



NC DEPARTMENT OF
**HEALTH AND
HUMAN SERVICES**

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

VIA EMAIL ONLY

November 21, 2023

William R. Shenton
wshenton@poynerspruill.com

No Review

Record #: 4319
Date of Request: November 13, 2023
Facility Name: Kimel Park Surgery Center
FID #: 180267
Business Name: Triad Center for Surgery, LLC
Business #: 2832
Project Description: Lease additional space in same building and change facility name
County: Forsyth

Dear Mr. Shenton:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency) received your correspondence regarding the project described above. Based on the CON law **in effect on the date of this response to your request**, the project as described is not governed by, and therefore, does not currently require a certificate of need. If the CON law is subsequently amended such that the above referenced proposal would require a certificate of need, this determination does not authorize you to proceed to develop the above referenced proposal when the new law becomes effective.

This determination is binding only for the facts represented in your correspondence. If changes are made in the project or in the facts provided in the correspondence referenced above, a new determination as to whether a certificate of need is required would need to be made by this office.

Please do not hesitate to contact this office if you have any questions.

Sincerely,

Gregory F. Yakaboski
Project Analyst

Micheala Mitchell
Chief

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

**NC DEPARTMENT OF HEALTH AND HUMAN SERVICES • DIVISION OF HEALTH SERVICE REGULATION
HEALTHCARE PLANNING AND CERTIFICATE OF NEED SECTION**

LOCATION: 809 Ruggles Drive, Edgerton Building, Raleigh, NC 27603
MAILING ADDRESS: 809 Ruggles Drive, 2704 Mail Service Center, Raleigh, NC 27699-2704
<https://info.ncdhhs.gov/dhsr/> • TEL: 919-855-3873

AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER

November 13, 2023

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

VIA EMAIL ONLY - micheala.mitchell@dhhs.nc.gov

Micheala Mitchell, Chief
North Carolina Department of Health and Human Services
Division of Health Service Regulation
Healthcare Planning and Certificate of Need Section
809 Ruggles Drive
Raleigh, NC 27603

RE: Kimel Park Surgery Center
Lease of Additional Space

Dear Ms. Mitchell:

I am writing on behalf of Triad Center for Surgery, LLC ("*Triad*"), which operates Kimel Park Surgery Center in Winston-Salem. Triad currently operates a multi-specialty ambulatory surgery center in approximately 16,750 square feet on the second floor of a building that is located at 180 Kimel Park Drive in Winston-Salem. Triad has an opportunity to lease a smaller area of about 5,100 square feet on the first floor of the building, and this letter seeks confirmation that it may do so without further Certificate of Need ("CON") review.

The additional first floor space would be used for administrative space and equipment storage only. It would not be used for any surgical services, or patient care of any kind. Current estimates of the total upfit expenses for renovations, carpeting, painting, cabling and other upfit will be less than \$25,000.00. A substantial portion of the upfit cost would be incorporated into Triad's rent for the new space as tenant upfit allowances. Therefore most of the upfit cost would not even constitute capital expenditures by Triad.

The Lease of the Additional Space is not a New Institutional Health Service.

The concept of New Institutional Health Services, as defined at N.C. General Statute 131E-176(16), broadly includes the development or acquisition of new facilities or equipment; the addition of new services, or certain units of service, such as hospital beds or operating rooms; and capital expenditures at or above stated thresholds. However, none of the components of the definition apply to this lease of the additional space for the Kimel Park Surgery Center.

Micheala Mitchell, Chief
November 13, 2023
Page 2

The entire expense of upfitting the space is far below the capital expenditure threshold where CON review is required, and a significant portion of the costs might be paid by the landlord through a tenant upfit allowance, so those costs would not constitute a capital expenditure at all. None of the types of equipment subject to review would be acquired, and no new facilities, CON-regulated services or units of health service, including operating rooms, would be developed or offered in the additional space. Finally, there is no unfinished CON project underway at the Kimel Park Surgery Center, so this lease of additional space does not constitute a reviewable change in an ongoing project.

Conclusion

Based on this summary of Kimel Park Surgery Center's plans, the lease of additional space on the first floor of the Kimel Park Surgery Center location is not a New Institutional Health Service governed by North Carolina's CON Law. Since the lease is not a new institutional health service, no certificate of need should be required.

Accordingly, Triad respectfully requests the Department's written confirmation that the lease does not require CON review. Thank you for your attention and consideration in this matter, and if further information or clarifications would be helpful, please do not hesitate to contact me.

