



DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF HEALTH SERVICE REGULATION

ROY COOPER
GOVERNOR

MANDY COHEN, MD, MPH
SECRETARY

MARK PAYNE
DIRECTOR

October 9, 2017

Gary S. Qualls, Esq.
K&L Gates
430 Davis Drive
Suite 400
Morrisville, North Carolina 27650

CORRECTED

No Review

Record #: 2414
Facility Name: West Stanly Imaging
FID #: 060855
Business Name: Union Medical Services, LLC
Business #: 1915
Project Description: Merger of West Stanly Imaging, LLC into Union Medical Services, LLC or Acquisition of the assets of West Stanly Imaging Center, LLC by Union Medical Services, LLC
County: Stanly

Dear Mr. Qualls:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency) received your letter of October 3, 2017 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.

However, you need to contact the Acute and Home Care Certification and Licensure Section 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 in your correspondence. 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 this office. Changes in a project include, but are not limited

HEALTHCARE PLANNING AND CERTIFICATE OF NEED SECTION

WWW.NCDHHS.GOV

TELEPHONE 919-855-3873

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





DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF HEALTH SERVICE REGULATION

ROY COOPER
GOVERNOR

MANDY COHEN, MD, MPH
SECRETARY

MARK PAYNE
DIRECTOR

October 13, 2017

Gary S. Qualls, Esq.
K&L Gates
430 Davis Drive
Suite 400
Morrisville, North Carolina 27650

Exempt from Review

Record #: 2414
Facility Name: West Stanly Imaging
FID #: 060855
Business Name: Union Medical Services, LLC
Business #: 1915
Project Description: Merger of West Stanly Imaging, LLC into Union Medical Services, LLC or Acquisition of the assets of West Stanly Imaging Center, LLC by Union Medical Services, LLC
County: Mecklenburg

Dear Mr. Qualls:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency) determined that based on your letter of October 3, 2017, the above referenced proposal is exempt from certificate of need review in accordance with N.C. Gen. Stat. §131E-184(a)(8). Therefore, you may proceed to offer, develop or establish the above referenced project without a certificate of need.

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

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

HEALTHCARE PLANNING AND CERTIFICATE OF NEED SECTION

WWW.NCDHHS.GOV

TELEPHONE 919-855-3873

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



Mr. Gary S. Qualls, Esq.
October 13, 2017
Page 2

separate determination. If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,



Gloria C. Hale
Project Analyst



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

cc: Acute and Home Care Licensure and Certification Section, DHSR
Sharetta Blackwell, Program Assistant, Healthcare Planning, DHSR

Gary S. Qualls
D 919.466.1182
F 919.516-2072
gary.qualls@klgates.com

October 3, 2017

Via Hand Delivery

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



Re: No Review Letter for West Stanly Imaging, LLC -- Reorganization

Dear Martha:

We represent The Charlotte-Mecklenburg Hospital Authority (“CMHA”), Union Medical Services, LLC (“Union Medical Services”), and West Stanly Imaging, LLC (“West Stanly”). The purpose of this letter is to:

1. inform the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Healthcare Planning and Certificate of Need Section (the “Agency”) of a transaction (the “Transaction”) involving two limited liability companies, both of which are wholly-owned by CMHA, Union Medical Services and West Stanly; and
2. verify that no Certificate of Need (“CON”) application is required for this Transaction.

I. THE PROPOSAL

West Stanly currently owns and operates the West Stanly Imaging Center, which is a Diagnostic Center under the CON Law, located at 103 Stanly Parkway, Locust, NC 28097 in Stanly County. Effective on or about February 28, 2018, Union Medical Services¹ will acquire West Stanly’s Diagnostic Center by either merger or asset transfer.

¹ Union Medical Services currently owns and operates two other locations: Carolinas HealthCare System Imaging-Indian Trail and Carolinas HealthCare System Imaging-Kannapolis.

Martha Frisone, Chief
October 3, 2017
Page 2

As referenced above, the Transaction will take one of two forms. Option #1 is to merge West Stanly into Union Medical Services. Option #2 is for Union Medical Services to acquire the assets of West Stanly through an asset transfer transaction. If the Agency confirms that both options are non-CON-reviewable, CMHA will decide which option to pursue in consummating the Transaction. If the Agency confirms only one option, CMHA will pursue that option.

Because CMHA is the sole member of both West Stanly and Union Medical Services, this Transaction -- by either option -- does not change the ownership of West Stanly's Diagnostic Center outside of CMHA wholly-controlled entities. CMHA will still be the indirect owner of the West Stanly Diagnostic Center assets, both before and after the Transaction. Further, no capital expenditures are being incurred as part of the Transaction.

For background reference, we have attached the CON correspondence when CMHA became the sole member of West Stanly. See Agency Letter dated February 29, 2016 (Exhibit 1) and January 13, 2016 Request (Exhibit 2).

As further explained below, we are requesting that the Agency confirm that this Transaction - via either method -- is not reviewable as a new institutional health service or is exempt under the North Carolina CON law.

II. NO REVIEW REQUEST

First, this type of proposed reorganization (whether by merger or asset transfer) between or among wholly-controlled entities is not expressly addressed in N.C. Gen. Stat. § 131E-176(16). 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.”).

