

JOSH STEIN
ATTORNEY GENERAL



REPLY TO:
BLAKE THOMAS
DEPUTY GENERAL COUNSEL
BTTHOMAS@NCDOJ.GOV
(919) 716-6414

November 7, 2020

Via E-Mail

Mr. Joseph M. Kahn
Hall, Render, Killian, Heath & Lyman, LLP
Perimeter Three
3015 Carrington Mill Blvd, Suite 450
Morrisville, NC 27560
jkahn@hallrender.com

**Re: Proposed Sale of Assets to Novant Health, Inc. —
First Request to Supplement Information Provided in Notice of Transfer of
Assets of New Hanover Regional Medical Center**

Dear Mr. Kahn:

Thank you for the Notice of Transfer of Assets provided on October 9, 2020 to our office. We appreciate the obvious effort that your client, New Hanover Regional Medical Center (“NHRMC”), put into preparing the notice packet.

Our review of the materials continues, and additional time is required for our office to review the proposed transaction. While going through the materials, we have noticed a few areas where relevant portions of the materials were redacted or where NHRMC did not provide a piece of information requested by our office’s notice form. As a result, we do not yet have all the information that the Attorney General’s Office determines is required for a complete review of the proposed transaction.

Specifically, we request that NHRMC supplement the October 9 notice packet with the following materials. Except where otherwise indicated, capitalized terms below hold the same meanings identified in the Asset Purchase Agreement.

1. Your response to question 4 in the notice form stated that “By partnering with Novant Health, NHRMC will be able to ... increase charity care and health-equity initiatives at NHRMC.” Please provide any details about how charity care and health equity initiatives will be increased.
2. Your responses to questions 5 and 6 in the notice form appear to relate only to NHRMC, but there are additional Sellers, including the County and NHRMC’s Subsidiaries and Affiliates. Please answer questions 5 and 6 in the notice form for all the Sellers.

3. NHRMC's response to question 7 in the notice form included a one-page summary of the valuation performed by Ponder & Co. Please provide a complete copy of Ponder & Co.'s valuation report.
4. Question 9 in our office's notice form requests all "board minutes ... discussing or approving the proposed transaction." NHRMC's response did not include any minutes. Please provide these minutes along with a copy of any board handouts or materials discussing or approving the proposed transaction.
5. Asset Purchase Agreement Schedule 12.17(c), the Strategic Plan, has been redacted in full. Please provide an unredacted copy of this schedule.
6. Please provide documents sufficient to show the cash transfers expected to be made in connection with the Closing. In these documents, please provide the amounts (current and projected at Closing) in the Transferred Seller Bank Accounts. It appears that this information would be found in Schedule 1.4(r) to the Asset Purchase Agreement, which has been redacted in full.
7. Please provide a copy of the current lease agreement between NHRMC and New Hanover County, along with the proposed documents that would terminate this lease at Closing.
8. For the Assets identified in Section 1.4 of the Asset Purchase Agreement, please provide a summary indicating which Assets are titled in the name of NHRMC, which Assets are titled in the name of New Hanover County, and which Assets (if any) are titled in the name of another Seller entity.
9. Concerning the existing foundation, New Hanover Regional Medical Center Foundation, Inc. ("NHRMC Foundation"):
 - a. The Asset Purchase Agreement indicates that "funds currently held by NHRMC Foundation can remain with NHRMC Foundation immediately after the Closing based on the terms of the restricted gift or endowment agreements applicable to those funds." § 2.10. However, in the materials that we have reviewed to date, we are not aware of any materials that describe (i) the plans for unrestricted NHRMC Foundation funds or assets or (ii) the long-term plans, in the months and years following the Closing, for restricted NHRMC Foundation funds and assets. Please summarize how the transaction will affect NHRMC Foundation funds and assets. Please include in this summary how, if at all, unrestricted assets will be treated differently from restricted assets, and what process is expected to be used to identify whether assets are subject to a restriction.
 - b. The Asset Purchase Agreement indicates that Sellers will transfer Sellers' rights to appoint all of the board of directors of NHRMC Foundation. § 1.4(s). With

respect to this planned change of control, please provide answers to questions 3-6 and 8-11 in our office's standard Notice of Merger or Transfer of Assets form.

