

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

**IN RE: REQUEST FOR DECLARATORY )  
RULING BY ORTHOPAEDIC SPECIALISTS )      DECLARATORY RULING  
OF THE CAROLINAS, P.A. )  
Project I.D. No. G-7723-06 )**

I, Robert J. Fitzgerald, as Director of the Division of Health Service Regulation, North Carolina Department of Health and Human Services (“Department” or “Agency”), 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.

Orthopaedic Specialists of the Carolinas, P.A. (“Petitioner”) has requested a declaratory ruling allowing for a change in host sites for Project I.D. No. G-7723-06 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 Petitioner 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. Sean A. Timmons and Jennifer B. Markham of Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P. have requested this ruling on behalf of Petitioner and have provided the material facts upon which this ruling is based.

## **STATEMENT OF THE FACTS**

Effective 1 May 2007, the CON Section issued a CON to Petitioner for Project I.D. No. G-7723-06 to acquire one mobile MRI scanner (the “Project Unit”) to provide MRI services at “two or more” host sites. The proposed host sites were Orthopaedic Specialists of the Carolinas, PA. at 170 Kimel Park Drive, Winston-Salem, North Carolina 27103 and OSC Bethabara at North Point Medical Associates at 1995 Bethabara Drive, Winston-Salem, North Carolina 27106 (“Bethabara”).

Petitioner now proposes to provide services at Kernersville Clinic, 445 Pineview Drive, Suite 100, Kernersville, North Carolina 27284 (“Kernersville”) instead of at Bethabara. It seeks a declaratory ruling that the substitution of Kernersville for Bethabara as a host site for the Project Unit does not constitute a material change to the scope of Project I.D. No. G-7723-06.

Petitioner represents that the Kernersville site is located less than fifteen (15) miles from the Bethabara site, and is still within Forsyth County. Petitioner intends to enter into a services agreement with Novant Health for Petitioner to provide services at the Kernersville site.

Petitioner represents that the Kernersville site is superior to the OSC Bethabara site because it already has a mobile MRI scanner pad, and that it can provide services to the Kernersville site without any compromise in services, increase in cost or charges, or compromise in compliance with the representations Petitioner made in its application regarding cost-effectiveness and utilization.

## **ANALYSIS**

The CON law would require a full review of Petitioner’s proposed change of host site 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 proposed change of the host site for Petitioner's project to Kernersville does not constitute a material change in the physical location or the scope of the proposed project because the use of Kernersville as a host site will not affect the scope of services offered or the costs and charges to Petitioner or to the public for the provision of mobile MRI services. The Kernersville site is still within Forsyth County. In addition, there is no proposed change in the person named in the application such that a violation of N.C.G.S. § 131E-181(a) would result.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw Petitioner's CON if Petitioner fails to develop the service in a manner consistent with the representations made in the application or with any conditions that were placed on the CON. Petitioner 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 substitution of Kernersville for Bethabara as a host site for Petitioner's mobile MRI scanner, Project I.D. No. G-7723-06, 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 \_\_\_\_\_, 2007.

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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 first-class, postage pre-paid envelope addressed as follows:

**CERTIFIED MAIL**

Sean A. Timmons  
Jennifer B. Markham  
Smith, Anderson, Blount, Dorsett,  
Mitchell & Jernigan, L.L.P.  
Post Office Box 2611  
Raleigh, NC 27602

This the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

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Jeff Horton  
Chief Operating Officer