



NC DEPARTMENT OF  
**HEALTH AND  
HUMAN SERVICES**

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

December 23, 2019

Robert A. Leandro  
robbleandro@parkerpoe.com

**Exempt from Review – Replacement Equipment**

**Record #:** 3166  
**Facility Name:** Harris Regional Hospital  
**FID #:** 923046  
**Business Name:** DLP Cardiac Partners, LLC  
**Business #:** 2314  
**Project Description:** Replace cardiac catheterization equipment located at Caldwell Memorial Hospital to be installed on a mobile trailer to serve Harris Regional Hospital  
**County:** Jackson

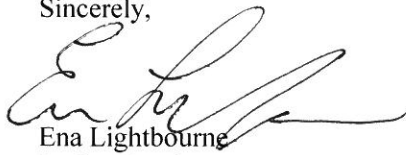
Dear Mr. Leandro:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency), determined that based on your letter of December 10, 2019, the above referenced proposal is exempt from certificate of need review in accordance with N.C. Gen. Stat. §131E-184(a)(7). Therefore, you may proceed to acquire without a certificate of need the GE Innova IGS 530 cardiac catheterization equipment to replace the GE Innova Optima cardiac catheterization equipment. This determination is based on your representations that the existing unit will be sold or otherwise disposed of and will not be used again in the State without first obtaining a certificate of need if one is required.

Moreover, you need to contact the Agency's Construction, and Acute and Home Care Licensure and Certification Sections to determine if they have any requirements for development of the proposed project.

It should be noted that the 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 office and a separate determination. If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,

  
Ena Lightbourne  
Project Analyst

  
Martha J. Frisone  
Chief

cc: Construction Section, DHSR  
Acute and Home Care Licensure and Certification Section, 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: 809 Ruggles Drive, 2704 Mail Service Center, Raleigh, NC 27699-2704  
<https://info.ncdhhs.gov/dhsr/> • TEL: 919-855-3873

AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER



**Robert A. Leandro**  
*Partner*  
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Atlanta, GA  
Charleston, SC  
Charlotte, NC  
Columbia, SC  
Greenville, SC  
Raleigh, NC  
Spartanburg, SC

December 10, 2019

**VIA U.S. MAIL AND ELECTRONIC MAIL**

Martha Frisone, Chief  
Healthcare Planning and Certificate of Need Section  
North Carolina Department of Health and Human Services  
2704 Mail Service Center  
Raleigh, NC 27699-2704  
[Martha.Frisone@dhhs.nc.gov](mailto:Martha.Frisone@dhhs.nc.gov)

Re: DLP Cardiac Partners Prior Notice of Replacement of Cardiac Cath Lab

Dear Ms. Frisone:

This letter is intended to provide prior notice to the Healthcare Planning and Certificate of Need Section (the "CON Section" or the "Agency") that our client, DLP Cardiac Partners ("Cardiac Partners") is replacing the cardiac cath lab equipment it currently operates at Caldwell Memorial Hospital ("CMH"). The existing cardiac cath lab equipment that is being replaced was originally purchased in 2012. The existing cardiac cath lab at CMH is one of the nine mobile cardiac cath labs subject to the 1995 Settlement Agreement with the Department. Pursuant to the Settlement Agreement, these nine mobile cath labs may be operated as either fixed or mobile cath labs. Cardiac Partners is the successor of interest to the 1995 Settlement Agreement based on the 2011 Exemption Decision of this Agency. See Attachment A.

The cardiac cath lab equipment that will replace the existing equipment at CMH will be installed on a mobile trailer. As set forth in the January 17, 2019 Notice and the January 23, 2019 Response from the Agency, Cardiac Partners still plans to operate the new cardiac cath equipment as a mobile unit at Harris Regional Hospital in Jackson County, North Carolina. See Attachment B.

The approximate cost of the replacement equipment, including installation on the trailer is \$500,000.00 See Attachment C, Replacement Chart. The replacement equipment will perform similar procedures and have similar capabilities as the existing cath lab equipment. The existing cardiac cath equipment is being sold to CMH. CMH was issued a CON in 2018 to acquire cardiac cath equipment and received a material compliance letter from the CON Section confirming that it can acquire the existing cath lab equipment in February of 2019.

Accordingly, Cardiac Partners requests that the Agency confirm that this replacement acquisition is exempt from CON review and that the CON Section issue a written determination that Cardiac Partners can move forward with purchasing the replacement equipment.

