



NC DEPARTMENT OF HEALTH AND HUMAN SERVICES

ROY COOPER • Governor
MANDY COHEN, MD, MPH • Secretary
MARK PAYNE • Director, Division of Health Service Regulation

VIA EMAIL ONLY

September 14, 2020

Denise Gunter
denise.gunter@nelsonmullins.com

Exempt from Review – Acquisition of Facility

Record #: 3345
Facility Name: Piedmont Surgical Center
Type of Facility: Ambulatory Surgical Facility
FID #: 944499
Acquisition by: Piedmont ASC, LLC
Business #: 3256
County: Guilford

Dear Ms. Gunter:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency) determined that based on your representations, the above referenced proposal is exempt from certificate of need (CON) review in accordance with N.C. Gen. Stat. §131E-184(a)(8). Therefore, the above referenced business may proceed to acquire the health service facility identified above without first obtaining a CON. The Agency’s determination is limited to the question of whether or not the above referenced business would have to obtain a CON if the current owners of the health service facility do in fact sell it to the business listed above. Note that pursuant to N.C. Gen. Stat. §131E-181(b): “A recipient of a certificate of need, or any person who may subsequently acquire, in any manner whatsoever permitted by law, the service for which that certificate of need was issued, is required to materially comply with the representations made in its application for that certificate of need.”

If the business listed above does acquire the facility, you should contact the Agency’s Acute and Home Care Licensure and Certification Section to obtain instructions for changing ownership of the existing facility.

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 regarding whether a certificate of need would be required. If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,

Celia C. Shuman

Project Analyst

Martha J. Frisone

Martha J. Frisone
Chief

cc: Acute and Home Care Licensure and Certification Section, DHSR

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
https://info.ncdhhs.gov/dhsr/ • TEL: 919-855-3873

Denise M. Gunter
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September 10, 2020

Via Electronic Mail

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

Re: Notice of Exempt Acquisition Pursuant to N.C. Gen. Stat. §131E-184(a)(8) and Request for Good Cause Transfer Pursuant to N.C. Gen. Stat. § 131E-189(c)
Project ID#: G-11855-20
Facility: Piedmont Surgical Center
County: Guilford
FID#: 944499

Dear Ms. Frisone:

Pursuant to N.C. Gen. Stat. § 131E-184(a)(8), I am writing on behalf of Piedmont ASC, LLC ("Piedmont ASC") to provide prior written notice of Piedmont's intention to acquire the Foot Surgery Center of North Carolina, L.L.C., doing business as Piedmont Surgical Center (the "Facility"). The Facility is a single-specialty ambulatory surgical facility ("ASF") located at 7819 National Service Rd., Suite 404, Greensboro, NC 27409. Pursuant to N.C. Gen. Stat. §§ 131E-181(a) and 189(c), I am also writing to request a good cause transfer of the CON for Project I.D. No. G-11855-20 issued to The Foot Surgery Center of North Carolina, L.L.C. on June 16, 2020. See **Exhibit A** attached hereto.

Notice of Exempt Acquisition

N.C. Gen. Stat. § 131E-184(a)(8) provides that upon prior written notice, the Department shall exempt from CON review the acquisition of an existing health service facility, which notice contains an explanation of why the new institutional health service is

needed. The Facility is an existing licensed, single-specialty ambulatory surgical facility (License # AS0063) and is therefore a "health service facility" pursuant to N.C. Gen. Stat. § 131E-176(9b).

Through an Asset Purchase Agreement (the "Transaction"), Piedmont proposes to acquire the Facility from its current owners. Piedmont intends to continue to operate the Facility at its present location, and assuming the good case transfer is approved, Piedmont will operate the Facility as a multi-specialty ambulatory surgical facility subject to the conditions on the CON for Project I.D. No. G-11855-20. The approval of this exemption will allow the Facility to continue to serve patients under new ownership.

Good Cause Transfer

On February 17, 2020, the Facility applied for a CON to change from a single-specialty ambulatory surgical facility to a multi-specialty ambulatory surgical facility. This CON was approved on May 15, 2020 and issued on June 16, 2020. See **Exhibit A** attached hereto. N.C. Gen. Stat. § 131E-181(a) provides:

A certificate of need shall be valid only for the defined scope, physical location, and person named in the application. A certificate of need shall not be transferred or assigned except as provided in G.S. 131E-189(c).

