



NC DEPARTMENT OF  
**HEALTH AND  
HUMAN SERVICES**

JOSH STEIN • Governor

DEV DUTTA SANGVAI • Secretary

MARK PAYNE • Director, Division of Health Service Regulation

VIA EMAIL ONLY

November 18, 2025

Gary S. Qualls

[gary.qualls@klgates.com](mailto:gary.qualls@klgates.com)

**No Review**

**Record #:** 4995

**Date of Request:** November 7, 2025

**Business Name:** University of North Carolina Hospitals at Chapel Hill

**Business #:** 1900

**Project Description:** Redesignation of spaces, services, and equipment from related entities to UNCH

**County:** Wake

Dear Mr. Gary Qualls:

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 representation in your request and 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. **As a reminder, it is unlawful to offer or develop a new institutional health service without first obtaining a certificate of need. The Department reserves the right to impose sanctions, including civil penalties and the revocation of a license, upon any entity that offers or develops a new institutional health service without first obtaining a certificate of need.**

Please do not hesitate to contact this office if you have any questions.

Sincerely,

Crystal Kearney  
Project Analyst

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

*Micheala Mitchell*

Micheala Mitchell  
Chief

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

November 3, 2025

Gary S. Qualls  
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gary.qualls@klgates.com

**Via E-Mail**

Micheala Mitchell, Chief  
Healthcare Planning and Certificate of Need Section  
Division of Health Service Regulation  
N.C. Department of Health and Human Services  
1915 Health Services Way  
Raleigh, NC 27607

Re: No Review and Material Compliance Request to Redesignate Related-Entity Wake County Cancer Center Space, Services and Equipment to UNCH Provider Based Status

Dear Ms. Mitchell:

The University of North Carolina Hospitals (“UNCH”) files this No Review Request asking the Department of Health and Human Services, Division of Health Service Regulation, Healthcare Planning and Certificate of Need Section (the “Agency”) to confirm that no Certificate of Need (“CON”) is required in order for UNCH to redesignate certain Wake County cancer services to UNCH unlicensed, provider-based status where those cancer services are currently operated by UNCH affiliates (the “Wake County Cancer Center Redesignations”). No equipment or services will move as a result of the Redesignation. UNCH is targeting December 8, 2025 to effectuate the Wake County Cancer Center Redesignations.

The specific space and equipment involved in the Wake County Cancer Center Redesignations will be called the “Redesignated Space, Services, and Equipment.” UNCH requests a No Review Determination that the Redesignated Space, Services, and Equipment described in Part I(A) through I(F) below may be redesignated to UNCH from its related entities, Rex Hospital, Inc. (“UNC Rex”) and Rex’s wholly owned subsidiary, Rex Radiation Oncology, LLC (“RRO”).

In Part III below, we also ask for a Material Compliance Determination with respect to Redesignated Space, Services, and Equipment in Part I(F) below since that linear accelerator is subject to a currently active CON.

**I. Space and Equipment To Be Redesignated.**

UNCH affiliates currently own and operate various cancer service locations throughout Wake County. All of the Wake County Cancer Center Redesignations described below – and their Redesignated Space, Services, and Equipment – are operated either by UNC Rex or its wholly owned subsidiary, RRO. As you know, UNCH and Rex share a parent entity, UNC Health Care. Thus, all of the proposed Wake County Cancer Center Redesignations described below are intra-organizational in nature.

The Redesignated Space, Services, and Equipment are currently at the following locations:

**A. UNC Rex Main Campus:**

- The following oncology services and equipment are offered by UNC Rex at the UNC Rex Main Campus at 2901 Blue Ridge Road, Raleigh:
  - Three (3) linear accelerators (“Linacs”)
  - Radiation Oncology Services and Space
  - Laboratory Space
  - Infusion Space and equipment
  - Oncology Support Services and Space
  - Oncology Research and Space
- These items listed above will constitute the Redesignated Space, Services, and Equipment at this location. The space currently housing these equipment items and services is shown in the floor plan attached as Exhibit 1.

**B. UNC Rex Wakefield Campus:**

- The following oncology services and equipment are offered by UNC Rex at the UNC Rex Wakefield Campus at 11200 Governor Manly Way, Raleigh:
  - One (1) Linac
  - Radiation Oncology Services and Space
  - Laboratory Space
  - Infusion Space and equipment
  - Oncology Support Services and Space
  - Pharmacy Space
- These items listed above will constitute the Redesignated Space, Services, and Equipment at this location. The space currently housing these equipment items and services is shown in the floor plan attached as Exhibit 2.

**C. Cary Campus:**

- The following oncology services and equipment are offered by UNC Rex at the UNC Rex Cary Campus at 150 Parkway Office Court, Cary:
  - Laboratory Space
  - Infusion Space and equipment
  - Oncology Support Services and Space
- These items listed above will constitute the Redesignated Space, Services, and Equipment at this location. The space currently housing these equipment items and services is shown in the floor plan attached as Exhibit 3.

**D. Garner Campus:**

- The following oncology services and equipment are offered by UNC Rex at the UNC Rex Garner Campus at 300 Health Park Drive, Garner:
  - Laboratory Space
  - Infusion Space and equipment
  - Oncology Support Services and Space
- These items listed above will constitute the Redesignated Space, Services, and Equipment at this location. The space currently housing these equipment items and services is shown in the floor plan attached as Exhibit 4.

**E. Holly Springs Campus:**

1. The following oncology services and equipment are offered by UNC Rex at the UNC Rex Holly Springs Campus at 781 Avent Ferry Road, Holly Springs:
  - Laboratory Space
  - Infusion Space and equipment
  - Oncology Support Services and Space
- These items listed above will constitute the Redesignated Space, Services, and Equipment at this location. The space currently housing these equipment items and services is shown in the floor plan attached as Exhibit 5.

**F. East Raleigh Campus:**

- The following oncology services and equipment are offered by UNCH affiliate, Rex Radiation Oncology, LLC at 117 Sunnybrook Road, Raleigh:
  - One (1) Linac
- The item listed above will constitute the Redesignated Space, Services, and Equipment at this location. The space currently housing this equipment item and service is shown in the floor plan attached as Exhibit 6.

**II. No Review To Redesignate Space and Equipment in Parts I(A) Through I(E) Above.**

We ask for a determination that all of the Wake County Cancer Center Redesignations are non-reviewable events. There are many precedents for redesignating existing equipment and services from one related entity to another without a CON, even for *per se* reviewable items such as Linacs.

One very analogous precedent is the 2018 UNC Rockingham Declaratory Ruling attached as Exhibit 7.<sup>1</sup> That Ruling recognized that then-existing cancer center space and equipment (including a linear accelerator) could be redesignated from UNCH's related hospital, UNC Health Rockingham, to UNCH to create the UNCH Rockingham Campus. That Ruling simply followed precedent from previous rulings for similar UNCH cancer center redesignation projects. Specifically, the 2018 UNC Rockingham Ruling followed the precedent of the 2016 Ruling allowing such a redesignation on the High Point Regional Health Campus (attached as Exhibit 8) and the 2015 Ruling allowing such a redesignation on the Caldwell Memorial Hospital Campus (attached as Exhibit 9). Further, the Caldwell Ruling cited to earlier, similar precedents upon which it relied.

The Wake County Redesignated Space, Services, and Equipment at issue here, like the Rockingham, High Point, and Caldwell Redesignations are occurring in space operated as Business Occupancy Space. As the Agency recognized in those Rulings (and numerous other rulings), such oncology services can be operated as unlicensed Business Occupancy Space outside of the county of the provider-based hospital offering the services.

Moreover, as with the Rockingham line of approvals, these Wake County Cancer Center Redesignations do not constitute a "new institutional health service" under N.C. Gen. Stat. § 131E-176(16)(b), because the capital expenditures being incurred as part of this Redesignation are minimal for signage and some minor partitioning. Such capital costs at each site will be less than \$100,000, far less than the current Section 176(16)(b) threshold of \$4,138,000. UNCH will simply assume any operating leases for the Wake County Redesignated Space. No capital expenditures are involved in that lease process.

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<sup>1</sup> All Declaratory Rulings cited herein and attached are the versions pulled from the DHSR Website on October 28, 2025.

Nor does the Redesignation of the Cancer Center Space trigger any of the “acquisition-related” new institutional health service definitions in N.C. Gen. Stat. § 131E-176(16). The Redesignated Space and the Radiation Therapy Equipment are not being acquired, because no legal entity outside of the UNC Health Care controlled affiliates is acquiring anything. Rather, this Redesignation is purely an intra-organizational Redesignation within UNC Health Care controlled affiliates, as was the case in the Rockingham, High Point, and Caldwell Rulings.

The Redesignation does not constitute the establishment of a new health service facility under N.C. Gen. Stat. § 131E-176(16)(a) because the Wake County Redesignated Space, Services, and Equipment are simply transitioning from outpatient space at one existing hospital to outpatient space at another existing, sister hospital. For the East Raleigh Location, the Redesignated Space, Services, and Equipment will shift from unlicensed freestanding UNCH-affiliated space to UNCH unlicensed, provider-based space. This latter type of redesignation (freestanding to hospital) was recently approved by the Agency in its August 22, 2025 No Review Approval for Advent Hendersonville. *See Exhibit 10.*<sup>2</sup>

Because no beds are involved, the Redesignation does not constitute a “change in bed capacity” under N.C. Gen. Stat. § 131E-176(16)(c). Because no operating rooms are involved, the Redesignation does not implicate N.C. Gen. Stat. § 131E-176(16)(u). Nor does the Redesignation constitute a “new institutional health service” under any other CON trigger in N.C. Gen. Stat. § 131E-176(16).

This Redesignation does not involve the offering or expansion of any new facility, service or equipment, and the inventory of linear accelerators in Wake County and Service Area 20 will not change. No new radiation therapy equipment or services will be placed in operation in Wake County or SMFP Linac Service Area 20 as a result of these Wake County Cancer Center Redesignations. Moreover, the other cancer services being redesignated (other than the Linacs) are not even CON-regulated unless they exceed the Section 176(16)(b) threshold of \$4,138,000 (to which they do not even come close here).

It is a well-established principle of statutory construction that the intent of the Legislature controls the interpretation of the statute. *See State v. Fulcher*, 294 N.C. 503, 520, 243 S.E.2d 338, 350 (1978). Prohibiting this simple intra-organizational Wake County Cancer Center Redesignations of existing services would not advance the goal of avoiding costly duplication because the radiation therapy equipment and the cancer center services and space already exist and are used to provide the same services they will provide after the Redesignation. Construing the statute otherwise would lead to absurd results that the General Assembly could not have intended. *King v. Baldwin*, 276 N.C. 316, 325, 172 S.E.2d 12, 18 (1970) (“It is presumed that the legislature acted in accordance with reason and common sense and that it did not intend an unjust or absurd result.”)

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<sup>2</sup> Due to the voluminous exhibits, we only included the Request (without exhibits) and the Approval as Exhibit 10. However, all exhibits are accessible via the Agency’s website.

**III. Material Compliance Request for the East Raleigh Location CON Award.**

The only Redesignation site that is currently subject to an outstanding CON is the East Raleigh Location described in Part I(F) above. Pursuant to a revised CON issued on May 28, 2024 (attached as Exhibit 11), Rex received a CON to replace and relocate the East Raleigh Linac to UNC Rex Wakefield with such equipment proposed to be installed at Rex Wakefield in early 2027 (the "Wakefield Linac Relocation Project"). Because Part II requests that both the East Raleigh linac and the Rex Wakefield Redesignated Space, Services, and Equipment (including the Linac at each site ) will be redesignated to UNCH, we request that you likewise approve this corollary Material Compliance Request for the East Raleigh Linac to continue to be operated by UNCH once it is relocated to the UNC Rex Wakefield Campus pursuant to the Wakefield Linac Relocation Project CON. We anticipate that the Wakefield Linac Relocation Project will still be accomplished within the capital cost limits in that CON.

**Conclusion**

Based on the foregoing facts and the authorities discussed above, UNCH requests a determination that the Wake County Cancer Center Redesignations are:

1. not CON reviewable; and
2. materially compliant for the Redesignation described in Part I(F) and Part III above.