Moreover, this transaction is very similar to the prior West Stanly Diagnostic Center transaction (Exhibits 1 and 2 discussed above) and a transaction that the Agency approved by letter dated August 22, 2013, approving the merger of Southern Piedmont Imaging, LLC into the same Union Medical Services which will be the surviving entity here. See Agency Letter (Exhibit 3) and August 15, 2013 Request (Exhibit 4). In both instances, the Agency found similar transactions to be non-reviewable.

Martha Frisone, Chief
October 3, 2017
Page 3

III. EXEMPTION NOTICE IN THE ALTERNATIVE

Even if the Agency determines that the Transaction is presumptively reviewable, it is exempt pursuant to N.C. Gen. Stat. § 131E-184(a)(8) as the exempt acquisition of an existing health service facility since West Stanly Imaging is a Diagnostic Center under the CON Law.

IV. CONCLUSION

Based upon the foregoing information, we hereby request that the Agency confirm that the Transaction described herein -- either via merger or asset transfer -- is not reviewable as a new institutional health service or is exempt under the CON law.

Thank you for your assistance in regard to this matter. Please let me know if you have any questions.

Sincerely,

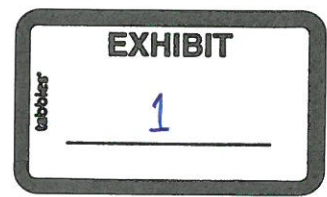


Gary S. Qualls

Martha Frisone, Chief
October 3, 2017
Page 4

Exhibits

1. Agency Letter dated February 29, 2016
2. January 13, 2016 Request
3. August 22, 2103 Agency Letter approving merger of Southern Piedmont Imaging, LLC into the same Union Medical Services
4. August 15, 2013 Request to merge Southern Piedmont Imaging, LLC into the same Union Medical Services without undergoing CON Review



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

Pat McCrory
Governor

Richard O. Brajer
Secretary DHHS

Drexdal Pratt
Division Director

February 29, 2016

Gary S. Qualls
K&L Gates LLP
430 Davis Drive
Suite 400
Morrisville, NC 27650

No Review

Record #: 1879
Facility Name: West Stanly Imaging, LLC
FID #: 060855
Business Name: The Charlotte-Mecklenburg Hospital Authority
Business #: 461
Project Description: The Charlotte-Mecklenburg Hospital Authority will become the sole member of the LLC
County: Stanly

Dear Mr. Qualls:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency) received your letter of January 13, 2016 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.

However, you need to contact the Agency's Construction, Acute and Home Care Licensure and Certification Section, DHSR 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 in your correspondence. Consequently, if changes are made in the project or in the facts provided in

Healthcare Planning and Certificate of Need Section

www.ncdhhs.gov

Telephone: 919-855-3873 • Fax: 919-715-4413

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



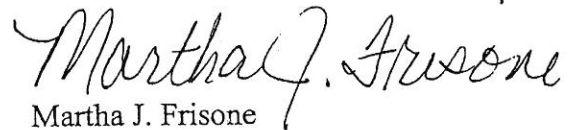
your correspondence referenced above, a new determination as to whether a certificate of need is required would need to be made by this office. Changes in a project include, but are not limited to: (1) increases in the capital cost; (2) acquisition of medical equipment not included in the original cost 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.

Please contact this office if you have any questions. Also, in all future correspondence you should reference the Facility ID # (FID) if the facility is licensed.

Sincerely,



Gregory F. Yakaboski
Project Analyst



Martha J. Frisone
Assistant Chief, Certificate of Need

cc: Acute and Home Care Licensure and Certification Section, DHSR
Construction Section, DHSR
Kelli Fisk, Program Assistant, Healthcare Planning

K&L Gates LLP
Post Office Box 14210
Research Triangle Park, NC 27709-4210

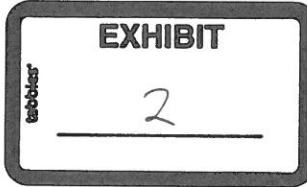
430 Davis Drive, Suite 400
Morrisville, NC 27560

T 919.466.1190 www.klgates.com

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



January 13, 2016



VIA HAND DELIVERY

Martha Frisone
Assistant Chief, Certificate of Need
Department of Health and Human Services
Division of Health Service Regulation
Healthcare Planning and Certificate of Need Section
809 Ruggles Drive
Raleigh, North Carolina 27603

Re: Merger of Stanly Health Services, Inc. and Stanly Regional Medical Center into The Charlotte-Mecklenburg Hospital Authority

No Review Letter, Alternative Exemption Notice, and Good Cause Transfer Request

Dear Ms. Frisone:

The purpose of this letter is to inform you of a proposed transaction (the "2016 SHS Transaction") wherein Stanly Health Services, Inc. ("SHS") and its controlled affiliate Stanly Regional Medical Center ("SRMC") will merge into The Charlotte-Mecklenburg Hospital Authority ("CMHA"). Effective on or about March 1, 2016, SHS and SRMC will merge into, and become part of, CMHA. As you will recall, in 2014, CMHA became the sole corporate member of SHS with certain reserve powers and the right to appoint a majority of the SHS board.

