



NC DEPARTMENT OF
**HEALTH AND
HUMAN SERVICES**

ROY COOPER • Governor

MANDY COHEN, MD, MPH • Secretary

MARK PAYNE • Director, Division of Health Service Regulation

January 8, 2020

Robert A. Leandro
robbleandro@parkerpoe.com

Exempt from Review – Replacement Equipment

Record #: 3170
Business Name: DLP Cardiac Partners, LLC
Business #: 2314
Project Description: Replace cardiac catheterization equipment at Maria Parham Health
County: Vance

Dear Mr. Leandro:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency), determined that based on your letter of December 18, 2019, the above referenced proposal is exempt from certificate of need review in accordance with N.C. Gen. Stat. §131E-184(a)(7). Therefore, you may proceed to acquire without a certificate of need the GE IGS cardiac catheterization equipment to replace the GE Inova (serial # 402411BU3) cardiac catheterization equipment. This determination is based on your representations that the existing unit will be sold or otherwise disposed of and will not be used again in the State without first obtaining a certificate of need if one is required.

It should be noted that the 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 office and a separate determination. If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,

Ena Lightbourne
Project Analyst

Martha J. Frisone
Chief

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



Robert A. Leandro
Partner
Telephone: 919.835.4636
Direct Fax: 919.834.4564
robbleandro@parkerpoe.com

Atlanta, GA
Charleston, SC
Charlotte, NC
Columbia, SC
Greenville, SC
Raleigh, NC
Spartanburg, SC

December 18, 2019

VIA U.S. MAIL AND ELECTRONIC MAIL

Martha Frisone, Chief
Healthcare Planning and Certificate of Need Section
North Carolina Department of Health and Human Services
2704 Mail Service Center
Raleigh, NC 27699-2704
Martha.Frisone@dhhs.nc.gov

Re: DLP Cardiac Partners Prior Notice of Replacement of Cardiac Cath Lab

Dear Ms. Frisone:

This letter is intended to provide prior notice to the Healthcare Planning and Certificate of Need Section (the "CON Section" or the "Agency") that our client, DLP Cardiac Partners ("Cardiac Partners") is replacing the cardiac cath lab equipment it currently operates at the main campus of Maria Parham Health ("Maria Parham"). The existing cardiac cath lab equipment that is being replaced was originally purchased in 2010. The existing cardiac cath lab at Maria Parham is one of the nine mobile cardiac cath labs subject to the 1995 Settlement Agreement with the Department. Pursuant to the Settlement Agreement, these nine mobile cath labs may be operated as either fixed or mobile cath labs. Cardiac Partners is the successor of interest to the 1995 Settlement Agreement based on the 2011 Exemption Decision of this Agency. See Attachment A.

The approximate cost of the replacement equipment, including installation is \$1,058,365. See Attachment B, Replacement Chart. The replacement equipment will perform similar procedures and have similar capabilities as the existing cath lab equipment. The existing cardiac cath equipment will be taken out of the state and will not be used in North Carolina unless a CON or applicable exemption is obtained.

Cardiac Partners requests that the Agency confirm that this replacement acquisition is exempt from CON review and that the CON Section issue a written determination that Cardiac Partners can move forward with acquiring the replacement equipment.

PPAB 5291203v1

December 18, 2019
Page 2

I greatly appreciate your attention to this matter. If you have any questions, please feel free to contact me directly.

Sincerely,

A handwritten signature in black ink that reads "Robb Leandro". The signature is written in a cursive style with a large, stylized initial "R".

Robb Leandro

RAL:klb

Enclosure

ATTACHMENT A



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

Beverly Eaves Perdue, Governor
Lanier M. Cansler, Secretary

www.ncdhhs.gov/dhssr

Craig R. Smith, Section Chief
Phone: 919-355-3873
Fax: 919-733-8139

April 29, 2011

Jone Law Koford, Secretary
DLP Cardiac Partners, LLC
103 Powell Court, Suite 200
Brentwood, TN 37027

RE: Exempt from Review/ Acquisition of the mobile diagnostic program consisting of the nine units of cardiac catheterization equipment identified in Attachment A owned by MedCath Partners, LLC by DLP Cardiac Partners, LLC

Dear Mr. Koford:

In response to your letter of April 27, 2011, the above referenced proposal is exempt from certificate of need review in accordance with G.S. 131E-184(a)(8). Therefore, DLP Cardiac Partners, LLC may proceed to acquire the above referenced health service facility without first obtaining a certificate of need.