Sincerely,



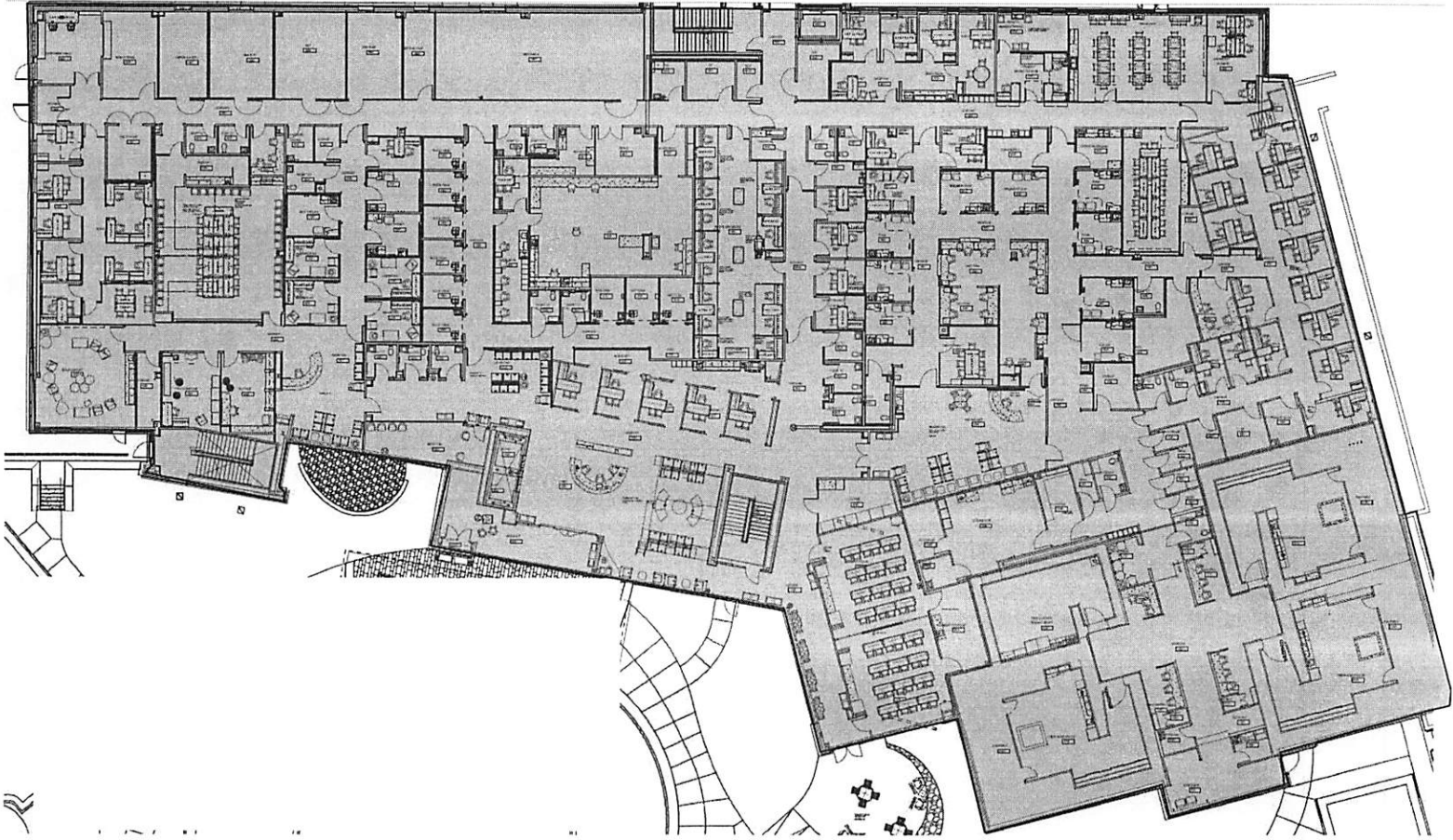
Gary S. Qualls

**Exhibits**

1. Floor Plan for oncology services and equipment currently offered at the UNC Rex Main Campus at 2901 Blue Ridge Road
2. Floor Plan for oncology services and equipment currently offered at the UNC Rex Wakefield Campus at 11200 Governor Manly Way
3. Floor Plan for oncology services and equipment currently offered at the UNC Rex Cary Campus at 150 Parkway Office Court
4. Floor Plan for oncology services and equipment currently offered at the UNC Rex Garner Campus at 300 Health Park Drive
5. Floor Plan for oncology services and equipment currently offered at the UNC Rex Holly Springs Campus at 781 Avent Ferry Road, Holly Springs
6. Floor Plan for oncology services and equipment currently offered at the East Raleigh location currently owned by UNCH affiliate, Rex Radiation Oncology, LLC and operated at 117 Sunnybrook Road, Raleigh
7. 2018 UNC Rockingham Health Care Declaratory Ruling (pulled from DHSR website on October 28, 2025)
8. 2016 High Point Regional Health Declaratory Ruling (pulled from DHSR website on October 28, 2025)
9. 2015 Caldwell Memorial Hospital Declaratory Ruling (pulled from DHSR website on October 28, 2025)
10. August 22, 2025 No Review Approval for Advent Hendersonville
11. UNC Rex Wakefield CON

# Exhibit 1

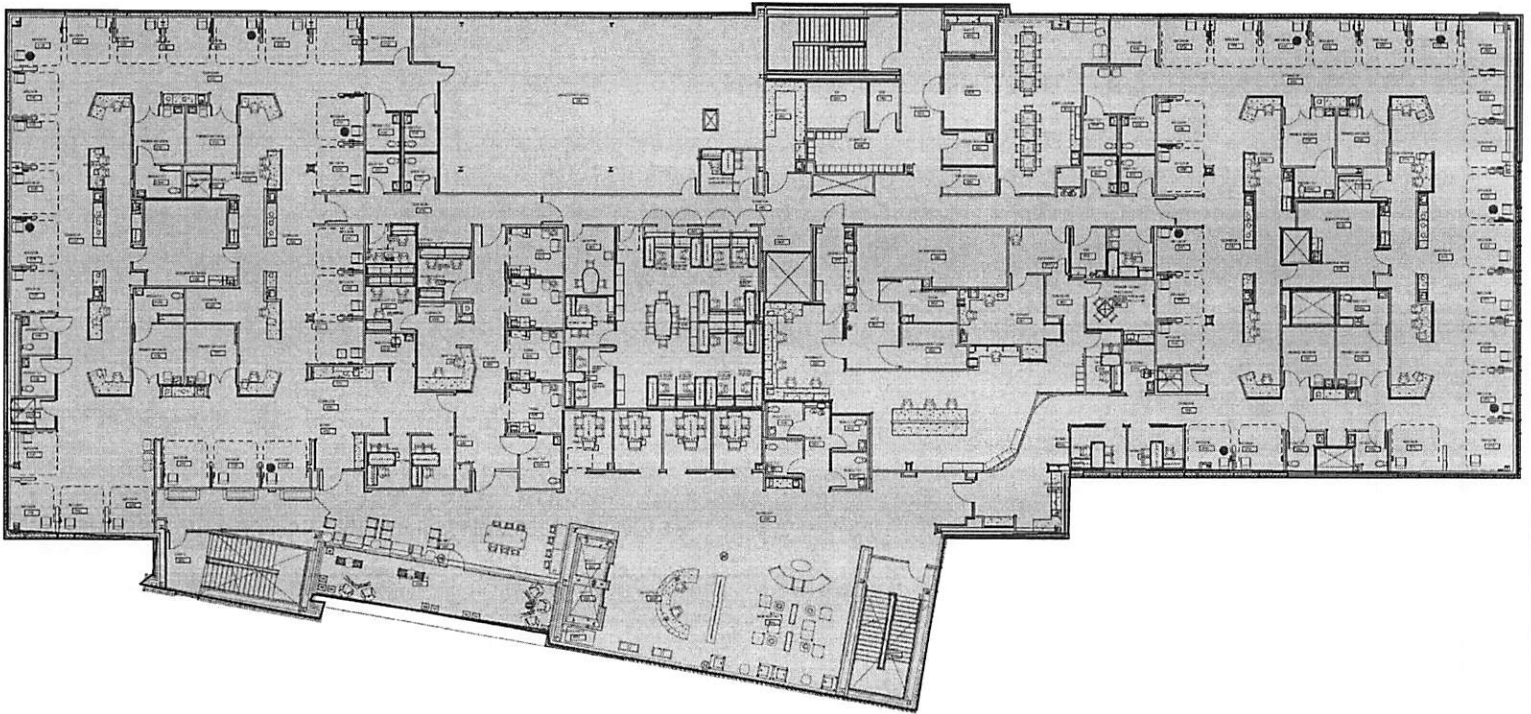
RALEIGH – 2901 Blue Ridge Road, Raleigh, NC – Level 1



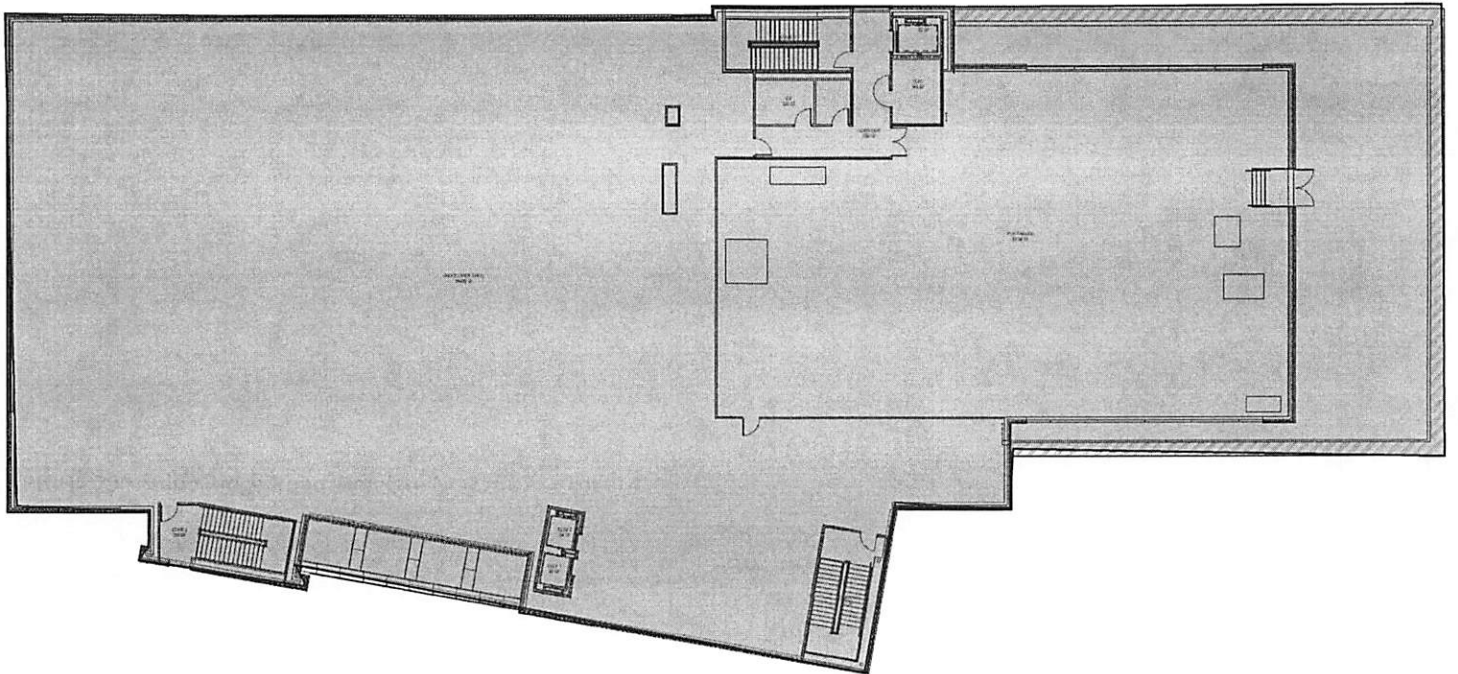
**RALEIGH – 2901 Blue Ridge Road, Raleigh, NC 27607– Level 2**



