



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

January 15, 2026

Frank Kirschbaum
fkirschbaum@wyrick.com

No Review

Record #: 5059
Date of Request: December 30, 2025
Facility Name: Surgical Center of Greensboro
FID #: 943477
Business Name: Surgical Center of Greensboro, LLC
Business #: 2488
Project Description: Transfer of membership interests
County: Guilford

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,

Yolanda W. Jackson
Project Analyst

Micheala Mitchell
Chief

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

NC DEPARTMENT OF HEALTH AND HUMAN SERVICES • DIVISION OF HEALTH SERVICE REGULATION

LOCATION: 1915 Health Services Way, Raleigh, NC 27607
MAILING ADDRESS: 1915 Health Services Way, 2704 Mail Service Center, Raleigh, NC 27699-2704
www.ncdhs.gov/dhsr • TEL: 919-855-3873



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

MEMBER OF MERITAS LAW FIRMS WORLDWIDE

Frank S. Kirschbaum
fkirschbaum@wyrick.com

December 30, 2025

VIA ELECTRONIC MAIL: 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
1915 Health Services Way
Raleigh, NC 27607

Re: Request for No Review Determination: Transfer of Membership Interests of Surgical Center of Greensboro, LLC and North Elam Ambulatory Surgery Center, LLC

Dear Ms. Mitchell:

This correspondence serves to request a no-review determination from the Healthcare Planning and Certificate of Need Section (the “CON Section” or the “Agency”) for a proposed two-phase transaction (collectively, the “Transaction”), with Phase II structured as an exercisable option and therefore not definitive, involving Surgical Care Affiliates, LLC, a Delaware limited liability company (“SCAH”), The Moses H. Cone Memorial Hospital, a North Carolina nonprofit corporation (“Cone Health”), two of SCAH’s and Cone Health’s joint venture holding companies (each, a “JV HoldCo”), and, in certain respects, participating physicians.

The Transaction.

This correspondence concerns two ambulatory surgery centers in Guilford County, North Carolina: Surgical Center of Greensboro, LLC (“SCG”), located at 705 Green Valley Road, Greensboro, NC 27408, and North Elam Ambulatory Surgery Center, LLC (“North Elam”),

located at 509 N. Elam Ave, Greensboro, NC 27403 (collectively, the “Centers”). As discussed below, SCG is presently beneficially owned by SCAH and individual physician owners, while North Elam is wholly owned by Cone Health. SCG is a licensed, operational ambulatory surgery center. The surgery center at the North Elam location has been operated as a hospital outpatient department (“HOPD”) of Cone Health. Cone Health and North Elam obtained CON approval to convert -the North Elam location into a freestanding ambulatory surgery center (*See Exhibit A*), and North Elam is pursuing initial licensure as a freestanding ASC.

SCAH and Cone Health expect to implement the transfer of certain membership interests in the Centers in two phases. Prior to the closing of Phase I, Cone and SCAH will form two new joint venture holding companies (each, a “JV HoldCo”), with one JV HoldCo established for SCG and the other for North Elam. At the Phase I closing, anticipated to occur on or about February 1, 2026, the ownership of the Centers will be adjusted to reflect (i) the transfer of certain membership interests by the current members to the applicable JV HoldCo for each Center, and (ii) in the case of North Elam, transfers to individual physician owners. Phase II will occur thereafter and, at its closing, will involve further transfers of membership interests among Cone Health, the respective JV HoldCo, and the individual physician owners. Following the closing of Phase II, if all options are exercised, the Centers will be owned 51% by the respective JV HoldCo (beneficially owned by Cone Health and SCAH) and 49% by the individual physician owners. The timing of the Phase II closing is inherently uncertain due to its structure as an exercisable option.

Phase I.

SCG is currently owned 35.72% by NSC Greensboro, LLC (“NSC Greensboro”), which is a wholly-owned subsidiary of SCAH, and 64.28% by individual physician members. SCG operates in its current location pursuant to a CON issued by the Agency on December 20, 2013. *See Exhibit A.* During Phase I of the Transaction, NSC Greensboro and Cone Health will form a new JV HoldCo, owned 49% by NSC Greensboro and 51% by Cone Health. Thereafter, NSC Greensboro will sell and transfer a 19.61% interest in SCG to JV HoldCo, retaining a 16.11% interest in SCG. Following Phase I, the individual physician members will hold the same percentage of SCG as they did prior to Phase I (64.28%), and the remaining interests will be owned by NSC Greensboro (16.11%) and JV HoldCo (19.61%).

The surgery center located at 509 N Elam Ave, Greensboro, NC 27403, has been operated by Cone Health as a HOPD. On July 21, 2020, Cone Health and North Elam received conditional approval from the CON Section to convert the HOPD to a separately licensed, freestanding ambulatory surgery center wholly owned by Cone Health. The Agency issued a CON for this project on August 21, 2020. See **Exhibit B**. At this time, North Elam is pursuing initial licensure as a freestanding ambulatory surgery center with the Acute Care Licensure Section, though such licensure has not yet been granted. Cone Health presently owns 100% of the membership interests in North Elam. During Phase I of the Transaction, Cone Health will sell and transfer a 10.2% membership interest in North Elam to JV HoldCo, which will be owned by Cone Health (51%) and NSC Greensboro (49%). Also during Phase I, Cone Health will sell and transfer to individual physician investors up to an aggregate 49% of the membership interests of North Elam. Following the transfers contemplated in Phase I of the Transaction, Cone Health will hold 40.8% of the membership interests in North Elam, the individual physician members will hold 49%, and JV HoldCo will hold 10.2%.

Phase II.

Following the closing of Phase I of the Transaction, and provided that certain conditions are met, Cone Health will have the option to purchase, through JV HoldCo, an additional 16.11% ownership interest in SCG from NSC Greensboro. Simultaneously, JV HoldCo will purchase at least an additional 15.28% membership interest in SCG from the individual physician members. After Phase II, JV HoldCo will hold a 51% interest in SCG and the individual physician owners will hold a 49% interest.

Also following the close of Phase I of the Transaction, SCAH will have the option to purchase up to an effective 24.99% beneficial ownership in North Elam from Cone Health. Assuming SCAH exercises this option in full, Cone Health will contribute the entirety of its 40.8% interest in North Elam to JV HoldCo. Following the transfer contemplated by this option, and if SCAH exercises its option in full, JV HoldCo will hold 51% of the interests in North Elam and the individual physician members will hold 49%.

For convenience, a table summarizing the ownership of the Centers before and following both phases of the Transaction is provided as **Exhibit C**, hereto.

The Transaction is not Subject to CON Review.

As described above, the current owners of SCG (NSC Greensboro, wholly owned by SCAH, and individual physicians) and North Elam (Cone Health) intend to transfer certain ownership interests in the Centers in a two-phase Transaction. By the end of Phase II, the Parties anticipate that the ownership structure for SCG and North Elam will be identical, with 49% of the membership interests in each entity being owned by individual physician members and 51% owned by a JV HoldCo owned by Cone Health (51%) and SCAH (49%). The Transaction does not involve the creation of a new institutional health service or result in the acquisition of an existing health service facility; rather, it involves the transfer of certain membership interests in the Centers.

Analysis with Respect to the Acquisition of Membership Interests

The Transaction involves the acquisition and transfer of membership interests in the Centers. 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 D**. 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 D**, 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 E**. 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 F**.

The proposed Transaction involves only the transfer of membership interests in the Centers, and not the transfer of the license, CON, or any other aspect of the Centers. Therefore, consistent with prior Agency reviews including those referenced above, we respectfully request written confirmation from the Agency that no CON review is required for the Transaction. Thank you for your consideration, and please let me know at your earliest convenience if there are any questions.

Sincerely,

/s/ Frank S. Kirschbaum
Frank S. Kirschbaum

Encl.

December 30, 2025
Micheala Mitchell
Chief, Healthcare Planning and Certificate of Need
Page 6

Exhibit A

SCG CON



North Carolina Department of Health and Human Services
Division of Health Service Regulation

Pat McCrory
Governor

Aldona Z. Wos, M.D.
Ambassador (Ret.)
Secretary DHHS

Drexdal Pratt
Division Director

RESPONSE REQUIRED

December 20, 2013

Kelli Collins
3820 North Elm Street
Greensboro, NC 27455

Conditional Approval

Project I.D. #: G-10210-13
Facility: Surgical Center of Greensboro
Project Description: Relocate existing ASC within Greensboro to a replacement facility and add two procedure rooms
County: Guilford
FID #: 130461

Dear Ms. Collins:

The Certificate of Need (CON) Section, Division of Health Service Regulation, Department of Health and Human Services has conditionally approved the above referenced certificate of need application. This decision was made after a review of the applications submitted for this cycle and after consideration of the Certificate of Need Law, G.S. 131E-175 et. seq. and regulations promulgated there under, the State Medical Facilities Plan, and other applicable information. Attached to this letter are the required findings made with respect to your application. The applicant shall not proceed with the construction, offering or development of this project until the certificate of need is issued. Further, the Department shall not issue the certificate of need until all applicable conditions of approval that can be satisfied before issuance of the certificate of need have been met pursuant to G.S. 131E-187(a). The conditions are as follows:

1. Surgical Center of Greensboro, LLC shall materially comply with all representations made in its certificate of need application.
2. Surgical Center of Greensboro, LLC shall relocate 13 operating rooms from two buildings to a single ambulatory surgical center which shall be licensed for no more than 13 dedicated outpatient operating rooms and two procedure room at project completion.



Certificate of Need Section

www.ncdhhs.gov

Telephone 919-855-3873 • Fax 919-733-8139

Location: Edgerton Building • 809 Ruggles Drive • Raleigh, NC 27603

Mailing Address: 2704 Mail Service Center • Raleigh, NC 27699-2704

An Equal Opportunity/ Affirmative Action Employer



3. Surgical Center of Greensboro, LLC shall construct no more than 13 operating rooms in the replacement facility that meet licensure requirements for an operating room under the ambulatory surgical facility rules.
4. The two procedure rooms shall not be used for procedures that should be performed only in an operating room based on current standards of practice.
5. Procedures performed in the minor procedure rooms shall not be reported for billing purposes as having been performed in an operating room and shall not be reported on the facility's license renewal application as procedures performed in an operating room.
6. Surgical Center of Greensboro, LLC shall not perform gastrointestinal endoscopy procedures in the procedure rooms.
7. Surgical Center of Greensboro, LLC shall meet all criteria to maintain accreditation of the ambulatory surgical facility from The Joint Commission, The Accreditation Association of Ambulatory Health Care or a comparable accreditation authority within two years following completion of the facility.
8. Surgical Center of Greensboro, LLC shall not acquire, as part of this project, any equipment that is not included in the project's proposed capital expenditure in Section VIII of the application or which would otherwise require a certificate of need.
9. Surgical Center of Greensboro, LLC 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. The plan must be consistent with the applicant's representations in the written statement as described in paragraph one of Policy GEN-4.
10. Surgical Center of Greensboro, LLC shall acknowledge acceptance of and agree to comply with all conditions stated herein in writing to the Certificate of Need Section prior to the issuance of the certificate of need.

Response to the above conditions should be submitted to the CON Section no later than 35 days from the date of the decision. Failure to respond within this time period may result in the CON Section making a determination not to issue a certificate of need for the project referenced above.

The conditional approval is valid only for a capital expenditure of \$22,974,569. If a cost overrun occurs that exceeds the approved capital expenditure amount, a new certificate of need may be required as determined by G.S. 131E-176(16)(e).

The applicant should be aware that according to the Certificate of Need Law any affected person shall have thirty (30) days after the date of decision to file a petition for a contested case on this approval. Further, if you are aggrieved by the conditions of the decision you may file a petition for a contested case hearing in accordance with G.S. 150B, Article 3, as amended. This petition must be filed with the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, North Carolina 27699-6714 within thirty (30) days of the date of this decision. [Note: Effective October 1, 2009, OAH requires a filing fee with submittal of petitions for contested cases. Please direct all questions regarding this fee to OAH Clerk's Office (919-431-3000).]

G.S. 150B-23 provides that a party filing a petition must also serve a copy of the petition on all parties to the petition. Therefore, if you file a petition for a contested case hearing, you must serve a copy of the petition on the Department of Health and Human Services by mailing a copy of your petition to:

Emery Milliken
Department of Health and Human Services,
Office of Legal Affairs,
Adams Building – Room 154
2001 Mail Service Center
Raleigh, North Carolina, 27699-2001

It is requested that a copy of the petition also be served on the Certificate of Need Section.

The certificate of need will not be issued before the completion of this 30 day period ending January 21, 2014. If a contested case request is received within the thirty (30) day period, the certificate will not be issued until the appeal is resolved (10A NCAC 14C .0208).

The timetable for completion of the project is the timetable outlined in the certificate of need application, unless an adjustment has been made by the CON Section because the review period was extended. The timetable for this project is as follows:

Completion of Final Drawings _____	July 1, 2014
Obtain funds necessary to undertake project _____	October 1, 2014
Approval of Site by Construction Section, DHSR _____	November 28, 2014
Contract Award _____	December 1, 2014
25% Completion of Construction _____	March 11, 2015
Ordering Equipment _____	March 28, 2015
50% Completion of Construction _____	June 3, 2015
75% Completion of Construction _____	August 5, 2015
Arrival of Equipment _____	August 28, 2015
Completion of Construction _____	September 24, 2015
Operation of Equipment _____	October 24, 2015
Licensure/Certification of Facility _____	January 1, 2016

If the decision is appealed, the timetable set forth in this letter will be adjusted accordingly before the Certificate of Need is issued. Please contact us if any clarification of this decision is required.

Kelli Collins
Page 4
December 20, 2013

Please refer to the Project I.D. # and Facility I.D. # (FID) in all correspondence.