The existing mobile diagnostic program consisting of the nine units of cardiac catheterization equipment identified in Attachment A is authorized by the terms of the August 14, 1995 Settlement Agreement (Attachment B). Operation of the nine units of cardiac catheterization equipment by DLP Cardiac Partners, LLC will also be subject to the terms of the August 14, 1995 Settlement Agreement.

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

Martha J. Frisone
Assistant Chief

Craig R. Smith

Craig R. Smith, Chief
Certificate of Need Section

cc: Medical Facilities Planning Section, DHSR



Attachment A

AS OF 7/1/2004	Current 2007	2008	10/1/2008	2/7/2011
277607WK3	277607WK3	277607WK3	277607WK3	277607WK3
Wilmington Heart Center	Wilmington Heart Center	Wilmington Heart Center	Wilmington Heart Center	Wilmington Heart Center
336	336	336	336	336
Duke	Duke	Duke	Duke	Duke
62824VP4	62824VP4	62824VP4	62824VP4	62824VP4
Presbyterian First Health Mobile Rte	Presbyterian First Health Mobile Rte	Presbyterian First Health Mobile Rte	Presbyterian First Health Mobile Rte	Presbyterian Hosp Matthews
577462	577462	577462	577462	577462
Wilmington Heart Center	Wilmington Heart Center	Wilmington Heart Center	Wilmington Heart Center	Wilmington Heart Center
527738WK2	527738WK2	527738WK2	527738WK2	527738WK2
Carroll Memorial	Carroll Memorial	Carroll Memorial	Carroll Memorial	Carroll Memorial
4180140	4180140	4180140	4180140	4180140
Graco Hospital	Graco Hospital	Graco Hospital	Graco Hospital	Graco Hospital
54280VPS	54280VPS	54280VPS	54280VPS	54280VPS
Greensboro Heart Center	Greensboro Heart Center	Greensboro Heart Center	Greensboro	ENC Mobile Route
55330VPS	55330VPS	402411BU3	402411BU3	402411BU3
Eastern North Carolina Mobile	ENC Mobile Route	ENC Mobile Route	ENC Mobile Route	ENC Mobile Route

- 1 Forged/No Review Letter dated 2/6/05
- 2 No Review Letter dated 1/4/05
- 3 No Review Letter dated 12/2/05 and Equipment Notice
- 4 No Review Letter dated 10/19/04
- 5 No Review Letter dated 7/19/01
- 6 No Review Letter dated 6/25/04
- 7 No Review Letter dated 7/13/01
- 8 No Review Letter dated 12/14/05
- 9 No Review Letter dated 5/26/10
- 10 No Review Letter dated 8/4/10

Duke LIFEPOINT

HEALTHCARE

April 27, 2011

Via Hand Delivery

Craig R. Smith, Section Chief
Certificate of Need Section
Division of Health Service Regulation
2704 Mail Service Center
Raleigh, NC 27699-2704

Re: Acquisition of Health Service Facility

Dear Mr. Smith:

We write on behalf of DLP Cardiac Partners, LLC ("DLP"). DLP is wholly owned by ~~DLP-Healthcare LLC, a joint-venture of the Duke University Health System and DLP Partner, LLC~~ (a subsidiary of LifePoint Hospitals, Inc.). The purpose of this letter is to provide prior written notice of the acquisition by DLP of the mobile diagnostic program currently owned and operated by MedCath Partners, LLC ("MedCath").

MedCath operates a mobile diagnostic program consisting of 9 cardiac catheterization units operated pursuant to service agreements with various host sites (the "Program"), pursuant to a Settlement Agreement between MedCath Incorporated, Healthtech Corporation, and the State dated August 14, 1995 (the "Settlement Agreement"). We understand from MedCath that pursuant to subsequent corporate reorganizations as previously communicated to the CON Section, MedCath became the authorized operator of the Program under the Settlement Agreement.

Subject to the Certificate of Need Section's confirmation that the acquisition does not require a certificate of need, DLP will acquire substantially all of the assets currently owned by MedCath, including the 9 cardiac catheterization units used in the Program, with the intent to continue operating the Program going forward. Upon learning that MedCath was seeking to divest itself of the Program, DLP pursued this acquisition in order to ensure the continued provision of necessary cardiac catheterization services throughout the state.

Attachment B

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
95 CVS 7908

MEDCATH INCORPORATED, and
HEALTHTECH CORPORATION,
Plaintiffs,

v.

NORTH CAROLINA DEPARTMENT OF
HUMAN RESOURCES,
Defendant.

