



North Carolina Department of Health and Human Services
Division of Health Service Regulation
Certificate of Need Section

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January 24, 2012

Richard G. Truax
Atlantic Orthopedics, P.A.
3787 Shipyard Blvd.
Wilmington, NC 28403

RE: Exempt from Review / Merger of Atlantic Orthopedics, P.A. and Wilmington Otrhopaedic Group, P.A. to form OrthoWilmington, P.A. / New Hanover County

Dear Mr. Truax:

In response to your letter of December 21, 2011, the above referenced proposal is exempt from certificate of need review in accordance with N.C.G.S 131E-184(a)(8). Therefore, Atlantic Orthopedics, P.A. and Wilmington Otrhopaedic Group, P.A. may proceed to merge to form OrthoWilmington, P.A. 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,


Gregory P. Yakaboski
Project Analyst

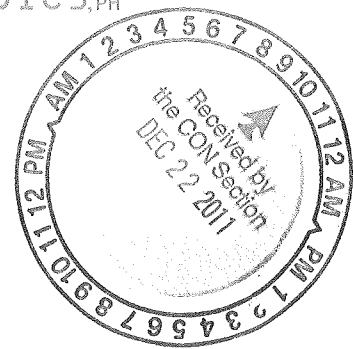

Craig R. Smith, Chief
Certificate of Need Section

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



2/28

Atlantic ORTHOPEDICS, PA
Center for Orthopedic Excellence



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Wilmington, NC 28403

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PT Dept 910 • 341 • 2444
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- Services**
- Arthroscopic Surgery
 - Hands and Upper Extremities
 - Hip, Knee & Shoulder Joint Replacement
 - Spine and Neck Surgery
 - Sports Medicine Injuries
 - Foot and Ankle Surgery
 - Fractures, Sprains and Strains
 - Workers Compensation
 - Pain Medicine
 - MRI Imaging Center
 - Physical Therapy
 - Hand Therapy

Orthopedic Surgeons

- Murray K. Seidel, MD
- Kevin S. Scully, MD
- Jon K. Miller, MD
- R. Mark Rodger, MD
- Richard S. Bahner, MD
- Robert B. Boswell, MD
- Walter W. Frueh, MD
- Shawn B. Hocker, MD
- Ryan M. Putnam, MD
- D. Todd Rose, MD
- Neil R. MacIntyre III, MD

Pain Medicine

- Francis S. Pecoraro, MD

Emeritus

- James R. Dineen, MD
- Donald D. Getz, MD
- James W. Markworth, MD

Physician Assistants

- Stephen J. Free, PA-C
- Armando P. Gonzalez, PA-C
- Jill A. McCulley, PA-C
- John H. Hendrick, Jr., PA-C
- David L. Shaw, PA-C
- D. Andrew Culbreth, PA-C
- Kyle W. Doré, PA-C
- Erica L. Cotter, PA-C
- Jessica K. Roberts, PA-C

Richard G. Truax, MBA, CMPE
Executive Director

Satellite Offices

- Porter's Neck
- Jacksonville
- Brunswick Forest

Mr. Craig Smith
Chief, Certificate of Need Section
Division of Health Service Regulation
809 Ruggles Drive
Raleigh, NC 27603

December 21, 2011

RE: Request for Confirmation of Exemption from Review for Acquisition of an Existing Health Service Facility by OrthoWilmington, P.A./New Hanover County

Dear Mr. Smith:

In 2005 the CON Section issued a certificate of need (Project ID# O-7259-05) to Atlantic Orthopedics, P.A. (AO) to acquire a fixed MRI scanner, to be located at its medical office building located at 3787 Shipyard Boulevard in Wilmington. AO subsequently acquired the equipment and has operated the MRI scanner at that location since 2006. In other words, the CON project is complete. Via this letter, AO hereby affirms that it has, and continues to operate the fixed MRI scanner in conformance with the CON conditions of approval.

Atlantic Orthopedics, P.A. intends to merge with another medical practice, Wilmington Orthopaedic Group, P.A. The surviving legal entity will be known as OrthoWilmington, P.A (OW). The planned merger is to become effective on January 1, 2012. As a result of this merger, OW will acquire the existing health service facility located at 3787 Shipyard Boulevard in Wilmington. This legal merger will have no impact upon the operation of the MRI scanner; i.e. it will not increase the inventory, nor will it result in a relocation of the MRI scanner. AO requests confirmation that such acquisition lies within the scope of the regulations set out in NCGS 131E-184(a)(8) as exempt from review.

Pursuant to NCGS 131E-184(a)(8) "The department shall exempt from certificate of need review a new institutional health service if it receives prior written notice from the entity proposing the new institutional health service, when notice includes an explanation of why the new institutional health service is required, for any of the following: ... (8) To acquire an existing health service facility, including equipment owned by the health service facility at the time of acquisition."

AO understands that because it owns and operates a fixed MRI scanner valued at greater than \$500,000, the 3787 Shipyard Boulevard facility in Wilmington is a diagnostic center, and thus a health service facility.

NCGS 131E-176(7a) states "diagnostic center" means a freestanding facility, program, or provider, including but not limited to, physicians' offices, clinical laboratories, radiology

centers, and mobile diagnostic programs, in which the total cost of all the medical diagnostic equipment utilized by the facility which cost ten thousand dollars (\$10,000) or more exceeds five hundred thousand dollars (\$500,000). In determining whether the medical diagnostic equipment in a diagnostic center costs more than five hundred thousand dollars (\$500,000), the costs of the equipment, studies, surveys, designs, plans, working drawings, specifications, construction, installation, and other activities essential to acquiring and making operational the equipment shall be included. The capital expenditure for the equipment shall be deemed to be the fair market value of the equipment or the cost of the equipment, whichever is greater.

