



NC DEPARTMENT OF
**HEALTH AND
HUMAN SERVICES**

ROY COOPER • Governor

MANDY COHEN, MD, MPH • Secretary

MARK PAYNE • Director, Division of Health Service Regulation

July 30, 2018

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

Exempt from Review – Acquisition of Facility

Record #: 2666
Facility Name: Triangle Springs
Type of Facility: Psychiatric Hospital
FID #: 150205
Acquisition by: Triangle Springs, LLC
Business #: 2149
County: Wake

Dear Mr. Qualls:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency) determined that based on your letter of July 25, 2018, the above referenced proposal is exempt from certificate of need review in accordance with N.C. Gen. Stat. §131E-184(a)(8).

Therefore, Triangle Springs, LLC may proceed to acquire the above referenced health service facility without first obtaining a certificate of need. However, you need to contact the Agency's Acute and Home Care Licensure and Certification Section to obtain instructions for changing ownership of the existing facility. 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.*"

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,

Michael J. McKilip
Project Analyst

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

cc: Acute and Home Care Licensure and Certification Section, DHSR
Amy Craddock, Assistant Chief, 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



July 25, 2018

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VIA HAND DELIVERY

Ms. Martha Frisone, Chief
Health Planning and 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 Triangle Springs, a Psychiatric Hospital in Wake County

Dear Ms. Frisone:

Triangle Springs, LLC (“Triangle Springs”) operates a licensed Psychiatric Hospital, License No. MHH0979, called Triangle Springs (the “Facility”) located at 10901 World Trade Blvd, Raleigh, Wake County. Propstone, LLC (“Propstone”) was an original CON co-applicant for the Facility with Triangle Springs. Propstone applied as the owner of the building in which the Facility was housed and Triangle Springs applied as the operator. Propstone and Triangle Springs are sister companies, with the same parent organization.

The purpose of this letter is to provide notice to the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Health Planning and Certificate of Need Section (the “Agency”) that Propstone is transferring its real property interest in the Facility to its sister company, Triangle Springs (the “Reorganization”). Please confirm that this real property transfer between related co-CON holders is either not reviewable as a new institutional health service under the CON law or (in the alternative) exempt from review under the CON law’s exemption provisions in N.C. Gen. Stat. § 131E-184. Triangle Springs will remain the licensed operator of the Facility after the Transaction.

I. No Review

We believe that this Reorganization is not a reviewable event for the following reasons. First, Triangle Springs and Propstone, the joint holders of the CON rights, are related entities that are simply transferring assets from one related corporation to another. Moreover, this is not the type of transaction which would trigger CON review, because it is merely a type of reorganization in the nature of those which the CON rules recognize as non-reviewable.

The Agency's rules at 10A N.C.A.C. 14C.0502(b) state as follows:

10A NCAC 14C.0502 WITHDRAWAL OF A CERTIFICATE

- (b) Ownership of a certificate of need is transferred when any person acquires a certificate from the holder by purchase, donation, lease, trade, or any comparable arrangement, except that ownership of a certificate of need is not transferred when:
- (1) the holder of the certificate is a corporation and the identity of the holder changes because of a corporate reorganization; or
 - (2) the holder of the certificate is a partnership and the identity of the holder changes because the same partners reorganize as a new partnership.

The foregoing rules do not strictly apply, because they apply to ownership of a CON, not of an operational facility. However, if the rules are used as a proxy, the Reorganization described above does not constitute a reviewable event.

II. Exemption Notice

Even if the Reorganization is not CON reviewable in the first instance (as described in Part I), the Reorganization is exempt under N.C. Gen. Stat. § 131E-184. Under the CON 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 a health service facility. See N.C. Gen. Stat. § 131E-176(16). 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.

This Reorganization involves only the sale of the real property housing a "health service facility." Thus, even assuming, *arguendo*, that such an acquisition were the type of Reorganization which constituted a new institutional health service subject to the CON law, it would nevertheless be exempt from CON review under N.C. Gen. Stat. § 131E-184(a)(8) as the acquisition of an existing health service facility. The Facility operates as a psychiatric hospital. After the Reorganization, the Facility will continue to operate as a psychiatric hospital and will continue to be operated by Triangle Springs. Thus, given that the Reorganization involves, at most, only the transfer of real property, it is exempt from CON review (if it is a new institutional health service in the first instance).

Martha Frisone
July 25, 2018
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III. CONCLUSION

Based on the foregoing information, we request the Agency's confirmation that the Reorganization is not subject to CON review either because the Reorganization: (1) does not constitute a new institutional health service; or (2) is exempt from CON review under N.C. Gen. Stat. § 131E-184(a)(8). If you require additional information, please contact me at the above number.

Sincerely,

A handwritten signature in blue ink that reads "Gary Qualls" followed by a stylized flourish or initials.

Gary S. Qualls