



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

January 2, 2023

Kenneth Burgess

kburgess@bakerdonelson.com

No Review

Record #: 4106
Date of Request: December 9, 2022
Facility Name: Mission Hospital
FID #: 943349
Business Name: MH Mission Hospital, LLLP
Business #: 3045
Project Description: Acquire a CT scanner
County: Buncombe

Dear Mr. Burgess:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency) received your correspondence regarding the project described above. Based on the CON law **in effect on the date of this response to your request**, the project as described 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.

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.

Sincerely,

Ena Lightbourne, Project Analyst

Micheala Mitchell, Chief

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

AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER

KENNETH LEE BURGESS, SHAREHOLDER
Direct Dial: 919.294.0802
Direct Fax: 919.338.7696
E-Mail Address: kburgess@bakerdonelson.com

December 9, 2022

VIA E-MAIL

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

RE: *Notice of Exemption for the Redesign and Renovation of MH Mission Hospital, LLLP's Emergency Room*

Dear Micheala and Ena:

I am writing on behalf of our client MH Mission Hospital, LLLP ("Mission") 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 Hospital's plans to redesign its existing Emergency Room ("ER") at the Mission main hospital, as described further below (the "Project"). For the reasons set forth below, we do not believe that the Project is subject to review by the Agency or that Mission is required to obtain a certificate of need ("CON") before proceeding with the Project because the Project qualifies for an exemption pursuant to N.C. Gen. Stat. § 131E-184(g).

Background

In 2021, Mission handled approximately 101,000 ER visits. The current Mission ER was developed by the former owners of Mission Hospital and so was acquired "as is" when HCA Healthcare acquired Mission Hospital in 2019. The current size and layout of the ER has proven challenging for patients, physicians and staff. The purpose of the Project is to redesign certain components of the main ER to optimize patient flow, patient experience and overall operations of the ER. The Project will also address the special needs of Behavioral Health ("BH") ER patients.

The Project will be developed in two phases and involves the following:

- Acquisition of a new CT Scanner to augment to Mission's existing 2 ER-based CT Scanners, discussed further below, to optimize patient flow;
- Renovate existing space to:
 - Relocate the existing EMS lounge;
 - Create a renovated pediatric ER pod;
 - Create a renovated 24-hour BH pod with intake rooms, a security work area and related support space; and

- Renovate and upgrade other portions of the existing ER to maximize space and efficiency.

For the reasons stated below, this redesign and renovation of Mission Hospital's main ER is exempt from CON Section review, and thus does not require that Mission obtain a CON, pursuant to N.C. Gen. Stat. § 131E-184(g). See Attachment 1 (diagrams showing the location of Mission's existing ER and the space to be renovated). The anticipated capital costs for the Project are \$12,724,000.00. See Attachment 2 (Capital Cost Worksheet).

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 \$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 \$2,000,000.00 where the sole purpose of the capital expenditure is "to renovate, replace on the same site, or expand the entirety or a portion of an existing health service facility located on the main campus." N.C. Gen. Stat. § 131E-184(g). 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 \$2,000,000.00. The estimated total capital cost for the project is \$12,724,000.00. However, the project is exempt from CON Section review based upon the exemption at N.C. Gen. Stat. § 131E-184(g).

The Statutory Exemption For Renovation, Replacement Or Expansion Of An Existing Health Facility On The Same Campus

N.C. Gen. Stat. § 131E-184(g) provides an express exemption from CON Section review for capital expenditures that exceed \$2,000,000.00 where:

1. The sole purpose of the capital expenditure is to renovate, replace on the same site, or expand the entirety or a portion of an existing health service facility located on the main campus;
2. So long as the capital expenditure does not result in:
 - a. A change in bed capacity as defined in G.S. 131E-176(5); or
 - b. The addition of a health service facility or any other new institutional health service other than that allowed by G.S. 131E-176(16)b; and
 - c. The CON Section receives prior written notice of the planned expenditure along with documentation demonstrating that the provider meets the exemption.

The Project Involves The Redesign and Renovation Of Mission's Existing Main ER On Mission's Main Campus

The Project which is the subject of this Notice is projected to cost in excess of \$2,000,000.00. Please see Attachment 2, a Certified Projected Capital Cost Worksheet reflecting that the total project cost is anticipated to be \$12,724,000.00. Of that amount, \$8,764,000.00 will be expended on construction and renovation related to renovating the existing main ER at Mission Hospital. The remaining costs include: \$2,080,000.00 in medical equipment, \$520,000.00 in architect and engineering fees, \$150,000.00 in non-medical equipment, \$125,000.00 in furniture costs, \$195,000.00 in interest costs during construction and \$890,000.00 in ITS costs.

The Project qualifies for the statutory exemption at N.C. Gen. Stat. § 131E-184(g) because the sole purpose of the project and related expenditure is to renovate, relocate and replace a portion of an existing health service facility on the hospital's main campus. The project consists of redesigning and renovating Mission's main ER which is housed in the Mission Hospital main building, located on the hospital's main campus.

The term "campus" is defined at N.C. Gen. Stat. § 131E-176(2c) as "the adjacent grounds and buildings, or grounds and buildings not separated by more than a public right-of-way, of a health service facility and related health care entities." For the purposes of the exemption at N.C. Gen. Stat. § 131E-184(g), "main campus" is defined as:

- a. The site of the main building from which a licensed health service facility provides clinical patient services and exercises financial and administrative control over the entire facility, including the buildings and grounds adjacent to that main building; and
- b. Other areas and structures that are not strictly contiguous to the main building but are located within 250 yards of the main building.

N.C. Gen. Stat. § 131E-176(14n).

