

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY CAROLINA NEUROSURGERY) DECLARATORY RULING
& SPINE ASSOCIATES, P.A.)
Project I.D. No. F-6734-03)**

I, Robert J. Fitzgerald, as Director of the Division of Health Service Regulation, North Carolina Department of Health and Human Services (“Department”), do hereby issue this Declaratory Ruling pursuant to North Carolina General Statute § 150B-4 and 10A NCAC 14A .0103 under the authority granted me by the Secretary of the Department of Health and Human Services.

Carolina Neurosurgery & Spine Associates, P.A.. (“CNSA”) has requested a declaratory ruling allowing for an additional location for Project I.D. No. F-6734-03 on the grounds that the change does not constitute a material change in physical location or a failure to materially comply with the representations made by CNSA in its Certificate of Need (“CON”) application for its project. N.C.G.S. §§ 131E-181(a) and (b). This ruling will be binding upon the Department and the entity requesting it, as long as the material facts stated herein are accurate. This ruling pertains only to the matters referenced herein. Except as provided by N.C.G.S. § 150B-4, the Department expressly reserves the right to make a prospective change in the interpretation of the statutes and regulations at issue in this Declaratory Ruling. Terrill Johnson Harris and William R. Forstner, of the law firm of Smith Moore LLP, have requested this ruling on behalf of CNSA and have provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Effective 27 August 2003, CNSA was issued a CON issued for Project I.D. # F-6734-03 to operate a mobile MRI scanner at the following two CNSA medical office locations: 1010 Edgehill Road North and 15825 John J. Delaney Drive. Both offices are located in Charlotte, Mecklenburg County, North Carolina. CNSA moved the mobile MRI scanner from its primary office location to the John J. Delaney Drive location at least one (1) day each week pursuant to the conditions on the CON.

In July 2005, CNSA gave the Department notice that it planned to move its primary office location from 1010 Edgehill Road North to 225 Baldwin Avenue. It requested a declaratory ruling that the new location was in material compliance with its CON. On 30 September 2005, the Department issued a declaratory ruling authorizing CNSA to continue operation of a mobile MRI scanner at 225 Baldwin Avenue and 15825 John J. Delaney Drive.

In May 2006, CNSA notified the Department of the relocation of its office from 15825 John J. Delaney Drive in Charlotte to 14135 Ballantyne Corporate Parkway, Suite 150, in Charlotte. On 19 July 2006, the Department issued a declaratory ruling enabling CNSA to continue operation of its mobile MRI scanner at 225 Baldwin Avenue and 14135 Ballantyne Corporate Parkway. Both of those locations are in Mecklenburg County.

CNSA now seeks to add a third mobile MRI site to its project. The proposed additional site is at CNSA's new office at 110 Lake Concord Road NE in Concord, Cabarrus County (the "Lake Concord Site") when that office is constructed. CNSA asks approval to operate its mobile MRI scanner one day per week at the Lake Concord Site and six days a week at the two current Mecklenburg County sites.

ANALYSIS

The CON law would require a full review of CNSA's proposed additional location if that change were to represent a material change in the physical location or scope of the project. N.C.G.S. § 131E-181(a). The addition of the Lake Concord site does not constitute a material change in the physical location or the scope of the proposed project for the following reasons. The CON for CNSA's mobile MRI scanner at the two CNSA Mecklenburg locations was not issued to meet an identified need in the SMFP; therefore, allowing CNSA to serve established patients at its office in Concord will not conflict with the State health planning process. CNSA's Mecklenburg patients will continue to be served six days per week. The 2007 SFMP establishes a need for one fixed MRI scanner in Cabarrus County, and CNSA providing one day of mobile MRI scanner service per week to patients at its Lake Concord office will not eliminate that need. CNSA will operate its mobile MRI scanner in a manner consistent with the conditions on its CON, because it will continue to move its mobile MRI scanner each week to provide services to at least two sites in Mecklenburg County. The Lake Concord location is in relatively close proximity to the current Mecklenburg sites, so the population to be served by the project will not be affected, and the scope of services offered by CNSA will not change.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw CNSA's CON if CNSA fails to develop the service in a manner consistent either with the representations made in the application or with any conditions that were placed on the CON. CNSA will not be developing its project in a manner that is materially different from the representations made in its application, nor will it be developing its project in a manner that is inconsistent with any of the conditions that were placed on its CON.

CONCLUSION

For all the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the addition of 110 Lake Concord Road NE in Concord, Cabarrus County, as a location for CNSA's mobile MRI scanner, Project I.D. No. F-6734-03, will not constitute a material change in the physical location or scope of the project, will not violate N.C.G.S. § 131E-181, and will not constitute a failure to satisfy a condition of the CON in violation of N.C.G.S. § 131E-189(b).

This ruling is not intended, and should not be interpreted, to authorize any increases in the approved capital expenditure for this project, a change in the approved timetable, a change in the conditions placed on the certificate of need, or any other change in the approved project.

This the _____ day of September, 2007.

Robert J. Fitzgerald, Director
Division of Health Service Regulation
N.C. Department of Health and Human 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 pre-paid envelope addressed as follows:

CERTIFIED MAIL

Terrill Johnson Harris
William R. Forstner
Smith Moore LLP
P.O. Box 21927
Greensboro, NC 27420

This the 7th day of September, 2007.

Jeff Horton
Chief Operating Officer