

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY JACKSONVILLE DIAGNOSTIC)
IMAGING, LLC AND PRESBYTERIAN) **DECLARATORY RULING**
MOBILE IMAGING, LLC)
Project I.D. Nos. F-6626-02 and F-7164-04)**

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 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) and Presbyterian Mobile Imaging, LLC (“PMI”) have requested a declaratory ruling allowing for changes in host sites for Project I.D. Nos. F-6626-02 and F-7164-04 on the grounds that the changes do not constitute material changes in physical location or a failure to materially comply with the representations made by JDI and PMI in their Certificate of Need (“CON”) applications for their projects. 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 and PMI, has requested this ruling on behalf of JDI and PMI 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 “JDI Scanner”) 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 JDI Scanner 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.

On 18 November 2008, the Department issued a Declaratory Ruling allowing JDI to add Presbyterian Diagnostic Center-Steele Creek (“Steele Creek”) as a host site for the operation of the JDI Scanner on Mondays and Fridays because the mobile service agreements for both Orion Imaging Sites had expired. The JDI Scanner was to continue to service the Ballantyne Site on Tuesdays through Thursdays.

Effective 25 January 2006, the CON Section issued a CON to PMI for Project # F-7164-04 to acquire a mobile MRI scanner (the “PMI Scanner”) to provide MRI services at “at least two” host sites each week. The specified host sites were Presbyterian Medical Plaza University, 8401 Medical Plaza Drive, Charlotte, North Carolina (the “University Site”), and Southern Piedmont Primary Care, 1640 E. Roosevelt Boulevard, Monroe, North Carolina (the “Southern Piedmont Site”). PMI represents that the PMI Scanner has been providing services Tuesday

through Friday at the University Site and on Monday through Sunday at the Southern Piedmont Site.

Novant Health is the ultimate parent company of both JDI and PMI. JDI and PMI represent that Southern Piedmont Primary Care no longer needs MRI services on Mondays and weekends and discussed two alternative proposals regarding the use of the JDI and PMI Scanners. In the first alternative, JDI and PMI propose to operate the PMI Scanner at the University Site Monday through Friday and park the PMI Scanner at the Southern Piedmont Site on weekends. However, JDI and PMI represent that Southern Piedmont Primary Care no longer needs MRI services on the weekends and consequently, the MRI scanner is not proposed to actually be operated at this site each week. In the second alternative, PMI and JDI propose that the JDI Scanner provide mobile MRI services at the University Site on Mondays, the Ballantyne Site Tuesdays through Thursdays, and the Steele Creek Site on Fridays. The PMI Unit would provide mobile MRI services at the Steele Creek site on Mondays, the University Site Tuesdays through Fridays, and be parked at the Southern Piedmont Site on weekends. JDI and PMI represent that they will comply with all other representations in the original CON applications for their respective projects and that the site changes will not change the costs and charges to JDI, PMI or the public.

ANALYSIS

The CON law would require a full review of JDI and PMI's proposed changes of host sites if those changes were to represent material changes in the physical locations or scopes of the projects. N.C.G.S. § 131E-181(a). The scope of the original CON for the PMI Scanner requires the scanner to "be operated at two host-sites." In addition, condition number 2 of the CON requires that the PMI Scanner "shall be moved each week to provide MRI services at least

two host sites.” Therefore, the first proposal, to operate the PMI Scanner at the University Site Monday through Friday and park the PMI Scanner at the Southern Piedmont Site on weekends absent a guarantee that the PMI Scanner would actually be operated at Southern Piedmont Primary Care each week, will constitute a material change in the scope of the project and will constitute a failure to satisfy a condition of the CON in violation of N.C.G.S. § 131E-189(b).

However, the alternative proposal that the JDI Scanner provide MRI services at the University Site on Mondays, the Ballantyne Site Tuesdays through Thursdays, and the Steele Creek Site on Fridays and the PMI Scanner provide MRI services at the Steele Creek site on Mondays and the University Site Tuesdays through Fridays will not constitute a material change in the physical locations or the scopes of the projects because these changes in host sites will not affect the scope of services offered or the costs and charges to JDI, PMI or to the public for the provision of mobile MRI services.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw JDI and PMI’s CONs if JDI or PMI fail to develop the services in a manner consistent with the representations made in the applications or with any conditions that were placed on the CONs. Under the alternative proposal which includes the PMI Scanner being operated at two host sites each week (the Steele Creek Site and the University Site), neither JDI nor PMI will 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 first proposal to leave the PMI Scanner at the University Site Monday through

Friday then park the PMI Scanner at the Southern Piedmont Site on weekends will constitute a material change in the scope of the project and will 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 alternative proposal for the JDI Scanner to be operated at the University Site on Monday, the Ballantyne Site Tuesdays through Thursdays, and the Steele Creek Site on Fridays, and for the PMI Scanner to be operated at the Steele Creek site on Mondays and the University Site Tuesdays through Fridays will not constitute a material change in the physical locations or scopes of the projects, will not violate N.C.G.S. § 131E-181, and will not constitute a failure to satisfy a condition of the CONs 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 expenditures for these projects, changes in the approved timetables, a change in the conditions placed on the certificates of need, or any other change in the approved projects.

This the _____ day of _____, 2009.

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 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 _____, 2009.

Jesse Goodman
Acting Chief Operating Officer