



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

December 21, 2021

Deborah Samenow
Deborah.samenow@dlapiper.com

Exempt from Review – Acquisition of Facility

Record #: 3762
Date of Request: December 20, 2021
Facility Name: Outpatient Surgery Center of Asheville
Type of Facility: Ambulatory Surgical Facility
FID #: 942946
Acquisition by: HSRE Asheville OSC, LP
Business #: 3493
County: Buncombe

Dear Ms. Samenow:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency) determined that the project described above is exempt from certificate of need (CON) review in accordance with G.S. 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 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 G.S. 131E-181(b): “A recipient of a certificate of need, or any person who may subsequently acquire, in any manner whatsoever permitted by law, the service for which that certificate of need was issued, is required to materially comply with the representations made in its application for that certificate of need.”

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,

Ena Lightbourne
Project Analyst

Micheala Mitchell
Micheala Mitchell
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

**From:** [Samenow, Deborah](#)  
**To:** [Hale, Gloria](#); [Ludwig, Rachel](#)  
**Cc:** [Lightbourne, Ena](#)  
**Subject:** [External] RE: Request for Exempt Acquisition or No review  
**Date:** Monday, December 20, 2021 12:14:19 PM  
**Attachments:** [image001.png](#)

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Good morning, Ms. Hale-

Thank you for your email and voicemail. Yes, the transaction we describe in our correspondence is for Outpatient Surgery Center of Asheville located at 29 Nettlewood Drive, Asheville (license number AS0038). It is the facility located on page 6 of the [Ambulatory Surgical Facilities document](#) (list of licensed facilities in North Carolina).

Please let us know if you have any further questions or need any additional information.

Deborah

**Deborah S. Samenow**

Of Counsel

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**From:** Hale, Gloria <[gloria.hale@dhhs.nc.gov](mailto:gloria.hale@dhhs.nc.gov)>  
**Sent:** Monday, December 20, 2021 9:50 AM  
**To:** Samenow, Deborah <[Deborah.Samenow@us.dlapiper.com](mailto:Deborah.Samenow@us.dlapiper.com)>; Ludwig, Rachel <[Rachel.Ludwig@us.dlapiper.com](mailto:Rachel.Ludwig@us.dlapiper.com)>  
**Cc:** Lightbourne, Ena <[ena.lightbourne@dhhs.nc.gov](mailto:ena.lightbourne@dhhs.nc.gov)>  
**Subject:** Request for Exempt Acquisition or No review

 **EXTERNAL MESSAGE**

Good morning. Deborah, I left you a voice mail as well, but just in case you are off for the holidays I am sending this email to Rachel as well. The request you sent us contained an FID# that is for Asheville SurgCare located at 34 Granby St., Asheville and not Outpatient Surgery Center of Asheville. I just want to make sure the transaction you describe is indeed for Outpatient Surgery Center of Asheville located at 29 Nettlewood Drive, Asheville. The latter facility has an FID# of 942946. Please clarify. Thank you.

**Gloria C. Hale, MPH**

Team Leader, Certificate of Need

[Division of Health Service Regulation](#), Healthcare Planning and Certificate of Need Section  
[NC Department of Health and Human Services](#)

Office: 919-855-3873 *(Currently, I am in the office Mondays, Tuesdays and Fridays. On*

*Wednesdays and Thursdays I can best be reached by email.)*

[Gloria.Hale@dhhs.nc.gov](mailto:Gloria.Hale@dhhs.nc.gov)

809 Ruggles Drive, Edgerton Building

2704 Mail Service Center

Raleigh, North Carolina 27699-2704

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Rachel D. Ludwig  
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T 202.799.4562  
F 202.799.5562

December 7, 2021

**VIA FEDEX AND EMAIL (ENA.LIGHTBOURNE@DHHS.NC.GOV)**

Ena Lightbourne, Project Analyst  
North Carolina Department of Health and Human Services  
Division of Health Service Regulation  
Healthcare Planning & Certificate of Need Section  
Health Service Area I, North Carolina  
2704 Mail Service Center  
Raleigh, NC 27699-2704

**Re: Notice of Exempt Acquisition/No Review Request**  
**Facility: Outpatient Surgery Center of Asheville**  
**29 Nettlewood Drive**  
**Asheville, NC 28803**  
**FID#: 180266**  
**Licensee: Orthopaedic Surgery Center of Asheville, LP d/b/a Outpatient Surgery**  
**Center of Asheville**  
**License #: AS0038**

Dear Ms. Lightbourne:

We write on behalf of our client Harrison Street Real Estate, LLC, a Delaware limited liability company (“Harrison Street”), which has entered into a Purchase and Sale Agreement with Ryan Companies US, a Minnesota corporation (“Current Owner”), for its affiliate HSRE Asheville OSC, LP, a Delaware limited partner (“New Owner”) to acquire the property located at 29 Nettlewood Drive in Asheville, NC 28803 (the “Facility”), which is currently operated by Orthopaedic Surgery Center of Asheville, LP d/b/a Outpatient Surgery Center of Asheville (“Current Operator”) (the “Proposed Transaction”).



Ena Lightbourne  
North Carolina  
Department of Health and Human Services  
December 7, 2021  
Page Two

The Current Operator holds an existing ambulatory surgical facility license to operate five operating rooms at the Facility. The Proposed Transaction will not result in any change in the Facility's Current Operator, the name, or federal tax identification number.

The purpose of this letter is to provide the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Healthcare Planning and Certificate of Need Section (the "Department") notice of the Proposed Transaction. It is our understanding upon review of the pertinent regulations and communications with representatives in your Department, that a CON is not needed for the acquisition of real estate that is operated by a regulated entity. Instead, written notice must be submitted to the Department prior to the closing of the transaction, and the Department will notify the New Owner that it is either (a) "exempt" from the CON requirement, or (b) that "no review" of the CON is required. This letter serves as notice to the Department of the Proposed Transaction.

Because the parties to the Proposed Transaction anticipate closing the transaction in the near future on or about December 15, 2021, we would appreciate your prompt attention to this request. If any additional information is needed, please do not hesitate to contact the undersigned.

Best Regards,

A handwritten signature in black ink, appearing to read 'Deborah S. Samenow'.

Deborah S. Samenow

A handwritten signature in black ink, appearing to read 'Rachel D. Ludwig'.

Rachel D. Ludwig

cc: Kalisa Gary (via email: [kalisa.gary@us.dlapiper.com](mailto:kalisa.gary@us.dlapiper.com))

**From:** [Lightbourne, Ena](#)  
**To:** [Waller, Martha K](#)  
**Subject:** FW: [External] CON Exemption Letter  
**Date:** Tuesday, December 7, 2021 2:09:59 PM  
**Attachments:** [CON Exemption Letter.pdf](#)  
[image002.png](#)

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Hey Martha, can you log? Thanks.

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**From:** Samenow, Deborah <deborah.samenow@dlapiper.com>  
**Sent:** Tuesday, December 7, 2021 10:51 AM  
**To:** Lightbourne, Ena <ena.lightbourne@dhhs.nc.gov>  
**Cc:** Ludwig, Rachel <rachel.ludwig@dlapiper.com>  
**Subject:** [External] CON Exemption Letter

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Good morning, Ms. Lightbourne:

Attached please find a notification letter for an acquisition of real estate in Asheville. Please let me know if you have any questions or need any additional information. A copy via FedEx will shortly follow.

Thank you - Deborah

**Deborah S. Samenow**

Of Counsel

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