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December 1, 2017

VIA ELECTRONIC MAIL

Ms. Martha J. Frisone, Chief
Healthcare Planning and Certificate of Need Section
Division of Health Service Regulation
N.C. Department of Health and Human Services
809 Ruggles Drive, Edgerton Building
Raleigh, NC 27603

RE: Certificate of Need Application of WakeMed
Project I.D. No. J-011428-17

Dear Ms. Frisone:

On behalf of our client, Raleigh Orthopaedic Surgery Center ("ROSC"), I am writing to express our client's opposition to the certificate of need application filed by WakeMed Health and Hospitals ("WakeMed") and designated as Project I.D. No.: J-011428-17. Please accept this letter as comments concerning a proposal under review, in accordance with N.C. Gen. Stat. § 131E-185(a1).

You will recall that ROSC submitted an application to relocate a single operating room from its existing facility in Raleigh to West Cary in Project I.D. No.: J-11161-16. On May 31, 2016, WakeMed filed comments in opposition to that application, contending, among other things, that the ROSC application did not comply with Review Criterion 3. Later, when the ROSC application was approved by the Department of Health and Human Services ("Department"), WakeMed filed a petition for a contested case to challenge that approval, thereby delaying the ROSC project for a considerable period of time and causing ROSC and the Department to incur significant expenses. Now, only a few months later, WakeMed in the Project currently under review itself proposes to relocate an operating room to the Cary area.

ROSC submits that the WakeMed application currently under review is fundamentally inconsistent with the representations made by WakeMed in its opposition to the earlier ROSC proposal. For example, in its comments regarding the ROSC project,

Ms. Martha J. Frisone, Chief
December 1, 2017
Page 2

WakeMed notes that at that time two projects involving approved ambulatory surgical operating rooms were under development in Holly Springs. WakeMed went on to argue:

Because these projects have not been developed, their impact on the surgery market and physician practice patterns of western Wake County surgeons has not yet been determined. To continue to add operating room capacity to this market, even an existing operating room, without fully understanding the impact on competition is unwise, particularly for a project with a substantial capital cost.

Because the ROSC project in West Cary was ultimately approved and is currently under development, the arguments made by WakeMed regarding that project are equally applicable to its own proposal currently under review. ROSC urges the Department to carefully review the various filings made by WakeMed in its comments against and appeal challenging the ROSC project in the Department's review of the current WakeMed application, and determine that the WakeMed application does not comply with relevant review criteria and should be disapproved.

With best wishes, we are

Very truly yours,

NELSON MULLINS RILEY &
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NHH/jfh/jkb

cc: David Boone, M.D.
Hadley Callaway, M.D.