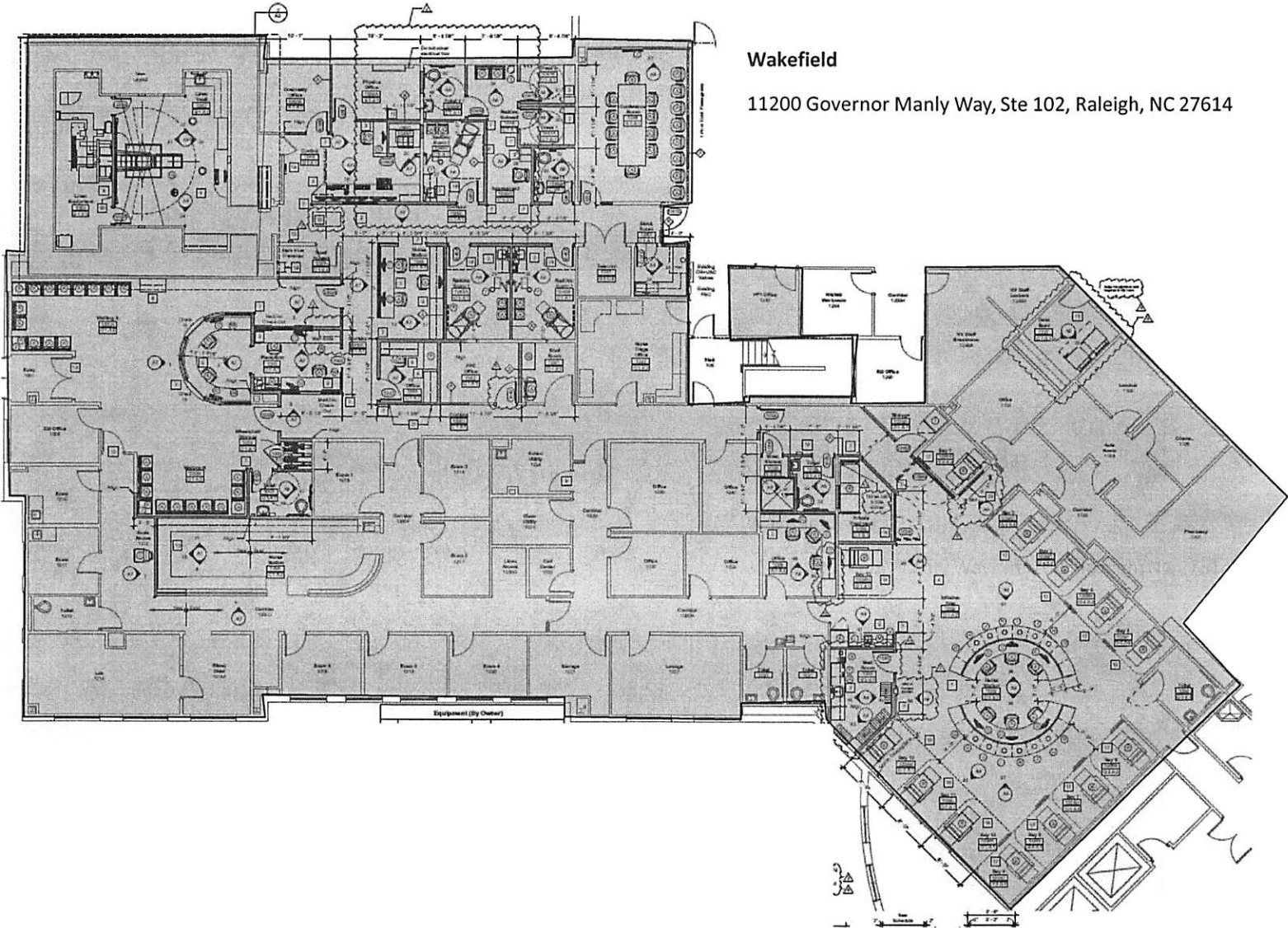
RALEIGH - 2901 Blue Ridge Road, Raleigh, NC 27607 Level 3



RALEIGH - 2901 Blue Ridge Road, Raleigh, NC 27607 Level 4



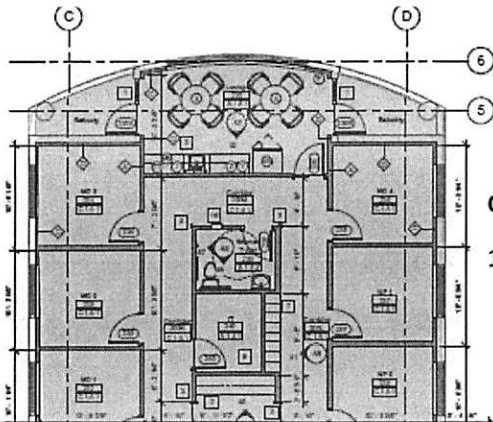
# Exhibit 2



**Wakefield**

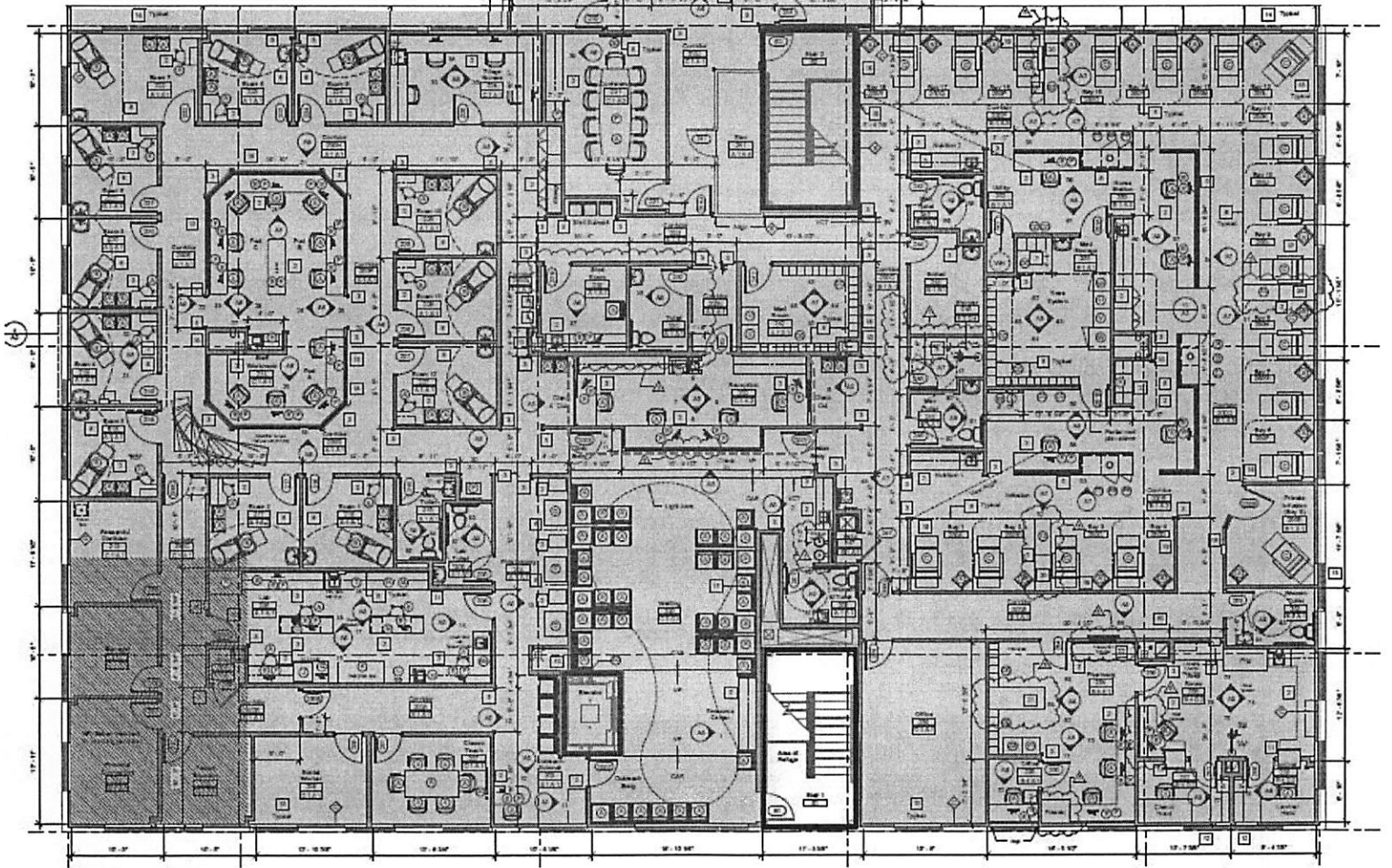
11200 Governor Manly Way, Ste 102, Raleigh, NC 27614

# Exhibit 3



Cary

150 Parkway Office Ct, Ste 200, Cary, NC 27518

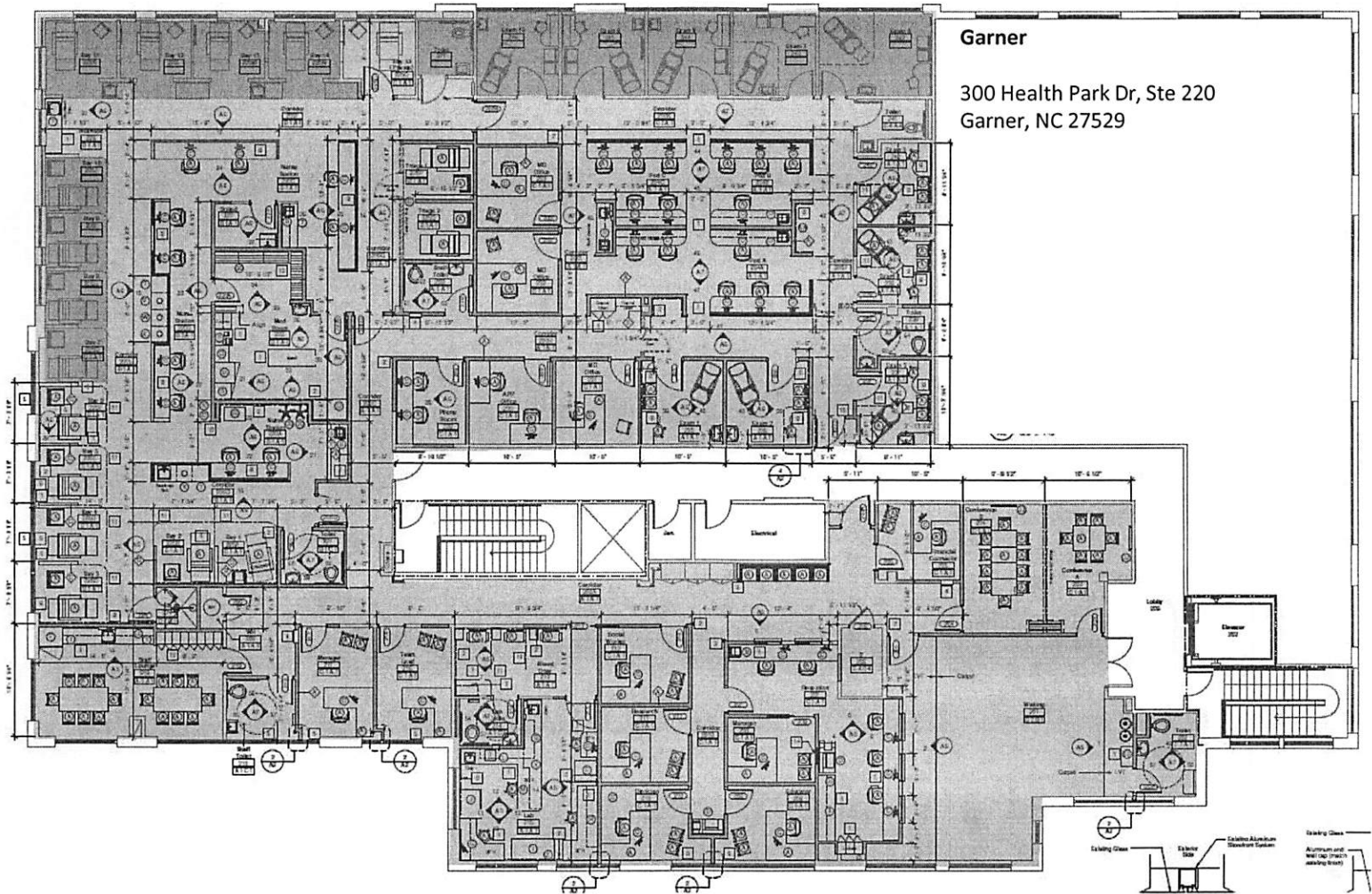


Renovation Plan  
3/10/10 - 1/10

# Exhibit 4

Garner

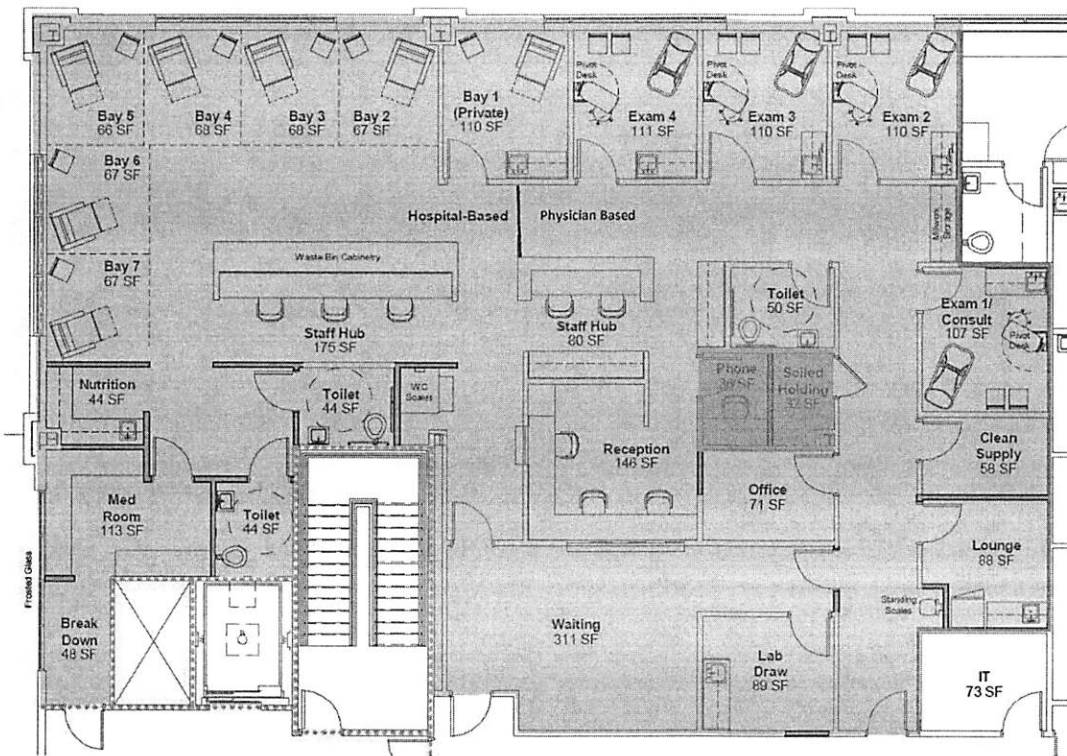
300 Health Park Dr, Ste 220  
Garner, NC 27529