SHS and SRMC are currently the partial or exclusive owners (directly or indirectly) of the following health service facilities regulated under the Certificate of Need ("CON") Law:

1. A hospital licensed to SRMC and known as Stanly Regional Medical Center in Albemarle, Stanly County (the "Hospital") -- License No. H0008, Facility ID No. 953472.
2. A Diagnostic Center owned by West Stanly Imaging, LLC, and known as West Stanly Imaging, in Albemarle, Stanly County, which is 51% owned by Stanly Regional Medical Center and 49% owned by CMHA.

3. A rehabilitation hospital operated by CMHA d/b/a Carolinas Rehabilitation and known as Carolinas Rehabilitation-NorthEast, located in Concord, Cabarrus County (the "Rehab Hospital") -- License No. H0286, Facility ID No. 080512. The CON recipients and holders for the Rehab Hospital are: (a) CMHA; (b) SRMC; and (c) Carolinas Rehabilitation-NorthEast, LLC ("CR-NorthEast, LLC"). In turn, CR-NorthEast, LLC is owned 93.5% by CMHA and 6.5% by SRMC.

(Collectively the foregoing health service facilities will be called the "SHS Facilities").

Thus, after the 2016 SHS Transaction, the following ownership structure will exist:

1. The Hospital will be owned and operated by CMHA without any separate subsidiaries involved and will be known as Carolinas HealthCare System Stanly.
2. The West Stanly Imaging Diagnostic Center will continue to be 100% owned and operated by West Stanly Imaging, LLC, and that LLC will be 100% owned by CMHA, as its sole member.
3. The CON rights to the Rehab Hospital known as Carolinas Rehabilitation-NorthEast will now be owned exclusively and directly by CMHA. Because of the 2016 SHS Transaction, CR-NorthEast, LLC will be dissolved. As you will recall, CR-NorthEast, LLC was the joint venture mechanism by which CMHA and SRMC shared interests in the Rehab Hospital CON rights. CR-NorthEast, LLC currently owns the building housing the Rehab Hospital (the "Rehab Hospital Building").¹ CMHA already owned 93.5% of CR-NorthEast, LLC. After the 2016 SHS Transaction, CMHA will directly own 100% of the Rehab Hospital Building. Without SRMC as a separate legal entity, CMHA can now own and operate the Rehab Hospital without the need for the LLC. Moreover, there will be no change to the licensed operator of the Rehab Hospital, which will continue to be CMHA.

¹ CR-NorthEast, LLC ground leases the Rehab Hospital Building from CMHA. CR-NorthEast, LLC then leases the Rehab Hospital Building back to CMHA to operate the Rehab Hospital.

Ms. Martha Frisone
January 13, 2016
Page 3

We are requesting that the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Healthcare Planning and Certificate of Need Section (the "Agency") confirm that the 2016 SHS Transaction is either:

- (1) not reviewable under the North Carolina Certificate of Need ("CON") law because the Transaction is simply an intra-corporate reorganization; or
- (2) in the alternative, exempt from review under the CON law's exemption provisions in N.C. Gen. Stat. § 131E-184(a)(8).

Additionally, to the extent the Agency deems this a transfer of Stanly Regional Medical Center's approved, but not fully developed emergency department CON (described in Part III below), we are requesting approval of a good cause transfer of that CON project under development.

I. NO REVIEW REQUEST FOR SHS TRANSACTION.

The merger of SHS (and its controlled affiliate, SRMC) into CMHA is not a CON reviewable event because such an event is not expressly addressed in any of the new institutional health service "CON triggers" in N.C. Gen. Stat. § 131E-176(16). The merger of a subsidiary into a parent (as here) 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) -- such as this SHS Transaction -- 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 situation 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.").

Therefore, we request your confirmation that the 2016 SHS Transaction is not subject to CON review.

II. **EXEMPTION NOTICE FOR SHS TRANSACTION (IF DEEMED CON REVIEWABLE).**

However, if the Agency treats the 2016 SHS Transaction as the acquisition of the SHS Facilities (as health service facilities), and thus CON reviewable, this letter serves as an exemption notice for the SHS Facilities, pursuant to N.C. Gen. Stat. § 131E-184(a)(8).

The General Assembly has chosen to exempt certain, otherwise reviewable, events from CON review, including the acquisition of an existing health service facility, including the equipment owned by the health service facility at the time of the acquisition. See N.C. Gen. Stat. § 184(a)(8). Under N.C. Gen. Stat. § 131E-176(9b), each of the SHS Facilities constitutes a "health service facility."

Furthermore, the proposed 2016 SHS Transaction 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 transaction does not include the offering of any *per se* reviewable services except those already offered by the existing health service facilities. See N.C. Gen. Stat. § 131E-176(16)(f).

Accordingly, given that the 2016 SHS Transaction involves only the SHS Facilities, which are existing health service facilities, even if the Agency deems the Transaction to trigger the new institutional health service definition, the Transaction is nevertheless exempt from CON review.

