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**May 3, 2010 Comments in Opposition from Kernersville Orthopaedic Surgery Center Holdings, LLC and Orthopaedic Specialists of the Carolinas Regarding Orthopaedic Surgical Center of the Triad Holdings, LLC and GSW Real Estate, LLC for a Single Specialty Ambulatory Surgery Center Demonstration Project with Two Surgical Operating Rooms and One Procedure Room in Guilford County (Project I.D. # G-8479-10)**

**Submitted March 15, 2010 for April 1, 2010 Review**

In accordance with N.C.G.S. Section 131E-185(a1)(1), Kernersville Orthopaedic Surgery Center Holdings, LLC and Orthopaedic Specialists of the Carolinas submit the following comments regarding the March 15, 2010 CON Application of Orthopaedic Surgical Center of the Triad Holdings, LLC and GSW Real Estate, LLC for a single specialty orthopedic ambulatory surgery center demonstration project with two surgical operating rooms and one procedure room in Guilford County (Project I.D. #G-8479-10).

**I. Introduction**

The following three CON applications were submitted in response to the need determination identified in the *2010 State Medical Facilities Plan (2010 SMFP)* for a single specialty ambulatory surgery center demonstration project with two surgical operating rooms in Forsyth/Guilford County:

- G-8477-10: Piedmont Outpatient Surgery Center, LLC for a Single Specialty Ambulatory Surgery Center Demonstration Project with Two ENT Surgical Operating Rooms in Forsyth County (Winston-Salem, NC)
- G-8479-10: Orthopaedic Surgical Center of the Triad for a Single Specialty Ambulatory Surgery Center Demonstration Project with Two Orthopaedic Surgical Operating Rooms and One Procedure Room in Guilford County (Sandy Ridge Rd.)
- G-8492-10: Kernersville Orthopaedic Surgery Center Holdings, LLC for a Single Specialty Ambulatory Surgery Center Demonstration Project with Two Orthopaedic Surgical Operating Rooms and One Procedure Room in Forsyth County (Kernersville, NC)

**II. Orthopaedic Surgical Center of the Triad's Proposal**

Co-Applicants, Orthopaedic Surgical Center of the Triad Holdings, LLC (OSCT) and GSW Real Estate, LLC (GSW), seek approval to develop a new single specialty ambulatory surgery demonstration project with two surgical operating rooms and one procedure room dedicated to orthopedic services in Guilford County, which will serve residents from Guilford and Forsyth County (Triad Area Single Specialty Surgery Center Demonstration Project).

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OSCT is a new limited liability company with two owners: (1) twenty-one individual physicians<sup>1</sup> collectively will own 66.67% the OSCT limited liability company's membership interests; and (2) Wake Forest Ambulatory Ventures, LLC ("WFAV") will own 33.33% of the OSCT limited liability company's membership interests. WFAV is a new entity owned by Wake Forest University Health Sciences. OSCT is the operating entity and the building lessee. See OSCT CON Application at pages 1, and 4-5.

GSW is a new limited liability company with two owners: (1) twenty-two individual physicians<sup>2</sup> collectively will own 66.67% the GSW limited liability company's membership interests; and (2) Wake Forest Ambulatory Ventures, LLC ("WFAV") will own 33.33% of the GSW limited liability company's membership interests. GSW's functions will be to purchase the land, build and upfit the ambulatory surgery center, and to lease the completed ambulatory surgery center to OSCT.<sup>3</sup> GSW is the building lessor and the owner of the land. See OSCT CON Application page 1.

The proposed new orthopedic surgery center will have three medical directors:

1. Dr. Marcus Duda, Southeastern Orthopaedic Specialists/Piedmont Orthopaedics
2. Dr. Frank Alusio, Greensboro Orthopaedics
3. Dr. L. Andrew Korman, Wake Forest University Baptist Medical Center, Chair, Orthopaedics

See page 9 of the OSCT CON Application.

The proposed orthopedic ambulatory surgery center will be located in a building on a 4 acre site on Sandy Ridge Road at the entrance to the Farmers Market, street addresses are 2918 and 2920 Sandy Ridge Road, Colfax, NC 27235.<sup>4</sup> There are currently no other health services offered near or at this location in Guilford County. OSCT also proposes an alternate location at 706 Sunshine Way, Greensboro, NC, 27409.

Projected start date for the OSCT Triad Area Demonstration Project is January 1, 2013.

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<sup>1</sup>Eleven Southeastern Orthopaedic Specialists' physicians hold membership interests in OSCT (Drs. Wainer, Murphy, Landau, Graves, Dalldorf, Rowan, Yates, Dean, Duda, Blackman, and Lucey; Ten Greensboro Orthopaedics' physicians hold membership interests in OSCT (Drs. Collins, Supple, Norris, Gramig, Ortmann, Bednbarz, Aluisio, Olin, Beane, and Brooks). OSCT has 21 individual physician owners.

<sup>2</sup>Twelve Southeastern Orthopaedic Specialists' physicians hold membership interests in GSW (Drs. Voytek, Wainer, Murphy, Landau, Graves, Dalldorf, Rowan, Yates, Dean, Duda, Blackman, and Lucey; Ten Greensboro Orthopaedics' physicians hold membership interests in OSCT (Drs. Collins, Supple, Norris, Gramig, Ortmann, Bednbarz, Aluisio, Olin, Beane, and Brooks). GSW has 22 individual physician owners.

<sup>3</sup> CON Application G-8479-10 at pages 1-3

<sup>4</sup> CON Application G-8479-10 at page 2

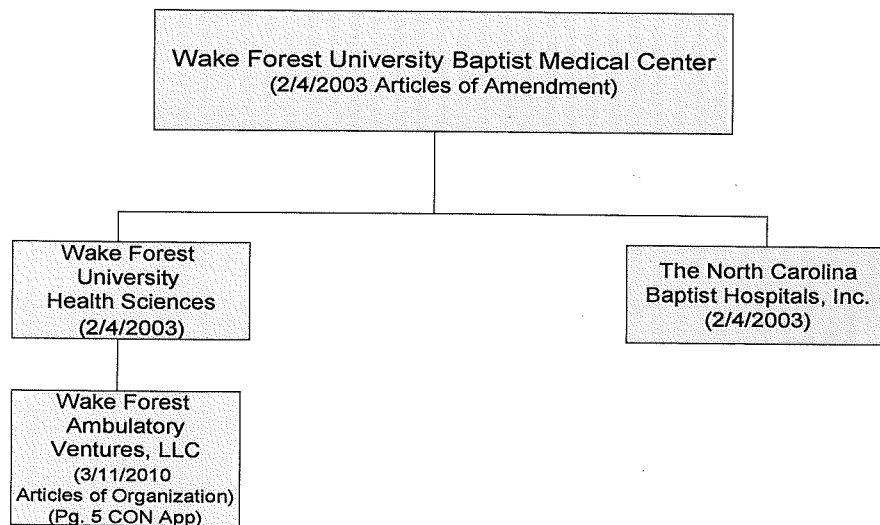
### III. Wake Forest University Health Sciences and Wake Forest Ambulatory Ventures, LLC, Should Be Co-Applicants in the OSCT Application

#### *Missing Co-Applicants*

GSW is owned 66.67% by individual physicians<sup>5</sup> and 33.33% by Wake Forest Ambulatory Ventures, LLC (WFAV). OSCT also is owned 66.67% by individual physicians and 33.33% by WFAV. WFAV is wholly owned by Wake Forest University Health Sciences (WUHS).<sup>6</sup>

Furthermore, publicly available information from the NC Secretary of State's web site shows that:

- 100% of the membership interests in Wake Forest Ambulatory Ventures, LLC is owned by the entity, Wake Forest University Health Sciences
- Wake Forest University Health Sciences is wholly owned by Wake Forest University Baptist Medical Center
- The North Carolina Baptist Hospitals, Inc., is also a wholly owned subsidiary of WFU Baptist Medical Center
- Thus, Wake Forest University Baptist Medical Center is the ultimate parent organization of Wake Forest University Health Sciences and The North Carolina Baptist Hospitals, Inc. See the organizational chart below.



<sup>5</sup>Of the 14 physicians that comprise Greensboro Orthopaedics, ten physicians are owners of GSW and OSCT. Of the 27 physicians that comprise Southern Orthopaedic Specialists, twelve physicians are owners of GSW and eleven physicians are owners of OSCT. CON Application G-8479-10 at pages 7-8.

<sup>6</sup>CON Application #G-8479-10 at Exhibits 43, 44, 45

Attachment 1 to these comments includes an organizational chart and WFUBMC Articles of Amendment for a Non-Profit Corporation and Articles of Incorporation for NC Baptist Hospital.

Each party's respective financial contribution to the OSCT project is shown in the following table.

**OSCT Triad Area Demonstration Project  
Financial Contributions of GSW, OSCT, WFAV/WFUHS**

|  | <b>GSW</b>         | <b>OSCT</b>        | <b>WFAV/WFUHS</b>  | <b>Total</b>       |
|--|--------------------|--------------------|--------------------|--------------------|
| Land, building   | \$3,620,681        |                    | \$1,810,069        | \$5,430,750        |
| Equipment, furniture, etc.   |                    | \$1,460,073        | \$728,927          | \$2,190,000        |
| Initial inventory, start-up expenses, working capital for first 4 months |                    | \$333,350          | \$166,650          | \$500,000          |
| <b>Total</b>   | <b>\$3,620,681</b> | <b>\$1,793,423</b> | <b>\$2,705,646</b> | <b>\$8,120,750</b> |

Bank financing letters are included in OSCT CON Application Exhibits 43-45, and confirm the details of the financial relationships and outlays among GSW, OSCT, and WFAV.

WFUHS provided a Financing Letter in Exhibit 42, which outlines the information provided in the previous table, and Financial Statements in Exhibit 47.

The previous table shows that WFAV/WFUHS will incur over \$2.7 million in capital cost and expenses for the proposed OSCT Triad Area Demonstration Project. That is the second greatest financial obligation in the OSCT Application.

In addition, on page 23 of the OSCT Application, WFAV is described as "an owner" of GSW and OSCT. The "owner of [WFAV] is [WFUHS]."

There can be no doubt that each of WFAV and WFUHS should have been Co-Applicants in the OSCT Application on the basis of their financial contributions to the capital needs of the project specified in OSCT CON Application Section VIII and to the working capital needs of the project specified in OSCT CON Application Section IX. Since WFAV is a newly formed LLC, with LLC paperwork filed with the NC Secretary of State's office four days prior to the February 15, 2010 CON application deadline, WFAV has no capital to contribute to the implementation of this project unless that capital is supplied by Wake Forest University Health Sciences. The WFUHS funding letter in CON Application Exhibit 42 confirms this and states: "*Wake Forest University Ambulatory Ventures, LLC is wholly owned by Wake Forest University Health Sciences.... This physician owned LLC [WFAV] will be created at the time the loan is put in place....*" Question 1, in CON Application Section I states, in pertinent part:

*“CON Application Question I.1: Legal Name of the Applicant(s): The applicants are the existing legal entities (i.e., persons or organizations) that will own the facility and any other persons who will offer, develop, or incur an obligation for a capital expenditure for the proposed new institutional health service.” [Emphasis added].*

WFUHS through its ownership of 100% of the membership interests in WFAV will own a portion (33.33%) of the OSCT facility, since WFAV holds a 33.33% membership interest in GSW Real Estate, LLC (land and building owner) and also holds a 33.33% membership interest in Orthopaedic Surgery Center of the Triad Holdings, LLC (the operating entity & lessee). In addition, as illustrated in the WFUHS letter found in CON Application Exhibit 42 WFUHS is incurring an obligation for capital expenditure for OSCT, by virtue of supplying capital and working capital funds and capitalizing its share of the new LLCs, LCST and GSW, so that the new demonstration project orthopedic surgery center can be implemented (as a “new institutional health service.”)

The applicant also provided in its CON Application, Certification pages for both WFUHS and WFAV and both Certification pages were signed by the Chief Medical Officer for Wake Forest University Health Sciences. Thus, it is clear that WFUHS should have been included as a co-applicant. Failure to do so renders the OSCT Application non-conforming to the CON Statute.

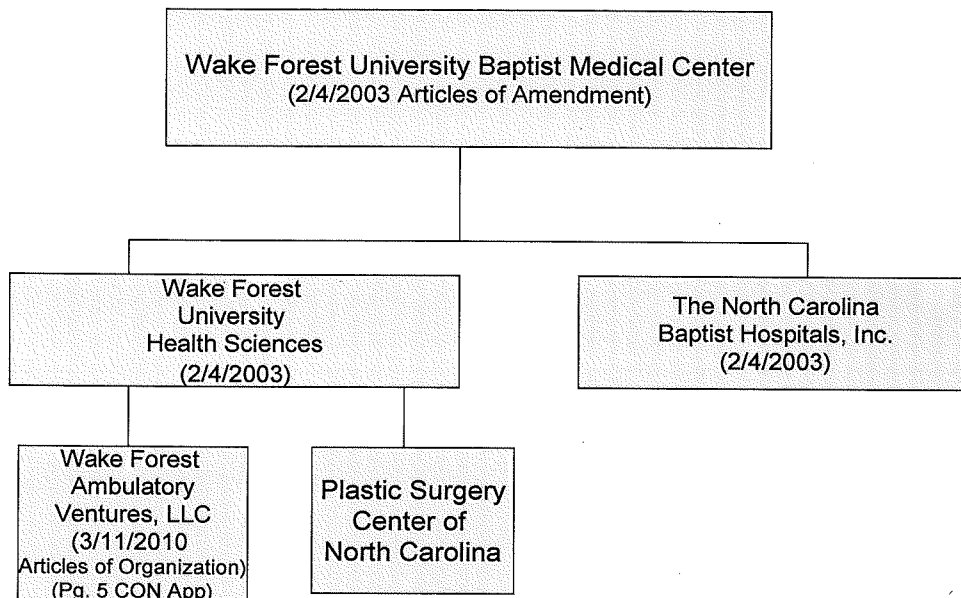
***Related Entities As Defined in the CON Operating Room Regulations: Wake Forest University Health Sciences, Plastic Surgery Center of North Carolina, and North Carolina Baptist Hospital***

In addition, as the 100% owner of Wake Forest Ambulatory Ventures, LLC, Wake Forest University Health Sciences is a “related entity” as that term is defined in the CON Surgical Services and Operating Room Regulations. At 10A NCAC 14C.2101(9), a “related entity” is defined to include:

*“...a joint venture in which the applicant is a member or a company that shares common ownership with the applicant (i.e., the applicant and another company are owned by some of the same persons).”*

First, since WFAV owns 33.33% of both the co-applicants, Orthopaedic Surgery Center of the Triad Holdings, LLC and GSW Real Estate, LLC, WFAV is a “related entity” as defined in the OR CON Regulations. Furthermore, since 100% of the membership interests in WFAV are owned by Wake Forest University Health Sciences, WFUHS is also a “related entity.” In 2009, WFU Health Sciences purchased three new Forsyth County operating rooms from Plastic Surgery Center of North Carolina. See Attachment 4 for a copy of the CON Section’s June 2009 Exempt from Review Letter for the WFU Health Sciences acquisition of Plastic Surgery Center of NC. As noted in page 23 of the OSCT CON Application, *“Wake Forest University Health Sciences acquired Plastic Surgery Center of North Carolina (with 3 ambulatory operating rooms) in 2009....”*

Furthermore, WFAV, which is 100% owned by WFUHS, holds a one-third interest in both of the applicants (Orthopaedic Surgery Center of the Triad and GSW Real Estate LLC). WFUHS and The North Carolina Baptist Hospital (NCBH) share a common parent organization, WFU Baptist Medical Center. Thus, NCBH "shares common ownership with the applicant," as defined above and at 10A NCAC 14C.2101(9), making both Plastic Surgery Center of North Carolina and NCBH "related entities." See the organizational chart below.



CON OR Regulation Section 10A NCAC 14C.2102 entitled "Information Required of the Applicant" and Section 10A NACA 14C.2103 entitled "Performance Standards" requires the application to provide additional information for the applicant's "related entities" as that term is defined in 10A NCAC 14C.2101(9). OSCT and GSW failed to recognize that both Plastic Surgery Center of North Carolina<sup>7</sup> and North Carolina Baptist Hospital are "related entities" and thus, failed to provide the following information in their March 15, 2010 CON application:

<sup>7</sup> On page 23 of the Application, the applicants argue that they did own but did not control Plastic Surgery Center of NC such that PSCNC was apparently not considered by them to be a "related entity." The explanation offered is insufficient and is inconsistent with the applicable OR CON Regulation definition of "related entity." The applicant stated: "The owner of WFAV, LLC is Wake Forest University Health Sciences. WFUHS acquired Plastic Surgery Center of North Carolina (with 3 ambulatory ORs) in 2009, but has not yet begun utilizing the facility. Prior to this acquisition, WFUHS had no control over the use of the operating rooms." The applicant's assertions do not create an exception to the regulatory definition of "related entity" for PSCNC.

