

**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  
<http://www.ncdhhs.gov/dhsr/>

Drexdal Pratt, Director

Beverly Eaves Perdue, Governor  
Albert A. Delia, Acting Secretary

Craig R. Smith, Section Chief  
Phone: (919) 855-3873  
Fax: (919) 733-8139

December 21, 2012

Gary S. Qualls  
430 Davis Drive, Suite 400  
Morrisville, NC 27560

**Exempt from Review**

Facility: Chapel Hill Surgical Center, Inc.  
Project Description: University of North Carolina Hospitals at Chapel to acquire substantially all the assets of Chapel Hill Surgical Center, Inc. (a multispecialty ambulatory surgical facility) in Chapel Hill, Orange County, which transaction is exempt from Certificate of Need Review under N.C. General Statute § 131 E-184 (a)(8).

County: Orange  
FID #: 923089

Dear Mr. Qualls:

The Certificate of Need Section (CON Section) received your letter on December 18, 2012 regarding the above referenced proposal. Based on the CON law in effect on the date of this response to your request, the proposal described in your correspondence is not governed by, and therefore, does not currently require a certificate of need. However, please note that 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.

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 Certificate of Need Section. Changes in project include, but are not limited to: (1) increase in 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.

In addition, you should contact the Construction Section of the DHSR Section to determine if they have any requirements for development of the proposed project. Please contact the CON Section if you have any questions. Also, in all future correspondence you should reference the Facility I.D. # (FID) if the facility is licensed.

Thank you for the opportunity to be of assistance.



Location: 809 Ruggles Drive, Dorothea Dix Hospital Campus, Raleigh, N.C. 27603  
An Equal Opportunity/Affirmative Action Employer

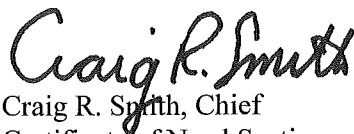


Gary S. Qualls  
December 21, 2012  
Page 2

Sincerely,

A handwritten signature in cursive script, appearing to read "F. Gene DePorter".

F. Gene DePorter, Project Analyst  
Certificate of Need Section

A handwritten signature in cursive script, appearing to read "Craig R. Smith".

Craig R. Smith, Chief  
Certificate of Need Section

cc: Construction Section, DHSR  
Medical Facilities Section, DHSR

December 18, 2012

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

**VIA HAND DELIVERY**

Mr. Craig Smith, Chief  
Certificate of Need Section  
Division of Health Service Regulation  
Department of Health and Human Services  
809 Ruggles Drive  
Raleigh, NC 27603

Re: Exemption Notice for Chapel Hill Surgical Center, Inc.  
License No. AS0010; Facility ID 923089

Dear Mr. Smith:

The purpose of this letter is to provide notice to the North Carolina Department of Health and Human Services, Division of Health Service Regulation (“DHSR”), Certificate of Need Section (the “CON Section”) that our client, the University of North Carolina Hospitals at Chapel Hill (“UNC Hospitals”), a North Carolina governmental agency, is planning to acquire substantially all of the assets of Chapel Hill Surgical Center, Inc. (“Chapel Hill Surgical”), a licensed three (3) operating room multispecialty ambulatory surgical facility in Chapel Hill, Orange County (the “ASF”),<sup>1</sup> which transaction is exempt from certificate of need (“CON”) review under N.C. Gen. Stat. § 131E-184(a)(8).

**I. THE TRANSACTION**

As of this date, Chapel Hill Surgical operates a three (3) operating room multispecialty ambulatory surgical facility, which is an existing “health service facility,” as that term is defined in N.C. Gen. Stat 131E-176(9b). Effective on or about December \_\_, 2012 (the “Effective Date”), UNC Hospitals will purchase substantially all of the assets of the ASF from Chapel Hill Surgical. On the Effective Date, UNC Hospitals will lease back to Chapel Hill Surgical substantially all of the assets of the ASF. Accordingly, Chapel Hill Surgical will remain the licensed operator after the Effective Date.

**II. EXEMPTION NOTICE**

Under North Carolina law, a certificate of need (“CON”) is required only prior to offering or developing a “new institutional health service.” “New institutional health service” includes a variety of services and activities, including the establishment of an ambulatory surgical facility or a capital expenditure exceeding \$2 million to develop a health service facility. N.C. Gen. Stat. § 131E-176(16)(a) & (b). However, the North Carolina General Assembly has exempted certain types of proposals from CON review, pursuant to N.C. Gen. Stat. § 131E-184, including the acquisition of an existing health service facility, including equipment owned by the health service facility at the time of acquisition.

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<sup>1</sup> Note that Chapel Hill Surgical is currently not a certified supplier participating in Medicare.

Mr. Craig Smith, Chief  
December 18, 2012  
Page 2

This transaction involves only the acquisition of an existing ambulatory surgical facility, which falls within the purview of the statutory definition of "health service facility." UNC Hospitals' acquisition of the ASF from Chapel Hill Surgical does not entail the purchase of any major medical equipment or any *per se* reviewable equipment as defined in N.C. Gen. Stat. §§ 131E-176(14o) and (16)(f1). Likewise, the transaction does not include the offering of any *per se* reviewable services except those already licensed to be provided by the ASF. N.C. Gen. Stat. § 131E-176(16)(f). Thus, given that the transaction involves only the acquisition of an existing health service facility, it is exempt from CON review.

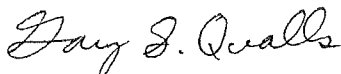
**III. CONCLUSION**

Based on the foregoing information, we are hereby providing notice that the transaction described above is exempt from CON review, pursuant to N.C. Gen. Stat. § 131E-184(a)(8).

Chapel Hill Surgical, represented by Steve Miller, Esq. and Dean McCord, Esq., has authorized the submission of this letter.

If you require additional information, please contact me at the above number.

Sincerely,



Gary S. Qualls

cc: Gina Bertolini, Esq., Assistant General Counsel, UNC Health Care System  
Steve Miller, Esq., Alexander, Miller & Schupp, LLP  
Dean McCord, Esq., Wyrick Robbins Yates & Ponton LLP