

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

IN RE: REQUEST FOR)
DECLARATORY RULING BY) **DECLARATORY RULING**
ALLIANCE IMAGING, INC. and ROYAL)
MEDICAL HEALTH SERVICES, INC.)

I, Robert J. Fitzgerald, Director of the Division of Health Service Regulation (the “Department”), hereby issue this declaratory ruling to Alliance Imaging, Inc. (“Alliance”) and Royal Medical Health Services, Inc. (“Royal”) (collectively “Petitioners”) pursuant to N.C.G.S. § 150B-4, 10A NCAC 14A.0103, and the authority delegated to me by the Secretary of the North Carolina Department of Health and Human Services. Petitioners have filed a Declaratory Ruling Request (the “Request”) asking the Department to issue a ruling as to the applicability of N.C.G.S. Chapter 131E, Article 9 to the facts described below. Petitioners also style their petition as a “Notice of Exempt Acquisition of Replacement Equipment.” For the reasons given below, I conclude that Petitioners’ requested ruling should be granted.

This ruling is binding on the Department and the persons requesting it if the material facts stated in the Request are accurate and no material facts have been omitted from the Request. The ruling applies only to this request. Except as provided by N.C.G.S. § 150B-4, the Department reserves the right to change the conclusions that are contained in this ruling. Wallace C. Hollowell of Nelson Mullins Riley & Scarborough, LLP has requested this ruling on behalf of Petitioners and has provided the statement of facts upon which this ruling is based. The material facts as provided by counsel for Petitioners and as shown in records of the Department are set out below.

STATEMENT OF THE FACTS

Petitioners represent that prior to changes in the Certificate of Need (“CON”) law that were effective March 18, 1993, Royal owned and operated three mobile MRI scanners in North Carolina (the “Grandfathered Units”). The Grandfathered Units did not require a CON at the time they were acquired, and therefore, for the Grandfathered Units, Petitioners do not have a CON with which they are now required to materially comply. Alliance acquired Royal in April 1996. Royal is now a wholly-owned subsidiary of Alliance, and Alliance operates Royal's MRI equipment and contracts with host sites for MRI services on these MRI scanners.

Petitioners identify one of the Grandfathered Units as a GE 1.5T mobile MRI scanner that was purchased in July 1999, VIN number 1JJV482W9XL512382 (the "Removed Unit"). The Removed Unit is currently used at various sites in North Carolina. Petitioners state that because of the age of the Removed Unit, they intend to replace it with a new MRI scanner (the "Replacement Unit"). They state their intention that the Request serve as notice of the exempt acquisition of replacement equipment pursuant to N.C. Gen. Stat. § 131E-184(a)(7).

Alliance states that it currently provides MRI scanning services to Raleigh Radiology, LLC (“Raleigh Radiology”), in Raleigh, North Carolina, with another of the Grandfathered Units (the “Raleigh Radiology Unit”), pursuant to a services agreement. The Department’s records show that the Raleigh Radiology Unit is VIN number 159FA482X11182426. Alliance represents that the Raleigh Radiology Unit is parked in Raleigh Radiology’s parking lot 24 hours a day, seven days a week and provides full-time services to Raleigh Radiology.

Petitioners propose to replace the Removed Unit with a new, fixed MRI scanner (the “Replacement Unit”). Following the acquisition of the Replacement Unit, Petitioners state that

they intend to cease providing MRI services to Raleigh Radiology with the Raleigh Radiology Unit. Instead, Petitioners propose to remove the Raleigh Radiology Unit from the site and to install the Replacement Unit inside Raleigh Radiology's office. According to Petitioners, the Replacement Unit will be operated pursuant to an MRI Services Agreement between Alliance and Raleigh Radiology, as is the Raleigh Radiology Unit, and technologists employed by Alliance will continue to provide the MRI services under this agreement. At all times, Alliance will remain the owner of this equipment and will simply provide MRI services to Raleigh Radiology using this equipment. Following acquisition of the Replacement Unit, Petitioners state that they will sell or otherwise dispose of the Removed Unit. Petitioners will remove the Removed Unit from North Carolina, and this equipment will not be used in North Carolina without first obtaining a CON.