- 10A NCAC 14C.2102(b) to provide *“the number and type of operating rooms in each facility with the applicant or a related entity owns a controlling interest in and is located in the service area...”*
  - The applicants failed to provide this current OR inventory information for Plastic Surgery Center of NC and for NCBH
- 10A NCAC 14C.2102(b)(2) to provide *“the number and type of operating rooms to be located in each facility which the applicant or a related entity owns a controlling interest in and is located in the service area after completion of the proposed project and all previously approved projects related to these facilities”*
  - The applicants failed to provide this future OR inventory information for Plastic Surgery Center of NC and for NCBH
- 10A NCAC 14C.2102(b)(3) to provide *“the number of inpatient surgical cases, excluding trauma cases reported by Level I, II, or III trauma centers, cases reported by designated burn intensive care units, and cases performed in dedicated open heart and dedicated C-section rooms, and the number of outpatient surgical cases performed in the most recent 12 month period for which data is available, in the operating rooms in each facility listed in response to Subparagraphs (b)(1) and (b)(2) of this Rule”*
  - The applicants failed to provide this historical data regarding OR cases performed at Plastic Surgery Center of NC and at NCBH
- 10A NCAC 14C.2102(b)(3) to provide *“the number of inpatient surgical cases, excluding trauma cases reported by level I, II, or III trauma centers, cases reported by designated burn intensive care units and cases performed in dedicated open heart and dedicated C-section rooms, and the number of outpatient surgical cases projected to be performed in each of the first three operating years of the proposed project, in each facility listed in response to Subparagraphs (b)(1) and (b)(2) of this Rule”*
  - The applicants failed to provide future projected OR cases performed at Plastic Surgery Center of NC and at NCBH
- 10A NCAC 14C.2102(b)(5) to provide *“a detailed description of and documentation to support the assumptions and methodology used in the development of the projections required by this Rule”*
  - The applicants failed to provide the assumptions and method by which the future OR cases for PSCNC and NCBH should have been projected
- 10A NCAC 14C.2103(b)(1)(A): *“A proposal to establish a new ambulatory surgical facility, to establish a new campus of an existing facility, to establish a new hospital, to increase the number of operating rooms in an existing facility (excluding dedicated C-section operating rooms), to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall not be approved unless: (1) the applicant reasonably demonstrates the need for the number of proposed operating rooms in the*

facility, which is proposed to be developed or expanded, in the third operating year of the project based on the following formula:  $\{[(\text{Number of facility's projected inpatient cases, excluding trauma cases reported by Level I or II trauma centers, cases reported by designated burn intensive care units and cases performed in dedicated open heart and C-section rooms, times 3.0 hours}) \text{ plus } (\text{Number of facility's projected outpatient cases times 1.5 hours})] \text{ divided by } 1872 \text{ hours}\}$  minus the facility's total number of existing and approved operating rooms and operating rooms proposed in another pending application, excluding one operating room for Level I or II trauma centers, one operating room for facilities with designated burn intensive care units, and all dedicated open heart and C-section operating rooms. The number of rooms needed is determined as follows: (A) in a service area which has more than 10 operating rooms, if the difference is a positive number greater than or equal to 0.5, then the need is the next highest whole number for fractions of 0.5 or greater and the next lowest whole number for fractions less than 0.5; and if the difference is a negative number or a positive number less than 0.5, then the need is zero;

- The applicants failed to provide future OR case volume projections to demonstrate the need for the ORs owned by the applicant's "related entities," Plastic Surgery Center of NC and NCBH
- 10A NCAC 14C.2103(c)(1)(A): "A proposal to increase the number of operating rooms (excluding dedicated C-section operating rooms) in a service area shall not be approved unless the applicant reasonably demonstrates the need for the number of proposed operating rooms in addition to the rooms in all of the licensed facilities identified in response to 10A NCAC 14C .2102(b)(2) in the third operating year of the proposed project based on the following formula:  $\{[(\text{Number of projected inpatient cases for all the applicant's or related entities' facilities, excluding trauma cases reported by Level I or II trauma centers, cases reported by designated burn intensive care units and cases performed in dedicated open heart and C-section rooms, times 3.0 hours}) \text{ plus } (\text{Number of projected outpatient cases for all the applicant's or related entities' facilities times 1.5 hours})] \text{ divided by } 1872 \text{ hours}\}$  minus the total number of existing and approved operating rooms and operating rooms proposed in another pending application, excluding one operating room for Level I or II trauma centers, one operating room for facilities with designated burn intensive care units, and all dedicated open heart and C-Section operating rooms in all of the applicant's or related entities' licensed facilities in the service area. The number of rooms needed is determined as follows: ...(1) in a service area which has more than 10 operating rooms, if the difference is a positive number greater than or equal to 0.5, then the need is the next highest whole number for fractions of 0.5 or greater and the next lowest whole number for fractions less than 0.5; and if the difference is a negative number or a positive number less than 0.5, then the need is zero"
  - The applicants failed to provide future OR case volume projections to demonstrate the need for the ORs owned by the applicant's "related entities," Plastic Surgery Center of NC and NCBH



The applicants should be found non-conforming with CON Statutory Review Criteria (1) and (3)<sup>8</sup> for failing to answer the above required CON Operating Room Regulations in Section II of the OSCT CON Application.

### **III. CON Review Criteria**

The following comments are submitted based upon the CON Statutory Review Criteria found at G.S.131E-183. While some issues impact multiple Criteria, they are discussed under the most relevant review Criteria and referenced in others to which they apply.

#### **N.C.G.S. 131E-183 (1)**

*The proposed project shall be consistent with applicable policies and need determinations in the State Medical Facilities Plan, the need determination of which constitutes a determinative limitation on the provision of any health service, health service facility, health service facility beds, dialysis stations, operating rooms, or home health offices that may be approved.*

##### **1. Policy Gen-3 Basic Principles**

As discussed in detail in the context of Criterion (3) below, OSCT failed to adequately demonstrate the need for the project, and therefore failed to document how its projected volumes incorporate the Basic Principles in meeting the need identified in the 2010 SMFP. Consequently, the OSCT Application is not conforming to SMFP Policy GEN-3, and does not conform to Criterion (1).

##### **2. Operating Room Need Methodology – Results in Overstated Surgical Volume**

As discussed in detail in the context of Criterion (3) below, OSCT failed to provide necessary assumptions associated with the projected surgical volume resulting in questionable projected volumes. As a result, the projected utilization is unreasonable and cannot be used to justify the proposed two surgical operating rooms in Guilford County. Therefore, the OSCT Application is non-conforming to Criterion (1).

#### **N.C.G.S. 131E-183 (3)**

*The applicant shall identify the population to be served by the proposed project, and shall demonstrate the need that this population has for the services proposed, and the extent to which all residents of the area, and, in particular, low income persons, racial and ethnic minorities, women, handicapped persons; the elderly, and other underserved groups are likely to have access to the services proposed.*

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<sup>8</sup>See NCGS Section 131E-183(a)(1) & (3)

The proposed project is non-conforming to Criterion (3) because OSCT fails to identify the population to be served and overstated the need for the proposed Triad Area Demonstration Project. As such, OSCT fails to justify a need for two surgical operating rooms at the proposed orthopedic ASC.

## 1. Orthopaedic Surgical Center of the Triad Has Not Identified the Population to Be Served

OSCT projects that the proposed patient origin for the new freestanding orthopedic surgery center will be 100% from Guilford and Forsyth Counties<sup>9</sup>. However, as documented in the following table and discussed in the Kernersville Surgery Center CON Application (Project I.D. #G-8492-10) on pages 59 and 60, in-migration into Forsyth and Guilford Counties for outpatient surgical services has been increasing annually and exceeded 40% in FFY 2009. See the table below.

### Guilford and Forsyth Counties Ambulatory Surgery In-migration

| Surgical Providers                | County           | 2007  | 2008  | 2009  |
|-----------------------------------|------------------|-------|-------|-------|
| Carolina Birth                    | Guilford         | 37.6% | 37.4% | 34.9% |
| FMC                               | Forsyth          | 41.7% | 41.1% | 40.9% |
| Gboro Specialty                   | Guilford         | 20.4% | 18.5% | 25.8% |
| HP Surg Ctr                       | Guilford         | 35.6% | 19.9% | 38.9% |
| HPRHS                             | Guilford         | 38.2% | 40.1% | 38.3% |
| Kindred                           | Guilford         | 13.3% | 5.5%  | 2.2%  |
| Moses Cone                        | Guilford         | 28.6% | 32.4% | 30.1% |
| MPH                               | Forsyth          | 42.6% | 41.8% | 41.6% |
| NCBH                              | Forsyth          | 57.0% | 56.7% | 56.2% |
| Piedmont (Podiatry)               | Guilford         | 31.7% | 32.2% | 29.4% |
| Plastic Surg                      | Forsyth          | 30.6% | 17.3% | 34.5% |
| Premier Surgery Center            | Guilford         |       |       | 0%    |
| Surgical Ctr of Gboro             | Guilford         | 10.1% | 30.0% | 30.3% |
| Surgical Eye                      | Guilford         | 52.8% | 52.2% | 55.0% |
| Triad Neurosurgery                | Guilford         |       |       | 0%    |
| Total                             | Forsyth.Guilford |       |       |       |
| Total In-migration other Counties | Forsyth.Guilford | 37.4% | 38.9% | 40.4% |

Source: Annual LRAs; KOSC CON Application, Exhibit 2, Table 13

In addition, orthopedic surgery represented over 25% of total outpatient surgical cases performed by Guilford and Forsyth County Surgical Providers as shown in the following table.

<sup>9</sup>See OSCT CON Application at page 53 (“the service area for the proposed project consists of Guilford and Forsyth Counties”) and Exhibit 31.

## Guilford and Forsyth Surgical Providers – Ambulatory Orthopedic Surgical Cases

| Surgical Providers     | County           | 2007          | 2008          | 2009          |
|------------------------|------------------|---------------|---------------|---------------|
|                        |                  | Percent Ortho | Percent Ortho | Percent Ortho |
| Carolina Birth         | Guilford         | 0.0%          | 0.0%          | 0.0%          |
| FMC                    | Forsyth          | 22.7%         | 23.4%         | 23.3%         |
| Gboro Specialty        | Guilford         | 64.1%         | 52.2%         | 51.3%         |
| HP Surg Ctr            | Guilford         | 24.0%         | 21.3%         | 25.7%         |
| HPRHS                  | Guilford         | 23.2%         | 21.3%         | 20.3%         |
| Kindred                | Guilford         | 0.0%          | 0.0%          | 0.0%          |
| Moses Cone             | Guilford         | 24.8%         | 27.1%         | 27.0%         |
| MPH                    | Forsyth          | 17.0%         | 18.8%         | 18.3%         |
| NCBH                   | Forsyth          | 21.5%         | 19.5%         | 20.5%         |
| Piedmont (Podiatry)    | Guilford         | 100.0%        | 100.0%        | 100.0%        |
| Plastic Surg           | Forsyth          | 0.0%          | 0.2%          | 0.0%          |
| Premier Surgery Center | Guilford         | 0.0%          | 0.0%          | 0.0%          |
| Surgical Ctr of Gboro  | Guilford         | 41.0%         | 32.0%         | 45.9%         |
| Surgical Eye           | Guilford         | 0.0%          | 0.0%          | 0.0%          |
| Triad Neurosurgery     | Guilford         | 0.0%          | 0.0%          | 0.0%          |
| Total                  | Forsyth.Guilford | 25.1%         | 24.4%         | 26.1%         |

*Source: Annual LRAs; KOSC CON Application, Exhibit 2, Table 1*

Based upon the above data, it is reasonable to assume that a substantial volume of orthopedic surgery cases performed in the Triad area are not from Guilford and Forsyth Counties. Furthermore, over 45% of total surgical volume at Surgical Center of Greensboro, the largest freestanding ambulatory surgery center in Greensboro with over 10,000 surgical cases in FFY 2009, is orthopedic surgery. In-migration from counties other than Guilford and Forsyth was over 30% in 2009 at the Surgical Center of Greensboro.

In addition, OSCT did not provide any historical patient origin data from the surgeons identified in the Application<sup>10</sup>, as discussed in more detail below. Therefore, no documentation was provided to substantiate the proposed patient origin as only Guilford and Forsyth Counties. Letters of support from physicians and patients included in the OSCT CON Application Exhibits are mainly from Guilford County, but include some from Forsyth, Randolph, Davidson, Rockingham, and Alamance Counties.

As a result it is **unrealistic** to assume that the proposed OSCT will provide surgical services to only residents of Guilford and Forsyth Counties. Therefore, OSCT has failed to identify the population to be served by the proposed project which is required by Criterion 3. The OSCT CON Application is non-conforming to Criterion 3 regarding identification of the population to be served.

<sup>10</sup>Fourteen physicians from Greensboro Orthopaedics; twenty-seven physicians from Southeastern Orthopaedic Specialists; and eight surgeons from Wake Forest University Physicians, Department of Orthopedic Surgery & Rehabilitation.

## **2. No Historical Orthopaedic Ambulatory Surgery Volume Provided for Physicians**

On pages 7 and 8 of the OSCT CON Application and in Exhibits 7 and 8, OSCT discloses that of the 14 physicians that comprise Greensboro Orthopaedics, 10 physicians are owners of GSW and OSCT, and that of the 27 physicians that comprise Southern Orthopaedic Specialists, 11 physicians are owners of OSCT and 12 physicians are owners of GSW. Further, on CON Application page 44, OSCT provides a “table summarizing the letters of support with the number of cases to be performed in the two licensed operating rooms.” That table contains names of 29 physicians (11 surgeons from Southeastern Orthopaedic Specialists; 10 surgeons from Greensboro Orthopaedics; and 8 surgeons from Wake Forest University Health Sciences, Orthopedic Surgery & Rehabilitation).

On page 47, OSCT states that the proposed project involves 29 of the 93 total licensed orthopedic surgeons (under the age of 70) in Forsyth and Guilford Counties, which equal 31%.

OSCT fails to provide any historical orthopedic ambulatory surgery volume for each physician of the 29 physicians listed on page 44. In addition, OSCT fails to provide the surgical operating room locations in which those 29 physicians performed surgical cases. It is a reasonable assumption that those locations include the 36 shared surgical operating rooms licensed to North Carolina Baptist Hospital in Forsyth County and the existing surgical providers in Guilford County.

Surely, historical data was readily available to OSCT. Instead, OSCT expects that the Agency will accept at face-value all assumptions and projections in the seven-step use rate-based need methodology set forth on pages 45-50 of the OSCT Con Application. In the table on page 44 of the OSCT CON application, nine of the eleven surgeons from Southeastern Orthopaedic Specialists, project the exact same number of orthopedic surgical cases to be performed at OSC during each of the first three years of operation. This is quite unusual and makes it unclear whether the future expected OSCT case volumes for these surgeons are based historical data or reasonable assumptions.

In the absence of orthopedic ambulatory surgery volume or patient origin for the 29 physicians who will perform surgery at the proposed orthopedic ASC, the following cannot be validated independently:

- Patient origin from Forsyth, Guilford and surrounding Counties;
- Current market share of Forsyth and Guilford Counties;
- Historical growth rates;
- Projected surgical volume;
- Volume to be shifted to the proposed orthopedic ASC;
- Market share assumptions, to include a projected increase in market share;
- Need for the proposed two surgical operating rooms and one minor procedure room; and,
- Impact on existing orthopedic surgical providers in the Triad Area.

The Agency cannot approve the OSCT Application without an ability to verify that the quantitative OR case projections that are necessary to demonstrate the quantitative “need” for the project are reasonable and well-supported. Thus, the OSCT application is non-conforming with CON Statutory Review Criterion (3).

### 3. Negative Impact on Existing Surgical Providers in Forsyth and Guilford Counties

On page 59, in response to Section III., Question 9(d), OSCT shows population projections for Forsyth and Guilford Counties for 2008 through 2015, in order to support their assertion that existing hospitals and ambulatory surgery centers “can easily achieve substantial growth in utilization and not be adversely affected by the project.” OSCT does not discuss or seek to quantify the impact the proposed facility will have on existing providers.

#### A. Guilford County

OSCT does not offer any impact analysis regarding the proposed shift of orthopedic ambulatory cases from existing hospitals and ambulatory surgery centers in Guilford County, and the direct impact on those facilities. According to the *2010 SMFP* Guilford County currently has a projected surplus of 21.2 operating rooms in 2012. Of the 29 surgeons associated with OSCT 21, or 72.4% currently practice in Guilford County.

