

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

IN RE: REQUEST FOR DECLARATORY)	
RULING BY THE CHARLOTTE-)	
MECKLENBURG HOSPITAL AUTHORITY)	DECLARATORY RULING
D/B/A CAROLINAS HEALTHCARE)	
SYSTEM AND MERCY HOSPITAL, INC.)	

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.

The Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas HealthCare System (“CMHA”) and Mercy Hospital, Inc. (“Mercy”) (collectively “CHS”) has requested a declaratory ruling as to the applicability of Chapter 131E, Article 9 of the North Carolina General Statutes, and of the Department’s rules, to the facts described below. Specifically, CMHA and Mercy request a Declaratory Ruling allowing the hospital facilities situated on the “Mercy Vail Avenue Campus,” at 2001 Vail Avenue, Charlotte, NC 28207 (License # H0042), as well as some specific off-campus outpatient services, to be relicensed as part of Carolinas Medical Center’s license (License # H0071) without first obtaining a Certificate of Need (“CON”), and allowing the good cause transfer of any outstanding CONs issued to Mercy-related CON projects. 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 CHS and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Mercy owns and operates two separate hospital campuses which are operated under the single “Mercy/Pineville License” (License # H0042). One Mercy Hospital campus, the “Mercy Vail Avenue Campus,” is located at 2001 Vail Avenue, Charlotte, NC 28207. Another Hospital campus, the “Pineville Campus,” is located at 10628 Park Road, Pineville, NC 28210. CMHA owns and operates, among other hospitals, Carolinas Medical Center (“CMC”) at 1000 Blythe Blvd., Charlotte, NC 28232 (License # H0071). CMHA is also the parent company for Mercy.

CMHA and its controlled affiliate Mercy have determined that operational and clinical efficiencies will be gained by shifting the Mercy Vail Avenue Campus, and some off-campus outpatient services, from the Mercy/Pineville License (License # H0042) to the CMC license (License # H0071). The off-campus outpatient services that will move from the Mercy/Pineville license are: (1) Carolinas Sleep Services-Mercy, (2) Carolinas Wound Care Center, (3) SEPC at Museum Medical Plaza.

CHS also requests a transfer of good cause of any outstanding CONs issued to Mercy. The change in outstanding Mercy/Pineville-related projects includes: (1) F-8771-12 CMC-Mercy MRI Replacement (will be licensed as part of CMC after the licensure change), (2) F-8763-11 CMC-Mercy 38 Acute Care Beds (will be licensed as part of CMC after the licensure change), (3) F-8704-11 CMC-Mercy 66 Bed Behavioral Health Hospital (will be licensed as part of CMC after the licensure change), (4) F-8640-11 and F-8764-11 Relocate LTACH beds to Pineville (will still be licensed under the Mercy/Pineville License on the Pineville campus), (5) F-8740-11 CMC-Providence Satellite ED (will still be licensed under the Mercy/Pineville

License) and (6) F-7979-07 CMC-Pineville Phase II (will still be licensed under the Mercy/Pineville License on the Pineville campus).

ANALYSIS

The CON statute sets forth the following definitions of new institutional health services:

- (16) “New institutional health services” means any of the following:
 - a. The construction, development, or other establishment of a new health service facility.
 - c. Any change in bed capacity as defined in G.S. 131-176(5)

N.C. Gen. Stat. § 131E-176(16) (a) and (c).

On July 15, 2002, the Department issued a Declaratory Ruling to WakeMed to split the WakeMed Raleigh and WakeMed Cary campuses into two separately licensed hospitals, where those facilities had previously operated under a single license. Since the WakeMed transaction, which created a new license did not require a CON, it can be assumed that the Mercy relicensing transaction requested herein which does not create a new license should not require a CON. The placing of Mercy Vail Avenue Campus under the CMC license does not involve any new institutional health service definitions requiring a CON. The relicensing transaction does not constitute the construction, development, or establishment of a new health service facility. The proposed transaction does not constitute a change in bed capacity as defined by N.C. Gen. Stat. § 131E-176(16)(c) and 176(5) in that no beds are being relocated from one licensed facility or campus to another, no health service facility bed capacity is being redistributed among the categories of health service facility beds and there are no increases in the number of health service facility beds, which would require CON review.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that Carolinas HealthCare System and Mercy Hospital, Inc. be allowed to relicense hospital facilities situated on the Mercy Vail Avenue Campus and some specific off-campus outpatient services from the Mercy Vail Avenue Campus license (License # H0042) to the Carolinas Medical Center’s license (License # H0071) including a transfer of good cause for any undeveloped CONs issued to Mercy/Pineville. The proposed licensure change has been determined to be in material compliance with representations in the respective applications.

This the _____ day of November, 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

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

This the _____ day of November, 2012.

Cheryl Ouimet
Chief Operating Officer