III. **GOOD CAUSE TRANSFER FOR THE UNDEVELOPED STANLY REGIONAL EMERGENCY DEPARTMENT PROJECT CON.**

A CON project at the Hospital is currently under development by Stanly Regional Medical Center, identified as:

F-10072-13 - Stanly Regional Medical Center shall renovate and expand Emergency Department/Stany County (the "ED Project")

(See CON attached hereto as Exhibit 1).

Ms. Martha Frisone

January 13, 2016

Page 5

To the extent that the Transaction is considered to be a transfer of the ED Project CON, we are requesting approval for a "good cause" transfer of this CON under N.C. Gen. Stat. § 131E-189 and 10A N.C.A.C. 14C.0502. We believe that good cause exists for such a transfer.

Good cause exists for the ED Project transfer because the larger purposes of the 2016 SHS Transaction are wholly unrelated to the pending ED Project. Rather, the ED Project transfer is merely a byproduct of the larger 2016 SHS Transaction. The larger purposes of the SHS Transaction include:

- Maintaining the viability of the SHS Facilities as robust providers in their respective service areas (the "SHS Service Areas");
- Continuing to provide quality, cost-efficient and innovative health care service to residents of the SHS Service Areas, while maintaining the accessibility and familiarity of local health care providers;
- Preparing for future reimbursement models that favor shared risk; and
- Ensuring that patients receive the best medical care in the most appropriate service setting by providing access to a comprehensive health care provider operating through multiple medical facilities within the State of North Carolina.

Moreover, nothing about this 2016 SHS Transaction will affect the ability of Stanly Regional Medical Center (as an even more integrated part of CMHA) to materially comply with any representations in its ED Project CON application or the CON conditions placed on the ED Project. In all material respects, the operations and development of this ED Project will be the same as represented in the ED Project CON application and in compliance with the issued CON.

Ms. Martha Frisone
January 13, 2016
Page 6

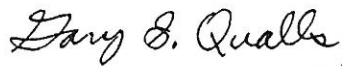
IV. CONCLUSION

Based upon the foregoing information, we hereby request the Agency's:

1. confirmation that the 2016 SHS Transaction: (1) does not require CON review; or alternatively, (2) is exempt from CON review under N.C. Gen. Stat § 131E-184(a)(8); and
2. approval of a good cause transfer for the outstanding Stanly Regional Medical Center ED Project CON if the Agency determines that the 2016 SHS Transaction constitutes an exempt transfer.

The effective Transaction date is currently anticipated to be March 1, 2016. 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

Ms. Martha Frisone
January 13, 2016
Page 7

Exhibit

1. CON for Stanly Regional Medical Center Emergency Department

STATE OF NORTH CAROLINA

Department of Health and Human Services
Division of Health Service Regulation

CERTIFICATE OF NEED

for

Project Identification Number #F-10072-13

FID #953472

ISSUED TO: Stanly Regional Medical Center
301 Yadkin Street
Albemarle, NC 28001

Pursuant to N.C. Gen. Stat. § 131E-175, et. seq., the North Carolina Department of Health and Human Services hereby authorizes the person or persons named above (the "certificate holder") to develop the certificate of need project identified above. The certificate holder shall develop the project in a manner consistent with the representations in the project application and with the conditions contained herein and shall make good faith efforts to meet the timetable contained herein. The certificate holder shall not exceed the maximum capital expenditure amount specified herein during the development of this project, except as provided by N.C. Gen. Stat. § 131E-176(16)e. The certificate holder shall not transfer or assign this certificate to any other person except as provided in N.C. Gen. Stat. § 131E-189(c). This certificate is valid only for the scope, physical location, and person(s) described herein. The Department may withdraw this certificate pursuant to N.C. Gen. Stat. § 131E-189 for any of the reasons provided in that law.

SCOPE: Stanly Regional Medical Center shall renovate and expand Emergency Department/ Stanly County

CONDITIONS: See Reverse Side

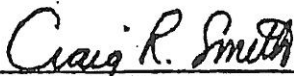
PHYSICAL LOCATION: Stanly Regional Medical Center
301 Yadkin Street
Albemarle, NC 28001

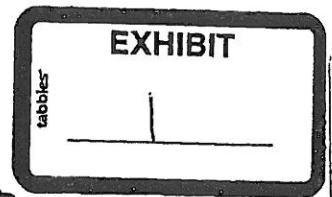
MAXIMUM CAPITAL EXPENDITURE: \$8,757,247

TIMETABLE: See Reverse Side

FIRST PROGRESS REPORT DUE: September 30, 2013

This certificate is effective as of the 11th day of May, 2013


Chief, Certificate of Need Section
Division of Health Service Regulation



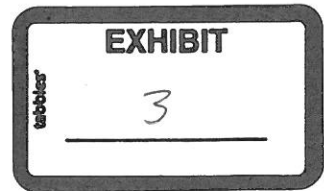
CONDITIONS:

1. Stanly Regional Medical Center shall materially comply with all representations made in the certificate of need application.
2. Stanly Regional Medical Center shall not acquire, as part of this project, any equipment that is not included in the project's proposed capital expenditure in Section VIII of the application and that would otherwise require a certificate of need.
3. Stanly Regional Medical Center shall develop and implement an Energy Efficiency and Sustainability Plan for the project that conforms to or exceeds energy efficiency and water conservation standards incorporated in the latest editions of the North Carolina State Building Codes. The plan must be consistent with the applicant's representations in the written statement as described in paragraph one of Policy GEN-4.
4. Stanly Regional Medical Center shall acknowledge acceptance of and agree to comply with all conditions stated herein to the Certificate of Need Section in writing prior to issuance of the certificate of need.

