

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY ORTHOPAEDIC SPECIALISTS)
OF THE CAROLINAS, P.A.) DECLARATORY RULING
Project I.D. No. G-7723-06)**

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.

Orthopaedic Specialists of the Carolinas, P.A. (“OSC”) has requested a declaratory ruling allowing for a change in one of the host sites for OSC’s mobile magnetic resonance imaging (“MRI”) scanner for which the agency issued a certificate of need for Project I.D. No. G-7723-06. Petitioner supports the request on the grounds that the change in a host site will not constitute grounds for withdrawal of the certificate of need under N.C.G.S. § 131E-189(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. Sean A. Timmons and Frederick R. Zufelt of Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P. have requested this ruling on behalf of OSC and have provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

On May 1, 2007, OSC was issued a certificate of need to acquire a mobile MRI scanner to serve two host sites in Forsyth County: 170 Kimel Park Drive in Winston-Salem (OSC Kimel Park site) and 1995 Bethabara Drive in Winston-Salem (Bethabara site).

On November 16, 2007, OSC received a declaratory ruling to change the Bethabara site to 445 Pineview Drive, Suite 100, in Kernersville (Novant site), also in Forsyth County. On January 29, 2010, OSC received an additional declaratory ruling to change the Novant site to 280 Broad Street, Suite E, in Kernersville. The current request for declaratory ruling proposes a new host site, to be located at 445 Pineview Drive, Suite 220, in Kernersville, rather than the Broad Street site, and a determination that the addition of the new host site is in material compliance with the certificate of need issued for Project I.D. No. G-7723-06.

ANALYSIS

If the proposed relocation were to represent a material change in the physical location or scope of the project, the CON law would require a full review of OSC's site relocation. N.C.G.S. § 131E-181(a). The proposed relocation to a new host site does not constitute a material change in the physical location or the scope of the proposed project for the following reasons:

In the original certificate of need, OSC was approved to serve two host sites located in Winston-Salem (Forsyth County). Subsequently, OSC received a declaratory ruling to change one host site location from the Bethabara site to the Novant site, also in Forsyth County. OSC received another declaratory ruling to change the Novant site to 280 Broad Street, Suite E, in Kernersville. On or after September 15, 2011, OSC will be relocating the Broad Street office to

445 Pineview Drive, Suite 220, in Kernersville, thus the need to change the mobile MRI site to the new location.

The new site is less than one mile from the Broad Street site. The new Pineview Drive site does not have MRI scanner services. Patients who are currently seen at the Broad Street site will be sent to the new Pineview Drive site. OSC will provide mobile MRI scanner services at the new Pineview site one day per week, just as it currently does at the Broad site. OSC will continue to provide 72 hours per week of mobile MRI scanner services at the OSC Kimel Park site in Winston-Salem. OSC anticipates that any costs incurred as a result of changing the host site location will not result in increased capital costs above that which was allowed in the original certificate of need.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the relocation of the host site of OSC's mobile MRI scanner from 280 Broad Street, Suite E, to 445 Pineview Drive, Suite 220, in Kernersville, Project I.D. No. G-7723-06 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 October, 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

Frederick R. Zufelt
Smith, Anderson, Blount, Dorset,
Mitchell & Jernigan, L.L.P
Post Office Box 2611
Raleigh, NC 27602

This the _____ day of October, 2011.

Jeff Horton
Chief Operating Officer