N.C. Gen. Stat. § 131E-181(a). In turn, N.C. Gen. Stat. § 131E-189(c) provides:

The Department may immediately withdraw any certificate of need if the holder of the certificate, before completion of the project or operation of the facility, transfers ownership or control of the facility, the project or the certificate of need. Any transfer after that time will be subject to the requirement that the service be provided consistent with the representations made in the application and any applicable conditions the Department has placed on the certificate of need. Transfers resulting from death or personal illness or other good cause, as determined by the Department, shall not result in withdrawal if the Department receives prior written notice of the transfer and finds good cause. Transfers resulting from death shall not result in withdrawal.

N.C. Gen. Stat. § 131E-189(c). Piedmont has read the CON application and the conditions placed upon the CON. Piedmont commits to materially comply with the representations in the application and the conditions placed upon the CON. See N.C. Gen. Stat. § 131E-181(b)("[a] recipient of a certificate of need, or any person who may

subsequently acquire, in any manner whatsoever permitted by law, the service for which that certificate of need is issued, is required to materially comply with the representations made in its application for that certificate of need.”).

Good cause exists to permit the transfer of the CON because the transfer of the CON is incidental to a larger Transaction in which the owners of the Facility are selling their business. Good cause has been found to exist in similar circumstances. See **Exhibits B-D** attached hereto¹. In **Exhibit B**, a July 2012 Declaratory Ruling issued to Novant Health, Inc., Same Day Surgery Center New Hanover, LLC and New Hanover Regional Medical Center, the Department found good cause for the transfer of an undeveloped ASF CON where the applicants were selling their existing and proposed businesses in New Hanover County. See also **Exhibit C**, a November 2009 Declaratory Ruling issued to WC-Albemarle, LLC, in which the Department approved the good cause transfer of a CON where the transfer was incidental to a larger transaction in which several facilities were sold; **Exhibit D**, a January 2008 Declaratory Ruling issued to Yancey Health Investors, LLC. (same). Similar to the 2012 Novant ruling, the owners of the Facility have decided to sell their business and the transfer of the CON is part of a larger transaction. Similar to WC-Albemarle and Yancey Health Investors, the primary purpose of the Transaction is to allow for the acquisition of the Facility; the fact that the Facility was approved for a CON to convert to a multispecialty ambulatory surgical facility is peripheral to the purpose of the Transaction.

Moreover, Piedmont will operate the service approved in the CON in a manner consistent with the representations contained in the CON application, any supplemental responses, and the seven conditions placed on the CON, which Piedmont expressly accepts. The scope and location of the project will not change. The project was approved to offer ophthalmology, orthopedic and plastic surgery surgical services and those are the services Piedmont proposes to offer at the Facility. The number of ORs will not increase. Piedmont will not acquire as part of this project any equipment that is not included in the project’s proposed capital expenditures in Section Q of the application and that would otherwise require a CON. Piedmont further commits to comply with the requirements of Conditions 5 and 6 of the CON. The approved capital cost will not increase beyond the 15% allowed under N.C. Gen. Stat. § 131E-176(16)e.

Allowing the transfer of the CON also ensures that the services approved in the CON will be developed for the benefit of patients. Conversely, if the transfer of the CON were not allowed, it is unclear how the project proposed in the application would be developed, as it is inextricably related to the Facility that is being acquired by Piedmont. “The fundamental purpose of the [CON] law is to limit the construction of health care

¹ Exhibits B-D are declaratory rulings obtained from the DHHS website.
Exhibit B: <https://info.ncdhhs.gov/dhsr/declrule/2012/070212Novant.pdf>.
Exhibit C: <https://info.ncdhhs.gov/dhsr/declrule/2009/20091123albemarle.pdf>.
Exhibit D: <https://info.ncdhhs.gov/dhsr/declrule/2008/20080108Yancey.pdf>.