SETTLEMENT AGREEMENT

BY THIS SETTLEMENT AGREEMENT the disputes described herein between Plaintiffs, Medcath Incorporated ("Medcath") and HealthTech Corporation ("HealthTech") (collectively referred to hereinafter as "Plaintiffs") and the North Carolina Department of Human Resources, Division of Facility Services (the "Department") (collectively referred to hereinafter as "the Parties") are hereby resolved.

GENERAL PROVISIONS

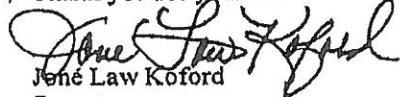
1. This Action was instituted by Complaint For Declaratory Judgment, filed by Plaintiffs on June 29, 1995.
2. Plaintiffs sought a declaration that, under the current Certificate of Need Law:
 - (A) the fifteen mobile cardiac laboratories acquired by Plaintiffs prior to March 18, 1993 are exempt from review;
 - (B) each mobile cardiac catheterization laboratory currently operated by Plaintiffs is a "diagnostic center" and a "health service facility"; and,
 - (C) the proposed conversion of an existing mobile cardiac catheterization laboratory to a fixed-base unit is not a "new institutional health service."

It is our understanding and belief that the acquisition of the MedCath's cardiac catheterization Program constitutes the acquisition of an existing health care facility exempt from certificate of need review under N.C.G.S. § 131-E-184(a)(8). We request your written confirmation of this exemption. We intend that this correspondence serve as any required statutory notice of the acquisition.

Because DLP will own and operate the Program going forward, we also seek your confirmation that the Settlement Agreement will remain in full force and effect with DLP, and that DLP will be entitled to continue operating the Program, including providing diagnostic and therapeutic cardiac catheterization services at existing and future host sites pursuant to service agreements, under the same terms and conditions that have previously applied to MedCath.

As we would like to move forward with the acquisition as quickly as possible, we would appreciate your early confirmation of our understanding of the effects of this acquisition. Should you require further information, please let me know as soon as feasible.

Thank you for your consideration.


Jené Law Koford
Secretary
DLP Cardiac Partners, LLC

Attachment B

STATE OF NORTH CAROLINA
COUNTY OF MCKLENNBURG

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
95 CVS 7908

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NORTH CAROLINA DEPARTMENT OF
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1. This Action was instituted by Complaint For Declaratory Judgment, filed by Plaintiffs on June 29, 1995.
2. Plaintiffs sought a declaration that, under the current Certificate of Need Law:
 - (A) the fifteen mobile cardiac laboratories acquired by Plaintiffs prior to March 18, 1993 are exempt from review;
 - (B) each mobile cardiac catheterization laboratory currently operated by Plaintiffs is a "diagnostic center" and a "health service facility"; and,
 - (C) the proposed conversion of an existing mobile cardiac catheterization laboratory to a fixed-base unit is not a "new institutional health service."

3. Plaintiffs also sought a declaration that the Department's application of the Certificate of Need Law, insofar as it seeks to prevent Plaintiffs from operating the mobile cardiac catheterization laboratories and/or converting them to fixed-base units in North Carolina, violates Article 1, Section 19 of the North Carolina Constitution and the Commerce Clause of the United States.

4. The Department maintains that:

(A) Plaintiffs are authorized to operate only those mobile cardiac catheterization laboratories that were acquired and in use in North Carolina prior to March 18, 1993;

(B) each individual mobile cardiac catheterization laboratory currently operated by Plaintiffs is not a "diagnostic center" or "mobile diagnostic program" within the definition of "diagnostic center" and/or a "health service facility"; and,

(C) the conversion of an existing mobile cardiac catheterization laboratory to a fixed-base unit may be a "new institutional health service."

5. The Department also maintains that Plaintiffs have failed to exhaust their administrative remedies and that the Department's application of the Certificate of Need Law which seeks to prevent Plaintiffs from operating the mobile cardiac catheterization laboratories and/or converting them to fixed-base units in North Carolina is not in violation of Article 1, Section 19 of the North Carolina Constitution and the Commerce Clause of the United States.

6. Plaintiffs have provided the Department with additional information which relates to the acquisition of the cardiac catheterization equipment prior to March 18, 1993. Plaintiffs have also provided documentation regarding:

(A) the actual use of mobile cardiac catheterization equipment in North Carolina prior to March 18, 1993;

(B) binding legal contracts with various persons that relate to the use of the equipment in North Carolina; and,

(C) conformance with replacement equipment exemption requirements.

