

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY CAPE FEAR DIAGNOSTIC) DECLARATORY RULING
IMAGING, INC.)
Project I.D. No. O-6434-01)**

I, Jeff Horton, as Acting 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 N.C.G.S. § 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 Diagnostic Imaging, Inc. (“CFDI”) has requested a declaratory ruling allowing for a change in host sites for Project I.D. No. O-6434-01 (the “Project”) on the grounds that the change does not constitute a material change in physical location or a failure to materially comply with the representations made by CFDI in its Certificate of Need (“CON”) application for its project. 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 CFDI and has provided the statement of facts upon which this ruling is based. The material facts as provided by counsel for CFDI and as drawn from Agency files are set out below.

STATEMENT OF THE FACTS

Effective July 23, 2002, pursuant to a settlement agreement, the CON Section issued a CON to CFDI for Project I.D. No. O-6434-01 to acquire a mobile MRI scanner (the “Project Unit”) to provide MRI services at “two or more” host sites. The initial host sites were CFDI’s Wilmington office in New Hanover County and Columbus County Hospital, Whiteville, Columbus County.

After several changes authorized by declaratory rulings, CFDI currently provides mobile MRI services to its Wilmington office in New Hanover County, to Atlantic Diagnostic Center, P.A. (“ADC”) in Morehead City, Carteret County, and to Jacksonville Diagnostic Imaging (“JDI”) in Jacksonville , Onslow County.

CFDI states that its parent company, MedQuest, Inc., has recently entered into an agreement with Kings Medical to use a Kings-owned scanner at MedQuest’s Wilmington location. CFDI proposes to redistribute the five days the CFDI scanner presently spends in Wilmington as follows: Three days per week at Triad Diagnostic Imaging, LLC, located at 3700 NW Cary Parkway, Cary, Wake County (the “Wake County Site”) and two days per week at Cape Fear Diagnostic Imaging, LLC d/b/a/ North Carolina Diagnostic Imaging – Waterford, located at 509 Olde Waterford Way, Leland, Brunswick County (the “Brunswick County Site”). The schedules for ADC and JDI will not change.

CFDI represents that no capital cost increases will result from its proposal, because both the Wake County and the Brunswick County Sites already have mobile pads and electrical hookups. It also represents that there will be no change in the scope of the project and that CFDI will enter into service agreements with the Wake County and the Brunswick County Sites that are substantially similar to the agreements signed by its other host sites. CFDI further represents

that it will satisfy all of the requirements and representations regarding the host sites in its original CON application, and that there will be no change in the person named in the application.

The conditions of approval in the CON for the Project include:

Cape Fear Diagnostic Imaging, Inc., shall materially comply with all representations made in its certificate of need application for Project ID No. O-6434-01, and in the supplemental information it submitted to the Certificate of Need Section on June 7, 2002 and July 1, 2002. In those instances in which any of these representations in these documents conflict, Cape Fear Diagnostic Imaging, Inc. shall materially comply with the latter-made representation.

In its original application, CFDI identified the population to be served by the Project as coming from the following counties: Brunswick, New Hanover, Pender, Duplin, Bladen, Columbus, and Onslow. The settlement materials reference MRI Service Area 21, which includes all of those counties except Onslow. A declaratory ruling dated May 3, 2007 approved CFDI's change of one host site from Atlantic Diagnostic Center, P.A. in Wallace, Duplin County to ADC in Morehead City, Carteret County.

ANALYSIS

The CON law would require a full review of CFDI's proposed change of host site 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 Brunswick County Site is located in CFDI's original primary service area as represented in the CON application and settlement materials. The use of Brunswick County Site as a host site will not affect the scope of services offered or the costs and charges to CFDI or to the public for the provision of mobile MRI services. In addition, there is no proposed change in the person named in the application that would result in a violation of N.C.G.S. § 131E-181(a).

Therefore, the proposed change of host site for the Project to the Brunswick County Site does not constitute a material change in the physical location or the scope of the Project,

The Wake County Site was not included in the service area proposed in CFDI's CON application, is not in MRI Service Area 21, and is not in a county contiguous to any of the counties in the proposed service area. Therefore, the Wake County Site does not materially comply with the representations made in the CON application or in the supplemental settlement materials.

CONCLUSION

For 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 addition of the Brunswick County Site as a host site for CFDI's mobile MRI scanner, Project I.D. No. Project ID No. O-6434-01, 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 subject to the following conditions:

- (1) CFDI shall enter into a service agreement with Cape Fear Diagnostic Imaging, LLC d/b/a/ North Carolina Diagnostic Imaging – Waterford that is substantially similar to the agreement signed by its other host sites.
- (2) CFDI shall satisfy all the requirements and representations regarding the host sites in its original CON application.

I also conclude that the addition of the Wake County Site as a as a host site for CFDI's mobile MRI scanner, Project I.D. O-6434-01, will constitute a material change in the physical location of the Project. Therefore, I deny CFDI's request to add the Wake County Site as a host site.

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 _____, 2008.

Jeff Horton, Acting 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

Denise M. Gunter
Nelson Mullins Riley & Scarborough LLP
Suite 530
380 Knollwood Street
Winston-Salem, NC 27103

This the _____ day of _____, 2008.

Jesse Goodman
Acting Chief Operating Officer