



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

Pat McCrory  
Governor

Aidona Z. Wos, M.D.  
Ambassador (Ret.)  
Secretary DHHS

Drexdal Pratt  
Division Director

December 12, 2014

Gary S. Qualls  
PO Box 14210  
Research Triangle Park, NC 27709-4210

**No Review**

Facility or Business: Cleveland Ambulatory Services  
Project Description: Change in indirect ownership of facility  
County: Cleveland  
FID #: 955505

Dear Mr. Qualls:

The Certificate of Need Section (CON Section) received your letters of November 5, 2014 and December 11, 2014 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 your correspondence is not governed by, and therefore, does not currently require a certificate of need. However, please note that 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.

Moreover, you need to contact the Construction and Acute and Home Care Licensure and Certification Sections of the Division of Health Service Regulation to determine if they have any requirements for development of the proposed project.

It should be noted that this determination is binding only for the facts represented by you. Consequently, if changes are made in the project or 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. Changes in a project include, but are not limited to: (1) increases in the capital cost; (2) acquisition of medical equipment not included in the original cost estimate; (3) modifications in the design of the project; (4) change in location; and (5) any increase in the number of square feet to be constructed.

**Certificate of Need Section**

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

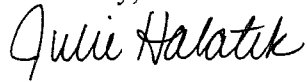
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Gary S. Qualls  
December 12, 2014  
Page 2

Please contact the CON Section if you have any questions. Also, in all future correspondence you should reference the Facility I.D. # (FID) if the facility is licensed.

Sincerely,



Julie Halatek  
Project Analyst



Martha J. Frisone, Interim Chief  
Certificate of Need Section

cc: Medical Facilities Planning Branch, DHSR  
Construction Section, DHSR  
Acute and Home Care Licensure and Certification Section, DHSR

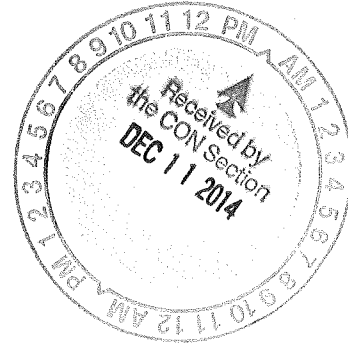
K&L GATES

December 11, 2014

Gary S. Qualls  
D 919.466.1182  
F 919.516.2072  
gary.qualls@klgates.com

**Via E-Mail and U.S. Mail**

Julie Halateck, Project Analyst  
Certificate of Need Section  
Division of Health Service Regulation  
North Carolina Department of Health & Human  
Services  
809 Ruggles Drive  
Raleigh, NC 27603



Re: Response to Information Request regarding:

Merger of Cleveland County Healthcare System with and into The Charlotte-Mecklenburg Hospital Authority

No Review Letter, or in the Alternative, Exemption Notice

Cleveland Regional Medical Center: Facility ID: 953106; License No. H0024;  
Kings Mountain Hospital: Facility ID: 943292; License No. H0113;  
Cleveland Pines Nursing Center: Facility ID: 923107; License No. NH0524; and  
Cleveland Ambulatory Services, LLC: Facility ID: 955505; License No. AS00062

Dear Julie:

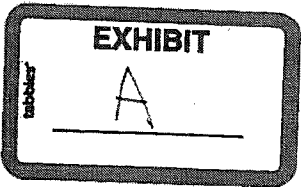
We are in receipt of your letter dated December 8, 2014, requesting additional information regarding the ownership structure of the facilities involved in this merger. Organization charts describing the ownership structure of each of the entities prior to the merger and after the proposed merger, are attached as Exhibit A. As indicated in the chart, the licensee of each of the facilities after the merger is indicated in bold.

I hope this information addresses your concerns. Please feel free to contact me at the number above if you have any questions of need further information.