Sincerely,

Celia C. Inman, Project Analyst

Lisa Pittman, Team Leader
Certificate of Need Section

CCI:LP:mw

Attachment

cc: Medical Facilities Planning Section, DHSR
Acute & Home Care Licensure & Certification Section, DHSR
Construction Section, DHSR

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing notice of **conditional approval** on the following person by placing a copy in an official depository of the United States Postal Service in a postage-paid, first class envelope addressed as follows:

Kelli Collins
3820 North Elm Street
Greensboro, NC 27455

Project I.D. # G-10210-13
FID #130461

This the 20th day of December, 2013.

Celia C. Inman
Project Analyst

STATE OF NORTH CAROLINA

*Department of Health and Human Services
Division of Health Service Regulation*

CERTIFICATE OF NEED

for

Project Identification Number #G-10210-13

FID #130461

ISSUED TO: Surgical Center of Greensboro, LLC
3820 North Elm Street
Greensboro, NC 27455

Pursuant to N.C. Gen. Stat. § 131E-175, et. seq., the North Carolina Department of Health and Human Services hereby authorizes the person or persons named above (the "certificate holder") to develop the certificate of need project identified above. The certificate holder shall develop the project in a manner consistent with the representations in the project 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 10A NCAC 14C .0209. The certificate holder shall not exceed the maximum capital expenditure amount specified herein during the development of this project, except as provided by N.C. Gen. Stat. § 131E-176(16)e. The certificate holder shall not transfer or assign this certificate to any other person except as provided in N.C. Gen. Stat. § 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 N.C. Gen. Stat. § 131E-189 for any of the reasons provided in that law.

SCOPE: Relocate existing ASC within Greensboro to a replacement facility and add two procedure rooms/ Guilford County

CONDITIONS: See Reverse Side

PHYSICAL LOCATION: Surgical Center of Greensboro
705 Green Valley Road
Greensboro, NC 27408

MAXIMUM CAPITAL EXPENDITURE: \$22,974,569

TIMETABLE: See Reverse Side

FIRST PROGRESS REPORT DUE: October 1, 2014

This certificate is effective as of the 17th day of March, 2014


Interim Chief, Certificate of Need Section
Division of Health Service Regulation

CONDITIONS:

1. Surgical Center of Greensboro, LLC shall materially comply with all representations made in its certificate of need application.
2. Surgical Center of Greensboro, LLC shall relocate 13 operating rooms from two buildings to a single ambulatory surgical center which shall be licensed for no more than 13 dedicated outpatient operating rooms and two procedure rooms and no additional procedure rooms may be developed as part of this project and for one year (365 days) after the project is deemed complete by the Certificate of Need Section pursuant to G.S. 131E-181(d).
3. Surgical Center of Greensboro, LLC shall construct no more than 13 operating rooms in the replacement facility that meet licensure requirements for an operating room under the ambulatory surgical facility rules.
4. The procedure room shall only be used to perform procedures that are appropriate for that room based upon current standards of practice.
5. Procedures performed in the procedure rooms shall not be reported on the facility's license renewal application as procedures performed in an operating room.
6. Surgical Center of Greensboro, LLC shall not perform gastrointestinal endoscopy procedures in the procedure rooms.
7. Surgical Center of Greensboro, LLC shall meet all criteria to maintain accreditation of the ambulatory surgical facility from The Joint Commission, The Accreditation Association of Ambulatory Health Care or a comparable accreditation authority within two years following completion of the facility.
8. Surgical Center of Greensboro, LLC shall not acquire, as part of this project, any equipment that is not included in the project's proposed capital expenditure in Section VIII of the application or which would otherwise require a certificate of need.
9. Surgical Center of Greensboro, LLC 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. The plan must be consistent with the applicant's representations in the written statement as described in paragraph one of Policy GEN-4.
10. Surgical Center of Greensboro, LLC shall acknowledge acceptance of and agree to comply with all conditions stated herein in writing to the Certificate of Need Section prior to the issuance of the certificate of need.

TIMETABLE:

Completion of Final Drawings and Specifications _____	September 1, 2014
Obtain Funds Necessary to Undertake Project _____	December 1, 2014
Approval of Site by the Construction Section, DHSR _____	January 28, 2015
Contract Award _____	February 1, 2015
25% Completion of Construction _____	May 11, 2015
Ordering Equipment _____	May 28, 2015
50% Completion of Construction _____	August 3, 2015
75% Completion of Construction _____	October 5, 2015
Arrival of Equipment _____	October 28, 2015
Completion of Construction _____	November 24, 2015
Operation of Equipment _____	December 24, 2015
Licensure/Certification of Facility _____	March 1, 2016

December 30, 2025
Micheala Mitchell
Chief, Healthcare Planning and Certificate of Need
Page 7

Exhibit B

North Elam CON

State of North Carolina

Department of Health and Human Services
Division of Health Service Regulation

Certificate of Need

for

Project ID #: G-11895-20

FID #: 200291

ISSUED TO: The Moses H. Cone Memorial Hospital
North Elam Ambulatory Surgery Center, LLC

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: Develop a new separately licensed freestanding ASF on the Wesley Long campus by re-licensing five existing hospital-based ORs at Wesley Long Surgery Center which are currently on the Cone Health license / Guilford County

CONDITIONS: See Reverse Side

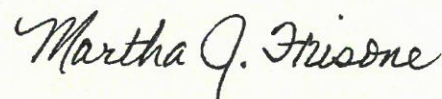
PHYSICAL LOCATION: North Elam Ambulatory Surgery Center
509 N. Elam Avenue
Greensboro, NC 27403

CAPITAL EXPENDITURE: \$7,715,777

TIMETABLE: See Reverse Side

FIRST PROGRESS REPORT DUE: January 1, 2021

This certificate is effective as of August 21, 2020



Martha J. Frisone, Chief

CONDITIONS:

1. The Moses H. Cone Memorial Hospital and North Elam Ambulatory Surgery Center, LLC shall materially comply with all representations made in the certificate of need application.
2. The Moses H. Cone Memorial Hospital and North Elam Ambulatory Surgery Center, LLC shall develop a freestanding multispecialty ambulatory surgical facility by re-licensing no more than five hospital-based operating rooms from Wesley Long Surgery Center on the Cone Health Wesley Long Hospital campus.
3. Upon project completion, North Elam Ambulatory Surgery Center shall be licensed for no more than five operating rooms.
4. The Moses H. Cone Memorial Hospital shall take the necessary steps to delicense the Wesley Long Surgery Center's five operating rooms on the Cone Health License #H0159. The Cone Health License #H0159 shall have a total of 41 operating rooms upon completion of this project and Project ID #G-11104-15 (de-license four of seven licensed shared ORs at Women's Hospital).
5. The Moses H. Cone Memorial Hospital and North Elam Ambulatory Surgery Center, LLC 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. North Elam Ambulatory Surgery Center shall receive accreditation from the Joint Commission for the Accreditation of Healthcare Organizations, the Accreditation Association for Ambulatory Health Care or a comparable accreditation authority within two years following licensure of the facility.
7. For the first three years of operation following completion of the project, The Moses H. Cone Memorial Hospital and North Elam Ambulatory Surgery Center, LLC shall not increase charges more than 5% of the charges projected in Section Q of the application without first obtaining a determination from the Healthcare Planning and Certificate of Need Section that the proposed increase is in material compliance with the representations in the certificate of need application.
8. The Moses H. Cone Memorial Hospital and North Elam Ambulatory Surgery Center, LLC 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.
9. No later than three months after the last day of each of the first three full fiscal years of operation following initiation of the services authorized by this certificate of need, The Moses H. Cone Memorial Hospital and North Elam Ambulatory Surgery Center, LLC shall submit, on the form provided by the Healthcare Planning and Certificate of Need Section, an annual report containing the:
 - a. Payor mix for the services authorized in this certificate of need.
 - b. Utilization of the services authorized in this certificate of need.
 - c. Revenues and operating costs for the services authorized in this certificate of need.
 - d. Average gross revenue per unit of service.
 - e. Average net revenue per unit of service.
 - f. Average operating cost per unit of service.

(Project I.D. # G-11895-20 Cont.)

10. The Moses H. Cone Memorial Hospital and North Elam Ambulatory Surgery Center, LLC shall acknowledge acceptance of and agree to comply with all conditions stated herein to the Agency in writing prior to issuance of the certificate of need.

A letter acknowledging acceptance of and agreeing to comply with all conditions stated in the conditional approval letter was received by the Agency on August 24, 2020.

Timetable

	Milestone	Date mm/dd/yyyy
1	Drawings Completed	12/01/2020
2	Construction / Renovation Contract(s) Executed	12/15/2020
3	25% of Construction / Renovation Completed (25% of the cost is in place)	05/15/2021
4	50% of Construction / Renovation Completed	10/15/2021
5	75% of Construction / Renovation Completed	03/15/2022
6	Construction / Renovation Completed	09/01/2022
7	Equipment Ordered	05/11/2022
8	Equipment Operational	09/01/2022
9	Building / Space Occupied	09/15/2022
10	Licensure Obtained	08/30/2022
11	Services Offered	10/01/2022
12	Medicare and / or Medicaid Certification Obtained	04/15/2023
13	Facility or Service Accredited	04/15/2023
14	First Annual Report Due*	12/31/2023

State of North Carolina

Department of Health and Human Services
Division of Health Service Regulation

Certificate of Need

for

Project ID #: G-12523-24

FID #: 200291

ISSUED TO: North Elam Ambulatory Surgery Center, LLC
The Moses H. Cone Memorial Hospital

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: Cost overrun for Project ID# G-11895-20 (develop an ambulatory surgical facility) / Guilford County

CONDITIONS: See Reverse Side

PHYSICAL LOCATION: North Elam Ambulatory Surgery Center
509 N. Elam Avenue
Greensboro, NC 27403

CAPITAL EXPENDITURE: \$11,205,972

TIMETABLE: See Reverse Side

FIRST PROGRESS REPORT DUE: March 3, 2025

This certificate is effective as of September 20, 2024



Micheala Mitchell, Chief

CONDITIONS:

- 1. North Elam Ambulatory Surgery Center, LLC and The Moses H. Cone Memorial Hospital (hereinafter certificate holder) shall materially comply with the representations in this application and the representations in Project ID # G-11895-20. Where representations conflict, the certificate holder shall materially comply with the last made representation.**
- 2. The total combined capital expenditure for both projects is \$18,921,749, an increase of \$11,205,972 over the capital expenditure of \$7,715,777 previously approved in Project ID #G-11895-20.**
- 3. The certificate holder shall develop a freestanding multispecialty ambulatory surgical facility by re-licensing no more than five hospital-based operating rooms from Wesley Long Surgery Center on the Cone Health Wesley Long Hospital campus.**
- 4. Upon project completion, North Elam Ambulatory Surgery Center shall be licensed for no more than five operating rooms.**
- 5. Upon completion of this project and Project ID # G-11895-20, the certificate holder shall take the necessary steps to delicense Wesley Long Surgery Center's five operating rooms on the Cone Health License #H0159.**
- 6. The certificate holder shall not acquire as part of this project and Project ID # G-11895-20 any equipment that is not included in the combined proposed capital expenditure in Section Q of the application and that would otherwise require a certificate of need.**
- 7. North Elam Ambulatory Surgery Center shall receive accreditation from the Joint Commission for the Accreditation of Healthcare Organizations, the Accreditation Association for Ambulatory Health Care or a comparable accreditation authority within two years following licensure of the facility.**
- 8. For the first three years of operation following completion of the project, the certificate holder shall not increase charges more than 5% of the charges projected in Section Q of this application, in Project ID # G-11895-20, and in any supplemental responses without first obtaining a determination from the Healthcare Planning and Certificate of Need Section that the proposed increase is in material compliance with the representations in the certificate of need application.**
- 9. The certificate holder shall develop and implement an Energy Efficiency and Sustainability Plan for this project and Project ID # G-11895-20 that conforms to or exceeds energy efficiency and water conservation standards incorporated in the latest editions of the North Carolina State Building Codes.**
- 10. The procedure room shall not be used for procedures that should be performed only in an operating room based on current standards of practice.**
- 11. Procedures performed in the procedure room shall not be reported for billing purposes as having been performed in an operating room and shall not be reported on the facility's license renewal application as procedures performed in an operating room.**
- 12. Progress Reports:**

(G-12523-24 Con't)

- 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 March 3, 2025.
13. The certificate holder shall acknowledge acceptance of and agree to comply with all conditions stated herein to the Agency in writing prior to issuance of the certificate of need.

A letter acknowledging of and agreeing to comply with all conditions stated in the conditional approval letter was received by the Agency on August 30, 2024.

Timetable

	Milestone	Date <i>mm/dd/yyyy</i>
1	Drawings Completed	12/01/2024
2	Construction / Renovation Contract(s) Executed	12/15/2024
3	25% of Construction / Renovation Completed (25% of the cost is in place)	4/1/2025
4	50% of Construction / Renovation Completed	7/1/2025
5	75% of Construction / Renovation Completed	10/1/2025
6	Construction / Renovation Completed	2/1/2026
7	Equipment Ordered	2/1/2025
8	Equipment Installed	2/1/2026
9	Equipment Operational	3/1/2026
10	Licensure Obtained	4/1/2026
11	Services Offered	4/1/2026
12	Medicare and / or Medicaid Certification Obtained	9/1/2026
13	Facility or Service Accredited	9/1/2026

Exhibit C

Facility Name/Address	County	Current Owner(s)	Ownership Following Phase I	Ownership Following Phase II
Surgical Center of Greensboro, LLC 705 Green Valley Road Greensboro, NC 27408	Guilford	Physician Members (64.28%) NSC Greensboro, LLC (owned by SCAH) (35.72%)	Physician Members (64.28%) NSC Greensboro, LLC (owned by SCAH) (16.11%) JV HoldCo (owned by Cone Health and SCAH) (19.61%)	Physician Members (49%) JV HoldCo (owned by Cone Health and SCAH) (51%)
North Elam Ambulatory Surgery Center, LLC 509 N. Elam Ave, Greensboro, NC 27403	Guilford	The Moses H. Cone Memorial Hospital (100%)	The Moses H. Cone Memorial Hospital(40.8%) JV HoldCo (owned by The Moses H. Cone Memorial Hospital and SCAH) (10.2%) Physician Members (49%)	Physician Members (49%) JV HoldCo (owned by The Moses H. Cone Memorial Hospital and SCAH) (51%)

December 30, 2025
Micheala Mitchell
Chief, Healthcare Planning and Certificate of Need
Page 9

Exhibit D

2015 Vidant No Review



North Carolina Department of Health and Human Services
Division of Health Service Regulation

Pat McCrory
Governor

Aldona Z. Wos, M.D.
Ambassador (Ret.)
Secretary DHHS

Drexdal Pratt
Division Director

August 12, 2015

Gary S. Qualls
K&L Gates, LLP
Post Office Box 14210
Research Triangle Park, North Carolina 27709-4210

William R. Shenton
Poyner Spruill
Post Office Box 1801
Raleigh, North Carolina 27602-1801

Exempt from Review

Record #: 1689
Business Name: Vidant Radiation Oncology
Business #: 2249
Project Description: Acquisition by Vidant Radiation Oncology of the linear accelerators and other equipment owned by NewCo Cancer Services, LLC and North Carolina Radiation Therapy Management Services, LLC (NCRT)
County: Pitt

Dear Messrs. Qualls and Shenton:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency), determined that based on your letter of July 31, 2015, the above referenced proposal is exempt from certificate of need review in accordance with G.S 131E-184(a)(8). Therefore, you may proceed to offer, develop or establish the above referenced project without a certificate of need.

