



NC DEPARTMENT OF
**HEALTH AND
HUMAN SERVICES**

ROY COOPER • Governor

KODY H. KINSLEY • Secretary

MARK PAYNE • Director, Division of Health Service Regulation

VIA EMAIL ONLY

June 10, 2022

Kenneth Burgess

kburgess@bakerdonelson.com

Exempt from Review

Record #: 3926
Date of Request: June 6, 2022
Facility Name: Mission Hospital
FID #: 943349
Business Name: MH Mission Hospital, LLLP
Business #: 3045
Project Description: Construct a new parking deck on the main campus
County: Buncombe

Dear Mr. Burgess:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency), determined that the above referenced proposal is exempt from certificate of need review in accordance with G.S. 131E-184(a)(4). Therefore, you may proceed to offer, develop or establish the above referenced project without 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 your correspondence referenced above, a new determination as to whether a certificate of need is required would need to be made by the Agency. 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.

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

Sincerely,

Ena Lightbourne
Project Analyst

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

KENNETH LEE BURGESS, SHAREHOLDER
Direct Dial: 919.294.0802
E-Mail Address: kburgess@bakerdonelson.com

June 6, 2022

VIA EMAIL

Micheala.mitchell@dhhs.nc.gov

Micheala Mitchell, Chief
N.C. Department of Health and Human Services
Division of Health Service Regulation
Certificate of Need Section
809 Ruggles Drive, Raleigh, N.C. 27603

With copy to:

Ena Lightbourne
Project Analyst
N.C. Department of Health and Human Services
Division of Health Service Regulation
Certificate of Need Section
809 Ruggles Drive, Raleigh, N.C. 27603
Via email to: **ena.lightbourne@dhhs.nc.gov**

RE: ***Notice of Exemption: Development of Additional Parking Capacity at Mission Hospital, Facility I.D. No. 943349***

Dear Micheala and Ena:

I am writing on behalf of our client MH Mission Hospital, LLLP (“Mission” or “the Hospital”)) to provide the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Certificate of Need Section (“the CON Section” or “the Agency”) with prior written notice of Mission’s intent to develop additional parking capacity on the main campus of Mission Hospital in Asheville, North Carolina (“the Project”). We believe the project is exempt

from further CON Section review and does not require a certificate of need (“CON”), pursuant to N.C. Gen. Stat. section 131E-184(a)(4).

Background and Project Description

Mission is slated in the near future to begin demolition of the Mission Hospital - St. Joseph’s Campus facilities which are located on Mission’s main campus in Asheville. The age and configuration of the infrastructure on St. Joseph’s Campus renders it inappropriate for future clinical uses and renovation of that facility for future purposes is impractical. As a result of the planned demolition of the St. Joseph’s Campus, and other ongoing or upcoming constructions projects on the Mission campus, Mission will lose approximately six hundred and fifty (650) of its currently-available parking spaces for at least twelve (12) to sixteen (16) months. Those spaces currently provide parking capacity for patients, visitors and hospital staff. Mission needs to replace those lost parking spaces and is generally in need of additional parking capacity to accommodate its busy tertiary care center in downtown Asheville.

The Project which is the subject of this Notice of Exemption will involve the construction of a new parking deck on Biltmore drive, which is located on the Mission main campus. The new parking deck will be constructed on existing hospital-owned property which today is an unused surface area. When the Project is completed, the new parking deck will replace the parking capacity which will be lost due to the St. Joseph’s demolition project and will provide an additional four hundred (400) parking spaces to accommodate Mission’s current and future needs.

Total project costs are estimated to exceed Four Million Dollars (\$4,000,000.00) *See attached Statement of Mission’s Chief Operating Officer*. For the reasons stated below, we believe that the Project is exempt from CON Section review pursuant to N.C. Gen. Stat. § 131E-184(a)(4), and thus Mission is not required to obtain a CON before proceeding with the Project.

Applicable Legal Authorities

The CON Law precludes any person from offering or developing a “new institutional health service” without first obtaining a CON. N.C. Gen. Stat. § 131E-178(a). The definition of “new institutional health service” includes, *inter alia*, the following:

- Incurring an obligation for a capital expenditure that exceeds Four Million Dollars (\$4,000,000.00) to develop or expand a health service or health service facility, or which “relates” to the provision of a health service.

N.C. Gen. Stat. §§ 131E-176(16)(b). However, the CON Law includes a specific exemption for health-related capital expenditures in excess of Four Million Dollars (\$4,000,000.00) where the sole purpose of the capital expenditure is “provide parking,” unless that activity is an integral part of another project that independently requires a CON. N.C. Gen. Stat. § 131E-184(a)(4).

That exemption, where applicable, eliminates the need to obtain a CON before incurring the capital expenditure.

The Project which is the subject of this Exemption Notice involves a capital expenditure in excess of Four Million Dollars (\$4,000,000.00). However, since the Project involves capital expenditures solely for the development of additional parking capacity at Mission Hospital, and the Project is not an integral part of any other Mission project which requires a CON, the Project is exempt from further CON Section review pursuant to N.C. Gen. Stat. § 131E-184(a)(4) and Mission is not required to obtain a CON before proceeding with the Project.

The Project Does Not Involve a Change in Bed Capacity, Increase in Health Service Beds or the Redistribution of Beds Among Health Service Categories

The Project does not involve a change in bed capacity as defined by N.C. Gen. Stat. § 131E-176(5). That section defines “change in bed capacity” in pertinent part as: (i) any relocation of health service facility beds from one licensed facility or campus to another, or (ii) any redistribution of health service facility bed capacity among the categories of health service facility beds defined in N.C. Gen. Stat. § 131E-176(9c), or (iii) any increase in the number of health service facility beds. The Project does not involve any relocation of health service facility beds from one licensed campus to another, any increase in the number of health service beds or any redistribution of health service facility beds among the categories identified at N.C. Gen. Stat. § 131E-176(9c). Further, the Project does not involve the development or addition of any bed capacity, operating rooms, health services or facilities that fall within the definition of “new institutional health services” at N.C. Gen. Stat. section 131E-176(16).