PPAB 5272780v1

December 10, 2019  
Page 2

I greatly appreciate your attention to this matter. If you have any questions, please feel free to contact me directly.

Sincerely,

A handwritten signature in black ink, appearing to read "Robb Leandro". The signature is written in a cursive style with a large, stylized "R" and "L".

Robb Leandro

RAL:klb

Enclosure

# ATTACHMENT A



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

Beverly Eaves Perdue, Governor  
Lanier M. Cansler, Secretary

[www.ncdhhs.gov/dhsr](http://www.ncdhhs.gov/dhsr)

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

April 29, 2011

Jone Law Koford, Secretary  
DLP Cardiac Partners, LLC  
103 Powell Court, Suite 200  
Brentwood, TN 37027

RE: Exempt from Review/ Acquisition of the mobile diagnostic program consisting of the nine units of cardiac catheterization equipment identified in Attachment A owned by MedCath Partners, LLC by DLP Cardiac Partners, LLC

Dear Mr. Koford:

In response to your letter of April 27, 2011, the above referenced proposal is exempt from certificate of need review in accordance with G.S. 131E-184(a)(8). Therefore, DLP Cardiac Partners, LLC may proceed to acquire the above referenced health service facility without first obtaining a certificate of need.

The existing mobile diagnostic program consisting of the nine units of cardiac catheterization equipment identified in Attachment A is authorized by the terms of the August 14, 1995 Settlement Agreement (Attachment B). Operation of the nine units of cardiac catheterization equipment by DLP Cardiac Partners, LLC will also be subject to the terms of the August 14, 1995 Settlement Agreement.

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,

*Martha J. Frisone*  
Martha J. Frisone  
Assistant Chief

*Craig R. Smith*  
Craig R. Smith, Chief  
Certificate of Need Section

cc: Medical Facilities Planning Section, DHSR



# Attachment A

AS OF 7/19/04	6/27/1905	Current 2007	2008	10/1/2008	2/7/2011
28507WK8 Charlotte Mobile route	28507WK8 CLT Mobile / Forsyth	28507WK8 CLT Mobile / Forsyth	28507WK8 CLT Mobile / Forsyth	28507WK8 CLT Mobile / Forsyth	28507WK8 CLT Mobile / Forsyth
28538VP4 Pardee	28538VP4 Pardee	28538VP4 Pardee	28538VP4 Pardee	28538VP4 Pardee	28538VP4 Pardee
277807WK8 Wilmington Heart Center	336 Duke	336 Duke	336 Duke	336 Duke	336 Duke
62824VP4 Pinehurst First Health Mobile Rte	62824VP4 Pinehurst First Health Mobile Rte	62824VP4 Pinehurst First Health Mobile Rte	62824VP4 Pinehurst First Health Mobile Rte	6570 Intestin Lab 73	557462BU9 Presbyterian Hosp Matthews
677482 Wilmington Heart Center	677482 Wilmington Heart Center	677482 Wilmington Heart Center	677482 Wilmington Heart Center	57821891U8 Wilmington Heart Center	57821891U8 Wilmington Heart Center
527736WK2 Caldwell Memorial	527736WK2 Caldwell Memorial	527736WK2 Caldwell Memorial	527736WK2 Caldwell Memorial	527736WK2 Caldwell Memorial	527736WK2 Caldwell Memorial
4180140 Grace Hospital	4180140 Grace Hospital	4180140 Grace Hospital	4180140 Grace Hospital	5789888BU0 Grace Hospital	5789888BU0 Grace Hospital
54280VP5 Greensboro Heart Center	54280VP5 Greensboro Heart Center	54280VP5 Greensboro Heart Center	54280VP5 Greensboro	54280VP5 Greensboro	6570 ENC Mobile Route
55330VP5 Eastern North Carolina Mobile	402411BU3 ENC Mobile Route	402411BU3 ENC Mobile Route	402411BU3 ENC Mobile Route	402411BU3 ENC Mobile Route	402411BU3 ENC Mobile Route

