

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY CAPE FEAR MOBILE IMAGING,)
LLC and CAROLINA IMAGING, INC. OF) **DECLARATORY RULING**
FAYETTEVILLE)**

I, Robert J. Fitzgerald, as Director of the Division of Facility Services, 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 (“CFMI”) and Carolina Imaging, Inc. (“Carolina Imaging”) (collectively “Petitioners”) have requested a declaratory ruling allowing for a change in host sites for CFMI’s mobile MRI scanner (“CFMI Scanner”) on the grounds that the change does not constitute a material change in physical location or a failure to materially comply with the conditions of the settlement related to the CFMI Scanner. 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. S. Todd Hemphill of Bode, Call & Stroup, LLP has requested this ruling on behalf of Petitioners and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

CFMI is solely owned by Cape Fear Diagnostic Imaging, Inc. (“CFDI”), which is a subsidiary of MQ Associates, Inc. Pursuant to a Settlement Agreement approved February 23, 2004 among Atlantic Diagnostic, P.A., New Hanover Imaging, LLC, Wesvill, LLC, and CFDI, Wesvill was awarded a CON to acquire a mobile MRI scanner. CFDI then acquired Wesvill and created CFMI to operate the mobile MRI scanner.

As a condition of the 2004 Settlement Agreement, CFMI must provide mobile MRI scanner services at a minimum of two sites. Initially, CFMI was authorized to provide mobile MRI services at Brunswick Community Hospital in Brunswick County and at Atlantic Diagnostic in New Hanover County. Currently, CFMI is authorized to provide four days of service per week to Jacksonville Diagnostic Imaging, LLC d/b/a/ Coastal Diagnostic Imaging (“Coastal”) in Jacksonville and three days of service per week to Triad Imaging, Inc. (“Triad”) in Greensboro. Coastal is a subsidiary of MQ Associates.

Carolina Imaging, which is also a subsidiary of MQ Associates, is located in Fayetteville, Cumberland County, and currently operates one fixed MRI scanner. In addition, Carolina Imaging currently receives three weekdays per week and two weekend days per month of mobile MRI services from Alliance Imaging.

Coastal has a CON to acquire and operate a fixed MRI scanner at the Jacksonville facility. Petitioners represent that they anticipate this scanner becoming operational in January, 2007. As a result of a Settlement Agreement dated August 28, 2006, Coastal has received approval to begin offering temporary full-time mobile MRI services, using a temporary mobile MRI scanner to be brought in from outside the State of North Carolina. Once the temporary

mobile MRI scanner is operational, the four existing CFMI days of service will no longer be required at Coastal.

Petitioners now request that CFMI be authorized to provide mobile MRI services at Carolina Imaging four days per week instead of Carolina Imaging continuing to contract with Alliance for three days of services per week. Petitioners represent that the proposed delivery of MRI scanner services by CFMI to Carolina Imaging will be more cost-effective than with Alliance, because the mobile MRI services will be provided by a related company. They further represent that there will not be any new costs associated with their request.

ANALYSIS

The CON law would require a full review of the proposed change of location for the CFMI Scanner if that change were to represent a material change in the physical location or scope of the project. N.C.G.S. § 131E-181(a). The proposed change of site of the CFMI Scanner from Coastal in Jacksonville to Carolina Imaging in Fayetteville does not constitute a material change in the physical location or the scope of the project because the change will not affect the scope of services offered and will not increase the costs and charges to Carolina Imaging or to the public for the provision of mobile MRI scanner services.

CONCLUSION

For all the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that subject to the conditions set out herein, the substitution of Carolina Imaging for Coastal as a host site for CFMI's mobile MRI scanner, and the addition of a day of mobile MRI services at Coastal, will not constitute a material change in the physical location or scope 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 ruling is not intended, and should not be interpreted, to authorize any increases in the approved capital expenditure for this project, a change in the approved timetable, a change in the conditions placed on the certificate of need, or any other change in the approved project.

This the _____ day of _____, 2006.

Robert J. Fitzgerald, Director
Division of Facility Services
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

S. Todd Hemphill
Bode, Call & Stroupe, LLP
3105 Glenwood Avenue, Suite 300
Raleigh, NC 27612

This the _____ day of _____, 2006.

Jeff Horton
Chief Operating Officer