OSCT did not have letters of support from any of the existing surgical providers in Guilford County (such as Moses Cone Hospital, High Point Regional Health System, Surgical Center of Greensboro, Premier Surgery Center, etc.). None of the following orthopedic surgery providers included in the following table supported the proposed project.

**Guilford County Orthopedic Surgery Providers**

| Surgical Providers     | County   | 2007                    | 2008  | 2009  |
|------------------------|----------|-------------------------|-------|-------|
| Gboro Specialty        | Guilford | 1,101                   | 986   | 1,277 |
| HP Surg Ctr            | Guilford | 1,472                   | 1246  | 1,461 |
| HPRHS                  | Guilford | 764                     | 838   | 632   |
| Moses Cone             | Guilford | 4,439                   | 5,433 | 5,219 |
| Piedmont (Podiatry)    | Guilford | 937                     | 1,012 | 1,087 |
| Premier Surgery Center | Guilford | Newly Approved Provider |       |       |
| Surgical Ctr of Gboro  | Guilford | 4,448                   | 4,471 | 4,678 |
| Triad Neurosurgery     | Guilford | Newly Approved Provider |       |       |

Source: Annual LRAs; KOSC CON Application, Exhibit 2, Table 1

As shown in the previous table, Guilford County six existing and approved providers of orthopedic surgery, plus one podiatry provider and one neurosurgery provider, both of whom do some procedures also performed by orthopedic surgeons. Two of the above providers recently received CON approval for two new freestanding CON applications,

one of which Premier Surgery Center, Project I.D. # G-8163-08, is a multispecialty ambulatory surgery center which will provide orthopedic surgery.

In addition, all but two of the six existing and approved providers of outpatient orthopedic surgery in Guilford County<sup>11</sup> are freestanding ambulatory surgery centers. Based upon the Petition filed with the SHCC, which resulted in the proposed Single Specialty Surgery Center Demonstration Project, and discussions held at the meetings of the SHCC Single Specialty ASC Work Group, and the SHCC Acute Care Committee, the Single Specialty Surgery Center Demonstration Project included in the 2010 SMFP anticipated a shift of patients from hospital-based outpatient surgical centers, rather than from existing freestanding surgical centers.

*1. Moses Cone Health System*

A review of the Moses Cone's online medical staff listing shows that all 21 of the Guilford County orthopedic surgeons are on the medical staff. In addition, OSCT CON Application Exhibit 33 CON Application page 78 identifies all 21 Greensboro-based orthopedic surgeons as members of the Moses Cone Health System medical staff. Outpatient orthopedic surgical procedures represent over 25% of total outpatient surgical volume at Moses Cone and are shown in the KOSC CON Application, Exhibit 2, Table 1. See Attachment 5 to these comments for a copy of this table. Surgical operating rooms at Moses Cone are currently utilized at less than 60% of capacity as shown in the following table.

**Moses Cone Health System OR Utilization - FFY 2009**

|  | <b>Cases</b>  | <b>ORs</b> |
|--|---------------|------------|
| Inpatient  | 13,325        | 37         |
| Open Heart   | 531           | 4          |
| C-sections in C-section ORs  | 0             | 0          |
| Outpatient   | 19,361        | 13         |
| <b>Total</b>   | <b>33,217</b> | <b>54</b>  |
| Weighted Inpatient Surgical Hours w.o Open Heart                       | 39,975        |            |
| Weighted Surgical Hours Outpatient                                     | 29,042        |            |
| <b>Total Weighted Surgical Hours</b>                                   | <b>69,017</b> |            |
| OR Capacity w.o Open Heart (9hrs/per day x 260 days per year x 50 ORs) |               | 117,000    |
| 2009 OR Utilization  | 59.0%         |            |

*Source: 2010 LRA*

Operating room capacity in the previous table is defined in accordance with the 2010 SMFP on page 62. The SMFP also assumes that for planning purposes ORs should be utilized at 80%. As shown above, current utilization at Moses Cone is well below the 80% target defined in the SMFP. The impact of shifting any outpatient orthopedic

surgical volume will result in further underutilization at Moses Cone. Moses Cone Health System, did not write a letter of support for the proposed project.

### 2. Surgical Center of Greensboro

A review of the Surgical Center of Greensboro's website<sup>12</sup> shows that all 21 of the Guilford County orthopedic surgeons also perform surgery at the Surgical Center of Greensboro (SCOG). In addition, as shown in Attachment 2, the SCOG has a designated Orthopaedic Surgery Center within its existing facility. Therefore, the 21 Guilford County orthopedic surgeons currently have access to and utilize a designated orthopedic surgical center in Guilford County. OSCT fails to discuss the potential impact on the Surgical Center of Greensboro.

Outpatient orthopedic surgical procedures represented over 45% of total outpatient surgical volume at SCOG in 2009 as shown in the KOSC CON Application, Exhibit 2, Table 1. See Attachment 5 to these comments for a copy of this table. Surgical operating rooms at SCOG are currently utilized at 50% of capacity as shown in the following table.

**SCOG OR Utilization - FFY 2009**

|  | Cases  | ORs    |
|--|--------|--------|
| Outpatient   | 10,186 | 13     |
| Weighted Surgical Hours  | 15,259 |        |
| OR Capacity w.o Open Heart (9hrs/per day x 260 days per year x 13 ORs) |        | 30,420 |
| 2009 OR Utilization  | 50.2%  |        |

Source: 2010 LRA

Operating room capacity in the previous table is defined in accordance with the 2010 SMFP on page 62. The SMFP also assumes that for planning purposes ORs should be utilized at 80%. As shown above, current utilization at SCOG is well below the 80% target defined in the SMFP. The impact of shifting any outpatient surgical volume will result in further underutilization at SCOG. SCOG did not write a letter of support for the proposed project.

### 3. High Point Regional Health System

A review of the High Point Regional Health System's online medical staff listing shows that none 21 of the Guilford County orthopedic surgeons are on the medical staff. However, surgical operating rooms at High Point Regional Health System (HPRHS) are currently utilized at less than 70% of capacity as shown in the following table.

<sup>12</sup><http://www.surgicalcenterofgreensboro.com>

### High Point Regional Health System OR Utilization - FFY 2009

|   | Cases        | ORs    |
|---|--------------|--------|
| Inpatient   | 3,290        |        |
| Open Heart  | 198          | 2      |
| C-sections in C-section ORs   | Not Reported | 1      |
| Outpatient  | 3,114        |        |
| Total   | 6,602        | 12     |
| Weighted Inpatient Surgical Hours w.o Open Heart                      | 9,870        |        |
| Weighted Surgical Hours Outpatient                                    | 4,671        |        |
| Total Weighted Surgical Hours   | 14,541       |        |
| OR Capacity w.o Open Heart (9hrs/per day x 260 days per year x 9 ORs) |              | 21,060 |
| 2009 OR Utilization   | 69.0%        |        |

*Source: 2010 LRA*

Operating room capacity in the previous table is defined in accordance with the 2010 SMFP on page 62. The SMFP also assumes that for planning purposes ORs should be utilized at 80%. As shown above, current utilization at HPRHS is well below the 80% target defined in the SMFP.

In addition, HPRHS has a recently received CON approval for a new freestanding ambulatory surgery center, Premier Surgery Center, Project I.D.# G-8163-08, which is a multispecialty ambulatory surgery center which will provide orthopedic surgery. See the HPRHS/Premier Surgery Center CON Application at pages 8, 17, 24 and CON Application Exhibit 4, which includes an orthopedic surgical practice letter of support. The proposed location of OSCT on Sandy Ridge Road in Guilford County is in HPRHS's primary service area. The impact of shifting any outpatient surgical volume will result in further underutilization at HPRHS. HPRHS did not write a letter of support for the proposed project.

#### ***b. Forsyth County***

OSCT does not offer any analysis about the proposed shift of orthopedic ambulatory cases from existing hospitals in Forsyth County, and the direct impact on those facilities. According to the 2010 SMFP Forsyth County currently has a projected surplus of only 5.52 operating rooms in 2012. Of the 29 surgeons associated with OSCT eight or 27.6% currently practice in Forsyth County.

OSCT did not have letters of support from any of the existing surgical providers in Forsyth County. None of the following orthopedic surgery providers included in the following table supported the proposed project.



### Guilford County Orthopedic Surgery Providers

| Surgical Provider | County  | 2007  | 2008  | 2009  |
|-------------------|---------|-------|-------|-------|
| FMC               | Forsyth | 2,959 | 2,971 | 3,023 |
| MPH               | Forsyth | 1,773 | 1,980 | 1,924 |
| NCBH              | Forsyth | 3,587 | 3,507 | 3,832 |

Source: Annual LRAs; KOSC CON Application, Exhibit 2, Table 1

As shown in the previous table, Forsyth County has only three existing providers of orthopedic surgery and no existing freestanding ambulatory surgery center providing orthopedic surgery.

#### 1. North Carolina Baptist Medical Center

OSCT does not discuss how the proposed volume shift will affect “related entity”<sup>13</sup> North Carolina Baptist Hospital. Existing operating room inventory at North Carolina Baptist Hospital is underutilized, as shown in the following table.

#### North Carolina Baptist Hospital Operating Room Need

|  | Cases  | ORs    |
|--|--------|--------|
| Inpatient  | 12,771 | 40     |
| Open Heart   | 586    |        |
| C-sections in C-section ORs  | 0      |        |
| Outpatient   | 18,693 |        |
| Total  | 32,050 | 40     |
| Weighted Inpatient Surgical Hours w.o. Open Heart                      | 40,071 |        |
| Weighted Surgical Hours Outpatient                                     | 28,040 |        |
| Total Weighted Surgical Hours  | 68,111 |        |
| ORs Needed at 1,872 Hours per OR                                       | 36.4   |        |
| OR Capacity w.o Open Heart (9hrs/per day x 260 days per year x 40 ORs) |        | 93,600 |
| 2009 OR Utilization  | 72.8%  |        |

Source: 2010 LRA North Carolina Baptist Hospital

Note: Inpatient cases include open heart as NCBH does not designate any OH ORs. Inpatient cases also include trauma and burn surgeries as those case volumes are not reported separately on the 2010 LRA

Note: Does not include Plastic Surgery Center of NC as no orthopedic surgery was performed there in 2009.

The previous table shows a surplus of at least two surgical operating rooms in the most recent fiscal year for which data is publicly reported when two operating rooms are subtracted for Trauma and Burn surgical cases, as required in the SMFP OR Need Methodology. However, no volumes are subtracted for these service requirements. Thus,

<sup>13</sup>See the “related entity” definition in the CON OR Regulations at 10A NCAC 14C.2101(9). These regulations are applicable to this review.

and based upon the actual utilization of the 40 existing NCBH operating rooms, total utilization in 2009 was 72.8%. As shown above, current OR utilization at NCBH is below the 80% target defined in the *SMFP*.

In addition, in January 2010, NCBH submitted a CON Application, using SMFP Policy AC-3, for seven new operating rooms at NCBH (Project I.D. # G-8460-10), to be part of a new 8-OR ambulatory surgery center (7 new ambulatory ORs and the relocation of one existing NCBH OR). The need for those seven additional operating rooms was based in part on the orthopedic surgical volume associated with the eight Wake Forest University Health Sciences Orthopedic surgeons associated with this project, as reflected on page 44 of the Application. Total projected surgical cases associated with WFUHS MDs reflected on OSCT CON Application page 44 are 886 procedures in Project Year 3. This volume when weighted is the equivalent of one operating room<sup>14</sup> no longer needed at NCBH. In this Application, WFUHS is proposing to double count surgical volume used in projecting the need for the seven new ORs at NCBH and the two new ambulatory orthopedic ORs at OSCT. Furthermore, Comments in Opposition, submitted by Novant Health regarding Project I.D. # G-8460-10, included in Attachment 3 to these comments, raised questions regarding the need for seven new operating rooms at NCBH. NCBH had failed to take into consideration the acquisition of Plastic Surgery Center of North Carolina, including its three new ambulatory ORs and had overstated growth rates.

As discussed in more detail in the context of a CON Criteria and Standards for Operating Rooms, OSCT is required to provide current/historical and projected surgical volume for "related entity" North Carolina Baptist Hospital, in response to 10A NCAC 14C.2102(b)(4) and 10A NCAC 14C.2103(c).

## *2. Novant Health Surgical Facilities: Forsyth Medical Center and Medical Park Hospital*

OSCT does not discuss how the proposed project will impact Novant Health surgical facilities, Forsyth Medical Center and Medical Park Hospital in Forsyth County. A review of the FMC/MPH online medical staff listing shows that none of the 29 orthopedic surgeons associated with OSCT are on the medical staff at either FMC or MPH. However, surgical operating rooms at FMC/MPH, excluding open heart and C-Section operating rooms as specified in the CON Criteria and Standards Surgical Services and Operating Rooms at 10A NCAC 14C .2103, are currently utilized at 68.5% of capacity as shown in the following table.

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<sup>14</sup> Calculation =  $886 \times 1.5 = 1,329$  weighted surgical hours;  $1,329$  weighted surgical hours /  $1,872$  hours per operating room =  $0.71$  operating rooms or  $1.0$  operating rooms when rounded.

**Novant Health OR Utilization - Forsyth County - FFY 2009**

| <b>Combined FMC and MPH</b>  | <b>Cases</b> | <b>ORs</b> |
|--|--------------|------------|
| Inpatient  | 10,682       | 23         |
| Open Heart   | 593          | 3          |
| C-sections in C-section ORs  | 2,027        | 2          |
| Outpatient   | 23,491       | 6          |
| Total  | 0            | 47         |
| Weighted Inpatient Surgical Hours w.o Open Heart and C-section Volumes   | 32,046       |            |
| Weighted Surgical Hours Outpatient   | 35,237       |            |
| Total Weighted Surgical Hours  | 67,283       |            |
| OR Capacity w.o Open Heart and C-section ORs, less non-operational ORs (9hrs/per day x 260 days per year x 38 ORs) |              | 88,920     |
| 2009 OR Utilization  | 75.7%        |            |

*Source: 2010 LRAs for FMC and MPH*

*Note: Inpatient cases exclude open heart and C-section cases.*

Operating room capacity in the previous table is defined in accordance with the 2010 SMFP on page 62. The SMFP also assumes that for planning purposes ORs should be utilized at 80%. However, FMC currently has four operating rooms included in the OR inventory that are being developed as reported on 2010 LRA. Three FMC ORs which are existing or under development will be relocated to the new Kernersville Medical Center (KMC) plus one OR from MPH. KMC will open in 2011. Adjusting for four non-operational operating rooms at FMC, results in a 75.7% utilization rate for operational operating rooms at FMC and MPH. If the four operating rooms are not excluded current utilization at FMC and MPH is at 68.5% of existing operating room capacity, excluding open heart and C-Section operating rooms.

Furthermore, the proposed location of OSCT is in a zip code that is part of the KMC Service Area. None of the surgeons associated with OSCT are on the FMC or MPH medical staff and none have expressed any interest in joining the KMC medical staff. Therefore, it is reasonable to assume that the proposed OSCT would have a negative impact on KMC.

**4. Future Recruitment of Ten Orthopedists does not Constitute Physician Support**

On page 44, under the heading entitled “Physician Support,” OSCT states that “[t]en new orthopedists will be recruited and encouraged to perform orthopedic surgery cases at the proposed facility.” OSCT “expects that the new surgeons will perform an additional 100 to 175 ambulatory surgical cases per physician per year at the proposed facility.” This translates to an expected annual additional OSCT annual surgical case load of 1,000 to 1,750 outpatient orthopedic cases per year.

It is unclear how the two OSCT operating rooms will accommodate an additional 1,000 to 1,750 outpatient orthopedic surgical cases annually, based on the projected recruitment of these ten additional surgeons.. With the existing 29 surgeons who have expressed that they will perform cases at OSCT, plus 10 additional orthopedic surgeons, there would be a total of 39 surgeons seeking OR time at OSCT. Even running the two operating rooms six days per week<sup>15</sup> or about 600 OR days per year, each of the 39 surgeons would have access to the ORs on average about 15.3 days per year, or barely once a month<sup>16</sup>. Based on the OSCT OR case volume projections for the first three years of operation, and the two OSCT ORs open six days per week, these two ORs will be running at 80% of capacity in Year 3<sup>17</sup>, with not much room to accommodate an additional 1,000 to 1,750 cases per year. The addition of 1,000 more OR cases in Year 3 would require the two OSCT operating rooms to run at 105% of capacity<sup>18</sup>. The addition of 1,750 more OR cases in Year 3 would require the two OSCT ORs to run at 124% of capacity<sup>19</sup>.