Sincerely,

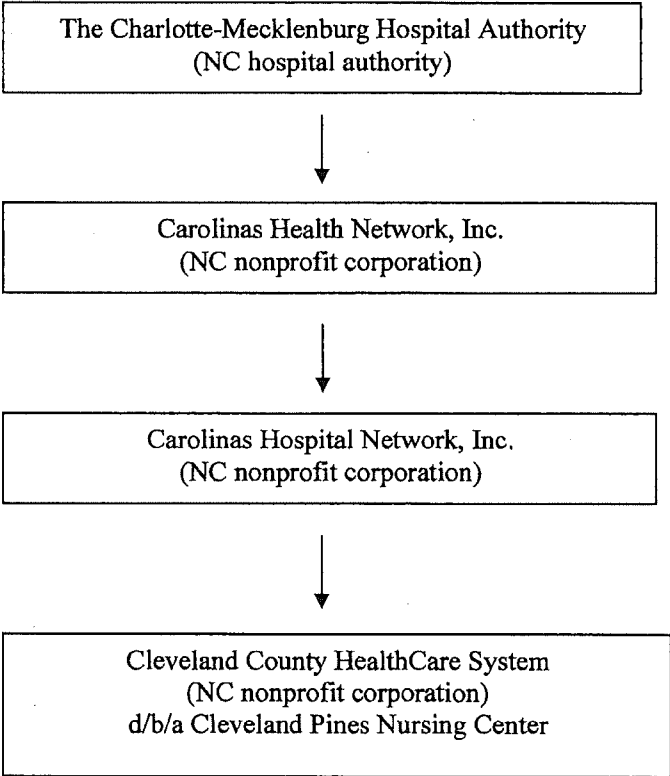
*Gary S. Qualls*

Gary S. Qualls

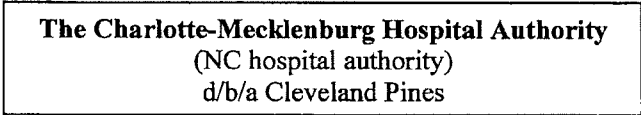


**CLEVELAND COUNTY HEALTHCARE SYSTEM  
d/b/a Cleveland Pines Nursing Center**

**Ownership Prior to 1/1/2015:**

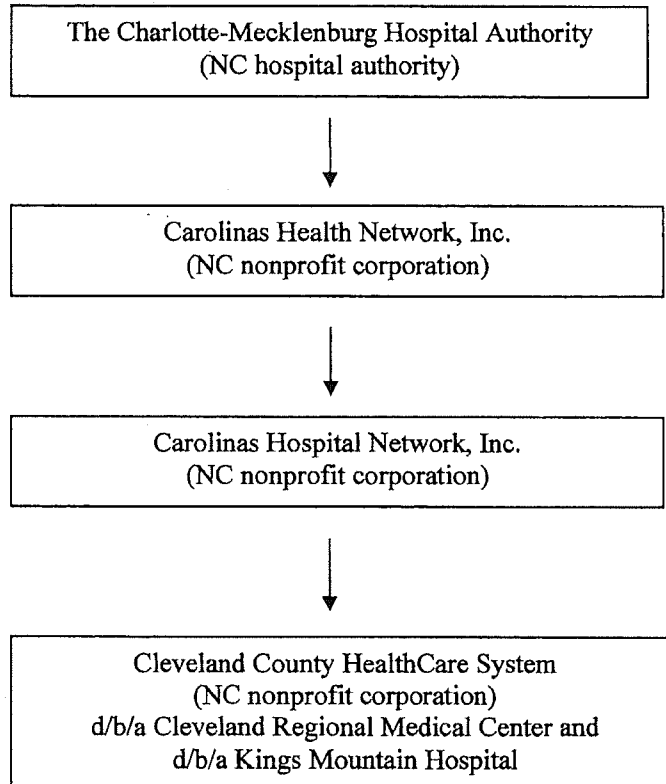


**Ownership as of 1/1/2015:**

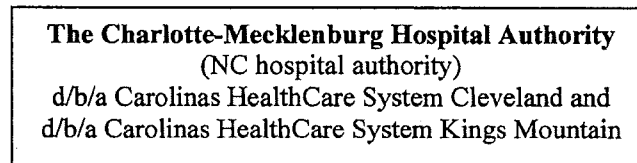


**CLEVELAND COUNTY HEALTHCARE SYSTEM**  
**d/b/a Cleveland Regional Medical Center and d/b/a Kings Mountain Hospital**

**Ownership Prior to 1/1/2015:**

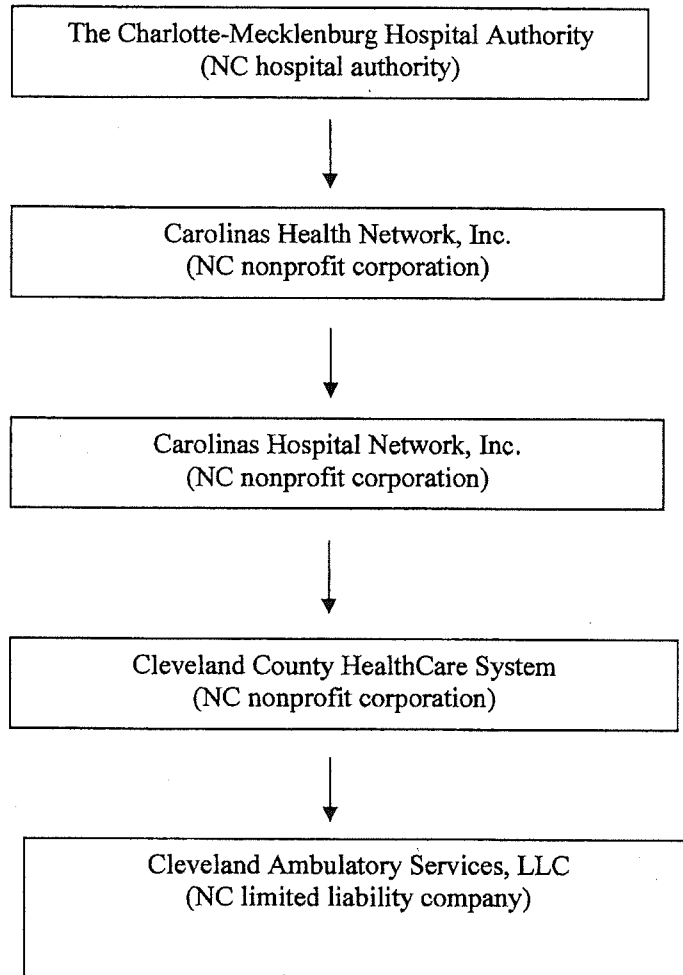


**Ownership as of 1/1/2015:**

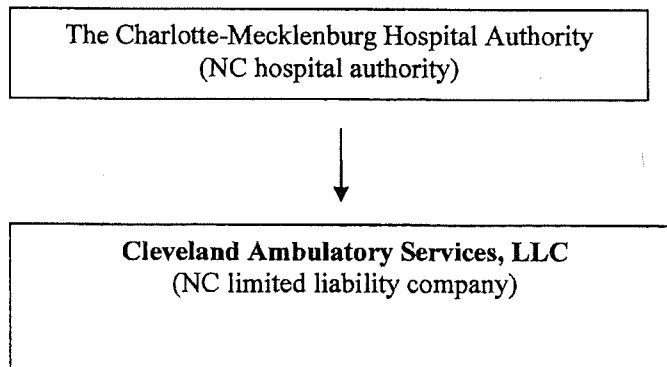


**CLEVELAND AMBULATORY SERVICES, LLC**

**Ownership Prior to 1/1/2015:**



**Ownership as of 1/1/2015:**



## Halatek, Julie F

---

**From:** Halatek, Julie F  
**Sent:** Thursday, December 11, 2014 12:44 PM  
**To:** 'Hall, Carolyn'  
**Cc:** Qualls, Gary; Crowley, Colleen; Davis, Darlene  
**Subject:** RE: Additional Information Requested regarding Cleveland County Healthcare System

Received – thank you! If the hard copy has not already been mailed out, please don't feel like it's necessary – the scanned copy is fine. I'll add this to the request and review shortly!