The Plaintiffs have designated certain of the information provided to the Department as "confidential," pursuant to N.C. Gen. Stat. § 132-1.2 and the Department acknowledges that disclosure of information so designated is not required or authorized by N.C. Gen. Stat. § 132-1, et seq.

7. In reviewing the above-referenced information provided by Plaintiffs, the Department has found that mobile cardiac catheterization laboratory (identification number 22B203025) that was in use in North Carolina prior to March 18, 1993, was acquired by Plaintiffs after March 18, 1993 without Certificate of Need review. Subsequently, this laboratory was removed from North Carolina and another laboratory (identification number 893750) was brought into North Carolina and put in use without Plaintiffs obtaining a replacement equipment exemption. Plaintiffs do not concede that any violation of applicable laws or rules of the Department have occurred with respect to this equipment and further contend that, if any such violation did in fact, occur it was unintentional and inadvertent.

8. Pursuant to N.C. Gen. Stat. § 150B-31, it is the policy of the State to settle disputes between state agencies and other persons whenever possible. The Parties have, therefore, determined that it is in their best interests to settle all issues related to this case upon the terms and conditions stated in this Settlement Agreement.

9. The Parties understand and expressly agree that this Settlement Agreement shall not be construed as an admission of liability on the part of either of the Parties with respect to any issue. Rather, the Parties continue to maintain and do not concede each of their respective contentions.

In consideration of their several and mutual promises, these disputes are hereby resolved in the manner set forth below:

A. Voluntary Dismissal With Prejudice. Within five business days after this Settlement Agreement is fully executed Plaintiffs shall file a notice of voluntary dismissal, with prejudice, in case number 95.CVS 7908.

~~B. Authorized Equipment. With respect to the fifteen (15) laboratories that are at issue, Plaintiffs shall be authorized to operate in North Carolina the nine (9) mobile cardiac catheterization laboratories identified in Attachment A to this Settlement Agreement. The remaining six (6) mobile cardiac catheterization laboratories shall be removed from the State within 30 days from the date that this Settlement Agreement is fully executed, and shall not be used or operated in North Carolina without first obtaining a certificate of need or exemption. This paragraph shall not apply in the event that, pursuant to judicial action or legislative action, a certificate of need is no longer required for Plaintiffs' services in North Carolina.~~

C. Authorized Use. Plaintiffs may operate the authorized nine (9) mobile cardiac catheterization units as either mobile laboratories or fixed-base laboratories at ambulatory surgical centers, hospitals/hospital campuses, professional office buildings, urgent care centers, and imaging centers.

D. Transfer of Equipment. Any transfer of ownership or control of any of the individual cardiac catheterization laboratories after the date of this Settlement Agreement shall remain subject to the provisions of the Certificate of Need Law and any applicable rules promulgated by the Department as those provisions may be in effect at the time of any such transfer; provided, however, that nothing in this Settlement Agreement shall place any greater restriction on the ownership, control or operation of any of the individual cardiac catheterization laboratories than is placed on any other comparable equipment by the above-referenced law and rules.

B. Penalties. In full satisfaction of any sanctions which might be imposed by the Department against Plaintiffs as of the date of this Settlement Agreement under N.C. Gen. Stat. § 131B-190 or any other law or rule of the Department in connection with Plaintiffs' acquisition, ownership or operation of the laboratory referenced in Paragraph 7, the Department will impose a civil penalty of five thousand dollars (\$5,000.00). Without conceding any violation of any law or rule of the Department, Plaintiffs will pay that penalty within ten (10) days of the execution of this Settlement Agreement. This Settlement Agreement will constitute any notice of the above-referenced civil penalty which is required by law and will fully resolve this matter.

F. Modification or Waiver. No modification or waiver of any provision of this Settlement Agreement shall be effective unless its modification or waiver shall be in writing and signed by the Parties and the same shall be effective only for the period and on the conditions and for the specific instances and purposes specified in such writing.

G. Title/Preamble. All parts and provisions hereof, including the preamble, are intended to be of substance.

H. Documentation/Notices. Upon request by the Department or Certificate of Need Section, Plaintiffs shall provide information documenting Plaintiffs' compliance with the provisions of this Settlement Agreement. All documentation, notices, requests, demands, or other communications provided for herein or in any instrument or document delivered pursuant hereto, shall be in writing, shall be deemed to have been given when sent by registered or certified mail, return receipt requested, and at Plaintiffs' option may be designated as "confidential" pursuant to N.C. Gen. Stat. § 132E-1 et seq.

