



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

September 29, 2023

Denise M. Gunter
denise.gunter@nelsonmullins.com

No Review

Record #: 4272
Date of Request: September 22, 2023
Business Name: Novant Health, Inc.
Business #: 1341
Project Description: Contribution of imaging assets from Novant Health Imaging Ballantyne and lease back from a joint venture which is held with a controlling interest
County: Mecklenburg

Dear Denise Gunter:

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,

Handwritten signature of Julie M. Faenza

Julie M. Faenza
Project Analyst

Handwritten signature of Micheala Mitchell

Micheala Mitchell
Chief

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  
T: 336.774.3322 F: 336.774.3372  
denise.gunter@nelsonmullins.com

The Knollwood, 380 Knollwood Street Suite 530  
Winston-Salem, North Carolina 27103  
T: 336.774.3300 F: 336.774.3299  
nelsonmullins.com

September 22, 2023

**VIA EMAIL ONLY**

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

Re: Novant Health Norfolk, LLC and Acquisition of Novant Health Imaging  
Ballantyne  
Mecklenburg County/HSA III

Dear Ms. Mitchell:

On behalf of Novant Health Norfolk, LLC, Inc. (“NH Norfolk”), I am writing to request the Agency’s written confirmation that the following proposed transaction (the “Transaction”) does not require CON review.

***Background***

As you may recall, in November 2022, I wrote to the Agency to advise of a proposed transaction in which NH Norfolk would acquire certain imaging assets of Novant Health, Inc. Novant Health owns 50.1% of the NH Norfolk joint venture. In December 2022, the Agency determined that NH Norfolk was permitted to acquire, without further CON review, certain imaging assets of Novant Health, Inc. A copy of my November 28, 2022 letter is attached as **Exhibit A**, and the Agency’s December 7, 2022 response is attached as **Exhibit B**. Due to file size limitations on the Agency’s servers, I have not provided the exhibits to my November 28 letter but if you need them, please let me know. The facts represented in my November 2022 letter have not changed.

### **Description of Current Transaction**

The NH Norfolk transaction closed on December 31, 2022. NH Norfolk now proposes to acquire Novant Health Imaging Ballantyne (“NHIB”). NHIB is a hospital outpatient department (“HOPD”) imaging center on the campus of Novant Health Ballantyne Medical Center. NHIB offers MRI, CT, ultrasound, X-ray, DEXA and mammography. See <https://www.novanthealth.org/locations/imaging-centers/imaging-ballantyne/>.

The structure of the Transaction will be the same as that described in my November 2022 letter. No new or additional health services will be offered as a result of the Transaction. The Transaction does not involve any construction, relocation or acquisition of other imaging assets that Novant Health does not presently own. At all times, the imaging assets at NHIB will be under Novant Health’s sole control and will be used solely by Novant Health to provide health care services to Novant Health’s patients, using Novant Health’s charity care and related financial assistance policies to ensure access by medically underserved patients.

### **Analysis**

Pursuant to N.C. Gen. Stat. § 131E-178(a), the CON Law regulates “new institutional health services,” which include, *inter alia*:

- (1) The construction, development, or other establishment of a new health service facility, such as a diagnostic center (N.C. Gen. Stat. § 131E-176(16)a.);
- (2) The obligation by any person of a capital expenditure of more than \$4 million to develop or expand a health service or a health service facility, or which relates to the provision of a health service (N.C. Gen. Stat. § 131E-176(16)b.);
- (3) The acquisition by purchase, donation, lease, transfer, or comparable arrangement of MRI scanners (N.C. Gen. Stat. § 131E-176(16)f1.7); and
- (4) The acquisition by purchase, donation, lease, transfer, or comparable arrangement of major medical equipment, *i.e.*, a single unit or system of components that cost more than \$2 million (N.C. Gen. Stat. § 131E-176(16)p.).