# Exhibit 5

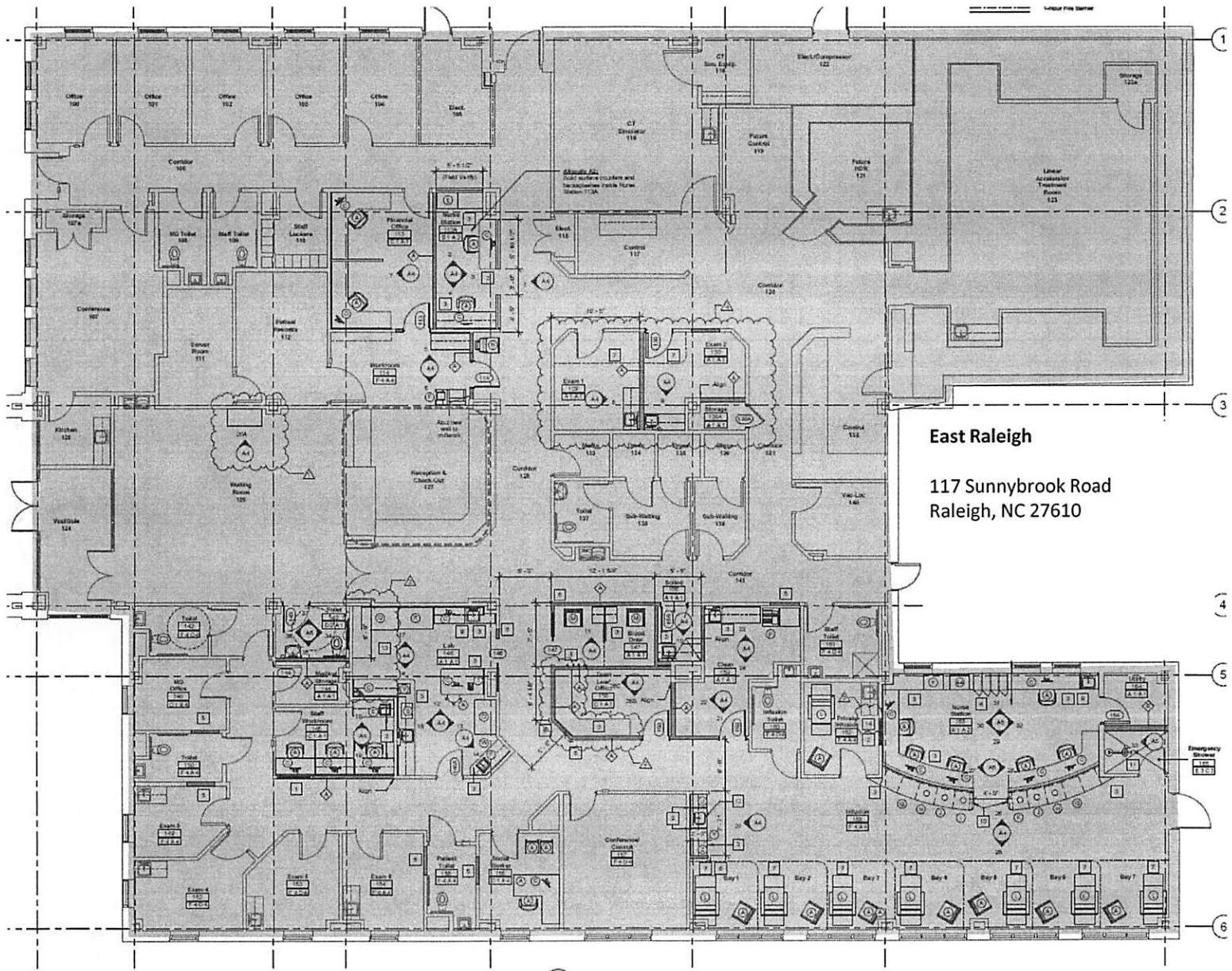
**Holly Springs**

781 Avent Ferry Road, Ste 200  
Holly Springs, NC 27540



**Proposed Renovation Plan**  
1/8" = 1'-0"

# Exhibit 6



**East Raleigh**

117 Sunnybrook Road  
Raleigh, NC 27610

1  
2  
3  
4  
5  
6

# Exhibit 7

**NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES  
 DIVISION OF HEALTH SERVICE REGULATION  
 RALEIGH, NORTH CAROLINA**

**IN RE: REQUEST FOR DECLARATORY )  
 RULING BY THE UNIVERSITY OF NORTH )  
 CAROLINA HEALTH CARE SYSTEM, THE ) **DECLARATORY RULING**  
 UNIVERSITY OF NORTH CAROLINA AT )  
 CHAPEL HILL d/b/a UNC HOSPITALS, AND )  
 UNC ROCKINGHAM HEALTH CARE, INC. )**

I, Mark Payne, as Director of the Division of Health Service Regulation, North Carolina Department of Health and Human Services (the “Department” or “Agency”), do hereby issue this Declaratory Ruling pursuant to North Carolina General Statutes § 150B-4 and 10A N.C.A.C. 14A .0103, under the authority granted me by the Secretary of the Department of Health and Human Services.

On February 15, 2018, The University of North Carolina Health Care System (“UNC Health Care”), The University of North Carolina at Chapel Hill d/b/a UNC Hospitals (“UNC Hospitals”), and UNC Rockingham Health Care, Inc. (“UNC Rockingham”) (collectively, the “Parties”), requested a declaratory ruling as to the applicability of Chapter 131E, Article 5 (Hospital Licensure Act) and Article 9 (Certificate of Need Law) of the North Carolina General Statutes, and of the Department’s rules, to the facts described below. Specifically, the Parties request a determination that the re-designation (without relocation) of UNC Rockingham’s Cancer Center Space, and the Radiation Therapy Equipment located therein, to unlicensed, provider-based space of its sister hospital, UNC Hospitals: (1) is permitted by the Hospital Licensure Act; and (2) does not require a Certificate of Need (“CON”). This ruling will be binding upon the Department and the entities requesting it, as long as the material facts stated herein are accurate. This ruling pertains only to the matters referenced herein. Except as provided by North Carolina General

Statutes § 150B-4, the Department expressly reserves the right to make a prospective change in the interpretation of the statutes and regulations at issue in this Declaratory Ruling. Gary S. Qualls, of K&L Gates, LLP, has requested this ruling on behalf of the Parties and has provided the material facts upon which this ruling is based.

### **STATEMENT OF THE FACTS**

Pursuant to N.C. Gen. Stat. § 116-37, UNC Hospitals, located in Chapel Hill, Orange County, North Carolina, is an operating component entity of UNC Health Care. UNC Rockingham operates an acute care hospital (“UNC Rockingham Health Care”) in Eden, Rockingham County, North Carolina. UNC Health Care is the sole corporate member of UNC Rockingham. Therefore, UNC Health Care, as the parent entity, owns both UNC Hospitals and UNC Rockingham.

While UNC Health Care is the parent of both, UNC Hospitals and UNC Rockingham are each distinct entities. Thus, while UNC Health Care owns UNC Hospitals, it owns it indirectly via being the sole owner of the subsidiary that owns UNC Hospitals. Similarly, while UNC Health Care owns UNC Rockingham, it owns it indirectly via being the sole owner of the subsidiary that owns UNC Rockingham. Effective January 1, 2018, UNC Health Care, through UNC Rockingham, acquired the assets of the former Morehead Memorial Hospital.

The Parties now wish to renovate and re-designate 11,267 square feet of radiation therapy space and outpatient medical oncology space currently operated at UNC Rockingham (the “Cancer Center Space”) to unlicensed, provider-based space of its sister hospital, UNC Hospitals (the “Re-designation”). The Cancer Center Space is situated in a single building, the Rockingham Cancer Center Building, located at 516 South Van Buren Road, Eden, Rockingham County, North Carolina. The Cancer Center Space includes one (1) linear accelerator (the “Radiation Therapy

Equipment”); two (2) private chemotherapy bays and six (6) chemotherapy chairs (the “Medical Oncology Equipment”); pharmacy and lab services; and provider-based physician offices.

Pursuant to the Re-designation, the Cancer Center Space, and the Radiation Therapy Equipment therein, will remain in the precise same location in the Rockingham Cancer Center Building, located at 516 South Van Buren Road, Eden, Rockingham County, North Carolina. UNC Rockingham will continue to own the Cancer Center Space, including the Radiation Therapy and Medical Oncology Equipment, and UNC Hospitals will lease the Cancer Center Space, including the Radiation Therapy Equipment, from UNC Rockingham through operating leases.

### **ANALYSIS**

The Re-designation entails the Parties shifting the designation of the Cancer Center Space from a provider-based licensed location of UNC Rockingham to a provider-based, unlicensed location of UNC Hospitals. No assets will be physically moved as a result of the Re-designation.

#### **A. Licensure Discussion**

Pursuant to the proposed lease, the Cancer Center Space, and the Radiation Therapy and Medical Oncology Equipment therein, will be provider-based to UNC Hospitals, and is permitted to be operated as an unlicensed outpatient location under the North Carolina Hospital Licensure Act’s Business Occupancy Exception, contained in N.C. Gen. Stat. § 131E-76(3). N.C. Gen. Stat. § 131E-76(3) defines “hospital” as follows:

“‘Hospital’ means any facility which has an organized medical staff and which is designed, used, and operated to provide health care, diagnostic and therapeutic services, and continuous nursing care primarily to inpatients where such care and services are rendered under the supervision and direction of physicians licensed under Chapter 90 of the General Statutes, Article 1, to two or more persons over a period in excess of 24 hours. The term includes facilities for the diagnosis and treatment of disorders within the scope of specific health specialties. **The term does not include...any outpatient department[,] including a portion of a hospital operated as an outpatient department, on or off of the hospital’s main campus, that**

**is operated under the hospital's control or ownership and is classified as Business Occupancy by the Life Safety Code of the National Fire Protection Association as referenced under 42 C.F.R. § 482.41 . . . .”**

N.C. Gen. Stat. § 131E-76(3) (emphasis added).

Because outpatient Business Occupancy locations are not part of a licensed hospital under the Business Occupancy Exception, they are not restricted by the “County Line Licensure Rule” at 10A N.C.A.C. 13B .3101(f), and thus can be located in a county other than the county in which the hospital is located. Therefore, the Cancer Center Space in Rockingham County can operate as a non-licensed, provider-based outpatient department of UNC Hospitals (otherwise predominantly located in Orange County) consistently with the Hospital Licensure Act.

The North Carolina Hospital Licensure Act’s “hospital” definition in N.C. Gen. Stat. § 131E-76(3) incorporates by reference the definitions in the 2000 Life Safety Code of the National Fire Protection Association (the “Life Safety Code”). That Life Safety Code designates whether hospital space is classified as:

1. Business Occupancy (so as to meet the Business Occupancy Exception);
2. Ambulatory Care Occupancy; or
3. Health Care Occupancy.

The Life Safety Code at NFPA 101 Section 3.3.134.1 defines what functionally constitutes occupancy for Ambulatory Health Care. The Life Safety Code classifies “Ambulatory Health Care” as a “building or portion thereof used to provide services or treatment simultaneously to four or more patients that (1) provides, on an outpatient basis, treatment for patients that renders the patients incapable of taking action for self-preservation under emergency conditions without the assistance of others; or (2) provides, on an outpatient basis, anesthesia that renders the patients

incapable of taking action for self-preservation under emergency conditions without the assistance of others.” See NFPA 101 Section 3.3.134.1A.

Because Business Occupancy classification is a functional step below Ambulatory Health Care (i.e., fewer requirements), the Department’s Construction Section looks at what falls below the Ambulatory Health Care standard to determine what is classified as Business Occupancy under the Life Safety Code. Thus, a Business Occupancy classification is appropriate when a building or portion thereof is used to provide outpatient services where treatment renders three (3) or fewer patients simultaneously incapable of self-preservation under emergency conditions without the assistance of others. In the proposed UNC Hospitals Cancer Center Space, no more than three (3) patients will be simultaneously rendered incapable of self-preservation under emergency conditions without the assistance of others. Moreover, the UNC Hospitals Cancer Center Space will be dedicated to this use.