OSCT does not yet have ten new surgeons on its medical staff performing surgical cases. OSCT does not specify the timing for recruiting these additional surgeons and whether the new surgeons will be recruited before or after the opening of the OSCT in January 2013. Implementation of a “recruiting plan” places OSCT years from actual performance of surgical cases at the proposed orthopedic ASC.

#### **G.S. 131E-183 (4)**

*Where alternative methods of meeting the needs for the proposed project exist, the applicant shall demonstrate that the least costly or most effective alternative has been proposed.*

As discussed in detail in the context of Criterion (1) above, OSCT failed to document how its projected volumes incorporate the Basic Principles in meeting the need identified in the 2010 SMFP, and projected unreasonable and overstated surgical volume which cannot be used to justify the proposed surgical operating rooms in Guilford County.

As discussed in detail in the context of Criterion (3) above, OSCT does not demonstrate a quantitative need for the two proposed surgical operating rooms at the Orthopaedic ASC.

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<sup>15</sup> At OSCT CON Application page 24, OSCT proposes its hours of operation as 7 a.m. – 5 p.m., Monday-Friday and 7 a.m. – 5 p.m. on Saturday. This is 10 hours per day per OR X 300 Days/Year or 3,000 hours per OR per year.

<sup>16</sup> Calculation: 300 Days Per Year Per OR X 2 ORs = 600 OR days per year/39 surgeons = 15.3 OR Days Per Year Per Surgeon.

<sup>17</sup> Calculation: 3,199 OSCT annual surgical cases PY3 X 1.5 hours per case = 4798.5 annual surgical case hours/6,000 hours annual OR capacity for 2 ORs = 79.9%.

<sup>18</sup> Calculation: (4798.5 OR Case Hours in PY3) + (1,000 OR cases X 1.5 hours per case) = 6,298.5 OR case hours/ 6,000 OR Case Hours Annually for 2 ORs = 105% of capacity.

<sup>19</sup> Calculation: (4798.5 OR Case Hours in PY3) + (1,750 OR cases X 1.5 hours per case) = 7,423.5 OR case hours/ 6,000 OR Case Hours Annually for 2 ORs = 124% of capacity.

When a proposed project does not comply with Criteria (1) and (3), there can be no means by which to demonstrate that the least costly or most efficient alternative has been proposed. For that reason, the OSCT Application does not conform to Criterion (4).

**G.S. 131E-183 (5)**

*Financial and operational projections for the project shall demonstrate the availability of funds for capital and operating needs as well as the immediate and long-term financial feasibility of the proposal, based upon reasonable projections of the costs of and charges for providing health services by the person proposing the service.*

When comparing the Gross Revenue per Case, the Net Revenue per Case, and the Total Cost per Case for the two competing orthopedic surgery centers, Kernersville Orthopaedic Surgery Center (CON Project I.D. # G-8492-10) and Orthopaedic Surgical Center of the Triad (CON Project I.D. # G-8479-10), it is clear that KOSC will provide the most cost-effective alternative with lower costs and Gross & Net Revenue per OR Case than OSCT, across all three project years. See the table below for the comparison:

|                    | Cost Per Case (ORs + Px Room) | Net Rev Per Case | Gross Rev or Charge per Case |
|--------------------|-------------------------------|------------------|------------------------------|
| OSCT Year 1        | \$1549                        | \$1525           | \$3020                       |
| <b>KOSC Year 1</b> | <b>\$959</b>                  | <b>\$1214</b>    | <b>\$2482</b>                |
| OSCT Year 2        | \$1480                        | \$1525           | \$2993                       |
| <b>KOCS Year 2</b> | <b>\$963</b>                  | <b>\$1244</b>    | <b>\$2556</b>                |
| OSCT Year 3        | \$1407                        | \$1525           | \$2993                       |
| <b>KOSC Year 3</b> | <b>\$967</b>                  | <b>\$1275</b>    | <b>\$2633</b>                |

Thus, the OSCT projections of costs and charges for orthopedic ambulatory surgery cases are higher than those of KOSC. Accordingly, the OSCT costs and charges are not reasonable. The lower cost and charge projections of KOSC are comparatively superior.

**G.S. 131E-183 (6)**

*The applicant shall demonstrate that the proposed project will not result in unnecessary duplication of existing or approved health service capabilities or facilities.*

As discussed in detail in the context of Criterion (1) above, OSCT failed to document how its projected volumes incorporate the Basic Principles in meeting the need identified in the 2010 SMFP, and projected unreasonable and overstated surgical volume which cannot be used to justify the proposed surgical operating rooms in Guilford County.

As discussed in detail in the context of Criterion (3) above, OSCT does not demonstrate a quantitative need for the two proposed surgical operating rooms at the Orthopaedic ASC. Furthermore, the location of the proposed OCST is in Guilford County, which has over 20 excess operating rooms as reflected in the 2010 SMFP. None of the existing surgical facilities in Guilford County supported the OSCT and none of the existing providers are

operating at over 70% of capacity for the operating rooms reflected as operational on each provider's 2010 annual licensure renewal applications.

The following table reflects utilization levels of existing surgical providers in Forsyth and Guilford County, and reflects if letters of support were provided to an Applicant in the review.

**Existing Surgical Providers in Forsyth and Guilford Counties - 2009 Surgical Utilization and Support of Proposed Applicants for Triad Region Demonstration Project**

| Surgical Providers              | County   | 2009 Surgical Utilization | Letter Of Support Orthopaedic Surgery Center of the Triad | Letter of Support Kernersville Orthopaedic Surgery Center |
|---------------------------------|----------|---------------------------|---|---|
| FMC                             | Forsyth  | 75.7%                     | No  | Yes   |
| North Carolina Baptist Hospital | Forsyth  | 72.8%                     | No  | No  |
| Gboro Specialty                 | Guilford | 53.2%                     | No  | No  |
| HP Surg Ctr                     | Guilford | 60.7%                     | No  | No  |
| HPRHS                           | Guilford | 69.0%                     | No  | No  |
| Moses Cone                      | Guilford | 59.0%                     | No  | No  |
| Piedmont (Podiatry)             | Guilford | 34.9%                     | No  | No  |
| Premier Surgery Center          | Guilford | Not Applicable            | No  | No  |
| Surgical Ctr of Gboro           | Guilford | 50.2%                     | No  | No  |
| Triad Neurosurgery              | Guilford | Not Applicable            | No  | No  |

Source: LRAs

Note: Surgical Utilization reflect utilization of operational ORs less open heart and C-Section ORs

As shown in the previous table, utilization of all existing operating rooms at all outpatient orthopedic surgical providers in Guilford County is well under the State target of 80% as set forth in the state's OR Need Method in the 2010 State Medical Facilities Plan. None of these Guilford County providers supported either of the proposed orthopedic surgery centers submitted in the Triad Area Single Specialty Surgery Center Demonstration Project review. In Forsyth County, both FMC/MPH and NCBH are operating existing operating rooms in service at over 70% as shown in the previous table. While both facilities are under the target utilization of 80%, locating a new freestanding specialty ambulatory surgery center in Forsyth County would have less impact on existing providers than a new single specialty ASC located in Guilford County. In addition, only FMC/MPH supported one of the proposed orthopedic surgery centers submitted in the Triad Area Single Specialty Surgery Center Demonstration Project review. See the FMC and Novant Health Triad Region management team letters of support in KOSC CON Application Exhibit 7.

When a proposed project does not comply with Criteria (1), (3), and (4) there can be no means by which to demonstrate that the proposed project will not result in unnecessary

duplication of existing or approved health service capabilities or facilities. For that reason, the OSCT Application does not conform to Criterion (6).

**G.S. 131E-183 (12)**

*Applications involving construction shall demonstrate that the cost, design, and means of construction proposed represent the most reasonable alternative, and that the construction project will not unduly increase the costs of providing health services by the person proposing the construction project or the costs and charges to the public of providing health services by other persons, and that applicable energy saving features have been incorporated into the construction plans.*

A comparison of the capital costs associated with the two competing orthopedic single specialty surgery centers is instructive. It shows that the total capital cost, the capital cost per OR, and the capital cost per square foot are less for Kernersville Orthopaedic Surgery Center (CON Project I.D. #G-8492-10) than for Orthopaedic Surgery Center of the Triad (CON Project I.D. # G-8479-10). Thus, KOSC presents the more reasonable alternative in terms of cost, design, and means of construction.

|                                   | KOSC         | OSCT        | Difference: KOSC Lower By |
|-----------------------------------|--------------|-------------|---------------------------|
| <b>Total Project Capital Cost</b> | \$,4,630,881 | \$7,620,750 | \$2,989,869 or 39%        |
| <b>Total Construction Cost</b>    | \$1,948,530  | \$3,552,500 | \$1,603,970 or 45%        |
| <b>Total Capital Cost Per OR</b>  | \$2,315,440  | \$3,810,375 | \$1,494,935 or 39%        |
| <b>Construction Cost Per OR</b>   | \$975,264    | \$1,776,250 | \$800,986 or 45%          |
| <b>Capital Cost/Sq Foot</b>       | \$496/SF     | \$753/SF    | \$257/SF or 34%           |
| <b>Construction Cost/Sq Foot</b>  | \$190/SF     | \$348/SF    | \$158/SF or 45%           |

See also the discussion in Criterion (5) for a comparison of the KOSC and OSCT Cost per OR Case. The KOSC cost per OR case is 31%to 38% less than that of OSCT during the first three years of operation of the new orthopedic surgery center.

**IV. 2010 SMFP Table 6D Single Specialty ASF Demonstration Project Criteria**

Of the three competing CON application for the Triad Demonstration Project Single Specialty Surgery Center, OSCT is the only applicant where the physicians own less than 100% of the proposed applicant entity. Physicians hold a 66.67% interest in OSCT (operating entity & lessee) and GSW (land owner & building lessor). Both the Kernersville Orthopaedic Surgery Center proposal and the Piedmont Outpatient Surgery Center, LLC are 100% owned by surgical groups. One hundred percent of the membership interests in the new KOSC limited liability company are held by Orthopaedic Specialists of the Carolinas, an independent orthopedic surgery and rehabilitation group with offices in Winston-Salem, Kernersville, Mocksville, and King. One hundred percent of the membership interests in the new POSC limited liability company are held by the private practice ENT group, Piedmont Ear Nose and Throat

(PENTA). The 2010 SMFP Table 6D Criteria for the Single Specialty Surgery Center Demonstration Projects state: *“In choosing among competing demonstration project facilities, priority will be given to facilities that are owned wholly or in part by physicians.”* See page 82 of the 2010 SMFP. In a comparative, competitive review more favorable consideration can be given by the CON Agency to projects that have the higher percentage of physician/surgeon ownership.

## **V. CON Criteria and Standards for Operating Rooms – 10A NCAC 14C .2100**

The proposed project is non-conforming to the Criteria and Standards for Operating Rooms as follows:

### **10A NCAC 14C .2102 Information Required of Applicant**

OSCT has not provided information that conforms to the requirements set forth in 10A NCAC 14C .2102(b)(1) through (4) which are applicable in this review. See the OSCT CON Application regulatory responses at CON Application pages 23-24. The two operating rooms included in the 2010 SMFP Single Specialty Ambulatory Surgery Demonstration Project do in fact increase the number of operating rooms in the defined service area. There is no language in the SMFP to the contrary. In addition, whether or not these ORs will be reported in future SMFP Chapter 6 OR inventories, is not relevant in determining whether the applicant must respond to applicable CON OR Regulations, which is within the expertise and purview of the CON Agency and the CON Analysts. Therefore, 10A NCAC 14C .2102(b)(1)-(4) is applicable and OSCT is required to provide responses other than “Not Applicable.”

These regulatory provisions all pertain to the applicant and “related entities” as defined at 10A NCAC 14C.2101(9). As discussed above, in Comment Section III, OSCT’s position that Wake Forest University Health Sciences, Plastic Surgery Center of North Carolina and North Carolina Baptist Hospital are not related entities is simply not correct.

### **10A NCAC 14C .2102(b)(1): Current OR Inventory Required for Applicants and Related Entities**

As stated on page 23, OSCT states that WFUHS owns WFAV and that WFUHS also owns Plastic Surgery Center of North Carolina, which has three underutilized ambulatory surgical operating rooms in the service area for the Triad ASC Demonstration Project, which consists of Forsyth and Guilford Counties. The three underutilized ambulatory surgical operating rooms at Plastic Surgery Center of North Carolina are in fact existing surgical operating rooms located in the service area, which is defined by the Demonstration Project Criteria as Forsyth and Guilford Counties.

The OSCT, however, fails to explain in response to .2102(b)(1) why North Carolina Baptist Hospital is not a “related entity,” as that term is defined in 10 NCAC 14C .2101(9). As a result, the four dedicated inpatient and 36 shared surgical operating rooms



licensed to North Carolina Baptist Hospital in Forsyth County should have been listed in response to the CON OR Regulation provision. See the discussion of NCBH as a “related entity in Section III of these comments.

OSCT also fails to discuss in its CON Application, a pending CON Application of North Carolina Baptist Hospital submitted on January 15, 2010 in which it seeks the State’s approval to add seven new surgical operating rooms in Forsyth County, using the special status afforded only to Academic Medical Centers under *SMFP* Policy AC-3. North Carolina Baptist Hospital proposes to spend \$38.7 million to construct a 72,300 square foot ambulatory surgery center (the West Campus Surgery Center).<sup>20</sup>

***10A NCAC 14C .2102(b)(2): Future OR Inventory for Applicants and Related Entities Required***

After completion of the proposed project, the three underutilized ambulatory surgical operating rooms at WFUHS’s Plastic Surgery Center of North Carolina will be operating rooms located in the service area, which is defined by the Demonstration Project Criteria as Forsyth and Guilford Counties.

Similarly, the licensed existing surgical operating rooms at North Carolina Baptist Hospital in Forsyth County remain operating rooms located in Forsyth County after completion of the proposed project.

OSCT did not provide the information required by this regulatory provision and should be found non-conforming.

***10A NCAC 14C .2102(b)(3): OR Cases for Most Recent 12 Months for All ORs Owned by the Applicants and Related Entities***

The OSCT is required to provide the number of cases performed in the most recent 12 month period for which data is available in the surgical operating rooms of each facility listed in response to .2102(b)(1) and (b)(2). OSCT failed to provide that information for the Plastic Surgery Center of North Carolina and NCBH, which are facilities that should have been identified in OSCT’s responses to .2102(b)(1) and .2102(b)(2).

***10A NCAC 14C .2102(b)(4): Projected Future OR Cases for All ORs Owned in the Future by the Applicants and Related Entities***

OSCT is required to provide the projected number of cases to be performed in each of the three operating years of the proposed OSCT for each facility listed in response to .2102(b)(1) and (b)(2).

---

<sup>20</sup> Please see Attachment 2 for a copy of the Comments in Opposition submitted by Novant Health regarding the West Campus Surgery Center CON Application.

OSCT fails to provide projected volume for WFUHS's Plastic Surgery Center of North Carolina and NSCH, which should be a facility listed in OSCT's CON Application responses to .2102(b)(1) and .2102(b)(2).

OSCT also fails to provide projected volume for North Carolina Baptist Hospital, which is a facility that should have been listed in response to .2102(b)(1) and (b)(2). Had OSCT provided projected volume for the 40 licensed surgical operating rooms at North Carolina Baptist Hospital, they would have certainly quantified the magnitude of loss in orthopedic ambulatory surgery volume that will result from a shift in those cases to the proposed OSCT in Guilford County. That loss of that surgical volume will only worsen the surplus of operating rooms in North Carolina Baptist Hospital's existing inventory.

### **10A NCAC 14C .2103 Performance Standards**

OSCT has not provided information that conforms to the requirements set forth in 10A NCAC 14C .2103(b)(1)(A) and (c)(1)(A). As previously discussed, the two operating rooms included in the 2010 SMFP Single Specialty Ambulatory Surgery Demonstration Project do in fact increase the number of operating rooms in the defined service area. There is no language in the SMFP to the contrary. Therefore, 10A NCAC 14C .2103(b) and (c) are applicable. OSCT should be found non-conforming with the performance standard, which is related to the OSCT non-conformity with CON statutory review criterion (3).

#### ***10A NCAC 14C .2103(b)(1)(A): Demonstrate the Quantitative Need for the New Surgery Center, OSCT***

As discussed in detail in the context of Criterion (3), OSCT bases their projections on unreasonable assumptions, which result in unreasonable and overstated projections. Overstated projections are used to demonstrate a need for two proposed surgical operating rooms at the proposed Orthopaedic ASC. Therefore, OSCT did not show that its projections justify two proposed operating rooms at OSCT, using the performance standard set forth in 10A NCAC 14C .2103(b)(1)(A).