This Transaction does not implicate any of the definitions of “new institutional health services.” With respect to (1) above, the Transaction does not involve the construction, development or other establishment of a new health service facility. With respect to (2) above, the Transaction does not involve the obligation by any person of a capital expenditure of more than \$4 million to develop or expand a health service or health service facility, or which relates to the provision of a health service. With respect to (3) and (4), no CON regulated assets such as an MRI scanner or major medical equipment are being sold to an unrelated third party.

Micheala Mitchell  
September 22, 2023  
Page 3

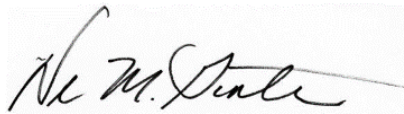
The authorities cited in my November 2022 letter also apply to this Transaction.  
See **Exhibit A**.

Accordingly, NH Norfolk respectfully requests the Agency's written confirmation that the foregoing Transaction does not require CON review. As the parties intend to close their transaction by October 1, 2023, we respectfully request that the Agency send its written response on or before September 29, 2023.

If you should need any further information, please do not hesitate to let me know.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Denise M. Gunter", is written over a light gray rectangular background.

Denise M. Gunter

Enclosures



Denise M. Gunter  
T: 336.774.3322 F: 336.774.3372  
denise.gunter@nelsonmullins.com

NELSON MULLINS RILEY & SCARBOROUGH LLP  
ATTORNEYS AND COUNSELORS AT LAW

The Knollwood, 380 Knollwood Street Suite 530  
Winston-Salem, North Carolina 27103  
T: 336.774.3300 F: 336.774.3299  
nelsonmullins.com

November 28, 2022

**VIA EMAIL ONLY**

Micheala Mitchell, Chief  
North Carolina Department of Health and Human Services  
Division of Health Service Regulation  
Healthcare Planning and Certificate of Need Section  
809 Ruggles Drive  
Raleigh, North Carolina 27603  
micheala.mitchell@dhhs.nc.gov

Re: Outpatient Imaging Joint Venture

Dear Ms. Mitchell:

On behalf of Novant Health, Inc. (“Novant”), I am writing to request the Agency’s written confirmation that the following proposed transaction (the “Transaction”) does not require CON review. Since the Transaction involves two open CONs, and to the extent that the Transaction implicates N.C. Gen. Stat. § 131E-189, this letter also requests a good cause transfer of these CONs pursuant to N.C. Gen. Stat. § 131E-189(c).

***Description of the Transaction***

Novant owns various imaging assets located in hospital outpatient departments (“HOPD”) and Independent Diagnostic Testing Facilities (“IDTF”), as well as mobile MRI scanners that serve various host sites throughout North Carolina. Collectively, the HOPD and IDTF locations are referred to as “Centers.” The imaging assets at the Centers consist of different modalities, such as CT, ultrasound, mammography, C-Arm, DEXA, x-ray, fluoroscopy, and MRI (collectively, “Imaging Assets”). A spreadsheet identifying the Centers and their imaging assets is attached hereto as **Exhibit A**<sup>1</sup>. Some of the mobile MRI scanners are not located at the IDTF locations shown in Rows 18-35 of **Exhibit A**. These mobile MRI scanners are included as part of the Transaction and are also Imaging Assets. They are included in Rows 39-46 of **Exhibit A**.

---

<sup>1</sup> Exhibit A is provided in both .pdf and Excel formats.

Micheala Mitchell  
November 28, 2022  
Page 2

Novant intends to contribute the Imaging Assets to a new joint venture company, of which Novant will own a controlling interest of 50.1%. The remaining 49.9% of the joint venture company will be owned by Norfolk Management Services, LLC.<sup>2</sup> The joint venture company is proposed to be called Novant Health-Norfolk, LLC. A copy of the certificate of formation for Novant Health-Norfolk, LLC is attached as **Exhibit B**. Novant Health-Norfolk, LLC will then lease the Imaging Assets back to Novant where they will continue to be used at the Centers identified on **Exhibit A** to provide the same services they currently provide at the same locations. The mobile MRI scanners listed on Rows 39-46 of **Exhibit A** will also be leased back to Novant where they will provide the same services they currently provide at the same host sites they currently serve. A diagram describing the transaction is attached as **Exhibit C**.

