



NC DEPARTMENT OF
**HEALTH AND
HUMAN SERVICES**

ROY COOPER • Governor

MANDY COHEN, MD, MPH • Secretary

MARK PAYNE • Director, Division of Health Service Regulation

January 23, 2019

Denise Gunter
Nelson Mullins Riley & Scarborough
380 Knollwood Street, Suite 530
Winston-Salem, NC 27103

No Review

Record #: 2845
Facility Name: Matthews Radiation Oncology Center
Business Name: Radiation Oncology Centers of the Carolinas, LLC
Business #: 1501
Project Description: Change in corporate structure and membership interests
County: Mecklenburg

Dear Ms. Gunter:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency) received your correspondence regarding the above referenced proposal. Based on the CON law **in effect on the date of this response to your request**, the proposal described in that correspondence is not governed by, and therefore, does not currently require a certificate of need. If the CON law is subsequently amended such that the above referenced proposal would require a certificate of need, this determination does not authorize you to proceed to develop the above referenced proposal when the new law becomes effective.

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

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

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

NC DEPARTMENT OF HEALTH AND HUMAN SERVICES • DIVISION OF HEALTH SERVICE REGULATION
HEALTHCARE PLANNING AND CERTIFICATE OF NEED SECTION


LOCATION: 809 Ruggles Drive, Edgerton Building, Raleigh, NC 27603
MAILING ADDRESS: 809 Ruggles Drive, 2704 Mail Service Center, Raleigh, NC 27699-2704
www.ncdhhs.gov/dhsr • TEL: 919-855-3873

AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER

Sincerely,



Gloria C. Hale
Team Leader



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

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



NELSON MULLINS



NELSON MULLINS RILEY & SCARBOROUGH
LLP
ATTORNEYS AND COUNSELORS AT LAW

Denise M. Gunter
T 336.774.3322 F 336.774.3372
denise.gunter@nelsonmullins.com

380 Knollwood Street | Suite 530
Winston-Salem, NC 27103
T 336.774.3300 F 336.774.3299
nelsonmullins.com

January 15, 2019

Hand Delivered

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

Re: Letter of No Review
Health Service Area III
Mecklenburg County and Iredell County

Dear Ms. Frisone:

On behalf of Novant Health, Inc. (“Novant”), I am writing pursuant to N.C. Gen. Stat. §§ 131E-176 and 178 to seek the Healthcare Planning and Certificate of Need Section’s (the “Agency”) written determination that a proposed transaction does not require a certificate of need.

Facts

Radiation Oncology Centers of the Carolinas, Inc. (“ROCC”) directly owns and operates two radiation oncology facilities in Health Service Area III. Matthews Radiation Oncology Center (“MROC”) is located at 1400 Matthews Township Parkway in Matthews, North Carolina 28105. MROC is a “grandfathered” facility because it became operational in 1990, prior to the application of the CON Law to radiation oncology treatment centers or major medical equipment. The radiation oncology equipment at MROC consists of a Varian 21Ex-d linear accelerator and a GE Brightspeed CT simulator. Lake Norman Radiation Oncology Center (“LNROC”) is located at 170 Medical Park Road, Suite 100, Mooresville, NC 28117. The radiation oncology equipment in use at LNROC consists of

a Varian Clinac 2100 Ex and a GE Lightspeed CT Qxi Oncology Simulator. See Table 9G of the 2019 SMFP, which lists MROC and LNROC.¹

ROCC plans to convert from an S-Corp to a limited liability company (“Radiation Oncology Centers of the Carolinas, LLC”). Following the conversion, Novant intends to purchase 50% of the membership interests in Radiation Oncology Centers of the Carolinas, LLC (the “Proposed Transaction”). There will be no other changes to ROCC.

The Proposed Transaction does not involve relocating either MROC or LNROC, constructing additional space at either MROC or LNROC or purchasing any additional equipment for either MROC or LNROC. Neither ROCC, MROC nor LNROC has any projects for which CONs have been issued but that remain undeveloped. The State’s inventory of linear accelerators and simulators will not change as a result of the Proposed Transaction.

