

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY CHARLOTTE-MECKLENBURG) DECLARATORY RULING
HOSPITAL AUTHORITY, D/B/A CAROLINAS)
HEALTHCARE SYSTEM)**

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. 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. Mary Beth Johnston, of Kennedy Covington Lobdell & Hickman, L.L.P., has requested this ruling on behalf of Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Healthcare System (“CHS”) and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

On 4 December 2007, CHS through a letter from its counsel sought a determination by the Certificate of Need (“CON”) Section of the Department that a series of transactions, described below, did not require a CON. On 9 January 2008, the CON Section issued letters stating that two of the transactions did not require a CON. The CON Section concluded that one

aspect of the third transaction required a declaratory ruling because it involves a change in the location of equipment for which a CON was issued.

The transactions, as described in the 4 December letter, were as follows:

(1) Carolinas Medical Center (“CMC”), an operating division of CHS that owned two MRI machines located at the Eastover Diagnostic Imaging Center (“EDIC”), would relocate one of the MRI machines to CMC’s main campus. The machine to be relocated to the CMC main campus was a unit that was “grandfathered” under the CON law. It is referred to here as the “1991 MRI Machine.”

(2) EDIC, which is an existing health service facility (i.e., a diagnostic center) would be acquired by Carolinas Imaging Services (“CIS”) through an asset purchase agreement. CIS is a joint venture in which CHS and Charlotte Radiology are partners. The assets of EDIC do not include the other MRI machine located at EDIC, which was acquired by CMC pursuant to a CON awarded in 1999. That MRI machine is referred to herein as the “1999 MRI Machine.”

(3) After the acquisition of EDIC, CIS will relocate the diagnostic center from its present location at 2612 and 2614 East 7th Street, Charlotte, Mecklenburg County (“7th Street”) to a new location at 6959 Fairview Road, Charlotte, Mecklenburg County (“Fairview Road”). CHS represents that the costs associated with relocating the diagnostic center will be approximately \$583,000. The 1999 MRI Machine also will be relocated. CMC, which is the current owner of the 1999 MRI Machine, will continue to own that machine.

The CON Section determined that the relocation of the 1991 MRI Machine and the purchase and relocation of the diagnostic center did not require a CON. The remaining aspect of the transaction, which is the subject of this ruling, is the relocation of the 1999 MRI Machine.

ANALYSIS

The CON law would require a full review of CHS's proposed change of site for the 1999 MRI Machine 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 site change to Fairview Road for the 1999 MRI Machine does not constitute a material change in the scope of the proposed project because the use of Fairview Road site will not affect the scope of services offered. It does not constitute a material change in the physical location of the 1999 MRI Machine, because both the present and the proposed locations are within the same county and the same Health Service Area. 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 CMC's CON if CMC 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. CMC 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 relocation of the 1999 MRI Machine to Fairview Road from 7th Street 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). CMC must continue to operate in material compliance with the representations in its CON application.

This the _____ day of _____, 2008.

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

Mary Beth Johnston
Kennedy Covington Lobdell & Hickman, L.L.P.
430 Davis Drive, Suite 400
Morrisville, NC 27560

With a courtesy copy to:

Robert V. Bode
Bode, Call & Stroupe, LLP
3105 Glenwood Avenue, Suite 300
Raleigh, NC 27612

This the _____ day of _____, 2008.

Jeff Horton
Chief Operating Officer