However, you need to contact the Agency's Construction and Acute and Home Care Licensure and Certification Sections to determine if they have any requirements for development of the proposed project.



Healthcare Planning and Certificate of Need Section

www.ncdhhs.gov

Telephone: 919-855-3873 • Fax: 919-715-4413

Location: Edgerton Building • 809 Ruggles Drive • Raleigh, NC 27603

Mailing Address: 2704 Mail Service Center • Raleigh, NC 27699-2704

An Equal Opportunity/ Affirmative Action Employer



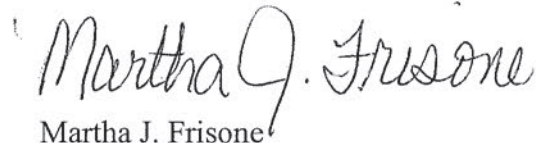
It should be noted that this determination is binding only for the facts represented by you. Consequently, if changes are made in the project or in the facts provided in your correspondence referenced above, a new determination as to whether a certificate of need is required would need to be made by the Agency. Changes in a project include, but are not limited to: (1) increases in the capital cost; (2) acquisition of medical equipment not included in the original cost estimate; (3) modifications in the design of the project; (4) change in location; and (5) any increase in the number of square feet to be constructed.

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

Sincerely,



Jane Rhoe-Jones
Project Analyst



Martha J. Frisone
Assistant Chief, Certificate of Need

cc: Acute and Home Care Licensure and Certification Section, DHSR
Construction Section, DHSR
Assistant Chief, Healthcare Planning

K&L|GATES

K&L Gates LLP
Post Office Box 14210
Research Triangle Park, NC 27709-4210

430 Davis Drive, Suite 400
Morrisville, NC 27560

T 919.466.1190 www.klgates.com



Gary S. Qualls
D 919.466.1182
F 919.516.2072
gary.qualls@klgates.com

Via Hand Delivery

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

Martha Frisone
Assistant Chief, 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, North Carolina 27603

RE: No Review Request - Joint Venture between Vidant and 21st Century Oncology Affiliate

Dear Ms. Carraway and Ms. Frisone:

On behalf of our client, Pitt County Memorial Hospital, Incorporated, d/b/a Vidant Medical Center ("Vidant"), along with William Shenton, who is counsel for 21st Century Oncology and its North Carolina affiliate, North Carolina Radiation Therapy Management Services, LLC ("NCRT"), enclosed please find an attachment describing a No Review Request for a potential joint venture between Vidant and NCRT.

As indicated in the No Review Request, we do not believe that this joint venture is subject to certificate of need review. Thank you in advance for your attention, and please let me know if you have any questions.

Sincerely,

Gary S. Qualls

cc: William Shenton

Attachments

Poyner Spruill^{LLP}

July 31, 2015

William R. Shenton
Partner
D: 919.783.2947
F: 919.783.1075
wshenton@poynerspruill.com

Shelley Carraway
Chief
Healthcare Planning and Certificate of Need Section
NC Department of Health and Human Services
2704 Mail Service Center
Raleigh, NC 27699-2704

Martha Frisone
Asst. Chief
Certificate of Need
NC Department of Health and Human Services
2704 Mail Service Center
Raleigh, NC 27699-2704

RE: No Review Request – Joint Venture between Vidant and 21st Century Oncology Affiliate

Dear Ms. Carraway and Ms. Frisone:

I am writing as counsel for 21st Century Oncology and its North Carolina affiliate, North Carolina Radiation Therapy Management Services, LLC ("NCRT"), to transmit, along with Gary Qualls and Colleen Crowley, who are counsel for Vidant Medical Center, a No-Review request for your consideration. Vidant and NCRT are planning to implement a joint venture which will entail the combination of their respective freestanding radiation equipment and services in the Greenville area into a new limited liability company, called Vidant Radiation Oncology.

The enclosed document describes the steps in the transaction, and as we indicate this joint venture should not be subject to certificate of need review. We appreciate your attention to this request and please feel free to contact counsel for either of the parties if you should have any questions or need further clarification.

Very truly yours,



William R. Shenton
Partner

**No Review Request for Joint Venture between
Vidant Health and 21st Century Oncology**

The purpose of this request is to inform the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Healthcare Planning and Certificate of Need Section (the “Agency”) of a planned joint venture between Pitt County Memorial Hospital, Incorporated, d/b/a Vidant Medical Center (“Vidant”) and North Carolina Radiation Therapy Management Services, LLC (“NCRT”),¹ involving the combination of their existing, freestanding radiation oncology equipment and services into a single joint venture limited liability company to be named Vidant Radiation Oncology (“VRO”). We ask that the Agency confirm that this joint venture is not reviewable as a new institutional health service under the North Carolina Certificate of Need (“CON”) law.

STATEMENT OF FACTS

By way of background, NewCo Cancer Services LLC (“NewCo”), d/b/a Leo Jenkins Cancer Center (“Cancer Center”), a 50/50 joint venture between East Carolina University Brody School of Medicine (“ECU”) and Vidant, owns and operates two existing linear accelerators (“linacs”) and CT simulators, pursuant to CON Project I.D. Q-8562-10. See Certificate of Need attached as Exhibit 1 and Exemption Request and Approval to Replace a CT Simulator attached as Exhibit 2. Vidant also owns and operates a Cyberknife linac, which is operated as a freestanding radiation treatment service at the Cancer Center, pursuant to CON Project I.D. Q-8558-10 and Material Compliance letter dated May 19, 2011. See Certificate of Need attached as Exhibit 3 and Material Compliance Letter attached as Exhibit 4.

NCRT owns and operates two existing linacs as part of NC Radiation Therapy-Greenville. See Declaratory Ruling and Exemption attached as Exhibits 5 and 6.

¹ NCRT is a controlled affiliate of 21st Century Oncology.

First, Vidant seeks to obtain full ownership of the two linacs and CT simulators currently owned by NewCo and located at the Cancer Center. NewCo will continue to exist after Vidant obtains 100% ownership of the linacs and simulators. Once Vidant obtains full ownership, the same equipment will be used to provide the same radiation oncology services, in the same location.

Second, as part of a joint venture, Vidant and NCRT will be combining and contributing their existing freestanding radiation oncology services, medical equipment (including the 5 linacs, one of which is a Cyberknife linac) and related assets to the newly created VRO. After the joint venture transaction occurs, all of the equipment will continue to be operated in the same two locations as described above.² Therefore, as a result of these two steps (collectively, the “Transaction”), no linacs will be relocated or added to Linear Accelerator Service Area 27, as defined by the 2015 State Medical Facilities Plan (“SMFP”).

DISCUSSION

I. Obtaining NewCo’s Interest in the Equipment Does Not Require a CON.

As Step #1 to the Transaction, Vidant seeks to acquire 100% ownership of the two linacs and simulators currently owned by NewCo. A separate, third party will not be obtaining ownership of the linacs and simulators. Instead, Vidant, the 50% owner of the equipment, will now become the 100% owner. The linacs and simulators will continue to be operated at the Cancer Center in the same manner they are currently being operated.

The purchase of NewCo’s interest in the two linacs and simulators does not involve the offering or expansion of any new facility, service or equipment, and the State’s inventory of linacs will not change. No new or additional linacs will be acquired or placed in operation in the

² While at some point in the future VRO may seek to relocate equipment, it would not do so unless and until all necessary approvals are obtained from the Agency.

State. As detailed below in Section II, this is similar to membership change in the ownership of regulated equipment and a CON is not required.

II. Creating VRO as a Conduit for Ownership is Not Regulated Under CON Law.

Likewise, Step 2 in the Transaction -- Vidant and NCRT contributing their respective linacs to VRO -- does not require a CON. The CON statute provides a lengthy and exclusive list of activities that constitute development of a new institutional health service, requiring a CON. The joint venture of two existing entities that already actively provide health services is not included on that list. Pursuant to a well-established maxim of statutory construction, *expressio unius est exclusio alterius*, those transactions not included in N.C. Gen. Stat. § 131E-176(16) do not require a CON. *See, e.g., In re Miller*, 357 N.C. 316, 325, 584 S.E.2d 772, 780 (2003) (stating that “[u]nder the doctrine of *expressio unius est exclusio alterius*, when a statute lists the situations to which it applies, it implies the exclusion of situations not contained in the list”); *see also Jackson v. A Woman’s Choice, Inc.*, 130 N.C. App. 590, 594, 503 S.E.2d 422, 425 (1998) (internal citations omitted) (“Where a statute is explicit on its face, the courts have no authority to impose restrictions that the statute does not expressly contain.”).

Here, Vidant and NCRT will place the ownership rights of all five linacs into the joint venture, VRO. NCRT will own 50% of VRO and Vidant will own 50% of VRO. Therefore, both Vidant and NCRT will continue to own the linacs through their respective ownership of VRO.

Previous Declaratory Rulings and No Review Decisions demonstrate that the Agency and the Division of Health Service Regulation have already determined that a CON is not required for similar membership interest changes pertaining to CON regulated equipment. *See Id.*, attached as Exhibit 7; *In re: Request for Declaratory Ruling by Wake Radiology Oncology*

Services, PLLC, et al., attached as Exhibit 8; *In re: Request for Declaratory Ruling by Radiation Therapy Services, Inc. et al.*, attached as Exhibit 9; *No Review/WakeMed/Acquisition of Ownership Interest of CSA-1, Owners of Five Heart-Lung Bypass Machines Located in WakeMed/Wake County* attached as Exhibit 10; and *No Review /Rex Hospital, Inc./Acquisition of Ownership Interests of CSAMS Lake Boone, LLC, Owners of Three Heart-Lung Bypass Machines Located at Rex Hospital/Wake County* attached as Exhibit 11.

Likewise, here, Vidant and NCRT's joint venture does not constitute the acquisition of a linac. In fact, the underlying linac ownership will be essentially the same. Unlike some of the prior situations referenced above that were determined not to be subject to CON review, Vidant and NCRT will still retain an ownership interest in the linacs. No separate third party will be acquiring any ownership interest in the equipment. The same parties will retain ownership of all five linacs (now through the joint conduit of VRO); and the linacs will remain in the same location, and will still be used to serve patients in the same manner.

A "new institutional health service" includes "the acquisition by purchase, donation, lease, transfer, or comparable arrangement . . . by or on behalf of any person" a linear accelerator and simulator. N.C. Gen. Stat. § 131E-176(16)(f1)(5a) and (f1)(9). However, the transaction contemplated here will not constitute the acquisition of a linear accelerator as defined by N.C. Gen. Stat. § 131E-176(16). Ownership of the radiation therapy equipment will largely be unaffected by this transaction. That equipment will continue to be owned, in part, by the same entities both before and after this transaction. VRO will be owned by Vidant and NCRT. VRO will merely be the new ownership conduit through which NCRT and Vidant continue to own the radiation oncology treatment equipment.

A fundamental concept of corporate law is that the owners of corporate stock are distinct from the corporation itself. *See* Robinson on North Carolina Corporate Law, § 2.08 (“A corporation is a legal entity separate and distinct from its shareholders.”) By design, LLC members also stand in a position similar to corporate shareholders. *Id.* at § 34.03[3]. Consequently, under the general principles of business organizations law governing LLC membership interests, the members of an LLC are legally distinct from the LLC itself. *Id.* at § 34.05[1] (“A membership interest may be acquired directly from the LLC or by assignment from another holder”).

Vidant and NCRT are merely placing their collective ownership interests into one joint venture and will then each retain a percentage share of the ownership of the joint venture. Therefore, this transaction cannot constitute the acquisition of a linear accelerator because Vidant and NCRT will retain ownership of their respective equipment through the VRO.

CONCLUSION

Based on the discussion herein, Vidant and NCRT request that the Agency provide confirmation that no CON is required for the proposed Transaction described above.

