

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

**IN RE: REQUEST FOR DECLARATORY )  
RULING BY CAPE FEAR MOBILE )  
IMAGING, LLC )           DECLARATORY RULING  
Project I.D. No. O-6434-01 )**

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.

Cape Fear Mobile Imaging, LLC (“Petitioner”) requests a declaratory ruling that the addition of a new host site at Raleigh Radiology-Brier Creek, for the provision of mobile MRI services, is in material compliance with the terms of the certificate of need (“CON”) previously issued to Petitioner allowing mobile MRI services at two or more host sites. 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 Petitioner and has provided the material facts upon which this ruling is based.

**STATEMENT OF THE FACTS**

Petitioner has a CON for a mobile MRI scanner and trailer to provide MRI services at “two or more host sites.” The host sites currently served by the mobile MRI scanner are Southern Pines Diagnostic Imaging in Southern Pines (Moore County) and Cary Diagnostic

Imaging, located at 3700 NW Cary Parkway in Cary (Wake County). Petitioner has identified an additional Wake County host site to which it proposes to provide mobile MRI services. Specifically, Petitioner proposes to add Raleigh Radiology-Brier Creek, located at 8851 Ellstree Lane, Suite 100, in Raleigh, North Carolina.

Accordingly, Petitioner requests a declaratory ruling that the addition of one new site at Raleigh Radiology-Brier Creek for the provision of mobile MRI services is in material compliance with the terms of the previously awarded CON.

### **ANALYSIS**

N.C.G.S. § 131E-181(a) provides that “[a] certificate of need shall be valid only for the defined scope, physical location, and person named in the application.” The recipient of the CON must also materially comply with the representations made in the CON application. N.C.G.S. § 131E-181(b). If Petitioner’s proposal were to represent a material change in the scope of the project, the CON law would require a full review of the proposal. N.C.G.S. § 131E-181(a).

The addition of a new host site located at Raleigh Radiology-Brier Creek will not affect the scope of services offered or the costs and charges to Petitioner or to the public for the provision of mobile MRI services. The newly proposed host site is within the same health service area (“HSA”) for which Petitioner was originally awarded the CON. Furthermore, Petitioner agrees to satisfy all the requirements and representations made regarding the host sites in its original CON application. Therefore, Petitioner’s proposal does not constitute a material change in the scope of the project.

## CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that Petitioner's proposal 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 January, 2012.

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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, NC 27103

This the \_\_\_\_\_ day of January, 2012.

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Jeff Horton  
Chief Operating Officer