No new or additional health services will be offered as a result of the Transaction. The Transaction does not involve any construction, relocation, or acquisition of other Imaging Assets that Novant does not presently own.<sup>3</sup> At all times, the Imaging Assets will be under Novant's sole control and will be used solely by Novant to provide health care services to Novant's patients, using Novant's charity care and related financial assistance policies to ensure access by medically underserved patients. To the extent there are CONs for any of the Imaging Assets, Novant, as either a CON holder or the ultimate parent entity of a CON holder, will continue to materially comply with these CONs. The legal names of the Centers, their tax identification and NPI numbers will not change as a result of this transaction; rather, the Centers will continue to operate as they always have. Likewise, the mobile MRI scanners shown on Rows 39-46 of **Exhibit A** will continue to operate as they always have.

### ***Analysis***

Pursuant to N.C. Gen. Stat. § 131E-178(a), the CON Law regulates "new institutional health services," which include, *inter alia*:

- (1) The construction, development, or other establishment of a new health service facility, such as a diagnostic center (N.C. Gen. Stat. § 131E-176(16)a.);
- (2) The obligation by any person of a capital expenditure of more than \$4 million 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.);
- (3) The acquisition by purchase, donation, lease, transfer, or comparable arrangement of MRI scanners (N.C. Gen. Stat. § 131E-176(16)f1.7); and
- (4) The acquisition by purchase, donation, lease, transfer, or comparable arrangement of major medical equipment, *i.e.*, a single unit or system of components that cost more than \$2 million (N.C. Gen. Stat. § 131E-176(16)p.).

---

<sup>2</sup> Norfolk Management Services, LLC does not own any health care facilities or services in North Carolina and does not provide health care services.

<sup>3</sup> Should that occur in the future, Novant will notify the Agency as necessary.

Micheala Mitchell  
November 28, 2022  
Page 3

This Transaction does not implicate any of the definitions of “new institutional health services.” With respect to (1) above, the Transaction does not involve the construction, development, or other establishment of a new health service facility. With respect to (2) above, the Transaction does not involve the obligation by any person of a capital expenditure of more than \$4 million to develop or expand a health service or health service facility or provide a new or additional health service. With respect to (3) and (4) above, to the extent the acquisition of CON regulated assets is involved, Novant will own the majority of Novant Health-Norfolk, LLC and continue to have exclusive possession, use and control of the Imaging Assets, just as it does today.

The Agency has previously determined that a similar joint venture arrangement did not require CON review. See **Exhibit D** attached hereto. In 2015, Vidant Radiation Oncology (“VRO”) notified the Agency that two entities, Vidant Medical Center (“Vidant”) and North Carolina Radiation Therapy Management Services, LLC (“NCRT”), planned to contribute their existing linear accelerators to a single joint venture, VRO. The two contributing members, Vidant and NCRT, each owned 50% of VRO. The initial establishment of VRO and the contribution of the linear accelerators to VRO did not require a CON. Later, in 2019, the Agency reaffirmed its earlier position and allowed VRO to acquire, without CON review, two additional linear accelerators and a CT scanner. The VRO no review letters in **Exhibit D** cite ample precedent to support the position that no CON is required for similar arrangements, and that precedent also applies here.

Similar to VRO, Novant Health-Norfolk, LLC merely serves as a conduit for ownership. Notably, Novant’s percentage ownership of Novant Health-Norfolk, LLC will be the majority percentage, whereas in VRO, the ownership percentage was divided equally between the members.

