

**NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF FACILITY SERVICES
RALEIGH, NORTH CAROLINA**

**IN RE: REQUEST FOR DECLARATORY)
RULING BY THE MOSES H. CONE)
MEMORIAL HOSPITAL and THE MOSES H.) **DECLARATORY RULING**
CONE MEMORIAL HOSPITAL OPERATING)
CORPORATION d/b/a/ THE MOSES H. CONE)
HEALTH SYSTEM)**

I, Robert J. Fitzgerald, Director of the Division of Facility Services (the “Department”), hereby issue this declaratory ruling to The Moses H. Cone Memorial Hospital and The Moses H. Cone Memorial Hospital Operating Corporation d/b/a The Moses H. Cone Health System (collectively “System” or “Petitioners”) pursuant to N.C.G.S. § 150B-4, 10A NCAC 14A.0103, and the authority delegated to me by the Secretary of the North Carolina Department of Health and Human Services. Petitioners have filed a Declaratory Ruling Request (the “Request”) asking the Department to issue a ruling as to the applicability of N.C.G.S. Chapter 131E, Articles 5 and 9 and of the Agency’s rules to the facts described below. For the reason set out below, I conclude that the Petitioners may obtain a change in licensure to include the 19 nursing beds currently physically located in the Hospital on the Corporation’s license, rather than on the license of the Moses Cone Extended Care Center, and that this change in the license does not require a Certificate of Need (“CON”).

This ruling is binding on the Department and the person requesting it if the material facts stated in the Request are accurate and no material facts have been omitted from the Request. The ruling applies only to this request. Except as provided by N.C.G.S. § 150B-4, the Department reserves the right to change the conclusions which are contained in this ruling. Maureen Demarest Murray and Allyson Jones Labban of Smith Moore LLP have requested this ruling on

behalf of the Petitioners and have provided the statement of facts upon which this ruling is based. The material facts as provided by counsel for Petitioners are set out below.

STATEMENT OF THE FACTS

Petitioners provide the following description of the entities involved in this Request. The Moses H. Cone Memorial Hospital (“Parent”) is the “parent entity” in the Moses Cone Health System (“System”). The Parent owns The Moses H. Cone Memorial Hospital (“Hospital”). The Moses Cone Extended Care Center (“ECC”) is a separately licensed skilled nursing facility located on the campus of the Hospital. ECC is licensed for 126 nursing beds and 37 adult care beds. The Parent owns the land on which the Hospital and ECC are located.

The Parent leases the Hospital to the Moses H. Cone Memorial Hospital Operating Corporation (“Corporation”), which holds the license to operate the Hospital. The Corporation is the subsidiary operating entity for the System.

The Parent currently leases the ECC to the Corporation. The license for the ECC is currently issued to the Corporation. At times in the past, all of the ECC nursing and adult care beds were included on the Hospital license issued to the Operating Corporation, but currently the ECC is separately licensed from the Hospital.

The System seeks to lease the ECC facility to a third-party nursing facility operator that Petitioners represent is unaffiliated with the System in any way. However, 19 of the ECC’s 126 licensed nursing beds are physically located within the Hospital building. These 19 beds are used for patients who need skilled nursing care for a short time. The System prefers to continue operating these 19 beds through the Corporation rather than leasing them to the third party. The anticipated lease to the third party would apply only to the 107 nursing beds and 37 adult care

beds physically located in the ECC. The Parent would continue to own the land, buildings and physical facility that comprise the ECC.

Petitioners propose to obtain a change of licensure for the 19 nursing beds located in the Hospital in order to include those beds in the Corporation's license for the Hospital rather than on the license for the operator of the ECC. The beds would not be physically relocated. The Petitioners propose that these beds would come under the responsibility of the Hospital administration pursuant to 10A NCAC .1900.

Petitioners represent that there are no construction or development costs associated with the change of licensure for the 19 nursing beds, and there will be no increase in patient charges as a result of the expected lease to a third party and requested licensure change.

Petitioners also state that they intend to obtain a new Medicare provider number for the 19 beds in the Hospital, and that the new operator of the ECC facility would assume the existing Medicare and Medicaid provider numbers currently assigned to the ECC.

ANALYSIS

The transactions proposed by Petitioners would require a CON if they constitute offering or developing a new institutional health service. N.C.G.S. § 131E-178(a). For a variety of reasons, the Petitioners are not offering or developing a new institutional health service as that term is defined in N.C.G.S. § 131E-176(16).

First, because the 19 beds in question already are located in the Hospital and in operation as nursing beds, there is no construction involved, and there is no relocation of health service facility beds. The owner, operator and licensed entity of the 19 nursing beds will not change; therefore, there is not an acquisition of a health service facility. The 19 beds are not a change in bed capacity as defined in N.C.G.S. 131E-176(5) because the beds will not be physically

relocated from one facility or campus to another, they are not being redistributed among categories of health service beds, and they do not represent an increase in the number of health service facility beds owned by the Parent.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the Request to be true, I conclude that the Petitioners do not require a CON to lease the ECC to a third party operator or to apply to have the 19 beds located in the Hospital included on the Hospital's license and to request different Medicare and Medicaid provider numbers for the 19 beds located in the Hospital.

This ____ day of _____, 2007.

Robert J. Fitzgerald, Director
Division of Facility Services
N.C. Department of Health and Human Services

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Declaratory Ruling has been served upon the nonagency party by certified mail, return receipt requested, by depositing the copy in an official depository of the United States postal service in a first class, postage prepaid envelope addressed as follows:

CERTIFIED MAIL

Maureen Demarest Murray
Allyson Jones Labban
Smith Moore LLP
P.O. Box 21927
Greensboro, NC 27420

This the 6th day of February, 2007.

Jeff Horton
Chief Operating Officer