- 1 Forfeit/No Review Letter dated 2/8/05
- 2 No Review Letter dated 1/14/05
- 3 No Review Letter dated 12/2/05 and Equipment Notice
- 4 No Review Letter dated 10/19/04
- 5 No Review Letter dated 7/19/01
- 6 No Review Letter dated 6/25/04
- 7 No Review Letter dated 6/25/04
- 8 No Review Letter dated 7/13/01
- 9 Notice Letter dated 12/14/03
- 10 No Review Letter dated 5/26/10
- 11 No Review Letter dated 6/6/10

# Duke LIFEPOINT

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## HEALTHCARE

April 27, 2011

Via Hand Delivery

Craig R. Smith, Section Chief  
Certificate of Need Section  
Division of Health Service Regulation  
2704 Mail Service Center  
Raleigh, NC 27699-2704

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Re: Acquisition of Health Service Facility

Dear Mr. Smith:

We write on behalf of DLP Cardiac Partners, LLC ("DLP"). DLP is wholly owned by ~~DLP Healthcare LLC, a joint venture of the Duke University Health System and DLP Partner, LLC~~ (a subsidiary of LifePoint Hospitals, Inc.). The purpose of this letter is to provide prior written notice of the acquisition by DLP of the mobile diagnostic program currently owned and operated by MedCath Partners, LLC ("MedCath").

MedCath operates a mobile diagnostic program consisting of 9 cardiac catheterization units operated pursuant to service agreements with various host sites (the "Program"), pursuant to a Settlement Agreement between MedCath Incorporated, Healthtech Corporation, and the State dated August 14, 1995 (the "Settlement Agreement"). We understand from MedCath that pursuant to subsequent corporate reorganizations as previously communicated to the CON Section, MedCath became the authorized operator of the Program under the Settlement Agreement.

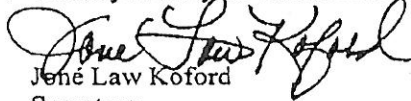
Subject to the Certificate of Need Section's confirmation that the acquisition does not require a certificate of need, DLP will acquire substantially all of the assets currently owned by MedCath, including the 9 cardiac catheterization units used in the Program, with the intent to continue operating the Program going forward. Upon learning that MedCath was seeking to divest itself of the Program, DLP pursued this acquisition in order to ensure the continued provision of necessary cardiac catheterization services throughout the state.

It is our understanding and belief that the acquisition of the MedCath's cardiac catheterization Program constitutes the acquisition of an existing health care facility exempt from certificate of need review under N.C.G.S. § 131-E-184(a)(8). We request your written confirmation of this exemption. We intend that this correspondence serve as any required statutory notice of the acquisition.

Because DLP will own and operate the Program going forward, we also seek your confirmation that the Settlement Agreement will remain in full force and effect with DLP, and that DLP will be entitled to continue operating the Program, including providing diagnostic and therapeutic cardiac catheterization services at existing and future host sites pursuant to service agreements, under the same terms and conditions that have previously applied to MedCath.

As we would like to move forward with the acquisition as quickly as possible, we would appreciate your early confirmation of our understanding of the effects of this acquisition. Should you require further information, please let me know as soon as feasible.

Thank you for your consideration.



Jené Law Koford

Secretary

DLP Cardiac Partners, LLC







3. Plaintiffs also sought a declaration that the Department's application of the Certificate of Need Law, insofar as it seeks to prevent Plaintiffs from operating the mobile cardiac catheterization laboratories and/or converting them to fixed-base units in North Carolina, violates Article 1, Section 19 of the North Carolina Constitution and the Commerce Clause of the United States.

4. The Department maintains that:

(A) Plaintiffs are authorized to operate only those mobile cardiac catheterization laboratories that were acquired and in use in North Carolina prior to March 18, 1993;

(B) each individual mobile cardiac catheterization laboratory currently operated by Plaintiffs is not a "diagnostic center" or "mobile diagnostic program" within the definition of "diagnostic center" and/or a "health service facility"; and,

(C) the conversion of an existing mobile cardiac catheterization laboratory to a fixed-base unit may be a "new institutional health service."

5. The Department also maintains that Plaintiffs have failed to exhaust their administrative remedies and that the Department's application of the Certificate of Need Law which seeks to prevent Plaintiffs from operating the mobile cardiac catheterization laboratories and/or converting them to fixed-base units in North Carolina is not in violation of Article 1, Section 19 of the North Carolina Constitution and the Commerce Clause of the United States.