Petitioners project that the total costs for this project will be \$1,750,746. Petitioners submitted a breakdown of these costs on a Proposed Capital Cost Form. This cost estimate was certified by Raleigh Radiology's architect, James M. Edwards III, AIA, a North Carolina licensed architect. The costs include costs for both Petitioners and for Raleigh Radiology.

Petitioners represent “this change will simply mean that instead of Raleigh Radiology's patients receiving MRI services on an MRI scanner parked in the parking lot, these patients will be served by an MRI scanner located inside the existing diagnostic center.” Petitioners state that both the Replacement Unit and the Removed Unit are used for the exact same diagnostic purposes; namely, to perform MRI scans. Petitioners also represent that use of the Replacement Unit will not result in more than a 10% increase in per procedure operating expenses within the first twelve months after the replacement equipment is acquired. In addition, Petitioners state that Raleigh Radiology has confirmed that use of the Replacement Unit will not result in more

than a 10% increase in patient charges within the first twelve months after the replacement equipment is acquired.

ANALYSIS

Unless otherwise exempt, the acquisition of the Replacement Unit by the Petitioners would constitute a new institutional health service pursuant to N.C.G.S. § 131E-176(16)(f)(7). This acquisition is exempt from CON review pursuant to N.C.G.S. § 131E-184(a)(7) if it constitutes the acquisition of replacement equipment. “Replacement equipment” is defined as

equipment that costs less than two million dollars (\$ 2,000,000) and is purchased for the sole purpose of replacing comparable medical equipment currently in use which will be sold or otherwise disposed of when replaced. In determining whether the replacement equipment costs less than two million dollars (\$ 2,000,000), the costs of equipment, studies, surveys, designs, plans, working drawings, specifications, construction, installation, and other activities essential to acquiring and making operational the replacement equipment shall be included. The capital expenditure for the equipment shall be deemed to be the fair market value of the equipment or the cost of the equipment, whichever is greater.

N.C.G.S. § 131E-176(22a).

As described in the Statement of Facts, Peitioners represent that the Replacement Unit will cost less than two million dollars. It is “comparable equipment” because it has the same technology as the Removed Unit, it is functionally similar to the Removed Unit and is to be used for the same diagnostic purposes, and Petitioners represent that the acquisition will not result in more than a 10% increase in patient charges or per procedure operating expenses within the first twelve months after the replacement equipment will be acquired. 10A N.C.A.C. 14C.0303(c). In addition, Petitioners represent that the Removed Unit will be removed from North Carolina and will not be used in North Carolina without a CON.

Because Petitioners will continue to own and operate the Replacement Unit, and Petitioners will be continuing to provide services to Raleigh Radiology pursuant to a services agreement similar to Alliance's current services agreements for mobile MRI services, this transaction does not constitute a change in ownership that would constitute an acquisition of a new institutional health service by Raleigh Radiology. No other provisions of the law require Petitioners to obtain a CON for their proposed transaction.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the Request to be true, I conclude that Petitioners do not require a CON to replace the Removed Unit with the Replacement Unit, and to install the Replacement Unit in the Raleigh Radiology facility. This ruling is conditioned on the costs of the project remaining as represented by Petitioners, upon Petitioners entering into a services agreement with Raleigh Radiology similar to its current services agreement, and upon Petitioners providing to the Department the sites at which the Raleigh Radiology Unit is to be utilized.

This ____ day of _____, 2008.

Robert J. Fitzgerald, 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 a first class, postage prepaid envelope addressed as follows:

CERTIFIED MAIL

Wallace C. Hollowell, III
Nelson Mullins Riley & Scarborough, LLP
Glen Lake One, Suite 200
4140 Parklake Avenue
Raleigh, North Carolina 27612

This _____ day of _____, 2008.

Jeff Horton
Chief Operating Officer