

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

IN RE: REQUEST FOR DECLARATORY)	
RULING BY DVA HEALTHCARE RENAL)	
CARE D/B/A MINT HILL DIALYSIS)	DECLARATORY RULING
CENTER)	
)	
Project I.D. No. F-7861-07)	

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.

DVA Healthcare Renal Care, Inc. d/b/a Mint Hill Dialysis Center (“DVA”) has requested a declaratory ruling for Project I.D. No. F-7861-07 (“Project”) allowing it to develop and operate the Mint Hill Dialysis Center at a new location. DVA requests this change on the grounds that it does not constitute either (1) a material change in scope or physical location or (2) a failure to materially comply with the representations made by DVA in its certificate of need application for its project or the conditions imposed upon the certificate of need. 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. William R. Shenton of Poyner Spruill LLP has requested this ruling on behalf of DVA and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

In September 2008, the CON Section issued a certificate of need for Project I.D. No. F-7861-07 authorizing DVA to relocate six dialysis stations from its Charlotte East Dialysis Center and four dialysis stations from its South Charlotte Dialysis Center to develop a 10-station dialysis facility in Mint Hill, Mecklenburg County, to be known as Mint Hill Dialysis Center.

As a result of the economic downturn, the business park where the primary and secondary sites in DVA's Certificate of Need application were located was not developed, so those sites were no longer available as locations for the facility. DVA identified another site at 9030 Albemarle Road, Charlotte, North Carolina and received a declaratory ruling approving that site. However, after issuance of the declaratory ruling, DVA learned of a restrictive covenant that prohibits any entity with an ownership or similar affiliation with a pharmacy from leasing space in the shopping center on Albemarle Road. That covenant eliminated the Albemarle Road site as a location for DVA's Mint Hill facility, because DVA's parent company DaVita, Inc., has a subsidiary that is a specialized pharmacy.

DVA represents that a new site at 11308 Hawthorne Drive in Mint Hill is available and suitable for development of the dialysis facility as originally configured and designed, and that DVA will operate the same number of dialysis stations as it proposed in its application. The new site has an existing building that once housed a medical practice, and the site is appropriately zoned. DVA's developer will purchase the building and DVA will upfit it with all necessary dialysis-specific renovations. DVA represents that its upfit costs will not exceed 115 percent of the capital expenditure amount shown on its certificate of need. DVA anticipates being able to complete development of the facility and have it ready for certification no later than the first

quarter of 2012. The new site is located at approximately the same distance to support services as the sites identified in the application.

ANALYSIS

The CON law would require a full review of DVA's proposed change if it 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 does not constitute a material change in the physical location or the scope of the proposed project. The new site is approximately the same distance to key support services identified in the application as the original sites in DVA's application. DVA will operate the same size facility and offer the same services at the new site as those proposed in the application. Costs for development will not exceed 115% of the amount shown on the certificate of need.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw DVA's certificate of need if DVA 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 of need. DVA will not 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 certificate of need.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the substitution of 11308 Hawthorne Drive, Mint Hill, North Carolina as the site for DVA's Mint Hill Dialysis Center, Project I.D. No. F-7861-07, 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 _____, 2011.

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

William R. Shenton
Poyner Spruill LLP
301 Fayetteville Street, Suite 1900
Raleigh, NC 27602-1801

This the _____ day of _____, 2011.

Jeff Horton
Chief Operating Officer