Julie Halatek  
N.C. Department of Health and Human Services  
Project Analyst, CON Section - Division of Health Service Regulation  
809 Ruggles Drive  
Raleigh, NC 27603  
(Office) 919.855.3873

[julie.halatek@dhhs.nc.gov](mailto:julie.halatek@dhhs.nc.gov)  
[www.ncdhhs.gov/dhsr](http://www.ncdhhs.gov/dhsr)

Email correspondence to and from this address is subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized State official. Unauthorized disclosure of juvenile, health, legally privileged, or otherwise confidential information, including confidential information relating to an ongoing State procurement effort, is prohibited by law. If you have received this e-mail in error, please notify the sender immediately and delete all records of this e-mail.

**From:** Hall, Carolyn [mailto:Carolyn.Hall@klgates.com]  
**Sent:** Thursday, December 11, 2014 12:02 PM  
**To:** Halatek, Julie F  
**Cc:** Qualls, Gary; Crowley, Colleen; Davis, Darlene  
**Subject:** Additional Information Requested regarding Cleveland County Healthcare System

Please see the attached letter in response to your letter dated December 8, 2014 regarding Cleveland County Healthcare System's proposed merger. If you have any questions, please let us know. A hard-copy is also being mailed to you.

Thank you.



Carolyn Hall  
Senior Paralegal  
K&L Gates LLP  
430 Davis Drive, Suite 400  
Morrisville, NC 27560  
Research Triangle Park Office  
Telephone: (919)466-1183  
Fax: (919)516-2073  
E-mail: [carolyn.hall@klgates.com](mailto:carolyn.hall@klgates.com)  
[www.klgates.com](http://www.klgates.com)



North Carolina Department of Health and Human Services  
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Drexdal Pratt  
Division Director

December 8, 2014

Gary S. Qualls  
PO Box 14210  
Research Triangle Park, NC 27709-4210

RE: Information Required for Exempt from Review/No Review Determination / Cleveland  
County Healthcare System and The Charlotte-Mecklenburg Hospital Authority /  
Cleveland County

Dear Mr. Qualls:

The Certificate of Need (CON) Section has received your request for a determination as to whether the above mentioned project is either exempt from review for a certificate of need or is not governed by the CON statutes. In order for the CON Section to make such a determination, please submit the following information to this office:

1. Additional information as to how the ownership structure of the facilities involved will change. Please provide information as to who will be the licensee of the facilities involved after the proposed merger is completed. A chart or diagram depicting the current ownership structure for each facility and the ownership structure following the merger for each facility would be useful to assist in this determination.

Your prompt response will assist the CON Section in making a timely review of your request. If you have any questions regarding this matter, please feel free to contact this office.

Sincerely,

A handwritten signature in black ink that reads "Julie Halatek".

Julie Halatek, Project Analyst  
Certificate of Need Section



**Certificate of Need Section**

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

An Equal Opportunity/ Affirmative Action Employer





November 5, 2014

Gary S. Qualls  
D 919.466.1182  
F 919.516.2072  
gary.qualls@klgates.com

Received by  
the CON Section  
NOV 5 2014

**Via Hand Delivery**

Ms. Martha Frisone  
Chief, Certificate of Need Section  
Division of Health Service Regulation  
North Carolina Department of Health & Human  
Services  
809 Ruggles Drive  
Raleigh, NC 27603

Re: Merger of Cleveland County Healthcare System with and into The Charlotte-Mecklenburg Hospital Authority

No Review Letter, or in the Alternative, Exemption Notice

Cleveland Regional Medical Center: Facility ID: 953106; License No. H0024;  
Kings Mountain Hospital: Facility ID: 943292; License No. H0113;  
Cleveland Pines Nursing Center: Facility ID: 923107; License No. NH0524; and  
Cleveland Ambulatory Services, LLC: Facility ID: 955505; License No. AS00062

Dear Martha:

We represent Cleveland County Healthcare System (“CCHS”) and The Charlotte-Mecklenburg Hospital Authority (“CMHA”). The purpose of this letter is to inform the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Certificate of Need Section (the “Agency”) of an upcoming corporate reorganization in the form of a merger (the “Merger” or “Transaction”), which is anticipated to be effective January 1, 2015, of CCHS, a North Carolina nonprofit charitable corporation, with and into CMHA, a North Carolina hospital authority. Currently, CMHA is the ultimate parent of CCHS.

