



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

July 2, 2013

Frank Kirschbaum
4141 Parklake Avenue, Suite 200
Raleigh, NC 27612

Exempt from Review – Acquisition of Facility

Facility: East Carolina Neurology, Inc. (ECN)/2280 Hemby Lane
Acquisition by: East Carolina University
County: Pitt
FID #: ~~NA-130327~~ mcf 7/16/13

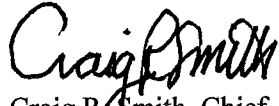
Dear Mr. Kirschbaum:

In response to your letter of June 20, 2013, the above referenced proposal is exempt from certificate of need review in accordance with N.C.G.S 131E-184(a)(8). Therefore, East Carolina University may proceed to acquire the above referenced health service facility without first obtaining a certificate of need. Note that pursuant to N.C.G.S. §131E-181(b): *“A recipient of a certificate of need, or any person who may subsequently acquire, in any manner whatsoever permitted by law, the service for which that certificate of need was issued, is required to materially comply with the representations made in its application for that certificate of need.”*

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,


Jane Rhoe-Jones
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

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Same



Frank Kirschbaum
Member
Admitted in NC

June 20, 2013

VIA HAND DELIVERY

Craig R. Smith, Chief
Certificate of Need Section
N.C. Dept. of Health and Human Services
Division of Health Service Regulation
Edgerton Bldg.
809 Ruggles Dr.
Raleigh, NC 27603

Re: Notice of Exempt Acquisition Pursuant to N.C. Gen. Stat. § 131E-184(a)(8)

Dear Mr. Smith:

- Charleston
- Charlotte
- Columbia
- Greensboro
- Greenville
- Hilton Head
- Myrtle Beach
- Raleigh**

This Firm represents East Carolina University (the "University"). We are writing to provide notice pursuant to N.C. Gen. Stat. § 131E-184(a)(8) of the University's future acquisition of the diagnostic center operated by East Carolina Neurology, Inc. ("ECN") located at 2280 Hemby Lane, Greenville, Pitt County, North Carolina (the "Facility"), including all equipment operated by ECN in the Facility.

The Facility is an existing "health service facility" as that term is defined under N.C. Gen. Stat. § 131E-176(9b). By letter dated April 5, 2013, a copy of which is enclosed for your reference, the Certificate of Need Section (the "CON Section") determined that the Facility existed as a diagnostic center prior to March 18, 1993. This finding was made based upon the fact that, prior to that date ECN utilized the medical diagnostic equipment at the facility, each item of which cost \$10,000 or more and the aggregate cost of which exceeded \$500,000. As such, the Facility is a "grandfathered" diagnostic center.

Pursuant to N.C. Gen. Stat. § 131E-184(a)(8), the acquisition of an existing health service facility is exempt from certificate of need review upon prior written notice to the CON Section. The University will not develop or establish any new health service facility, nor will it offer, develop, or establish any new institutional

Craig R. Smith, Chief
June 20, 2013
Page 2

health service that is not exempt under N.C. Gen. Stat. § 131E-184(a)(8) in connection with this transaction. Based on these facts, the University's acquisition of the Facility is exempt from CON review upon the CON Section's receipt of this notice.

In order to meet deadlines with respect to this acquisition, we respectfully request that you respond to this letter by July 5, 2013, and confirm that this transaction is exempt from CON review pursuant to N.C. Gen. Stat. § 131E-184(a)(8).

Thank you for your assistance in this matter. Please do not hesitate to contact us if you have any questions.

Sincerely,



Frank Kirschbaum
Member

Enclosure



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

Pat McCrory
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Ambassador (Ret.)
Secretary DHHS

Drexal Pratt
Division Director

April 5, 2013

J. Michael Fields, Attorney at Law
Ward and Smith PA
Post Office Box 8088
Winterville, North Carolina 28590

7/16/13
Equip included:
CT
US
EMG
No MRI
mqf 7/16/13

Inquiry/Acknowledgement

Facility or Business: East Carolina Neurology, Inc.
Project Description: Diagnostic Center Prior to March 18, 1993
County: Pitt
FID #: NA

Dear Mr. Fields:

The Certificate of Need Section (CON Section) received your letter of March 1, 2013 requesting acknowledgement by the Certificate of Need Section that the above referenced MRI scanner was in operation and the facility was a diagnostic center prior to the amendment to NC GEN STAT 131E-175.

The basis for this decision/acknowledgement that East Carolina Neurology, Inc. (ECN) is grandfathered as a diagnostic center includes the following facts:

1. ECN was located in a medical office from 1978-2000 at a different site (2501 Stantonsburg Road, Greenville, North Carolina) prior to moving (2280 Hemby Lane, Greenville, North Carolina) in 2000.
2. The medical equipment valued at more than \$10,000 and operated at the former medical office building, was \$340,486. The cost of the space attributed to the equipment was \$397,717. The total cost of the improvement was \$738,203.
3. Effective March 18, 1993, the Certificate of Need Law was amended as follows:

131E-176. Definitions

(7a) "Diagnostic center" means a freestanding facility, program, or provider, including but not limited to, physicians' offices, clinical laboratories, radiology centers, and mobile



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Mr. J. Michael Fields
April 5, 2013
Page 2

diagnostic programs, in which the total cost of all the medical diagnostic equipment utilized by the facility which cost ten thousand dollars (\$10,000) or more exceeds five hundred thousand dollars (\$500,000), the costs of the equipment studies, surveys, designs, plans, working drawings, specifications, construction, installation, and other activities essential to acquiring and operational the equipment shall be included. The capital expenditure for the equipment shall be deemed to be the fair market value of the equipment or the cost of the equipment, whichever is greater.

4. ECN was in fact a diagnostic center when the Certificate of Need Law was amended on March 18, 1993.
5. Relocating the equipment to the Hemby Lane address does not change the diagnostic center status for ECN.
6. Therefore, based on the information represented by you and the above findings, the CON Section acknowledges that East Carolina Neurology, Inc. is a "diagnostic center," as defined the above quoted CON Statute.

It should be noted that this determination is binding only for the facts represented by you. Consequently, if changes are made 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.

Please contact the CON Section if you have any questions.

Sincerely,



Jane Rhoe-Jones, Project Analyst



Craig R. Smith, Chief
Certificate of Need Section

cc: Medical Facilities Planning Section, DHSR