



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

June 13, 2014

Richard P. Church, Esq.
K&L Gates LLP
Post Office Box 14210
Research Triangle Park, North Carolina 27709-4210

No Review

Facility or Business: Vidant Pungo Hospital
Project Description: Transfer control of corporation to the Town of Belhaven
County: Beaufort
FID #: 923419

Dear Mr. Church:

The Certificate of Need Section (CON Section) received your letter of June 4, 2014 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.

Moreover, you need to contact the Acute and Home Care Licensure and Certification Section, of the Division of Health Service Regulation (DHSR) to determine if they have any requirements for development of the proposed project.

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.



Certificate of Need Section

www.ncdhhs.gov

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

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

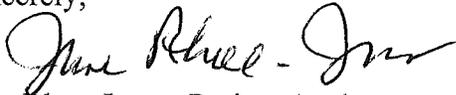
Mailing Address: 2704 Mail Service Center • Raleigh, NC 27699-2704

An Equal Opportunity/ Affirmative Action Employer



Please contact the CON Section if you have any questions. Also, in all future correspondence you should reference the Facility I.D. # (FID) if the facility is licensed.

Sincerely,



Jane Rhoe-Jones, Project Analyst



Martha J. Frisone, Interim Chief
Certificate of Need Section

cc: Medical Facilities Planning Branch, DHR
Acute and Home Care Licensure and Certification Section, DHR



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

June 4, 2014

Richard P. Church
D 919.466.1187
F 919.516.2077
richard.church@klgates.com

Via Hand Delivery

Ms. Martha Frisone
Chief, Certificate of Need Section
Division of Health Service Regulation
North Carolina Department of Health & Human Services
809 Ruggles Drive
Raleigh, NC 27603

Re: Change of Control of Pungo Hospital District Corporation.
Hospital: License No. H0002; Facility ID No. 923419

Dear Ms. Frisone:

We represent University Health Systems of Eastern Carolina, Inc. d/b/a Vidant Health ("Vidant Health"). The purpose of this letter is to inform you of a proposed change in control of Pungo Hospital District Corporation ("Pungo"). Pungo is the owner and licensed operator of a hospital in Belhaven, North Carolina (the "Hospital").

Currently, Pungo is operated as a controlled affiliate of Vidant Health. Effective on July 1, 2014, Pungo will no longer be affiliated with Vidant Health. Majority governance control and operational responsibility for Pungo will be transferred to the Town of Belhaven ("Belhaven") through an Agreement and Plan of Change of Control proposed to be entered into between Pungo, Vidant Health, Belhaven, and Pantego Creek, LLC, which possesses certain rights related to real property used in conjunction with the Hospital.

This change in control does not change the ownership of Pungo's assets or change the operator or licensee of any services offered by Pungo. For instance, Pungo will remain the owner and licensed operator of the Hospital.

We are requesting that the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Certificate of Need Section (the "Agency") confirm that this transaction is either not reviewable as a new institutional health service under the North Carolina Certificate of Need ("CON") law or (in the alternative) exempt from review under the CON law's exemption provisions in N.C. Gen. Stat. § 131E-184.

Further, there is the potential that Pungo will temporarily suspend provision of services to patients on July 1, 2014. However, such suspension, if one occurs, is expected to be short-term in nature and Belhaven (with Vidant Health) is meeting with the Acute Care and Licensure Section to ensure the Hospital will remain licensed and certified during any such period. Consequently, any such temporary suspension should not impact the CON rights associated with Pungo.

Ms. Martha Frisone
June 4, 2014
Page 2

Belhaven is represented by Joseph Kahn, Esq. of Nexsen Pruet, LLC, and they also have authorized the submission of this letter.

I. NO REVIEW REQUEST

The foregoing change of control of Pungo is not a CON reviewable event. The proposed change in control is not expressly addressed in N.C. Gen. Stat. § 131E-176(16). A change in control of an owner of a health care facility is not included in the list of activities that constitute the development of a new institutional health service, requiring a CON. Pursuant to the 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) (“[W]here a statute is explicit on its face, the courts have no authority to impose restrictions that the statute does not expressly contain.”).

II. EXEMPTION NOTICE

As noted above, since this transaction does not involve the acquisition of a health service facility or otherwise involve a transfer of any assets, we do not think that notice under N.C. Gen. Stat. § 131E-184(a)(8) is required. However, to the extent that you disagree, please accept this letter as the required notice under N.C. Gen. Stat. § 131E-184(a)(8) for an exemption.

The General Assembly has chosen to exempt certain, otherwise reviewable, events from CON review, including the acquisition of an existing health service facility, including the equipment owned by the health service facility at the time of the acquisition. See N.C. Gen. Stat. § 131E-184(a)(8). Under N.C. Gen. Stat. § 131E-176(9b), a hospital is a “health service facility.”

Assuming that the transaction is deemed by the Agency to be an acquisition under the CON law, Belhaven will be acquiring an existing “health service facility,” including all equipment owned at the time of acquisition. Specifically, Belhaven will be acquiring the Hospital, including substantially all of the equipment owned by the Hospital at the time of the acquisition.

Furthermore, the proposed transaction does not entail the acquisition of any major medical equipment or any *per se* reviewable equipment as defined in N.C. Gen. Stat. §§ 131E-176(14)(o) and (16)(f1), except in conjunction with the acquisition of the entire existing health service facility. Likewise, the transaction does not include the offering of any *per se* reviewable services except those already offered by the existing health service facility. See N.C. Gen. Stat. § 131E-176(16)(f).

Accordingly, given that the transaction involves only existing health service facilities, even if the Agency deems the transaction an acquisition under the CON law, it is exempt from CON review.

Ms. Martha Frisone
June 4, 2014
Page 3

III. CONCLUSION

Based upon the foregoing information, we hereby request the Agency's (1) confirmation that the overall transaction does not require CON review; or (2) alternatively is exempt from CON review under N.C. Gen. Stat. § 131E-184(a)(8).

Because the effective date of this change in control will be on July 1, 2014, we respectfully request your expedited review.

Thank you for your assistance in regard to this matter. Please feel free to contact me at the number above if you have any questions or need further information.

Sincerely,

A handwritten signature in cursive script that reads "Richard P. Church". To the right of the signature is a circular stamp or mark containing the initials "R.P.C."

Richard P. Church, Esq.

cc: Ms. Azzie Conley, Section Chief, Department of Health and Human Services, Acute and Home Care Licensure and Certification Section

Joseph Kahn, Esq., Nexsen Pruet, LLC (via email only)