A letter acknowledging acceptance of and agreeing to comply with all conditions stated in the conditional approval letter was received by the Certificate of Need Section on April 15, 2013.

TIMETABLE:

Contract Award _____	September 15, 2013
50% Completion of Construction _____	April 1, 2014
Completion of Construction _____	September 15, 2014
Occupancy/Offering of Services _____	October 1, 2014



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

August 22, 2013

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

No Review

Facility or Business: Southern Piedmont Imaging, LLC
Project Description: Merger of Southern Piedmont Imaging, LLC with Union Medical Services, LLC
County: Cabarrus
FID #: 061206

Dear Mr. Qualls:

The Certificate of Need Section (CON Section) received your letter of August 15, 2013 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.

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

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




Gary S. Qualls
August 22, 2013
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,



Gloria C. Hale, Project Analyst



Craig R. Smith, Chief
Certificate of Need Section

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



K&L Gates LLP
Post Office Box 14210
Research Triangle Park, NC
430 Davis Drive, Suite 400
Morrisville, NC 27560
T 919.466.1190 www.klgates.com

Received by
the CON Section
AUG 15 2013

Gary S. Qualls
D 919.466.1182
F 919.516-2072
gary.qualls@klgates.com

August 15, 2013

Via Hand Delivery

Mr. Craig R. Smith
Chief, Certificate of Need Section
Division of Health Service Regulation
North Carolina Department of Health & Human
Services
809 Ruggles Drive
Raleigh, NC 27603

Re: Corporate Reorganization of Diagnostic Center Under Development
No Review Letter and Good Cause Transfer Request
Southern Piedmont Imaging: Facility ID No. 061206

Dear Craig:

We represent The Charlotte-Mecklenburg Hospital Authority ("CMHA"), Union Medical Services, LLC, and Southern Piedmont Imaging, LLC. 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 the following corporate change: the merger of one limited liability company (Southern Piedmont Imaging, LLC), which is wholly-owned by CMHA and has two CON projects under development, with and into another limited liability company wholly-owned by CMHA (Union Medical Services, LLC).

The purpose of this proposal is to streamline the billing and other administrative functions of the one CMHA-controlled facility, Southern Piedmont Imaging, LLC, by merging it into one limited liability company wholly-owned by CMHA (Union Medical Services, LLC), and thereby enable more efficient operations. Union Medical Services, LLC is the owner and operator of Union West MRI, and CMHA became the sole member of Union Medical Services, LLC via the recent merger of Union Memorial Regional Medical Center, Inc. with and into CMHA.

As further explained below, we are requesting that the Agency: (1) confirm that this corporate change is not reviewable as a new institutional health service under the North Carolina Certificate of Need ("CON") law; or (2) in the alternative, approve a good cause transfer of the two SPI CON Projects under development.

Craig R. Smith, Chief
August 15, 2013
Page 2

I. THE PROPOSAL

Effective October 1, 2013, Southern Piedmont Imaging, LLC (“SPI”) will merge with and into Union Medical Services, LLC. SPI currently holds the following two CONs that are under development (hereafter “the SPI CON Projects”):

- Project ID No. F-7730-06 – Acquire a 64-slice CT scanner, X-ray unit, and digital mammography equipment and develop a diagnostic center/Cabarrus County
- Project ID No. F-7859-07 – Acquire a fixed MRI scanner and install it in the previously approved diagnostic center at the North Carolina Research Campus in Kannapolis/Cabarrus County.

See Exhibits A and B.

Currently, SPI is a wholly-owned subsidiary of CMHA. Therefore, because CMHA is the sole member of Union Medical Services, LLC, this merger does not change the ownership of SPI outside of CMHA wholly-controlled entities.

II. NO REVIEW REQUEST

First, this type of proposed corporate reorganization and merger between or among wholly-controlled entities is not expressly addressed in N.C. Gen. Stat. § 131E-176(16). 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.”). Further, no capital expenditures are being incurred to accomplish this corporate change.

Second, to the extent that the holder of the CONs for the SPI CON Projects is changing, the identity of the holder is changing solely because of a corporate merger between two limited liability companies wholly-owned and wholly-controlled by CMHA. It is not the type of transaction that would trigger CON review. The merger of a wholly-owned subsidiary into another wholly-owned subsidiary does not change control or ownership

Craig R. Smith, Chief
August 15, 2013
Page 3

outside of the ultimate owner, CMHA. Rather, such a merger merely constitutes a corporate reorganization, as contemplated in 10A N.C.A.C. 14C.0502(b)(1).

II. GOOD CAUSE TRANSFER

To the extent that the merger of SPI with and into Union Medical Services, LLC is considered to be a transfer of the SPI CON Projects or their CONs, we are requesting approval for a "good cause" transfer of these CONs under N.C. Gen. Stat. § 131E-189 and 10A N.C.A.C. 14C.0502. We believe that good cause for such transfers exists.