MROC is not a separate entity so does not have its own EIN but uses the EIN of ROCC. LNROC is a limited liability company wholly owned by ROCC and is a disregarded entity for tax purposes, so as a result the facilities are operated under the EIN and Medicare and Medicaid numbers for ROCC. The EIN for ROCC and its Medicare and Medicaid numbers will all remain unchanged.

Analysis

The CON Law regulates the development of new institutional health services, which include, *inter alia*, the construction, development or other establishment of a new health service facility; capital expenditures greater than \$2 million to develop or expand a health service or health service facility; the acquisition of linear accelerators and simulators, and the acquisition of major medical equipment. See N.C. Gen. Stat. §§ 131E-176(16)a., b., f1.5a, f1.9 and p.

The Proposed Transaction does not involve any of these activities. Novant will not be constructing, developing or establishing a new health service facility or spending more than \$2 million to develop or expand a health service or health service facility. Nor will Novant be acquiring any linear accelerators, simulators or major medical equipment as a result of the Proposed Transaction. Rather, Novant will be buying membership interests in Radiation Oncology Centers of the Carolinas, LLC.

The Agency and DHSR have previously determined that the acquisition of membership interests in a limited liability company is not a CON-reviewable event. See,

¹ LNROC acquired Salisbury Radiation Cancer Treatment Center (“SRCTC”) in Rowan County in 2004. LNROC received permission from the Agency in 2004 to relocate SRCTC to Mooresville in Iredell County. See Exhibit A.

Martha J. Frisone
January 11, 2019
Page 3

e.g., **Exhibit B**, a 2011 Declaratory Ruling Request issued to ROCC, p. 2 (“Prior declaratory rulings show that the Department has already determined that [the definitions of new institutional health service] do not require an entity to obtain a CON to acquire membership interests in an existing legal entity like ROCC which owns and operates a linear accelerator or simulator.”). See also **Exhibit C**, a February 12, 2018 No Review Letter determining that acquisition of 100% of the membership interests in an LLC was not subject to CON review); **Exhibit D**, a June 23, 2017 No Review Letter determining that the acquisition of a 10% interest in an LLC was not subject to CON Review).

Novant’s intended purchase of a 50% membership interest in Radiation Oncology Centers of the Carolinas, LLC is consistent with these prior determinations. The entity that owns the linear accelerators and the simulators will not change, and the same equipment will be used to provide the same radiation oncology services in the same locations. Radiation Oncology Centers of the Carolinas, LLC will continue to own the linear accelerators, the simulators, and all the oncology treatment center assets that ROCC is authorized to operate and have been used to furnish oncology treatments to patients.

The Proposed Transaction does not involve the offering or expansion of any new facility, service or equipment, and the State’s inventory of linear accelerators and simulators will not change. No new or additional equipment will be acquired or placed in operation in North Carolina as a result of the Proposed Transaction.

Request

For the above-stated reasons, Novant respectfully requests that the Agency issue a written determination that no CON is required for the Proposed Transaction.

As the Proposed Transaction is expected to close in late January, we would appreciate receiving the Agency’s written response by January 28, 2019.

Thank you for your time and consideration.

With best personal regards.

Sincerely,



Denise M. Gunter

Enclosures



RECEIVED OCT 04 2004

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

September 30, 2004

S. Todd Hemphill
Bode, Call & Stroupe, LLP
3105 Glenwood Avenue, Ste. 300
Raleigh NC 27612


RE: No Review/ Lake Norman Radiation Oncology, LLC/ Relocation of existing oncology treatment center within same Radiation Oncology Treatment Center Service Area/ Iredell and Rowan Counties

Dear Mr. Hemphill:

In response to your letters of August 25, September 3, and September 30, 2004, the proposal described in your correspondence is not regulated under the Certificate of Need Law and, therefore, does not require a certificate of need. 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 the 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 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.

