

NC DEPARTMENT OF  
**HEALTH AND  
 HUMAN SERVICES**

ROY COOPER • Governor  
 MANDY COHEN, MD, MPH • Secretary  
 MARK PAYNE • Director, Division of Health Service Regulation

**RESPONSE REQUIRED**

January 28, 2019

Emily Mader  
 11200 Governor Manly Way  
 Suite 309  
 Raleigh, NC 27614

**Conditional Approval**

Project ID #: J-11561-18  
 Facility: Ortho NC ASC  
 Project Description: Develop a new ASC with one OR and one procedure room pursuant to the need determination in the 2018 SMFP  
 County: Wake  
 FID #: 180424

Approved Capital Expenditure: \$3,895,599  
 Conditions of Approval: See Attachment A  
 Approved Timetable: See Attachment B  
 Last Date to Appeal: February 27, 2019  
 Required State Agency Findings: Will be mailed within five business days after the date of this letter

Dear Ms. Mader:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency) has conditionally approved the above referenced certificate of need application. This decision was made after review of the application or applications if the review was competitive, consideration of the Certificate of Need Law and regulations promulgated thereunder, the State Medical Facilities Plan, written comments if any, responses to comments if any, and other publicly applicable information.

The conditional approval is valid only for the approved capital expenditure shown above. If a cost overrun occurs that exceeds the approved capital expenditure amount, a new certificate of need may be required based on N.C. Gen. Stat. §131E-176(16)(e).

The applicant shall not proceed with the construction, offering or development of this project until the certificate of need is issued. Furthermore, the Agency shall not issue the certificate of need until all applicable conditions of approval have been met pursuant to N.C. Gen. Stat. §131E-187(a). **Response to the conditions in Attachment A should be submitted to the Agency no later than 35 days from the date of the decision. Failure to respond within this time period may result in the Agency making a determination not to issue a certificate of need for the project referenced above.**

The timetable for completion of the project is the timetable outlined in the certificate of need application, unless an adjustment has been made by the Agency because the review period was extended. The approved timetable for this project is found in Attachment B.

The Certificate of Need law provides that any affected person has thirty (30) days after the date of the decision to file a petition for a contested case on this approval. Further, if you are aggrieved by any of the conditions you may file a petition for a contested case hearing in accordance with N.C. Gen. Stat. §150B, Article 3. This petition must be filed with the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, North Carolina 27699-6714 within thirty (30) days of the date of this decision. Effective October 1, 2009, OAH requires a filing fee with submittal of petitions for contested cases. Please direct all questions regarding this fee to the OAH Clerk's Office (919-431-3000).

N.C. Gen. Stat. §150B-23 provides that a party filing a petition must also serve a copy of the petition on all parties to the petition. Therefore, if you file a petition for a contested case hearing, you must serve a copy of the petition on the Department of Health and Human Services by mailing a copy of your petition to:

Lisa G. Corbett  
Department of Health and Human Services,  
Office of Legal Affairs,  
Adams Building – Room 154  
2001 Mail Service Center  
Raleigh, North Carolina, 27699-2001

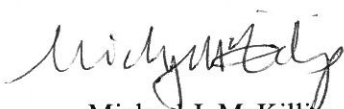
It is requested that a copy of the petition also be served on the Agency.

The certificate of need will not be issued before the completion of thirty day appeal period which ends on the date shown above. If a contested case petition is filed with OAH within the thirty day appeal period, the certificate will not be issued until the appeal is resolved.


If the decision is appealed, the timetable set forth in this letter will be adjusted accordingly before the certificate of need is issued. Please contact this office if any clarification of this decision is required.

Please refer to the Project ID # and Facility ID # (FID) in all correspondence.


Sincerely,



Michael J. McKillip  
Project Analyst



Lisa Pittman  
Assistant Chief



Martha J. Frisone  
Chief

Enclosures:

- Attachment A: Conditions of Approval
- Attachment B: Approved Timetable

cc: Acute & Home Care Licensure & Certification Section, DHSR  
Construction Section, DHSR  
Melinda Boyette, Administrative Assistant, Healthcare Planning, DHSR

**Attachment A**  
**Conditions of Approval**

- 1. OrthoNC ASC, Inc. shall materially comply with all representations made in the certificate of need application.**
- 2. OrthoNC ASC, Inc. shall develop a new single-specialty ambulatory surgical facility by developing no more than one operating room and one procedure room.**
- 3. Upon completion of the project, OrthoNC ASC, Inc. shall be licensed for no more than one operating room and one procedure room.**
- 4. OrthoNC ASC, Inc. shall not acquire as part of this project any equipment that is not included in the project's proposed capital expenditures in Section Q of the application and that would otherwise require a certificate of need.**
- 5. OrthoNC ASC, Inc. shall receive accreditation from the Joint Commission for the Accreditation of Healthcare Organizations, the Accreditation Association for Ambulatory Health Care or a comparable accreditation authority within two years following licensure of the facility.**
- 6. For the first three years of operation following completion of the project, OrthoNC ASC, Inc. shall not increase charges more than 5% of the charges projected in Section Q of the application without first obtaining a determination from the Healthcare Planning and Certificate of Need Section that the proposed increase is in material compliance with the representations in the certificate of need application.**
- 7. The procedure room shall not be used for procedures that should be performed only in an operating room based on current standards of practice.**
- 8. Procedures performed in the procedure room shall not be reported for billing purposes as having been performed in an operating room and shall not be reported on the facility's license renewal application as procedures performed in an operating room.**
- 9. OrthoNC ASC, Inc. shall develop and implement an Energy Efficiency and Sustainability Plan for the project that conforms to or exceeds energy efficiency and water conservation standards incorporated in the latest editions of the North Carolina State Building Codes.**
- 10. No later than three months after the last day of each of the first three full years of operation following initiation of the services authorized by this certificate of need, OrthoNC ASC, Inc. shall submit, on the form provided by the Healthcare Planning and Certificate of Need Section, an annual report containing the:**
  - a. Payor mix for the services authorized in this certificate of need.**
  - b. Utilization of the services authorized in this certificate of need.**



**Attachment A**  
**Conditions of Approval (Con't)**

- c. Revenues and operating costs for the services authorized in this certificate of need.**
  - d. Average gross revenue per unit of service.**
  - e. Average net revenue per unit of service.**
  - f. Average operating cost per unit of service.**
- 11. OrthoNC ASC, Inc. shall acknowledge acceptance of and agree to comply with all conditions stated herein to the Agency in writing prior to issuance of the certificate of need.**



**Attachment B  
Approved Timetable**

1. Drawings Completed \_\_\_\_\_ April 15, 2019
2. Construction/Renovation Contract(s) Executed \_\_\_\_\_ September 15, 2019
3. 25% of Construction/Renovation Completed  
(25% of the cost is in place) \_\_\_\_\_ December 1, 2019
4. 50% of Construction/Renovation Completed \_\_\_\_\_ March 1, 2020
5. 75% of Construction/Renovation Completed \_\_\_\_\_ June 1, 2020
6. Construction/Renovation Completed \_\_\_\_\_ September 1, 2020
7. Licensure Obtained \_\_\_\_\_ October 1, 2020
8. Services Offered \_\_\_\_\_ October 1, 2020
9. Medicare and/or Medicaid Certification Obtained \_\_\_\_\_ October 1, 2020
10. Final Annual Report Due \_\_\_\_\_ January 1, 2024