6. Plaintiffs have provided the Department with additional information which relates to the acquisition of the cardiac catheterization equipment prior to March 18, 1993. Plaintiffs have also provided documentation regarding:

(A) the actual use of mobile cardiac catheterization equipment in North Carolina prior to March 18, 1993;

(B) binding legal contracts with various persons that relate to the use of the equipment in North Carolina; and,

(C) conformance with replacement equipment exemption requirements.

The Plaintiffs have designated certain of the information provided to the Department as "confidential," pursuant to N.C. Gen. Stat. § 132-1.2 and the Department acknowledges that disclosure of information so designated is not required or authorized by N.C. Gen. Stat. § 132-1, et seq.

7. In reviewing the above-referenced information provided by Plaintiffs, the Department has found that mobile cardiac catheterization laboratory (identification number 22B203025) that was in use in North Carolina prior to March 18, 1993, was acquired by Plaintiffs after March 18, 1993 without Certificate of Need review. Subsequently, this laboratory was removed from North Carolina and another laboratory (identification number 893750) was brought into North Carolina and put in use without Plaintiffs obtaining a replacement equipment exemption. Plaintiffs do not concede that any violation of applicable laws or rules of the Department have occurred with respect to this equipment and further contend that, if any such violation did in fact, occur it was unintentional and inadvertent.

8. Pursuant to N.C. Gen. Stat. § 150B-31, it is the policy of the State to settle disputes between state agencies and other persons whenever possible. The Parties have, therefore, determined that it is in their best interests to settle all issues related to this case upon the terms and conditions stated in this Settlement Agreement.

9. The Parties understand and expressly agree that this Settlement Agreement shall not be construed as an admission of liability on the part of either of the Parties with respect to any issue. Rather, the Parties continue to maintain and do not concede each of their respective contentions.

In consideration of their several and mutual promises, these disputes are hereby resolved in the manner set forth below:

A. Voluntary Dismissal With Prejudice. Within five business days after this Settlement Agreement is fully executed Plaintiffs shall file a notice of voluntary dismissal, with prejudice, in case number 95 CVS 7908.

~~B. Authorized Equipment. With respect to the fifteen (15) laboratories that are at issue, Plaintiffs shall be authorized to operate in North Carolina the nine (9) mobile cardiac catheterization laboratories identified in Attachment A to this Settlement Agreement. The remaining six (6) mobile cardiac catheterization laboratories shall be removed from the State within 30 days from the date that this Settlement Agreement is fully executed, and shall not be used or operated in North Carolina without first obtaining a certificate of need or exemption. This paragraph shall not apply in the event that, pursuant to judicial action or legislative action, a certificate of need is no longer required for Plaintiffs' services in North Carolina.~~

C. Authorized Use. Plaintiffs may operate the authorized nine (9) mobile cardiac catheterization units as either mobile laboratories or fixed-base laboratories at ambulatory surgical centers, hospitals/hospital campuses, professional office buildings, urgent care centers, and imaging centers.

9. The Parties understand and expressly agree that this Settlement Agreement shall not be construed as an admission of liability on the part of either of the Parties with respect to any issue. Rather, the Parties continue to maintain and do not concede each of their respective contentions.

In consideration of their several and mutual promises, these disputes are hereby resolved in the manner set forth below:

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B. Authorized Equipment. With respect to the fifteen (15) laboratories that are at issue, Plaintiffs shall be authorized to operate in North Carolina the nine (9) mobile cardiac catheterization laboratories identified in Attachment A to this Settlement Agreement. The remaining six (6) mobile cardiac catheterization laboratories shall be removed from the State within 30 days from the date that this Settlement Agreement is fully executed, and shall not be used or operated in North Carolina without first obtaining a certificate of need or exemption. This paragraph shall not apply in the event that, pursuant to judicial action or legislative action, a certificate of need is no longer required for Plaintiffs' services in North Carolina.

C. Authorized Use. Plaintiffs may operate the authorized nine (9) mobile cardiac catheterization units as either mobile laboratories or fixed-base laboratories at ambulatory surgical centers, hospitals/hospital campuses, professional office buildings, urgent care centers, and imaging centers.

9. The Parties understand and expressly agree that this Settlement Agreement shall not be construed as an admission of liability on the part of either of the Parties with respect to any issue. Rather, the Parties continue to maintain and do not concede each of their respective contentions.