### ***Good Cause Transfer***

Novant and its affiliates have received CONs for two projects which are not yet complete. In Project I.D. No. G-12208-22, Novant and Piedmont Imaging LLC received a CON to replace a dedicated breast MRI scanner with a general use MRI scanner and relocate it to Novant Health Imaging Piedmont in Winston-Salem. See **Exhibit E**. In Project I.D. No. F-11990-20, Novant and Presbyterian Breast Center, LLC received a CON to relocate a diagnostic center to a new site in Mecklenburg County, replace some existing equipment and add certain additional equipment. See **Exhibit F**. Each CON is currently being developed. The Transaction involves both of these projects. These CONs will continue to be developed by Novant exactly as described in the CON applications. Novant will materially comply with any conditions on these CONs and will control the projects as 50.1% owner of the Novant Health-Norfolk, LLC. Nevertheless, to the extent that this Transaction may implicate N.C. Gen. Stat. § 131E-189, Novant respectfully asks the Agency to deem this a good cause transfer of these CONs to the joint venture pursuant to N.C. Gen. Stat. § 131E-189(c).

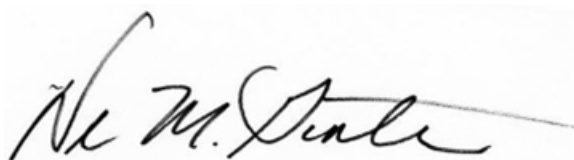
Micheala Mitchell  
November 28, 2022  
Page 4

Accordingly, Novant respectfully requests the Agency's written confirmation that the foregoing Transaction does not require CON review. Novant further requests confirmation that the good cause transfer provision of N.C. Gen. Stat. § 131E-189(c) applies to the CONs for Project I.D. No. G-12208-22 and Project I.D. No. F-11990-20.

If you should need any further information, please do not hesitate to let me know.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Denise M. Gunter", is written over a light gray rectangular background.

Denise M. Gunter

DMG:pfb  
Enclosures  
cc: Derek L. Hunter, Esq. (with enclosures)(via email)





NC DEPARTMENT OF HEALTH AND HUMAN SERVICES

Exhibit B

ROY COOPER • Governor
KODY H. KINSLEY • Secretary
MARK PAYNE • Director, Division of Health Service Regulation

VIA EMAIL ONLY

December 7, 2022

Denise M. Gunter
Denise.gunter@nelsonmullins.com

No Review

Record #: 4074
Date of Request: November 28, 2022
Business Name: Novant Health, Inc.
Business #: 1341
Project Description: Contribution of imaging assets and lease back from a joint venture which is held with a controlling interest
County: Statewide

Dear Ms. Gunter:

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,

[Handwritten signature of Michael J. McKillip]

Michael J. McKillip
Team Leader

[Handwritten signature of Micheala Mitchell]

Micheala Mitchell
Chief

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

**From:** [Denise Gunter](#)  
**To:** [Faenza, Julie M](#); [Waller, Martha K](#); [Stancil, Tiffany C](#)  
**Subject:** [External] Ballantyne Imaging No Review Letter  
**Date:** Friday, September 22, 2023 4:25:50 PM  
**Attachments:** [Ballantyne Imaging No Review Letter 4859-7899-4560 v.1.pdf](#)  
[Nov 28 letter.pdf](#)  
[Dec 7 letter.pdf](#)

---

**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.

Good afternoon,

I hope you're doing well.

Attached for processing is a no review for Ballantyne Imaging Center in Charlotte.

Could you please confirm that you received this?

As the parties plan to close their transaction on 10/1/23, I respectfully request a response on or before 9/29/23.

Thanks and best regards.



---

**DENISE M. GUNTER PARTNER**  
[denise.gunter@nelsonmullins.com](mailto:denise.gunter@nelsonmullins.com)

She/Her/Hers

THE KNOLLWOOD | SUITE 530  
380 KNOLLWOOD STREET | WINSTON-SALEM, NC 27103

T 336.774.3322 F 336.774.3299

[NELSONMULLINS.COM](http://NELSONMULLINS.COM) [VCARD](#) [VIEW BIO](#)

---

### **Confidentiality Notice**

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone (800-237-2000) or reply to this e-mail and delete all copies of this message.