Sincerely,


Lee B. Hoffman, Chief
Certificate of Need Section

cc: Medical Facilities Planning Section, DFS

EXHIBIT

A



RECEIVED OCT 04 2004



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

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

September 30, 2004

S. Todd Hemphill
Bode, Call & Stroupe, LLP
3105 Glenwood Avenue, Ste. 300
Raleigh NC 27612

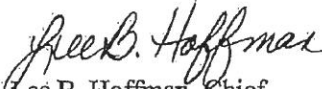
RE: Exempt from Review/ Lake Norman Radiation Oncology, LLC/ Acquire a new simulator to replace existing simulator/ Rowan County

Dear Mr. Hemphill:

In response to your letters of August 25, September 3, and September 30, 2004, the above referenced proposal is exempt from certificate of need review in accordance with N.C.G.S 131E-184(a)(7). Therefore, you may proceed to acquire, without a certificate of need, the Siemens Treatment Simulator/CT, Model Somatom Emotion to replace the Nucletron/Kermath Treatment Simulator, Model # TST101, Serial # TSP655-0688. This determination is based on your representations that the existing unit will be removed from North Carolina and will not be used again in the State without first obtaining a certificate of need. Further please be advised that as soon as the replacement equipment is acquired, you must provide the CON Section and the Medical Facilities Planning Section with the serial number of the new equipment to update the inventory.

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,


Lee B. Hoffman, Chief
Certificate of Need Section

cc: Medical Facilities Planning Section, DFS



RECEIVED OCT 04 2004



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

September 30, 2004

S. Todd Hemphill
Bode, Call & Stroupe, LLP
3105 Glenwood Avenue, Ste. 300
Raleigh NC 27612

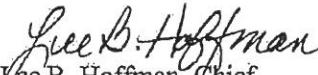
RE: Exempt from Review/ Lake Norman Radiation Oncology, LLC/ Acquire new linear accelerator to replace existing linear accelerator/ Rowan County

Dear Mr. Hemphill:

In response to your letters of August 25, September 3, and September 30, 2004, the above referenced proposal is exempt from certificate of need review in accordance with N.C.G.S 131E-184(a)(7). Therefore, you may proceed to acquire, without a certificate of need, the Varian linear accelerator Model Clinac EX-d to replace the existing Siemens linear accelerator, Serial #1817, Model Mevatron 7445. This determination is based on your representations that the existing unit will be removed from North Carolina and will not be used again in the State without first obtaining a certificate of need. Further please be advised that as soon as the replacement equipment is acquired, you must provide the CON Section and the Medical Facilities Planning Section with the serial number of the new equipment to update the inventory.

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,


Lee B. Hoffman, Chief
Certificate of Need Section

cc: Medical Facilities Planning Section, DFS





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. Basley, Governor
Carmen Hooker Odum, Secretary

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

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

March 11, 2004

S. Todd Hemphill
Bode, Call & Stroupe, LLP
P. O. Box 6338
Raleigh NC 27628-6338

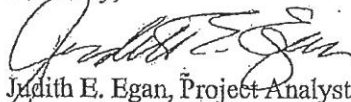
RE: Exempt from Review / Acquisition of Salisbury Radiation Cancer Treatment Center by Lake Norman Radiation Oncology, LLC / Rowan County

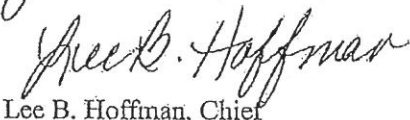
Dear Mr. Hemphill:

In response to your letter of February 12, 2004, the above referenced proposal is exempt from certificate of need review in accordance with N.C.G.S 131B-184(a)(8). Therefore, Lake Norman Radiation Oncology, LLC may proceed to acquire the above referenced health service facility without first obtaining a certificate of need. Please be advised that you must contact the Medical Facilities Planning Section of the Division of Facility Services regarding reporting requirements for services provided by the oncology treatment center.

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,


Judith E. Egan, Project Analyst


Lee B. Hoffman, Chief

Certificate of Need Section
Division of Facility Services
Medical Facilities Planning Section, DFS



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

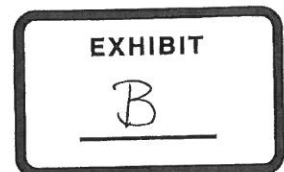
**IN RE: REQUEST FOR DECLARATORY)
RULING BY RADIATION ONCOLOGY) DECLARATORY RULING
CENTERS OF THE CAROLINAS, INC.)**

I, Drexel Pratt, as Director of the Division of Health Service Regulation, North Carolina Department of Health and Human Services ("Department" or "Agency"), do hereby issue this Declaratory Ruling pursuant to North Carolina General Statute § 150B-4 and 10A NCAC 14A .0103 under the authority granted me by the Secretary of the Department of Health and Human Services.

