

**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