Given the foregoing features, the Department confirms that the Re-designation (without relocation) of UNC Rockingham’s Cancer Center Space to unlicensed, provider-based space of its sister hospital, UNC Hospitals, is permitted by the Business Occupancy Exception in N.C. Gen. Stat. § 131E-76(3) of the Hospital Licensure Act.

**B. CON Discussion**

Pursuant to N.C. Gen. Stat. § 131E-178(a), no person shall offer or develop a “new institutional health service” without first obtaining a CON. The term “new institutional health service” is defined in numerous ways in N.C. Gen. Stat. § 131E-176(16). The Re-designation does

not trigger any of the definitions of a “new institutional health service,” which would implicate CON review.

Among these definitions is N.C. Gen. Stat. § 131E-176(16)(b), which defines a “new institutional health service” to include:

“...the obligation by any person of a capital expenditure exceeding two million dollars (\$2,000,000) 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). However, the Re-designation does not constitute a “new institutional health service” under N.C. Gen. Stat. § 131E-176(16)(b) because the capital expenditures being incurred as part of this Re-designation are less than \$2,000,000. UNC Hospitals projects expenditures of \$1,918,840 in non-exempt capital costs for the Re-designation. In addition, the operating leases for the Cancer Center Space and the CON-regulated Radiation Therapy Equipment is purely an intra-organizational re-designation within UNC Health Care’s two controlled affiliates, UNC Hospitals and UNC Rockingham.

In addition, the Re-designation of the Cancer Center Space does not trigger any of the “acquisition-related” new institutional health service definitions in N.C. Gen. Stat. § 131E-176(16). Pursuant to N.C. Gen. Stat. § 131E-178(b):

“No person shall make an acquisition by donation, lease, transfer, or comparable arrangement without first obtaining a certificate of need from the Department, if the acquisition would have been a new institutional health service if it had been made by purchase....”

N.C. Gen. Stat. § 131E-178(b). Here, the Cancer Center Space and the CON-regulated Radiation Therapy Equipment are not being acquired because no legal entity outside of the UNC Health Care controlled affiliates is acquiring anything. Rather, the Re-designation is an intra-organizational re-designation within UNC Health Care controlled affiliates.

Further, pursuant to 10A N.C.A.C. 14C. 0502(b):

“Ownership of a certificate of need is transferred when any person acquires a certificate from the holder by purchase, donation, lease, trade, or any comparable arrangement, except that ownership of a certificate of need is not transferred when:

(1) the holder of the certificate is a corporation and the identity of the holder changes because of a corporate reorganization; or

(2) the holder of the certificate is a partnership and the identity of the holder changes because the same partners reorganize as a new partnership.”

10A N.C.A.C. 14C .0502(b). Because the existing Cancer Center Space is simply transitioning from being designated as outpatient space at one existing hospital to outpatient space at its existing, sister hospital, both of which entities are owned by UNC Health Care, the Re-designation does not constitute the transfer of ownership of the CON.

Moreover, because no beds are involved, the Re-designation does not constitute a “change in bed capacity” under N.C. Gen. Stat. § 131E-176(16)(c). Because no operating rooms are involved, the Re-designation does not implicate N.C. Gen. Stat. § 131E-176(16)(u). And, finally, the Re-designation does not constitute a “new institutional health service” under any other definition in N.C. Gen. Stat. § 131E-176(16).

This proposal is similar to other UNC Health Care proposals that the Department determined to be non-reviewable. On March 12, 2015, the Department determined that no CON review was necessary for the re-designation (without relocation) of Caldwell Memorial Hospital, Inc.’s (“CMHI”) Cancer Center Space, and the Radiation and Medical Oncology Equipment located therein, to unlicensed space of its sister hospital, UNC Hospitals. Similarly, on March 24, 2016, the Department determined that no CON review was necessary for UNC Health Care to re-designate (without relocation) of High Point Regional Health’s (“HPRH”) Cancer Center Space,

and the Radiation and Medical Oncology Equipment located therein, to unlicensed space of its sister hospital, UNC Hospitals.

**CONCLUSION**

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the Re-designation (without relocation) of UNC Rockingham's Cancer Center Space, and the Radiation Therapy Equipment located therein, to unlicensed, provider-based space of its sister hospital, UNC Hospitals: (1) is permitted by the Hospital Licensure Act; and (2) does not require a Certificate of Need.

This the \_\_\_\_\_ day of April, 2018.

---

S. Mark Payne, Director  
Division of Health Service Regulation  
N.C. Department of Health and Human Services

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this day served the foregoing Declaratory Ruling upon the PETITIONER by certified mail, return receipt requested, by causing a copy of same to be placed in the United States Mail, first-class, postage pre-paid envelope addressed as follows:

**CERTIFIED MAIL**

Gary S. Qualls  
K&L GATES, LLP  
430 Davis Drive, Suite 400  
Morrisville, North Carolina 27560  
ATTORNEY FOR THE UNC HEALTH CARE SYSTEM,  
THE UNIVERSITY OF NORTH CAROLINA d/b/a UNC  
HOSPITALS, and UNC ROCKINGHAM HEALTH CARE,  
INC.

This the \_\_\_\_\_ day of April, 2018.

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Diana Barbry  
Executive Assistant to the Director  
Division of Health Service Regulation

# Exhibit 8



**NORTH CAROLINA DEPARTMENT OF  
HEALTH AND HUMAN SERVICES  
DIVISION OF HEALTH SERVICE REGULATION  
RALEIGH, NORTH CAROLINA**

IN RE: REQUEST FOR DECLARATORY )  
RULING BY THE UNIVERSITY OF NORTH )  
CAROLINA HEALTH CARE SYSTEM, THE )  
UNIVERSITY OF NORTH CAROLINA )  
AT CHAPEL HILL D/B/A UNC HOSPITALS )  
AND HIGH POINT REGIONAL HEALTH )

**DECLARATORY  
RULING**

I, Mark Payne, Assistant Secretary, Audit and Health Service Regulation, North Carolina Department of Health and Human Services (the “Department” or “Agency”), do hereby issue this Declaratory Ruling pursuant to North Carolina Gen. Stat. §150B-4 and 10A N.C.A.C. 14A.0103 under the authority granted me by the Secretary of the Department of Health and Human Services.

The University of North Carolina Health Care System (“UNC Health Care”), the University of North Carolina at Chapel Hill d/b/a UNC Hospitals (“UNC Hospitals”), and High Point Regional Health (“HPRH”) (collectively the “Parties”) have requested that the North Carolina Department of Health and Human Services, Division of Health Service Regulation (the “Department”) issue a declaratory ruling as to the applicability of Chapter 131E, Article 9 of the North Carolina General Statutes, and of the Department’s rules, to the facts described below. Specifically, the Parties request a determination that the redesignation (without relocation) of HPRH’s Cancer Center Space, and Radiation Therapy Equipment located therein, to unlicensed, provider-based space of its sister hospital, UNC Hospitals: (1) is permitted by the Hospital Licensure Act; and (2) does not require a Certificate of Need (“CON”). This ruling will be binding upon the Department and the entity requesting it, as long as the material facts stated herein are accurate. This ruling pertains only to the matters referenced herein. Except as provided by N.C. Gen. Stat. § 150B-4, the Department expressly reserves the right to make a prospective change in

the interpretation of the statutes and regulations at issue in this Declaratory Ruling. Gary S. Qualls, of K&L Gates LLP, has requested this ruling on behalf of the Parties, and has provided the material facts upon which this ruling is based.

### **STATEMENT OF FACTS**

By statute (N.C. Gen. Stat. § 116-37), UNC Hospitals is an operating component entity of UNC Health Care. HPRH operates an acute care hospital (“High Point Regional”) in High Point, Guilford County. Effective May 2, 2013, UNC Health Care became the sole corporate member of HPRH. Thus, UNC Health Care owns, as the parent, both HPRH and UNC Hospitals.

While UNC Health Care is the parent of both, HPRH and UNC Hospitals are each distinct entities. Thus, while UNC Health Care owns HPRH, it owns HPRH indirectly, via being the sole owner of the subsidiary that owns HPRH, and UNC Health Care owns UNC Hospitals, but indirectly, via being the sole owner of the subsidiary that operates UNC Hospitals.

The Parties now wish to redesignate 27,112 square feet of radiation therapy space and outpatient medical oncology space currently operated at High Point Regional (the “Cancer Center Space”) to unlicensed, provider-based space of its sister hospital, UNC Hospitals (the “Redesignation”). UNC Health Care proposes to have its subsidiary, UNC Hospitals, lease the cancer center space from its other subsidiary, HPRH. In doing so, HPRH will no longer have the Cancer Center Space on its license. While UNC Health Care owns both UNC Hospitals and HPRH, it is not a part of the transaction itself. The transaction is between UNC Hospitals and HPRH, two distinct entities that have common ownership.

The Cancer Center Space is situated in a single building, the Hayworth Cancer Center Building, at 302 Westwood Avenue, High Point, NC, 27262. The Cancer Center Space includes the following services in the following locations within the Hayworth Cancer Center Building:

1. The First Floor Space delineated within the red lines in the supplemental line drawing submitted contains 11,961 square feet of space. That is the “Radiation Therapy Space.” The First Floor Space includes:
  - a. two (2) linear accelerators;
  - b. one (1) PET Scanner; and
  - c. one (1) CT simulator.(the “Radiation Therapy Equipment”).
2. The Second Floor Space is delineated within the green, red, and blue lines in the line drawing attached as Exhibit 4 to the Request. The Second Floor Space includes:
  - a. 4800 square feet of hematology / oncology clinic space;
  - b. 3348 square feet of infusion center space;
  - c. 1174 square feet of pharmacy space;
  - d. 570 square feet of clinical research space; and
  - e. 4026 square feet of oncology support and administration space.
3. The Third Floor Space delineated within the green lines in the line drawing attached as Exhibit 5 to the Request contains 1233 square feet of oncology care team office suite space.

The Cancer Center Space and the Radiation Therapy Equipment will remain in the precise same location in the same Hayworth Cancer Center Building at 302 Westwood Avenue, High Point, NC, 27262. UNC Hospitals will lease the Cancer Center Space, including the Radiation Therapy Equipment, from HPRH through operating leases.

### ANALYSIS

The Redesignation entails the Parties shifting the designation of the Cancer Center Space from a provider-based licensed location of HPRH to a provider-based, unlicensed location of UNC Hospitals. No assets are physically moving as a result of the Redesignation.

**A. Licensure Discussion**

Pursuant to the proposed lease, the Cancer Center Space, and the Radiation Therapy Equipment therein, will be provider-based to UNC Hospitals, and is permitted to be operated as an unlicensed outpatient location under the North Carolina Hospital Licensure Act's Business Occupancy Exception, contained in N.C. Gen. Stat. § 131E-76(3). That statute defines "hospital" as follows for licensure purposes:

**"Hospital" means any facility which has an organized medical staff and which is designed, used, and operated to provide health care, diagnostic and therapeutic services, and continuous nursing care primarily to inpatients where such care and services are rendered under the supervision and direction of physicians licensed under Chapter 90 of the General Statutes, Article 1, to two or more persons over a period in excess of 24 hours. The term includes facilities for the diagnosis and treatment of disorders within the scope of specific health specialties. The term does not include private mental facilities licensed under Article 2 of Chapter 122C of the General Statutes, nursing homes licensed under G.S. 131E-102, adult care homes licensed under Part 1 of Article 1 of Chapter 131D of the General Statutes, and any outpatient department including a portion of a hospital operated as an outpatient department, on or off of the hospital's main campus, that is operated under the hospital's control or ownership and is classified as Business Occupancy by the Life Safety Code of the National Fire Protection Association as referenced under 42 C.F.R. § 482.41 . . . ."**

See N.C. Gen. Stat. § 131E-76(3) (emphasis added).

Because outpatient Business Occupancy locations are not part of a licensed hospital under the Business Occupancy Exception, they are not restricted by the "County Line Licensure Rule" at 10A N.C.A.C. 13B.3101(f), and thus can be located in a county other than the county in which the hospital is located. Therefore, the Cancer Center Space (in Guilford County) can operate as a

non-licensed, provider-based outpatient department of UNC Hospitals (otherwise predominantly located in Orange County) consistently with the Hospital Licensure Act.

The North Carolina Hospital Licensure Act's "hospital" definition in N.C. Gen. Stat. § 131E-76(3) incorporates by reference the definitions in the 2000 Life Safety Code of the National Fire Protection Association (the "Life Safety Code"). That Life Safety Code designates whether hospital space is classified as:

1. Business Occupancy (so as to meet the Business Occupancy Exception);
2. Ambulatory Care Occupancy; or
3. Health Care Occupancy.