Radiation Oncology Centers of the Carolinas, Inc. ("ROCC") has requested a declaratory ruling to confirm that the transfer of two CON-approved radiation oncology facilities to two wholly owned subsidiaries (the "Proposed Transaction") will not constitute a new institutional health service or require a CON. This ruling will be binding upon the Department and the entities requesting it, as long as the material facts stated herein are accurate. This ruling pertains only to the matters referenced herein. Except as provided by N.C.G.S. § 150B-4, the Department expressly reserves the right to make a prospective change in the interpretation of the statutes and regulations at issue in this Declaratory Ruling. S. Todd Hemphill of Bode, Call & Stroupe, L.L.P. has requested this ruling on ROCC's behalf and have provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

ROCC directly owns and operates two CON-approved radiation oncology facilities, University Radiation Oncology Center ("UROC"), located at 8310 University Executive Park, Suite 500, Charlotte, NC 28262, was acquired by ROCC in 1997 pursuant to an exemption.



Matthews Radiation Oncology Center ("MROC"), located at 1400 Matthews Township Parkway, Matthews, NC 28105, is a "grandfathered" facility, because it became operational in 1990, prior to the application of the CON law to oncology treatment centers or major medical equipment.

The radiation oncology equipment located at UROC includes a Varian 2100C linear accelerator and a GE Highspeed Advantage CT simulator. The radiation oncology equipment located at MROC includes a Varian 21Ex-d linear accelerator and a GE Brightspeed CT simulator. Acquisition of the linear accelerator and CT simulator equipment at each facility has been previously approved by the agency.

ROCC would like to transfer its interest in UROC and MROC to two wholly owned subsidiaries of ROCC.

ANALYSIS

The CON law provides that no person shall offer or develop a "new institutional health service" without first obtaining a CON. N.C. Gen. Stat. § 131E-178. The list of new institutional health services includes "the acquisition by purchase, donation, lease, transfer or comparable arrangement" of a linear accelerator or simulator "by or on behalf of any person," N.C. Gen. Stat. § 131E-176(16)(f1)5a, 9, and "the obligation by any person of a capital expenditure exceeding two million dollars (\$2,000,000) to develop or expand a health service or a health service facility, or which relates to the provision of a health service," N.C. Gen. Stat. § 131E-176(16)(b).

Prior declaratory rulings show that the Department has already determined that these definitions do not require an entity to obtain a CON to acquire membership interests in an existing legal entity like ROCC which owns and operates a linear accelerator or simulator. The declaratory ruling requested by Petitioner is consistent with the Department's prior rulings that

have interpreted the applicability of the CON Law to the purchase of ownership interests in health care organizations, for the following reasons:


The entity that owns the linear accelerator and simulator will not change, and the same equipment will be used to provide the same radiation oncology services, in the same location. The LLC will continue to own the linear accelerator, the simulator, and all the oncology treatment center assets that were authorized under the CON and have been used to furnish oncology treatments to patients.

The Proposed Transaction does not involve the offering or expansion of any new facility, service or equipment, and the state's inventory of linear accelerators and simulators will not change. No new, or additional equipment will be acquired or placed in operation in the State.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the Petitioner does not require a certificate of need in order to proceed with the Proposed Transaction:

This the 18th day of August, 2011.


Drexel Pratt, Director
Division of Health Service Regulation
N.C. Department of Health and Human Services

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Declaratory Ruling has been served upon the nonagency party by facsimile and certified mail, return receipt requested, by depositing the copy in an official depository of the United States Postal Service in a first-class, postage pre-paid envelope addressed as follows:

CERTIFIED MAIL

Bode Call & Stroupe, L.L.P.
S. Todd Hemphill, Esquire
Post Office Box 6338
Raleigh, NC 27628-6338

This the 18th day of August, 2011.



