

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

IN RE: REQUEST FOR DECLARATORY)	
RULING BY PORTERS NECK)	
IMAGING, LLC AND DELANEY)	DECLARATORY RULING
AT MCD, LLC)	
Project I.D. No. O-7254-05)	

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.

Porters Neck Imaging, LLC (“PNI”) and Delaney at MCD, LLC (“Delaney”) have requested a declaratory ruling allowing for a change in host sites for Project I.D. No. O-7254-05 on the grounds that the change does not constitute a material change in scope or physical location or a failure to materially comply with the representations made by PNI and Delaney in their Certificate of Need (“CON”) application for the 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. Ronald I. Kirschbaum of Kirschbaum, Nanney, Keenan & Griffin, P.A. has requested this ruling on behalf of PNI and Delaney and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

On September 30, 2006 a Certificate of Need (“CON”) was issued for Project I.D. # O-7254-05, which enabled PNI and Delaney to operate a mobile magnetic resonance imaging (“MRI”) scanner. The MRI scanner is currently authorized to be operated at the following locations: 8115 Market Street, Wilmington, North Carolina, 28411 (the “Market Street site”) and 1025 Medical Center Drive, Wilmington, North Carolina, 28401 (the “Medical Center Drive site”).

PNI and Delaney now seek to discontinue service at the Market Street site, and to substitute in its place a site at 2800 Ashton Drive, Suite 102, Wilmington, North Carolina, 28412 (the “Ashton Drive site”).

The request is being made because of a change in ownership of the property at the Market Street site and the desire of the new owner to no longer have that location as a site for the mobile MRI scanner.

ANALYSIS

The CON law would require a full review of PNI and Delaney’s request for a change in host sites from the Market Street site to the Ashton Drive 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 site change does not constitute a material change in the physical location or the scope of the proposed project for the following reasons:

The Ashton Drive site is within the same MRI service area as the two current locations of service.

The Ashton Drive site does not cause any changes in the fees charged for mobile MRI services nor does it add to the CON-approved capital budget for the project.

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

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the site change of PNI and Delaney's mobile MRI scanner from the Market Street site to the Ashton Drive site for Project I.D. No. O-7254-05 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 the _____ day of September, 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

Ronald I. Kirschbaum
Kirschbaum, Nanney, Keenan & Griffin, P.A.
Post Office Box 19766
Raleigh, North Carolina 27619-9766

This the _____ day of September, 2009.

Jesse Goodman
Acting Chief Operating Officer