#### ***10A NCAC 14C .2103(c)(1)(A): Demonstrate the Quantitative Need for the Increase in the Number of Service Area Operating Rooms***

As previously discussed, the two operating rooms included in the 2010 SMFP Single Specialty Ambulatory Surgery Demonstration Project do in fact increase the number of operating rooms in the defined service area. There is no language in the SMFP to the contrary. Therefore, 10A NCAC 14C .2103(c) is applicable.

OSCT did not demonstrate the need for two proposed OSCT operating rooms in addition to the operating rooms in the "related entities" required to be identified in response to 10A NCAC 14C .2102(b)(2), which OSCT did not address. Specifically no projections were included in the application for Plastic Surgery Center of North Carolina, which is a wholly owned subsidiary of WFUHS, which owns a third of the proposed OSCT facility,

as required. Nor were projections included for NCBH, which is also a “related entity” as discussed in Section III of these comments.

Consequently, the OSCT Application should be denied for failure to conform to the Criteria and Standards for Operating Rooms.

## **VI. Comparative Review**

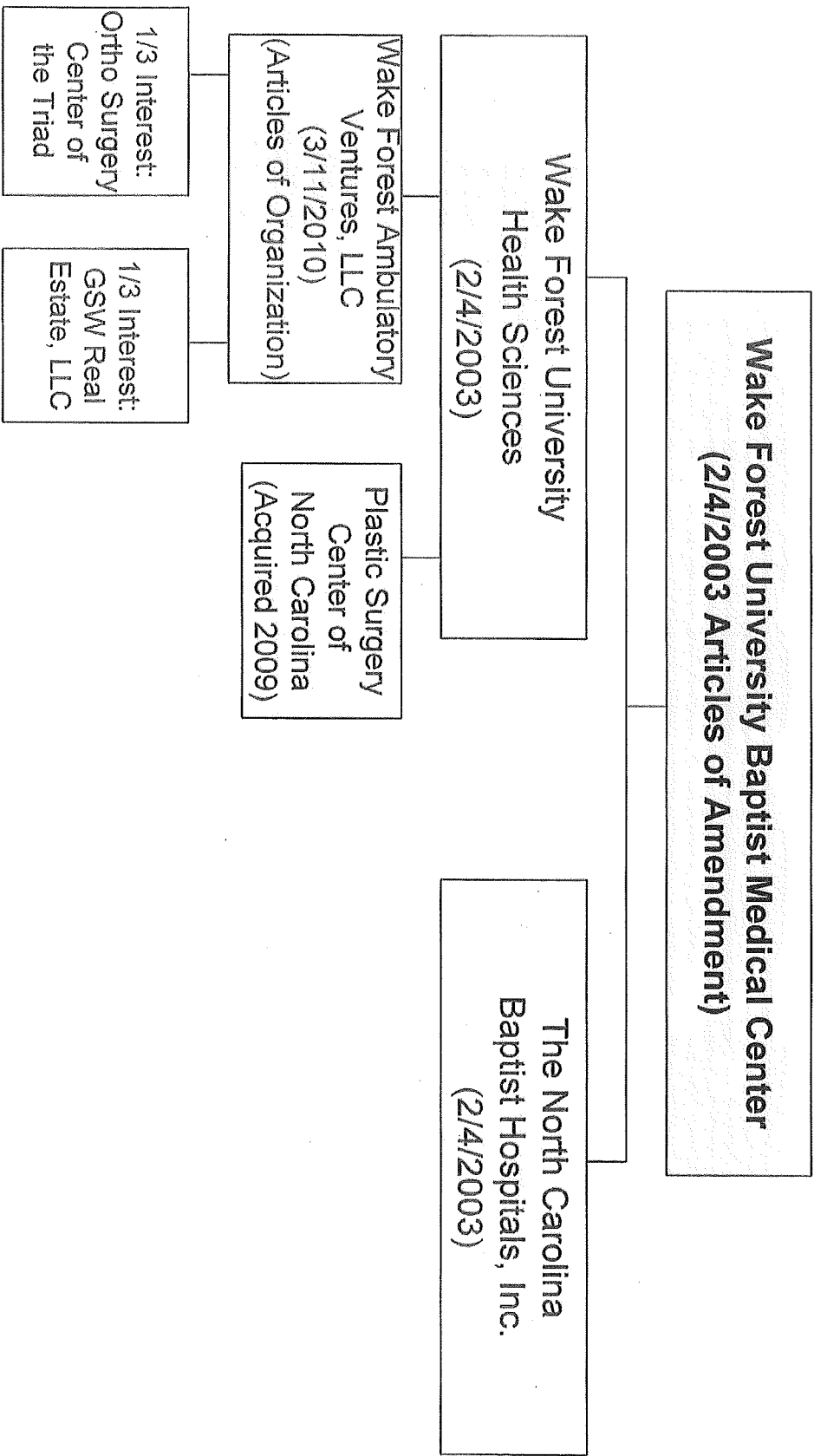
See Attachment 6 to these comments for a comparison of the two competing orthopedic surgery center CON applications and the one ENT surgery center CON application. In a competitive CON review, the Agency often utilizes this type of comparison to differentiate the applicant to be approved. The factors used for comparison Attachment 6 include in : Location, Physician Ownership Percent, Opening Date, Total Capital Cost, Construction Cost, Cost Per Square Foot, Charity Care Policy, Percent of Self-Pay, Medicare, & Medicaid, Cost Per Surgical Case, Gross & Net Revenue Per Surgical Case, etc. When comparing the two orthopedic surgery center CON Applications, the Kernersville Orthopaedic Surgery Center is superior to the Orthopaedic Surgery Center of the Triad on those comparative factors.

## **VII. Conclusion**

The CON Application submitted by GSW/OSCT/WFAV/WFUHS fails to conform to key Criterion reflected in G.S. 131E-183 and important and applicable provisions of the applicable CON OR Regulations. The project fails to document the need for the proposed OSCT Triad Area Orthopedic Surgery Center Demonstration Project.

For all of the above reasons, the Application is non-conforming to the CON Statutory Review Criteria for a New Institutional Health Service, and the Application must be denied.

*File: TriadDemonstrationProjectCIOForOSCT 4 29 10.doc*



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Date Filed: 2/4/2003 3:36:00 PM  
Elaine F. Marshall  
North Carolina Secretary of State

State of North Carolina  
Department of the Secretary of State

ARTICLES OF AMENDMENT  
NONPROFIT CORPORATION

Pursuant to §55A-10-05 of the General Statutes of North Carolina, the undersigned corporation hereby submits the following Articles of Amendment for the purpose of amending its Articles of Incorporation.

1. The name of the corporation is: WAKE FOREST UNIVERSITY BAPTIST MEDICAL CENTER
2. The text of the amendment adopted is as follows:

Article 3 is rewritten to read:

"3.

The purposes for which the Wake Forest University Baptist Medical Center (the "Medical Center") is organized are to operate exclusively for charitable, educational, literary, religious and scientific purposes including, for such purposes, the making of gifts and contributions to organizations (other than organizations testing for public safety) that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provisions of any future United States Internal Revenue Law), and further to operate exclusively for the benefit of, and to facilitate the carrying out of the functions and purposes of Wake Forest University Health Sciences ("WFUHS") and any other activities of Wake Forest University related to medical education and research, and of The North Carolina Baptist Hospitals, Incorporated (the "Hospital"), both of Winston-Salem, North Carolina, herein generally called "exempt purposes."

Article 6 is rewritten to read:

"6.

Any amendment of these articles of the corporation and the adoption or amendment of bylaws will be subject to the prior approval of the WFUHS Board of Directors, the trustees of Wake Forest University, and the trustees of the Hospital."

Article 12 is rewritten to read:

"12.

In the event of termination, dissolution or winding up of the corporation in any manner or for any reason whatsoever, the directors shall, after paying or making provision for the payment of all of the liabilities of the corporation, dispose of all remaining assets of the corporation one-half to Wake Forest University Health Sciences and one-half to The North Carolina Baptist Hospitals, Incorporated, provided such organizations are then organized and operated for exempt purposes and qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law) and are not "private foundations," as defined in Section 509 of the Internal Revenue Code of 1954."

3. The date of adoption of the amendment was as follows: November 2, 2002

4. (Check a, b, and/or c, as applicable)
- a. \_\_\_ The amendment(s) was (were) approved by a sufficient vote of the board of directors or incorporators, and member approval was not required because (set forth a brief explanation of why member approval was not required) There are no members.
- b. \_\_\_ The amendment(s) was (were) approved by the members as required by Chapter 55A.
- c. X Approval of the amendment(s) by some person or persons other than the members, the board, or the incorporators was required pursuant to N.C.G.S. §55A-10-30, and such approval was obtained.
5. These articles will be effective upon filing, unless a date and/or time is specified:

This the 30<sup>th</sup> day of January, 2003.

WAKE FOREST UNIVERSITY BAPTIST MEDICAL CENTER  
Name of Corporation

By: Ellen M. Hines  
Ellen M. Hines  
Secretary of the Board of Directors

Notes:

1. Filing fee is \$25. This document and one exact or conformed copy of these articles must be filed with the Secretary of State.

205519  
6-15902

FILED

Nov 21 9 02 AM '75

THAD EURE  
SECRETARY OF STATE  
NORTH CAROLINA

ARTICLES OF INCORPORATION  
OF  
THE MEDICAL CENTER OF BOWMAN GRAY SCHOOL OF MEDICINE  
AND  
NORTH CAROLINA BAPTIST HOSPITAL

I, the undersigned, being of the age of eighteen years or more, do hereby make and acknowledge these Articles of Incorporation for the purpose of organizing a corporation under the Nonprofit Corporation Act of the State of North Carolina.

1.

The name of the corporation is The Medical Center of Bowman Gray School of Medicine and North Carolina Baptist Hospital.

2.

The period of duration of the corporation shall be perpetual.

3. *Amended, Aug 1978*

The purposes for which the corporation is organized are:

(a) To operate exclusively for charitable, educational, literary, religious and scientific purposes including, for such purposes, the making of gifts and contributions to organizations (other than organizations testing for public safety) that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code of 1954 (or the corresponding provisions of any future United States Internal Revenue Law), and further to operate exclusively for the benefit of, to facilitate the carrying out of the functions and purposes of the Bowman Gray School of Medicine of Wake Forest University ("the School of Medicine") and The North Carolina Baptist Hospitals, Incorporated ("the Hospital"), both of Winston-Salem, North Carolina, herein generally called "exempt purposes," including, but not restricted to, the following more specific purposes, but only to the extent that they are within the scope of such exempt purposes:

(b) To serve as an academic medical center ("the Medical Center") for the School of Medicine and the Hospital and perform the functions of those institutions that are shared in common, including:

(1) Formulating and recommending general policies of the Medical Center and planning for future needs.

(2) Serving as spokesman on Medical Center matters in order to assure that the School of Medicine and the Hospital speak with a single voice to the community, to the Baptist denomination and to state and federal authorities.

(3) Serving as a board of adjustment between the School of Medicine and the Hospital.

(4) Coordinating and supporting fund raising activities.

(5) Reviewing and commenting upon proposed annual budgets of the School of Medicine and of the Hospital prior to final action of their respective trustees in order to promote consistency with Medical Center planning, the efficient use of resources in carrying out programs, and equitability in cost sharing.

(6) Reviewing and making recommendations with respect to affiliation agreements between the School of Medicine or the Hospital and other parties, and with respect to plans for major renovation or construction of facilities, prior to final action of the trustees of the University or the Hospital.

(7) Promoting and supporting the goals, purposes and work of the University and of the Hospital.

4.

The corporation shall have no members.

5.

The method of election or designation of the directors shall be set forth in the bylaws of the corporation.

6. - *Amended in 2011*

Any amendment of the charter of the corporation and the adoption or amendment of bylaws shall be subject to the prior approval of the trustees of Wake Forest University and of the Hospital.

7.

The corporate autonomy and operational integrity of both Wake Forest University and the Hospital shall be maintained,



and this corporation is not authorized in any way to interfere with, infringe upon or prevent the duly elected trustees of either institution from discharging their duties as imposed upon them by the Baptist State Convention of North Carolina.

8.

The address of the initial registered office of the corporation is 300 South Hawthorne Road, Winston-Salem, Forsyth County, North Carolina 27103, and the name of the initial registered agent at such address is Manson Meads.

9.

The number of persons constituting the initial board of directors shall be seventeen, and the persons who are to constitute such board of directors, together with their addresses, are as follows:

Dr. J. Donald Bradsher  
503 North Ridge Road  
Roxboro, N. C. 27573

Dr. Jesse Chapman  
520 Biltmore Avenue  
Asheville, N. C. 28801

Mr. Charles W. Cheek  
Richardson Corporation  
Piedmont Building  
114 North Elm Street  
Greensboro, N. C. 27401

Mr. J. Edwin Collette  
Integon Corporation  
420 Spruce Street, N.W.  
Winston-Salem, N. C. 27102

Mr. T. Clyde Collins, Jr.  
Southern Life Insurance  
330 South Greene Street  
Greensboro, N. C. 27401

Dr. Thomas D. Long  
(no street number) Hospital Road  
Roxboro, N. C. 27573

Mr. E. Lawrence Davis, III  
Womble, Carlyle, Sandridge & Rice  
2400 Wachovia Building  
300 North Main Street  
Winston-Salem, N. C. 27101

Mr. Thomas H. Davis  
Piedmont Aviation, Inc.  
4051 Liberty Street, N.E.  
Winston-Salem, N. C. 27102

Mr. A. H. Field  
Field Insurance Agency  
204 Fourth Street, N.W.  
Hickory, N. C. 28601

Mr. Francis E. Garvin  
Holly Farms Poultry Industries  
103 Factory Road  
Wilkesboro, N. C. 28697

Mr. H. A. Hodge, Jr.  
Route 4 (no street name or number)  
Zebulon, N. C. 27597

Mr. Carter Preslar  
5 Amherst Road  
Asheville, N. C. 28803

3.

Dr. Claude A. McNeill, Jr.  
180-B Parkwood Drive  
Elkin, N. C. 28621

Dr. Mary Lide Morris  
404 Cedarwood Drive  
Burlington, N.C. 27215

Dr. Eben Alexander, Jr.  
Chief of Neurosurgery  
The Bowman Gray School of Medicine  
300 South Hawthorne Road  
Winston-Salem, N. C. 27103

Rev. R. F. Smith, Jr.  
First Baptist Church  
354 First Avenue, N.W.  
Hickory, N. C. 28601

Mr. Colin Stokes  
405 North Main Street  
Winston-Salem, N. C. 27101

10.

The name and address of the incorporator are:

Mr. Francis E. Garvin  
Holly Farms Poultry Industries  
103 Factory Road  
Wilkesboro, N. C. 28697

11.

No part of the net earnings of the corporation shall inure to the benefit of or be distributable to any member, director or officer of the corporation, or any other private person, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of its purposes as set forth herein. No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of any candidate for public office. Notwithstanding any other provision hereof, the corporation shall not carry on any other activities not permitted to be carried on by a corporation organized and operated exclusively for exempt purposes as described herein. Provided, further, that if the corporation shall at any time be determined to be a "private foundation" as that term is defined in Section 509 of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent federal tax laws, the corporation shall, from and after the date of such determination, strictly observe the following specific prohibitions:

The corporation shall distribute its income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by Section 4942 of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent federal tax laws.

The corporation shall not engage in any act of self-dealing as defined in Section 4941(d) of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent federal tax laws.

The corporation shall not retain any excess business holdings as defined in Section 4943(c) of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent federal tax laws.

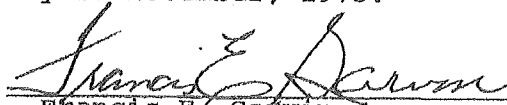
The corporation shall not make any investments in such manner as to subject it to tax under Section 4944 of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent federal tax laws.

The corporation shall not make any taxable expenditures as defined in Section 4945(d) of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent federal tax laws.

12. *Amended 11/17/75*

In the event of termination, dissolution or winding up of the corporation in any manner or for any reason whatsoever, the directors shall, after paying or making provision for the payment of all of the liabilities of the corporation, dispose of all remaining assets of the corporation one-half to the Bowman Gray School of Medicine of Wake Forest University and one-half to The North Carolina Baptist Hospitals, Incorporated, provided such organizations are then organized and operated for exempt purposes and qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law) and are not "private foundations," as defined in Section 509 of the Internal Revenue Code of 1954.

