



North Carolina Department of Health and Human Services
Division of Health Service Regulation

Pat McCrory
Governor

Aldona Z. Wos, M.D.
Ambassador (Ret.)
Secretary DHHS

Drexdal Pratt
Division Director

April 30, 2013

Kenneth L. Burgess
301 Fayetteville St, Ste 1900
Raleigh, NC 27601

No Review

Facility/Business: Beystone Health and Rehabilitation Company & Fletcher Academy, Inc.
Project Description: Place the real property and facility under development into a new real estate holding company
County: Henderson
FID #: 110870

Dear Mr. Burgess:

The Certificate of Need Section (CON Section) received your letter of April 10, 2013 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 or a transfer for good cause of the existing 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 or whether a transfer for good cause is required would need to be made by the Certificate of Need Section.

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.

Sincerely,

Julie Halatek
Project Analyst

Craig R. Smith, Chief
Certificate of Need Section

Certificate of Need Section

www.ncdhhs.gov

Telephone: 919-855-3873 • Fax: 919-733-8139

Location: Edgerton Building • 809 Ruggles Drive • Raleigh, NC 27603

Mailing Address: 2704 Mail Service Center • Raleigh, NC 27699-2704

An Equal Opportunity/ Affirmative Action Employer



Done

Poyner Spruill^{LLP}

April 11, 2013



Kenneth L. Burgess
Partner
D: 919.783.2917
F: 919.783.1075
kburgess@poynerspruill.com

VIA HAND DELIVERY

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

RE: Request for Transfer of CON for Good Cause Determination: Beystone Health and Rehabilitation Company and Fletcher Academy, Inc.

Dear Craig:

We are writing on behalf of our client, Beystone Health and Rehabilitation Company ("Beystone") and also on behalf of Fletcher Academy, Inc. ("Fletcher") which was a co-applicant for a Certificate of Need ("CON") with Beystone in 2011 to relocate and replace fifty (50) skilled nursing facility ("SNF") beds to a new site in Henderson County. That application was approved in April 2012. See Attachment 1 (Transmittal of CON). The purpose of this correspondence is to request a "transfer for good cause" determination regarding that CON within the meaning of N.C. Gen. Stat. § 131E-189 and 10A NCAC 14C .0502(a) and (b) or a determination that the proposal described herein does not constitute transfer of a CON within the meaning of N.C. Gen. Stat. § 131E-189. Fletcher has consented to the filing of this request by counsel for Beystone and a copy is being provided to counsel for Fletcher.

At the time the CON application was filed by Beystone and Fletcher in October 2011, Beystone leased an existing facility from Fletcher with an option to purchase, which was located at 80 Brownsberger Circle, Fletcher, N.C. 28732. The parties jointly decided to apply for a CON to relocate and replace the facility to a site in Henderson County identified as Henderson County PIN # 9631859030 (no street address had been assigned to the property when the CON application was filed). Subsequent to the approval of the CON application, the parties filed a Petition for Declaratory Ruling seeking a change in the site to a new location five to seven miles away. A Declaratory Ruling approving the site relocation was issued by the CON Section on July 26, 2012. See Attachment 1 (Declaratory Ruling).

Beystone and Fletcher were co-applicants on the CON application because Fletcher was essentially contributing the licensed beds to the new project and Beystone was arranging for and contributing the financing for the project and the development and management operations expertise. Pursuant to an agreement between Beystone and Fletcher, upon completion of the new project, Fletcher will relinquish its ownership interest in the new facility in favor of Beystone, which will then be sole owner and operator of the new facility. That transfer will occur only when permitted by the CON Statute and will constitute the "transfer of an existing health service facility" which is exempt from CON review upon written notice of the transfer to the CON Section, which will be provided at that time. See N.C. Gen. Stat. § 131E-184(a)(8).

The Beystone entity which was identified in the application and on the CON, as noted above, was Beystone Health and Rehabilitation Company. That entity is an operating company which typically does

Craig R. Smith
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not hold real property.¹ Beystone is owned entirely by Ardent Health and Rehabilitation Company ("Ardent"). Ardent is owned exclusively by the Christopher J. Springer Revocable Trust and the Michael Douglas DeLoach Revocable Trust.

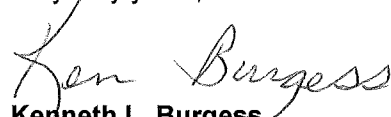
Beystone, its parent Ardent and the owners of Ardent would like to place the real property and the facility itself ("the realty") in a real estate holding company, Henderson-Beystone Healthcare Properties, LLC, which will also be wholly owned by Ardent. Christopher Springer and Michael DeLoach will each maintain their current ownership interests in Ardent, which will wholly own Henderson-Beystone Healthcare Properties, LLC. No other changes in the corporate structure are being proposed as part of this rearrangement and this request. Fletcher will also maintain the role which was described for it in the CON application and for which it was approved. The revised structure being proposed in this request is consistent with standard practice in the industry of housing facility operations in one entity and real estate holdings in a related entity. The proposal described herein will have no impact on the scope of services, cost, timing or any other aspect of the project as approved by the CON Section and is entirely a corporate structural modification.

