

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

**IN RE: REQUEST FOR DECLARATORY )  
RULING BY TOTAL RENAL CARE OF )  
NORTH CAROLINA, LLC )     **DECLARATORY RULING**  
Project I.D. No. J-7142-04 )**

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 N.C.A.C. 14A .0103 under the authority granted me by the Secretary of the Department of Health and Human Services.

Total Renal Care of North Carolina, LLC (“TRC”) has requested a declaratory ruling allowing for a change of site for Project I.D. No. J-4142-04 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 TRC in its Certificate of Need (“CON”) application for its project. N.C.G.S. §§ 131E-181(a) and (b). In addition, TRC requests a declaratory ruling that a change in the name of the proposed dialysis facility will not violate provisions of the CON Law codified at N. C. Gen. Stat. § 131E-175 *et. seq.*, or the Certificate of Need Section’s Administrative Regulations, codified at 10A N.C.A.C. 14C.

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. William R. Shenton of the law firm of Poyner & Spruill, LLC requested this ruling on behalf of TRC and has provided the material facts upon which this ruling is based.

## **STATEMENT OF THE FACTS**

Effective 28 March 2006, the CON Section issued a CON to TRC d/b/a DaVita Dialysis of Wake Forest for Project J-7142-04 to develop a new 10-station dialysis facility in Wake Forest, North Carolina. TRC represented in its CON application that its proposed primary site was in the Wake Forest Business Park (near U.S. Highway 1 and Durham Road), approximately 1.5 miles west of downtown Wake Forest (the “original site”). The original site is no longer available for the development of the proposed facility, and the cost for the secondary site is now more than triple the cost of the original site.

TRC has identified a suitable alternate site, 11371 Forest Pines Drive, Raleigh (the “alternate site”). Although the new site is within the city limits of Raleigh, it is located approximately 2 miles from the original site proposed in TRC’s CON Application. According to TRC, the alternate site will not entail any additional significant capital costs and TRC will offer the same services as proposed in its application. Further, distances to key support services identified in the application will be similar.

TRC also requests a change in the name under which the TRC facility in Project J-7142-04 will do business from “Total Renal Care of North Carolina, LLC d/b/a DaVita Dialysis of Wake Forest” to “Total Renal Care of North Carolina, LLC d/b/a Wake Forest Dialysis Center.” According to TRC, the name change does not constitute a change in the nature or the identity of the proponent of the application but only the name under which the facility will transact business.

## **ANALYSIS**

The CON law would require a full review of TRC’s proposed change of 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 site for TRC’s Project J-7142-04 does not constitute a material change in the physical location or the scope of the proposed project because locating the project at the alternate site will not affect the scope of services offered or the cost of the project. Because of the close proximity of the alternate site to the original site, the change will not affect the population to be served.

A certificate of need is valid only for the person named in the application. N. C. Gen. Stat. § 131E-181(a). Operating the facility under the name “Wake Forest Dialysis Center” will not constitute a change in the identity or ownership of the applicant or affect TRC’s continuity of control of the facility 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 TRC’s CON if TRC 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. TRC will not develop its project in a manner that is materially different from the representations made in its application, nor will it develop 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 TRC’s development and operation of the facility to be known as “Total Renal Care of North Carolina, LLC d/b/a Wake Forest Dialysis Center,” at 11371 Forest Pines Drive in Raleigh, North Carolina, does not constitute a material change in the implementation of Project J-7142-04. The change of site from the original site to the alternate site for TRC’s 10-station dialysis facility 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). Moreover, the change in the

name under which TRC does business at this location does not constitute a material change in the person named in the application, does 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 December, 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 non-agency 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**

Mr. William R. Shenton  
Poyner & Spruill LLP  
301 Fayetteville Street, Suite 1900  
Raleigh, NC 27601

This the \_\_\_\_\_ day of December, 2008.

---

Jesse Goodman  
Acting Chief Operating Officer