

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY ORTHOCAROLINA, P.A.)
) **DECLARATORY RULING**
)
Project I.D. No. F-7987-07)
)**

I, Drexdal Pratt, as 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.

OrthoCarolina, P.A. (“OrthoCarolina”) has requested a declaratory ruling for Project I.D. No. F-7987-07 (“Project”) allowing for the replacement of one host site location as well as the addition of two host sites for its mobile MRI scanner (“Scanner”) on the grounds that these site changes do not constitute a material change in scope or physical location or a failure to materially comply with the representations made in the certificate of need application or the conditions imposed upon the certificate. N.C.G.S. §§ 131E-181(a) and (b). This ruling will be binding upon the Department and the entities 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. Joy Heath Thomas of the Law Office of Joy Heath Thomas has requested this ruling on behalf of Petitioner and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

On April 29, 2008, the CON Section issued a certificate of need to OrthoCarolina to acquire a mobile MRI scanner as set forth in Project I.D. No. F-7987-07 to provide mobile magnetic resonance imaging services at three host site locations in Mecklenburg County and one host site location in Cleveland County. The locations named in the application included: 15825 John J. Delaney Drive, Suite 100, Charlotte (“Ballantyne site”); 2001 Randolph Rd., Charlotte (“Charlotte site”); 16455 Statesville Rd., Huntersville (“Huntersville site”); and 101 Delta Park Dr., Shelby in Cleveland County (“Shelby site”).

OrthoCarolina seeks to substitute a new location for the current Huntersville site. Specifically, OrthoCarolina seeks to provide services at 10030 Gilead Road, Suite 160, Huntersville in Mecklenburg County – a site that is approximately 3 miles from the original Huntersville site. OrthoCarolina also seeks to add new sites at 710 Park Center Drive, Suite 200, Matthews (Mecklenburg County) and 808 Circle Drive, Monroe (Union County). All three proposed locations are located within HSA III.

The proposed sites will offer substantially the same mobile MRI services as those currently offered pursuant to the certificate of need, and offering services at the proposed sites will not result in increased costs or charges to OrthoCarolina or its patients. OrthoCarolina represents that the requested modifications would more effectively meet the needs of its patients, would allow for optimal utilization of the equipment and would meet increasing demand for MRI services.

ANALYSIS

The CON law would require a full review of Petitioner’s proposed changes if they were to represent a material change in the physical location or scope of the project. N.C.G.S. § 131E-

181(a). The proposed host site substitution and host site additions do not constitute a material change in the physical location or the scope of the project. The new sites are within the HSA that the Scanner was approved to serve. The modifications will not increase costs or charges or change the scope of services provided.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw a certificate of need if the applicant 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 certificate. Petitioner will not be developing its project in a manner that is materially different from the representations made in the application, nor will it be developing its project in a manner that is inconsistent with any of the conditions that were placed on the certificate of need.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the addition of the above sites as sites for the Scanner approved in Project I.D. No. F-7987-07 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 certificate of need in violation of N.C.G.S. § 131E-189(b).

This the _____ day of December, 2010.

Drexdal Pratt, 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

Joy Heath Thomas
The Law Office of Joy Heath Thomas
514 Daniels Street, # 182
Raleigh, NC 27605

This the _____ day of December, 2010.

Jeff Horton
Chief Operating Officer