IN WITNESS WHEREOF, the incorporator has hereunto set his hand and seal, this 19<sup>th</sup> day of November, 1975.

  
Francis E. Garvin (SEAL)



ATTACHMENT 2

## SURGICAL CENTER OF GREENSBORO & ORTHOPAEDIC SURGICAL CENTER

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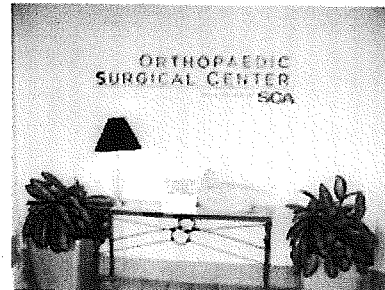
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- Ophthalmology
- Oral and Maxillofacial Surgery
- Otorhinolaryngology (ENT)
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- Orthopedic Surgery



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**Orthopaedic**

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URL :

Specialty: Orthopaedic  
Address: 300 West Northwood Street  
Greensboro, NC 27401  
Phone: 336-275-0927  
URL :

**March 3, 2010**  
**Comments Submitted by Novant Health**  
**Regarding the January 15, 2010**  
**NCBH CON Application for a New \$38 Million**  
**Ambulatory Surgery Center with Seven New ORs**  
**Pursuant to SMFP Policy AC-3**  
**(Project I.D. # G-8460-10)**

***NCBH Does Not Meet the Criteria to Qualify for Special Consideration  
and Exemption from the Forsyth County OR Need Determination Under  
SMFP Policy AC-3 “Exemption From Plan Provisions for Certain  
Academic Medical Center Teaching Hospital Projects”***

**Overview**

In its January 15, 2010 CON Application, NCBH is seeking the state’s approval to add seven new ORs in Forsyth County, even though the 2010 SMFP shows for Forsyth County the need for no new ORs in Forsyth County in Table 6 C of the 2010 SMFP. In fact, the 2010 SMFP in Table 6B shows a projected surplus of 5.52 operating rooms in Forsyth County, more than half of which is associates with ORs that are part of the NCBH/Wake Forest Health Sciences (including the recent acquisition of Plastic Surgery Center of North Carolina) operating room inventory. NCBH/WFU Health Sciences did not address the 2.65 surplus ORs at Plastic Surgery Center of NC in seeking approval for seven new ORs in its 8-OR Ambulatory Surgery Center. NCBH proposes to spend \$38.7 Million to construct a 72,300 Square Foot Ambulatory Surgery Center (“the West Campus Surgery Center”) with:

- 8 operating rooms ( 7 new ORs and 1 relocated OR from NCBH’s existing surgical suites)
- 2 procedure rooms
- 1 simulation operating room (to provide a safe and lifelike learning environment for medical students, residents, fellows, nurses, and faculty to acquire essential skills required in clinical care)<sup>1</sup>
- 1 robotics training operating room (to train surgeons interested in laparoscopic surgery and other minimally invasive procedures using the DaVinci robot)<sup>2</sup>
- Sterile Processing in the ASC
- 23 Prep/Recovery Bays plus one patient isolation room
- 10 PACU Bays NCBH .
- 8 Short-Stay Recovery Rooms, including one Isolation Recovery Room

Under the special status afforded only to Academic Medical Centers under SMFP Policy AC-3, the applicant has a especially important burden of showing the need for new ORs in a County where a surplus of existing ORs already exists. SMFP Policy AC-3: “Exemption From Plan Provisions for Certain Academic Medical Center Teaching Hospital Projects” states:

*“Projects for which certificates of need are sought by academic medical center teaching hospitals may qualify for exemption from the need determinations of this document. The Medical Facilities Planning Section shall designate as an Academic Medical Teaching*

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<sup>1</sup> NCBH CON Application page 14.

<sup>2</sup> NCBH CON Application page 15.

*Hospital any facility whose application for such designation demonstrates the following characteristics of the hospital:*

- 1. Serves as a primary teaching site for a school of medicine and at least one other health professional school, providing undergraduate, graduate, and postgraduate education.*
- 2. Houses extensive basic medical science and clinical research programs, patients, and equipment.*
- 3. Serves the treatment needs of patients from a broad geographic area through multiple medical specialists.*

*Exemption from the provisions of need determinations of the North Carolina State Medical Facilities Plan shall be granted to projects submitted by Academic Medical Center Teaching Hospitals designated prior to January, 1, 1990 provided the projects comply with one of the following conditions:*

- 1. Necessary to complement a specified and approved expansion of the number or types of students, residents or faculty, as certified by the head of the relevant associated professional school.*
- 2. Necessary to accommodate patients, staff or equipment for a specified and approved expansion of research activities, as certified by the head of the entity sponsoring the research; or*
- 3. Necessary to accommodate changes in requirements of specialty education accrediting bodies, as evidenced by copies of documents issued by such bodies.*

*A project submitted by an Academic Medical Center Teaching Hospital under this policy that meets one of the above conditions shall also demonstrate that the Academic Medical Center Teaching Hospital's teaching or research need for the proposed project cannot be achieved effectively at any non-Academic Medical Center Teaching Hospital provider which currently offers the service for which the exemption is requested and which is within 20 miles of the Academic Medical Center Teaching Hospital." [Emphasis Added]*

**NCBH Provides Insufficient Documentation and Explanation Needed to Demonstrate Compliance with the SMFP Policy AC-3 Requirement for the Necessity to Support an Expansion of Students, Residents or Faculty**

In its CON application for an 8-OR Ambulatory Surgery Center, with seven new ORs, NCBH is seeking to qualify for Policy AC-3 Exemption from SMFP Provisions for New OR Need Determinations in Forsyth County, using Criterion #1 above: "Necessary to complement a specified and approved expansion of the number or types of students, residents or faculty, as certified by the head of the relevant associated professional school."

At pages 66-67 in Section II of the 8-OR ASC CON Application, NCBH briefly addresses the provisions of SMFP Policy AC-3, under which it is seeking an exemption from the finite limits of an OR Need Determination in Forsyth County, where such exemption is only available to Academic Medical Centers. Since SMFP Policy AC-3 grants a unique privilege to a handful of North Carolina hospitals that are Academic Medical Centers, it is imperative that the Academic Medical Center is diligent and thorough in demonstrating compliance with all the requirements of SFMP Policy AC-3 in order to qualify for this exemption, which is a unique exception, available to a chosen few hospitals, in the standard SMFP Need Determination process.

In its Policy AC-3 documentation, NCBH relies on a letter included in CON Application Exhibit #8 from Dr. Applegate, President Wake Forest University Health Sciences & Dean, Wake Forest University School of Medicine. This letter notes as justification for the Policy AC-3 Exemption:

- WFUHS projects to add 39 clinical FTEs to the Division of Surgical Sciences by 2020 (over the next ten years);

The faculty recruiting plan represents the addition of approximately 3.9 FTE clinical staff per year for the Division of Surgical Sciences for each of the next ten years. This seems like a modest and manageable rate of growth in surgical faculty that may also be offset by future retirements of surgical faculty, which were not discussed as part of WFUHS Surgeon Recruiting Plan. However, it is unclear whether the projected 12 additional "research" FTEs in the Division of Surgical Sciences would require access to the proposed operating rooms in the West Campus ASC.<sup>3</sup>

- 2 of the 39 new Clinical FTEs in the Division of Surgical Sciences are identified as "Cardiothoracic Surgery," so it is unlikely that these surgeons will perform surgical cases in the proposed West Campus 8-OR surgery center.
- 6 of the 39 new Clinical FTEs in the Division of Surgical Sciences are identified as "Emergency"; it is unclear whether these are "emergency" surgeons or whether these 6 FTEs are Emergency Department physicians; if these 6 FTEs are Emergency Room physicians it is very unlikely that they would be performing surgery in the proposed 8-OR West Campus ASC.
- 6 of the 39 new Clinical FTEs in the Division of Surgical Sciences are identified as Neurosurgeons. It is not likely that neurosurgeons would be performing surgical cases on a regular basis in the proposed West Campus 8-OR ASC.

If you assume that fourteen (2 Cardiothoracic Surgery, 6 Emergency, and 6 Neurosurgery) of the 39 Clinical FTEs to be recruited for the Division of Surgical Sciences during the next ten years (2010- 2020) will not use the West Campus Surgery Center ORs, then WFUHS is proposing to add only 25 clinical FTEs to the Division of

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<sup>3</sup> See the table in Dr. Applegate's letter at page 2. See CON application Exhibit #8 for a copy of this letter.

Surgical Sciences over the next ten years who could be reasonably expected to use the eight ORs at the West Campus surgery center. This represents the modest addition of approximately 2.5 FTE clinical surgical staff per year added to the Division of Surgical Sciences, who would require access to the eight ORs of outpatient surgical capacity proposed at the West Campus ASC.

These 25 FTEs of new clinical surgery FTEs to be recruited to the Division of Surgical Sciences over the next ten years include surgeons specializing in: General Surgery, Ophthalmology, ENT, Plastic Surgery, Urology, and Vascular Surgery. The most recent Medical Group Managers Association "Physician Compensation and Production Survey: Based on 2008 Data" shows that at the 75 Percentile of annual surgical case productivity:

- Each Plastic Surgeon performs 598 surgical cases per year
- Each General Surgeon performs 832 surgical cases per year
- Each Vascular Surgeon performs 685 surgical cases per year
- Each Urological Surgeon performs 2,043 cases per year
- Each ENT Surgeon performs 1,141 cases per year

In total, one each of these five types of surgeons, if working at the highly productive 75<sup>th</sup> percentile, would generate about 5,300 outpatient surgical cases per year.<sup>4</sup> The MGMA Table is provided as Attachment 1. Applying the SMFP OR Need Method Weighting Factor of 1.5 Hours Per Outpatient Surgery, would result in 7,949 hours of ambulatory surgery cases per year; dividing this by the SMFP defined capacity for annual OR hours per year per OR of 1,872, shows, at best, a need for only 4 ORs<sup>5</sup>, rather than the 7, for which NCBH is seeking approval. With only 2.5 FTEs of surgeons added on average each year over the next ten years, if those surgeons are going to use only the West Campus surgery center (which seems unlikely), these 2.5 FTE new surgeons might add 2,650 outpatient OR cases per year. These 2,650 outpatient cases would occupy about two ORs during the course of a year<sup>6</sup>, so an initial request for 7 new ORs seems to be overstated for the proposed West Campus ASC. This is not enough outpatient OR case volume to suggest that as many as eight ORs are needed right now.

If these surgeons, functioned at only the MGMA Median Percentile of annual surgical case productivity, due to the added complexity of Academic Medical Center patients as discussed in the NCBH CON application, then the annual cases for the above five surgeon types would total only 3,671. This level of annual outpatient OR volume would utilize the capacity of about 3 outpatient ORs<sup>7</sup>, based on the elements of the SMFP OR Need Method. Again, seven new ORs for the NCBH West Campus ASC, seems excessive at this point in time.

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<sup>4</sup> Calculation:  $598 + 832 + 685 + 2,043 + 1,141 = 5,299$  cases per year

<sup>5</sup> Calculation:  $(5,299 \text{ outpt OR cases} \times 1.5 \text{ Hours/Case}) / 1,872 \text{ Hours Per OR Per Year} = 4.2 \text{ ORs}$

<sup>6</sup> Calculation: 2.5 FTE Surgeons generate half the annual outpatient OR cases that 5 surgeons would =  $5,299 / 2 = 2,650$  outpatient OR cases/year. Estimate OR capacity utilized:  $(2,650 \text{ outpatient OR cases} \times 1.5 \text{ hours per OR case}) / 1,872 \text{ hours per OR per year} = 2.1 \text{ ORs}$

<sup>7</sup> Calculation:  $(3,671 \text{ outpatient OR cases/year} \times 1.5 \text{ hours per OR case}) / 1,872 \text{ hours per OR per year} = 2.99 \text{ ORs}$

A lesser number of ORs at the proposed ASC would meet the needs in the near-term and would not run the risk of saturating the OR inventory in Forsyth County that already shows a surplus of 5.5 operating rooms in the 2010 SMFP. Also, an affiliate of NCBH, Wake Forest University Health Sciences, has notified the Agency of the exempt acquisition of a 3-OR Plastic Surgery Center in Forsyth County (Plastic Surgery Center of NC), which is licensed for three ORs, 2.65 of which are currently identified in the 2010 SMFP as underutilized ORs. It is puzzling that NCBH did not seek to relocate one or two of these operating rooms to the proposed 8-OR ASC, in order to put them to better, more productive use. In addition, two more operating rooms may well be added to the OR inventory in Forsyth County pursuant to the Triad (Forsyth and Guilford) Need Determination for two new Demonstration Project single specialty ambulatory surgery ORs in the 2010 SMFP. The CON Application deadline for these Demonstration Project ASC ORs is March 15, 2010. Given the above factors, adding seven new ORs to the Forsyth County OR inventory, which are projected to be operational in 2012, would simply compound the surplus of OR capacity in Forsyth County now and for the foreseeable future. Unnecessary Duplication is a statutory Review Criterion<sup>8</sup> which the Agency will apply in its consideration of NCBH's 8-OR ASC CON application.

**NCBH's Application Fails to Discuss the Mandatory SMFP Policy AC-3 Provision Requiring the Academic Medical Center to Show that its Teaching Need for the Project Cannot be Achieved at Any Non-AMC Currently Offering the Service and Located within 20 miles of NCBH**

The above criterion, as stated in SMFP Policy AC-3 is a mandatory requirement (“*shall also demonstrate*”) which must be discussed by NCBH in its SMFP Policy AC-3 CON Application for the new 8-OR Ambulatory Surgery Center. Neither the CON application narrative nor the CON Application Exhibits provided by NCBH address this requirement. The NCBH application is silent on this point.

The Agency should note that there are other Non-Academic Medical Center providers of ambulatory surgical services within a twenty-mile radius of NCBH. These surgical services providers include:

- Forsyth Medical Center, Winston-Salem, NC (including FMC's Hawthorne Surgery Center, with 6 ORs)
- Medical Park Hospital, Winston-Salem, NC
- Kernersville Medical Center, Kernersville NC (under development and slated to open prior to the 2010 opening date for NCBH's proposed 8-OR ASC)
- Davie County Hospital Replacement Facility, Advance, NC
- Clemmons Medical Center, Clemmons, NC

NCBH's CON application is devoid of any discussion of these options and thus, fails to meet this mandatory requirement to qualify for an SMFP Policy AC-3 exemption from the OR Need Determination in Forsyth County, which is zero new ORs in the 2010

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<sup>8</sup> North Carolina General Statutes Section 131E-183(a)(6).



SMFP. Thus, the Agency should find NCBH non-conforming under CON statutory Review Criterion (1)<sup>9</sup>, which requires the applicant to demonstrate that “the project is consistent with applicable policies [including SMFP Policy AC-3]...in the State Medical Facilities Plan.”

***Simulation Operating Room and Robotics Training Operating Room***

Novant does not oppose the portion of NCBH’s proposal that seeks approval for one simulation operating room and one robotics training operating room. Novant would note that many area hospital facilities and surgeons already have in use DaVinci robotic surgical technology (to be addresses in the NCBH Robotics Training OR), which is in use today at operating rooms at Forsyth Medical Center, Medical Park Hospital, High Point Regional Medical Center, and Moses Cone Hospital. A few years ago NCBH announced an enhanced clinical training agreement between NCBH and MCH.

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<sup>9</sup>North Carolina General Statutes Section 131E-183(a)(6).

***NCBH Overstates the Need for Additional Operating Rooms in its Quantitative Need Method in CON Application Section III***

**Review of NCBH AC-3 OR Need Methodology**

1. The following analysis reflects a review of only the need for **total** operating rooms at NCBH. The need methodology for the West Campus Outpatient Surgery Center was not analyzed, only NCBH's total need for ORs.
2. For FFY 2005-FFY 2009, the NCBH annual inpatient surgical growth rate of 0.8% and annual outpatient surgical growth rate of 3.9%, as calculated in the following table, are significantly less than the NCBH reported inpatient surgery growth rate of 5.52% and the outpatient surgery growth rate of 5.83% reflected on page 55, Section III of the Application for 2008 to 2009, based upon a July to June timeframe.