N.C. Gen. Stat. § 131E-189 and 10A NCAC 14C .0502, taken together, generally prohibit the transfer of a CON prior to completion of the project at issue, unless the CON Section determines that the transfer is for "good cause." Those authorities also provide certain examples of "good cause transfers." Additionally, 10A NCAC 14C .0502 (b)(1) specifically provides that "ownership of a certificate of need is not transferred when . . . the holder of the certificate is a corporation and the identity of the holder changes because of a corporate reorganization." The proposal described herein is essentially a corporate reorganization in the sense that certain assets described as belonging to Beystone in the CON application will be relocated to a related real estate holding company created to hold the realty, which is also owned by the same parent entity, Ardent, as Beystone.

We are writing to request a determination by the CON Section that placing the realty which is part of this project in the Henderson-Beystone Healthcare Properties, LLC entity either constitutes a transfer for good cause within the meaning of N.C. Gen. Stat. § 131E-189, or is not a "transfer" of the CON pursuant to 10A NCAC 14C .0502 (b)(1). Further, we are requesting a determination that the CON Section would not, as a result of the arrangement described herein, initiate proceedings to withdraw the CON which was issued to Beystone and Fletcher.

Please let me know if you need additional information concerning this request. We appreciate your attention to this matter.

Very truly yours,



Kenneth L. Burgess
Partner

¹ The existing facility in Fletcher, N.C. is operated by Beystone Health and Rehabilitation Company and the land and facility are owned by Fletcher. Thus, Beystone owns no realty in connection with its operation of the current facility.

Craig R. Smith
April 11, 2013
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cc: Michael Ovsievsky, Esq.



ATTACHMENT 1

North Carolina Department of Health and Human Services
Division of Health Service Regulation
Certificate of Need Section

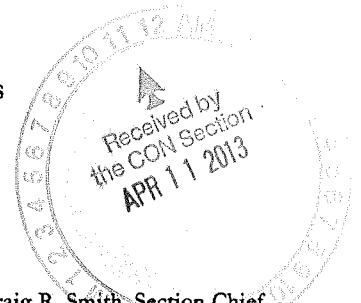
2704 Mail Service Center • Raleigh, North Carolina 27699-2704

<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



April 5, 2012

Don Poole, Principal
Dixon Hughes Goodman, LLP
2501 Blue Ridge Road, Suite 500
Raleigh, NC 27607

RE: Transmittal of CON/ Project I.D. #B-8759-11/ Beystone Health and Rehabilitation Co. AND Fletcher Academy, Inc./ Relocate and replace existing 50 bed nursing facility/ Henderson County
FID #1110870

Dear Mr. Poole:

We are happy to transmit your certificate of need for the above referenced project. At this time, you should contact the Construction Section and the Licensure and Certification Section, regarding their procedures and requirements for the development of this project. The Certificate of Need Section will notify the other Sections that the certificate of need has been issued. However, please note that it is the responsibility of the holder of the certificate of need to contact these Sections concerning the next steps to follow in the development of the approved project.

Please be aware that pursuant to General Statute 131E-181(b), you are required to materially comply with the representations made in your application for a certificate of need, or with any conditions the department placed on the certificate of need. If you operate a service which materially differs from the representations made in your application for a certificate of need, or with any conditions the department placed on the certificate of need, including any increase in per diem reimbursement rates/charges, the department may bring remedial action against the holder of the certificate of need pursuant to General Statutes 131E-189 and 131E-190.

The holder of a certificate of need is obligated to submit progress reports to this Agency as required by 10A NCAC 14C .0209. The applicant shall notify the Agency of any variations from the schedule or the projected capital cost of the project. During the development of the project, the Agency may request any additional information pertinent to the project, including additional progress reports, to determine: 1) if the timetable specified on the certificate is being met; 2) if the amount of the capital expenditure obligated under the certificate has exceeded or can be expected to exceed the maximum amount under the certificate; 3) if the terms and conditions of the approval are being met; and 4) if the project is progressing as proposed in the application.



Don Poole
April 5, 2012
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The first progress report on this project is due August 1, 2012. Forms for the submittal of these reports are enclosed. Failure to submit any scheduled or requested progress report in a timely manner may result in the agency withdrawing the certificate pursuant to G.S.131E-189 (a). If after reviewing the status of the project, the Certificate of Need Section determines that the holder of the certificate is not meeting the timetable and is not making a good faith effort to meet it, the Agency may withdraw the certificate in accordance with G.S. 131E-189.