As further described below, we are requesting that the Agency confirm that this Transaction is either not reviewable as a new institutional health service under the North Carolina Certificate of Need (“CON”) law or (in the alternative) exempt from review under the CON law’s exemption provisions in N.C. Gen. Stat. § 131E-184.

Martha Frisone  
November 5, 2014  
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**I. THE PROPOSED MERGER**

CCHS's sole member is Carolinas Hospital Network, Inc., whose sole member is CMHA. By virtue of being the ultimate parent of CCHS, CMHA already maintains and exercises control over CCHS. CMHA operates CCHS as a component of CMHA's vertically integrated healthcare delivery system.

Upon consummation of the merger, all of the assets of CCHS will be transferred to CMHA by operation of law. CMHA will continue to utilize the assets and operations of CCHS in a manner consistent with the nonprofit mission of CCHS. CCHS operates several health care facilities described below (the "Facilities").

**A. HOSPITALS OWNED BY CCHS**

CCHS currently operates two hospitals in Cleveland County:

- 1) Cleveland Regional Medical Center ("CRMC") which includes licensed acute care beds, operating rooms, endoscopy rooms, and an emergency department (License No. H0024, attached hereto as Exhibit 1); and
- 2) Kings Mountain Hospital ("KMG") which includes licensed acute care beds, psychiatric beds, chemical detox beds, operating rooms, endoscopy rooms, and an emergency department (License No. H0113, attached hereto as Exhibit 2).

After the merger, CMHA will become the operator of these two hospitals. The hospitals' doing business names will change to the following: Carolinas HealthCare System Cleveland and Carolinas HealthCare System Kings Mountain.

**B. SKILLED NURSING FACILITY OWNED BY CCHS**

CCHS is also the licensed operator of a skilled nursing facility known as Cleveland Pines Nursing Center located in Cleveland County. (See License No. NH0524, attached hereto as Exhibit 3). After the merger, this facility's name will be changed to Cleveland Pines.

**C. AMBULATORY SURGERY CENTER OWNED BY CCHS**

In addition to the general acute care hospitals and skilled nursing facility, each of which is operated by CCHS, CCHS is the sole member of Cleveland Ambulatory Services, LLC ("CAS") which is the owner and operator of Cleveland Ambulatory Services, an

Martha Frisone  
November 5, 2014  
Page 3

ambulatory surgical facility (See License No. AS0062, attached hereto as Exhibit 4). After the merger, CMHA will become the sole member of CAS.

## II. NO REVIEW REQUEST

As to the health service facilities currently operated by CCHS, the merger of a wholly-owned subsidiary into its parent is not a CON reviewable event for the following reasons.

First, the proposed corporate reorganization is not expressly addressed in N.C. Gen. Stat. § 131E-176(16). The merger of a wholly-owned subsidiary into its parent is not included in the list of activities that constitute the development of a new institutional health service, requiring a CON. Pursuant to the maxim of statutory construction *expressio unius est exclusio alterius*, those transactions not included in N.C. Gen. Stat. § 131E-176(16) do not require a CON. See, e.g., In re Miller, 357 N.C. 316, 325, 584 S.E.2d 772, 780 (2003) (stating that “[u]nder the doctrine of *expressio unius est exclusio alterius*, when a statute lists the situations to which it applies, it implies the exclusion of situations not contained in the list”); see also Jackson v. A Woman’s Choice, Inc., 130 N.C. App. 590, 594, 503 S.E.2d 422, 425 (1998) (internal citations omitted) (“[W]here a statute is explicit on its face, the courts have no authority to impose restrictions that the statute does not expressly contain.”).

Second, to the extent that the holder of the CON for any of these facilities is changing to CMHA, which already is the ultimate parent and/or owner, the identity of the holder is changing solely because of a corporate reorganization. It is not the type of transaction that would trigger CON review. For instance, by analogy, this corporate reorganization Transaction would not constitute the transfer of a CON even if it occurred during the development phase. Rather, in such an instance, it is a reorganization that the CON rules recognize as non-reviewable. The Agency’s rule at 10A N.C. Admin. Code § 14C.0502 states in pertinent part as follows:

### **10A N.C.A.C. 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

Martha Frisone  
November 5, 2014  
Page 4

- (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.
- (c) Control of a certificate of need is transferred when any person acquires a majority interest in the facility, project or holder or any parent entity of the facility, project or holder.

