

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

**IN RE: REQUEST FOR DECLARATORY )  
RULING BY DIALYSIS CLINIC, INC. )       DECLARATORY RULING  
Project ID No. C-8787-12        )**

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.

Dialysis Clinic, Inc. (DCI) has requested a declaratory ruling allowing a change in site for Project I.D. No. C-8787-12 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 Dialysis Clinic, Inc. in its Certificate of Need (“CON”) application for its project. N.C.G.S. §§ 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. Jan H. Combs, Administrator, has requested this ruling on behalf of DCI and has provided the material facts upon which this ruling is based.

**STATEMENT OF THE FACTS**

On July 17, 2012 Dialysis Clinic, Inc. d/b/a DCI Kings Mountain was issued a certificate of need to relocate an existing 14-station dialysis facility, and add one dialysis station for a total of 15 stations upon project completion, in Kings Mountain, in Cleveland County.

On January 22, 2014, DCI gave notice that it wanted to change the approved site from 701 Charles Street, Kings Mountain, Cleveland County, to a proposed site at 354 Countryside Road, Kings Mountain, Cleveland County.

Subsequent to the issuance of the CON, and during the time that plans were in development, DCI and AI Management (lessor) discovered that the original site had previously supported transfer trucks and had housed gas pumps. Due to concerns about liabilities with potential environmental issues, the lessor decided not to purchase the approved site.

### **ANALYSIS**

The CON law would require a full review of DCI's change in site if that change was to represent a material change in the physical location or scope of the project. N.C.G.S. § 131E-181(a). The proposed site change does not constitute a material change in the physical location or the scope of the proposed project for the following reasons:

The approved site is 2.9 miles from the existing site and the proposed site is 3.7 miles from the existing site.

The proposed site is in an area zoned for light industrial use which permits development of a dialysis facility.

Water and sewer are available at the proposed site and the city of Kings Mountain will provide power, water service, and wastewater collection at the proposed site.

DCI will still develop the project in a manner consistent with representations made in the application for the certificate of need, including capital expenditures.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw DCI's CON if DCI 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. DCI 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 DCI's proposal to change the approved site for Project ID C-8787-12 from 701 Charles Street, Kings Mountain, to 354 Countryside Road, Kings Mountain, does not constitute a material change in the physical location or scope of the project, does not violate N.C.G.S. § 131E-181, and does 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 March, 2014.

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Drexdal Pratt, Director  
Division of Health Service Regulation  
N.C. Department of Health and Human Services

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this day served the foregoing Declaratory Ruling upon the nonagency party by certified mail, return receipt requested, by causing a copy of same to be placed in the United States Mail, first-class, postage pre-paid envelope addressed as follows:

**CERTIFIED MAIL**

Jan H. Combs, Administrator  
Dialysis Clinic, Inc.  
1016 North Lafayette Street  
Shelby, NC 28150

This the \_\_\_\_\_ day of March, 2014.

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Cheryl Ouimet  
Chief Operating Officer