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A. Voluntary Dismissal With Prejudice. Within five business days after this Settlement Agreement is fully executed Plaintiffs shall file a notice of voluntary dismissal, with prejudice, in case number 95 CVS 7908.

~~B. Authorized Equipment. With respect to the fifteen (15) laboratories that are at issue, Plaintiffs shall be authorized to operate in North Carolina the nine (9) mobile cardiac catheterization laboratories identified in Attachment A to this Settlement Agreement. The remaining six (6) mobile cardiac catheterization laboratories shall be removed from the State within 30 days from the date that this Settlement Agreement is fully executed, and shall not be used or operated in North Carolina without first obtaining a certificate of need or exemption. This paragraph shall not apply in the event that, pursuant to judicial action or legislative action, a certificate of need is no longer required for Plaintiffs' services in North Carolina.~~

C. Authorized Use. Plaintiffs may operate the authorized nine (9) mobile cardiac catheterization units as either mobile laboratories or fixed-base laboratories at ambulatory surgical centers, hospitals/hospital campuses, professional office buildings, urgent care centers, and imaging centers.

D. Transfer of Equipment. Any transfer of ownership or control of any of the individual cardiac catheterization laboratories after the date of this Settlement Agreement shall remain subject to the provisions of the Certificate of Need Law and any applicable rules promulgated by the Department as those provisions may be in effect at the time of any such transfer; provided, however, that nothing in this Settlement Agreement shall place any greater restriction on the ownership, control or operation of any of the individual cardiac catheterization laboratories than is placed on any other comparable equipment by the above-referenced law and rules.

E. Penalties. In full satisfaction of any sanctions which might be imposed by the Department against Plaintiffs as of the date of this Settlement Agreement under N.C. Gen. Stat. § 131B-190 or any other law or rule of the Department in connection with Plaintiffs' acquisition, ownership or operation of the laboratory referenced in Paragraph 7, the Department will impose a civil penalty of five thousand dollars (\$5,000.00). Without conceding any violation of any law or rule of the Department, Plaintiffs will pay that penalty within ten (10) days of the execution of this Settlement Agreement. This Settlement Agreement will constitute any notice of the above-referenced civil penalty which is required by law and will fully resolve this matter.

F. Modification or Waiver. No modification or waiver of any provision of this Settlement Agreement shall be effective unless its modification or waiver shall be in writing and signed by the Parties and the same shall be effective only for the period and on the conditions and for the specific instances and purposes specified in such writing.



G. Title/Preamble. All parts and provisions hereof, including the preamble, are intended to be of substance.

H. Documentation/Notices. Upon request by the Department or Certificate of Need Section, Plaintiffs shall provide information documenting Plaintiffs' compliance with the provisions of this Settlement Agreement. All documentation, notices, requests, demands, or other communications provided for herein or in any instrument or document delivered pursuant hereto, shall be in writing, shall be deemed to have been given when sent by registered or certified mail, return receipt requested, and at Plaintiffs' option may be designated as "confidential" pursuant to N.C. Gen. Stat. § 132B-1 et seq.

I. Merger. The Parties further agree and acknowledge that this Settlement Agreement sets forth all of the terms and conditions between them concerning the subject matter of this Settlement Agreement, superseding all prior oral and written statements and representations, and that there are no terms or conditions between the Parties except as specifically set forth in this Settlement Agreement.

J. Expenses. The Parties agree that each Party shall bear its own expenses, including attorney's fees, and that no claim for such costs or expenses shall be made by one Party against the other.

K. Review of Agreement/Authority to Settle. The Parties have reviewed this document, have had the opportunity to consult with counsel and represent and warrant that they are authorized to enter into this Settlement Agreement on behalf of the Parties to this Agreement. The terms of this Settlement Agreement shall not be construed in favor of or against any of the Parties.

L. Effective Date. This Agreement shall be effective as of the day and year on which it is adopted and approved by the Director of the Division of Facility Services.

M. Mutual Release. Plaintiffs hereby release the Department of Human Resources, the Certificate of Need Section, its officials, employees, and representatives, from any and all liability that has arisen or may arise as a result of this matter or the execution of this Settlement Agreement. The Department hereby releases Plaintiffs, their officers, employees, and representatives, from any and all liability that has arisen or may arise as a result of this matter or the execution of this Settlement Agreement.

(Signature Page to Follow)

IN WITNESS WHEREOF, the Parties have executed duplicate original  
copies of this Settlement Agreement, with one original copy being retained by each party.

