

---

1. I am the Chief Operating Officer for MH Mission Hospital, LLLP ("Mission). I am providing this Statement in support of Mission Hospital's Notice of Exemption to the N.C. Certificate of Need Section in connection with Mission's West Tower Renovation Project.

2. As part of my duties as Chief Operating Officer, I am responsible for the oversight of all operations for Mission Hospital.

3. I am personally familiar with the Proposed Project which involves renovating and upgrading certain patient rooms on five units and floors of the West Tower located at the hospital's main campus at 509 Biltmore Avenue, Asheville, N.C.

4. I certify that the total costs of the project are approximately FIVE MILLION, FIVE HUNDRED THOUSAND DOLLARS (\$5,500,000.00).

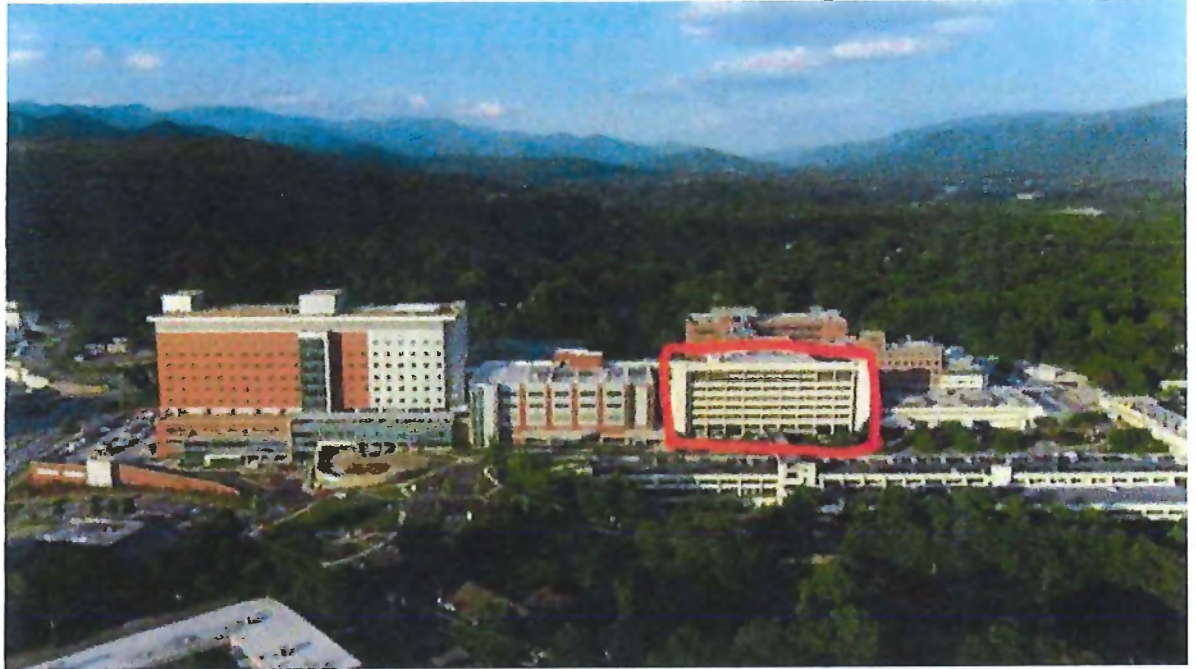
5. Furthermore, as part of this Proposed Project, Mission Hospital will not acquire any new major medical equipment as defined in the CON Statute, increase total bed capacity, redistribute health service facility beds among categories designated in the CON Statute or develop any other new institutional health services described in N.C. Gen. Stat. §131E-176 (16).

This the 14 day of July, 2021.



JOSEPH R. RUDISILL  
Chief Operating Officer  
MH Mission Hospital, LLLP

## Exhibit C





**From:** [Lightbourne, Ena](#)  
**To:** [Waller, Martha K](#)  
**Subject:** FW: [External] Notice of Exemption: Mission Hospital West Tower Renovation  
**Date:** Tuesday, October 26, 2021 10:57:03 AM  
**Attachments:** [4856-5484-5184 v.1 Mission West Tower Notice of Exemption.pdf](#)

---

Here you go.

---

**From:** Burgess, Ken <kburgess@bakerdonelson.com>  
**Sent:** Monday, October 25, 2021 4:55 PM  
**To:** Mitchell, Micheala L <Micheala.Mitchell@dhhs.nc.gov>; Pittman, Lisa <lisa.pittman@dhhs.nc.gov>; Lightbourne, Ena <ena.lightbourne@dhhs.nc.gov>  
**Subject:** [External] Notice of Exemption: Mission Hospital West Tower Renovation

**CAUTION:** External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to [Report Spam](#).

Micheala, Lisa and Ena, attached please find a Notice of Exemption I'm filing on behalf of our client MH Mission Hospital, LLLP in connection with the renovation of patient rooms at the main hospital. Please advise if you have questions or need additional information regarding this Exemption Notice. Thank you, Ken Burgess

NOTICE: This electronic mail transmission with any attachments may constitute an attorney-client communication, protected health information (PHI) or other confidential information that is in fact confidential, legally protected from disclosure and/or protected by the attorney-client privilege. If you are the intended recipient, please maintain confidentiality and be aware that forwarding this e-mail to others may result in a waiver of these protections and privileges and regardless electronic communications may be at times illegally accessed and viewed. If you are not the intended recipient, this e-mail is not intended for transmission to you, nor to be read, reviewed, used, distributed or even received by you or any other unauthorized persons. If you have received this electronic mail transmission in error, please double delete it from your system immediately without copying, reading or disseminating it, and notify the sender by reply e-mail, so that our address record can be corrected. Thank you very much.

---

Email correspondence to and from this address is subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized State official. Unauthorized disclosure of juvenile, health, legally privileged, or otherwise confidential information, including confidential information relating to an ongoing State procurement effort, is prohibited by law. If you have received this email in error, please notify the sender immediately and delete all records of this email.