

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

IN RE: REQUEST FOR DECLARATORY)	
RULING BY FORSYTH MEMORIAL)	
HOSPITAL, INC. d/b/a FORSYTH)	DECLARATORY RULING
MEDICAL CENTER)	
Project I.D. No. G-7919-07)	

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.

Forsyth Memorial Hospital, Inc. d/b/a Forsyth Medical Center (“Forsyth”) has requested a declaratory ruling that allows a change in location for a fixed MRI scanner, contending that the change would not constitute a change in scope for purposes of N.C. Gen. Stat. § 131E-181 and that the location change would not affect Forsyth’s material compliance with representations made in the CON application or the conditions imposed upon the CON. The CON law would require a full review of Forsyth’s proposal if it represented a material change in the physical location or scope of the project. N.C. Gen. Stat. § 131E-181(a). 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. Denise M. Gunter of Nelson Mullins Riley & Scarborough, LLP has requested this ruling on behalf of Forsyth and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

On November 28, 2007, the CON Section issued a CON to Forsyth to acquire a third fixed MRI scanner, to be installed at Forsyth Medical Center (“FMC”), 3333 Silas Creek Parkway, Winston-Salem, NC 27103.

Since that time, Forsyth has concluded that locating a third fixed MRI scanner inside FMC is not the most effective option for two reasons: (1) the existing fixed MRI scanners in FMC are able to accommodate existing volumes and are projected to be able to accommodate this volume for the foreseeable future; and (2) space constraints within the hospital make installing a third MRI scanner within FMC impractical.

Forsyth has determined that the best location for the MRI scanner is inside Kernersville Medical Center (“KMC”), which opened on March 16, 2011. The KMC CON application initially proposed to have mobile MRI services, and that is what it has been doing since the hospital opened in March 2011.

According to its request, there will be no capital expenditures, no obligations for capital expenditures, no commitment of funds, no addition of any health services, no planning, no construction, no purchases of any equipment, and no other activities related to this MRI relocation, including contracting with any contractors, until after March 16, 2012.

ANALYSIS

The CON law would require a full review of Forsyth’s proposal if it represented a material change in the physical location or scope of the project. N.C. Gen. Stat. § 131E-181(a). The requested MRI relocation does not represent a material change in the scope of the project for the following reasons:

KMC is located in Forsyth County and is approximately 14 miles from FMC. KMC is licensed as part of FMC, so the location change for this scanner will not involve a change of ownership. There will also be no change in the scope of services offered.

The capital costs to implement the MRI scanner will be lower than originally proposed to develop the scanner inside FMC.

Forsyth represents that there will be no increase in costs or charges to the public for MRI services as a result of this location change.

N.C. Gen. Stat. § 131E-176(16)e. states that a “new institutional health service” includes:

a change in a project that was subject to certificate of need review and for which a certificate of need was issued, if the change is proposed during the development of the project or within one year after the project was completed. For purposes of this subdivision, a change in a project is a change of more than fifteen percent (15%) of the approved capital expenditure amount or the addition of a health service that is to be located in the facility, or portion thereof, that was constructed or developed in the project.

This provision is not applicable because there will be no capital expenditures, no obligations for capital expenditures, no commitment of funds, no addition of any health services, no planning, no construction, no purchases of any equipment, and no other activities related to this MRI relocation, including contracting with any contractors, until after March 16, 2012. Forsyth also does not propose to increase the approved capital expenditure for the MRI project by more than 15%.

N.C. Gen. Stat. § 131E-183(b) allows the Agency to withdraw the CON if Forsyth 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. Forsyth will not be operating the project in a manner that is materially different from the representation made in the application, nor in a manner that is inconsistent with any of the conditions that were placed on the CON.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the proposed change in location for the approved, but unimplemented fixed MRI scanner from Forsyth Medical Center to Kernersville Medical Center does not constitute a change in the scope of the project, would not violate N.C. Gen. Stat. § 131E-181, and would not constitute a failure to satisfy a condition of the certificate of need in violation of N.C. Gen. Stat. § 131E-189(b).

This the _____ day of December, 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

Denise M. Gunter
Nelson Mullins Riley & Scarborough, LLP
380 Knollwood Street, Suite 530
Winston-Salem, North Carolina 27103

This the _____ day of December, 2011.

Jeff Horton
Chief Operating Officer