

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY REX HOSPITAL, INC.) DECLARATORY RULING
Project I.D. No. J-7294-05)**

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.

Rex Hospital, Inc. (hereinafter “Rex”) has requested a declaratory ruling allowing for a site addition for Project I.D. No. J-7294-05 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 Rex 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. Gary S. Qualls of K&L Gates, LLP has requested this ruling on behalf of Rex and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Rex owns a mobile MRI scanner, which was originally authorized by the Rex MRI Project Certificate of Need (“CON”) approved on August 4, 2006, and identified as Project I.D. No. J-7294-05 (“Rex’s Mobile MRI”). Rex was approved to provide mobile MRI services to two locations:

- (1) Rex Wakefield for five (5) days per week; and
- (2) Rex Hospital’s main campus on Lake Boone Trail in Raleigh for two (2) days per week.

On March 3, 2009, the Department issued a Declaratory Ruling allowing Rex’s Mobile MRI to provide mobile MRI services to a third location, Rex Healthcare of Knightdale (“Rex Knightdale”). As a result, Rex’s Mobile MRI has been providing mobile MRI services to three locations:

- (1) Rex Wakefield Site;
- (2) Rex Hospital’s main campus on Lake Boone Trail in Raleigh; and
- (3) Rex Knightdale.

Rex now requests a ruling that Rex be permitted to provide mobile MRI services at a new site not identified in the CON or the 2009 Declaratory Ruling. Rex filed a CON application on April 15, 2011 to develop an acute care hospital in Holly Springs, Wake County (“Rex Holly Springs Hospital”). As part of that project, Rex plans to provide mobile MRI services. So Rex is proposing to change its schedule for Rex’s Mobile MRI to serve the following four sites:

- (1) Rex Wakefield Site;
- (2) Rex Hospital’s Lake Boone Trail Campus in Raleigh;
- (3) Rex Knightdale; and

- (4) Rex Holly Springs Hospital (not yet approved or built).

Rex also proposes that until the Rex Holly Springs Hospital is operational, Rex would temporarily locate the Rex Mobile MRI up to three (3) days per week at Rex's outpatient facility in Holly Springs. On August 28, 2008, Rex was awarded a CON to develop a hospital-based outpatient facility to include an urgent care center, diagnostic, and treatment services in Holly Springs, Wake County (Project I.D. No. J-8007-07). This facility is known as Rex Healthcare of Holly Springs ("Rex Holly Springs Outpatient Facility"). This project is under construction but has yet to be completed.

Rex indicates that if the Rex Holly Springs Hospital Project is not approved, Rex would request that Rex Holly Springs Outpatient Facility permanently replace Rex Holly Springs Hospital as an additional site for Rex's Mobile MRI. In that event, Rex would propose to serve the following four sites:

- (1) Rex Wakefield Site;
- (2) Rex Hospital's Lake Boone Trail Campus in Raleigh;
- (3) Rex Knightdale; and
- (4) Rex Holly Springs Outpatient Facility.

ANALYSIS

The CON law would require a full review of Rex's proposed addition of Rex Holly Springs Hospital and/or the Rex Holly Springs Outpatient Facility if that addition 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 addition of Rex Holly Springs Hospital does constitute a material change in the physical location or the scope of the project, but the proposed site addition for Rex

Holly Springs Outpatient Facility does not constitute a material change, for the following reasons:

Rex Holly Springs Hospital has at this point only been proposed in a CON application, submitted on April 15, 2011. The review of that application began on May 1, 2011, and a decision on that application will be issued no later than September 27, 2011. If approved, the projected date of completion for the project, assuming no legal or construction delays, is October 1, 2014. Therefore under a best case scenario, no patients will be treated at Rex Holly Springs Hospital, if approved, for at least three years. The entirely speculative nature of this request, coupled with the prospect of the Rex Mobile MRI not treating patients at the Rex Holly Springs Hospital for at least three years, if approved, means adding the proposed Rex Holly Springs Hospital as a host site for the Rex Mobile MRI would materially change the scope of the original project and cannot be approved.

Rex Holly Springs Outpatient Facility, on the other hand, is an approved CON project currently under construction. Rex predicts patients will be able to be treated on the Rex Mobile MRI at the Rex Holly Springs Outpatient Facility in Fall, 2011. Rex also asserts that this change in site will not increase Rex's capital costs associated with Rex's mobile MRI CON.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw Rex's CON if Rex 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. Rex 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.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the proposed site addition of Rex Holly Springs Hospital does constitute a material change in the physical location or the scope of the project, but the proposed site addition for Rex Holly Springs Outpatient Facility 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 June, 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

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ATTORNEYS FOR REX HOSPITAL, INC.

This the _____ day of June, 2011.

Jeff Horton
Chief Operating Officer