EXHIBITS

1. Certificate of Need CON Project I.D. Q-8562-10
2. Exemption Request (without exhibits) and Approval to Replace CT Simulator
3. Certificate of Need CON Project I.D. Q-8558-10
4. Material Compliance Letter dated May 19, 2011
5. NC Radiation Therapy-Greenville 2007 Declaratory Ruling
6. NC Radiation Therapy-Greenville's 2009 Certificate of Need Exemption
7. *Declaratory Ruling for the Charlotte-Mecklenburg Hospital Authority d/b/a/Carolinas Healthcare System, November 4, 2011*
8. *In re: Request for Declaratory Ruling by Wake Radiology Oncology Services, PLLC, et al.*
9. *In re: Request for Declaratory Ruling by Radiation Therapy Services, Inc. et. al.*
10. *No Review/WakeMed/Acquisition of Ownership Interest of CSA-1, Owners of Five Heart-Lung Bypass Machines Located in WakeMed/Wake County*
11. *No Review /Rex Hospital, Inc./Acquisition of Ownership Interests of CSAMS Lake Boone, LLC, Owners of three Heart-Lung Bypass Machines Located at Rex Hospital/Wake County*

STATE OF NORTH CAROLINA

*Department of Health and Human Services
Division of Health Service Regulation*

CERTIFICATE OF NEED

for

Project Identification Number #Q-8562-10

FID #100878

ISSUED TO: NewCo Cancer Services, LLC
P.O. Box 6028
Greenville, NC 27835

Pursuant to N.C. Gen. Stat. § 131E-175, et. seq., the North Carolina Department of Health and Human Services hereby authorizes the person or persons named above (the "certificate holder") to develop the certificate of need project identified above. The certificate holder shall develop the project in a manner consistent with the representations in the project application and with the conditions contained herein and shall make good faith efforts to meet the timetable contained herein. The certificate holder shall not exceed the maximum capital expenditure amount specified herein during the development of this project, except as provided by N.C. Gen. Stat. § 131E-176(16)e. The certificate holder shall not transfer or assign this certificate to any other person except as provided in N.C. Gen. Stat. § 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 N.C. Gen. Stat. § 131E-189 for any of the reasons provided in that law.

SCOPE: NewCo Cancer Services shall acquire two existing linear accelerators, CT simulator, and related equipment, and multispecialty oncology physician practices from East Carolina University Brody School of Medicine/ Pitt County

CONDITIONS: See Reverse Side

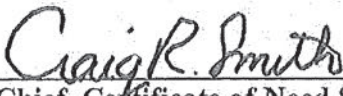
PHYSICAL LOCATION: Pitt County Memorial Hospital
600 Moye Boulevard
Greenville, NC 27834

MAXIMUM CAPITAL EXPENDITURE: \$9,700,000

TIMETABLE: See Reverse Side

FIRST PROGRESS REPORT DUE: May 1, 2011

This certificate is effective as of the 30th day of December, 2010



Chief, Certificate of Need Section
Division of Health Service Regulation

CONDITIONS:

1. NewCo Cancer Services, LLC shall materially comply with all representations made in its application.
2. NewCo Cancer Services, LLC shall not acquire, as part of this project, any equipment that is not included in the project's proposed capital expenditure in Section VIII of the application or which would otherwise require a certificate of need.
3. NewCo Cancer Services, LLC shall acknowledge acceptance of and agree to comply with all conditions stated herein to the Certificate of Need Section in writing prior to the issuance of the certificate of need.

A letter acknowledging acceptance of and agreeing to comply with all conditions stated in the conditional approval letter was received by the Certificate of Need Section on December 6, 2010.

TIMETABLE:

Occupancy/Offering of service(s) _____ April 1, 2011



**North Carolina Department of Health and Human Services
Division of Health Service Regulation**

Pat McCrory
Governor

Aldona Z. Wos, M.D.
Ambassador (Ret.)
Secretary DHHS

Drexdal Pratt
Division Director

September 13, 2013

Jeffrey Shovelin, Director of Corporate Planning
Vidant Health
Post Office Box 2068
Greenville, North Carolina 27835-6028

Exempt from Review - Replacement Equipment

Facility or Business: Vidant Medical Center
Project Description: Replace CT Scanner and CT Simulator at the Leo Jenkins Cancer Center
County: Pitt
FID #: 933410

Dear Mr. Shovelin:

In response to your letter of August 14, 2013, the above referenced proposal is exempt from certificate of need review in accordance with N.C.G.S 131E-184(a)(7). Therefore, you may proceed to acquire, without a certificate of need, the GE Optima CT580 16 Slice CT Simulator to replace the existing Siemens SimView CT Scanner. This determination is based on your representations that the existing unit will be removed from North Carolina and will not be used again in the State without first obtaining a certificate of need. Further please be advised that as soon as the replacement equipment is acquired, you must provide the CON Section and the Medical Facilities Planning Section with the serial number of the new equipment to update the inventory, if not already provided.

Moreover, you need to contact the Acute and Home Care Licensure and Certification Section and the Construction Section to determine if they have any requirements for development of the proposed project.

It should be noted that this Agency's position is based solely on the facts represented by you and that any change in facts as represented would require further consideration by this Agency and a separate determination. If you have any questions concerning this matter, please feel free to contact this office.



Certificate of Need Section

www.ncdhhs.gov

Telephone: 919-855-3873 • Fax: 919-733-8139

Location: Edgerton Building • 809 Ruggles Drive • Raleigh, NC 27603

Mailing Address: 2704 Mail Service Center • Raleigh, NC 27699-2704

An Equal Opportunity/ Affirmative Action Employer



Jeffrey Shovelin
September 13, 2013
Page 2

Sincerely,


Jane Rhoe-Jones
Project Analyst


Craig R. Smith, Chief
Certificate of Need Section

cc: Acute and Home Care Licensure and Certification, DHSR
Construction Section, DHSR
Medical Facilities Planning Branch, DSHR



Jane

VIDANT HEALTH™

August 29, 2013

Ms. Jane Rhoe-Jones
 Certificate of Need Section
 Division of Health Service Regulation
 NC Department of Health and Human Services
 2704 Mail Service Center
 Raleigh, NC 27699-2704



RE: Request for "No Review" for Replacement CT Scanner and CT Simulator at the Leo Jenkins Cancer Center

Dear Ms. Rhoe-Jones:

NewCo Cancer Services, LLC (NewCo), a joint venture between Vidant Medical Center and ECU's Leo Jenkins Cancer Center, plans to replace an existing CT simulator with new equipment. NewCo believes that the proposed equipment replacement is not subject to review under North Carolina's Certificate of Need (CON) laws.

The proposed project includes the replacement of a Siemens SimView CT scanner with a GE Optima CT580 16 slice CT simulator (see Appendix A for vendor quotes and Appendix B for equipment comparison table and brochure). The equipment will be secured through accumulated reserves. The reason for this replacement is due to age and the need for upgraded technology to provide optimal care. Only minor renovations are needed for the existing CT simulator suite (See Appendix C for drawings and construction estimate). The total capital costs for the proposed replacement is estimated to be \$ 1,147,781 (see Appendix D for the Capital Cost Sheet). These costs include all expenses associated with the equipment and minor renovations. After the new scanner is operational, the existing equipment will be permanently removed from the facility and will no longer be exempt from CON law (see Appendix E for required documentation of equipment removal).

NewCo's proposed project meets the definition of replacement equipment found in G.S. 131E-176(22a). The total capital expenditure for the equipment is less than \$2,000,000 and the equipment being purchased is for the sole purpose of replacing comparable medical equipment. Since NewCo's proposal meets the definition of "replacement equipment", G.S. 131E-184(a)(7) exempts this project from review. Therefore, NewCo requests approval of a no review status for the proposed project.

If you require additional information or clarification, please contact me at (252)-847-3631.

Jeffrey Shovelin
 Director of Corporate Planning
 Vidant Health

STATE OF NORTH CAROLINA

*Department of Health and Human Services
Division of Health Service Regulation*

CERTIFICATE OF NEED

for

Project Identification Number #Q-8558-10

FID #933410

**ISSUED TO: Pitt County Memorial Hospital, Inc.
P.O. Box 6028
Greenville, NC 27835**

Pursuant to N.C. Gen. Stat. § 131E-175, et. seq., the North Carolina Department of Health and Human Services hereby authorizes the person or persons named above (the "certificate holder") to develop the certificate of need project identified above. The certificate holder shall develop the project in a manner consistent with the representations in the project application and with the conditions contained herein and shall make good faith efforts to meet the timetable contained herein. The certificate holder shall not exceed the maximum capital expenditure amount specified herein during the development of this project, except as provided by N.C. Gen. Stat. § 131E-176(16)e. The certificate holder shall not transfer or assign this certificate to any other person except as provided in N.C. Gen. Stat. § 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 N.C. Gen. Stat. § 131E-189 for any of the reasons provided in that law.

SCOPE: Pitt County Memorial Hospital shall acquire a CyberKnife radiosurgery system and related equipment from East Carolina University Brody School of Medicine/ Pitt County

CONDITIONS: See Reverse Side


**PHYSICAL LOCATION: Pitt County Memorial Hospital
600 Moye Boulevard
Greenville, NC 27834**

MAXIMUM CAPITAL EXPENDITURE: \$4,750,000

TIMETABLE: See Reverse Side

FIRST PROGRESS REPORT DUE: May 1, 2011

This certificate is effective as of the 30th day of December, 2010



Chief, Certificate of Need Section
Division of Health Service Regulation

STATE OF NORTH CAROLINA

*Department of Health and Human Services
Division of Health Service Regulation*

CERTIFICATE OF NEED

for

Project Identification Number #Q-8558-10

FID #933410

**ISSUED TO: Pitt County Memorial Hospital, Inc.
P.O. Box 6028
Greenville, NC 27835**

Pursuant to N.C. Gen. Stat. § 131E-175, et. seq., the North Carolina Department of Health and Human Services hereby authorizes the person or persons named above (the "certificate holder") to develop the certificate of need project identified above. The certificate holder shall develop the project in a manner consistent with the representations in the project application and with the conditions contained herein and shall make good faith efforts to meet the timetable contained herein. The certificate holder shall not exceed the maximum capital expenditure amount specified herein during the development of this project, except as provided by N.C. Gen. Stat. § 131E-176(16)e. The certificate holder shall not transfer or assign this certificate to any other person except as provided in N.C. Gen. Stat. § 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 N.C. Gen. Stat. § 131E-189 for any of the reasons provided in that law.

SCOPE: Pitt County Memorial Hospital shall acquire a CyberKnife radiosurgery system and related equipment from East Carolina University Brody School of Medicine/ Pitt County

CONDITIONS: See Reverse Side


**PHYSICAL LOCATION: Pitt County Memorial Hospital
600 Moye Boulevard
Greenville, NC 27834**

MAXIMUM CAPITAL EXPENDITURE: \$4,750,000

TIMETABLE: See Reverse Side

FIRST PROGRESS REPORT DUE: May 1, 2011

This certificate is effective as of the 30th day of December, 2010



Chief, Certificate of Need Section
Division of Health Service Regulation

CONDITIONS:

1. Pitt County Memorial Hospital, Incorporated shall materially comply with all representations made in its application.
2. Pitt County Memorial Hospital, Incorporated shall not acquire, as part of this project, any equipment that is not included in the project's proposed capital expenditure in Section VIII of the application or which would otherwise require a certificate of need.
3. Pitt County Memorial Hospital, Incorporated shall acknowledge acceptance of and agree to comply with all conditions stated herein to the Certificate of Need Section in writing prior to the issuance of the certificate of need.

A letter acknowledging acceptance of and agreeing to comply with all conditions stated in the conditional approval letter was received by the Certificate of Need Section on December 6, 2010.

TIMETABLE:

Occupancy/Offering of service(s) _____ January 1, 2011



North Carolina Department of Health and Human Services
Division of Health Service Regulation
Certificate of Need Section
 2704 Mail Service Center ■ Raleigh, North Carolina 27699-2704

Beverly Eaves Perdue, Governor
 Lanier M. Cansler, Secretary

www.ncdhhs.gov/dhsr

Craig R. Smith, Section Chief
 Phone: 919-855-3873
 Fax: 919-733-8139

May 19, 2011

Mr. Jeff Shovelin, Director of Corporate Planning
 Pitt County Memorial Hospital
 2100 Stantonsburg Road
 Greenville, NC 27835

RE: Material Compliance/ Project I.D. # Q-8558-10 Pitt County Memorial Hospital shall acquire a CyberKnife radiosurgery system and related equipment from East Carolina University Brody School of Medicine/ Change from operating the CyberKnife as a hospital-based service to a freestanding radiation treatment center/ Pitt County
 FID # 933410

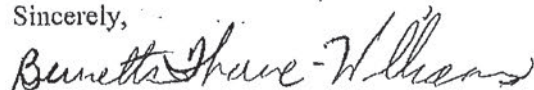
Dear Mr. Shovelin:

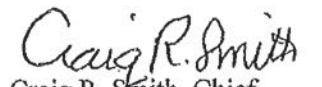
In response to your correspondence dated April 18, 2011 regarding the above referenced project, the Certificate of Need Section has determined that the proposed change is in material compliance with representations made in the application. These changes include obtaining an additional NPI number and new Medicare and Medicaid identification numbers to operate the CyberKnife service as a freestanding radiation treatment center at the same location in the Leo W. Jenkins Cancer Center. This change in operating status does not constitute a change in the equipment to be acquired from East Carolina University Brody School of Medicine. However, you should contact the Construction Section of the Division of Health Service Regulation to determine if they have any requirements pertinent to the proposed change.

It should be noted that this Agency's position is based solely on the facts represented by you and that any change in facts as represented would require further consideration by this Agency and a separate determination.

If you have any questions concerning this matter, please feel free to contact this office. Please refer to the Project I.D.# and Facility I.D.# (FID) in all correspondence.

Sincerely,


 Bernetta Thorne-Williams, Project Analyst


 Craig R. Smith, Chief
 Certificate of Need Section

cc: Medical Facilities Planning Section, DHSR
 Construction Section, DHSR
 Acute Care Licensure and Certification Section, DHSR



PITT COUNTY MEMORIAL HOSPITAL
University Health Systems of Eastern CarolinaSM

April 18, 2010

Mr. Craig Smith, Chief
Certificate of Need Section, Division of Health Service Regulation
North Carolina Department of Health and Human Services
2704 Mail Service Center
Raleigh, NC 27699-2704

Re: Notification of a minor project change to Project ID #Q-8558-10 / Pitt County Memorial Hospital, Inc. / Acquire CyperKnife (linear accelerator) from Brody School of Medicine / Pitt County FID#933410

Dear Mr. Smith:

This letter serves as notification of a minor project change in approved Project ID #Q-8558-10 / Pitt County Memorial Hospital, Inc. / Acquire CyperKnife (linear accelerator) from Brody School of Medicine / Pitt County. We believe the change outlined below does not constitute a material difference in the representations made in the original CON. The change was necessary to comply with the new CMS Life Safety Code Requirements effective February, 2011.

