

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY TOTAL RENAL CARE OF)
NORTH CAROLINA, LLC) DECLARATORY RULING
Project I.D. No. O-7903-07)**

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 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.

Total Renal Care of North Carolina, LLC (“TRC”) has requested a declaratory ruling allowing for a change of site for Project I.D. No. O-7903-07 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 TRC 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. William R. Shenton of Poyner & Spruill LLP has requested this ruling on behalf of TRC, and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

TRC previously applied for and received a certificate of need to relocate 10 dialysis stations from its Southeastern Dialysis Center-Shallotte in order to develop another dialysis center in Southport, Brunswick County, to be known as Southport Dialysis Center. (Project I.D. No. O-7903-07).

In its application, TRC identified a primary site located at 5201 Southport-Supply Road in Southport and a secondary site at the corner of Creek Road and Highway 211 on Southport-Supply Road, also in Southport.

After receiving the certificate of need to build the Southport facility, TRC received an offer for a suitable space at a new site which it could lease at a rate lower than the cost of buying either the primary or secondary site identified by TRC in its application.

The certificate of need issued to TRC authorized a capital expenditure in the amount of \$1,141,635.00.

ANALYSIS

The CON law would require a full review of TRC'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 proposed change of site for TRC's project does not constitute a material change in the physical location or the scope of the proposed project for the following reasons:

The new site is located at 1513-15 Smithville Crossing on North Howe Street in Southport, and is 1.3 miles from the primary site. The new site is located the same distance or less to most support services in the community as were the primary and secondary sites.

The proposed new site is in a building located in an area zoned for commercial development. TRC can lease space in the building and up fit it with all the necessary dialysis-specific renovations as described in the certificate of need application.

TRC's construction costs will not exceed 115% of the capital expenditure amount shown on the certificate of need, \$1,141,635.00.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw TRC's CON if TRC 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. TRC 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 the change of site for Project I.D. No. O-7903-07 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 the _____ day of December, 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

William R. Shenton
Poyner & Spruill, LLP
301 Fayetteville Street, Suite 1900
Raleigh, North Carolina 27601

This the _____ day of December, 2008.

Jesse B. Goodman
Acting Chief Operating Officer