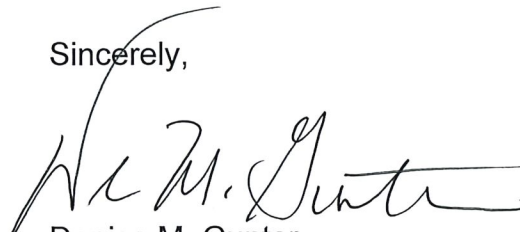
Martha J. Frisone
September 10, 2020
Page 4

facilities in this [S]tate to those that the public needs and that can be operated efficiently and economically for their benefit." *Hope-A Women's Cancer Ctr., P.A. v. N.C. Dep't of Health & Human Servs.*, 203 N.C. App. 276, 281, 691 S.E.2d 421, 424 (2010), *rev. denied*, 365 N.C. 87, 706 S.E.2d 204 (2011). The transfer of the CON to a purchaser who commits to materially comply with the CON ensures that this purpose is served for the benefit of patients in the service area.

Accordingly, Piedmont respectfully requests that the Department find that good cause exists for the transfer of the CON for Project I.D. No. G-11855-20.

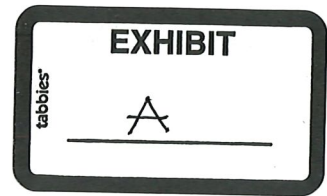
As Piedmont expects to close this transaction shortly, we would appreciate your prompt response to this letter. Please let me know if you have any questions or need any additional information.

Sincerely,



Denise M. Gunter

Enclosures



STATE OF NORTH CAROLINA

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

CERTIFICATE OF NEED

for

Project ID #: G-11855-20

FID #: 944499

ISSUED TO: The Foot Surgery Center of NC, LLC

Pursuant to N.C. Gen. Stat. § 131E-177(6), 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 described below. The certificate holder shall develop the project in a manner consistent with the representations in the application and with the conditions contained herein and shall make good faith efforts to meet the timetable contained herein, as documented by the periodic progress reports required by 10A NCAC 14C .0209. 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 section.

SCOPE: Convert specialty ambulatory surgical program to a multispecialty ambulatory surgical program / Guilford

CONDITIONS: See Reverse Side

**PHYSICAL LOCATION: Piedmont Surgical Center
7819 National Service Rd., Suite 404
Greensboro, NC 27409**

MAXIMUM CAPITAL EXPENDITURE: \$135,000

TIMETABLE: See Reverse Side

FIRST PROGRESS REPORT DUE: October 15, 2020

This certificate is effective as of June 16, 2020

Martha J. Frisone, Chief

CONDITIONS:

1. The Foot Surgery Center of NC, LLC shall materially comply with all representations made in the certificate of need application and any supplemental responses. In the event that representations conflict, The Foot Surgery Center of NC, LLC shall materially comply with the last made representation.
2. The Foot Surgery Center of NC, LLC shall convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical facility by adding ophthalmology, orthopedic and plastic surgery surgical services.
3. Upon project completion, Piedmont Surgical Center shall be licensed for no more than two operating rooms.
4. The Foot Surgery Center of NC, LLC shall not acquire as part of this project any equipment that is not included in the project's proposed capital expenditures in Section Q of the application and that would otherwise require a certificate of need.
5. For the first three years of operation following completion of the project, The Foot Surgery Center of NC, LLC shall not increase charges more than 5% of the charges projected in Section Q of the application without first obtaining a determination from the Healthcare Planning and Certificate of Need Section that the proposed increase is in material compliance with the representations in the certificate of need application.
6. No later than three months after the last day of each of the first three full fiscal years of operation following initiation of the services authorized by this certificate of need, The Foot Surgery Center of NC, LLC shall submit, on the form provided by the Healthcare Planning and Certificate of Need Section, an annual report containing the:
 - a. Payor mix for the services authorized in this certificate of need.
 - b. Utilization of the services authorized in this certificate of need.
 - c. Revenues and operating costs for the services authorized in this certificate of need.
 - d. Average gross revenue per unit of service.
 - e. Average net revenue per unit of service.
 - f. Average operating cost per unit of service.
7. The Foot Surgery Center of NC, LLC shall acknowledge acceptance of and agree to comply with all conditions stated herein to the Agency 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 Agency on May 26, 2020.

