

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY CARTERET COUNTY)
GENERAL HOSPITAL CORPORATION) **DECLARATORY RULING**
D/B/A CARTERET CENTRAL HOSPITAL)
AND SEASHORE IMAGING, LLC)
Project I.D. No. P-8049-08)**

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.

Carteret County General Hospital Corporation d/b/a Carteret Central Hospital and Seashore Imaging, LLC (collectively, “Seashore”) have requested a declaratory ruling allowing for a change in location and equipment for Project I.D. No. P-8049-08 on the grounds that the changes do not constitute material changes in scope or physical location or a failure to materially comply with the representations made by Seashore 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. S. Todd Hemphill of Bode, Call & Stroupe, L.L.P. has requested this ruling on behalf of Seashore and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Seashore was issued a Certificate of Need on November 7, 2008 to acquire a fixed open bore MRI scanner and establish a diagnostic center in Morehead City, Carteret County, North Carolina.

The proposed primary site was located at 3725 Bridges Street and the proposed secondary site was located at 3025-A Bridges Street in Morehead City.

In both instances, Seashore contemplated that construction costs would be approximately \$1,237,500. The Seashore application also proposed to acquire a Siemens Magnetom Espree 1.5T short bore open MRI scanner, at a cost of \$1,854,055.

Seashore has found an alternative site at 4252 Arendell Street, Suite B, Morehead City, which is less than a mile for the original proposed primary site. The Arendell Street site is a more effective alternative for the development of Seashore's MRI scanner, due to its lower cost.

Condition No. 2 to the CON issued to Seashore provided that it "acquire one 1.5T Espree High-Field MRI scanner..." Since the CON was issued in 2008, the technology represented in the Espree has become outdated, such that there are cheaper and better MRI scanners available on the market which meet the same specifications. The Toshiba Titan X High Field Open MRI System provides all of the same basic functions as the Siemens, but with improved capabilities.

The capital cost for the project is now expected to be \$2,442,675, which is lower than the approved capital expenditure of \$3,396,555.

ANALYSIS

The CON law would require a full review of Seashore's site relocation and equipment change, if that relocation and equipment 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 relocation

and equipment change does not constitute a material change in the physical location or the scope of the proposed project for the following reasons:

Both the initial site and the new proposed site are within a mile of each other, and are located in Morehead City, in Carteret County.

The cost of the new site is lower than the cost of the primary site in the application.

The cost of the Toshiba is lower than the cost of the Siemens MRI proposed in the CON application, and is functionally equivalent.

The service area will be consistent with the service area listed in the application, the service offerings will be consistent with those proposed in the application, and there will be no changes in volume projections and demand as a result of the site or equipment change.

The site and equipment change will result in no increase in charges or other operating costs, and no changes in staffing.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw Seashore's CON if Seashore 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 CON. Seashore 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 CON, other than previously discussed.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the development of a diagnostic Center in Carteret County on the Arendell Street site, and the proposed acquisition of a Toshiba Titan X High Field Open MRI System for Project I.D. No. P-8049-08 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 April, 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 a first-class, postage pre-paid envelope addressed as follows:

CERTIFIED MAIL

S. Todd Hemphill
Bode, Call & Stroupe, L.L.P.
Post Office Box 6338
Raleigh, NC 27628-6338

This the _____ day of April, 2011.

Jeff Horton
Chief Operating Officer