10. Concerning Pender Memorial Hospital, Inc. ("Pender"):

- a. Please provide the most current version of the Operating Agreement among NHRMC, Pender County, and Pender, or direct us to a location on the Internet where these materials may be found. Please also describe or provide a copy of any changes to the Operating Agreement that the parties contemplate making in connection with the Closing.
- b. Page 111 of the Asset Purchase Agreement indicates that "Buyer will substitute as the member of Pender at the Closing." With respect to this planned change of control, please provide answers to questions 3-6 and 8-11 in our office's standard Notice of Merger or Transfer of Assets form.

11. Concerning the new foundation expected to be named New Hanover Community Endowment, Inc. (the "Endowment"):

- a. Please provide any formation documents for the Endowment that have not already been provided to our office. This includes, but is not limited to, the Endowment's articles of incorporation.
- b. Please provide any agreements between the parties concerning the Endowment's governance that have not already been provided to our office.
- c. Please provide any policies for the Endowment, including but not limited to any board or committee charters and any policies on grant-making, conflicts of interest or ethics, placement agents, investments, or governance.
- d. Asset Purchase Agreement Exhibit C, § 3(e)(ii), states that "non-profit, governmental, or community organizations" would be eligible for Endowment grants. Please identify whether New Hanover County and other local governments in the region would be eligible to receive grants from the Endowment. Please also describe which kinds of organizations would be "community organizations" eligible to receive grants under this provision.

12. Concerning the Buyer entities:

- a. Please provide all formation documents for Novant Health New Hanover Regional Medical Center, LLC, Novant Health Coastal Region, LLC, and any other entity that may receive Buyer assets or provide operational support to the Healthcare Businesses (collectively, the "Buyer Entities").

- b. We understand that the Buyer Entities will operate like nonprofit corporations. Please summarize the legal mechanisms that will accomplish this goal.
 - c. Please identify all legal restrictions that will prevent the Buyer Entities from engaging in for-profit business.
 - d. Please identify all legal restrictions that will prevent the Buyer Entities from being converted to for-profit operation.
 - e. Please provide the full text of any legal documents that are identified in your answers to questions (a)-(c) above.
 - f. Asset Purchase Agreement Exhibit F, the Novant Governing Documents, has been redacted in full. Please provide an unredacted copy of this exhibit.
13. Please provide all correspondence and communications with respect to the transaction or the Endowment with the UNC School of Government, the North Carolina Department of State Treasurer, or the North Carolina Local Government Commission.
 14. If any commitments have been made to government officials with respect to the transaction or Endowment, and if those commitments go beyond the documents that NHRMC has provided, please provide a copy of those commitments (if written) or please describe those commitments (if unwritten).
 15. Please provide unredacted copies of Attachment A to Schedule 1.4(g), which appears to list certain contracts, and Schedule 1.7(l), which appears to list Excluded Liabilities.
 16. Please provide a summary of the types of matters that have been redacted in Schedules 2.6, 2.7, 2.9(a), and 2.9(d), and summarize whether Seller would retain any expected liabilities for these matters.
 17. Please provide any updates or amendments to the answers and transaction documents provided in the October 9 notice packet or provided in response to this November 7 letter. This is a continuing request that will remain in effect through the Closing Date.
 18. As NHRMC did in the October 9 notice, please provide a certification from a representative of NHRMC that the answers provided in the response to this letter are true and complete to the best of the representative's knowledge.

We look forward to your response to these requests; in the meantime, we will continue to review the materials you have provided.

Finally, a staffing note. My colleague Jennifer Harrod left the Department of Justice yesterday to take a staff position at the Utilities Commission. Llogan Walters will be replacing

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Jennifer as our dedicated attorney for nonprofit transactions. Llogan and I will be working together on this transaction going forward. Please substitute Llogan's address, lwalters@ncdoj.gov, for Jennifer's address on future correspondence.

As always, please do not hesitate to reach out if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Blake W. Thomas". The signature is written in a cursive, flowing style.

Blake Thomas
Deputy General Counsel

cc: Ms. Llogan R. Walters, Esq., Assistant Attorney General, N.C. Department of Justice