



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

Pat McCrory  
Governor

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

Drexdal Pratt  
Division Director

May 27, 2014

Heath Law Firm  
514 Daniels Street, #182  
Raleigh, NC 27605

**Exempt from Review – Acquisition of Facility**

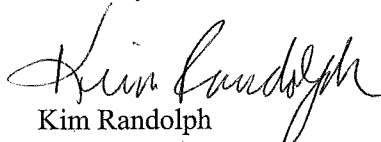
Facility: Orthopaedic Specialists of the Carolinas, P.A.  
Acquisition by: OrthoCarolina, P.A.  
County: Forsyth  
FID #: 061201

Dear Ms. Health:

In response to your letter of May 20, 2014, the above referenced proposal is exempt from certificate of need review in accordance with G.S 131E-184(a)(8). Therefore, OrthoCarolina, P.A. may proceed to acquire the above referenced health service facility without first obtaining a certificate of need. Note that pursuant to 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,

  
Kim Randolph  
Project Analyst

  
Martha J. Frisone, Interim Chief  
Certificate of Need Section

cc: Medical Facilities Planning Branch, DHSR



**Certificate of Need Section**

www.ncdhhs.gov

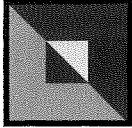
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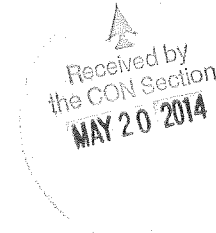
## Via Hand Delivery

TO: Martha Frisone, Interim Chief, CON Section  
809 Ruggles Drive  
Raleigh, NC 27603

FROM: Joy Heath, Esq.  
Ruth Levy, Esq.

RE: OrthoCarolina, P.A. – Prior Written Notice

DATE: May 20, 2014



Our law firm represents OrthoCarolina, P.A. and we write to notify the Department of Health and Human Services, Division of Health Service Regulation, Certificate of Need Section of our client's plans, as described below.

OrthoCarolina, P.A. ("OrthoCarolina") anticipates entering into an arrangement with Orthopaedic Specialists of the Carolinas, P.A. ("OSC") effective June 1, 2014. Following this effective date, OSC will operate under OrthoCarolina's tax identification and group provider numbers under the trade name "OrthoCarolina" as a separate division within OrthoCarolina, consistent with OrthoCarolina's operation of its "super-satellite" practice locations.

OrthoCarolina plans to enter into a Senior Physician Employment Agreement with each OSC Physician and intends to offer each eligible OSC Physician the opportunity to become a shareholder in OrthoCarolina.

OrthoCarolina and OSC anticipate entering into Lease Agreements covering the equipment and real estate currently utilized by OSC.

As you know, on May 1, 2007, OSC was issued a certificate of need ("CON") to acquire a mobile MRI scanner to serve host sites in Forsyth County (Project I.D. No. 0-7723-06). Subsequent to issuance of the CON, OSC has received Declaratory Rulings with respect to its host site locations. Most recently, in 2011, the Division Director issued a ruling concluding that the relocation of the host site of OSC's mobile MRI scanner from 280 Broad Street, Suite E, to 445 Pineview Drive, Suite 220, in Kernersville, would not constitute a material change. OSC also utilizes the mobile MRI scanner at the OSC Kimel Park site in Winston-Salem. As part of

the above transaction, OrthoCarolina and OSC anticipate entering into a Lease Agreement for OSC's mobile MRI scanner.<sup>1</sup>

The acquisition by purchase or lease of "an existing health service facility, including equipment owned by the health service facility at the time of acquisition" is exempt from certificate of need review pursuant to N.C. Gen. Stat. Section 131E-184(a)(8). "Health service facility" is defined to include a "diagnostic center," which, in turn, is defined as a freestanding facility, program, or provider, including but not limited to, mobile diagnostic programs, in which the total cost of all the medical diagnostic equipment utilized by the facility which costs ten thousand dollars (\$10,000) or more exceeds five hundred thousand dollars (\$500,000). OSC's mobile MRI scanner is considered a mobile diagnostic program, and hence a diagnostic center, within the meaning of the CON law.

Based on the foregoing, it is our understanding that our client's plans are exempt from certificate of need review pursuant to N.C. Gen. Stat. Section 131E-184(a)(8) or are otherwise not subject to certificate of need review.

Accordingly, OrthoCarolina respectfully requests confirmation that, based on the CON law currently in effect, the proposed lease of OSC's mobile MRI scanner is not governed by, and, therefore, does not currently require a certificate of need.

Please let us know of any questions or additional information that may be required. Thank you for your attention to this request.

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<sup>1</sup> In the event that the above-described agreements between OrthoCarolina and OSC are terminated, the Lease Agreement will also terminate, and ownership and control of the mobile MRI scanner will revert to OSC. If that occurs, OSC will so advise the CON Section.