**NCBH Annual Surgical Growth**

| NCBH               | FFY 2005 | FFY 2006 | FFY 2007 | FFY 2008 | FFY 2009 | AGR FFY 2008 - FFY 2009 |
|--------------------|----------|----------|----------|----------|----------|-------------------------|
| Inpatient Cases    | 11,847   | 11,900   | 12,208   | 13,251   | 13,357   | 0.8%                    |
| Annual Growth Rate |          | 0.4%     | 2.6%     | 8.5%     | 0.8%     |                         |
| Ambulatory Cases   | 15,656   | 15,842   | 16,717   | 17,999   | 18,693   | 3.9%                    |
| Annual Growth Rate |          | 1.2%     | 5.5%     | 7.7%     | 3.9%     |                         |

Source: Table 2; LRAs

NCBH's narrative on CON Application page 55, is addressing the CON Application Question III.1(b), which requires the applicant to *"provide statistical data that substantiates the existence of an unmet need for each project component and the proposed services..."* This is the most basic threshold which every applicant must demonstrate in its Certificate of Need Application to establish the most fundamental level of "need" for the project: the applicant must first and foremost demonstrate the "quantitative need" for the 8-OR ambulatory surgery center as measured by the Agency under CON Statutory Review Criterion 3 ("Need").<sup>10</sup>

Two years of data, such as that used by NCBH on pages 46 and 55 of its application, is not typically enough to establish a trend or a reliable growth rate for use in estimating future surgical cases that justify 8 ORs at the proposed surgery center. It seems that the annual percent growth rates for NCBH OR cases may be overstated, which if applied to base year data would suggest a need for more new ORs than can be supported in the future.

3. The NCBH annual growth rate for the last fiscal year as reported on page 55, Section III of the Application, is inconsistent and overstated when compared to LRA<sup>11</sup> data

<sup>10</sup> NCGS Section 131E-183(a)(3).

<sup>11</sup> LRA = Annual Hospital Licensure Renewal Application

for the timeframe FFY 2008 to FFY 2009 as shown in the following table. Note that NCBH uses a July to June Fiscal Year in the Application, rather than an October to September Fiscal Year (timeframe in LRAs). The data reported in the 2010 LRA is the most current data available which NCBH elected not to consider in its projections of OR cases to demonstrate the need for its existing ORs and the seven proposed new ASC ORs.

### Comparison NCBH Surgical Growth Rates

|                  | Actual One Year Growth Rates 2008-2009                                |  |
|------------------|---|--|
|                  | LRA Data<br>FFY 2008 and FFY 2009<br>October 2007 – September<br>2009 | NCBH Reported<br>SFY 2008 and SFY 2009<br>July 2007 – June 2009<br>Page 55 |
| Inpatient Cases  | 0.8%  | 5.52%  |
| Ambulatory Cases | 3.9%  | 5.83%  |

Source: Table 2; LRAs and page 55

4. Based upon NCBH's own data reported by NCBH in these two documents the only conclusion to be made is that the rate of inpatient surgical growth dropped precipitously in the last quarter of FFY 2009 (July 1, 2009 – Sept. 30, 2009). Annual growth for the twelve months from July 2008 to June of 2009 was 5.52% which decreased to 0.8% (less than 1%) for the twelve months from October 2008 to September 2009. Likewise, NCBH outpatient surgical growth dropped during the last quarter of FFY2009, from 5.83% for the twelve months from July 2008 to June of 2009, to 3.9% for the twelve months from October 2008 to September 2009. This rapid decrease in growth in only three months was not discussed by NCBH nor was it taken into consideration in the application when determining the projected growth rate used in calculating future surgical utilization to justify the need for all existing and new ORs.
5. The high growth rates utilized by NCBH in Step 3 of its Quantitative Need Method in Section III.1(b) of the application on page 56 were based upon the growth experience of NCBH referenced on page 55. However, the historical growth rates reflected in the NCBH Annual Surgical Growth table included in #2 above, which also are more current growth rates than those presented on page 55 of the Application, reflect a much lower growth rate than that which was used to in the projections.
6. The compound annual growth rates for NCBH as calculated: (a) using the LRA data (see table in #2 above); (b) as reported on page 55 of the application; and (c) those utilized in the projections are reflected in the following table.

**NCBH Reported CAGRs (Compound Annual Growth Rates)  
For OR Cases**

|                     | <b>NCBH Reported<br/>SFY 2005-SFY2009<br/>July 2004-June2009<br/>Page 55</b> | <b>NCBH Interim<br/>Growth Rates<br/>Page 56</b> | <b>NCBH Project<br/>Year Growth<br/>Rates<br/>Page 56</b> |
|---------------------|--|--|---|
| Inpatient Cases     | 2.1%   | 4.5%   | 5.0%  |
| Ambulatory<br>Cases | 4.55%  | 5.0%   | 5.5%  |

Source: Table 2; 2010 LRA and page 55

7. As shown in the previous table, the 4.5% interim time period inpatient NCBH annual OR case growth rate and the 5.0% Project Year inpatient annual growth rate used in Step 4 on page 57 of the Application is over twice the actual CAGR rate reported by NCBH on page 55. The 5.0% interim period NCBH outpatient OR case annual growth rate and the 5.5% Project Year outpatient annual OR case growth rate used in Step 4 on page 57 of the Application are half of a percent to one percent greater than the actual CAGR rate reported by NCBH on page 55. Both annual OR case growth rates utilized by NCBH in its projections are significantly greater than the more current LRA annual growth rates discussed in #1 above.
8. The projected growth rates utilized in Step 4 of the application on page 57 are contradictory to the most current historical growth rates reported in LRA and the CAGR reflected on 55 of the Application. Overstated growth rates result in overstated utilization. Therefore, the projected need for new operating rooms is overstated.
9. NCBH fails to acknowledge the recent purchase of Plastic Surgery Center of North Carolina by Wake Forest University Health Sciences, which is the teaching/research arm of the organization. North Carolina Baptist Hospital and Wake Forest University Health Sciences are "related entities" as that term is defined in the CON Surgical Services and Operating Room Regulations at 10A NCAC 14C.2101(9)<sup>12</sup>. As a result of this recent acquisition, the teaching and research arm of the institution now has three operating rooms which can be utilized for teaching, so it is not clear why seven additional operation rooms, or 10 overall (7 + 3), are needed for teaching at NCBH and Wake Forest Health Sciences. The PSCNC operating rooms are chronically underutilized operating rooms as listed in Chapter 6 of the SMFP and should be relocated to the proposed West Campus ASC, as part of the project.
10. Novant calculated revised number of operating rooms need at NCBH using the LRA 2005-2009 CAGR included in Table 7. The result is a need for only four additional ORs at NCBH when the Plastic Surgery Center of North Carolina (PSCNC) surplus

<sup>12</sup> The definition of "related entity" states: "...or a company that shares common ownership with the applicant (i.e., the applicant [NCBH] and another company [Wake Forest University Health Sciences] are owned by some of the same persons."

of 2.65 out of 3 ORs into consideration. In late 2009 Wake Forest University Health Sciences, a “related entity” and affiliate of NCBH sought and received confirmation from the CON Agency for the CON exemption acquisition of PSCNC. This is shown in the following table and in Table 7. Note that the following projections do not take into consideration any shift in NCBH surgical volume to the new Davie County Hospital, which was described in the Davie County Replacement Hospital CON Application filed in March 2008 by NCBH. This project was approved, a Certificate of Need was issued by the Agency following settlement, which projects the DCH ORs to become operational anytime between now and 2014.

|  | FFY 2010 | FFY 2011 | FFY 2012 | PY1<br>FFY<br>2013 | PY2<br>FFY<br>2014 | PY3<br>FFY<br>2015 |
|--|----------|----------|----------|--------------------|--------------------|--------------------|
| Inpatient Cases  | 13,764   | 14,183   | 14,615   | 15,059             | 15,518             | 15,990             |
| Annual Growth Rate                                       | 3.0%     | 3.0%     | 3.0%     | 3.0%               | 3.0%               | 3.0%               |
| Weighted Inpatient Cases<br>NCBH LRA 3.0 hrs/case        | 41,291   | 42,548   | 43,844   | 45,178             | 46,554             | 47,971             |
| Ambulatory Cases   | 19,540   | 20,426   | 21,351   | 22,319             | 23,331             | 24,388             |
| Annual Growth Rate                                       | 4.5%     | 4.5%     | 4.5%     | 4.5%               | 4.5%               | 4.5%               |
| Weighted Ambulatory<br>Cases at NCBH LRA 1.5<br>hrs/case | 29,310   | 30,639   | 32,027   | 33,479             | 34,996             | 36,582             |
| Total Weighted Cases                                     | 70,601   | 73,187   | 75,871   | 78,657             | 81,550             | 84,553             |
| Licensed ORs needed at<br>1,872 cases/year               | 38       | 39       | 41       | 42                 | 44                 | 45                 |
| Planning Inventory                                       | 38       | 38       | 38       | 38                 | 38                 | 38                 |
| Surplus/Deficit  | 0        | -1       | -3       | -4                 | -6                 | -7                 |
| NCBH Deficit Less Surplus<br>at PSCNC                    | 3.0      | 1.7      | 0.2      | -1.3               | -2.8               | <b>-4.4</b>        |

11. Novant also calculated revised operating room need at NCBH using a weighted population growth rate for 45+ population based upon NCBH discussion on CON Application page 49, Section III and current NCBH surgical patient origin as calculated in the attached Table 8. This methodology results in a need for only 1.5 or 2.0 additional ORs at NCBH (includes PSCNC surplus) as shown in the following table and in the attached Table 6. The result is a need for only four additional ORs at NCBH (taking the PSCNC surplus into consideration) as shown in the following table and in Table 6. Note that the following projections do not take into consideration any shift in surgical volume to the new Davie County Hospital operating rooms, which can open anytime between now and 2014.

|   | FFY 2010 | FFY 2011 | FFY 2012 | PY1<br>FFY<br>2013 | PY2<br>FFY<br>2014 | PY3<br>FFY<br>2015 |
|---|----------|----------|----------|--------------------|--------------------|--------------------|
| Inpatient Cases                                   | 13,695   | 14,041   | 14,397   | 14,761             | 15,134             | 15,517             |
| Annual Growth Rate                                | 2.5%     | 2.5%     | 2.5%     | 2.5%               | 2.5%               | 2.5%               |
| Weighted Inpatient Cases<br>NCBH LRA 3.0 hrs/case | 41,085   | 42,124   | 43,190   | 44,282             | 45,403             | 46,551             |
| Ambulatory Cases                                  | 19,166   | 19,651   | 20,148   | 20,658             | 21,180             | 21,716             |
| Annual Growth Rate                                | 2.5%     | 2.5%     | 2.5%     | 2.5%               | 2.5%               | 2.5%               |
| Weighted Ambulatory<br>Cases at 1.5 hrs/case      | 28,749   | 29,476   | 30,222   | 30,986             | 31,770             | 32,574             |
| Total Weighted Cases                              | 69,834   | 71,600   | 73,412   | 75,269             | 77,173             | 79,125             |
| Licensed ORs needed at<br>1,872 cases/year        | 37       | 38       | 39       | 40                 | 41                 | 42                 |
| NCBH Planning Inventory                           | 38       | 38       | 38       | 38                 | 38                 | 38                 |
| Surplus/Deficit                                   | 0.7      | -0.2     | -1.2     | -2.2               | -3.2               | -4.3               |
| NCBH Deficit Less Surplus<br>at PSCNC             | 3.4      | 2.5      | 1.5      | 0.5                | -0.5               | <b>-1.5</b>        |

12. NCBH July 2008-June 2009 does not appear to subtract trauma/burn cases but does subtract trauma/burn ORs from planning inventory. This will cause the need for existing and new ORs to be overstated.
13. The 2010 SMFP does not indicate that NCBH's existing operating rooms are currently operating at capacity as suggested on page 44 of the NCBH CON Application. In fact, the 2010 SMFP shows only that NCBH's operating rooms are not projected to be at planning capacity (80% of total capacity) until 2012.
14. Based upon surgical data included in Table 6A of the 2010 SMFP, NCBH and Plastic Surgery Center of NC have a current surplus of 4.5 operating rooms in 2010. Based upon the projected growth rate in the 2010 SMFP, the projected surplus in 2012 for NCBH plus Plastic Surgery Center decreases to 2.0 operating rooms. The proposed additional seven operating rooms in this Application are projected to be operational in July 2012 as reflected in Section XII of the Application, which will result in a combined surplus of 9.0 operating rooms in 2012 if the proposed Application is approved.

### ***Conclusion***

In May 2003, NCBH has filed an SMFP Policy AC-3 CON Application that was ultimately successful, for one MRI Scanner and one PET/CT Scanner for placement in the NCBH Cancer Center (CON Project I.D. #G-6816-03). In that case the project involved medical equipment only and capital cost for the MRI scanner was \$3.1 Million and the capital cost for the PET/CT Scanner was \$2.96 Million, for a total of \$6 Million in projects exempt from the SMFP need determinations. By contrast, NCBH's Jan. 15, 2010 CON application, seeks approval to spend \$38 Million for seven new ORs, the relocation of one existing OR, a simulation OR, and a robotics training OR, plus all

associated support space in a 72,600 Square Foot facility. Given the magnitude of the proposed capital expenditure and the large number of new ORs, requested over and above the existing surplus of operating rooms in Forsyth County per the 2010 SMFP OR Need Determination, the Agency should give careful consideration to the scope and capital intensity of this project under the requirements of SMFP Policy AC-3. Seven new ORs in a county that currently has 84 ORs (excluding dedicated c-section ORs) is a substantial, practical increase in operating room capacity (+8%) in a County that has consistently for the past five years of Forsyth County OR 2006-2010 SMPF data shown a surplus of operating rooms ranging from 5.5 to 10.3 ORs<sup>13</sup>. The FFY 2009 OR case data (10/1/2008-9/30/2009) that will populate the 2011 SMFP, will be the first data to reflect the time period when the effects of the economic downturn were in full force and perhaps reflected in hospital volumes, including OR cases. Taken in that context, including the historical pattern some ongoing excess OR capacity in Forsyth County, NCBH's request for seven new ORs is too much, too soon. A less costly project, with a significantly smaller compliment of new ORs and greater relocation of existing ORs seems the more reasonable course at this point in time.

*File: NCBH AC-3 OR Application analysis 3 3 2010.FINAL.doc*

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<sup>13</sup> Forsyth County OR Surpluses in annual State Medical Facilities Plans, Chapter 6: 2006 SMFP = 8.7 ORs; 2007 SMFP = 8.47 ORs; 2008 SMFP = 10.3 ORs; 2009 SMFP = 8.42 ORs; and 2010 SMFP = 5.5 ORs.



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June 15, 2009

S. Todd Hemphill  
Bode, Call & Stroupe, LLP  
3105 Glenwood Avenue, Suite 300  
Raleigh, NC 27612

RE: Exempt from Review / Acquisition of Plastic Surgery Center of North Carolina, Inc. by Wake Forest University Health Sciences (WFUHS) / Forsyth County  
FID # 953413

Dear Mr. Hemphill:

In response to your letter of May 22, 2009, the above referenced proposal is exempt from certificate of need review in accordance with N.C.G.S 131E-184(a)(8). Therefore, Wake Forest University Health Sciences (WFUHS) may proceed to acquire the above referenced health service facility without first obtaining a certificate of need. However, you need to contact the Acute and Home Care Licensure and Certification Section of the Division of Health Service Regulation to obtain instructions for changing ownership of the existing facility. Note that pursuant to N.C.G.S. §131E-181(b): "A recipient of a certificate of need, or any person who may subsequently acquire, in any manner whatsoever permitted by law, the service for which that certificate of need was issued, is required to materially comply with the representations made in its application for that 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,

Gebretie Miles  
Project Analyst

Lee B. Hoffman, Chief  
Certificate of Need Section

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





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Certificate of Need Section  
Division of Facility Services  
701 Barbour Drive  
Raleigh, North Carolina 27603

Re: Plastic Surgery Center of North Carolina, Inc. Ambulatory Surgical Facility / Acquisition by  
Wake Forest University Health Sciences / Winston-Salem, Forsyth County, North Carolina

Dear Ms. Hoffman and Ms. Miles:

This letter is submitted on behalf of our client, Wake Forest University Health Sciences ("WFUHS"). WFUHS intends to acquire from Plastic Surgery Center of North Carolina, Inc. ("PSCNC"), the ambulatory surgical facility, as that term is defined in G.S. §131E-176(1b), owned by PSCNC (hereinafter, the "Facility"). When the transaction is completed, PSCNC will have no interest in the Facility, and WFUHS will have no interest in PSCNC.

The Facility is located in the lower level of the medical building located at 2901 Maplewood Avenue, Winston-Salem, Forsyth County, North Carolina, and consists of three (3) ambulatory surgery operating rooms and support space, as identified in the 2009 SMFP. The parties have entered into a Purchase Agreement, which provides that the purchase is contingent upon our client obtaining confirmation from the CON Section that it does not need to obtain a certificate of need to acquire the Facility.