TIMETABLE:

1. Financing Obtained _____ March 2, 2020
2. Equipment Ordered _____ September 1, 2020
3. Equipment Installed _____ October 1, 2020
4. Equipment Operational _____ October 15, 2020
5. Licensure Obtained _____ September 1, 2020
6. Services Offered (required) _____ October 15, 2020
7. First Annual Report Due* _____ December 31, 2021



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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY NOVANT HEALTH, INC.,)
SAME DAY SURGERY CENTER NEW) DECLARATORY RULING
HANOVER, LLC AND NEW HANOVER)
REGIONAL MEDICAL CENTER.)**

I, Drexdal 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.

Petitioners Novant Health, Inc. (“Novant”), Same Day Surgery Center New Hanover, LLC (“SDSC New Hanover”) and New Hanover Regional Medical Center (“NHRMC”) (collectively, “Petitioners”) request that the North Carolina Department of Health and Human Services, Division of Health Service Regulation (the “Department”) issue a declaratory ruling as to whether NHRMC may acquire from Novant all of Novant’s membership interests in SDSC New Hanover. 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. Denise M. Gunter has requested this ruling on behalf of the Petitioners and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

On October 11, 2007, the CON Section awarded SDSC New Hanover a CON to develop a two-room ambulatory surgery center as set forth in Project I.D. No. O-7671-06 (the "Project"). Novant is the parent company of SDSC New Hanover, and has not yet developed the Project.

On June 1, 2007, the CON Section issued Novant and Brunswick Community Hospital, LLC a CON to develop a replacement hospital for Brunswick Community Hospital ("BCH"). The replacement BCH, known as Brunswick Novant Medical Center ("BNMC"), opened in Summer 2011.

Novant has decided to divest all of its existing and approved projects in New Hanover County so that it can concentrate on making BNMC a success.

NHRMC, which operates two hospital campuses in Wilmington, has offered to buy Novant's membership interests in SDSC New Hanover, a limited liability company. The divestiture of Novant's membership interests in SDSC New Hanover is part of a larger transaction in which Novant will sell its interests in all of its existing and proposed New Hanover operations.

ANALYSIS

N.C. Gen. Stat. § 131E-181 provides:

(a) A certificate of need shall be valid only for the defined scope, Physical location, and person named in the application. A Certificate of need shall not be transferred or assigned except as provided in G.S. 131E-189(c).

(b) A recipient of a certificate of need, or any person who may Subsequently acquire, in any manner whatsoever permitted by law, the service for which the certificate of need was issued, is required to materially comply with the representations made in its application for that certificate of need.

N.C. Gen. Stat. § 131E-189(c) provides:

The Department may immediately withdraw any certificate of Need if the holder of the certificate, before completion of the project or operation of the facility, transfers ownership or control of the facility, the project, or the certificate of need. Any transfer after that time will be subject to the requirement that the service be provided consistent with the presentations made in the application and any applicable conditions the Department placed on the certificate of need. Transfers resulting from death or personal illness or other good cause, as determined by the Department, shall not result in withdrawal if the Department receives prior written notice of the transfer and finds good cause. Transfers resulting from death shall not result in withdrawal.

The Department has previously determined that the acquisition of membership interests in a limited liability company does not require a CON. *See, e.g.*, Declaratory Ruling issued to Wake PET Services, LLC, et al.; Declaratory Ruling issued to Wake Radiology Oncology Services, PLLC; Declaratory Ruling issued to Alliance Oncology; Declaratory Rulings issued to the Charlotte Mecklenburg Hospital Authority; Declaratory Ruling issued to JRH Ventures, LLC. In this case, NHRMC will be acquiring membership interests in SDSC New Hanover; SDSC will remain intact as the same LLC, but with a different membership composition. The entity to whom the CON was issued (SDSC New Hanover) does not change as a result of this transaction. SDSC New Hanover will be the entity that develops the operating rooms.

The scope of the project does not change as a result of this transaction. The transaction will not result in a change in the scope of services, costs to patients or the number of operating rooms that were determined to be needed in the 2006 SMFP.

The Department has also previously found a basis for a good cause transfer under N.C. Gen. Stat. § 131E-189(c) in two similar situations. In November 2009, the Department issued a declaratory ruling to WC-Albemarle, LLC, et al. which found good cause for the transfer of Albemarle House (and an undeveloped CON for 12 additional beds) to a third party. Similarly, in January 2008, the Department issued a declaratory ruling to Yancey Health Investors, LLC, et

al. in which a third party proposed to acquire an LLC's membership interests in a facility that had been approved for, but had not yet developed, 10 additional adult care home beds.

