



NC DEPARTMENT OF  
**HEALTH AND  
HUMAN SERVICES**

ROY COOPER • Governor  
MANDY COHEN, MD, MPH • Secretary  
MARK PAYNE • Director, Division of Health Service Regulation

December 4, 2018

Kenneth Burgess  
301 Fayetteville Street, Suite 1900  
Raleigh, NC 27601

**Exempt from Review – Acquisition of Facility**

**Record #:** 2780  
**Facility Name:** See Attachment A  
**Type of Facility:** Hospital  
**FID #:** 943349  
**Acquisition by:** MH Master Holdings, LLLP  
**Business #:** 2964  
**County:** Buncombe

Dear Mr. Burgess:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency) determined that based on your representations, the above referenced proposal is exempt from certificate of need (CON) review in accordance with N.C. Gen. Stat. §131E-184(a)(8). Therefore, the above referenced business may proceed to acquire the health service facility identified above without first obtaining a CON. The Agency's determination is limited to the question of whether or not the above referenced business would have to obtain a CON if the current owners of the health service facility do in fact sell it to the business listed above. Note that pursuant to N.C. Gen. Stat. §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."*

In the event that the business listed above does acquire the facility, you should contact the Agency's Acute and Home Care Licensure and Certification Section to obtain instructions for changing ownership of the existing facility.

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 regarding whether or not a certificate of need would be required. If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,

Ena Lightbourne  
Project Analyst

Martha J. Frisone  
Chief, Healthcare Planning and  
Certificate of Need Section

cc: Acute and Home Care Licensure and Certification Section, DHSR  
Melinda Boyette, Administrative Assistant, Healthcare Planning, DHSR

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: 2701 Mail Service Center, Raleigh, NC 27699-2701  
www.ncdhhs.gov/dhsr/ • TEL: 919-855-3750 • FAX: 919-733-2757

## Attachment A

1. Mission Health System, Inc.
2. Mission Hospital, Inc.
3. Mission Medical Associates, Inc.
4. Mission Imaging Services, LLC
5. Blue Ridge Regional Hospital, Inc.
6. Transylvania Community Hospital, Inc.
7. Angel Medical Center, Inc.
8. MSJHS and CCP Joint Development Company, LLC d/b/a Asheville Specialty Hospital
9. The McDowell Hospital, Inc.
10. Community CarePartners, Inc.
11. Highlands-Cashiers Hospital, Inc.
12. WNC CareSource, LLC
13. Avenu Health, Inc.
14. McDowell Hospital Imaging Services, LLC
15. Mission Community Anesthesiology Specialists, LLC
16. Transylvania Physician Services, Inc.
17. Transylvania Services, Inc.
18. Transylvania Hospital Imaging Services, LLC
19. Highlands-Cashiers Physician Services, Inc.
20. The Eckerd Living Center LLC



Wyrick Robbins Yates & Ponton LLP

REGISTERED VS. ATTORNEY

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LEE M. WHITMAN

[lwhitman@wyrick.com](mailto:lwhitman@wyrick.com)

November 16, 2018

**VIA ELECTRONIC MAIL**

Martha Frisone, Chief  
Ena Lightbourne, Project Analyst  
N.C. Department of Health and Human Services  
Division of Health Service Regulation  
Healthcare Planning and Certificate of Need Section  
809 Ruggles Drive  
Raleigh, N.C. 27603

RE: **Notice of Exempt Acquisition of Mission Health System, Inc. Assets**

Dear Martha and Ena:

As you may know, Mission Health System, Inc. (Mission) and numerous related entities which are part of the Mission Health System network have entered into an Asset Purchase Agreement with our law firm’s client, MH Master Holdings, LLLP (“Buyer”), pursuant to which Mission plans to sell, and Buyer plans to purchase, substantially all of the Mission Health System assets (“the Transaction”). The Transaction is projected to close in the next few weeks, subject to certain pending governmental approvals. A complete list of the Mission Health System-related entities whose assets are being acquired is Attachment 1 to this correspondence<sup>1</sup>.