The Life Safety Code at NFPA 101 Section 3.3.134.1 defines what functionally constitutes occupancy for Ambulatory Health Care. The Life Safety Code classifies "Ambulatory Health Care" as a "building or portion thereof used to provide services or treatment simultaneously to four or more patients that (1) provides, on an outpatient basis, treatment for patients that renders the patients incapable of taking action for self-preservation under emergency conditions without the assistance of others; or (2) provides, on an outpatient basis, anesthesia that renders the patients incapable of taking action for self-preservation under emergency conditions without the assistance of others." See NFPA 101 Section 3.3.134.1A.

Because Business Occupancy classification is a functional step below Ambulatory Health Care (i.e., fewer requirements), the Department's Construction Section looks at what falls below the Ambulatory Health Care standard to determine what is classified as Business Occupancy under the Life Safety Code. Thus, a Business Occupancy classification is appropriate when a building or portion thereof is used to provide outpatient services where treatment renders three (3) or fewer patients simultaneously incapable of self-preservation under emergency conditions without the

assistance of others. In the proposed UNC Hospitals Cancer Center Space, no more than three (3) patients will be simultaneously rendered incapable of self-preservation under emergency conditions without the assistance of others. Moreover, UNC Hospitals' Cancer Center Space will be space dedicated to this use, within the Hayworth Cancer Center Building.

The Cancer Center Space on the First and Second Floors is already designated as Business Occupancy. The Cancer Center Space on the Third Floor (the office space) is currently designated as Healthcare Occupancy, but will be redesignated as Business Occupancy. No more than three (3) patients will be simultaneously rendered incapable of self-preservation under emergency conditions without the assistance of others in all areas designated as Business Occupancy.

Given the foregoing features, the Department confirms that the Redesignation (without relocation) of HPRH's Cancer Center Space to unlicensed, provider-based space of its sister hospital, UNC Hospitals is permitted by the Business Occupancy Exception in N.C. Gen. Stat. § 131E-76(3) of the Hospital Licensure Act.

**B. CON Discussion**

The Redesignation does not trigger any of the definitions of a "new institutional health service," which would implicate CON review. N.C. Gen. Stat. § 131E-178(a) provides that no person shall offer or develop a "new institutional health service" without first obtaining a CON. The term "new institutional health service" is defined in numerous ways in N.C. Gen. Stat. § 131E-176(16).

Among these definitions is N.C. Gen. Stat. § 131E-176(16)(b), which defines a "new institutional health service" to include:

. . . [T]he obligation by any person of a capital expenditure exceeding two million dollars (\$2,000,000) to develop or expand a health service or a health service facility, or which relates to the provision of a health service . . . .

See N.C. Gen. Stat. § 131E-176(16)(b).

However, the Redesignation does not constitute a “new institutional health service” under N.C. Gen. Stat. § 131E-176(16)(b), because the capital expenditures being incurred as part of this Redesignation are far less than \$2,000,000. The Parties’ submissions show the \$1,564,031 in non-exempt capital costs that UNC Hospitals projects to spend for this Redesignation. Moreover, UNC has incurred exempt expenditures, some of which may continue to be incurred during the timeframe of the Redesignation, related to information systems. Those costs do not count toward this Redesignation because: (a) they are not incurred as a result of this Redesignation; and (b) they are exempt in any event.

The lease for the Cancer Center Space and the CON-regulated Radiation Therapy Equipment will be operating leases from HPRH to its sister entity, UNC Hospitals. Additionally, this is an intra-organizational Redesignation within UNC Health Care’s two controlled affiliates, HPRH and UNC Hospitals.

Nor does the Redesignation of the Cancer Center Space trigger any of the “acquisition-related” new institutional health service definitions in N.C. Gen. Stat. § 131E-176(16). Ordinarily, if a health care entity wanted to acquire a cancer center from another entity, via lease, it would require a CON. N.C. Gen. Stat. § 131E-178(b) states:

...No person shall make an acquisition by donation, lease, transfer, or comparable arrangement without first obtaining a certificate of need from the Department, if the acquisition would have been a new institutional health service if it had been made by purchase...

..

See N.C. Gen. Stat. § 131E-178(b).

Here, the Radiation Therapy Equipment is not being acquired, because no legal entity outside of the UNC Health Care controlled affiliates is acquiring anything. Rather, this

Redesignation is an intra-organizational redesignation within UNC Health Care controlled affiliates. 10A N.C.A.C. 14C.0502 states:

...(b) Ownership of a certificate of need is transferred when any person acquires a certificate from the holder by purchase, donation, lease, trade, or any comparable arrangement, except that ownership of a certificate of need is not transferred when:

- (1) the holder of the certificate is a corporation and the identity of the holder changes because of a corporate reorganization; or
- (2) the holder of the certificate is a partnership and the identity of the holder changes because the same partners reorganize as a new partnership...

..

See 10A N.C.A.C. 14C.0502.

Because the current holder of the CON for the Cancer Center Space and the Radiation Therapy Equipment is a corporation, HPRH, and because UNC Health Care now owns HPRH, transferring ownership of the CON from HPRH to UNC Hospitals qualifies as a corporate reorganization.

The Redesignation does not constitute the establishment of a new health service facility under N.C. Gen. Stat. § 131E-176(16)(a) because the existing Cancer Center Space is transitioning from outpatient space at one existing hospital to outpatient space at another existing, sister hospital. Because no beds are involved, the Redesignation does not constitute a “change in bed capacity” under N.C. Gen. Stat. § 131E-176(16)(c). Because no operating rooms are involved, the Redesignation does not implicate N.C. Gen. Stat. § 131E-176(16)(u). Nor does the Redesignation constitute a “new institutional health service” under any other CON trigger in N.C. Gen. Stat. § 131E-176(16).

This Redesignation does not involve the offering or expansion of any new facility, service or equipment, and the inventory of linear accelerators, PET Scanners, and simulators in Guilford

County, Health Service Area (“HSA”) II, and the State overall will not change. No new radiation therapy equipment or services will be placed in operation in Guilford County, HSA II, or the State as a result of this Project.

It is a well-established principle of statutory construction that the intent of the Legislature controls the interpretation of the statute. *See State v. Fulcher*, 294 N.C. 503, 520, 243 S.E.2d 338, 350 (1978). Prohibiting this simple intra-organizational Redesignation of existing services would not advance the goal of avoiding costly duplication because the Radiation Therapy Equipment and the Cancer Center Space already exist and are used to provide the same services they will provide after the Redesignation. Construing the statute otherwise would lead to absurd results that the General Assembly could not have intended. *See King v. Baldwin*, 276 N.C. 316, 325, 172 S.E.2d 12, 18 (1970) (“It is presumed that the legislature acted in accordance with reason and common sense and that it did not intend an unjust or absurd result.”)

This proposal is similar to another UNC Health Care proposal that the Agency has found to be non-reviewable. On March 12, 2015, the Agency determined that no CON review was necessary for UNC Health Care to redesignate (without relocation) Caldwell Memorial Hospital, Incorporated’s (“CMHI”) Cancer Center Space, and Radiation and Medical Oncology Equipment located therein, to unlicensed space at its sister hospital, UNC Hospitals.

### **CONCLUSION**

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that that the Redesignation (without relocation) of HPRH’s Cancer Center Space, and Radiation Therapy Equipment located therein, to unlicensed, provider-based space of its sister hospital, UNC Hospitals: (1) is permitted by the Hospital Licensure Act; and (2) does not require a Certificate of Need.

This the \_\_\_\_\_ day of March, 2016.

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Mark Payne, Assistant Secretary  
Audit and Health Service Regulation  
N.C. Department of Health and Human Services

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing Declaratory Ruling has been served upon the nonagency party by certified mail, return receipt requested, by depositing the copy in an official depository of the United States Postal Service in first-class, postage pre-paid envelope addressed as follows:

Gary S. Qualls  
K&L Gates, LLP  
430 Davis Drive, Suite 400  
Morrisville, NC 27560

This the \_\_\_\_\_ day of March, 2016.

---

Cheryl Ouimet  
Chief Operating Officer

# Exhibit 9

**NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF HEALTH SERVICE REGULATION  
RALEIGH, NORTH CAROLINA**

**IN RE: REQUEST FOR DECLARATORY )  
RULING BY THE UNIVERSITY OF NORTH )  
CAROLINA HEALTH CARE SYSTEM, THE )  
UNIVERSITY OF NORTH CAROLINA )     **DECLARATORY RULING**  
AT CHAPEL HILL D/B/A UNC HOSPITALS, )  
AND CALDWELL MEMORIAL HOSPITAL, )  
INCORPORATED )  
FID#: 933051 )**

I, Drexdal Pratt, Director of the Division of Health Service Regulation, North Carolina Department of Health and Human Services (the "Department" or "Agency"), do hereby issue this Declaratory Ruling pursuant to North Carolina General Statute §150B-4 and 10A NCAC 14A.0103 under the authority granted me by the Secretary of the Department of Health and Human Services.

The University of North Carolina Health Care System ("UNC Health Care"), the University of North Carolina at Chapel Hill d/b/a UNC Hospitals ("UNC Hospitals"), and Caldwell Memorial Hospital, Incorporated ("CMHI") (collectively the "Parties") have requested that the North Carolina Department of Health and Human Services, Division of Health Service Regulation (the "Department") issue a declaratory ruling as to the applicability of Chapter 131E, Article 9 of the North Carolina General Statutes, and of the Department's rules, to the facts described below. Specifically, the Parties request a determination that the redesignation (without relocation) of CMHI's Cancer Center Space, and Radiation and Medical Oncology Equipment located therein, to unlicensed space at its sister hospital, UNC Hospitals: (1) is permitted by the Hospital Licensure Act; and (2) does not require a Certificate of Need ("CON").

This ruling will be binding upon the Department and the entity requesting it, as long as the material facts stated herein are accurate. This ruling pertains only to the matters referenced herein. Except as provided by N.C.G.S. § 150B-4, the Department expressly reserves the right to make a prospective change in the interpretation of the statutes and regulations at issue in this Declaratory Ruling. Gary S. Qualls of K&L Gates LLP has requested this ruling on behalf of the Parties, and has provided the material facts upon which this ruling is based.

### **STATEMENT OF FACTS**

By statute (N.C. Gen. Stat. § 116-37), UNC Hospitals is an operating component entity of UNC Health Care. CMHI operates an acute care hospital -- “Caldwell Memorial” -- in Lenoir, Caldwell County. Effective April 29, 2013, UNC Health Care became the sole corporate member of CMHI. Thus, UNC Health Care owns, as the parent, both Caldwell Memorial and UNC Hospitals.

The Parties now wish to redesignate radiation and medical oncology space currently operated as CMHI’s McCreary Cancer Center (the “Cancer Center Space”) to unlicensed space of its sister hospital, UNC Hospitals (the “Redesignation”). The Cancer Center Space is situated at 212 Mulberry Street, SW, Lenoir, Caldwell County, and includes the following:

1. One (1) linear accelerator and one (1) CT scanner capable of simulation (the “Radiation Oncology Equipment”);
2. 10 private chemotherapy bays (the “Medical Oncology Equipment”);
3. Lab services; and
4. Provider-based physician offices.

The Cancer Center Space, and the Radiation and Medical Oncology Equipment therein, will remain in the precise same location, in the same building at 212 Mulberry Street, SW.

The Cancer Center Space comprises 13,446 square feet. UNC Hospitals will lease the Cancer Center Space, the Radiation Oncology Equipment, and the Medical Oncology Equipment from CMHI through operating leases.

### ANALYSIS

The Redesignation entails the Parties shifting the designation of the Cancer Center Space from a provider-based licensed location of CMHI to an unlicensed location of UNC Hospitals. No assets are physically moving as a result of the Redesignation.

#### A. Licensure Discussion

Pursuant to the proposed lease, the Cancer Center Space, the Radiation Oncology Equipment, and the Medical Oncology Equipment will be permitted to be operated by UNC Hospitals as an unlicensed outpatient location under the North Carolina Hospital Licensure Act's Business Occupancy Exception, contained in N.C. Gen. Stat. § 131E-76(3). That statute defines "hospital" as follows for licensure purposes:

"Hospital" means any facility which has an organized medical staff and which is designed, used, and operated to provide health care, diagnostic and therapeutic services, and continuous nursing care primarily to inpatients where such care and services are rendered under the supervision and direction of physicians licensed under Chapter 90 of the General Statutes, Article 1, to two or more persons over a period in excess of 24 hours. The term includes facilities for the diagnosis and treatment of disorders within the scope of specific health specialties. **The term does not include private mental facilities licensed under Article 2 of Chapter 122C of the General Statutes, nursing homes licensed under G.S. 131E-102, adult care homes licensed under Part 1 of Article 1 of Chapter 131D of the General Statutes, and any outpatient department including a portion of a hospital operated as an outpatient department, on or off of the hospital's main campus, that is operated under the hospital's control or ownership and is classified as Business Occupancy by the Life Safety Code of the National Fire Protection Association as referenced under 42 C.F.R. § 482.41 . . . .**"

See N.C. Gen. Stat. § 131E-76(3) (emphasis added).