MEDCATH INCORPORATED

BY: Stephen R. Puckett  
Stephen R. Puckett, President

HEALTHTECH CORPORATION

BY: Stephen R. Puckett  
Stephen R. Puckett, Vice President

MICHAEL F. BASLEY  
Attorney General

BY: Sherry Cornett Lindquist  
Sherry Cornett Lindquist  
Assistant Attorney General  
N.C. Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629  
(919) 733-4512  
COUNSEL FOR THE CERTIFICATE OF  
NEED-SECTION

BY: Noah H. Huffstetler III  
Noah H. Huffstetler III  
Petree Stockton, L.L.P.  
4101 Lake Boone Trail  
Suite 400  
Raleigh, NC 27607  
COUNSEL FOR PETITIONER *Plaintiff*

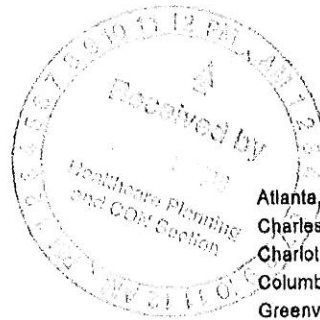
This is the 14<sup>th</sup> day of August, 1995.

John M. Syria  
John M. Syria, Director  
Division of Facility Services  
N.C. Department of Human Resources  
701 Barbour Drive  
Raleigh, NC 27603-2008

ATTACHMENT A

Cardiac Catheterization Laboratories to be Registered by Plaintiffs (by Serial Number)	Cardiac Catheterization Laboratories to be Registered by Plaintiffs (by VIN Number)
9803603201	1PT011JH529001121
259058WK6	1PT011JH3L9004826
277607WK8	1PT011JH6M9002232
28691WK1	1T9FS0Z26KB021865
119R013	1PT011AH3M9007078
347649WK6	1T9FS0Z24NB021819
893750	1TT011JH1L9004582
289378WK2	1T9FS0Z29LB021073
368093WK1	1T9FS0Z21PB021893

# ATTACHMENT B



Robert A. Leandro  
Partner  
Telephone: 919.835.4636  
Direct Fax: 919.834.4564  
robbleandro@parkerpoe.com

Atlanta, GA  
Charleston, SC  
Charlotte, NC  
Columbia, SC  
Greenville, SC  
Raleigh, NC  
Spartanburg, SC

January 17, 2019

**VIA U.S. MAIL AND ELECTRONIC MAIL**

Martha Frisone, Chief  
Healthcare Planning and Certificate of Need Section  
North Carolina Department of Health and Human Services  
2704 Mail Service Center  
Raleigh, NC 27699-2704  
[Martha.Frisone@dhhs.nc.gov](mailto:Martha.Frisone@dhhs.nc.gov)

Re: No Review Request for DLP Cardiac Partners, LLC to relocate Cardiac Catheterization Equipment

Dear Ms. Frisone:

On behalf of our client, DLP Cardiac Partners, LLC ("Cardiac Partners"), I am writing to request written confirmation that the CON Law does not apply to and that no CON is required for the project described in more detail below.

As you are likely aware, Cardiac Partners operates nine grandfathered cardiac catheterization ("cardiac cath") units pursuant to a settlement agreement between the Agency and Cardiac Partners' predecessor organization Medcath Inc. Currently one of those units (GE Innova 3100IQ Serial number 610960BU7) operates at Caldwell Memorial Hospital ("Caldwell"), which is located in Caldwell County, North Carolina.

In 2017, Caldwell submitted a Petition for an adjusted need determination requesting that the Agency include a need in the 2018 SMFP for one unit of cardiac cath equipment in Caldwell's service area. In its Petition, Caldwell represented to the Agency that if its Petition was granted and it had an opportunity to acquire its own cardiac cath equipment it would do so with the understanding that Cardiac Partners could utilize its grandfathered equipment in another North Carolina hospital. Caldwell's Petition was approved and the 2018 SMFP reflected a need for one unit of fixed cardiac cath equipment in Caldwell's service area.