<sup>1</sup> Certain assets of the entities involved in the Transaction are “excluded assets,” meaning that they are not being acquired by Buyer. However, none of those are pertinent to this Notice of Exempt Acquisition.

The CON Statute provides that “(n)o person shall offer or develop a new institutional health service without first obtaining a certificate of need” (“CON”) from the N.C. Department of Health and Human Services, Division of Health Service Regulation, Healthcare Planning and Certificate of Need Section (“the CON Section” or “the Agency”). N.C. Gen. Stat. § 131E-178(a). The definition of “new institutional health service” includes, *inter alia*:

- (i) (t)he purchase, lease or acquisition of any health service facility, or portion thereof, or a controlling interest in the health service facility or portion thereof (*see* N.C. Gen. Stat. §§ 131E-176(16)l);
- (ii) ii) the acquisition by purchase, donation, lease, transfer or comparable arrangement by any person of major medical equipment (*see* N.C. Gen. Stat. §§ 131E-176(16)p); and
- (iii) the acquisition by purchase, donation, lease, transfer or comparable arrangement of a designated list of medical equipment commonly owned by hospitals, including cardiac catheterization equipment, Gamma knives, heart-lung bypass machines, linear accelerators, lithotripters, MRI scanners, PET scanners and simulators (N.C. Gen. Stat. § 131E-176(16)l).

In summary, the acquisition of existing health service facilities and most major medical equipment, as those terms are defined by the CON Statute, qualify as “new institutional health services” under the CON Statute. However, the CON Statute expressly permits the acquisition of an existing health service facility, including equipment owned by the health service facility at the time of the acquisition, without CON Section review or the need to obtain a CON if the party acquiring the existing health service facility provides to the CON Section prior written notice of the acquisition. N.C. Gen. Stat. § 131E-184(a)(8). The CON Statute defines “health service facility” to include the following: hospitals, long-term care hospitals, psychiatric facilities, rehabilitation facilities, nursing homes, adult care homes, kidney disease treatment centers, home health agency offices, diagnostic centers, hospice offices, hospice inpatient facilities, hospice residential facilities and ambulatory surgery centers. N.C. Gen. Stat. § 131E-176(9b).

The Transaction between Mission and Buyer involves the acquisition of numerous existing health service facilities and items of medical equipment. The purpose of this correspondence is to provide to the Agency the prior written notice required by N.C. Gen. Stat. § 131E-184(a)(8) of Buyer’s plans to acquire the following existing health service facilities and all equipment owned by these facilities<sup>2</sup>:

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<sup>2</sup> For the convenience of the CON Section, we are providing the name and license number of each licensed health service facility being acquired by Buyer as reflected on the Division of Health Service Regulation’s publicly-available website. Each of these facilities is directly owned by a North Carolina corporation or limited liability corporation, the sole owner or member of which is Mission Health System, Inc. or one of Mission Health System’s wholly-owned affiliates. However, since the Transaction involves the purchase by Buyer of assets and does not involve the purchase or acquisition of corporate stock or LLC membership interests regarding the facilities included in this list, we are not providing the names of the legal entity which owns each health service facility. We are happy to provide those to the Agency upon request. We are including references to each licensed facility’s license number to capture all facilities and services included within each facility’s existing license. Where we have listed an entity without a license number, the facility is not the type which is licensed by the State of North Carolina.