The Project Does Not Involve the Acquisition of Equipment Which Qualifies as Major Medical Equipment Under the CON Statute

The CON Statute treats as a “new institutional health service” requiring a CON the acquisition of major medical equipment. N.C. Gen. Stat. § 131E-176(16)p. Major medical equipment is defined as “a single unit or single system of components with related functions which is used to provide medical and other health services and which costs more than two million dollars (“2,000,000.00).” N.C. Gen. Stat. 131E-176(14o).

Mission’s Project does not involve the acquisition of medical equipment which meets the definition of “major medical equipment” under the CON Statute. *See attached Statement of Mission’s Chief Operating Officer.* Also, the Project does not include the acquisition of any of the equipment defined at N.C. Gen. Stat. § 131E-176(16)f1 as a “new institutional health service” which, if listed there, would require Mission to obtain a CON before acquiring the equipment, regardless of the cost of the equipment.

Micheala Mitchell
June 6, 2022
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**Mission's Project Is Not A New Institutional Health Service
Under Any Other Provision Of N.C. Gen. Stat. § 131E-176(16)**

The Project does not qualify as a “new institutional health service” under any other provision of the CON Statute, specifically including N.C. Gen. Stat. section 131E1-17(16). The Project does not involve a change in bed capacity, the construction or other development of a new health service or health service facility, the acquisition of major medical equipment or any other item or service which qualifies as a new institutional health service. Other than the proposed project expenditure which exceeds Four Million Dollars (\$4,000,000.00), and from which Mission qualifies for an exemption pursuant to N.C. Gen. Stat. 131E-184(a)(4), there are no other “new institutional health service” definitional elements that apply to the Project.

Conclusion

For the reasons recited herein, the project qualifies under the exemption from CON Section review set forth at N.C. Gen. Stat. § 131E-184(a)(4). Please allow this letter to serve as the advance written notice required by N.C. Gen. Stat. § 131E-184(a)(4). We would appreciate the CON Section acknowledging at its earliest opportunity that the project, as described herein, is not subject to CON Section Review and that Mission may proceed with the project without first obtaining a CON.

Please let me know if you have questions or need further information regarding this notice.

Very truly yours,

A handwritten signature in blue ink that reads "Ken Burgess". The signature is written in a cursive style.

Kenneth L. Burgess
Shareholder

cc: Joseph R. Rudisill
Cathi Durham
Sondra Smith

STATEMENT OF JOSEPH R. RUDISILL

1. I am the Chief Operating Officer for MH Mission Hospital, LLLP (“Mission). I am providing this Statement in support of Mission Hospital’s Notice of Exemption to the N.C. Certificate of Need Section in connection with Mission’s parking construction and expansion project (the “Project”).

2. As part of my duties as Chief Operating Officer, I am responsible for the oversight of all operations of Mission Hospital.

3. I am personally familiar with the Project which involves the development of a new parking deck on property already owned by Mission, which is located on Biltmore Avenue on the main campus of Mission Hospital in Asheville, N.C.

4. I certify that the total costs of the project are in excess of FOUR MILLION DOLLARS (\$4,000,000.00)

5. Furthermore, as part of this Project, Mission Hospital will not acquire any new major medical equipment as defined in the CON Statute, increase total bed capacity, redistribute health service facility beds among categories designated in the CON Statute or develop any other new institutional health services described in N.C. Gen. Stat. §131E-176 (16).

This the 6th day of June, 2022.

**Joseph R.
Rudisill** Digitally signed by
Joseph R. Rudisill
Date: 2022.06.06
12:26:58 -04'00'

JOSEPH R. RUDISILL
Chief Operating Officer
MH Mission Hospital, LLLP

From: [Lightbourne, Ena](#)
To: [Waller, Martha K](#)
Subject: FW: [External] Mission Hospital Notice of Exemption
Date: Tuesday, June 7, 2022 8:56:03 AM
Attachments: [4874-0311-0692 v.1 Mission 2022 Parking Project Exemption Notice 4865-1758-2628 v.1 - 2022-06-06.pdf](#)

Hey Martha can you log? Thanks.

From: Burgess, Ken <kburgess@bakerdonelson.com>
Sent: Monday, June 6, 2022 4:26 PM
To: Mitchell, Micheala L <Micheala.Mitchell@dhhs.nc.gov>; Lightbourne, Ena <ena.lightbourne@dhhs.nc.gov>
Subject: [External] Mission Hospital Notice of Exemption

CAUTION: External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to [Report Spam](#).

Hi Micheala and Ena, attached please find a Notice of Exemption I'm filing on behalf of our client MH Mission Hospital, LLLP in connection with the construction of a new parking deck on the Mission Hospital main campus. Please let me know if you have questions or need additional information regarding the attached Exemption Notice. Thank you, Ken Burgess

Kenneth (Ken) L. Burgess
Shareholder
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
2530 Meridian Parkway, Suite 300
Durham, NC 27713

Phone: 919-294-0802
Cell: 919-449-4754
Email address: kburgess@bakerdonelson.com
www.bakerdonelson.com

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC represents clients across the U.S. and abroad from offices in Alabama, Florida, Georgia, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Texas, Virginia and Washington, D.C.

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