

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

Pat McCrory
Governor

Aldona 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

Exempt from Review – Acquisition of Facility

Facility: Cleveland Regional Medical Center
Type of Facility: Acute Care Hospital
Acquisition by: The Charlotte-Mecklenburg Hospital Authority
County: Cleveland
FID #: 953106

Dear Mr. Qualls:

In response to your letters of November 5, 2014 and December 11, 2014, the above referenced proposal is exempt from certificate of need review in accordance with G.S. 131E-184(a)(8). Therefore, The Charlotte-Mecklenburg Hospital Authority may proceed to acquire the above referenced health service facility without first obtaining a certificate of need. However, you need to contact the Acute and Home Care Licensure and Certification Section of the Division of Health Service Regulation to obtain instructions for changing ownership of the existing facility. Note that pursuant to G.S. 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,

Julie Halatek
Project Analyst

Martha J. Frisone, Interim Chief
Certificate of Need Section

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



Certificate of Need Section

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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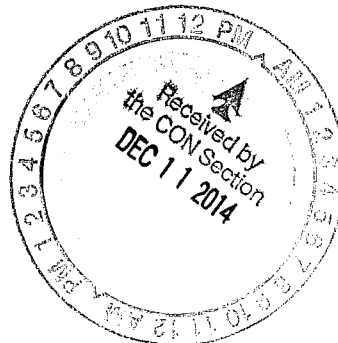
K&L GATES

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:

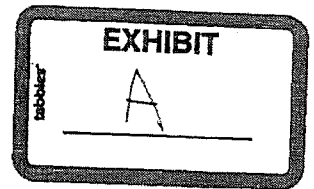
We are in receipt of your letter dated December 8, 2014, requesting additional information regarding the ownership structure of the facilities involved in this merger. Organization charts describing the ownership structure of each of the entities prior to the merger and after the proposed merger, are 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,

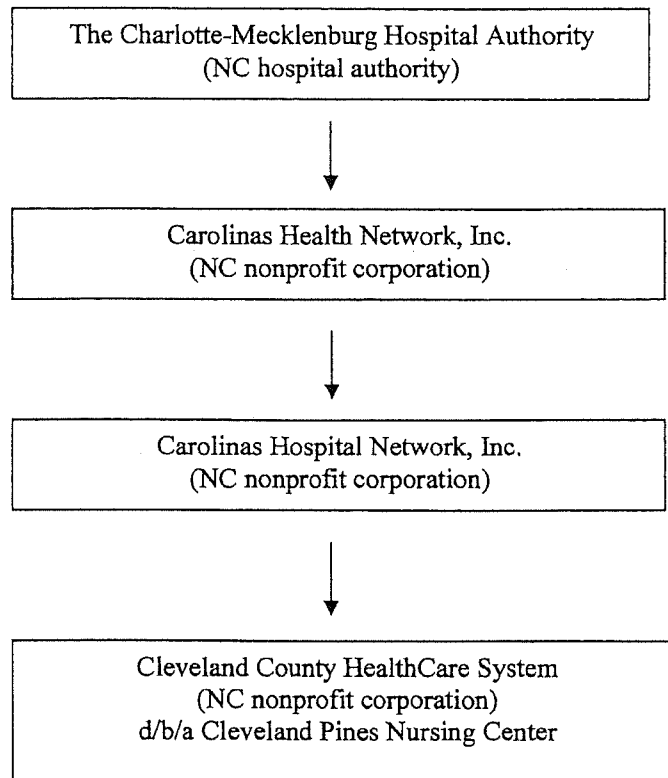
A handwritten signature in cursive script that reads 'Gary S. Qualls'.