Because outpatient Business Occupancy locations are not part of a licensed hospital under the Business Occupancy Exception, they are not restricted by the “County Line Licensure Rule” at 10A N.C.A.C. 13B.3101(f), and thus can be located in a county other than the county in which the hospital is located. Therefore, the Cancer Center Space (in Caldwell County) can operate as a non-licensed outpatient department of UNC Hospitals (otherwise located in Orange County) consistently with the Hospital Licensure Act.

The North Carolina Hospital Licensure Act’s “hospital” definition in N.C. Gen. Stat. § 131E-76(3) incorporates by reference the definitions in the 2000 Life Safety Code of the National Fire Protection Association (the “Life Safety Code”). That Life Safety Code designates whether hospital space is classified as:

1. Business Occupancy (so as to meet the Business Occupancy Exception);
2. Ambulatory Care Occupancy; or
3. Health Care Occupancy.

The Life Safety Code at NFPA 101 Section 3.3.134.1 defines what functionally constitutes occupancy for Ambulatory Health Care. The Life Safety Code classifies “Ambulatory Health Care” as a “building or portion thereof used to provide services or treatment simultaneously to four or more patients that (1) provides, on an outpatient basis, treatment for patients that renders the patients incapable of taking action for self-preservation under emergency conditions without the assistance of others; or (2) provides, on an outpatient basis, anesthesia that renders the patients incapable of taking action for self-preservation under emergency conditions without the assistance of others.” See NFPA 101 Section 3.3.134.1A.

Because Business Occupancy classification is a functional step below Ambulatory Health Care (i.e., fewer requirements), we understand that the Department’s Construction Section looks

at what falls below the Ambulatory Health Care standard to determine what is classified as Business Occupancy under the Life Safety Code. Thus, a Business Occupancy classification is appropriate when a building or portion thereof is used to provide outpatient services where treatment renders three (3) or fewer patients simultaneously incapable of self-preservation under emergency conditions without the assistance of others.

In the proposed UNC Hospitals Cancer Center Space, no more than three (3) patients will be simultaneously rendered incapable of self-preservation under emergency conditions without the assistance of others. Moreover, UNC Hospitals' Cancer Center Space will be located in a building dedicated to such space, the McCreary Cancer Center Building at 212 Mulberry Street, SW. The Cancer Center Space will not be contiguous to any space operated as part of Caldwell Memorial's licensed hospital, which is located at 321 Mulberry Street, SW. Per the Certificate of Occupancy for the Cancer Center Space, that space is already classified as Business Occupancy as of July 31, 2012.

Given the foregoing features, the Department confirms that the Redesignation (without relocation) of CMHI's Cancer Center Space to unlicensed space of its sister hospital, UNC Hospitals is permitted by the Business Occupancy Exception in N.C. Gen. Stat. § 131E-76(3) of the Hospital Licensure Act.

**B. CON Discussion**

The Redesignation does not trigger any of the definitions of a "new institutional health service," which would implicate CON review. N.C. Gen. Stat. § 131E-178 provides that no person shall offer or develop a "new institutional health service" without first obtaining a CON. The term "new institutional health service" is defined in numerous ways in N.C. Gen. Stat. § 131E-176(16).

Among these definitions is N.C. Gen. Stat. § 131E-176(16)(b), which defines a “new institutional health service” to include:

. . . [T]he obligation by any person of a capital expenditure exceeding two million dollars (\$2,000,000) to develop or expand a health service or a health service facility, or which relates to the provision of a health service . . .

See N.C. Gen. Stat. § 131E-176(16)(b).

However, the Redesignation does not constitute a “new institutional health service” under N.C. Gen. Stat. § 131E-176(16)(b) because no capital expenditures (other than nominal signage costs)<sup>1</sup> are being incurred as part of this Redesignation. Those expenditures were incurred years ago as the Cancer Center Space was developed. Moreover, UNC has incurred exempt expenditures, some of which may continue to be incurred during the timeframe of the Redesignation, related to information systems. Those costs do not count toward this Redesignation because: (a) they are not incurred as a result of this Redesignation; and (b) they are exempt in any event.

The lease for the Cancer Center Space, the Radiation Oncology Equipment, and the Medical Oncology Equipment will be operating leases from CMHI to its sister entity, UNC Hospitals. Additionally, this is purely an intra-organizational Redesignation within UNC Health Care’s two controlled affiliates, CMHI and UNC Hospitals.

Nor does the Redesignation of the Cancer Center Space trigger any of the “acquisition-related” new institutional health service definitions in N.C. Gen. Stat. § 131E-176(16). The Cancer Center Space, the Radiation Oncology Equipment, and the Medical Oncology Equipment are not being acquired, because no legal entity outside of the UNC Health Care controlled affiliates is

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<sup>1</sup> UNC Hospitals projects that approximately \$3,000 may be expended to change the signage to UNC Hospitals signage.

acquiring anything. Rather, this Redesignation is purely an intra-organizational Redesignation within UNC Health Care controlled affiliates. See 10A NCAC 14C.0502.

The Redesignation does not constitute the establishment of a new health service facility under N.C. Gen. Stat. § 131E-176(16)(a) because the existing Cancer Center Space is simply transitioning from outpatient space at one existing hospital to outpatient space at another existing, sister hospital. Because no beds are involved, the Redesignation does not constitute a “change in bed capacity” under N.C. Gen. Stat. § 131E-176(16)(c). Because no operating rooms are involved, the Redesignation does not implicate N.C. Gen. Stat. § 131E-176(16)(u). Nor does the Redesignation constitute a “new institutional health service” under any other CON trigger in N.C. Gen. Stat. § 131E-176(16).

This Redesignation does not involve the offering or expansion of any new facility, service or equipment, and the inventory of linear accelerators and CT scanners in Caldwell County and the State overall will not change. No new radiation oncology equipment or services will be placed in operation in Caldwell County or the State as a result of this Project.

It is a well-established principle of statutory construction that the intent of the Legislature controls the interpretation of the statute. *See State v. Fulcher*, 294 N.C. 503, 520, 243 S.E.2d 338, 350 (1978). Prohibiting this simple intra-organizational Redesignation of existing services would not advance the goal of avoiding costly duplication because the Radiation Oncology Equipment and the Cancer Center Space already exist and are used to provide the same services they will provide after the Redesignation. Construing the statute otherwise would lead to absurd results that the General Assembly could not have intended. *King v. Baldwin*, 276 N.C. 316, 325, 172 S.E.2d 12, 18 (1970) (“It is presumed that the legislature acted in accordance with reason and common sense and that it did not intend an unjust or absurd result.”)

This proposal is similar to other proposals that the Agency has found to be non-reviewable. For example, the Agency recently determined that no CON review was necessary for a transaction involving Heart-Lung Bypass Machines (“Bypass Machines”) in Wake County (the “Wake Bypass Transaction”). In Stage #1 of the Wake Bypass Transaction, eight Bypass Machines were redesignated from CSA Medical Services, LLC (“CSA”) to two separate subsidiaries -- CSAMS Lake Boone Trail, LLC (“CSA Lake Boone”) and CSAMS New Bern Avenue, LLC (“CSA New Bern”). Thus, in Stage #1, the eight Bypass Machines (reviewable *per se* if “acquired” per § 131E-176(16)(f1)(5)) were shifted from one related company to another without a CON. In Stage #2 of the Wake Bypass Transaction, CSA Lake Boone and CSA New Bern became controlled affiliates of Rex Hospital, Inc, and WakeMed, respectively. Even though the Bypass Machines technically changed ownership (from one related company to another), no CON was required.

As the requesting parties emphasized, the Wake Bypass Transaction resulted in:

1. No increase in the Bypass Machine inventory in Wake County;
2. No physical relocation of Bypass Machines in Wake County; and
3. No creation of any new health service facilities anywhere.

This UNC/Caldwell Redesignation is also similar to another proposal that the Agency has found to be non-reviewable, the Ruling in *In Re: Request for Declaratory Ruling by The Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Healthcare*, November 24, 2011

This UNC/Caldwell Redesignation is even further removed from reviewability than the Wake Bypass Transaction or the *Carolinas Healthcare* Ruling because the UNC/Caldwell Redesignation retains ultimate operational control of the equipment under a single parent, whereas the parent entity changed in Stage 2 of the Wake Bypass Transaction and in the *Carolinas Healthcare* Ruling Transaction.

**CONCLUSION**

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that that the Redesignation (without relocation) of CMHI's Cancer Center Space, and Radiation and Medical Oncology Equipment located therein, to unlicensed space of its sister hospital, UNC Hospitals: (1) is permitted by the Hospital Licensure Act; and (2) does not require a Certificate of Need.

Submitted this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Drexdal Pratt, Director  
Division of Health Service Regulation  
N.C. Department of Health and Human Services

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing Declaratory Ruling has been served upon the nonagency party by certified mail, return receipt requested, by depositing the copy in an official depository of the United States Postal Service in first-class, postage pre-paid envelope addressed as follows:

**CERTIFIED MAIL**

Gary S. Qualls  
K&L Gates, LLP  
430 Davis Drive, Suite 400  
Morrisville, NC 27560

This the \_\_\_\_\_ day of March, 2015.

\_\_\_\_\_  
Cheryl Ouimet  
Chief Operating Officer

# Exhibit 10



NC DEPARTMENT OF HEALTH AND HUMAN SERVICES

JOSH STEIN • Governor
DEV DUTTA SANGVAI • Secretary
MARK PAYNE • Director, Division of Health Service Regulation

VIA EMAIL ONLY



August 22, 2025

Frank Kirshbaum
fkirschbaum@wyrick.com

No Review

Record #: 4902
Date of Request: August 19, 2025
Facility Name: AdventHealth Hendersonville
Facility ID#: 943388
Business Name: Fletcher Hospital, Inc.
Business #: 745
Project Description: Acquisition of outstanding membership interests in North Carolina Radiation Therapy Management Services, LLC and intra-corporate transfer of a linear accelerator to be operated in a hospital outpatient department
County: Henderson

Dear Mr. Kirschbaum:

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 representation in your request and 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. As a reminder, it is unlawful to offer or develop a new institutional health service without first obtaining a certificate of need. The Department reserves the right to impose sanctions, including civil penalties and the revocation of a license, upon any entity that offers or develops a new institutional health service without first obtaining a certificate of need.

Please do not hesitate to contact this office if you have any questions.

Sincerely,

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

*Gloria C. Hale*

Gloria C. Hale  
Team Leader

*Micheala Mitchell*

Micheala Mitchell  
Chief

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



Wyrick Robbins Yates & Ponton LLP  
ATTORNEYS AT LAW

4101 Lake Boone Trail, Suite 300, Raleigh, NC 27607

PO Drawer 17803, Raleigh, NC 27619

P: 919.781.4000 F: 919.781.4865 [www.wyrick.com](http://www.wyrick.com)

**MEMBER OF MERITAS LAW FIRMS  
WORLDWIDE**

Frank S. Kirschbaum  
[fkirschbaum@wyrick.com](mailto:fkirschbaum@wyrick.com)

August 19, 2025

**VIA ELECTRONIC MAIL:** [micheala.mitchell@dhhs.nc.gov](mailto:micheala.mitchell@dhhs.nc.gov)

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

**Re: No Review Request: Acquisition of Limited Liability Company  
Membership Interests; Intra-Corporate Transfer of LINAC**

Dear Ms. Mitchell:

On behalf of our client Fletcher Hospital Inc. (“AdventHealth”), I am writing to provide the Agency with prior written notice of a planned transaction (the “Transaction”) in which AdventHealth proposes to purchase, *inter alia*, one hundred percent (100%) of the outstanding membership interests in North Carolina Radiation Therapy Management Services, LLC (“RTMS”), a North Carolina limited liability company that owns and operates linear accelerators at several locations within North Carolina. Immediately following the closing of the Transaction, AdventHealth proposes to transfer ownership of one linear accelerator (“LINAC”) currently owned by RTMS and located in Hendersonville on the AdventHealth campus, to that hospital to be operated as a hospital outpatient department (“HOPD”). The use and physical location of the transferred LINAC will not change. Accordingly, with respect to the acquisition of all membership interests in RTMS, including any CON-regulated equipment owned by RTMS at the time of acquisition, this letter seeks a determination that the CON Law, N.C. Gen. Stat. § 131E-

175 *et seq.*, does not apply. Similarly, with regard to the intra-corporate transfer of an asset from one AdventHealth entity to another, AdventHealth seeks a determination that the CON Law does not apply.

**The Transaction**

GenesisCare USA, Inc. (“GenesisCare”) provides comprehensive oncology care services at 115 locations in Florida and North Carolina. The North Carolina Division of GenesisCare is comprised of nine (9) locations offering radiation oncology services. As set forth in the table below, each location is equipped with one LINAC owned by RTMS, which is currently a wholly owned subsidiary of GenesisCare.