Specifically, in the original application, Pitt County Memorial Hospital, Inc. (PCMH) stated the CyberKnife would be operated in its existing location in the existing Leo W. Jenkins Cancer Center (LWJCC) as a hospital-based service under the hospital's existing provider numbers. As a result of new CMS Life Safety Code Requirements effective February, 2011, the LWJCC does not meet the requirements for institutional space. Therefore, in its existing location, the CyberKnife cannot be operated as a hospital-based service without first incurring significant capital improvements.

To address this issue, PCMH will operate the CyberKnife in its current location, but instead of operating as a hospital-based service, PCMH will obtain an additional NPI number and new Medicare and Medicaid identification numbers to operate CyberKnife services as a freestanding radiation treatment center, doing business as "UHS CyberKnife". PCMH believes this change has not materially altered the approved CON as these changes do not require modifications to ownership, need, services to be provided, patients to be served, capital costs, staffing, time lines, or financial projections.

If you need additional information or have any questions, please do not hesitate to call me at (252) 847-3631 or email me directly at jshoveli@uhseast.com.

Sincerely,



Jeff Shovelin
Director of Corporate Planning,
University Health System of Eastern Carolina



North Carolina Department of Health and Human Services
Division of Health Service Regulation
Office of the Director

2701 Mail Service Center • Raleigh, North Carolina 27699-2701

Michael F. Easley, Governor
Dempsey Benton, Secretary

Robert J. Fitzgerald, Director
Phone: 919-855-3750
Fax: 919-733-2757

September 18, 2007

CERTIFIED MAIL

Susan H. Hargrove, Esquire
Smith, Anderson, Blount, Dorsett
Mitchell & Jernigan, L.L.P.
P.O. Box 2611
Raleigh, NC 27602-2611

RE: Declaratory Ruling for Radiation Therapy Services, Inc. and North Carolina Radiation
Therapy Management Services, Inc.

Dear Ms. Hargrove:

I am enclosing a Declaratory Ruling that you requested. If questions arise, do not
hesitate to let me know.

Sincerely,

Robert J. Fitzgerald

RJF:JH:peb

Enclosure

- cc: Jeff Horton, Chief Operating Officer, DHSR
- Lee Hoffman, Chief, Certificate of Need Section, DHSR
- Azzie Conley, Chief, Acute and Home Care Licensure and Certification Section, DHSR
- Marc Lodge, Special Deputy Attorney General, DOJ



Location: 701 Barbour Drive ■ Dorothea Dix Hospital Campus ■ Raleigh, N.C. 27603
An Equal Opportunity / Affirmative Action Employer



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

IN RE: REQUEST FOR DECLARATORY RULING BY RADIATION THERAPY SERVICES, INC. AND NORTH CAROLINA RADIATION THERAPY MANAGEMENT SERVICES, INC.))))))	DECLARATORY RULING
--	----------------------------	--------------------

I, Robert J. Fitzgerald, Director of the Division of Health Service Regulation (the "Department"), hereby issue this declaratory ruling to Radiation Therapy Services, Inc. d/b/a/ 21st Century Oncology ("RTS") and North Carolina Radiation Therapy Management Services, Inc. ("NC Radiation") (collectively "Petitioners") pursuant to N.C.G.S. § 150B-4, 10A NCAC 14A.0103, and the authority delegated to me by the Secretary of the North Carolina Department of Health and Human Services. Petitioners have filed a Declaratory Ruling Request (the "Request") asking the Department to issue a declaratory ruling that they may acquire all of the stock of Carolina Radiation and Cancer Treatment Center, Inc. ("CRTC") without certificate of need ("CON") review.

This ruling is binding on the Department and the person requesting it if the material facts stated in the Request are accurate and no material facts have been omitted from the request. The ruling applies only to this request. Except as provided by N.C.G.S. § 150B-4, the Department reserves the right to change the conclusions which are contained in this ruling. Susan H. Hargrove, Sean A. Timmons, and Jennifer B. Markhan of Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P., counsel for Petitioners, have requested this ruling on behalf of Petitioners and have provided the statement of facts upon which this ruling is based. The material facts as provided by counsel for Petitioners are set out below.

STATEMENT OF THE FACTS

Except as noted, the following statement of the facts is based on the representations of Petitioners in the Request.

Petitioner RTS is a Florida corporation. NC Radiation is a North Carolina corporation that is a wholly-owned subsidiary of RTS. Both have their principal business address in Fort Myers, Florida.

Petitioners wish to acquire 100% of the issued and outstanding stock of CRTC, which they state is a North Carolina corporation owned by Dr. Gordon Koltis that operates a radiation therapy facility for cancer patients. Petitioners describe CRTC as an oncology treatment center that, prior to 26 August 2005, would have been a "health service facility" as defined in N.C.G.S. § 131B-176(9b). S.L. 2005-325 eliminated oncology treatment centers from the category of "health service facilities," effective 26 August 2005.

Petitioners also state that CRTC "owns and operates two linear accelerators" and "one simulator." Request, p. 3. Footnote 1 to the Request states:

CRTC has represented to Petitioners that it entered into binding obligations to acquire the second linear accelerator prior to August 26, 2005, and that the acquisition of the second linear accelerator cost less than \$750,000, including the cost of the equipment, studies, surveys, designs, plans, working drawings, specifications, construction, installation, and other activities essential to acquiring and making operational the second linear accelerator.

I note from the files of the Department that the inventory report of linear accelerator equipment submitted by Carolina Radiation Medicine, P.A., certified and dated by Gordon G. Koltis on April 6, 2007, identifies only one linear accelerator owned by CRTC. The Department files do not contain any information concerning the purported second linear accelerator.

Petitioners represent that they have executed a stock purchase agreement by which NC Radiation will acquire 100% of the issued and outstanding capital stock of CRTC from Dr. Koltis. After closing the transaction, Petitioners state that CRTC will remain a separate corporate entity that is a wholly-owned subsidiary of NC Radiation. They state that CRTC will continue to operate its freestanding radiation therapy facility at the same location in Greenville, Pitt County, North Carolina, in the same manner in which it operated prior to the transaction in all material ways. Petitioners will pay more than two million dollars to purchase the CRTC stock. The closing of the transaction is conditioned on receiving confirmation from the Department that acquisition of the stock will not require a certificate of need.

ANALYSIS

N.C.G.S. § 131E-178 provides that no person shall offer or develop "a new institutional health service" without first obtaining a CON. N.G.C.S. § 131E-176(16) defines "new institutional health service" to include: (1) "The acquisition by purchase, donation, lease, transfer, or comparable arrangement" of a linear accelerator "by or on behalf of any person," N.G.C.S. § 131E-176(16)fl.5a, and (2) "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.G.S. § 131E-176(16)b.

The transaction described by Petitioners does not constitute the acquisition of a linear accelerator or a simulator by any person because ownership of the one reported linear accelerator and one reported simulator here will not change. CRTC will continue to be the owner of these two pieces of equipment, and CRTC's legal status as a corporate entity will not change.

Similarly, the transaction is not an obligation to develop or expand a health service or a health service facility, since Petitioners represent that CRTC will continue to operate at the same

location in a manner that is the same in all material respects as it operated prior to the transaction. In addition, pursuant to S.L. 2005-325, oncology treatment centers are not "health service facilities" for purposes of the CON law.

Finally, on the specific facts of this case, the transaction proposed by Petitioners is not "a capital expenditure . . . which relates to the provision of a health service" within the meaning of N.C.G.S. § 131E-176(16)b. The definition of "health service" specifically "does not include administrative and other activities that are not integral to clinical management." Petitioners' representations indicate that stock ownership of CRTC is not integral to the clinical management of CRTC, because in all material respects the operations of CRTC will not change.

I specifically except from this Ruling any conclusions as to the status or legality of the ownership of a purported second linear accelerator by CRTC. The Department has no notice of the existence or ownership of the second linear accelerator, and I make no finding that CRTC may acquire or operate, or has properly acquired and operated, a second linear accelerator without CON review.


CONCLUSION

For the foregoing reasons, assuming the statements of fact in the Request to be true, I conclude that the acquisition by Petitioners of 100% of the outstanding and issued stock of CRTC, in the manner represented by Petitioners in the Request, is not subject to CON review.

This ruling is subject to the condition that, after the transaction, CRTC continues to operate its freestanding radiation therapy facility at the same location in Greenville, Pitt County, North Carolina, in the same manner in which it operated prior to the transaction in all material ways.

This ruling is not intended to address, expand or validate any activities or status of CRTC with respect to the requirements of the CON law as it relates to CRTC. The ruling is limited to the specific facts presented in the Request. It specifically does not address the status of any linear accelerator that CRTC may own or claim to own.

This 14th day of September 2007.



Robert J. Fitzgerald, 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 a first-class, postage pre-paid envelope addressed as follows:

CERTIFIED MAIL

Susan H. Hargrove, Esq.
Smith, Anderson, Blount, Dorsett
Mitchell & Jernigan, L.L.P.
P.O. Box 2611
Raleigh, NC 27602-2611

This the 14th day of September, 2007.



Jeff Horton
Chief Operating Officer



North Carolina Department of Health and Human Services
 Division of Health Service Regulation
 Certificate of Need Section
 2704 Mail Service Center ■ Raleigh, North Carolina 27699-2704

Beverly Eaves Perdue, Governor
 Lanier M. Cansler, Secretary

www.ncdhhs.gov/dhsr

Lee Hoffman, Section Chief
 Phone: 919-855-3873
 Fax: 919-733-8139

June 29, 2009

Renee J. Montgomery, Partner
 Parker Poe Adams and Bernstein LLP
 Post Office Box 389
 Raleigh, NC 27602-0389

RE: Exempt from Review - Replacement Equipment/ Radiation Therapy Services, Inc. d/b/a 21st Century Oncology, North Carolina Radiation Therapy Management Services, Inc. and Carolina Radiation and Cancer Treatment Center, Inc./ Acquire a replacement linear accelerator for the second linear accelerator located at CRCTC in Greenville/ Pitt County

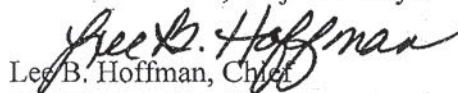
Dear Ms. Montgomery:

In response to your letters of June 23, 2009, November 18, 2008, and July 29, 2008, the above referenced proposal is exempt from certificate of need review in accordance with N.C.G.S 131E-184(a)(7). Therefore, you may proceed to acquire, without a certificate of need, the Varian 2100C, s/n 1167, to replace the existing Varian 2100C, s/n 527. This determination is based on your representations that the existing unit will be removed from North Carolina and will not be used again in the State without first obtaining a certificate of need.

It should be noted that this Agency's position is based solely on the facts represented by you and that any change in facts as represented would require further consideration by this Agency and a separate determination. If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,


 F. Gene DePorter, Project Analyst


 Lee B. Hoffman, Chief
 Certificate of Need Section

cc: Medical Facilities Planning Section, DHSR





North Carolina Department of Health and Human Services
Division of Health Service Regulation
Office of the Director
2701 Mail Service Center • Raleigh, North Carolina 27699-2701
<http://www.ncdhhs.gov/dhsr>

Beverly Eaves Perdue, Governor
Lanier M. Cansler, Secretary

Drexdal Pratt, Director
Phone: 919-855-3750
Fax: 919-733-2757

November 4, 2011

CERTIFIED MAIL & FACSIMILE

William W. Stewart, Esq.
K&L Gates LLP
430 Davis Drive, Suite 400
Morrisville, NC 27560

RE: Declaratory Ruling for The Charlotte-Mecklenburg Hospital Authority
d/b/a Carolinas Healthcare System

Dear Mr. Stewart:

I am enclosing a Declaratory Ruling that you requested. If questions arise, do not hesitate to let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Drexdal Pratt", with a long horizontal flourish extending to the right.

Drexdal Pratt

DP:JH:peb

Enclosure

cc: Jeff Horton, Chief Operating Officer, DHSR
Craig Smith, Chief, Certificate of Need Section
Steven Lewis, Chief, Construction Section
Azzie Conley, Chief, Acute and Home Care Licensure and Certification Section
DHSR Medical Facilities Planning Section
Marc Lodge, Special Deputy Attorney General, DOJ



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

IN RE: REQUEST FOR)	
DECLARATORY RULING BY)	
THE CHARLOTTE-MECKLENBURG)	DECLARATORY RULING
HOSPITAL AUTHORITY D/B/A)	
CAROLINAS HEALTHCARE SYSTEM)	

I, Drexdal Pratt, as Director of the Division of Health Service Regulation, North Carolina Department of Health and Human Services (“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 Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Healthcare System (“CMHA”) has requested a declaratory ruling to confirm that its acquisition of the membership interests of University Radiation Oncology Center, LLC (“UROC”) and its continued operation of that facility may proceed without first obtaining 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 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. William W. Stewart of K&L Gates LLP has requested this ruling on CMHA’s behalf and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

UROC, which is located at 8310 University Executive Park, Suite 500, Charlotte, NC 28262, is a limited liability company which provides radiation therapy treatment. UROC was

acquired by Radiation Oncology Centers of the Carolinas, Inc. ("ROCC") pursuant to an exemption in August 1997. Currently, UROC operates a Varian 2100C linear accelerator and a GE Highspeed Advantage CT simulator, which the CON Section previously approved.

On August 18, 2011, the Department issued a Declaratory Ruling determining that ROCC could transfer, without a CON, its interest in UROC and Matthews Radiation Oncology Center ("MROC") to two wholly owned subsidiaries of ROCC. Once that transaction is consummated, ROCC will be the sole member of UROC. ROCC will then transfer its entire membership interest in UROC to CMHA and CMHA will become UROC's sole member. Thus, UROC will remain intact as the same LLC, but with a different membership composition.

