

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY PRESBYTERIAN MOBILE) DECLARATORY RULING
IMAGING, LLC)
Project I.D. No. F-7164-04)**

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.

Presbyterian Mobile Imaging, LLC (“PMI”) has requested a declaratory ruling allowing it to add two additional host sites for Project I.D. No. F-7164-04 (the “Project Unit”) on the grounds that the additions do not constitute a material change in physical location or a failure to materially comply with the representations made by PMI 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 and Scarborough, LLP, counsel for PMI, has requested this ruling on behalf of PMI and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Effective 25 January 2006, the CON Section issued a CON to PMI for Project I.D. No.F-7164-04 to acquire the Project Unit to provide mobile MRI services at “at least two” host sites. The approved host sites were Presbyterian Medical Plaza University at 8401 Medical Plaza Drive, Charlotte in Mecklenburg County (the “University Site”) and Southern Piedmont Primary Care at 1640 E. Roosevelt Boulevard, Monroe in Union County (the “Southern Piedmont Site”) (collectively “the Original Sites”). Both sites are located in Health Service Area (“HSA”) III. In 2008, mobile MRI service was discontinued at the Southern Piedmont Site and on 23 April 2009, the Department issued a Declaratory Ruling allowing PMI to add Presbyterian Diagnostic Center-Steele Creek in Mecklenburg County (the “Steele Creek Site”) as a new host site for the Project Unit.

In this Request, PMI proposes to add two additional host sites for its mobile MRI scanner. The proposed sites are Mecklenburg Diagnostic Imaging-Mooresville at 118 Gateway Boulevard, Suite E, Mooresville in Iredell County (the “MDI Site”) and a site located at 900 Cox Road, Suite C, Gastonia in Gaston County (the “Gastonia site”) (collectively “the Proposed Sites”). Both Proposed Sites are located in HSA III. PMI proposes to continue use of the Project Unit at the University Site for five days of service per week and to begin service at the MDI Site for one day per week and at the Gastonia Site for one day per week. PMI proposes to discontinue mobile MRI service at the Steele Creek Site. PMI states that the service agreements for the Gastonia and MDI Sites will be substantially similar to those in place at the University and Steele Creek Sites and that adding the Proposed Sites will not result in any changes in the scope of services offered nor will it affect the population proposed to be served. PMI represents that adding the Proposed Sites will not result in any increase in costs to patients for its mobile

MRI services. PMI further represents that it will comply with all conditions of its CON and all applicable regulations.

ANALYSIS

The CON law would require a full review of PMI's proposed addition of two new host sites 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 addition of the Proposed Sites as host sites does not constitute a material change in the physical location or the scope of the proposed project because the use of the Proposed Sites as host sites will not affect the scope of services offered or the costs and charges to PMI or to the public for the provision of mobile MRI services. The Proposed Sites are located in counties that are adjacent to Mecklenburg County and in the same HSA as the Original Sites. 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).

N.C.G.S. § 131E-189(b) allows the Agency to withdraw PMI's CON if PMI 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. PMI 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 addition of the Proposed Sites as host sites for PMI's mobile MRI scanner, Project I.D. No. F-7164-04, 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 November, 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 first-class, postage pre-paid envelope addressed as follows:

CERTIFIED MAIL

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

This the _____ day of November, 2009.

Jesse Goodman
Acting Chief Operating Officer