In applying the foregoing rule by analogy, the corporate reorganization Transaction does not equate to transfer of ownership of a CON within the meaning of the rule. The merger of a wholly-owned subsidiary into its parent does not change control or ownership outside of the two related entities, but constitutes a corporate reorganization contemplated in Subsection (b)(1).

Further, no capital expenditures are being incurred to accomplish this corporate reorganization Transaction. After the Transaction, CMHA will continue to operate the Facilities in their current locations.

For the reasons described above, pursuant to the maxim of statutory construction *expressio unius est exclusio alterius*, this Transaction is not included in the list of new institutional health service items requiring a CON under N.C. Gen. Stat. § 131E-176(16).

### **III. EXEMPTION NOTICE**

For the reasons described above, we do not think that notice under N.C. Gen. Stat. § 131E-184(a)(8) is technically required. However, to the extent that you disagree, please accept this letter as the required notice under N.C. Gen. Stat. § 131E-184(a)(8) for an exemption.

The General Assembly has chosen to exempt certain otherwise reviewable events from CON review, including the acquisition of an existing health service facility and the equipment owned by the health service facility at the time of the acquisition.<sup>1</sup> Under N.C. Gen. Stat. § 131E-176(9b), the hospitals, the nursing home facility, and the ambulatory surgical facility are all “health service facilities.”

Assuming that the Transaction is deemed by the Agency to be an acquisition under the CON law, upon consummation of the merger, CMHA will be acquiring existing “health service facilities,” including all equipment owned at the time of acquisition. Specifically,

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<sup>1</sup> See N.C. Gen. Stat. § 131E-184(a)(8).

Martha Frisone  
November 5, 2014  
Page 5

CMHA will be acquiring the hospitals known as CRMC and KMH, as well as Cleveland Pines Nursing Center, including all equipment owned by the hospitals and the skilled nursing facility at the time of the acquisition. After the Merger, CMHA will continue to operate these health service facilities as hospitals and a skilled nursing facility, respectively, at their current locations.

Similarly, again assuming that the Transaction is deemed by the Agency to be an acquisition under the CON law, CMHA will be acquiring CAS (an ambulatory surgical facility). This acquisition will occur through the change in the underlying ownership of the LLC as described above. After the merger, CMHA, as the sole owner in the LLC owning this health service facility, will continue to operate the health service facility as it exists in its current form (*i.e.*, as an ambulatory surgical facility) at the same location.

Furthermore, the proposed merger does not entail the acquisition of any major medical equipment or any *per se* reviewable equipment as defined in N.C. Gen. Stat. §§ 131E-176(14)(o) and (16)(f1), except in conjunction with the acquisition of the entire existing health service facilities. Likewise, the merger does not include the offering of any *per se* reviewable services except those already offered by the existing health service facilities.<sup>2</sup>

Accordingly, given that the proposed Merger involves only existing health service facilities, it is exempt from CON review.

**V. CONCLUSION**

Based upon the foregoing information, we hereby request the Agency's confirmation that the proposed Transaction (as described above): (1) is not subject to CON review; or (2) alternatively, is exempt from CON review under N.C. Gen. Stat. § 131E-184(a)(8).

Because the effective date of this Merger is currently anticipated to be January 1, 2015, we respectfully request your expedited review.

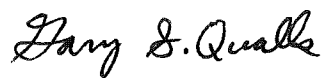
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<sup>2</sup> See N.C. Gen. Stat. § 131E-176(16)(f).

Martha Frisone  
November 5, 2014  
Page 6

Thank you for your assistance in regard to this matter. Please feel free to contact me at the number above if you have any questions of need further information.

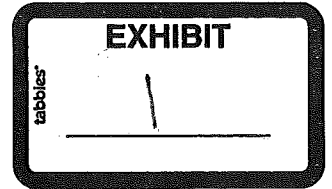
Sincerely,

A handwritten signature in cursive script that reads "Gary S. Qualls".