Moreover, please be advised that this Agency may assess a civil penalty not to exceed \$20,000 against any person who violates the terms of a certificate of need which has been issued each time the service provided is in violation of this provision (G.S. 131E-190(f)). If for some reason, the holder of a certificate of need determines it necessary to request an increase in a per diem charge or reimbursement rate over that which was stated in the application for the certificate of need, then the holder must first contact the Certificate of Need Section to obtain proper instructions for initiating such a request. The request for the increase will be considered by the department pursuant to G.S. 131E-181(b).

Please keep us informed of the progress in the development of this project. Please refer to the Project I.D.# and Facility I.D.# (FID) in all correspondence.

Sincerely,



Bernetta Thorne-Williams, Project Analyst
Certificate of Need Section



Craig R. Smith, Chief
Certificate of Need Section

BTW:CRS:vlw

Enclosures

cc: Construction Section, DHSR
Medical Facilities Planning Section, DHSR
Nursing Home Licensure and Certification Section, DHSR

STATE OF NORTH CAROLINA

*Department of Health and Human Services
Division of Health Service Regulation*

CERTIFICATE OF NEED

for

Project Identification Number #B-8759-11

FID #110870

ISSUED TO: ~~Beystone Health and Rehabilitation Co. and Fletcher Academy, Inc.~~
~~229 Airport Road, Suite 7-104~~ ~~185 Fletcher Academy Drive~~
~~Arden, NC 28704-6402~~ ~~Fletcher, NC 28732~~

Pursuant to N.C. Gen. Stat. § 131E-175, et. seq., the North Carolina Department of Health and Human Services hereby authorizes the person or persons named above (the "certificate holder") to develop the certificate of need project identified above. The certificate holder shall develop the project in a manner consistent with the representations in the project application and with the conditions contained herein and shall make good faith efforts to meet the timetable contained herein. The certificate holder shall not exceed the maximum capital expenditure amount specified herein during the development of this project, except as provided by N.C. Gen. Stat. § 131E-176(16)e. The certificate holder shall not transfer or assign this certificate to any other person except as provided in N.C. Gen. Stat. § 131E-189(c). This certificate is valid only for the scope, physical location, and person(s) described herein. The Department may withdraw this certificate pursuant to N.C. Gen. Stat. § 131E-189 for any of the reasons provided in that law.

SCOPE: ~~Beystone Health and Rehabilitation Co. AND Fletcher Academy, Inc. shall construct a replacement 50-bed nursing facility and relocate the facility from Fletcher to Mills River/ Henderson County~~

CONDITIONS: See Reverse Side

PHYSICAL LOCATION: ~~Beystone Health and Rehabilitation~~
~~Haywood Road (Parcel I.D. #9631859030)~~
~~Mills River, NC 28759~~

MAXIMUM CAPITAL EXPENDITURE: \$6,817,388

TIMETABLE: See Reverse Side

FIRST PROGRESS REPORT DUE: August 1, 2012

This certificate is effective as of the 2nd day of April, 2012.



Chief, Certificate of Need Section
Division of Health Service Regulation

CONDITIONS:

1. Beystone Health and Rehabilitation Co and Fletcher Academy, Inc shall materially comply with all representations made in its certificate of need application.
2. Beystone Health and Rehabilitation Co and Fletcher Academy, Inc shall construct a replacement nursing facility with a total licensed bed complement of no more than 50 beds upon completion of the project.
3. Beystone Health and Rehabilitation Co and Fletcher Academy, Inc shall provide documentation that the 50 beds at the existing Beystone Health and Rehabilitation Co are delicensed following completion of the proposed replacement nursing facility.
4. Beystone Health and Rehabilitation Co and Fletcher Academy, Inc shall submit all patient charges and actual per diem reimbursement for each source of patient payment to the Certificate of Need at year end for each of the first two operating years following licensure of the beds in the new facility.
5. For the first two full federal fiscal years of operation following completion of the project, actual private pay charges shall not be increased more than 5% of the projected private pay charges provided in Section X of the application without first obtaining a determination from the Certificate of Need Section that the proposed increase is in material compliance with the representations made in the certificate of need application.
6. Beystone Health and Rehabilitation Co and Fletcher Academy, Inc shall receive Medicaid per diem rates allowed by the Division of Medical Assistance, under the NC State Plan Section .0102.
7. Beystone Health and Rehabilitation Co and Fletcher Academy, Inc shall acknowledge acceptance of and agree to comply with all conditions stated herein to the Certificate of Need Section, in writing prior to issuance of the certificate of need.

