

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY TRIAD IMAGING, LLC. d/b/a) DECLARATORY RULING
SOUTHERN PINES DIAGNOSTIC IMAGING)
Project I.D. No. H-8365-09)**

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 Statutes § 150B-4 and 10A NCAC 14A .0103 under the authority granted me by the Secretary of the Department of Health and Human Services.

Triad Imaging, LLC d/b/a Southern Pines Diagnostic Imaging (“SPDI”) has requested a declaratory ruling allowing it to develop Project I.D. No. H-8365-09 (“Project”) at its current location rather than the location named in the Certificate of Need (“CON”) 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 SPDI in its CON application for this Project or the conditions imposed upon the CON. N.C.G.S. §§ 131E-181(a) and (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. Denise M. Gunter of Nelson Mullins Riley & Scarborough, LLP, has requested this ruling on behalf of SPDI and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

On September 27, 2010, SPDI was issued a Certificate of Need to acquire one (1) fixed Magnetic Resonance Imaging (“MRI”) scanner and relocate its existing diagnostic center, located at 355 South Bennett Street, Southern Pines, Moore County, North Carolina (“Original Site”), to a new location at 205 West Pennsylvania Street, Southern Pines, Moore County, North Carolina (“Proposed Site”), approximately one-quarter mile from the Bennett Street location. SPDI now seeks to develop the Project at the Original Site as opposed to the Proposed Site, purchase a mobile MRI scanner rather than a fixed MRI scanner, and permanently affix the mobile MRI scanner to its existing facility at the Original Site.

ANALYSIS

The CON law would require a full review of SPDI’s development of the Project at the Original Site if it represented a material change in the scope or physical location of the Project. N.C.G.S. § 131E-181(a). The development of the Project at the Original Site does not constitute a material change in the scope or physical location of the Project for the following reasons:

The Proposed Site in the CON application included a building that was to be leased to SPDI for operation of the diagnostic center. Since issuance of the CON, however, the building and Proposed Site have been leased to another business. Therefore, the location is no longer available to SPDI. After considering various options, SPDI determined that the most cost-effective, efficient, and expedient alternative for development of the Project is to remain at the Original Site. First, the Original Site is approximately one-quarter mile and a less than one (1) minute drive from the Proposed Site. Secondly, SPDI represents that remaining at the Original Site will result in the least disruption to its existing services; reduce costs associated with moving and construction; and provide SPDI’s physicians and patients with increased accessibility to MRI services at a familiar

location. In addition, SPDI states that remaining at the Original Site will not result in an increase in patient charges and will reduce the capital costs of the Project since the facility will not have to be relocated as originally proposed.

With respect to purchasing a mobile MRI scanner rather than a fixed MRI scanner as proposed in the CON application, and permanently affixing the mobile MRI scanner to the Original Site, SPDI represents that this will not result in any disruption to the provision of diagnostic imaging services to its patients and there will be no change in the scope of services approved for the Project or in the population proposed to be served by the Project.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw the CON if SPDI 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. In remaining at the Original Site, SPDI represents that it will not develop or operate this Project in a manner that is materially inconsistent with the representations made in its application or in a manner that is inconsistent with any of the conditions that were placed on its CON.

CONCLUSION

For the foregoing reasons, assuming the statement of facts in the request to be true, I conclude that (i) SPDI's development of the Project at its existing location at 355 South Bennett Street, Southern Pines, Moore County, North Carolina, as opposed to the Proposed Site, located at 205 West Pennsylvania Street, Southern Pines, Moore County, North Carolina; and (ii) SPDI purchasing a mobile MRI scanner rather than a fixed MRI scanner, and permanently affixing the mobile MRI scanner to its existing location, will not constitute a material change in the scope or physical location of the Project, will not violate N.C.G.S. § 131E-181, and will 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 _____, 20__.

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 PETITIONER 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

Denise M. Gunter
NELSON MULLINS RILEY & SCARBOROUGH, LLP
308 Knollwood Street
Suite 530
Winston-Salem, North Carolina 27103
ATTORNEY FOR TRIAD IMAGING LLC, d/b/a
SOUTHERN PINES DIAGNOSTIC IMAGING

This the _____ day of _____, 20__.

Cheryl Ouimet
Chief Operating Officer