

**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 AND
ALLIANCE IMAGING, INC. and)	WITHDRAWAL OF
SMT HEALTH SERVICES, INC.)	DECLARATORY RULING

I, Jeff Horton, Acting Director of the Division of Health Service Regulation (the “Department”), hereby issue this declaratory ruling to Alliance Imaging, Inc. (“Alliance”) and SMT Health Services, Inc. (“SMT”) (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.

On 1 December 2008, Petitioners filed a filed a Declaratory Ruling Request (the “First 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 styled their petition as a “Notice of Exempt Acquisition of Replacement Equipment.” On 30 January 2009, for the reasons described below, I concluded that Petitioners’ requested ruling should be denied and issued a ruling (the “First Ruling”) to that effect.

Petitioners by letter dated 3 February 2009 (the “Current Request”) submitted additional information in support of the ruling sought by the First Request. For the reasons described below, based on the new information, I conclude that Petitioners’ requested ruling should be granted, and I hereby withdraw the First Ruling and substitute this Declaratory Ruling in its place.

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 in the First Request and in the Current Request, and as shown in records of the Department, are set out below.

STATEMENT OF THE FACTS

Petitioners state that SMT is a wholly owned subsidiary of Alliance. Petitioners represent that prior to changes in the Certificate of Need (“CON”) law that were effective 18 March 1993, SMT owned and operated a mobile MRI scanner in North Carolina (the “Removed Unit”). The Removed Unit did not require a CON at the time it was acquired, and therefore, for the Removed Unit, Petitioners do not have a CON with which they are now required to materially comply. Petitioners state that the Removed Unit is I.D. No. 1JJV482W1YL515102. In 1999, Alliance acquired SMT, a mobile diagnostic program and all MRI scanners owned by SMT.

Alliance states that it has provided MRI scanner services to Arthur Doshier Memorial Hospital (“Doshier”) in Southport, Brunswick County, since September 2005 “via a mobile unit parked two days per week on the Doshier campus.” The unit used at Doshier (the “Doshier Unit”) is not the Removed Unit.

Petitioners state that because of the age of the Removed Unit, they intend to replace it with a new fixed MRI scanner (the "Replacement Unit"). They intend that the Request serve as notice of the exempt acquisition of replacement equipment pursuant to N.C. Gen. Stat. § 131E-184(a)(7). Following the acquisition of the Replacement Unit, Petitioners intend to cease

providing MRI services to Doshier with the Doshier Unit two days a week. They intend to install the Replacement Unit at Doshier Medical Plaza, an outpatient hospital location about four miles from the Doshier main campus that is the location of the present services.

Petitioners state that after installation of the Replacement Unit, the Removed Unit will be disposed of outside of North Carolina.

The First Ruling denied Petitioners' Request because Petitioners provided no representations that the Removed Unit was currently in use in North Carolina. In the Current Request, Petitioners provide inventory reports which show that the Removed Unit was in use at Carolinas Medical Center – Lincoln, in Lincolnton, North Carolina since at least April, 2008. Petitioners further represent in the Current Request that the Removed Unit is presently providing MRI services at Carolinas Medical Center – Lincoln.

Petitioners state that the MRI services provided by the Replacement Unit will continue to be subject to an MRI Services Agreement between Alliance and Doshier, and technologists employed by Doshier will continue to provide the services under that Agreement. There will not be any change in the ownership of the Replacement Unit. The total costs for the project are projected to be \$1,435,296, which includes \$203,442 for building developer's costs for land, shell construction, and general upfit.

Additional facts supplied by Petitioners, related to the costs of their proposed transaction are not material given the disposition of this Request.

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 will be 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.” 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 to 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 is currently in use and, after acquisition of the Replacement 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 providing services to Doshier pursuant to a services agreement similar to those used 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 Doshier. 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 Doshier Medical Plaza facility. This ruling is conditioned on the costs of the project remaining as represented by Petitioners, and

upon Petitioners entering into a services agreement with Doshier on the terms of the draft agreement attached to the Request. The First Ruling is hereby withdrawn.

This ____ day of February, 2009.

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 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 February, 2009.

Jesse B. Goodman
Acting Chief Operating Officer