Gary S. Qualls

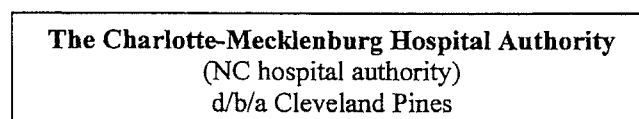


CLEVELAND COUNTY HEALTHCARE SYSTEM
d/b/a Cleveland Pines Nursing Center

Ownership Prior to 1/1/2015:

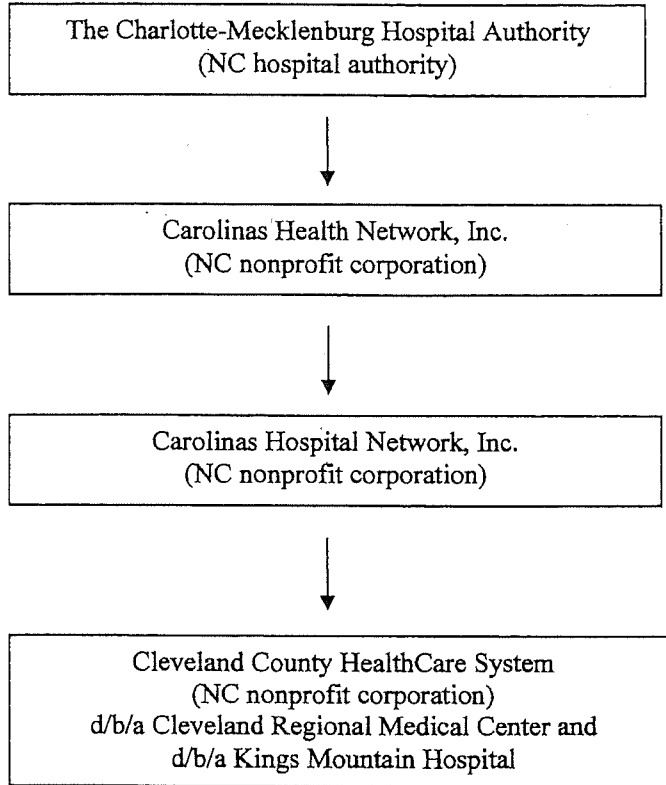


Ownership as of 1/1/2015:

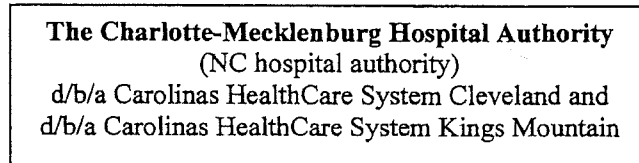


CLEVELAND COUNTY HEALTHCARE SYSTEM
d/b/a Cleveland Regional Medical Center and d/b/a Kings Mountain Hospital

Ownership Prior to 1/1/2015:

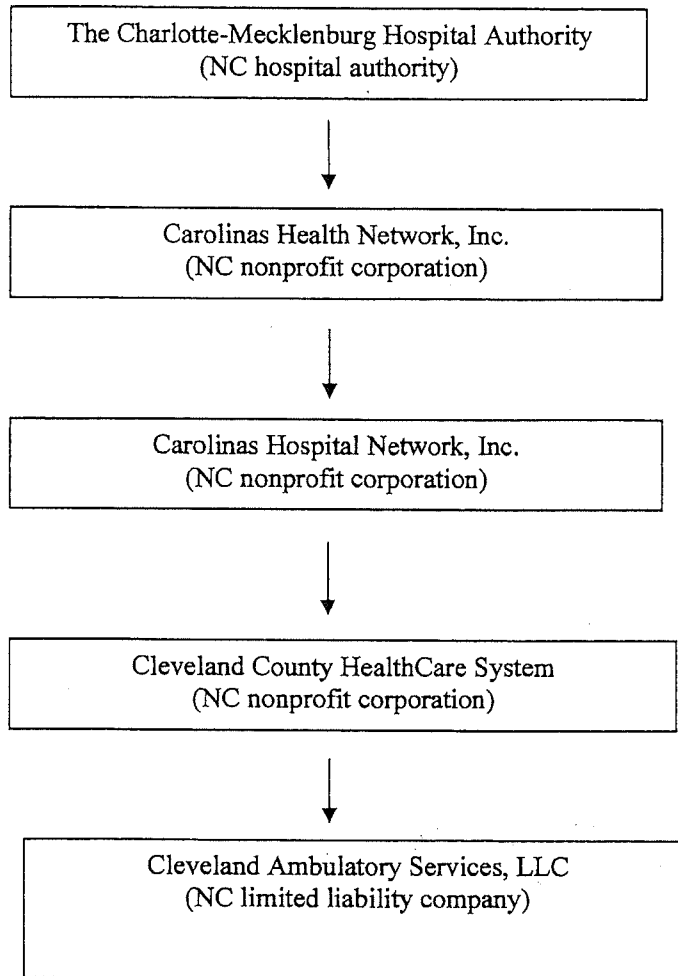


Ownership as of 1/1/2015:

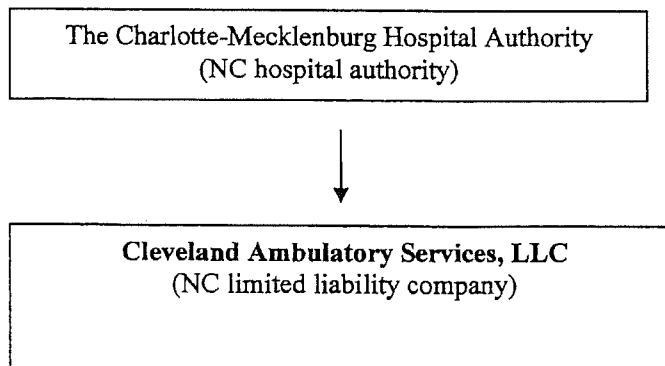


CLEVELAND AMBULATORY SERVICES, LLC

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
www.ncdhhs.gov/dhsr

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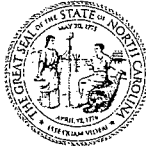
From: Hall, Carolyn [mailto:Carolyn.Hall@klgates.com]
Sent: Thursday, December 11, 2014 12:02 PM
To: Halatek, Julie F
Cc: Qualls, Gary; Crowley, Colleen; Davis, Darlene
Subject: Additional Information Requested regarding Cleveland County Healthcare System

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
www.klgates.com



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

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Secretary DHHS

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 cursive script that reads "Julie Halatek".

Julie Halatek, Project Analyst
Certificate of Need Section

Certificate of Need Section

www.ncdhhs.gov

Telephone: 919-855-3873 • Fax: 919-733-8139

Location: Edgerton Building • 809 Ruggles Drive • Raleigh, NC 27603

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K&L Gates LLP
Post Office Box 14210
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Morrisville, NC 27560

T 919.466.1190 www.klgates.com

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
Page 2

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
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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.¹ 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,

¹ 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.²

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.

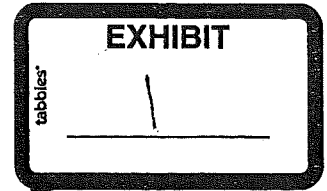
² See N.C. Gen. Stat. § 131E-176(16)(f).

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 or need further information.

Sincerely,

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:

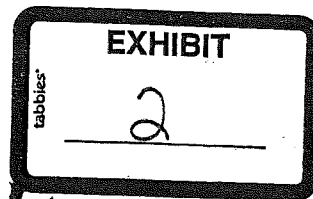
Secretary, N.C. Department of Health and
Human Services



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 W. W. M.D.", written over a horizontal line.

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



A handwritten signature in black ink, appearing to read "Dudley P.", 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

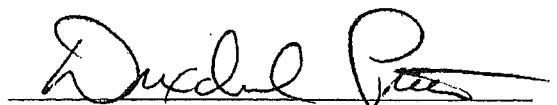
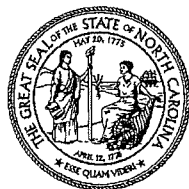
Bed Capacity: 120

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:

Adena Williams, M.D.

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



Dwight R. Pate

Director, Division of Health Service Regulation