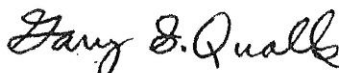
The purpose of this merger transaction is wholly unrelated to any of the pending CON projects, but is in conjunction with a larger corporate reorganization by merging one CMHA wholly-owned limited liability company, SPI, with and into another CMHA wholly-owned limited liability company, Union Medical Services, LLC. Moreover, Union Medical Services, LLC and CMHA will materially comply with the representations in the CON applications under development and the conditions placed on those projects under development. In all material respects, the operations and development of these projects will be the same as represented in the CON applications and in compliance with the issued CONs.

III. CONCLUSION

Based upon the foregoing information, we hereby request that the Agency: (1) confirm that this corporate change is not reviewable as a new institutional health service under the CON law; or (2) in the alternative, approve a good cause transfer of the SPI CON Projects under development.

Thank you for your assistance in regard to this matter. Please let me know if you have any questions.

Sincerely,

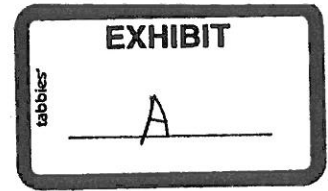


Gary S. Qualls

Craig R. Smith, Chief
August 15, 2013
Page 4

Exhibits

- A. CON for Project ID No. F-7730-06
- B. CON for Project ID No. F-7859-07



North Carolina Department of Health and Human Services
Division of Facility Services
Certificate of Need Section
2704 Mail Service Center ■ Raleigh, North Carolina 27699-2704

Michael F. Easley, Governor
Carmen Hooker Odom, Secretary

<http://facility-services.state.nc.us>

Lee Hoffman, Section Chief
Phone: 919-855-3873
Fax: 919-733-8139

May 10, 2007

Carol Lovin, Vice President
Strategic Planning & Market Development
Cabarrus Memorial Hospital
920 Church Street, North
Concord, NC 28025

RE: Transmittal of CON/ Project I.D.#F-7730-06/ Southern Piedmont Imaging, LLC/ Proposal to develop a diagnostic center and add mammography, CT scanner, ultrasound, dexascan, and x-ray imaging services/ Cabarrus County
FID # 061206

Dear Ms. Lovin:

We are happy to transmit your certificate of need for the above referenced project. At this time, you should contact the Construction Section and the Licensure and Certification Section, regarding their procedures and requirements for the development of this project. The Certificate of Need Section will notify the other Sections that the certificate of need has been issued. However, please note that it is the responsibility of the holder of the certificate of need to contact these Sections concerning the next steps to follow in the development of the approved project.

Please be aware that pursuant to General Statute 131E-181(b), you are required to materially comply with the representations made in your application for a certificate of need, or with any conditions the department placed on the certificate of need. If you operate a service which materially differs from the representations made in your application for a certificate of need, or with any conditions the department placed on the certificate of need, including any increase in per diem reimbursement rates/charges, the department may bring remedial action against the holder of the certificate of need pursuant to General Statutes 131E-189 and 131E-190.

The holder of a certificate of need is obligated to submit progress reports to this Agency as required by 10A NCAC 14C .0209. The applicant shall notify the Agency of any variations from the schedule or the projected capital cost of the project. During the development of the project, the Agency may request any additional information pertinent to the project, including additional progress reports, to determine: 1) if the timetable specified on the certificate is being met; 2) if the amount of the capital expenditure obligated under the certificate has exceeded or can be expected to exceed the maximum amount under the certificate; 3) if the terms and conditions of the approval are being met; and 4) if the project is progressing as proposed in the application. The first progress report on this project is

Location: 701 Barbour Drive ■ Dorothea Dix Hospital Campus ■ Raleigh, N.C. 27603
An Equal Opportunity / Affirmative Action Employer



Ms. Lovin
May 10, 2007
Page 2

due September 1, 2007. Forms for the submittal of these reports are enclosed. Failure to submit any scheduled or requested progress report in a timely manner may result in the agency withdrawing the certificate pursuant to G.S.131E-189 (a). If after reviewing the status of the project, the Certificate of Need Section determines that the holder of the certificate is not meeting the timetable and is not making a good faith effort to meet it, the Agency may withdraw the certificate in accordance with G.S. 131E-189.

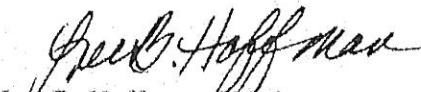
Moreover, please be advised that this Agency may assess a civil penalty not to exceed \$20,000 against any person who violates the terms of a certificate of need which has been issued each time the service provided is in violation of this provision (G.S. 131E-190(f)). If for some reason, the holder of a certificate of need determines it necessary to request an increase in a per diem charge or reimbursement rate over that which was stated in the application for the certificate of need, then the holder must first contact the Certificate of Need Section to obtain proper instructions for initiating such a request. The request for the increase will be considered by the department pursuant to G.S. 131E-181(b).

Please keep us informed of the progress in the development of this project. Please refer to the Project I.D.# and Facility I.D.# (FID) in all correspondence.