ANALYSIS

The CON law provides that no person shall offer or develop a "new institutional health service" without first obtaining a CON. N.C. Gen. Stat. § 131E-178. The list of new institutional health services includes "the acquisition by purchase, donation, lease, transfer or comparable arrangement" of a linear accelerator or simulator "by or on behalf of any person," N.C. Gen. Stat. § 131E-176(16)(f1)5a, 9, and "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).

Prior declaratory rulings show that the Department has already determined that these definitions do not require an entity to obtain a CON to acquire membership interests in an existing legal entity like UROC which owns and operates a linear accelerator or simulator. The declaratory ruling requested by CMHA is consistent with the Department's prior rulings that

have interpreted the applicability of the CON Law to the purchase of ownership interests in health care organizations, for the following reasons:


CMHA's acquisition of the membership interests in UROC does not constitute the acquisition of a linear accelerator or a simulator because the ownership of the equipment will not change, and the same equipment will be used to provide the same radiation oncology services, in the same location. UROC will continue to own the two pieces of equipment and UROC's legal status as a corporate entity will not change.

The purchase of ROCC's membership interests in UROC does not involve the offering or expansion of any new facility, service or equipment, and the state's inventory of linear accelerators and simulators will not change. No new or additional equipment will be acquired or placed in operation in the State.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that CMHA does not require a certificate of need in order to proceed with the purchase of ROCC's membership interests in UROC.

This the 4th day of November, 2011.


Drexal Pratt, Director
Division of Health Service Regulation
N.C. Department of Health and Human Services

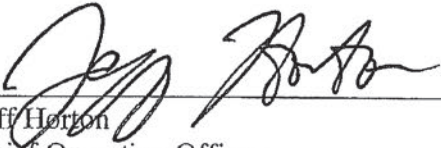
CERTIFICATE OF SERVICE

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

CERTIFIED MAIL

William W. Stewart
K&L Gates LLP
430 Davis Drive, Suite 400
Morrisville, NC 27560

This the 4th day of November, 2011.



Jeff Horton
Chief Operating Officer

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

IN RE: REQUEST FOR DECLARATORY)	
RULING BY WAKE RADIOLOGY)	
ONCOLOGY SERVICES, PLLC, CANCER)	DECLARATORY RULING
CENTERS OF NORTH CAROLINA, P.C.,)	
US ONCOLOGY, INC., AOR)	
MANAGEMENT COMPANY OF VIRGINIA,)	
LLC AND WAKEMED)	

I, Drexdal Pratt, as Director of the Division of Health Service Regulation, North Carolina Department of Health and Human Services (“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.

Wake Radiology Oncology Services, PLLC (hereinafter “WROS”); Cancer Centers of North Carolina, P.C. (“CCNC”); US Oncology, Inc. (“USON”) and its subsidiary AOR Management Company of Virginia, LLC (“AOR”); and WakeMed have requested a declaratory ruling to confirm that the acquisition of the membership interests in WROS and the continued operation of the oncology treatment center may proceed without first obtaining a certificate of need. 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 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. Attorneys for the Petitioners have requested this ruling on their behalf and have provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

WROS is a North Carolina professional limited liability company presently owned by certain physician-members, each of whom owns a specific percentage of the total membership interests in WROS. WROS provides radiation oncology treatment services at 300 Ashville Avenue, Suite 110, Cary, North Carolina, based on a certificate of need that was issued in 1997 to own an oncology treatment center and to operate a linear accelerator and simulator and other equipment used in furnishing radiation oncology services.

CCNC is a professional corporation organized under the laws of the State of North Carolina. CCNC employs physicians licensed to practice medicine in the State of North Carolina, who provide oncology treatment services, including radiation oncology services through the use of a linear accelerator.

USON is a business corporation organized under the laws of the State of Delaware. Through its subsidiaries, US Oncology provides administrative support for, and furnishes medical equipment used by, oncology practices throughout the United States.

AOR is a limited liability company, a subsidiary of USON and was organized under the laws of the State of Delaware and authorized to do business in North Carolina. AOR provides administrative and other support services to CCNC under a Management Services Agreement with CCNC.

WakeMed is a North Carolina nonprofit corporation engaged in the provision of acute care services and other health care services in Wake County.

WROS established its oncology treatment center on or about July 17, 1998. Since the establishment of its oncology treatment center, WROS has continuously operated the oncology treatment center established pursuant to the CON it received in 1997.

When the CON Law was amended in 2005, WROS already was operating an existing oncology treatment center pursuant to the CON that it had obtained in 1997 and using a linear accelerator and simulator that had been recognized in the SMFP inventory for seven years. Since it already owned the equipment, it was not required to obtain a second CON to be able to continue to operate its linear accelerator and simulator.

Recently, WROS physician owners approved a conversion of WROS from a professional limited liability company to a limited liability company, to occur simultaneously with the sale of ownership interests to CCNC. It is likely that WROS will change its name after the sale. Subsequently, in a separate transaction, WakeMed anticipates purchasing a minority membership interest in the renamed WROS ("the LLC").

This change in the business form of WROS that has been approved by its physician owners will not constitute a change in or dissolution of WROS, the legal entity that received the CON in 1997 and has continuously operated the oncology treatment center and the linear accelerator and simulator since they became operational.

After these two transactions, the LLC will continue to exist as a legal and business entity, and will continue to own the oncology treatment center and the equipment that was authorized under the 1997 CON, including the linear accelerator and simulator. The oncology treatment center and its equipment will remain at the same location at 300 Ashville Avenue in Cary.

The LLC will not offer any medical services. Oncology treatment services will be furnished by physicians associated with CCNC.

ANALYSIS

The CON law provides that no person shall offer or develop a "new institutional health service" without first obtaining a CON. N.C. Gen. Stat. § 131E-178. The list of new

institutional health services includes “the acquisition by purchase, donation, lease, transfer or comparable arrangement” of a linear accelerator or simulator “by or on behalf of any person,” N.C. Gen. Stat. § 131E-176(16)(f1)5a, 9, and “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).

Prior declaratory rulings show that the Department has already determined that these definitions do not require an entity to obtain a CON to acquire membership interests in an existing legal entity like WROS which owns and operates a linear accelerator or simulator. The declaratory ruling requested by Petitioners is consistent with the Department’s prior rulings that have interpreted the applicability of the CON Law to the purchase of ownership interests in health care organizations, for the following reasons:

The entity that owns the linear accelerator and simulator will not change, and the same equipment will be used to provide the same radiation oncology services, in the same location. The LLC will continue to own the linear accelerator, the simulator, and all the oncology treatment center assets that were authorized under the 1997 CON and have been used to furnish oncology treatments to patients. Its membership composition initially will change from the present physician members to a single member, CCNC, with the subsequent purchase of a minority interest by WakeMed.

The Proposed Transaction will involve expenditures by CCNC, and later by WakeMed, but these will be purchases of ownership interests in an existing limited liability company that owns the oncology treatment center. There will be no capital expenditure to develop or expand a

health service or health service facility because the same equipment will continue to be operated at the same location, and no expansion of services is proposed.

The Proposed Transaction does not involve the offering or expansion of any new facility, service or equipment, and the state's inventory of linear accelerators and simulators will not change. No new, or additional equipment will be acquired or placed in operation in the State.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the Petitioners do not require a certificate of need in order to proceed with the Proposed Transaction.

This the _____ day of September, 2010.

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

Ronald I. Kirschbaum
KIRSCHBAUM, NANNEY, KEENAN & GRIFFIN, P.A.
P.O. Box 19766
Raleigh, North Carolina 27607
Attorneys for Wake Radiology Oncology, PLLC

William R. Shenton
POYNER SPRUILL LLP
301 Fayetteville Street, Suite 1900
Raleigh, North Carolina 27601
Attorneys for U.S. Oncology, Inc. and AOR Management
Company of Virginia, LLC

Larry E. Robbins
WYRICK ROBBINS YATES & PONTON, LLP
P.O. Drawer 17803
Raleigh, North Carolina 27607
Attorneys for Cancer Centers of North Carolina, P.C.

Maureen Demarest Murray
SMITH MOORE LEATHERWOOD LLP
P.O. Box 21927
Greensboro, North Carolina 27420
Attorneys for WakeMed

This the _____ day of September, 2010.

Jeff Horton
Chief Operating Officer

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

IN RE: REQUEST FOR)	
DECLARATORY RULING BY RADIATION)	
THERAPY SERVICES, INC. AND NORTH)	DECLARATORY RULING
CAROLINA RADIATION THERAPY)	
MANAGEMENT SERVICES, INC.)	

I, Robert J. Fitzgerald, Director of the Division of Health Service Regulation (the “Department”), hereby issue this declaratory ruling to Radiation Therapy Services, Inc. d/b/a/ 21st Century Oncology (“RTS”) and North Carolina Radiation Therapy Management Services, Inc. (“NC Radiation”) (collectively “Petitioners”) pursuant to N.C.G.S. § 150B-4, 10A NCAC 14A.0103, and the authority delegated to me by the Secretary of the North Carolina Department of Health and Human Services. Petitioners have filed a Declaratory Ruling Request (the “Request”) asking the Department to issue a declaratory ruling that they may acquire all of the stock of Carolina Radiation and Cancer Treatment Center, Inc. (“CRTCC”) without certificate of need (“CON”) review.

This ruling is binding on the Department and the person requesting it if the material facts stated in the Request are accurate and no material facts have been omitted from the request. The ruling applies only to this request. Except as provided by N.C.G.S. § 150B-4, the Department reserves the right to change the conclusions which are contained in this ruling. Susan H. Hargrove, Sean A. Timmons, and Jennifer B. Markhan of Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P., counsel for Petitioners, have requested this ruling on behalf of Petitioners and have provided the statement of facts upon which this ruling is based. The material facts as provided by counsel for Petitioners are set out below.

STATEMENT OF THE FACTS

Except as noted, the following statement of the facts is based on the representations of Petitioners in the Request.

Petitioner RTS is a Florida corporation. NC Radiation is a North Carolina corporation that is a wholly-owned subsidiary of RTS. Both have their principal business address in Fort Myers, Florida.

Petitioners wish to acquire 100% of the issued and outstanding stock of CRTC, which they state is a North Carolina corporation owned by Dr. Gordon Koltis that operates a radiation therapy facility for cancer patients. Petitioners describe CRTC as an oncology treatment center that, prior to 26 August 2005, would have been a "health service facility" as defined in N.C.G.S. § 131E-176(9b). S.L. 2005-325 eliminated oncology treatment centers from the category of "health service facilities," effective 26 August 2005.

Petitioners also state that CRTC "owns and operates two linear accelerators" and "one simulator." Request, p. 3. Footnote 1 to the Request states:

CRTC has represented to Petitioners that it entered into binding obligations to acquire the second linear accelerator prior to August 26, 2005, and that the acquisition of the second linear accelerator cost less than \$750,000, including the cost of the equipment, studies, surveys, designs, plans, working drawings, specifications, construction, installation, and other activities essential to acquiring and making operational the second linear accelerator.

I note from the files of the Department that the inventory report of linear accelerator equipment submitted by Carolina Radiation Medicine, P.A., certified and dated by Gordon G. Koltis on April 6, 2007, identifies only one linear accelerator owned by CRTC. The Department files do not contain any information concerning the purported second linear accelerator.

Petitioners represent that they have executed a stock purchase agreement by which NC Radiation will acquire 100% of the issued and outstanding capital stock of CRTC from Dr. Koltis. After closing the transaction, Petitioners state that CRTC will remain a separate corporate entity that is a wholly-owned subsidiary of NC Radiation. They state that CRTC will continue to operate its freestanding radiation therapy facility at the same location in Greenville, Pitt County, North Carolina, in the same manner in which it operated prior to the transaction in all material ways. Petitioners will pay more than two million dollars to purchase the CRTC stock. The closing of the transaction is conditioned on receiving confirmation from the Department that acquisition of the stock will not require a certificate of need.

ANALYSIS

N.C.G.S. § 131E-178 provides that no person shall offer or develop “a new institutional health service” without first obtaining a CON. N.G.C.S. § 131E-176(16) defines “new institutional health service” to include: (1) “The acquisition by purchase, donation, lease, transfer, or comparable arrangement” of a linear accelerator “by or on behalf of any person,” N.G.C.S. § 131E-176(16)f1.5a, and (2) “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.G.S. § 131E-176(16)b.

The transaction described by Petitioners does not constitute the acquisition of a linear accelerator or a simulator by any person because ownership of the one reported linear accelerator and one reported simulator here will not change. CRTC will continue to be the owner of these two pieces of equipment, and CRTC’s legal status as a corporate entity will not change.

Similarly, the transaction is not an obligation to develop or expand a health service or a health service facility, since Petitioners represent that CRTC will continue to operate at the same

location in a manner that is the same in all material respects as it operated prior to the transaction. In addition, pursuant to S.L. 2005-325, oncology treatment centers are not “health service facilities” for purposes of the CON law.

Finally, on the specific facts of this case, the transaction proposed by Petitioners is not “a capital expenditure . . . which relates to the provision of a health service” within the meaning of N.C.G.S. § 131E-176(16)b. The definition of “health service” specifically “does not include administrative and other activities that are not integral to clinical management.” Petitioners’ representations indicate that stock ownership of CRTC is not integral to the clinical management of CRTC, because in all material respects the operations of CRTC will not change.

I specifically except from this Ruling any conclusions as to the status or legality of the ownership of a purported second linear accelerator by CRTC. The Department has no notice of the existence or ownership of the second linear accelerator, and I make no finding that CRTC may acquire or operate, or has properly acquired and operated, a second linear accelerator without CON review.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the Request to be true, I conclude that the acquisition by Petitioners of 100% of the outstanding and issued stock of CRTC, in the manner represented by Petitioners in the Request, is not subject to CON review.

This ruling is subject to the condition that, after the transaction, CRTC continues to operate its freestanding radiation therapy facility at the same location in Greenville, Pitt County, North Carolina, in the same manner in which it operated prior to the transaction in all material ways.

This ruling is not intended to address, expand or validate any activities or status of CRTC with respect to the requirements of the CON law as it relates to CRTC. The ruling is limited to the specific facts presented in the Request. It specifically does not address the status of any linear accelerator that CRTC may own or claim to own.