NCGS 131E-176(9b) states "health service facility" means a hospital; long-term care hospital; psychiatric facility; rehabilitation facility; nursing home facility; adult care home; kidney disease treatment center, including freestanding hemodialysis units; intermediate care facility for the mentally retarded; home health agency office; chemical dependency treatment facility; **diagnostic center**; hospice office, hospice inpatient facility, hospice residential care facility; and ambulatory surgical facility.

NCGS 131E-176(16) defines "new institutional health service" as meaning any of the following:

- a. The construction, development, or other establishment of a new health service facility.
- b. The obligation by any person of a capital expenditure exceeding two million dollars (\$2,000,000) to develop or expand a health service or a health service facility, or which relates to the provision of a health service. The cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities, including staff effort and consulting and other services, essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which an expenditure is made shall be included in determining if the expenditure exceeds two million dollars (\$2,000,000).
- c. Any change in bed capacity as defined in G.S. 131E-176(5).
- d. The offering of dialysis services or home health services by or on behalf of a health service facility if those services were not offered within the previous 12 months by or on behalf of the facility.
- e. A change in a project that was subject to certificate of need review and for which a certificate of need was issued, if the change is proposed during the development of the project or within one year after the project was completed. For purposes of this subdivision, a change in a project is a change of more than fifteen percent (15%) of the approved capital expenditure amount or the addition of a health service that is to be located in the facility, or portion thereof, that was constructed or developed in the project.
- f. The development or offering of a health service as listed in this subdivision by or on behalf of any person:
 1. Bone marrow transplantation services.

2. Burn intensive care services.
- 2a. Cardiac catheterization services, except cardiac catheterization services provided on equipment furnished by a person authorized to operate such equipment in North Carolina pursuant to either a certificate of need issued for mobile cardiac catheterization equipment or a settlement agreement executed by the Department for provision of cardiac catheterization services.
3. Neonatal intensive care services.
4. Open-heart surgery services.
5. Solid organ transplantation services.
- f1. The acquisition by purchase, donation, lease, transfer, or comparable arrangement of any of the following equipment by or on behalf of any person:
 1. Air ambulance.
 2. Repealed by Session Laws 2005-325, s. 1, effective for hospices and hospice offices December 31, 2005.
 3. Cardiac catheterization equipment.
 4. Gamma knife.
 5. Heart-lung bypass machine.
 - 5a. Linear accelerator.
 6. Lithotripter.
 7. Magnetic resonance imaging scanner.
 8. Positron emission tomography scanner.
 9. Simulator.
- g. to k. Repealed by Session Laws 1987, c. 511, s. 1.
- l. The purchase, lease, or acquisition of any health service facility, or portion thereof, or a controlling interest in the health service facility or portion thereof, if the health service facility was developed under a certificate of need issued pursuant to G.S. 131E-180.
- m. Any conversion of nonhealth service facility beds to health service facility beds.
- n. The construction, development or other establishment of a hospice, hospice inpatient facility, or hospice residential care facility;
- o. The opening of an additional office by an existing home health agency or hospice within its service area as defined by rules adopted by the Department; or the opening of any office by an existing home health agency or hospice outside its service area as defined by rules adopted by the Department.
- p. The acquisition by purchase, donation, lease, transfer, or comparable arrangement by any person of major medical equipment.
- q. The relocation of a health service facility from one service area to another.
- r. The conversion of a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or the addition of a specialty to a specialty ambulatory surgical program.
- s. The furnishing of mobile medical equipment to any person to provide health services in North Carolina, which was not in use in North Carolina


- prior to the adoption of this provision, if such equipment would otherwise be subject to review in accordance with G.S. 131E-176(16)(f1.) or G.S. 131E-176(16)(p) if it had been acquired in North Carolina.
- t. Repealed by Session Laws 2001-242, s. 4, effective June 23, 2001.
 - u. The construction, development, establishment, increase in the number, or relocation of an operating room or gastrointestinal endoscopy room in a licensed health service facility, other than the relocation of an operating room or gastrointestinal endoscopy room within the same building or on the same grounds or to grounds not separated by more than a public right-of-way adjacent to the grounds where the operating room or gastrointestinal endoscopy room is currently located.
 - v. The change in designation, in a licensed health service facility, of an operating room to a gastrointestinal endoscopy room or change in designation of a gastrointestinal endoscopy room to an operating room that results in a different number of each type of room than is reflected on the health service facility's license in effect as of January 1, 2005.

AO hereby confirms that the acquisition of this health service facility does not constitute a new institutional health service, as defined by any of the definitions of NCGS 131E-176(16) listed on the preceding pages. Specifically, this acquisition does not involve any relocation of a health service facility from one service area to another. AO further confirms that this acquisition will not result in the offering or development of a new institutional health service in the building.

AO requests that the Division of Health Service Regulation confirm that the merger of these medical practices, and thus the subsequent acquisition of this existing health service facility as described herein does not constitute a new institutional health service, and is exempt from certificate of need review.

Please contact me at 910.332.1550 regarding any questions concerning this request.

Sincerely,


Richard G. Truax
Executive Director