## Faenza, Julie M

---

**From:** Denise Gunter <denise.gunter@nelsonmullins.com>  
**Sent:** Monday, September 25, 2023 1:39 PM  
**To:** Faenza, Julie M  
**Subject:** RE: [External] FW: Ballantyne Imaging No Review Letter

**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.

Thanks, Julie. Like the other letters, it is the equipment that is being acquired. Please let me know if you need me to re-submit the letter. Thanks.

---

**From:** Faenza, Julie M <Julie.Faenza@dhhs.nc.gov>  
**Sent:** Monday, September 25, 2023 1:20 PM  
**To:** Denise Gunter <denise.gunter@nelsonmullins.com>  
**Subject:** Re: [External] FW: Ballantyne Imaging No Review Letter

Hi Denise - just to clarify, is this again a situation where the assets of the imaging center are being acquired and will be leased back to the imaging center? The prior letters indicated the equipment was being acquired and this letter says the actual imaging center will be acquired. I am not familiar enough with corporate structures to know whether there's a difference in a hospital outpatient department's ownership outside of the CON world. If you could clarify that for me I'd appreciate it. Thanks!

**Julie M. Faenza, Esq.**

Pronouns: She/her/hers

Project Analyst

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

[NC Department of Health and Human Services](#)

Office: 919-855-3873

[julie.faenza@dhhs.nc.gov](mailto:julie.faenza@dhhs.nc.gov)

809 Ruggles Drive, Edgerton Building

2704 Mail Service Center

Raleigh, NC 27699-2704

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 e-mail.

---

**From:** Denise Gunter <[denise.gunter@nelsonmullins.com](mailto:denise.gunter@nelsonmullins.com)>  
**Sent:** Friday, September 22, 2023 4:28 PM  
**To:** Hale, Gloria <[gloria.hale@dhhs.nc.gov](mailto:gloria.hale@dhhs.nc.gov)>; Pittman, Lisa <[lisa.pittman@dhhs.nc.gov](mailto:lisa.pittman@dhhs.nc.gov)>  
**Cc:** Faenza, Julie M <[Julie.Faenza@dhhs.nc.gov](mailto:Julie.Faenza@dhhs.nc.gov)>  
**Subject:** [External] FW: Ballantyne Imaging No Review Letter

**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.

Hi, Gloria and Lisa,

I received Julie's out of office message so am contacting you directly. If it is possible to get a response on or before 9/29/23, I would greatly appreciate it.

Thanks so much.

---

**From:** Denise Gunter  
**Sent:** Friday, September 22, 2023 4:25 PM  
**To:** Faenza, Julie M <[Julie.Faenza@dhhs.nc.gov](mailto:Julie.Faenza@dhhs.nc.gov)>; Waller, Martha K <[martha.waller@dhhs.nc.gov](mailto:martha.waller@dhhs.nc.gov)>; Stancil, Tiffany C <[Tiffany.Stancil@dhhs.nc.gov](mailto:Tiffany.Stancil@dhhs.nc.gov)>  
**Subject:** Ballantyne Imaging No Review Letter

Good afternoon,

I hope you're doing well.

Attached for processing is a no review for Ballantyne Imaging Center in Charlotte.

Could you please confirm that you received this?

As the parties plan to close their transaction on 10/1/23, I respectfully request a response on or before 9/29/23.

Thanks and best regards.



---

DENISE M. GUNTER PARTNER  
[denise.gunter@nelsonmullins.com](mailto:denise.gunter@nelsonmullins.com)  
She/Her/Hers

THE KNOLLWOOD | SUITE 530  
380 KNOLLWOOD STREET | WINSTON-SALEM, NC 27103  
T 336.774.3322 F 336.774.3299  
NELSONMULLINS.COM [VCARD](#) [VIEW BIO](#)

---

**Confidentiality Notice**

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone (800-237-2000) or reply to this e-mail and delete all copies of this message.