

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY JRH VENTURES, LLC,)
SMITHFIELD RADIATION) **DECLARATORY RULING**
ONCOLOGY, LLC and JOHNSTON)
RADIATION ONCOLOGY, LLC)**

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.

JRH Ventures, LLC (hereinafter “JRH”), Smithfield Radiation Oncology, LLC (“SRO”), and Johnston Radiation Oncology, LLC (“JRO”) (collectively “the Applicants”) have requested a declaratory ruling to confirm that JRH’s acquisition of the membership interests of SRO and JRO may proceed without first obtaining a certificate of need. This ruling will be binding upon the Department and the entities 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. David W. Strong of SRO has requested this ruling on behalf of the Applicants and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

SRO owns and operates a linear accelerator (“linac”) in a building located on the campus of Johnston Memorial Hospital, at 509 N. Bright Leaf Blvd., Smithfield, Johnston County (“the Bright Leaf Blvd. Location”).

JRO owns and operates a linac in a medical office building located at 2186 NC Highway 42 West, in Clayton, Johnston County (“the Clayton Location”).

SRO is a North Carolina limited liability company (“LLC”) whose current sole member is Rex Hospital, Inc. (“Rex”). JRO is a North Carolina LLC whose current sole member is Johnston Health Enterprises, Inc.

JRH is a North Carolina LLC and consists of two members: Rex (50% member) and Johnston Health Enterprises, Inc. (50% member).

Rex now proposes to transfer its entire membership interest in SRO to JRH, and JRH will become SRO’s sole member. Thus, SRO will remain intact as the same LLC, but with a different membership composition.

Johnston Health Enterprises, Inc. will also transfer its entire membership interest in JRO to JRH, and JRH will become JRO’s sole member. Thus, JRO will remain intact as the same LLC, but with a different membership composition.

ANALYSIS

The CON law provides that no person shall offer or develop a “new institutional health service” without first obtaining a CON. N.C. Gen. Stat. § 131E-178. The list of new institutional health services includes “the acquisition by purchase, donation, lease, transfer or comparable arrangement” of a linear accelerator or simulator “by or on behalf of any person,” N.C. Gen. Stat. § 131E-176(16)(f1)5a, 9, and “the obligation by any person of a capital

expenditure exceeding two million dollars (\$2,000,000) to develop or expand a health service or a health service facility, or which relates to the provision of a health service,” N.C. Gen. Stat. § 131E-176(16)(b).

Prior Declaratory Rulings show that the Department has already determined that these definitions do not require an entity to obtain a CON to acquire membership interests in existing legal entities like SRO and JRO which own and operate a linear accelerators or simulators. The Declaratory Ruling requested by the Applicants is consistent with the Department’s prior rulings that have interpreted the applicability of the CON Law to the purchase of ownership interests in health care organizations, for the following reasons:

The entity that owns the linear accelerator and simulator will not change, and the same equipment will be used to provide the same radiation oncology services, in the same location. The LLCs will continue to own their respective radiation therapy equipment.

There will be no capital expenditure to develop or expand a health service or health service facility because the same equipment will continue to be operated at the same locations, and no expansion of services is proposed.

The proposed transaction does not involve the offering or expansion of any new facility, service or equipment, and the state’s inventory of linear accelerators and simulators will not change. No new, or additional equipment will be acquired or placed in operation in the State.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the Applicants do not require a certificate of need in order to proceed with the proposed transaction.

This the _____ day of January, 2012.

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

David W. Strong
President, Smithfield Radiation Oncology, LLC
4420 Lake Boone Trail
Raleigh, NC 27607

This the _____ day of January, 2012.

Jeff Horton
Chief Operating Officer