**Health Service Facility Name**

**License Number**

Angel Medical Center	H0034
Asheville Specialty Hospital	H0279
Blue Ridge Regional Hospital	H0169
Highlands-Cashiers Hospital	H0193
Mission Hospital	H0036
The McDowell Hospital	I10097
Transylvania Regional Hospital and Bridgeway	H0111
Asheville MRI (diagnostic center)	
Asheville Imaging, LLP (diagnostic center)	
Asheville Cardiac Imaging (diagnostic center/CT Scanner Buncombe)	
Mission Imaging Services, LLC	
McDowell Hospital Imaging Services, LLC	
Transylvania Hospital Imaging Services, LLC	
CarePartners Hospice & Palliative Care Services (Buncombe)	HOS0113
CarePartners Home Health Services (Buncombe)	HC0114
CarePartners Home Health Services (Haywood)	HC0279
CarePartners Home Health Services (Henderson)	HC0440
CarePartners Rehabilitation Hospital	H0081
CarePartners Private Duty Services	HC1492
CarePartners Home Care & Hospice (Macon)	HC0324
CarePartners Hospice & Palliative Care (McDowell)	HOS1153
CarePartners Home Health & Hospice (Transylvania)	HC0067
Eckerd Living Center (Macon)	NH0467

In addition to the health service facilities listed above, Mission also owns a thirty-three percent (33%) equity interest in the WNC Stone Center in Asheville which owns a fixed lithotripter. As part of the Transaction, Buyer will acquire Mission's equity interest in the WNC Stone Center. Since the WNC Stone Center is not a licensed health service facility and Mission does not own the WNC Stone Center, or its fixed lithotripter, in its entirety, we do not believe that a notice of exemption to the CON Section is required. However, in the spirit of being comprehensive, we have included the WNC Stone Center in this notice of exempt acquisition.

Finally, Mission also owns numerous other healthcare-related entities and facilities, including physician practice offices, walk-in clinics and similar sites where health care is delivered which are also being acquired by Buyer as part of the Transaction. However, none of these are licensed health service facilities nor do they contain major medical equipment as that term is defined by the CON Statute.

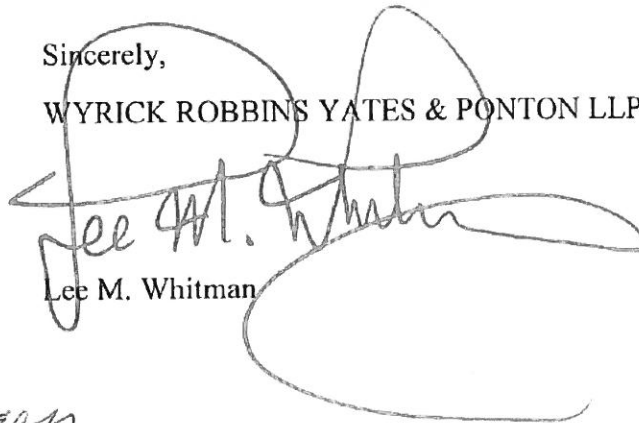
We believe that Buyer's acquisition of the assets of Mission Health System and its related entities is exempt from CON Section review and Buyer is not required to obtain a CON to proceed with the Transaction. We are writing to ask that the CON Section confirm in writing as soon as possible that the Transaction, as described herein, may proceed without further CON Section review and without the need for Buyer to obtain a CON. Please let us know if you have questions or need additional information about this request or the Transaction.

By virtue of its signature below, counsel for Mission Health System, Inc. joins in this filing. Please let us know if you have questions or need additional information, and thank you very much for your assistance.

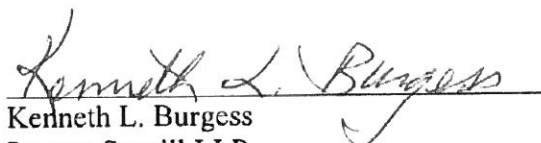
With best regards.

Sincerely,

WYRICK ROBBINS YATES & PONTON LLP



Lee M. Whitman

  
Kenneth L. Burgess  
Poyner Spruill LLP  
Counsel for Mission Health System, Inc.

cc: Don Esposito, Esquire  
Chadd Tierney, Esquire

## Attachment 1

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<sup>3</sup> At closing, Buyer may acquire Mission's membership interest in this LLC rather than its assets. It is included here in the interest of being thorough although the LLC does not possess any assets which are subject to the CON Statute.