In this case, NHRMC's acquisition of the membership interests in SDSC New Hanover is part of a larger transaction involving Novant's decision to sell its existing and proposed operations in New Hanover County. Second, the transaction will not result in a change in the scope of services, costs to patients or the number of operating rooms that were determined to be needed in the 2006 SMFP.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that NHRMC may acquire from Novant all of Novant's membership interests in SDSC New Hanover. This proposed change does not constitute a change in the scope of the project, would not violate N.C. Gen. Stat. § 131E-181, or N.C. Gen. Stat. § 131E-189, or any of the rules of the Department.

This the _____ day of July, 2012.

Drexdal 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 certified mail, return receipt requested, by depositing the copy in an official depository of the United States Postal Service in first-class, postage pre-paid envelope addressed as follows:

CERTIFIED MAIL

Denise M. Gunter
NELSON MULLINS RILEY & SCARBOROUGH LLP
380 Knollwood Street
Suite 530
Winston-Salem, North Carolina 27103

This the _____ day of July, 2012.

Dr. Patsy Christian, Assistant Director
Healthcare, Quality and Safety



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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY WC-ALBEMARLE, LLC,)
ALBEMARLE HOUSE HOLDINGS, LLC) DECLARATORY RULING
d/b/a ALBEMARLE HOUSE, AND)
ALBEMARLE HCRE, LLC)
Project I.D. No. F-8131-08)**

I, Jeff Horton, as Acting 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.

WC-Albemarle (“WC-Albemarle”), LLC, Albemarle House Holdings, LLC d/b/a Albemarle House (“Albemarle House LLC”), and Albemarle HCRE, LLC, (collectively “the Applicants”) have requested a declaratory ruling finding that the Applicants have satisfied the requirements for a “good cause” transfer of ownership of Albemarle House, pursuant to Section 131E-181(a) and Section 131E-189(c). This ruling will be binding upon the Department and the entity 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. Gary S. Qualls of K&L Gates, LLP has requested this ruling on behalf of Albemarle House LLC, Renee Montgomery of Parker Poe Adams & Bernstein LLP has requested this ruling on behalf of Albemarle HCRE, and they provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

On October 24, 2008 the Certificate of Need Section (“CON Section”) conditionally approved Albemarle House’s Certificate of Need (“CON”) Application, identified as Project I.D. # F-8131-08 (the “Albemarle House Application”) to relocate 12 adult care home beds from The First Baptist Church of Oakboro d/b/a Oakboro Baptist Church Home For The Aged (“Oakboro”) to the existing adult care facility known as Albemarle House (the “Facility”) for a complement of 44 adult care home (“ACH”) beds and 32 Special Care Unit adult care home beds. On November 4, 2008 the applicants for the Albemarle House Application (the “CON Applicants”) notified the CON Section in writing of their acceptance of the conditions placed upon its CON, and it has now been issued.

At the time of the Albemarle House Application filing and approval, WC-Albemarle was the owner/lessor of the Facility and Albemarle House LLC was the licensee and operator of the Facility.

On December 1, 2009 Albemarle HCRE, LLC will be acquiring ownership of the Facility from WC-Albemarle, the current lessor and building owner. The current lessee/license holder, Albemarle House LLC will continue to operate the Facility as the licensee after the December 1 transaction.

ANALYSIS

The CON law allows the transfer of a CON for good cause: “A certificate of need shall not be transferred or assigned except as provided in G.S. § 131E-189(c).” N.C. Gen. Stat. § 131E-181(a). “Transfers resulting from death or personal illness or other good cause, as determined by the Department, shall not result in withdrawal [of the CON] if the Department

receives prior written notice of the transfer and finds good cause.” N.C. Gen. Stat. § 131E-189(c).

Good cause exists for the transfer of ownership from WC-Albemarle, LLC to Albemarle HCRE, LLC because the transaction at issue here is part of a larger refinancing transaction in which 18 ACH’s owned and operated by related entities are being sold by the current Facility owners to the owners of Albemarle HCRE, LLC. Additionally, the primary purpose of the transaction is to allow for the refinancing of these 18 facilities. The fact that the Facility was approved for a CON for twelve additional beds is peripheral to the objective of the transaction.