Caldwell subsequently filed a CON application to acquire one unit of fixed cardiac cath equipment on or around January 15, 2018. Caldwell's Application represented that if approved, it would acquire new more-advanced equipment that would benefit its patients. The Application also represented that if approved, Caldwell would terminate its agreement with Cardiac Partners. If that occurred, Caldwell represented that the existing Cardiac Partners' cardiac cath equipment would be removed from the facility and Cardiac Partners would be free to relocate the grandfathered equipment to a new facility. On April 18, 2018 Caldwell's Application to acquire one unit of shared fixed cardiac cath equipment was approved by the Agency.

PPAB 4664574v1

Martha Frisone, Chief  
Healthcare Planning and Certificate of Need Section  
North Carolina Department of Health and Human Services  
January 17, 2019  
Page 2

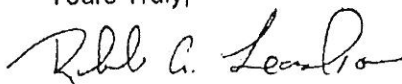
Recently, Caldwell informed Cardiac Partners that it plans to terminate its services agreement with Cardiac Partners effective March 31, 2019. As a result of the impending termination, Cardiac Partners has determined that upon termination it will relocate its existing equipment to a mobile trailer, which is already owned by Cardiac Partners, and will use its cath lab to service Harris Regional Hospital ("Harris") located at 68 Hospital Road, Sylva, Jackson County, North Carolina. The installation costs for relocating the equipment to the trailer owned by Cardiac Partners will be less than \$150,000.. Ownership of the existing equipment will not be transferred to Harris, but rather the existing equipment will be operated pursuant to a new service agreement between Cardiac Partners and Harris, which is permitted under the settlement agreement.

Installing the existing cardiac cath equipment in the trailer will not entail costs exceeding \$750,000 and will not result in the acquisition of major medical equipment, or the development of a "New Institutional Health Service" as defined by N.C. Gen. Stat. § 131E-176.

Based on the above, we respectfully request that the CON Section determine this proposal does not require a CON and that the above identified cath equipment may be relocated to Harris by Cardiac Partners under a new service agreement. Should you have any questions, please feel free to reach out to me directly.

Thank you for your consideration.

Yours Truly,



Robb A. Leandro



NC DEPARTMENT OF  
**HEALTH AND  
HUMAN SERVICES**

ROY COOPER • Governor

MANDY COHEN, MD, MPH • Secretary

MARK PAYNE • Director, Division of Health Service Regulation

January 23, 2019

Robert A. Leandro  
Parker Poe Adams & Bernstein LLP  
301 Fayetteville Street, Suite 1400  
Raleigh, NC 27601

**No Review**

**Record #:** 2847  
**Facility Name:** Harris Regional Hospital  
**FID#:** 923046  
**Business Name:** DLP Cardiac Partners, LLC  
**Business #:** 2314  
**Project Description:** Relocate cardiac catheterization equipment from Caldwell Memorial Hospital to a mobile trailer to serve Harris Regional Hospital  
**County:** Jackson

Dear Mr. Leandro:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency) received your correspondence 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 that correspondence is not governed by, and therefore, does not currently require a certificate of need. 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.

You may need to contact the Agency's Construction, and Acute and Home Care Licensure and Certification Sections to determine if they have any requirements for development of the proposed project.

This determination is binding only for the facts represented in your correspondence. If changes are made in the project or in the facts provided in the correspondence referenced above, a new determination as to whether a certificate of need is required would need to be made by this office.

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: 809 Ruggles Drive, 2704 Mall Service Center, Raleigh, NC 27699-2704  
www.ncdhhs.gov/dhsr • TEL: 919-855-3873

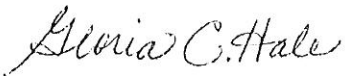
AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER



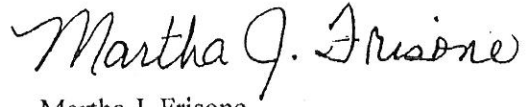
Mr. Robert Leandro  
January 23, 2019  
Page 2

Please do not hesitate to contact this office if you have any questions.