This ____ day of _____, 2007.

Robert J. Fitzgerald, 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 a first class, postage prepaid envelope addressed as follows:

CERTIFIED MAIL

Susan H. Hargrove
Smith, Anderson, Blount, Dorsett,
Mitchell & Jernigan, L.L. P
P.O. Box 2611
Raleigh, NC 27602-2611

This ____ day of _____, 2007.

Jeff Horton
Chief Operating Officer



North Carolina Department of Health and Human Services
Division of Health Service Regulation
Certificate of Need Section

2704 Mail Service Center • Raleigh, North Carolina 27699-2704
<http://www.ncdhhs.gov/dhsr/>

Drexdal Pratt, Director

Beverly Eaves Perdue, Governor
Albert A. Delia, Acting Secretary

Craig R. Smith, Section Chief
Phone: (919) 855-3873
Fax: (919) 733-8139

February 27, 2012

Maureen Demarest Murray
Smith, Moore, Leatherwood
300 N. Greene Street, Suite 1400
Greensboro, NC 27401

RE: No Review / WakeMed / Acquisition of ownership interests of CSA-1, owners of five heart-lung bypass machines located at WakeMed / Wake County
FID #: 943528

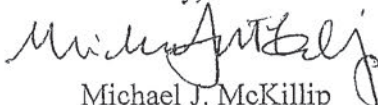
Dear Ms. Murray:

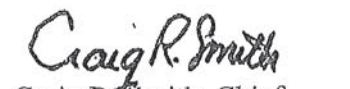
The Certificate of Need (CON) Section received your letter of February 8, 2012 regarding the above referenced proposal. Based on the CON law **in effect on the date of this response to your request**, the proposal described in your correspondence is not governed by, and therefore, does not currently require a certificate of need. However, please note that 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.

It should be noted that this determination is binding only for the facts represented by you. Consequently, if changes are made in the project or in the facts provided in your correspondence referenced above, a new determination as to whether a certificate of need is required would need to be made by the Certificate of Need Section. Changes in a project include, but are not limited to: (1) increases in the capital cost; (2) acquisition of medical equipment not included in the original cost estimate; (3) modifications in the design of the project; (4) change in location; and (5) any increase in the number of square feet to be constructed.

Please contact the CON Section if you have any questions.

Sincerely,


Michael J. McKillip
Project Analyst


Craig R. Smith, Chief
Certificate of Need Section





SMITH MOORE LEATHERWOOD

February 8, 2012



Via E-Mail and U.S. Mail

Mr. Craig R. Smith, Chief
 Ms. Martha Frisone, Assistant Chief
 North Carolina Department of Health
 Service Regulation
 Certificate of Need Section
 2704 Mail Service Center
 Raleigh, North Carolina 27696-2704

Re: WakeMed Acquisition of Ownership Interests in CSA-1

Dear Mr. Smith and Ms. Frisone:

We represent WakeMed. The purpose of this letter is to provide notice to the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Certificate of Need Section (the "Agency") and confirm that WakeMed's acquisition of the ownership interests of CSA-1 is not reviewable as a new institutional health service under the North Carolina Certificate of Need ("CON") law. CSA-1 is a wholly owned sub of CSA Medical, LLC ("CSA") and owns five (5) heart lung bypass ("HLB") machines that have been and are operated at WakeMed. WakeMed would acquire the membership interests in CSA-1, which would continue to exist as a legal entity and to own the five (5) HLB machines that would remain located and operated at WakeMed.

The Agency has issued numerous declaratory rulings and no review letters that acknowledge that acquisition of ownership interests in a legal entity does not constitute a reviewable acquisition of the medical equipment owned by that legal entity. For example, in a declaratory ruling issued to New Hanover Perfusionists, Inc., the Agency determined that the purchase of stock did not constitute the acquisition of a heart-lung bypass machine because ownership of the regulated heart-lung bypass equipment would not change. The Agency also determined that the transaction was not an obligation to develop or expand a health service or health service facility because the equipment company was not a health service facility. The stock purchase transaction proposed also was not "a capital expenditure . . . which relates to the provision of a health service" within the meaning of N.C. Gen. Stat. § 131E-176(16)(b). The definition of "health service" specifically "does not include administrative and other activities that are not integral to clinical management." Stock or membership interest ownership is not integral to clinical management. *In re: Request for Declaratory Ruling by New Hanover Perfusionists, Inc., January 24, 2008.*


Mr. Craig R. Smith, Chief
Ms. Martha Frisone, Assistant Chief
February 8, 2012
Page 2

Similarly, the Department approved the sale of 100% of the issued and outstanding stock of a company that owned a linear accelerator to another entity. Linear accelerators are regulated in the same manner as heart-lung bypass equipment. The Department held that certificate of need review was not required for the stock purchase transaction. *See Declaratory Ruling, In re: Request for Declaratory Ruling by Radiation Therapy Services, Inc. and North Carolina Radiation Therapy Management Services, Inc.*, September 14, 2007.

We would appreciate written confirmation from you that the anticipated transaction does not require CON review. If you require additional information to consider this request, please contact us. We appreciate your consideration.

Sincerely yours,

SMITH MOORE LEATHERWOOD LLP



Maureen Demarest Murray

cc: Stan Taylor, WakeMed



North Carolina Department of Health and Human Services
 Division of Health Service Regulation
 Certificate of Need Section

2704 Mail Service Center • Raleigh, North Carolina 27699-2704
<http://www.ncdhhs.gov/dhsc/>

Drexdal Pratt, Director

Beverly Eaves Perdue, Governor
 Albert A. Delia, Acting Secretary

Craig R. Smith, Section Chief
 Phone: (919) 855-3873
 Fax: (919) 733-8139

February 27, 2012

Gary S. Qualls
 K & L Gates, LLP
 P.O. Box 14210
 Research Triangle Park NC 27709-4210

RE: No Review / Rex Hospital, Inc. / Acquisition of ownership interests of CSAMS Lake Boone, LLC, owners of three heart-lung bypass machines located at Rex Hospital / Wake County
 FID #: 953429

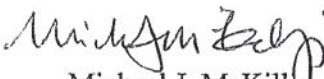
Dear Mr. Qualls:


The Certificate of Need (CON) Section received your letter of February 9, 2012 regarding the above referenced proposal. Based on the CON law **in effect on the date of this response to your request**, the proposal described in your correspondence is not governed by, and therefore, does not currently require a certificate of need. However, please note that 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.

It should be noted that this determination is binding only for the facts represented by you. Consequently, if changes are made in the project or in the facts provided in your correspondence referenced above, a new determination as to whether a certificate of need is required would need to be made by the Certificate of Need Section. Changes in a project include, but are not limited to: (1) increases in the capital cost; (2) acquisition of medical equipment not included in the original cost estimate; (3) modifications in the design of the project; (4) change in location; and (5) any increase in the number of square feet to be constructed.

Please contact the CON Section if you have any questions.

Sincerely,


 Michael J. McKillop
 Project Analyst


 Craig R. Smith, Chief
 Certificate of Need Section



K&L|GATES



K&L Gates LLP
 Post Office Box 14210
 Research Triangle Park, NC 27709-4210

430 Davis Drive, Suite 400
 Morrisville, NC 27560

T 919.466.1190 www.klgates.com

Gary S. Qualls
 D 919.466.1182
 F 919.516.2072
 gary.qualls@klgates.com

February 9, 2012

Mr. Craig R. Smith, Chief
 Ms. Martha Frisone, Assistant Chief
 North Carolina Department of Health
 Service Regulation
 Certificate of Need Section
 2704 Mail Service Center
 Raleigh, North Carolina 27696-2704

Re: Rex Acquisition of Ownership Interests in CSAMS Lake Boone Trail, LLC

Dear Mr. Smith and Ms. Frisone:

We represent Rex Hospital, Inc. ("Rex"). The purpose of this letter is to provide notice to the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Certificate of Need Section (the "Agency") and confirm that Rex's acquisition of the ownership interests of CSAMS Lake Boone Trail, LLC ("CSA Lake Boone") is not reviewable as a new institutional health service under the North Carolina Certificate of Need ("CON") law. CSA Lake Boone is a wholly owned sub of CSA Medical, LLC ("CSA") and owns three (3) heart-lung bypass ("HLB") machines that have been and are operated at Rex. Rex would acquire the membership interests in CSA Lake Boone, which would continue to exist as a legal entity and to own the three (3) HLB machines that would remain located and operated at Rex.

The Agency has issued numerous declaratory rulings and no review letters that acknowledge that acquisition of ownership interest in a legal entity does not constitute a reviewable acquisition of the medical equipment owned by that legal entity. For example, in a declaratory ruling issued to New Hanover Perfusionists, Inc., the Agency determined that the purchase of stock did not constitute the acquisition of a heart-lung bypass machine because ownership of the regulated heart-lung bypass equipment would not change. The Agency also determined that the transaction was not an obligation to develop or expand a health service or health service facility because the equipment company was not a health service facility. The stock purchase transaction proposed also was not "a capital expenditure . . . which relates to the provision of a health service" within the meaning of N.C. Gen. Stat. § 131E-176(16)(b). The

K&L|GATES

Mr. Craig R. Smith, Chief
Martha Frisone, Assistant Chief
February 9, 2012
Page 2

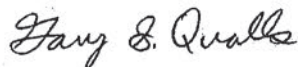
definition of "health service" specifically "does not include administrative and other activities that are not integral to clinical management." Stock or membership interest ownership is not integral to clinical management. *In re: Request for Declaratory Ruling by New Hanover Perfusionists, Inc., January 24, 2008.*

Similarly, the Department has recently approved the sale of 100% of the membership interests in a company that owned a linear accelerator to another entity. Linear accelerators are regulated in the same manner as heart-lung bypass equipment. The Department held that certificate of need review was not required for the LLC membership purchase transaction. *See Declaratory Ruling, In re: Request for Declaratory Ruling by The Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Healthcare, November 4, 2011 (attached as Exhibit 1).*

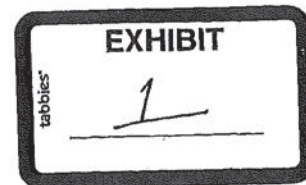
We would appreciate written confirmation from you that the anticipated transaction does not require CON review. If you require additional information to consider this request, please contact us. We appreciate your consideration.

Sincerely yours,

K&L GATES LLP



Gary S. Qualls



North Carolina Department of Health and Human Services
 Division of Health Service Regulation
 Office of the Director
 2701 Mail Service Center • Raleigh, North Carolina 27699-2701
<http://www.ncdhhs.gov/dhsr>

Beverly Haves Perdue, Governor
 Lanier M. Cansler, Secretary

Drexdal Pratt, Director
 Phone: 919-855-3750
 Fax: 919-733-2757

November 4, 2011

CERTIFIED MAIL & FACSIMILE

William W. Stewart, Esq.
 K&L Gates LLP
 430 Davis Drive, Suite 400
 Morrisville, NC 27560

RE: Declaratory Ruling for The Charlotte-Mecklenburg Hospital Authority
 d/b/a Carolinas Healthcare System

Dear Mr. Stewart:

I am enclosing a Declaratory Ruling that you requested. If questions arise, do not hesitate to let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Drexdal Pratt".

Drexdal Pratt

DP:JH:peb

Enclosure

cc: Jeff Horton, Chief Operating Officer, DHSR
 Craig Smith, Chief, Certificate of Need Section
 Steven Lewis, Chief, Construction Section
 Azzie Conley, Chief, Acute and Home Care Licensure and Certification Section
 DHSR Medical Facilities Planning Section
 Marc Lodge, Special Deputy Attorney General, DOJ



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

IN RE: REQUEST FOR)	
DECLARATORY RULING BY)	
THE CHARLOTTE-MECKLENBURG)	DECLARATORY RULING
HOSPITAL AUTHORITY D/B/A)	
CAROLINAS HEALTHCARE SYSTEM)	

I, Drexdal Pratt, as Director of the Division of Health Service Regulation, North Carolina Department of Health and Human Services (“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 Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Healthcare System (“CMHA”) has requested a declaratory ruling to confirm that its acquisition of the membership interests of University Radiation Oncology Center, LLC (“UROC”) and its continued operation of that facility may proceed without first obtaining 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 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. William W. Stewart of K&L Gates LLP has requested this ruling on CMHA’s behalf and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

UROC, which is located at 8310 University Executive Park, Suite 500, Charlotte, NC 28262, is a limited liability company which provides radiation therapy treatment. UROC was

acquired by Radiation Oncology Centers of the Carolinas, Inc. ("ROCC") pursuant to an exemption in August 1997. Currently, UROC operates a Varian 2100C linear accelerator and a GE Highspeed Advantage CT simulator, which the CON Section previously approved.

On August 18, 2011, the Department issued a Declaratory Ruling determining that ROCC could transfer, without a CON, its interest in UROC and Matthews Radiation Oncology Center ("MROC") to two wholly owned subsidiaries of ROCC. Once that transaction is consummated, ROCC will be the sole member of UROC. ROCC will then transfer its entire membership interest in UROC to CMHA and CMHA will become UROC's sole member. Thus, UROC will remain intact as the same LLC, but with a different membership composition.

ANALYSIS

The CON law provides that no person shall offer or develop a "new institutional health service" without first obtaining a CON. N.C. Gen. Stat. § 131E-178. The list of new institutional health services includes "the acquisition by purchase, donation, lease, transfer or comparable arrangement" of a linear accelerator or simulator "by or on behalf of any person," N.C. Gen. Stat. § 131E-176(16)(f1)5a, 9, and "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).

Prior declaratory rulings show that the Department has already determined that these definitions do not require an entity to obtain a CON to acquire membership interests in an existing legal entity like UROC which owns and operates a linear accelerator or simulator. The declaratory ruling requested by CMHA is consistent with the Department's prior rulings that

have interpreted the applicability of the CON Law to the purchase of ownership interests in health care organizations, for the following reasons:


CMHA's acquisition of the membership interests in UROC does not constitute the acquisition of a linear accelerator or a simulator because the ownership of the equipment will not change, and the same equipment will be used to provide the same radiation oncology services, in the same location. UROC will continue to own the two pieces of equipment and UROC's legal status as a corporate entity will not change.

