

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

**IN RE: REQUEST FOR DECLARATORY )  
RULING BY RALEIGH ORTHOPAEDIC )     DECLARATORY RULING  
CLINIC, P.A. )  
Project I.D. No. J-7557-06 )**

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.

Raleigh Orthopaedic Clinic, P.A. (“ROC”) has requested a declaratory ruling allowing for a change in host sites for Project I.D. No. J-7557-06 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 ROC 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. Wallace C. Hollowell, III, of Nelson, Mullins, Riley & Scarborough, LLP, has requested this ruling on behalf of ROC and has provided the material facts upon which this ruling is based.

## **STATEMENT OF THE FACTS**

Effective 30 May 2007, the CON Section issued a CON to ROC for Project I.D. No. J-7557-06 to acquire a mobile MRI scanner (the “Project Unit”) to provide MRI services in Wake County to “at least two host sites.” The proposed host sites were ROC’s Raleigh and Garner offices. The Project Unit is not yet operational.

ROC proposes that its existing office in Cary, located at 222 Ashville Avenue, Suite 30, in the Cary Medical Park, serve as the second host site for the mobile MRI scanner, in place of the Garner location. ROC states that it has been unable to resolve a dispute with the landlord at the Garner location concerning the mobile MRI pad.

ROC asserts that estimated construction costs for building the mobile MRI pad at the Cary location will be comparable to, if not less than, the estimated costs that ROC would have incurred if the mobile MRI pad were built in Garner. ROC also asserts that there will be no change in the scope of services offered or an increase in costs to patients as result of this modification. The only change will be in the location of the second host site for the mobile MRI scanner. Additionally, ROC states that its Cary host site will meet the requirements for a mobile MRI host site set forth at 10A N.C.A.C. 14C.2705.

## **ANALYSIS**

The CON law would require a full review of ROC’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 ROC’s project to its Cary location does not constitute a material change in the physical location or the scope of the proposed project because the use of the Cary office as a host site will not affect the scope of services offered or the costs and charges to ROC or to the public for the provision of mobile MRI

services. In addition, there is no proposed change in the person named in the application that would result in a violation of N.C.G.S. § 131E-181(a).

N.C.G.S. § 131E-189(b) allows the Agency to withdraw ROC's CON if ROC 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. ROC 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 the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the substitution of the Cary office for the Garner location as a host site for ROC's mobile MRI scanner, Project I.D. No. J-7557-06, 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.

---

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**

Wallace C. Hollowell, III  
Nelson Mullins Riley & Scarborough, LLP  
Attorneys at Law  
Glen Lake One, Suite 200  
4140 Parklake Avenue  
Raleigh, North Carolina 27612

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

\_\_\_\_\_  
Jeff Horton  
Chief Operating Officer