Sincerely,



Carol L. Hutchison, Project Analyst



Lee B. Hoffman, Chief
Certificate of Need Section

CLH:LBH:ly
Enclosures

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

STATE OF NORTH CAROLINA

Department of Health and Human Services

Division of Facility Services

CERTIFICATE OF NEED

for

Project Identification Number #F-7730-06

FID# 061206

ISSUED TO: Southern Piedmont Imaging, LLC
North Main Street
Kannapolis, NC 28081

Pursuant to N.C. Gen. Stat. § 131E-175, et. seq., the North Carolina Department of Health and Human Services hereby authorizes the person or persons named above (the "certificate holder") to develop the certificate of need project identified above. The certificate holder shall develop the project in a manner consistent with the representations in the project application and with the conditions contained herein and shall make good faith efforts to meet the timetable contained herein. The certificate holder shall not exceed the maximum capital expenditure amount specified herein during the development of this project, except as provided by N.C. Gen. Stat. § 131E-176(16)e. The certificate holder shall not transfer or assign this certificate to any other person except as provided in N.C. Gen. Stat. § 131E-189(c). This certificate is valid only for the scope, physical location, and person(s) described herein. The Department may withdraw this certificate pursuant to N.C. Gen. Stat. § 131E-189 for any of the reasons provided in that law.

SCOPE: Acquire a 64-slice CT scanner, X-ray unit, and digital mammography equipment and develop a diagnostic center/ Cabarrus County

CONDITIONS: See Reverse Side

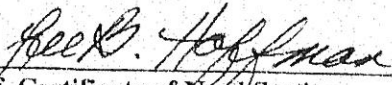
PHYSICAL LOCATION: Southern Piedmont Imaging, LLC
North Main Street
Kannapolis, NC 28081

MAXIMUM CAPITAL EXPENDITURE: \$7,661,838

TIMETABLE: See Reverse Side

FIRST PROGRESS REPORT DUE: September 1, 2007

This certificate is effective as of the 1st day of May, 2007



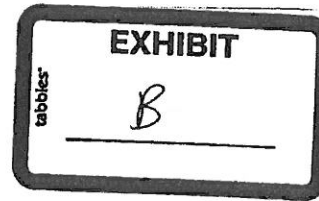
Chief, Certificate of Need Section
Division of Facility Services

CONDITIONS:

1. Southern Piedmont Imaging, Inc. shall materially comply with all representations made in its certificate of need application.
2. Southern Piedmont Imaging, Inc. shall develop and operate no more than one diagnostic center to be located at North Main Street, Kannapolis in Cabarrus County.
3. Southern Piedmont Imaging, Inc. shall acquire no more than one new CT scanner, one new mammography unit, and one new x-ray unit and relocate from North East Medical Center one existing ultrasound machine and one existing bone densitometry machine.
4. Southern Piedmont Imaging, Inc. shall not acquire by purchase or lease, within one year after completion of this project, any equipment including replacement equipment, which costs or has a fair market value of \$10,000 or more that was not included in the capital expenditure in Section VIII.1 of the application.
5. Southern Piedmont Imaging, Inc. shall lease and upfit no more space than is color highlighted for the diagnostic center on the drawings in Exhibit 8 of the application.
6. Southern Piedmont Imaging, Inc. shall acknowledge acceptance of and agree to comply with all conditions stated herein to the Certificate of Need Section in writing prior to issuance of the certificate of need.

TIMETABLE:

Completion of final drawings and specifications -----	July 15, 2007
Contract Award (Notice to Proceed -----	December 1, 2007
50% Completion of construction -----	May 1, 2008
Completion of Construction -----	September 1, 2008
Occupancy/Offering of service -----	October 1, 2008



**North Carolina Department of Health and Human Services
Division of Health Service Regulation
Certificate of Need Section**

2704 Mail Service Center v Raleigh, North Carolina 27699-2704

Michael F. Easley, Governor
Dempsey Benton, Secretary

www.ncdohhs.gov/dhsr

Lee Hoffman, Section Chief
Phone: 919-855-3873
Fax: 919-733-8139

October 31, 2008

Carol Lovin, VP, RN, MN
Southern Piedmont Imaging
Strategic Planning & Market Development
920 Church St., North
Concord, NC 28025

RE: Transmittal of CON/ Project I.D. #F-7859-07/ Southern Piedmont Imaging, LLC/ Proposal to acquire a fixed MRI scanner and install in approved diagnostic center at the NC Research Campus in Kannapolis, NC/ Cabarrus County
FID #061206

Dear Ms. Lovin:

We are happy to transmit your certificate of need for the above referenced project. At this time, you should contact the Construction Section and the Licensure and Certification Section, regarding their procedures and requirements for the development of this project. The Certificate of Need Section will notify the other Sections that the certificate of need has been issued. However, please note that it is the responsibility of the holder of the certificate of need to contact these Sections concerning the next steps to follow in the development of the approved project.

Please be aware that pursuant to General Statute 131E-181(b), you are required to materially comply with the representations made in your application for a certificate of need, or with any conditions the department placed on the certificate of need. If you operate a service which materially differs from the representations made in your application for a certificate of need, or with any conditions the department placed on the certificate of need, including any increase in per diem reimbursement rates/charges, the department may bring remedial action against the holder of the certificate of need pursuant to General Statutes 131E-189 and 131E-190.

