



NC DEPARTMENT OF
**HEALTH AND
HUMAN SERVICES**

JOSH STEIN • Governor

DEVPUTTA SANGVAI • Secretary

MARK PAYNE • Director, Division of Health Service Regulation

VIA EMAIL ONLY

May 30, 2025

Mr. Gary S. Qualls

Gary.qualls@klgates.com

No Review

Record #: 4793
Date of Request: May 13, 2025
Facility Name: Cape Fear Valley Health System
FID #: 040147
Business Name: Cumberland County Hospital System, Inc.
Business #: 578
Project Description: Sale and lease back of diagnostic equipment at Valley Radiology Imaging
County: Cumberland

Dear Mr. Qualls:

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 representation in your request and 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. **As a reminder, it is unlawful to offer or develop a new institutional health service without first obtaining a certificate of need. The Department reserves the right to impose sanctions, including civil penalties and the revocation of a license, upon any entity that offers or develops a new institutional health service without first obtaining a certificate of need.** Please do not hesitate to contact this office if you have any questions.

Sincerely,

Tanya M. Saporito
Project Analyst

Micheala Mitchell
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



K&L GATES

May 13, 2025

Gary S. Qualls
D 919.466.1182
F 919.516.2072
gary.qualls@klgates.com

VIA E-MAIL

Micheala Mitchell
Chief, Certificate of Need
North Carolina DHHS, Division of Health Service Regulation
Healthcare Planning and Certificate of Need Section
809 Ruggles Drive
Raleigh, North Carolina 27603

Re: No Review / Exemption Request

Lease Transaction Involving Cape Fear Valley Health System and Valley Radiology
Imaging Regarding Cumberland County Diagnostic Center

Dear Ms. Mitchell:

This letter is to inform you of a proposed transaction (the “Lease Transaction”) involving an existing diagnostic center (the “Diagnostic Center”) owned by The Medical Imaging Center, LLC d/b/a Valley Radiology Imaging (“VRI”) and operated at 3186 Village Dr, Fayetteville. VRI is a joint venture entity owned 51% by Valley Radiology, P.A. and 49% by Cumberland County Hospital System, Inc. d/b/a Cape Fear Valley Health System (“Cape Fear”).

The proposed Lease Transaction involves the following sale and lease-back:

- Cape Fear plans to acquire ownership of the vast majority of equipment that is operated by the Diagnostic Center, as described below, from VRI, the joint venture of which Cape Fear is a member as noted above; and
- Cape Fear will then lease that same Diagnostic Center Equipment back to VRI to continue to operate in the same manner as the Diagnostic Center (the “Leased Equipment”).

Specifically, Cape Fear plans to acquire ownership of the following equipment:

- two (2) MRI scanners;
- three (3) X-Ray Units;
- one (1) CT Scanner;
- four (4) Ultrasound Units;
- one (1) Bone Densitometry Unit; and
- one (1) Nuclear Medicine Unit.

Any other units of medical equipment (comprised of two (2) Ultrasound Units and three (3) Mammography Units) remaining under VRI's ownership (and not leased from Cape Fear) would not be substantial in capital costs and is projected to have a fair market value of less than \$350,000.

After the Lease Transaction occurs, the Leased Equipment (as well as VRI's remaining equipment) will still all be operated as part of the Diagnostic Center at the same address and by the same Diagnostic Center operator, VRI. Thus, the Leased Equipment will remain part of the Diagnostic Center and will not become part of Cape Fear's hospital as a result of this Lease Transaction. Cape Fear will simply acquire ownership of the already operational equipment.

We request that the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Healthcare Planning and Certificate of Need Section (the "Agency") confirm that the Lease Transaction is either:

1. not reviewable under the North Carolina Certificate of Need ("CON") law because the Lease Transaction is simply a related entity lease where the medical equipment currently operated at and by the Diagnostic Center will not change and thus will still be operated at and by the Diagnostic Center (albeit as equipment leased from Cape Fear);

or (in the alternative);

2. exempt from review under the CON law's exemption provisions in N.C. Gen. Stat. § 131E-184(a)(8).