The Mission main ER is located in the main hospital building on the main campus in Asheville, N.C. The Mission Hospital main building is the site from which the hospital exercises clinical and administrative control over the entire hospital. See Attachment 3 (Statement of Mission's COO).

Mission's Project Does Not Involve A Change In Bed Capacity

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 involves only the relocation and renovation of existing ER space on Mission's main campus and 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).

The Equipment To Be Acquired And Installed As Part Of The Project Does Not Constitute 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)." 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. The total equipment budget for the Project is approximately \$2,080,000.00. See Attachment 2 (capital cost worksheet). No single item or single system of components to be included in the Project comes anywhere close to the \$2,000,000.00.00 major medical equipment threshold in terms of cost. The Project does include the acquisition of an additional CT Scanner for the renovated ER. However, the total price of the new CT Scanner is estimated to be \$684,315.00. See Attachment 3 (Statement of Mission's COO).

Also, the Project does not include the acquisition of any of the major medical equipment designated at N.C. Gen. Stat. § 131E-176(16)f1 which would require Mission to obtain a CON before acquiring the equipment.

Michaela Mitchell
Ena Lightbourne
December 9, 2022
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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(g). Please allow this letter to serve as the advance written notice required by N.C. Gen. Stat. § 131E-184(g). We would appreciate the CON Section acknowledging at its earliest opportunity that Mission's 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,



Kenneth L. Burgess
Shareholder

cc: Sondra Smith
Cathi Durham

Attachments

Attachment 1

Mission Emergency Department Redesign




Attachment 2

**Projected Capital Cost Form
Mission Hospital ER Redesign**

Building Purchase Price	\$0.00
Purchase Price of Land	\$0.00
Closing Costs	\$0.00
Site Preparation	\$0.00
Construction/Renovation Contract(s)	\$8,764,000.00
Landscaping	\$0.00
Architect / Engineering Fees	\$520,000.00
Medical Equipment	\$2,080,000.00
Non-Medical Equipment	\$150,000.00
Furniture	\$125,000.00
Consultant Fees (specify)	\$0.00
Financing Costs	\$0.00
Interest during Construction	\$195,000.00
Other (ITS)	\$890,000.00
Total Capital Cost	\$12,724,000.00

CERTIFICATION BY A LICENSED ARCHITECT OR ENGINEER

I certify that, to the best of my knowledge, the projected capital cost for the proposed project is complete and correct.




 Signature of Licensed Architect or Engineer

Date Signed: 12-5-2022

CERTIFICATION BY AN OFFICER OR AGENT FOR THE PROPONENT

I certify that, to the best of my knowledge, the projected total capital cost for the proposed project is complete and correct and that it is our intent to carry out the proposed project as described.



 Signature of Officer/Agent

Date Signed: 12/2/22

Name **EDDIE PUCKETT**
 Title of Officer/Agent **CONSTRUCTION MGR**

Attachment 3

Attachment 3

STATEMENT OF JOSEPH R. RUDISILL

1. I am the Chief Operating Officer for MH Mission Hospital, LLLP ("Mission"). I am personally familiar with Mission Hospital's plan to redesign and renovate Mission Hospital's emergency room located within the main campus of Mission Hospital. I make this statement in support of Mission's Exemption Notice to the N.C. Certificate of Need Section.

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

3. I am personally familiar with the proposed project which involves the renovation and redesign of the Mission emergency department.

4. I certify that the total costs of the project are approximately TWELVE MILLION, SEVEN HUNDRED AND TWENTY-FOUR THOUSAND DOLLARS (\$12,724,000.00).

5. The main building at Mission Hospital is the location from which Mission provides clinical and administrative control over the entire hospital.

6. Mission will acquire a third CT Scanner for the renovated emergency department at a cost of approximately SIX HUNDRED EIGHTY-FOUR THOUSAND, THREE HUNDRED AND FIFTEEN DOLLARS (\$684,315.00), an amount well below the capital cost threshold of TWO MILLION DOLLARS (\$2,000,000.00) applicable to major medical equipment as that term is defined in the CON Statute.

7. As part of this project, Mission Hospital will not acquire any new major medical equipment, increase total bed capacity, increase total operating room capacity or develop any other new institutional health services described in N.C. Gen. Stat. §131E-176 (16).

This the 9 day of December, 2022.

Joseph R.
Rudisill

Digitally signed by
Joseph R. Rudisill
Date: 2022.12.09
14:53:11 -05'00'

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

From: [Mitchell, Micheala L](#)
To: [Stancil, Tiffany C](#)
Cc: [Lightbourne, Ena](#)
Subject: FW: [External] Notice of Exemption for Mission Hospital ER Renovation
Date: Saturday, December 10, 2022 9:09:18 AM
Attachments: [4889-8803-2067 v.1 Mission ER Redesign Exemption Notice w-attachments - 2022-12-09.pdf](#)

Tiffany, would you mind logging this as an exemption and assigning to Ena?

Thank you,

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

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From: Burgess, Ken <kburgess@bakerdonelson.com>
Sent: Friday, December 9, 2022 4:37 PM
To: Mitchell, Micheala L <Micheala.Mitchell@dhhs.nc.gov>; Lightbourne, Ena <ena.lightbourne@dhhs.nc.gov>
Subject: [External] Notice of Exemption for Mission Hospital ER Renovation

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Micheala and Ena, again, Happy Friday. Attached please find a Notice of Exemption we are filing on behalf of MH Mission Hospital, LLLP in connection with Mission's renovation of its existing emergency department at the main hospital on the Mission Campus. Please let me know if you need additional information or have questions regarding the attached Exemption Notice. Thanks, Ken

Burgess

Kenneth (Ken) L. Burgess
Shareholder
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