The holder of a certificate of need is obligated to submit progress reports to this Agency as required by 10A NCAC 14C .0209. The applicant shall notify the Agency of any variations from the schedule or the projected capital cost of the project. During the development of the project, the Agency may request any additional information pertinent to the project, including additional progress reports, to determine: 1) if the timetable specified on the certificate is being met; 2) if the amount of the capital expenditure obligated under the certificate has exceeded or can be expected to exceed the maximum amount under the certificate; 3) if the terms and conditions of the approval are being met; and 4) if the project is progressing as proposed in the application. The first progress report on this project is due February 15, 2009. Forms for the submittal of these reports are enclosed.



Carol Lovin
October 31, 2008
Page 2

Failure to submit any scheduled or requested progress report in a timely manner may result in the agency withdrawing the certificate pursuant to G.S.131E-189 (a). If after reviewing the status of the project, the Certificate of Need Section determines that the holder of the certificate is not meeting the timetable and is not making a good faith effort to meet it, the Agency may withdraw the certificate in accordance with G.S. 131E-189.

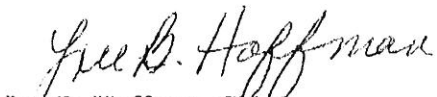
Moreover, please be advised that this Agency may assess a civil penalty not to exceed \$20,000 against any person who violates the terms of a certificate of need which has been issued each time the service provided is in violation of this provision (G.S. 131E-190(f)). If for some reason, the holder of a certificate of need determines it necessary to request an increase in a per diem charge or reimbursement rate over that which was stated in the application for the certificate of need, then the holder must first contact the Certificate of Need Section to obtain proper instructions for initiating such a request. The request for the increase will be considered by the department pursuant to G.S. 131E-181(b).

Please keep us informed of the progress in the development of this project. Please refer to the Project I.D.# and Facility I.D.# (FID) in all correspondence.

Sincerely,



Tanya S. Rupp, Project Analyst



Lee B. Hoffman, Chief
Certificate of Need Section

TSR:LBH:se

Enclosures

cc: Medical Facilities Planning Section, DHSR

STATE OF NORTH CAROLINA

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

CERTIFICATE OF NEED

for

**Project Identification Number #F-7859-07
FID #061206**

ISSUED TO: Southern Piedmont Imaging, LLC
North Main Street
Kannapolis, NC 28081

Pursuant to N.C. Gen. Stat. § 131E-175, et. seq., the North Carolina Department of Health and Human Services hereby authorizes the person or persons named above (the "certificate holder") to develop the certificate of need project identified above. The certificate holder shall develop the project in a manner consistent with the representations in the project application and with the conditions contained herein and shall make good faith efforts to meet the timetable contained herein. The certificate holder shall not exceed the maximum capital expenditure amount specified herein during the development of this project, except as provided by N.C. Gen. Stat. § 131E-176(16)e. The certificate holder shall not transfer or assign this certificate to any other person except as provided in N.C. Gen. Stat. § 131E-189(c). This certificate is valid only for the scope, physical location, and person(s) described herein. The Department may withdraw this certificate pursuant to N.C. Gen. Stat. § 131E-189 for any of the reasons provided in that law.

SCOPE: Acquire a fixed MRI scanner and install it in the previously approved diagnostic center at the North Carolina Research Campus in Kannapolis/ Cabarrus County

CONDITIONS: See Reverse Side

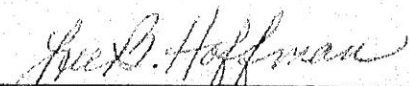
PHYSICAL LOCATION: Southern Piedmont Imaging
North Main Street
Kannapolis, NC 28081

MAXIMUM CAPITAL EXPENDITURE: \$ 2,091,794

TIMETABLE: See Reverse Side

FIRST PROGRESS REPORT DUE: February 15th, 2009.

This certificate is effective as of the 29th day of October, 2008



Chief, Certificate of Need Section
Division of Health Service Regulation

CONDITIONS:

1. Southern Piedmont Imaging, LLC, shall materially comply with all representations made in its certificate of need application.
2. Southern Piedmont Imaging, LLC shall acquire no more than one fixed magnetic resonance imaging (MRI) scanner.
3. Southern Piedmont Imaging, LLC shall not acquire, as part of this project, any equipment that is not included in the project's proposed capital expenditure in Section VIII of the application or that would otherwise require a certificate of need.
4. Southern Piedmont Imaging, LLC shall obtain accreditation from the American College of Radiology for magnetic resonance imaging services within two years following operation of the fixed MRI scanner.
5. Southern Piedmont Imaging, LLC shall acknowledge acceptance of and agree to comply with all conditions stated herein to the Certificate of Need Section in writing prior to issuance of the certificate of need.

A letter acknowledging acceptance and compliance with all conditions stated in the conditional approval letter was received by the Certificate of Need Section on November 15, 2007.

TIMETABLE:

Approval of Final Drawings and Specifications by the Construction Section, DHSR	_____	March 1, 2009
50% Completion of Construction	_____	June 1, 2009
Occupancy/Offering of Service(s)	_____	October 1, 2009