Jeff Horton
Chief Operating Officer



DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF HEALTH SERVICE REGULATION

ROY COOPER
GOVERNOR

MANDY COHEN, MD, MPH
SECRETARY

MARK PAYNE
DIRECTOR

February 12, 2018

Stephanie M. Hoffman
Bradley, Arant, Boult, Cummings, LLP
1600 Division Street, Suite 700
Nashville TN 37203-2754

No Review

Record #: 2510
Business Name: Outpatient Imaging Affiliates, LLC
Business #: 1368
Project Description: Change in ownership structure of parent companies
County: See Attachment A

Dear Ms. Hoffman:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency) received your letter of February 6, 2018 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 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 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.

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

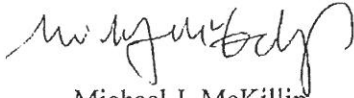
AN EQUAL OPPORTUNITY/ AFFIRMATIVE ACTION EMPLOYER

EXHIBIT

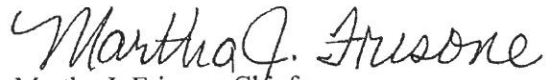
C

Stephanie Hoffman
February 12, 2018
Page 2

Sincerely,



Michael J. McKillip
Project Analyst



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

Attachment A

Outpatient Imaging Facilities in North Carolina

Name of Facility	Legal Entity	FID#	County
Raleigh Radiology-Brier Creek	Brier Creek Imaging, LLC	060525	Wake
Raleigh Radiology-Cedarhurst	Pinnacle Health Services of North Carolina, LLC	080829	Wake
Raleigh Radiology-Clayton	Pinnacle Health Services of North Carolina, LLC	150392	Johnston
Raleigh Radiology-Wake Forest	Pinnacle Health Services of North Carolina, LLC	090950	Wake
Wake Forest Baptist Imaging	Wake Forest Baptist Imaging, LLC	160116	Forsyth



DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF HEALTH SERVICE REGULATION

ROY COOPER
GOVERNOR

MANDY COHEN, MD, MPH
SECRETARY

MARK PAYNE
DIRECTOR

February 12, 2018

Stephanie M. Hoffman
Bradley, Arant, Boult, Cummings, LLP
1600 Division Street, Suite 700
Nashville TN 37203-2754

No Review

Record #: 2510
Business Name: Outpatient Imaging Affiliates, LLC
Business #: 1368
Project Description: Change in ownership structure of parent companies
County: ~~Wake and Forsyth~~ See Attachment A

Exhibit
Make an Attachment H and add the county to the table

Dear Ms. Hoffman:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency) received your letter of February 6, 2018 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 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 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.

HEALTHCARE PLANNING AND CERTIFICATE OF NEED SECTION

WWW.NCDHHS.GOV

TELEPHONE 919-855-3873

LOCATION: EDGERTON BUILDING • 809 RUGGLES DRIVE • RALEIGH, NC 27603

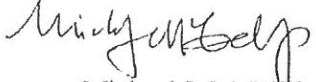
MAILING ADDRESS: 2704 MAIL SERVICE CENTER • RALEIGH, NC 27699-2704

AN EQUAL OPPORTUNITY/ AFFIRMATIVE ACTION EMPLOYER



Stephanie Hoffman
February 12, 2018
Page 2

Sincerely,

A handwritten signature in cursive script, appearing to read "Michael J. McKillip".

Michael J. McKillip
Project Analyst

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

Stephanie M. Hoffmann
shoffmann@bradley.com
615.252.3837 direct
615.248.3037 fax

Pub. # 1268
P. # 12516

Bradley

February 6, 2018

VIA FEDERAL EXPRESS

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



Re: Notice of Proposed Transaction; Request for Determination of Reviewability

Dear Ms. Frisone:

I write on behalf of our client, Outpatient Imaging Affiliates, LLC ("OIA"), which, by and through its subsidiaries, owns and operates health care facilities located in North Carolina. The purpose of this letter is to provide notice of a proposed transaction (the "Proposed Transaction") involving OIA and to request a formal determination regarding whether the Proposed Transaction is subject to certificate of need ("CON") review under North Carolina law. As described more fully below, it is our understanding that the Proposed Transaction will not require CON review.