The transaction will have no impact on the Facility’s ability to develop the project in a manner consistent with the representations made in the application and with any conditions imposed by the Agency.

The current lessor, WC-Albemarle, as a party to this Request for a Declaratory Ruling, agrees that it shall not impede or impair the ability of Albemarle HCRE, LLC and lessee Albemarle House LLC to develop the proposed project.

There will be no change in the administration or day-to-day health care operations of the Facility or this project.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that pursuant to Section 131E-181(a) and Section 131E-189(c), good cause exists for the transfer of the ownership of the Facility from WC-Albemarle, LLC to Albemarle HCRE, LLC.

This the _____ day of November, 2009.

Jeff Horton, Acting 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 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:

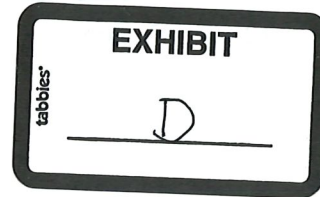
CERTIFIED MAIL

K&L Gates, LLP
Gary S. Qualls
Susan K. Hackney
430 Davis Drive, Suite 400
Morrisville, NC 27560

Parker Poe Adams & Bernstein LLP
Renee J. Montgomery
150 Fayetteville Street, Suite 1400
Raleigh, NC 27601

This the _____ day of November, 2009.

Jesse Goodman
Acting Chief Operating Officer



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

**IN RE: REQUEST FOR)
DECLARATORY RULING BY YANCEY)
HEALTH INVESTORS, LLC, YANCEY) DECLARATORY RULING
HOUSE, LLC, AND WC-YANCEY, LLC,)
Project I.D. No. D-7915-07)**

I, Robert J. Fitzgerald, Director of the Division of Health Service Regulation (the “Department”), hereby issue this declaratory ruling to Yancey Health Investors, LLC (“Yancey Health Investors”), Yancey House, LLC (“Yancey House”), and WC-Yancey, LLC (“WC-Yancey”) (collectively “Petitioners”) pursuant to N.C.G.S. § 150B-4, 10A NCAC 14A.0103, and the authority delegated to me by the Secretary of the North Carolina Department of Health and Human Services. Petitioners have filed a Declaratory Ruling Request (the “Request”) asking the Department to issue a ruling as to the applicability of N.C.G.S. Chapter 131E, Article 9 to the facts described below.

This ruling is binding on the Department and the person requesting it if the material facts stated in the Request are accurate and no material facts have been omitted from the request. The ruling applies only to this request. Except as provided by N.C.G.S. § 150B-4, the Department reserves the right to change the conclusions which are contained in this ruling. Gary S. Qualls and Gina L. Bertolini of Kennedy Covington Lobdell & Hickman, L.L.P., counsel for Petitioners, have requested this ruling on behalf of Petitioners and have provided the statement of facts upon which this ruling is based. The material facts as provided by counsel for Petitioners are set out below.

STATEMENT OF THE FACTS

On 10 October 2007, the Certificate of Need Section conditionally approved the application of Yancey Health Investors and Yancey House for a Certificate of Need ("CON") (identified as Project I.D. No. D-7915-07) to develop and operate an additional 10 adult care home ("ACH") beds at their existing 60-bed ACH facility, known as Yancey House, located in Burnsville, North Carolina, (hereafter, "the Facility"). Upon approval and completion of the project, the Facility was to have a total of 70 ACH beds, 40 of which would be designated as a Special Care Unit for patients with Alzheimer's Disease. On 29 October 2007, Yancey Health Investors and Yancey House notified the CON Section in writing of their acceptance of the conditions placed upon the CON.

On 29 October 2007, WC-Yancey provided notice to the Agency, pursuant to N.C. Gen. Stat. § 131E-184(a)(8), of its intent to acquire the ownership interest of Yancey Health Investors in the Facility.