We look forward to your response.

Sincerely,



William R. Shenton
Of Counsel

WRS/dt

cc: Derek L. Hunter, Esq.
Via E-Mail Only: dhunter@ncdoj.gov

Tiffany Stancil
Via E-Mail Only: Tiffany.stancil@dhhs.nc.gov

From: [Bill Shenton](#)
To: michaela.mitchell@dhhs.nc.gov
Cc: [Stancil, Tiffany C](#); [Hunter, Derek L](#)
Subject: [External] FW: Kimel Park Surgery Center--Winston-Salem, NC
Date: Monday, November 13, 2023 1:33:32 PM
Attachments: [image002.png](#)
[image003.png](#)
[image004.png](#)
[\[Untitled\].pdf](#)

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Good Afternoon Ms. Mitchell,

Please see the attached letter, and thank-you for your attention to this.

Bill Shenton

William R. Shenton | Of Counsel

Poyner Spruill^{LLP}

ATTORNEYS AT LAW

301 Fayetteville Street, Suite 1900, Raleigh, NC 27601

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From: admin@poynerspruill.com <admin@poynerspruill.com>

Sent: Monday, November 13, 2023 1:25 PM

To: Bill Shenton <WShenton@poynerspruill.com>

Subject:

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From: [Bill Shenton](#)
To: [Yakaboski, Greg](#)
Subject: RE: [External] RE: Question re: No Review Request
Date: Friday, November 17, 2023 3:20:17 PM
Attachments: [image001.jpg](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)

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Hi Greg,

You indicated that you would be able to change the facility name in the database, and so I checked back with the client, and they agree that, as long as this does not delay your decision on the No-Review request, or result in the need to take some other steps in regard to the facility name other than you changing the name in the database, the facility name can be changed to Kimel Park Surgery Center. As stated in the letter, the owner is Triad Center for Surgery, LLC.

With this point resolved, will the Agency be able to issue the No-Review letter early next week?

Thanks very much,

Bill

William R. Shenton | Of Counsel



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From: Yakaboski, Greg <greg.yakaboski@dhhs.nc.gov>

Sent: Friday, November 17, 2023 2:44 PM

To: Bill Shenton <WShenton@poynerspruill.com>

Subject: RE: [External] RE: Question re: No Review Request

Hey Bill,

Apologies....just have to "drill down on this" one last time- focusing specifically on just the name of the facility.

Currently, in our database, we have:

Facility Name: Triad Center for Surgery

Owner: Triad Center for Surgery, LLC

The letter seemingly had a different **facility name:** Kimel Park Surgery Center

The way I am reading your last email is the correct Facility Name is: Triad Center for Surgery, LLC (so the Facility Name is the same as the name of the Business?)

Just need to know if I need to change the Facility Name in our Data base.

Appreciate your patience with this.

Thanks,

Greg

Sincerely,

Gregory F. Yakaboski

Gregory F. Yakaboski

Project Analyst

[Division of Health Service Regulation](#), Certificate of Need
[NC Department of Health and Human Services](#)

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Office: 919-855-3873

Greg.Yakaboski@dhhs.nc.gov

809 Ruggles Drive, Edgerton Building

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Raleigh, NC 27699-2704

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From: Bill Shenton <WShenton@poynerspruill.com>

Sent: Thursday, November 16, 2023 2:59 PM

To: Yakaboski, Greg <greg.yakaboski@dhhs.nc.gov>

Subject: [External] RE: Question re: No Review Request

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Hi Greg,

Client has confirmed that Kimel Park Surgery Center is a d/b/a, and the correct legal name is Triad Center for Surgery, LLC.

Please let me know if you have any other questions on this and thanks very much.

Bill

William R. Shenton | Of Counsel



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From: Yakaboski, Greg <greg.yakaboski@dhhs.nc.gov>

Sent: Thursday, November 16, 2023 12:35 PM

To: Bill Shenton <WShenton@poynerspruill.com>

Subject: Question re: No Review Request

Hey Bill,

Question re: the attached No Review Request you sent over. What is the correct name of the facility? In our data base we still have the name of the facility as "Triad Center for Surgery". In the No Review request the facility is referred to as "Kimel Park Surgery Center".

Thanks,

Greg

Sincerely,

Gregory F. Yakaboski

Gregory F. Yakaboski

Project Analyst

[Division of Health Service Regulation](#), Certificate of Need

[NC Department of Health and Human Services](#)

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