

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY JACKSONVILLE DIAGNOSTIC) DECLARATORY RULING
IMAGING, LLC)
Project I.D. No. F-6626-02)**

I, Jeff Horton, as Acting 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.

Jacksonville Diagnostic Imaging, LLC. (“JDI”) (formerly Imaging Associates of the Carolinas) has requested a declaratory ruling allowing for a change in host site for Project I.D. No. # F-6626-02 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 JDI 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. Denise M. Gunter of Nelson Mullins Riley & Scarborough, LLP, counsel for JDI, has requested this ruling on behalf of JDI and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Effective 21 October 2004, the CON Section issued a CON to Imaging Associates of the Carolinas, LLC (“IAC”) for Project # F-6626-02 to acquire a mobile MRI scanner (the “Project Unit”) to provide MRI services at “at least two” host sites. The specified host sites were Orion Imaging, LLC, 10420 Park Road Extension, Suite 100, Pineville, North Carolina (the “Park Road Site”), and Orion Imaging, LLC, 900 Cox Road, Suite C, Gastonia, North Carolina (the “Cox Road Site”).

On 3 May 2007, the Department issued a Declaratory Ruling allowing IAC to add a site for the operation of the Project Unit at 10710 Ballantyne Commons Parkway, Winslow Building, Charlotte, North Carolina (the “Ballantyne Site”). On 20 February 2008, the Department issued an exemption for Novant Health and/or its subsidiaries to acquire IAC. JDI is the Novant subsidiary which now owns the assets of IAC.

JDI represents that the mobile MRI service agreement for the Park Road Site, which was for Monday service only, expired on 3 November 2008. The mobile MRI service agreement for the Cox Road Site, which was for Friday service only, has also expired. JDI proposes to temporarily utilize the Project Unit to serve a host site at Presbyterian Imaging Center-University (“PIC-U”), located at 8401 Medical Drive Plaza in Charlotte (the “PIC-U Site”) for Monday service only. The Project Unit would serve the PIC-U Site from 1 December 2008 to 4 January 2009. Effective 5 January 2009, JDI proposes to relocate the Project Unit from the PIC-U Site to Presbyterian Diagnostic Center (“PDC”) at Steele Creek, located at 13357 Steelcroft Parkway in Charlotte (the “PDC Site”). PDC is an approved diagnostic center with a pad for mobile MRI service and the required hook ups already in place. JDI proposes to provide mobile MRI service at the PDC Site on Mondays and Fridays. JDI anticipates that another mobile arrangement will

be in place at PIC-U by January. JDI states it will continue to use the Project Unit to serve the Ballantyne Site on Tuesdays through Thursdays.

ANALYSIS

The CON law would require a full review of JDI'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 change in host site does not constitute a material change in the physical location or the scope of the project because the use of the PIC-U and PDC host sites will not affect the scope of services offered or the costs and charges to JDI or to the public for the provision of mobile MRI services. Allowing JDI to temporarily change the current mobile MRI host site location from the Park Road Site to the PIC-U Site will allow the Project Unit to continue to be utilized on Mondays. With the opening of the PDC Site expected in January 2009, the Project Unit could be moved from PIC-U to PDC and be utilized on both Mondays and Fridays. The Project Unit would continue to serve the Ballantyne Site on Tuesdays through Thursdays as previously ruled in the Department's 3 May 2007 Declaratory Ruling.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw JDI's CON if JDI 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. JDI 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 8401 Medical Drive Plaza, Charlotte, N.C. as a host site for

JDI's mobile MRI Scanner (Project I.D. No. # F-6626-02) from 1 December 2008 to 4 January 2009 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). I further conclude that the subsequent substitution of 13357 Steelcroft Parkway, Charlotte, N.C. as a host site for JDI's mobile MRI Scanner (Project I.D. No. # F-6626-02) effective 5 January 2009, or upon the opening of PDC at Steele Creek, 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 _____, 2008.

Jeff Horton, Acting 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

Denise M. Gunter
Nelson Mullins Riley & Scarborough, LLP
380 Knollwood Street, Suite 530
Winston-Salem, NC 27103

This the _____ day of _____, 2008.

Jeff Horton
Acting Director