DESCRIPTION OF PROPOSED TRANSACTION

OIA partners with healthcare providers such as health systems, academic medical centers, and radiology groups to develop, market, and operate outpatient imaging centers across the United States (each, a "Facility" and collectively, the "Facilities"). Five of these Facilities are located in North Carolina. OIA and OIA Acquisition Holdings, LLC ("Holdings") are parties to an agreement that, subject to the satisfaction or waiver of certain conditions, will result in the acquisition of one hundred percent (100%) of the membership interests of OIA by Holdings.

Enclosed for your reference as Exhibit A is a listing of the Facilities located in North Carolina that will be included in the Proposed Transaction. In addition, enclosed as Exhibit B are ownership structure charts showing the ownership of each of the Facilities before and after the closing of the Proposed Transaction.

As shown in Exhibit B, the Proposed Transaction will not result in any change in the direct ownership of the Facilities. Instead, the Proposed Transaction will result in a change in the ownership structure several levels removed from the legal entities that own and operate the Facilities. In each case, the legal entity that owns and operates the Facility will retain its legal business name, federal tax identification number, and assets, and there will be no change in the direct ownership of its stock. Accordingly, the Proposed Transaction will not result in a change of ownership of any of the Facilities for Medicare purposes. In addition, no change in the local governing bodies or day-to-day operations of the Facilities is anticipated as a result of the Proposed Transaction.

4816-3378-9786.3

Ms. Martha Frisone
North Carolina Department of Health and Human Services
Division of Health Service Regulation
Certificate of Need Section
February 6, 2018
Page 2

APPLICABLE LAW

It is our understanding that the Proposed Transaction will not require CON review, and that no other filings will be required in connection with the Proposed Transaction. Under North Carolina law, a CON is required for the "acquisition by donation, lease, transfer, or comparable arrangement ... if the acquisition would have been a new institutional health service if it had been made by purchase." N.C. Gen. Stat. § 131E-178(b). The term "new institutional health services" is defined to include "[t]he purchase, lease, or acquisition of any health service facility, or portion thereof, or a controlling interest in the health service facility or portion thereof, if the health service facility was developed under a certificate of need issued pursuant to [N.C. Gen. Stat. § 131E-180]." N.C. Gen. Stat. § 131E-176(16)(l).

As reflected in Exhibit B, the Proposed Transaction will not result in the purchase, lease, or acquisition of the Facilities, nor will it result in the purchase, lease, or acquisition of a controlling interest in the Facilities. Rather, the legal entities that own and operate the Facilities will remain the same following the closing of the Proposed Transaction. However, the Proposed Transaction will result in a change in one of the legal entities that owns indirect ownership interests in the legal entities that own and operate the Facilities, and we understand that the Department may interpret the Proposed Transaction to constitute an "acquisition" in the case of at least one of the Facilities.¹

Although it is our understanding that the Proposed Transaction will not constitute an "acquisition" for purposes of North Carolina CON law, we understand that the acquisition of an existing health service facility is, in any event, exempt from CON review pursuant to N.C. Gen. Stat. § 131E-184(a)(8), provided that prior written notice is provided to the Department. In the event that the Department determines that the Proposed Transaction will constitute an acquisition of an existing health service facility with respect to any of the Facilities, please allow this letter to serve as the notice required under N.C. Gen. Stat. § 131E-184(a) and a request for confirmation that the Proposed Transaction is exempt from CON review.

REQUEST FOR DETERMINATION OF REVIEWABILITY

We respectfully request a determination from your office regarding whether the Proposed Transaction is subject to, or exempt from, CON review under North Carolina law, or will otherwise require action with the Department. Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me at (615) 252-3837 or shoffmann@bradley.com.

Very truly yours,

BRADLEY ARANT BOULT CUMMINGS LLP

By: 
Stephanie M. Hoffmann

¹ As described in the enclosed ownership structure charts, OIA's indirect ownership interest in all but one of the legal entities that own and operate the Facilities is 50 percent or less.