COUNTY/ HSA	ADDRESS	EQUIPMENT	MAKE/MODEL
Buncombe 2	179 N Buncombe School Rd. Weaverville, NC 28787	Linear Accelerator	Siemens Oncor Expression
Buncombe 2	20 Medical Park Dr Asheville, NC 28803	Linear Accelerator	Elekta Versa-HD
Haywood 2	600 Hospital Dr. Suite 10, Clyde, NC 28721	Linear Accelerator	Elekta Infinity
Henderson 4	95 Doctors Dr. Hendersonville, NC 28792	Linear Accelerator	Elekta Versa-HD
Transylvania 4	70 Neely Rd. Brevard, NC 28712	Linear Accelerator	Siemens Oncor Expression
McDowell 4	63 S Medical Ct. Marion, NC 28752	Linear Accelerator	Siemens Oncor Expression
Rutherford 6	171 Daniel Rd. Forest City, NC 28043	Linear Accelerator	Siemens Oncor Expression
Sampson 18	215 Beaman St. Clinton, NC 28328	Linear Accelerator	Elekta Versa-HD
Wayne 23	2802 McLamb Pl. Goldsboro, NC 27534	Linear Accelerator	Elekta Versa-HD

As background, AdventHealth is purchasing all GenesisCare entities involved in the provision of cancer care in North Carolina. However, for purposes of this letter, only the purchase of RTMS is relevant, as that entity is the owner of the linear accelerators referenced above. When the Transaction closes, RTMS will become an AdventHealth entity. Following closing, AdventHealth intends to continue to operate all of these LINACS at their present locations and to provide the same services, during the same or substantially the same hours of operation. For the time being, following closing, all of these LINACS will continue to be owned

by RTMS, with the exception of one. The LINAC located at 95 Doctors Drive in Hendersonville sits on the main campus of AdventHealth Hendersonville. For this reason, AdventHealth intends to immediately transfer ownership of that LINAC to the hospital, and to operate the LINAC as an HOPD. Again, despite this change of ownership, there will be no change to the location or use of the LINAC.

**Analysis with Respect to the Acquisition of Membership Interests**

The Transaction involves the acquisition of membership interests in RTMS, not the acquisition of linear accelerators or other assets held by RTMS. The Agency has repeatedly recognized that acquisitions of membership interests are not regulated by the CON Law. For example, in 2015, the Agency concluded that Vidant's acquisition of 100% of the membership interests in Newco Cancer Services, LLC ("Newco"), a 50/50 joint venture ("JV") between Vidant and ECU Brody School of Medicine that owned and operated two linear accelerators and CT simulators, did not require a CON. See **Exhibit A**. After Vidant became the sole owner of Newco, Vidant and North Carolina Radiation Therapy, another company that owned linear accelerators in Pitt County, contributed their respective linear accelerators to a new JV limited liability company, Vidant Radiation Oncology. Again, the Agency determined that no CON was required as only membership interests in an LLC were being acquired. *Id.*

The Agency has also issued declaratory rulings establishing that acquisitions of membership interests in LLCs are not regulated by the CON Law. See, e.g., **Exhibit A**, including pp. 3-4 and attachments therein. The same reasoning applies here. There is nothing in the CON Law that regulates acquisitions of membership interests in limited liability companies. See N.C. Gen. Stat. § 131E-176(16)a.-v.(definition of new institutional health services); See also, *In re Miller*, 357 N.C. 316, 325, 584 S.E.2d 772, 780 (2003)(stating, according to the doctrine of *expressio unius est exclusio alterius*, the expression of one thing means the exclusion of others; thus, "when a statute lists the situations to which it applies, it implies the exclusion of situations not contained on the list.").

In 2011, the Agency issued a declaratory ruling to Radiation Oncology Centers of the Carolinas, Inc. ("ROCC") approving ROCC's proposal to transfer its interest in two oncology treatment centers which operated linear accelerators and CT simulators to two wholly owned

subsidiaries of ROCC. See **Exhibit B**. Again, the Agency determined no CON review was required for the ROCC transaction.

More recently, in yet another transaction analogous to the ROCC transaction, Novant Health, Inc. and Novant Health New Hanover Regional Medical Center, LLC (“Novant”) proposed the acquisition of membership interests in South Atlantic Radiation Oncology, LLC (“SARO”). Coastal Carolina Radiation Oncology, PA (“CCRO”) dropped its linear accelerators into HoldCo, LLC, a wholly owned subsidiary of CCRO. SARO then acquired the membership interests in HoldCo, LLC and Novant acquired the remaining 50% interest in SARO from the CCRO shareholders. At the conclusion of the transaction, just as in the proposed Transaction, Novant owned 100% of the membership interests in SARO and the Agency determined that the CON Law did not regulate the transaction. See **Exhibit C**.

***Analysis with Respect to the Intra-Corporate Transfer of a Linear Accelerator***

Immediately following the closing of the Transaction, AdventHealth intends to transfer ownership and operation of the LINAC located on the hospital campus at 95 Doctors Dr. Hendersonville, NC 28792 to the hospital. As stated above, no LINAC will be relocated or added or subtracted from any Linear Accelerator Service Area, as defined by the 2025 State Medical Facilities Plan. A “new institutional health service” includes “the acquisition by purchase, donation, lease, transfer, or comparable arrangement . . . by or on behalf of any person” of a linear accelerator. N.C. Gen. Stat. § 131-176(16)(f1)(5a). However, because AdventHealth will wholly own RTMS following the Transaction, a separate, third party will not be obtaining ownership of the LINAC. Rather, the parent company of RTMS will assume ownership and control of the LINAC pursuant to an intra-corporate transfer. The ownership of the LINAC will be largely unaffected by the transfer because the equipment will continue to be owned by the same ultimate owner both before and after the transfer.

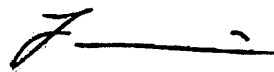
The Agency has consistently determined that intra-corporate transfers that do not change the ultimate ownership of an asset are not subject to the CON law. For instance, and as stated above, the Agency in 2011 issued a declaratory ruling approving ROCC’s proposal to transfer two CON-approved radiation oncology facilities to two wholly owned subsidiaries, determining that the proposed transaction did not constitute a new institutional health service or require a CON. See **Exhibit B**. Similarly, the agency in 2012 approved a no review request for the

transfer by Sampson Regional Medical Center of its ownership interests in a LINAC to a wholly owned subsidiary. See Exhibit D. Thus, the Agency has repeatedly determined that the intra-corporate transfer of a LINAC to a wholly owned subsidiary is not subject to the CON law. Here, under precisely the same principles, AdventHealth seeks a determination that the intra-corporate transfer of a LINAC from a wholly owned subsidiary to its parent will not constitute a new institutional health service or require a CON. Such a transfer does not involve the offering or expansion of any new facility, service, or equipment, and the state's inventory of LINACs remains unchanged.

*Conclusion*

For the foregoing reasons, we respectfully request the Agency's written determination that the Transaction described in this letter, as well as the subsequent proposed intra-corporate transfer of one LINAC from RTMS to AdventHealth, is not subject to Agency review and does not require a CON. The Transaction is scheduled to close within a very short time frame, and we respectfully request a response to this letter from the Agency as soon as possible.<sup>1</sup> Thank you for your assistance with this request, and please feel free to contact me if you have any questions or need additional information.

Sincerely,



Frank S. Kirschbaum

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<sup>1</sup> Because of the tight schedule within which the Transaction will close, AdventHealth has not yet determined whether any of the LINACs might be grandfathered under the CON Law. That analysis will not be undertaken until after closing has occurred, but such an analysis should not in any way impact the determination requested in this letter.

# Exhibit 11



# State of North Carolina

Department of Health and Human Services  
Division of Health Service Regulation

Corrected

## Certificate of Need

for

Project ID #: J-12371-23

FID #: 953429

**ISSUED TO:** Rex Hospital, Inc.

Pursuant to G.S. 131E-177(6), the North Carolina Department of Health and Human Services hereby authorizes the person or persons named above (the certificate holder) to develop the project described below. The certificate holder shall develop the project in a manner consistent with the representations in the application and with the conditions contained herein and shall make good faith efforts to meet the timetable contained herein, as documented by the periodic progress reports required by G.S. 131E-189(a). The certificate holder shall not exceed the maximum capital expenditure amount specified herein during the development of this project, except as provided by G.S. 131E-176(16)e. The certificate holder shall not transfer or assign this certificate to any other person except as provided in G.S. 131E-189(c). This certificate is valid only for the scope, physical location, and person(s) described herein. The Department may withdraw this certificate pursuant to G.S. 131E-189 for any of the reasons provided in that section.

**SCOPE:** Replace and relocate an existing linear accelerator from UNC Health Rex Cancer Care of East Raleigh to UNC Health Rex Cancer Care of Wakefield / Wake County

**CONDITIONS:** See Reverse Side

**PHYSICAL LOCATION:** UNC Health Rex Cancer Care of Wakefield  
(Cancer Care of Wakefield)  
11200 Governor Manly Way  
Raleigh, NC 27614

**CAPITAL EXPENDITURE:** \$11,308,083

**TIMETABLE:** See Reverse Side

**FIRST PROGRESS REPORT DUE:** August 1, 2024

This certificate is effective as of May 9, 2024  
Corrected certificate issued on May 13, 2024  
Revised certificate issued on May 28, 2024

*Micheala Mitchell*

---

Micheala Mitchell, Chief

**CONDITIONS:**

1. Rex Hospital, Inc. (hereinafter certificate holder) shall materially comply with all representations made in the certificate of need application.
2. The certificate holder shall replace and relocate an existing linear accelerator from UNC Rex Cancer Care Center of East Raleigh to UNC Health Rex Cancer Care of Wakefield (Cancer Care of Wakefield), the proposed site in the certificate of need application.
3. Upon completion of the project, the certificate holder shall be approved for no more than six (6) linear accelerators.
4. Progress Reports:
  - a. Pursuant to G.S. 131E-189(a), the certificate holder shall submit periodic reports on the progress being made to develop the project consistent with the timetable and representations made in the application on the Progress Report form provided by the Healthcare Planning and Certificate of Need Section. The form is available online at: <https://info.ncdhhs.gov/dhsr/coneed/progressreport.html>.
  - b. The certificate holder shall complete all sections of the Progress Report form.
  - c. The certificate holder shall describe in detail all steps taken to develop the project since the last progress report and should include documentation to substantiate each step taken as available.
  - d. The first progress report shall be due on August 1, 2024.
5. The certificate holder shall not acquire as part of this project any equipment that is not included in the project's proposed capital expenditures in Section Q of the application and that would otherwise require a certificate of need.
6. The certificate holder shall develop and implement an Energy Efficiency and Sustainability Plan for the project that conforms to or exceeds energy efficiency and water conservation standards incorporated in the latest editions of the North Carolina State Building Codes.

**Timetable**

	<b>Milestone</b>	<b>Date</b> <i>mm/dd/yy.v.v.v</i>
I	Drawings Completed	02/05/2026
2	Construction/Renovation Contract(s) Executed	03/04/2026
3	25% Construction/Renovation Completed	06/10/2026
4	50% Construction/Renovation Completed	09/09/2026
5	75% Construction/Renovation Completed	12/20/2026
6	Construction/ Renovation Completed	03/31/2027
7	Equipment Ordered	05/06/2026
8	Equipment Installed	01/27/2027
9	Equipment Operational	04/28/2027
10	Building/Space Occupied	04/28/2027
11	Licensure Obtained	04/28/2027
12	Services Offered	05/12/2027

**From:** [Mitchell, Micheala L](#)  
**To:** [Stancil, Tiffany C](#)  
**Subject:** FW: [External] No Review and Material Compliance Request to Redesignate Related-Entity Wake County Cancer Center Space, Services and Equipment to UNCH Provider Based Status  
**Date:** Monday, November 3, 2025 12:05:38 PM  
**Attachments:** [11012025.pdf](#)

---

Hey!

I hope you are well and that your dad is better!

Would you mind logging the attached and assigning to Crystal?

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](mailto:Micheala.Mitchell@dhhs.nc.gov)

---

**From:** Qualls, Gary <Gary.Qualls@klgates.com>  
**Sent:** Saturday, November 1, 2025 1:05 PM  
**To:** Mitchell, Micheala L <Micheala.Mitchell@dhhs.nc.gov>  
**Subject:** [External] No Review and Material Compliance Request to Redesignate Related-Entity Wake County Cancer Center Space, Services and Equipment to UNCH Provider Based Status

**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:

I am not expecting you to acknowledge this until Monday. However, I wanted to go ahead and file this No Review and Material Compliance Request to Redesignate Related-Entity Wake County Cancer Center Space, Services and Equipment to UNCH Provider Based Status. I have dated it for Monday.

As always, don't hesitate to let me know if you have any questions.

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](mailto:gary.qualls@klgates.com)

[www.klgates.com](http://www.klgates.com)

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