

**NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF FACILITY SERVICES  
RALEIGH, NORTH CAROLINA**

**IN RE: REQUEST FOR DECLARATORY )  
RULING BY FOUNDATION HEALTH ) DECLARATORY RULING  
SYSTEMS CORP. D/B/A SALEM MRI, LLC )**

I, Robert J. Fitzgerald, Director of the Division of Facility Services (the “Department”), hereby issue this declaratory ruling to Foundation Health Systems Corp. d/b/a Salem MRI, LLC (“Salem MRI”) pursuant to N.C.G.S. § 150B-4, 10A NCAC 14A.0103, and the authority delegated to me by the Secretary of the North Carolina Department of Health and Human Services. Salem MRI has filed a Declaratory Ruling Request (the “Request”) asking the Department to issue a ruling as to the applicability of N.C.G.S. Chapter 131E, Article 9 to the facts described below. Specifically, Salem MRI requests a declaratory ruling authorizing it to locate an approved MRI scanner in an office building located at 3155 Maplewood Avenue, Winston-Salem, instead of in Salem MRI, LLC’s existing diagnostic center. For the reasons given below, I conclude that the request must be denied, and that Salem MRI is not entitled to locate the MRI scanner as requested without first obtaining a certificate of need (“CON”) pursuant to N.C.G.S. § 131E-178(a).

This ruling is binding on the Department and the person requesting it if the material facts stated in the Request are accurate and no material facts have been omitted from the request. The ruling applies only to this request. Except as provided by N.C.G.S. § 150B-4, the Department reserves the right to change the conclusions which are contained in this ruling. Denise M. Gunter of Nelson Mullins Riley & Scarborough, LLP

has requested this ruling on behalf of Salem MRI and has provided the statement of facts upon which this ruling is based.

### **STATEMENT OF THE FACTS**

Salem MRI Center is an existing diagnostic center, as defined in N.C.G.S. §131E-176(7a), located at 1701 South Hawthorne Road, Winston-Salem. Pursuant to the need determination in the 2005 State Medical Facilities Plan, Salem MRI, LLC submitted a certificate of need application on September 15, 2005 proposing to acquire a third MRI scanner to be located at Salem MRI Center (Project I.D. #G-7387-05). A CON was issued for the project effective August 28, 2006 after resolution of an appeal filed by a competing applicant. The CON authorizes Salem MRI, LLC to acquire a third MRI scanner to be located at its existing diagnostic center - 1701 South Hawthorne Road in Winston-Salem.

Salem MRI, LLC is requesting a declaratory ruling authorizing it to locate the approved MRI scanner in an office building located at 3155 Maplewood Avenue, Winston-Salem, instead of in Salem MRI, LLC's existing diagnostic center. The proposed site is less than a half mile from Salem MRI Center.

Maplewood Imaging Center, an existing diagnostic center owned by Forsyth Radiological Associates, P.A ("FRA"), is located in the same office building at 3155 Maplewood Avenue, in which Salem MRI, LLC proposes to locate its new MRI scanner. In its request for declaratory ruling, Salem MRI states that the proposed change in location of the MRI scanner will not result in a change of ownership, capital costs, scope of services, patient origin, functional capabilities of the scanner, hours of operation, payor mix, operating costs or charges. Yet, Salem MRI states that locating the approved MRI

scanner in the same building with Maplewood Imaging “facilitates the joint venture” formed for outpatient imaging called Excel Imaging, a joint venture between FRA and Novant Health, Inc. (“Novant”).

At the time the CON application was submitted, Salem MRI, LLC was a wholly-owned subsidiary of Foundation Health Systems, Corp., which is a wholly owned subsidiary of Novant. In Section I.1, page 5, of the CON application, Salem MRI states:

It is anticipated that on or about January 1, 2006, a minority interest of up to forty percent (40%) of the ownership interests in Salem MRI Center, LLC will be transferred to the radiology group affiliated with Forsyth Medical Center and other NHTR imaging sites.

The radiology group associated with Novant Health, Inc. is FRA.

### **ANALYSIS**

With certain exceptions not applicable here, no person shall offer or develop a new institutional health service without first obtaining a certificate of need. N.C.G.S. § 131E-178(a). The definition of “new institutional health service” includes a “diagnostic center” which is defined as:

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. . . .

N.C.G.S. § 131E-176(7a).

Pursuant to the CON issued effective August 28, 2006, Salem MRI is authorized to add a third MRI scanner to its existing diagnostic center located at 1701 South

Hawthorne Road, Winston-Salem. Salem MRI now proposes to operate this MRI scanner at a different location than the diagnostic center named in its CON application. Salem MRI proposes to locate the MRI scanner in the same building in which the Maplewood Imaging diagnostic center is located, a separate entity from Salem MRI. However, Salem MRI states that the scanner will still be owned and operated by Salem MRI, LLC, and, will therefore, remain a separate entity from Maplewood Imaging. Thus, Salem MRI is proposing to establish a new diagnostic center because it is developing diagnostic MRI services at a different location than its existing diagnostic center and the services will not be provided by another existing diagnostic center. Since Salem MRI did not propose in its CON application to develop a new diagnostic center, this would constitute a material change in the proposed project as it would result in the establishment of a new institutional health service.

Pursuant to N.C.G.S. § 131E-181(a), “a certificate of need shall be valid only for the defined scope, physical location, and person named in the application.” Furthermore, a recipient of a CON is required to materially comply with the representations made in its application for a CON. N.C.G.S. § 131E-181(b). Based on the statement of facts in its request for declaratory ruling, Salem MRI is proposing a project that would not materially comply with the representations made in its application for a CON for the MRI scanner.

In addition, Salem MRI states that the change in location of the MRI scanner is “merely to facilitate the joint venture” established between FRA and Novant called Excel Imaging. However, Salem MRI does not adequately explain how locating the approved MRI scanner in the same building as Maplewood Imaging would facilitate the joint

venture unless the intent is to transfer ownership of the MRI scanner to Maplewood Imaging. Yet, Salem MRI clearly states in its request for declaratory ruling that ownership of the approved MRI scanner will not change as a result of the proposed change of location.

**CONCLUSION**

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that Salem MRI may not locate its approved MRI scanner as requested, at 3155 Maplewood Avenue, Winston-Salem, without the issuance of a new certificate of need.

This \_\_\_\_\_ day of December, 2006.

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Robert J. Fitzgerald, Director  
Division of Facility Services

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing Declaratory Ruling has been served upon the nonagency party by certified mail, return receipt requested, by depositing the copy in an official depository of the United States postal service in a first class, postage prepaid envelope addressed as follows:

**CERTIFIED MAIL**

Denise M. Gunter  
Nelson Mullins Riley & Scarborough LLP  
380 Knollwood Street  
Winston-Salem, NC 27103

This \_\_\_\_\_ day of December, 2006.

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Jeff Horton  
Chief Operating Officer