Sincerely,



Gloria C. Hale  
Team Leader



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

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

# ATTACHMENT C

EQUIPMENT COMPARISON

	EXISTING EQUIPMENT	REPLACEMENT EQUIPMENT
Type of Equipment (List Each Component)	cardiac cath lab	cardiac cath lab
Manufacturer of Equipment	GE	GE
Tesla Rating for MRIs	N/A	N/A
Model Number	Innova Optima	IGS
Serial Number	N/A	TBD
Provider's Method of Identifying Equipment	N/A	N/A
Specify if Mobile or Fixed	Fixed	Mobile
Mobile Trailer Serial Number/VIN #	N/A	1S9FS5025X1182289
Mobile Tractor Serial Number/VIN #	N/A	N/A
Date of Acquisition of Each Component	2/1/2012	TBD
Does Provider Hold Title to Equipment or Have a Capital Lease?	Holds Title	Will Hold Title
Specify if Equipment Was/Is New or Used When Acquired	New	Used
Total Capital Cost of Project (Including Construction, etc.) *Use attached form*	N/A	N/A
Total Cost of Equipment	538,751	500000*
Fair Market Value of Equipment	538,751	500,000
Net Purchase Price of Equipment	538,751	500,000
Location Where Operated	Caldwell Memorial Hospital	Harris Regional Hospital
Number days in Use/To be Used in N.C. Per Year	250	250
Percent Change in patient Charges (by Procedure)	N/A	0%
Percent of Change in Per Procedure Operating Expenses (by Procedure)	N/A	0%
Type of Procedures Currently Performed on Existing equipment	cardiac catheterizations	N/A
Type of Pricedures New Equipment id Capable of Performing	N/A	cardiac catheterizations
		*Includes installation on Trailer



1040 A Derita Rd.  
Concord, NC 28027  
1.800.710.9996

**SALES AGREEMENT #DLP53020191511**

**November 15, 2019**

Transtate Equipment Company Inc., a North Carolina corporation with primary service center located at 1040 A Derita Rd., Concord, NC 28027 (“Transtate”) and DLP Cardiac Partners, LLC located at 566 Ruin Creek Rd., Henderson, NC 27536 (the “Buyer”) are entering into this Sales Agreement (the “Agreement”) whereby the Buyer will purchase, and Transtate will sell to Buyer the Equipment and services described below.

**1. DESCRIPTION OF EQUIPMENT:**

Qty: 1	<b>2013 (New) GE Innova IGS 530 cath/angio system:</b>  Floor Mounted L-Arm with Offset C-Arm Gantry, Performix 160A Water Cooled X-Ray Tube, Coolix X-Ray Tube chiller, 31 x 31cm Flat Panel Digital Detector, Standard Innova 3100 User Interface Package, DL 8 Digital Imaging Subsystem with DICOM, Omega V Patient Table, 18” Monitors (2) with Ceiling Mounted Suspension capable of holding four monitors, installed cardiac and vascular software and all manuals.	Total Price: <b>\$500,000.00</b>  Includes installation
Qty: 1	<b>Full Trailer Refurbishment</b> - See trailer refurbishment detail attached as Exhibit A	

**2. TOTAL PRICE, TERMS, AND TAXES:**

**Total Price: \$500,000.00 USD. Terms:** To book this order, the Buyer shall execute this agreement and submit a 20% non-refundable deposit (\$100,000.00) due on or before December 1, 2019. A 70% progress payment (\$350,000.00) is due upon completion of reconditioning and prior to shipping to the customer’s site. A final 10% payment (\$50,000.00) is due upon completion of all equipment and trailer installation. **Local sales or use tax may apply. Applicable sales / use taxes are the Buyer’s responsibility.**

**3. WARRANTY:**

The equipment described above (the “Equipment”) is warranted to meet all OEM specifications in all material respects upon completion of installation and for **twelve (12) months** following completion of installation (the “Warranty Period”). During the Warranty Period, Transtate will maintain the Equipment according to OEM specifications, providing parts (including tube and detector) and labor as needed. Such warranty service shall constitute Buyer’s exclusive remedy and Transtate’s sole obligation for any failure of the Equipment to comply with OEM specifications in all material respects.

The Customer warrants that (a) it has the right to service and maintain all Equipment; (b) it has the right to authorize Transtate to perform the services described on the Equipment; and (c) the Customer’s authorization of Transtate’s performance of the services shall not violate any contract to which the Customer is bound with an OEM, manufacturer or otherwise, or the intellectual property or other proprietary rights of any third party.

Notwithstanding anything to the contrary in this agreement the warranty services provided by Transtate do not cover:

- Equipment damage caused by fire, smoke, water or electrical power surges or other events which originate outside of the equipment.
- Damage caused by customer/operator misuse or negligence, theft, or other malicious actions.
- Consumable items, media, accessories/options, networking hardware/software, workstations, and UPS systems.
- Improper Equipment modification or maintenance.