Ms. Martha Frisone
North Carolina Department of Health and Human Services
Division of Health Service Regulation
Certificate of Need Section
February 6, 2018
Page 3

Enclosures: Exhibit A – OIA Affiliates Facilities in North Carolina
Exhibit B – Ownership Structure Charts

cc: Perry Baker (via email: pbaker@oiarad.com)
Dennis Williams (via email: dennis.williams@dlapiper.com)



DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF HEALTH SERVICE REGULATION

ROY COOPER
GOVERNOR

MANDY COHEN, MD, MPH
SECRETARY

MARK PAYNE
DIRECTOR

VIA EMAIL ONLY

June 23, 2017

Dr. Ronald B. Shealy

No Review

Record #: 2301
Facility Name: Piedmont Outpatient Surgery Center
FID #: 100255
Business Name: Piedmont Outpatient Surgery Center, LLC
Business #: 1419
Project Description: Change in ownership composition of LLC; addition of the 10th physician owner
County: Forsyth

Dear Dr. Shealy:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency) received your email request of June 22, 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 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 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 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.

HEALTHCARE PLANNING AND CERTIFICATE OF NEED SECTION

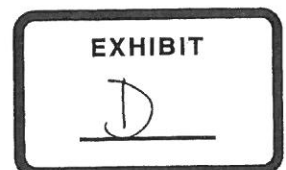
WWW.NCDHHS.GOV

TELEPHONE 919-855-3873

LOCATION: EDGERTON BUILDING • 809 RUGGLES DRIVE • RALEIGH, NC 27603

MAILING ADDRESS: 2704 MAIL SERVICE CENTER • RALEIGH, NC 27699-2704

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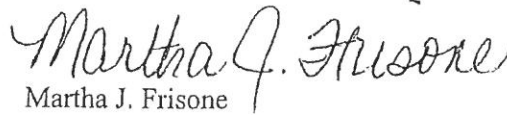
Dr. Shealy
June 23
Page 2

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,



Celia C. Inman
Project Analyst



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

cc: Acute and Home Care Licensure and Certification Section, DHSR
Paige Bennett, Assistant Chief, Healthcare Planning, DHSR

Moore, Veronica M

From: Frisone, Martha
Sent: Thursday, June 22, 2017 12:13 PM
To: Moore, Veronica M
Cc: Inman, Celia C
Subject: FW: [FWD: addition of an owner]

Veronica, please print, log and give to Celia (if you haven't already done so).

Martha J. Frisone

Chief, Healthcare Planning and Certificate of Need
Division of Health Service Regulation, Healthcare Planning and Certificate of Need Section
North Carolina Department of Health and Human Services

919-855-3873 office
Martha.Frisone@dhhs.nc.gov

809 Ruggles Drive
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From: bcunningham@piedmontosc.com [mailto:bcunningham@piedmontosc.com]
Sent: Thursday, June 22, 2017 12:10 PM
To: Frisone, Martha
Subject: [FWD: addition of an owner]

Mrs. Frisone,
Please see the email below about an addition of an owner. Dr. Shealy asked that I send it again. Thank you.

*Brandi Cunningham, RN, BSN, BA, MHA, MBA
POSC Administrator
(336) 201-0003 ext. 113
bcunningham@piedmontosc.com*

----- Original Message -----

Subject: addition of an owner

From: <bcunningham@piedmontosc.com>

Date: Wed, June 21, 2017 3:37 pm

To: "Martha Frisone" <martha.frisone@dhhs.nc.gov>

Ms. Frizone,

Piedmont Outpatient Surgery Center has a new physician seeking ownership in the surgery center. He is a partner in Piedmont Ear, Nose, Throat and has performed procedures at Piedmont Outpatient Surgery Center for over a year now. He will abide by all of the conditions of the demonstration project and currently abides by the conditions of coverage for the state and CMS regulations. The original 9 physicians will still be owners this would just be an additional owner. Thus, each physician would have 10% ownership in the facility. Can you tell me in what manner I need to inform DHHS? Thank you in advance for your help.

Brandi Cunningham, RN, BSN, BA, MHA, MBA

POSC Administrator

(336) 201-0003 ext. 113

bcunningham@piedmontosc.com

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