The purchase of ROCC's membership interests in UROC does not involve the offering or expansion of any new facility, service or equipment, and the state's inventory of linear accelerators and simulators will not change. No new or additional equipment will be acquired or placed in operation in the State.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that CMHA does not require a certificate of need in order to proceed with the purchase of ROCC's membership interests in UROC.

This the 4th day of November, 2011.


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

December 30, 2025
Micheala Mitchell
Chief, Healthcare Planning and Certificate of Need
Page 10

Exhibit E

2011 ROCC No Review

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY RADIATION ONCOLOGY) **DECLARATORY RULING**
CENTERS OF THE CAROLINAS, INC.)**

I, Drexdal Pratt, as Director of the Division of Health Service Regulation, North Carolina Department of Health and Human Services (“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.

Radiation Oncology Centers of the Carolinas, Inc. (“ROCC”) has requested a declaratory ruling to confirm that the transfer of two CON-approved radiation oncology facilities to two wholly owned subsidiaries (the “Proposed Transaction”) will not constitute a new institutional health service or require a 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 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. S. Todd Hemphill of Bode, Call & Stroupe, L.L.P. has requested this ruling on ROCC’s behalf and have provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

ROCC directly owns and operates two CON-approved radiation oncology facilities. University Radiation Oncology Center (“UROC”), located at 8310 University Executive Park, Suite 500, Charlotte, NC 28262, was acquired by ROCC in 1997 pursuant to an exemption.

Matthews Radiation Oncology Center (“MROC”), located at 1400 Matthews Township Parkway, Matthews, NC 28105, is a “grandfathered” facility, because it became operational in 1990, prior to the application of the CON law to oncology treatment centers or major medical equipment.

The radiation oncology equipment located at UROC includes a Varian 2100C linear accelerator and a GE Highspeed Advantage CT simulator. The radiation oncology equipment located at MROC includes a Varian 21Ex-d linear accelerator and a GE Brightspeed CT simulator. Acquisition of the linear accelerator and CT simulator equipment at each facility has been previously approved by the agency.

ROCC would like to transfer its interest in UROC and MROC to two wholly owned subsidiaries of ROCC.

ANALYSIS

The CON law provides that no person shall offer or develop a “new institutional health service” without first obtaining a CON. N.C. Gen. Stat. § 131E-178. The list of new institutional health services includes “the acquisition by purchase, donation, lease, transfer or comparable arrangement” of a linear accelerator or simulator “by or on behalf of any person,” N.C. Gen. Stat. § 131E-176(16)(f1)5a, 9, and “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).

Prior declaratory rulings show that the Department has already determined that these definitions do not require an entity to obtain a CON to acquire membership interests in an existing legal entity like ROCC which owns and operates a linear accelerator or simulator. The declaratory ruling requested by Petitioner is consistent with the Department’s prior rulings that

have interpreted the applicability of the CON Law to the purchase of ownership interests in health care organizations, for the following reasons:

The entity that owns the linear accelerator and simulator will not change, and the same equipment will be used to provide the same radiation oncology services, in the same location. The LLC will continue to own the linear accelerator, the simulator, and all the oncology treatment center assets that were authorized under the CON and have been used to furnish oncology treatments to patients.

The Proposed Transaction does not involve the offering or expansion of any new facility, service or equipment, and the state's inventory of linear accelerators and simulators will not change. No new, or additional equipment will be acquired or placed in operation in the State.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the Petitioner does not require a certificate of need in order to proceed with the Proposed Transaction.

This the _____ day of August, 2011.

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

Bode, Call & Stroupe, L.L.P.
S. Todd Hemphill
P.O. Box 6338
Raleigh, NC 27628-6338

This the _____ day of August, 2011.

Jeff Horton
Chief Operating Officer

December 30, 2025
Micheala Mitchell
Chief, Healthcare Planning and Certificate of Need
Page 11

Exhibit F

2024 SARO No Review



NC DEPARTMENT OF HEALTH AND HUMAN SERVICES

Exhibit C

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

VIA EMAIL ONLY

October 15, 2024

Denise M. Gunter
denise.gunter@nelsonmullins.com

No Review

Record #: 4609
Date of Request: September 24, 2024
Business Name: Novant Health, Inc.
Business #: 1341
Project Description: Acquisition by Novant Health, Inc. of membership interests in South Atlantic Radiation Oncology, LLC (SARO) from Coastal Carolina Radiation Oncology, PA (CCRO)
County: New Hanover

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 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,

Ena Lightbourne

Ena Lightbourne
Project Analyst

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



Denise M. Gunter
Attorney
T: (336) 774-3322
denise.gunter@nelsonmullins.com

NELSON MULLINS RILEY & SCARBOROUGH LLP
ATTORNEYS AND COUNSELORS AT LAW
380 Knollwood Street
Suite 530
Winston-Salem, NC 27103
T: (336) 774-3300 F: (336) 774-3299
nelsonmullins.com

September 24, 2024

Via E-mail

Micheala Mitchell, Chief
Healthcare Planning and Certificate of Need Section
North Carolina Department of Health and Human Services
Division of Health Service Regulation
809 Ruggles Drive
Raleigh, North Carolina 27699

RE: No Review Novant Health New Hanover Regional Medical Center, LLC
Linear Accelerator Service Area 19 (New Hanover, Brunswick, Pender, and
Columbus Counties)

Dear Ms. Mitchell:

On behalf of Novant Health, Inc. and Novant Health New Hanover Regional Medical Center, LLC (“NHNHRMC” and collectively, “Novant”), I am writing to request that the Agency issue a written determination that the CON Law, N.C. Gen. Stat. § 131E-175 *et seq.*, does not apply to the following transaction (the “Transaction”).

Facts:

As shown in the table below, there are four linear accelerators currently operating in Service Area 19. A fifth linear accelerator is scheduled to open in 2025.

Linear Accelerator	Location	Owner	Status
1	Novant Health Cancer Institute - New Hanover Radiation Oncology 1988-A S. 16 th Street, Wilmington, NC 28401	Coastal Carolina Radiation Oncology, PA (“CCRO”)	In operation

Micheala Mitchell
 September 24, 2024
 Page 2

Linear Accelerator	Location	Owner	Status
2	Novant Health Cancer Institute - New Hanover Radiation Oncology 1988-A S. 16 th Street, Wilmington, NC 28401	CCRO	In operation
3	Novant Health Cancer Institute - New Hanover Radiation Oncology 1988-A S. 16 th Street, Wilmington, NC 28401	NHNHRMC	In operation
4	Novant Health Cancer Institute Radiation Oncology – Supply 545 Ocean Hwy W, Supply, NC 28462	South Atlantic Radiation Oncology, LLC (“SARO”)	In operation
5	NHNHRMC Scotts Hill, 151 Scotts Hill Medical Dr, Wilmington, NC 28411	SARO (Novant Health and NHNHRMC are the two other parties listed on the CON)	In development; CON issued in Project I.D. No. O-12110-21

CCRO is a radiation oncology practice that provides professional and clinical services. Certain physician shareholders of CCRO and NHNHRMC jointly formed SARO; currently, NHNHRMC owns 50% of SARO, and the four current physician shareholders of CCRO (the “CCRO Shareholders”) collectively own the remaining 50% of SARO. For many years, CCRO and NHNHRMC have worked collaboratively under a Resource Services Agreement to provide outstanding radiation oncology care to patients in Service Area 19 and adjacent areas. To further enhance quality and access to radiation oncology services in Service Area 19 and adjacent areas, Novant and CCRO have been discussing the Transaction, as described below.

The Transaction:

CCRO plans to form a new, wholly owned subsidiary (“HoldCo, LLC”) and will drop the two linear accelerators (and the related equipment necessary for the operation thereof) CCRO owns into HoldCo, LLC. SARO will then acquire the membership interests in HoldCo, and Novant will then acquire the remaining 50% interest in SARO from the

Micheala Mitchell
September 24, 2024
Page 3

CCRO Shareholders. At the conclusion of the Transaction, Novant will own 100% of the membership interests in SARO. To effectuate the Transaction, CCRO and Novant will enter into various agreements, including real estate leases, a Professional Services Agreement pursuant to which CCRO will be the exclusive provider of professional radiation oncology services in the area, and a Radiation Oncology Co-Management Agreement for CCRO to provide non-billable management services and advisory services for the radiation oncology service line of NHHHRMC.

The Transaction does not contemplate acquiring any equipment that is regulated by the CON Law, incurring any capital costs that are regulated by the CON Law or otherwise developing any "new institutional health services" that are regulated by the CON Law. The number of existing and approved linear accelerators and their locations in Service Area 19 will not change as a result of the Transaction. The linear accelerators will continue to be operated just as they have always been operated.

Analysis:

The Transaction involves the acquisition of membership interests, not the acquisition of linear accelerators. The Agency has repeatedly recognized that the acquisition of membership interests is 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 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**. The same is true here as Novant, the 50% owner of SARO, will become the 100% owner of SARO. **Exhibit A** also describes that after Vidant became the sole owner of Newco, Vidant and North Carolina Radiation Therapy, another company that owned linear accelerators in Pitt County, planned to contribute their respective linear accelerators to a new joint venture limited liability company, Vidant Radiation Oncology ("VRO"). Again, the Agency determined that no CON was required as the only thing being acquired was membership interests in an LLC.

Exhibit A also cites and attaches numerous declaratory rulings establishing that the acquisition of membership interests in an LLC is not regulated by the CON Law. See **Exhibit A**, pp. 3-4 and attachments therein. The same reasoning applies here. There is nothing in the CON Law that regulates the acquisition of membership interests in limited liability companies. See N.C. Gen. Stat. § 131E-176(16)a.-v.(definition of new institutional health services); *In re Miller*, 357 N.C. 316, 325, 584 S.E.2d 772, 780 (2003)(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.").

Exhibit B is a declaratory ruling issued in 2011 to Radiation Oncology Centers of the Carolinas, Inc. ("ROCC"), in which ROCC proposed to transfer its interest in two oncology treatment centers which operated linear accelerators and CT simulators to two wholly owned subsidiaries of ROCC. This is analogous to CCRO moving its linear

Micheala Mitchell
September 24, 2024
Page 4

accelerators into HoldCo, LLC, a wholly owned subsidiary of CCRO. Similar to **Exhibit A** and the declaratory rulings cited therein, the Agency determined no CON was required.

We further note with respect to the approved but not yet operational linear accelerator at Scotts Hill, Novant Health, Inc., SARO, and NHNHRMC were all applicants for that CON and the parties to which the CON was issued. See Findings for Project I.D. No. O-12110-21; see also N.C. Gen. Stat. § 131E-181(a)(a CON is valid only for the defined scope, physical location, and person named in the application). None of the persons named in the application for Project I.D. No. O-12110-21 will change as a result of the Transaction. As described above, SARO remains intact as an LLC with a different membership composition. Accordingly, we do not believe it is necessary to request a good cause transfer of that CON pursuant to N.C. Gen. Stat. § 131E-189(c). If, however, the Agency believes otherwise, we respectfully request that the Agency find good cause on the grounds that the Transaction merely contemplates the reconfiguration of membership interests in a limited liability company.

For the foregoing reasons, we respectfully request the Agency's written determination that the Transaction described in this letter does not require a CON. If you have any questions or need further information, please let me know. Thank you for your time and consideration.

Sincerely,



Denise M. Gunter

Enclosures

From: [Mitchell, Micheala L](#)
To: [Stancil, Tiffany C](#)
Cc: [Pittman, Lisa](#)
Subject: FW: [External] No Review: Surgical Center of Greensboro, LLC and North Elam Ambulatory Surgery Center, LLC
Date: Monday, January 5, 2026 4:08:22 PM
Attachments: [CON No Review Notice Request \(SCA_Cone\).pdf](#)
[image001.png](#)

Happy New Year!

Would you mind assigning this no review to Yolanda?

Micheala

Micheala Mitchell, JD

(she/her/hers)

Section Chief, Healthcare Planning and CON Section
Division of Health Service Regulation
North Carolina Department of Health and Human Services

Physical Address:

1915 Health Services Way, 2nd Floor
Raleigh, NC 27607



2704 Mail Service Center
Raleigh, NC 27699-2704

Office: 919 855 3879

Micheala.Mitchell@dhhs.nc.gov

-
Email correspondence to and from this address is subject to the North Carolina Public Records Law and may be disclosed to third parties.

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: Trevor P. Presler <TPresler@wyrick.com>
Sent: Monday, January 5, 2026 8:27 AM
To: Mitchell, Micheala L <Micheala.Mitchell@dhhs.nc.gov>
Cc: Pittman, Lisa <lisa.pittman@dhhs.nc.gov>; Frank Kirschbaum <FKirschbaum@wyrick.com>

Subject: [External] No Review: Surgical Center of Greensboro, LLC and North Elam Ambulatory Surgery Center, LLC

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 morning, Ms. Mitchell,

On behalf of Frank Kirschbaum, please find attached a “No Review” request related to the transfer of certain membership interests of Surgical Center of Greensboro, LLC and North Elam Ambulatory Surgery Center, LLC. If you need any additional information please don’t hesitate to let us know. Thanks

Trevor

Trevor P. Presler
ATTORNEY

Direct: 919.228.2901
Mobile: 919.428.3525
tpresler@wyrick.com

Wyrick Robbins Yates & Ponton LLP
4101 Lake Boone Trail, Suite 300
Raleigh, NC 27607
P: 919.781.4000 F: 919.781.4865
www.wyrick.com

The contents of this e-mail message may be privileged and/or confidential. If you are not the intended recipient, any review, dissemination, copying, distribution or other use of the contents of this message or any attachment by you is strictly prohibited. If you receive this communication in error, please notify us immediately by return e-mail or by telephone (919-781-4000), and please delete this message and all attachments from your system. Thank you.