A letter acknowledging acceptance of and agreeing to comply with all conditions stated in the conditional approval letter was received by the Certificate of Need Section on March 23, 2012.

TIMETABLE:

Approval of Final Drawings by Construction, DHR	_____	October 1, 2012
25% Completion of Construction	_____	March 1, 2013
75% Completion of Construction	_____	July 15, 2013
Completion of Construction	_____	September 1, 2013
Licensure of Facility	_____	October 1, 2013
Medicare/ Medicaid Certification of Facility	_____	October 1, 2013

**CERTIFICATE OF NEED
PROGRESS REPORT FORM**

County: _____
 Facility: _____
 Project I.D. #: _____
 Project Description: _____

Date of Progress Report: _____
 Facility I.D. #: _____
 Effective Date of Certificate: _____

A. Status of the Project

- (a) Describe in **detail** the current status of the project. If the project is not going to be developed exactly as proposed in the certificate of need application, describe all differences between the project as proposed in the application and the project as currently proposed. Such changes include, but are not limited to, changes in the: 1) design of the facility; 2) number or type of beds to be developed; 3) medical equipment to be acquired; 4) proposed charges; and 5) capital cost of the project. (See the Capital Cost Section of this form for additional questions regarding changes in the total capital cost of the project).
- (b) Pursuant to G.S. 131E-181(d), the CON Section cannot determine that a project is complete until "the health service or the health service facility for which the certificate of need was issued is licensed and certified and in material compliance with the representations made in the certificate of need application." To document that new or replacement facilities, new or additional beds, new or replacement equipment or new services have been licensed and certified, provide copies of correspondence from the appropriate section within the Division of Health Service Regulation and the Centers for Medicare and Medicaid Services (CMS).

B. Timetable

1. Complete the following table. The first column **must** include the timetable dates found on the certificate of need. If the CON Section has authorized an extension of the timetable in writing, you may substitute the dates from that letter.

PROJECT MILESTONES	Projected Completion Date from certificate	Actual completion date	Proposed completion date
	Month/day/year	Month/day/year	Month/day/year
Obtained Funds for the Project			
Final Drawings and Specifications Sent to DHSR			
Acquisition of land/facility			
Construction Contract Executed			
25% completion of construction			
50% completion of construction			
75% completion of construction			
Completion of construction			
Ordering of medical equipment			
Operation of medical equipment			
Occupancy/offering of services			
Licensure			
Certification			

2. If the project is experiencing significant delays in development:
- a. explain the reasons for the delay; and
 - b. provide a revised timetable for the CON Section to consider.

- C. Medical Equipment Projects** – If the project involves the acquisition of any of the following equipment: 1) major medical equipment as defined in NCGS §131E-176(14f); 2) the specific equipment listed in NCGS §131-176(16); 3) equipment that creates an oncology treatment center as defined in NCGS §131-176(18a); or 4) equipment that creates a diagnostic center as defined in NCGS §131E-176(7a), provide the following information for each piece or unit of equipment: 1) manufacturer; 2) model; 3) serial number; and 4) date acquired.

D. Capital Expenditure

1. Complete the following table.
 - a. Include all capital costs that have been paid to date as well as those that the applicant(s) are legally obligated to pay.
 - b. If you have not already done so, provide copies of the executed construction contracts, including the one for architect and engineering services, and all final purchase orders for medical equipment costing more than \$10,000/unit.
 - c. If the project involves renovation or construction, provide copies of the Contractors Application for Payment [AIA G702] with Schedule of Values [AIA G703].

	Capital Expense Since Last Report	Total Cumulative Capital Expenditure
Site Costs		
Purchase price of land	_____	_____
Closing costs	_____	_____
Legal Fees	_____	_____
Site preparation costs	_____	_____
Landscaping	_____	_____
Other site costs (identify)	_____	_____
Subtotal Site Costs	_____	_____
Construction Costs		
Construction Contract	_____	_____
Miscellaneous Costs		
Moveable Equipment	_____	_____
Fixed Equipment	_____	_____
Furniture	_____	_____
Consultant Fees	_____	_____
Financing Costs	_____	_____
Interest during Construction	_____	_____
Other Misc. Costs (identify)	_____	_____
Subtotal Misc. Costs	_____	_____
Total Capital Cost of the Project	_____	_____

2. What do you project to be the remaining capital expenditure required to complete the project? _____
3. Will the total actual capital cost of the project exceed 115% of the approved capital expenditure on the certificate of need? If yes, explain the reasons for the difference.

E. CERTIFICATION – The undersigned hereby certifies that the responses to the questions in this progress report and the attached documents are correct to the best of his or her knowledge and belief.

Signature of Officer: _____
 Name and Title of Responsible Officer _____
 Telephone Number of Responsible Officer _____