

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY NOVANT HEALTH, INC. AND) DECLARATORY RULING
FORSYTH MEMORIAL HOSPITAL, INC.)
D/B/A FORSYTH MEDICAL CENTER)
Project I.D. No. G-7065-04)**

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.

Novant Health, Inc. and Forsyth Memorial Hospital, Inc. d/b/a Forsyth Medical Center (collectively “FMC” or “the applicants”) have requested a declaratory ruling allowing for a change in host sites for Project I.D. No. G-7065-04 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 FMC 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 has requested this ruling on behalf of FMC and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Effective 13 November 2004, the CON Section issued a CON to FMC for Project I.D. No. G-7065-04 to acquire a mobile MRI scanner (the “Project Unit”) for the provision of mobile MRI services at the following sites: Mountainview Medical in King, Stokes County; Winston-Salem Health Care in Winston-Salem, Forsyth County; Central Triad Imaging Center in Kernersville, Forsyth County; Thomasville Medical Center in Thomasville, Davidson County and Northern Hospital of Surry County in Mount Airy, (the “Original Host Sites”). According to FMC’s CON application, service to Thomasville Medical Center and Northern Hospital of Surry County was for “backup” mobile MRI service on an as needed basis. Pursuant to a Declaratory Ruling issued in October, 2006, a host site in Davie County, which is contiguous to two of the counties FMC proposed to serve in its CON Application, was added.

Thomasville Medical Center now has a fixed MRI scanner and Northern Hospital of Surry County has been approved for a second MRI scanner. Therefore, these facilities are no longer in need of mobile services. Additionally, service at Mountainview Medical has ended due to a drop in referrals. Thus, the remaining sites served by FMC’s mobile MRI scanner are Medical Associates of Davie, Central Triad Imaging Center in Kernersville and Winston-Salem Health Care. However, Piedmont Imaging, LLC, another Novant subsidiary, was recently approved for a fixed MRI scanner in Kernersville (Project I.D. No. G-8196-08) so mobile service will no longer be needed in Kernersville. These changes result in a four day gap in FMC’s mobile MRI schedule.

FMC now requests approval of a host site at another of Novant’s subsidiaries, Mecklenburg Diagnostic Imaging, LLC d/b/a North Carolina Diagnostic Imaging-Mooresville (“MDI” or “Proposed Site”) in Mooresville, Iredell County for the four days of service that are

now available on FMC's mobile MRI Scanner. MDI is currently receiving mobile MRI service from a third party vendor four days a week, however, the contract ends in September 2009.

Since service began on FMC's mobile in October 2005, some Iredell patients began receiving scans on the mobile. In the 2009 Registration and Inventory of Medical Equipment form submitted to the North Carolina Department of Health and Human Services, both Winston-Salem Health Care and Medical Associates of Davie report treating Iredell patients on FMC's mobile scanner, with the greater number of Iredell residents going to Medical Associates of Davie. Davie County is adjacent to Iredell County.

ANALYSIS

The CON law requires a full review of FMC's proposed change of host site if that change represents a material change in the defined scope, physical location or person named in the project. N.C.G.S. § 131E-181(a). The addition of FMC's proposed host site does not constitute a material change in the physical location or the scope of the proposed project because the use of MDI as a host site will not affect the scope of services offered or the costs and charges to the public for the provision of mobile MRI services. In addition, there is no proposed change in the person named in the application such that a violation of N. C. Gen. Stat. § 131E-181(a) would result.

In November 2007, Novant Health, Inc. acquired MQ Associates, Inc. ("MedQuest") which operated a diagnostic imaging center in Mooresville. At the time its CON application was filed in 2004, Novant could not have predicted this and thus, Iredell County was not listed in its proposed service area in the application. However, Iredell County patients are currently being served on FMC's mobile MRI scanner.

MDI now has patient demand for the four days of service available on FMC's mobile MRI scanner due to the expiration of its current contract. The addition of MDI as a host site will result in better utilization of the Project Unit.

N. C. Gen. Stat. § 131E-189(b) allows the Agency to withdraw Petitioners' CON if Petitioners fail 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. Petitioners will not be developing their project in a manner that is materially different from the representations made in its application, nor will they be developing their project in a manner that is inconsistent with any of the conditions that were placed on their CON.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the addition of MDI as a host site for FMC's mobile MRI scanner, Project I.D. No. G-7065-04, 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 _____, 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