I. Merger. The Parties further agree and acknowledge that this Settlement Agreement sets forth all of the terms and conditions between them concerning the subject matter of this Settlement Agreement, superseding all prior oral and written statements and representations, and that there are no terms or conditions between the Parties except as specifically set forth in this Settlement Agreement.

J. Expenses. The Parties agree that each Party shall bear its own expenses, including attorney's fees, and that no claim for such costs or expenses shall be made by one Party against the other.

K. Review of Agreement/Authority to Settle. The Parties have reviewed this document, have had the opportunity to consult with counsel and represent and warrant that they are authorized to enter into this Settlement Agreement on behalf of the Parties to this Agreement. The terms of this Settlement Agreement shall not be construed in favor of or against any of the Parties.

L. Effective Date. This Agreement shall be effective as of the day and year on which it is adopted and approved by the Director of the Division of Facility Services.

M. Mutual Release. Plaintiffs hereby release the Department of Human Resources, the Certificate of Need Section, its officials, employees, and representatives, from any and all liability that has arisen or may arise as a result of this matter or the execution of this Settlement Agreement. The Department hereby releases Plaintiffs, their officers, employees, and representatives, from any and all liability that has arisen or may arise as a result of this matter or the execution of this Settlement Agreement.

(Signature Page to Follow)

IN WITNESS WHEREOF, the Parties have executed duplicate original
copies of this Settlement Agreement, with one original copy being retained by each party.

MEDCATH INCORPORATED

BY: Stephen R. Puckett
Stephen R. Puckett, President

HEALTHTECH CORPORATION

BY: Stephen R. Puckett
Stephen R. Puckett, Vice President

MICHAEL P. BASLEY
Attorney General

BY: Sherry Cornett Lindquist
Sherry Cornett Lindquist
Assistant Attorney General
N.C. Department of Justice
P.O. Box 629
Raleigh, NC 27602-0629
(919) 733-4512
COUNSEL FOR THE CERTIFICATE OF
NBBB-SECTION

BY: Noah H. Huffstetler III
Noah H. Huffstetler III
Petree Stockton, L.L.P.
4101 Lake Boone Trail
Suite 400
Raleigh, NC 27607
COUNSEL FOR PETITIONER *Plaintiff*

This is the 14th day of August, 1995.

John M. Syria
John M. Syria, Director
Division of Facility Services
N.C. Department of Human Resources
701 Barbour Drive
Raleigh, NC 27603-2008

ATTACHMENT A

Cardiac Catheterization Laboratories to be Registered by Plaintiffs (by Serial Number)	Cardiac Catheterization Laboratories to be Registered by Plaintiffs (by VIN Number)
9803603201	1PT011JH529001121
259058WK6	1PT011JH3L9004826
277607WK8	1PT011JH6M9002232
28691WK1	1T9FS0Z26KB021865
119R013	1PT011AH3M9007078
347649WK6	1T9FS0Z24NB021819
893750	1TT011JH1L9004582
289378WK2	1T9FS0Z29LB021073
368093WK1	1T9FS0Z21PB021893

446-165118

ATTACHMENT B

EQUIPMENT COMPARISON

	EXISTING EQUIPMENT	REPLACEMENT EQUIPMENT
Type of Equipment (List Each Component)	cardiac cath lab	cardiac cath lab
Manufacturer of Equipment	GE	GE
Model Number	Inova	IGS
Serial Number	402411BU3	TBD
Specify if Mobile or Fixed	Fixed	Fixed
Date of Acquisition of Each Component	6/7/2010	TBD
Does Provider Hold Title to Equipment or Have a Capital Lease?	Holds Title	Will Hold Title
Specify if Equipment Was/Is New or Used When Acquired	Used	New
Total Capital Cost of Project (Including Construction, etc.) *Use attached form*	N/A	N/A
Total Cost of Equipment	753,126	1508365
Fair Market Value of Equipment	753,126	1058365
Net Purchase Price of Equipment	753,126	1,058,365
Location Where Operated	MPH	MPH
Number days in Use/To be Used in N.C. Per Year	250	250
Percent Change in patient Charges (by Procedure)	N/A	0%
Percent of Change in Per Procedure Operating Expenses (by Procedure)	N/A	0%
Type of Procedures Currently Performed on Existing equipment	cardiac catheterizations	N/A
Type of Procedures New Equipment id Capable of Performing	N/A	cardiac catheterizations