The medical office building in which PSCNC is located is owned by John Paul & Associates, LLC ("JPA"). PSCNC leases its space from JPA. WFUHS will enter into a new lease with JPA for the space which constitutes the Facility. WFUHS will not lease any other space in the building and will have no interest in JPA.

Ms. Hoffman  
Ms. Miles  
May 22, 2009  
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By this letter, we are providing notice to the CON Section, pursuant to G.S. §131E-184(a) of this transaction. Because this project involves the acquisition of an interest in an existing health service facility, we believe the acquisition of the Facility is exempt from CON review pursuant to G.S. §131E-184(a)(8). We would appreciate your office reviewing this information and advising us that our analysis is correct and that this acquisition is not subject to CON review.

The parties intend to close on this transaction by no later than the end of June, 2009, so your prompt attention to this request would be very much appreciated. Should you have any questions, please do not hesitate to contact me.

Very truly yours,

BODE, CALL & STROUPE, L.L.P.



S. Todd Hemphill

STH:sh  
cc: Brian McGinn



| <b>CON App Demo Project Single Specialty</b> | <b>Kernersville Orthopaedic Surgery Center Holdings, LLC</b>   | <b>Orthopaedic Surgical Center of the Triad Holdings, LLC</b>   | <b>Piedmont Outpatient Surgery Center, LLC</b>  |
|--|--|---|---|
| <b>Applicant(s)</b>                          | Kernersville Orthopaedic Surgery Center Holdings, LLC (owner)—new LLC 100% owned by Orthopaedic Specialists of the Carolinas<br>NOTE: KOSC will contract with Novant's Management Company (Ambulatory Surgical Management, LLC) for daily operation of ASC | Ortho Surgical Cntr of the Triad Holdings, LLC (Lessee & Operator/Mgr) with owners:<br>1. 66.66% Interest in OSCT owned by 21 Individual Physicians at Greensboro Orthopaedics, PA; & Southeastern Ortho Specialists with Sports Med & Ortho Cntr/SMOC( 2 MDs), Murphy Wainer Ortho Specialists; Piedmont Ortho; Guilford Ortho & Sports Med Cntr<br>2. 33.33% of OSCT owned by Wake Forest Ambulatory Ventures, a subsidiary of WFU Health Sciences— <b>SEE ATTACHED</b> | 1. Piedmont Outpatient Surgery Center, LLC (100% owned by 9 PENTA surgeons) (POSC)-9 PENTA Surgeons own 11.1% each: Drs. Britt, Harper, Inman, Maxwell, McGuirt, Potts, Scurry, Shealy, & Wagoner |
| <b>Co-Applicant</b>                          | Parent: Orthopaedic Specialists of the Carolinas   | GSW Real Estate, LLC (Bldg Lessor, Land Owner)<br>1. 66.66% interest in GSW RE, LLC owned by 22 Individual Physicians at Gboro Orthopaedics, PA; & Southeastern Ortho Specialists with Sports Med & Ortho Cntr/SMOC; Murphy Wainer Ortho Specialists; Piedmont Ortho; Guilford Ortho & Sports Medicine— <b>SEE ATTACHED</b>   | 2. Stratford Executive Associates, LLC (SEA)—same 9 PENTA ENT surgeons own 100% of SEA  |
| <b>Location</b>                              | 445 Pineview Dr.<br>Kernersville, NC 27284   | 2918&2920 Sandy Ridge Rd.,<br>Colfax, NC 27235  | Undeveloped land on Shepherd St., Stratford Executive Park Winston-Salem, NC 27103  |
| <b>Alternate Location</b>                    | Kernersville Medical Parkway<br>Kernersville, NC 27284   | 705 Sunshine Way<br>Greensboro, NC 27409  | None  |
| <b>Scope of Services</b>                     | Ortho: 2 ORs, 1 Procedure Room   | Ortho: 2 ORs, 1 Procedure Room  | ENT: 2 ORs  |
| <b>Hours of Operation</b>                    | 50-55 hours per week, M-F  | 60 hours per week, Mon- Sat   | 52.5 hours per week, M-F  |
| <b>Physician Ownership</b>                   | 100%   | 66.7%   | 100%  |
| <b>ASC Square Footage</b>                    | 9,346 SF   | 10,120 SF   | 9,000 SF  |
| <b>Opening Date</b>                          | 1/1/2012   | 1/1/2013  | 1/1/2012  |
| <b>Total Capital Cost</b>                    | \$4,630,881  | GSW RE, LLC: \$5,430,750<br>OSCT, LLC: \$2,190,000<br>TOTAL: \$7,620,750  | SEA: \$2,989,794<br>POSC: \$1,099,501<br>TOTAL \$4,089,295  |
| <b>Construction Cost</b>                     | \$1,948,530  | \$3,522,500   | \$2,102,360   |
| <b>Construction Cost/Sq Foot</b>             | \$190/SF   | \$348/SF  | \$233.60/SF   |

|   |   |  |   |
|---|---|--|---|
| <b>Total Capital Cost/SF</b>  | \$496/SF  | \$753/SF   | \$454.37/SF   |
| <b>Charity Care Policy</b>  | Up to 300% FPL qualifies for \$0 Charges (100% discount)  | Up to 100% FPL qualifies for \$0 Charges (100% discount); 101-200% FPL qualifies for sliding scale discount @50-95%)   | Undefined Charity Care Policy—See CON App Section VI: PENTA MDs participate in Community Care Clinic & help pts apply for Medicaid & Health Access Coverage   |
| <b>Projected Self-Pay/Indigent %</b>                                  | 3.88%   | 3.50%  | 1.43%   |
| <b>Projected Medicaid %</b>   | 7.85%   | 10.10%   | 27.88%  |
| <b>Projected Medicare %</b>   | 27.72%  | 30.70%   | 9.41%   |
| <b>Avg Cost Per Case (including ORs &amp; Px Room)</b>                | Yr 1: \$959<br>Yr 2: \$963<br>Yr 3: \$967   | Yr 1: \$1549<br>Yr 2: \$1480<br>Yr 3: \$1407   | Yr 1: \$802<br>Yr 2: \$443<br>Yr 3: \$396<br>NOTE: No Px Room   |
| <b>Gross Rev or Charge Per Case (includes ORs &amp; Px Room)</b>      | Yr 1: \$2482<br>Yr 2: \$2556<br>Yr 3: \$2633  | Yr 1: \$3020<br>Yr 2: \$2993<br>Yr 3: \$2993   | Yr 1: \$2637<br>Yr 2: \$2638<br>Yr 3: \$2638<br>NOTE: No Px Room  |
| <b>Net Revenue Per Case</b>   | Yr 1: \$1214<br>Yr 2: \$1244<br>Yr 3: \$1275  | Yr 1: \$1525<br>Yr 2: \$1525<br>Yr 3: \$1525   | Yr 1: \$1255<br>Yr 2: \$1256<br>Yr 3: \$1256  |
| <b>Service Area Definition (SMFP Definition = Forsyth + Guilford)</b> | Forsyth & Guilford Counties   | Forsyth & Guilford Counties  | Primary Sv Area: Forsyth, Davie, Davidson, Guilford, Stokes, Yadkin, & Surry Counties<br>Secondary Sv Area: Wilkes, Watauga, Rowan, Rockingham, Randolph, Iredell, Caldwell, Catawba, Alexander, Alamance                                     |
| <b>Referring MD Support Letters</b>                                   | 94 Total: 13 Guilford County & 81 Forsyth County (with 23 from Kville); includes Maplewood FP; Forsyth Int Med; Salem FP; Forsyth Peds Kville & Oak Ridge; Sports Med Assoc; WSHC; Piedmont Triad Fam Prac; Premier Med Assoc; Twin City Peds; PrimeCare Kville & Hickory Branch; Walkertown FP; New Garden Med Assoc | ~95-100 Referring MD letters including primary care & medical & surgical specialists; all referring MD letters are from Guilford County, except 10 letters from WFUHS Dept of Ortho Surgery & Rehabilitation | 26 Referring MDs including MDs practicing in Winston-Salem, Greensboro, Advance, N. Wilkesboro, High Pt, & Thomasville (PCPs, Peds, Endocrinology, Int Med, Dermatology, Sleep Medicine, & Other ENT's in W-S, Gboro, Thomasville, & High Pt) |
| <b>Surgeon Support Letters</b>  | Yes: (1) OSC Surgeons; (2) RoMedical Surgeons   | See Attached Table below   | 9 PENTA surgeons only   |
| <b>Community Support Letters</b>                                      | Kville Community Leaders; FMC & KMC Presidents; Forsyth County Commissioners Chair; NHTR VP Surgical Svs; 17 OSC Patient Letters  | City of Gboro; City of W-S; USPS; Koury Dev Corp; Jim Melvin/Lomax; Frank Mascia; Goodwill/Greensboro; None from NCBH, FMC, MPH, Moses Cone Hosp, HPRHS  | Sen. Brunstetter, Mayor Joines of W-S, Community Care Center, CIGNA, & Many PENTA Patient Ltrs/Petitions;   |

**OSCT, LLC Physician/Surgeon Owners By Group**

| <b>Ortho Group</b>                                      | <b>Physician Name</b> | <b>Physician Specialty</b>                         | <b>Real Estate Owner?</b> | <b>Mgt Co Owner?</b> | <b>Perform Cases @ ASC?</b> |
|---|-----------------------|--|---------------------------|----------------------|-----------------------------|
| <b>Southeastern Orthopaedic Specialists (SOS)</b>       |                       |  |                           |                      |                             |
| <b>SOS-Sports Med &amp; Ortho Cntr/SMOC Greensboro</b>  |                       |  |                           |                      |                             |
| <b>SOS/SMOC</b>   | <b>Bassett</b>        | <b>Peds Ortho, Sports Med, Orthotics,</b>          |                           |                      |                             |
| <b>SOS/SMOC</b>   | <b>Caffrey</b>        | <b>Orthopedics</b>                                 |                           |                      |                             |
| <b>SOS/SMOC</b>   | <b>Deveshwar</b>      | <b>Rheumatology</b>                                |                           |                      |                             |
| <b>SOS/SMOC</b>   | <b>Lucey</b>          | <b>Orthopedics</b>                                 | <b>YES</b>                | <b>YES</b>           | <b>Yes</b>                  |
| <b>SOS/SMOC</b>   | <b>Mortenson</b>      | <b>Orthopedics</b>                                 |                           |                      |                             |
| <b>SOS/SMOC</b>   | <b>Rendell</b>        | <b>Orthopedics</b>                                 |                           |                      |                             |
| <b>SOS/SMOC (&amp; SOS/MWOS)</b>                        | <b>Voytek</b>         | <b>Non-Surgical Ortho, Foot &amp; Ankle</b>        | <b>YES</b>                | <b>NO</b>            |                             |
| <b>SOS/SMOC</b>   | <b>Whitfield</b>      | <b>Orthopedics</b>                                 |                           |                      |                             |
| <b>SOS- Piedmont Orthopedics-</b>                       |                       |  |                           |                      |                             |
| <b>SOS-PO</b>   | <b>Blackman</b>       | <b>Orthopedics</b>                                 | <b>YES</b>                | <b>YES</b>           | <b>Yes</b>                  |
| <b>SOS-PO</b>   | <b>Dean</b>           | <b>Orthopedics</b>                                 | <b>YES</b>                | <b>YES</b>           | <b>Yes</b>                  |
| <b>SOS-PO</b>   | <b>Duda</b>           | <b>Orthopedics</b>                                 | <b>YES</b>                | <b>YES</b>           | <b>Yes</b>                  |
| <b>SOS-PO</b>   | <b>Hilts</b>          | <b>Family Practice</b>                             |                           |                      |                             |
| <b>SOS-PO</b>   | <b>Meyerdierks</b>    | <b>Orthopedics</b>                                 |                           |                      |                             |
| <b>SOS-PO (&amp; SOS-SMOC)</b>                          | <b>Newton</b>         | <b>Rehab/Spine</b>                                 |                           |                      |                             |
| <b>SOS-PO</b>   | <b>Nitka</b>          | <b>Gen Ortho/Spine</b>                             |                           |                      |                             |
| <b>SOS-PO</b>   | <b>Yates</b>          | <b>Ortho/Sports Med</b>                            | <b>YES</b>                | <b>YES</b>           | <b>Yes</b>                  |
| <b>SOS-Guilford Orthopaedic &amp; Sports Med Center</b> |                       |  |                           |                      |                             |
| <b>SOS-GOSMC</b>  | <b>Dalldorf</b>       | <b>Ortho/Sports Med</b>                            | <b>YES</b>                | <b>YES</b>           | <b>Yes</b>                  |
| <b>SOS-GOSMC</b>  | <b>Graves</b>         | <b>Orthopedics</b>                                 | <b>YES</b>                | <b>YES</b>           | <b>Yes</b>                  |
| <b>SOS-GOSMC</b>  | <b>McKinley</b>       | <b>Non-Surgical Ortho; Sports Med Primary Care</b> |                           |                      |                             |
| <b>SOS-GOSMC</b>  | <b>Paul</b>           | <b>Orthopedics</b>                                 |                           |                      |                             |
| <b>SOS-GOSMC</b>  | <b>Rowan</b>          | <b>Orthopedics</b>                                 | <b>YES</b>                | <b>YES</b>           | <b>Yes</b>                  |
| <b>SOS-GOSMC</b>  | <b>Wang</b>           | <b>Non-Surgical Spine Care</b>                     |                           |                      |                             |

| SOS-Murphy<br>Wainer Ortho<br>Specialists | Physician<br>Name | Physician<br>Specialty                   | Real Estate<br>Owner? | Mgt Co<br>Owner? | Perform<br>Cases @<br>ASC? |
|---|-------------------|--|-----------------------|------------------|----------------------------|
| SOS-MWOS                                  | Draper (DO)       | Gen Ortho;<br>Primary Care<br>Sports Med |                       |                  |                            |
| SOS-MWOS                                  | Kramer            | Gen Ortho;<br>Primary Care<br>Sports Med |                       |                  |                            |
| SOS-MWOS                                  | Landau            | Orthopedics                              | YES                   | YES              | Yes                        |
| SOS-MWOS                                  | Murphy            | Orthopedics                              | YES                   | YES              | Yes                        |
| SOS-MWOS                                  | Wainer            | Orthopedics                              | YES                   | YES              | Yes                        |
| Greensboro<br>Orthopaedics, PA            |                   |  |                       |                  |                            |
| GO, PA                                    | Aplington         | Orthopedics                              |                       |                  |                            |
| GO, PA                                    | Beane             | Orthopedics,<br>Spine, Sports Med        | YES                   | YES              | Yes                        |
| GO, PA                                    | Gramig III        | Orthopedics, Hand                        | YES                   | YES              | Yes                        |
| GO, PA                                    | Ramos             | Rehabilitation                           |                       |                  |                            |
| GO, PA                                    | Bednarz           | Orthopedics                              | YES                   | YES              | Yes                        |
| GO, PA                                    | Ortmann IV        | Orthopedics                              | YES                   | YES              | Yes                        |
| GO, PA                                    | Brooks            | Orthopedics                              | YES                   | YES              | Yes                        |
| GO, PA                                    | Olin              | Orthopedics                              | YES                   | YES              | Yes                        |
| GO, PA                                    | Kendall           | Orthopedics                              |                       |                  |                            |
| GO, PA                                    | Gioffre           | Orthopedics                              |                       |                  |                            |
| GO, PA                                    | Collins           | Orthopedics,<br>Sports Medicine          | YES                   | YES              | Yes                        |
| GO, PA                                    | Supple            | Orthopedics,<br>Sports Medicine          | YES                   | YES              | Yes                        |
| GO, PA                                    | Alusio            | Orthopedics                              | YES                   | YES              | Yes                        |
| GO, PA                                    | Norris            | Orthopedics                              | YES                   | YES              | Yes                        |
| WFU/Baptist Med<br>Center                 |                   |  |                       |                  |                            |
| Wake Forest Univ<br>Physicians            | Wiesler           | Orthopedics                              |                       |                  | Yes                        |
| WFUP                                      | Tuohy             | Orthopedics, Hand                        |                       |                  | Yes                        |
| WFUP                                      | Scott             | Orthopedics, Foot<br>& Ankle             |                       |                  | Yes                        |
| WFUP                                      | Poehling          | Orthopedics                              |                       |                  | Yes                        |
| WFUP                                      | Li                | Orthopedics, Hand                        |                       |                  | Yes                        |
| WFUP                                      | Koman             | Peds Ortho                               |                       |                  | Yes                        |
| WFUP                                      | Ferguson          | Orthopedics,<br>Sports Medicine          |                       |                  | Yes                        |
| WFUP                                      | Curl              | Ortho, Adolescent<br>Sports Medicine     |                       |                  | Yes                        |

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