Gary S. Qualls

# State of North Carolina

Department of Health and Human Services  
Division of Health Service Regulation



*Effective January 01, 2014, this license is issued to  
Cleveland County HealthCare System*

*to operate a hospital known as  
Cleveland Regional Medical Center  
located in Shelby, North Carolina, Cleveland County.*

*This license is issued subject to the statutes of the  
State of North Carolina, is not transferable and shall remain  
in effect until amended by the issuing agency.*

*Facility ID: 953106*

*License Number: H0024*

**Bed Capacity: 241**

*General Acute 241*

Dedicated Inpatient Surgical Operating Rooms: 1

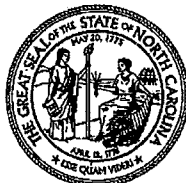
Dedicated Ambulatory Surgical Operating Rooms: 0

Shared Surgical Operating Rooms: 6

Dedicated Endoscopy Rooms: 4

Authorized by:

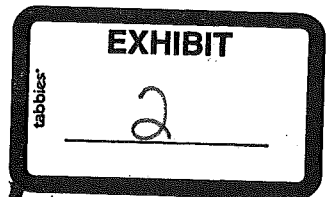
Secretary, N.C. Department of Health and  
Human Services



Director, Division of Health Service Regulation

# State of North Carolina

## Department of Health and Human Services Division of Health Service Regulation



*Effective March 01, 2014, this license is issued to*

*Cleveland County HealthCare System*

*to operate a hospital known as*

*Kings Mountain Hospital*

*located in Kings Mountain, North Carolina, Cleveland County.*

*This license is issued subject to the statutes of the  
State of North Carolina, is not transferable and shall remain  
in effect until amended by the issuing agency.*

*Facility ID: 943292*

*License Number: H0113*

**Bed Capacity: 77**

*General Acute 47, Psych 14, Detox 6,*

*Nursing: 10*

**Dedicated Inpatient Surgical Operating Rooms: 0**

**Dedicated Ambulatory Surgical Operating Rooms: 0**

**Shared Surgical Operating Rooms: 2**

**Dedicated Endoscopy Rooms: 1**

**Authorized by:**

A handwritten signature in black ink, appearing to read "Adona [unclear] MD.", written over a horizontal line.

**Secretary, N.C. Department of Health and  
Human Services**



A handwritten signature in black ink, appearing to read "Dyckel [unclear]", written over a horizontal line.

**Director, Division of Health Service Regulation**



# State of North Carolina

Department of Health and Human Services  
Division of Health Service Regulation

*Effective January 01, 2014, this license is issued to*

*Cleveland County Health Care System*

*to operate a nursing facility known as*

*Cleveland Pines Nursing Center*

*located in Shelby, Cleveland County*

*This license is issued subject to the statutes of the  
State of North Carolina, is not transferable and shall expire  
midnight December 31, 2014.*

*Facility ID: 923107*

*License Number: NH0524*

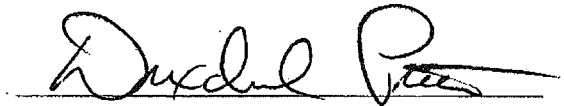
*Bed Capacity: 120*

*Nursing Facility Beds 120*

Authorized by:



Secretary, N.C. Department of Health and  
Human Services



Director, Division of Health Service Regulation

# State of North Carolina

Department of Health and Human Services  
Division of Health Service Regulation

*Effective January 01, 2014, license is issued to*

*Cleveland Ambulatory Services, LLC*

*to operate an ambulatory surgical clinic known as*

*Cleveland Ambulatory Services*

*located at 1100 N. Lafayette Street*

*Shelby, Cleveland County, North Carolina.*

*This license is issued subject to the statutes of the  
State of North Carolina, is not transferable and shall expire  
midnight December 31, 2014.*

*Facility ID: 955505*

*License Number: AS0062*

Surgical Operating Rooms: 4

Endoscopy Rooms: 4

Authorized by:

*Aldona M. Co. M.D.*

Secretary, N.C. Department of Health and  
Human Services



*Dyrdal Pate*

Director, Division of Health Service Regulation