I. No Review Request

The Lease Transaction is not a CON reviewable event because, even though the ownership of the equipment will change, the Diagnostic Center that is already CON approved will continue to operate with the same CON-approved equipment as before. Thus, no equipment is added to the Diagnostic Center inventory or the Cumberland County inventory and no equipment is being relocated as a result of the Lease Transaction. Additionally, no new health service facility is being created. Moreover, the new equipment lessor, Cape Fear, is a 49% owner in the Diagnostic Center,

Ms. Micheala Mitchell
May 13, 2025
Page 3

and thus the Lease Transaction is entirely intra-organizational in any event. Therefore, we request your confirmation that the Lease Transaction is not subject to CON review.

II. Exemption Notice (If Lease Transaction Deemed CON Reviewable)

However, if the Agency treats the Lease Transaction as the acquisition of the Diagnostic Center (as a health service facility), and thus CON reviewable, this letter serves as an exemption notice of Cape Fear's acquisition of the Diagnostic Center, pursuant to N.C. Gen. Stat. § 131E-184(a)(8). The General Assembly has chosen to exempt certain, otherwise reviewable, events from CON review, including the acquisition of an existing health service facility, including the equipment owned by the health service facility at the time of the acquisition. See N.C. Gen. Stat. § 184(a)(8). Under N.C. Gen. Stat. § 131E-176(9b), the Diagnostic Center constitutes a "health service facility."

Accordingly, given that the Lease Transaction involves only the Diagnostic Center, which is an existing health service facility, even if the Agency deems the Lease Transaction to trigger a new institutional health service definition, the Lease Transaction is nevertheless exempt from CON review.

CONCLUSION

Based upon the foregoing information, we hereby request the Agency's confirmation that the Lease Transaction:

1. is not CON reviewable because the equipment being leased by Cape Fear to VRI will continue to operate as part of the same Diagnostic Center in the same location as previously approved;

or (alternatively)

2. is exempt from CON review under N.C. Gen. Stat § 131E-184(a)(8).

The effective Lease Transaction date is currently anticipated to be May 30, 2025. Thank you for your assistance in regard to this matter. Please feel free to contact me at the number above if you have any questions or need further information.

Sincerely,



Gary S. Qualls

From: [Mitchell, Micheala L](#)
To: [Stancil, Tiffany C](#)
Subject: FW: [External] No Review / Exemption Request for filing on behalf of Cape Fear Valley Health System
Date: Tuesday, May 13, 2025 1:41:30 PM
Attachments: [05132025_K&L_GATES_001.pdf](#)

Tiffany,

Would you mind logging this as a no review when you return?

Hope you're feeling better! Take some T-nol and get rest!

Micheala Mitchell, JD
[NC Department of Health and Human Services](#)
[Division of Health Service Regulation](#)
Section Chief, Healthcare Planning and CON Section
809 Ruggles Drive, Edgerton Building
2704 Mail Service Center
Raleigh, NC 27699-2704
Office: 919 855 3879
Micheala.Mitchell@dhhs.nc.gov

From: Qualls, Gary <Gary.Qualls@klgates.com>
Sent: Tuesday, May 13, 2025 1:10 PM
To: Mitchell, Micheala L <Micheala.Mitchell@dhhs.nc.gov>
Subject: [External] No Review / Exemption Request for filing on behalf of Cape Fear Valley Health System

CAUTION: External email. Do not click links or open attachments unless verified. Report suspicious emails with the Report Message button located on your Outlook menu bar on the Home tab.

Micheala:

Please see the attached No Review / Exemption Request for filing on behalf of Cape Fear Valley Health System. Please confirm receipt for my records. As always, let me know if you have any questions.

Thanks

Gary



Gary S. Qualls
Partner
K&L Gates LLP
430 Davis Drive, Suite 400

Morrisville, NC 27560
Phone: 919-466-1182
Fax: 919-516-2072
gary.qualls@klgates.com
www.klgates.com

This electronic message contains information from the law firm of K&L Gates LLP. The contents may be privileged and confidential and are intended for the use of the intended addressee(s) only. If you are not an intended addressee, note that any disclosure, copying, distribution, or use of the contents of this message is prohibited. If you have received this e-mail in error, please contact me at Gary.Qualls@klgates.com.

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.