Petitioners represent that on 30 October 2007, through an Asset Purchase Agreement, WC-Yancey acquired Yancey Health Investors' interest, replacing Yancey Health Investors as the lessor of the Facility. They state that this transaction was part of a larger acquisition involving the refinancing and acquisition of six ACH facilities with common ownership interests. Petitioners represent that in each acquisition, only the lessor changed, while the lessee/licensee remained the same. According to Petitioners, Yancey House has been and will continue to be the lessee, operator, and licensee of the Facility, and WC-Yancey will have no involvement in any operational issues related to the Facility. Petitioners now request approval for a "good cause" transfer of the CON for Project I.D. No. D-7915-07, pursuant to N.C. Gen. Stat. § 131E-189(c) and 10A N.C. Admin. Code 14C.0502.

Petitioners state that the transaction will have no impact on the Facility's ability to develop the project in a manner consistent with the representations made in the application and with any conditions imposed by the Agency. Moreover, Petitioners assert that WC-Yancey, as a party to this Request for a Declaratory Ruling, agrees that it shall not impede or impair the ability of the lessee, Yancey House, to develop the proposed project. They also assert that while the ownership of the Facility was transferred, the operational control of the Facility and the project remain with Yancey House, which will continue to be the licensee.

ANALYSIS

N.C.G.S. § 131E-181(a) provides that a CON “shall be valid only for the defined scope, physical location, and person named in the application. A certificate of need shall not be transferred or assigned except as provided in G.S. 131E-189(c).”

N.C.G.S. § 131E-189(c) provides:

The Department may immediately withdraw any certificate of need if the holder of the certificate, before completion of the project or operation of the facility, transfers ownership or control of the facility, the project or the certificate of need. . . . Transfers resulting from death or other good cause, as determined the Department, shall not result in withdrawal if the Department receives prior written notice of the transfer and finds good cause. . . .

Petitioners have shown good cause for the transfer of the CON because (1) the operations and operational control of the Facility will remain unchanged for both its currently licensed beds and the ten additional beds approved in the CON for Project I.D. No. D-7915-07, (2) WC-Yancey’s acquisition of the assets of Yancey Health Investors is part of a larger acquisition involving the refinancing and acquisition of six ACH facilities with common ownership interests, and the transfer of the CON is merely incidental to that transaction, and (3)

the transfer will not result in any failure by Yancey House to materially comply with the representations of its CON application or the conditions of its CON.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the Request to be true and subject to the condition set out below, I conclude that on the facts presented here Petitioners have shown good cause to transfer the CON for Project I.D. No. D-7915-07 from Yancey Health Investors to WC-Yancey. This transfer is subject to the condition that WC-Yancey and Yancey House comply with all conditions in the CON for Project I.D. No. D-7915-07.

This the ____ day of January, 2008.

Robert J. Fitzgerald, 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 certified mail, return receipt requested, by depositing the copy in an official depository of the United States postal service in a first class, postage prepaid envelope addressed as follows:

CERTIFIED MAIL

Gary S. Qualls
Gina L. Bertolini
Kennedy Covington Lobdell & Hickman, L.L.P.
430 Davis Drive, Suite 400
Morrisville, NC 27560

This _____ day of January, 2008.

Jeff Horton
Chief Operating Officer

From: [Flores, Disraeliza](#)
To: [Waller, Martha K](#)
Subject: FW: [External] CON Correspondence for HSA II (Guilford County)
Date: Thursday, September 10, 2020 3:58:39 PM
Attachments: [20200910152533222.pdf](#)

FYI,

Disraeliza Flores
Administrative Assistant
Division of Health Service Regulation
North Carolina Department of Health and Human Services

919-855-3872 office
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From: Denise Gunter <denise.gunter@nelsonmullins.com>
Sent: Thursday, September 10, 2020 3:29 PM
To: Flores, Disraeliza <Disraeliza.Flores@dhhs.nc.gov>
Subject: [External] CON Correspondence for HSA II (Guilford County)

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Good afternoon,

I hope you are doing well. Attached is a letter for Health Service Area II; could you please route it to the Project Analyst, and let me know that you have received this?

Thanks.

Nelson Mullins is continuing to monitor developments related to COVID-19, including guidance from the Centers for Disease Control and various health officials; and federal, state, and local government authorities. The firm has implemented precautionary measures and plans to ensure the continuation of all firm services to clients from both in office and remote work arrangements across our 25 geographically dispersed offices. [Click here to visit the Nelson Mullins Coronavirus Resources page.](#) Information described therein is subject to change.

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