



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

April 24, 2023

Gary Qualls

Gary.qualls@klgates.com

Exempt from Review – Acquisition of Facility

Record #: 4181

Date of Request: April 17, 2023

Facility Name: Southeastern Hospice

Type of Facility: Hospice Agency

FID #: 980087

Acquisition by: Lower Cape Fear Hospice, Inc.

Business #: 1152

County: Robeson

Dear Mr. Qualls:

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.

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

AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER

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

Sincerely,

A handwritten signature in cursive script that reads "Tanya M. Saporito".

Tanya M. Saporito
Project Analyst

A handwritten signature in cursive script that reads "Micheala Mitchell".

Micheala Mitchell
Chief

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



April 17, 2023

Gary S. Qualls
D 919.466.1182
F 919.516.2082
gary.qualls@klgates.com

Via E-Mail Delivery

Micheala Mitchell, Chief
Healthcare Planning and Certificate of Need Section
Division of Health Service Regulation
Department of Health and Human Services
809 Ruggles Drive
Raleigh, NC 27603

Re: Exemption Notice for Lower Cape Fear Hospice, Incorporation d/b/a Lower Cape Fear LifeCare to Acquire a Hospice Office from Health Horizons (Robeson County)

Dear Ms. Mitchell:

Lower Cape Fear Hospice, Incorporated d/b/a Lower Cape Fear LifeCare (“LCFH” or the “Buyer”) is planning to acquire a Medicare-certified hospice agency office (the “Hospice Office”) from Health Horizons, Inc. d/b/a (“Health Horizons”), which currently owns UNC Southeastern Hospice in Robeson County (the “Acquisition”). The Hospice Office is located at 1100 Pine Run Drive, Lumberton, NC, 28358, and operates under Hospice License HOS1599.

The letter provides prior notice of the Acquisition, which is exempt from certificate of need (“CON”) review, to the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Healthcare Planning and Certificate of Need Section (the “Agency”). LCFH seeks confirmation that it is permitted to acquire the Hospice Office described herein without CON Review, thus acquiring the CON rights to own that existing health service facility (as defined in the CON statute).

Micheala Mitchell, Chief

April 17, 2023

Page 2

I. EXEMPTION NOTICE

Under North Carolina law, a CON is required only prior to offering or developing a “new institutional health service.” “New institutional health service” includes the establishment of a new health service facility. See N.C. Gen. Stat. § 131E-176(16)(a). However, the North Carolina General Assembly saw fit to exempt certain types of proposals from CON review, pursuant to N.C. Gen. Stat. § 131E-184. One such exempt proposal is the acquisition of an existing health service facility, “including equipment owned by the health service facility at the time of acquisition.” See N.C. Gen. Stat. § 131E-184(a)(8).

This Acquisition involves only the acquisition of an existing Medicare-certified hospice agency office, which falls within the purview of the statutory definition of “health service facility.” See N.C. Gen. Stat. § 131E-176(9b). Furthermore, LCFH’s Hospice Office Acquisition does not entail the purchase of any major medical equipment or any *per se* reviewable equipment as defined in N.C. Gen. Stat. §§ 131E-176(14o) and (16)(f1). Likewise, the Acquisition does not include the offering of any *per se* reviewable services. See N.C. Gen. Stat. § 131E-176(16)(f). Finally, the Acquisition does not trigger any other new institutional health service definition in N.C. Gen. Stat. § 131E-176(16). Thus, the Acquisition is exempt from CON review.

II. CONCLUSION

Based on the foregoing information, we hereby request the Agency’s confirmation that the Acquisition described above is exempt from CON review, pursuant to N.C. Gen. Stat. § 131E-184(a)(8), and thus LCFH may acquire the Hospice Office, with all of its existing CON rights, without a CON.

If you require additional information to consider this request, please contact us at the above number as soon as possible. We thank you for your consideration of this request.

Sincerely,



Gary S. Qualls

From: [Mitchell, Micheala L](#)
To: [Stancil, Tiffany C](#)
Subject: FW: [External] Exemption Notice for Lower Cape Fear Hospice, Incorporated d/b/a Lower Cape Fear LifeCare to Acquire a Hospice Office from Health Horizons (Robeson County)
Date: Monday, April 17, 2023 4:29:21 PM
Attachments: [20230417_Via E-Mail Delivery.pdf](#)

Hey Tiffany. Would you mind logging this as an exemption and assigning to Tanya?

Thanks,

Micheala Mitchell, JD
[NC Department of Health and Human Services](#)
[Division of Health Service Regulation](#)
Section Chief, Healthcare Planning and CON Section
809 Ruggles Drive, Edgerton Building
2704 Mail Service Center
Raleigh, NC 27699-2704
Office: 919 855 3879
Micheala.Mitchell@dhhs.nc.gov

Don't wait to vaccinate. Find a COVID-19 vaccine location near you at MySpot.nc.gov.
[Twitter](#) | [Facebook](#) | [Instagram](#) | [YouTube](#) | [LinkedIn](#)

Email correspondence to and from this address is subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized State official. Unauthorized disclosure of juvenile, health, legally privileged, or otherwise confidential information, including confidential information relating to an ongoing State procurement effort is prohibited by law. If you have received this e-mail in error, please notify the sender immediately and delete all records of this email.

From: Qualls, Gary <Gary.Qualls@klgates.com>
Sent: Monday, April 17, 2023 4:24 PM
To: Mitchell, Micheala L <Micheala.Mitchell@dhhs.nc.gov>
Subject: [External] Exemption Notice for Lower Cape Fear Hospice, Incorporated d/b/a Lower Cape Fear LifeCare to Acquire a Hospice Office from Health Horizons (Robeson County)

CAUTION: External email. Do not click links or open attachments unless verified. Report suspicious emails with the Report Message button located on your Outlook menu bar on the Home tab.

Micheala:

Please accept for filing the attached Exemption Notice for Lower Cape Fear Hospice, Incorporated d/b/a Lower Cape Fear LifeCare to Acquire a Hospice Office from Health Horizons in Robeson County.

Please acknowledge your receipt for my records.

Thanks

Gary



Gary S. Qualls

Partner

K&L Gates LLP

430 Davis Drive, Suite 400

Morrisville, NC 27560

Phone: 919-466-1182

Fax: 919-516-2072

gary.qualls@klgates.com

www.klgates.com

This electronic message contains information from the law firm of K&L Gates LLP. The contents may be privileged and confidential and are intended for the use of the intended addressee(s) only. If you are not an intended addressee, note that any disclosure, copying, distribution, or use of the contents of this message is prohibited. If you have received this e-mail in error, please contact me at Gary.Qualls@klgates.com. -4