

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

IN RE: REQUEST FOR)	
DECLARATORY RULING BY)	
ORTHOPAEDIC SPECIALISTS OF THE)	DECLARATORY RULING
CAROLINAS, P.A.)	
Project I.D. No. G-7723-06)	

I, Jeff Horton, as Acting Director of the Division of Health Service Regulation of the North Carolina Department of Health and Human Services (the “Department”) hereby issue this Declaratory Ruling to Orthopaedic Specialists of the Carolinas, P.A. (the “Petitioner”), pursuant to N.C. Gen. Stat. § 150B-4(a), 10A NCAC 14A.0103, and the authority delegated to me by the Secretary of the Department.

The Petitioner has requested a Declaratory Ruling allowing for a change in one of the host sites for Project I.D. No. G-7723-06 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 the Petitioner in its Certificate of Need application for its project. N.C. Gen. Stat. § 131E-181(a), (b).

This ruling will be binding on the Department and the person requesting it, if the material facts stated herein are accurate and no material facts have been omitted from the request. This ruling pertains only to the matters referenced herein. Except as provided by N.C. Gen. Stat. § 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. Sean A. Timmons and Jennifer B. Markham of Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P. have requested this ruling on behalf of the Petitioner and have provided the facts upon which this ruling is based.

STATEMENT OF THE FACTS

The Petitioner was awarded a Certificate of Need on May 1, 2007 for Project I.D. No. G-7723-06, permitting the Petitioner to acquire one mobile MRI scanner to serve two host sites in Forsyth County. The proposed host sites identified in the Petitioner's Certificate of Need were Orthopaedic Specialists of the Carolinas, P.A.'s office at 170 Kimel Park Drive, Winston-Salem, North Carolina 27103 (the "OSC Kimel Park site") and OSC Bethabara at North Point Medical Associates at 1995 Bethabara Drive, Winston-Salem, North Carolina 27106 (the "OSC Bethabara site").

On November 16, 2007, the Petitioner received a Declaratory Ruling from the Department to substitute the OSC Bethabara site with Novant's Kernersville Clinic located at 445 Pineview Drive, Suite 100, Kernersville, North Carolina 27284 (the "Novant site").

The Petitioner has been informed that the Novant site no longer needs the Petitioner's mobile MRI services as the Novant site will receive MRI services from a fixed MRI scanner awarded to Piedmont Imaging, LLC (CON Project I.D. #G-8196-08) and Novant intends to terminate its agreement with Petitioner. Therefore, the Petitioner proposes to substitute the Petitioner's office located at 280 Broad Street, Suite E, Kernersville, North Carolina 27284 (the "OSC Kernersville site") for the Novant site.

The Petitioner represents that the OSC Kernersville site will not result in any change in the scope of services offered or any increases in costs to patients or to the Petitioner for its mobile MRI services. The Petitioner represents that it will comply with all material conditions of its Certificate of Need and all applicable regulations.

ANALYSIS

The Certificate of Need statute would require a full review of the Petitioner's proposed change of host site if the change were to represent a material change in the physical location or scope of the project. N.C. Gen. Stat. § 131E-181(a). In addition, the Certificate of Need statute would prohibit a change in the person named in the application. Id.

The Petitioner's proposed host site does not constitute a material change in the physical location or the scope of the project because the addition of the OSC Kernersville site will not affect the scope of services offered or increase the costs or charges to the Petitioner or the public for the provision of mobile MRI services. The proposed host site is within the same health service area authorized in the Petitioner's Certificate of Need. In addition, there is no proposed change in the person named in the application – the Petitioner will continue to be the owner of the mobile MRI scanner. Petitioner anticipates that any costs incurred as a result of changing the host site location will not result in increased capital costs above which was allowed in the original certificate of need.

N.C. Gen. Stat. § 131E-189(b) allows the Department to withdraw the Petitioner's Certificate of Need if the Petitioner fails to develop the service in a manner consistent with the representations made in the application or any conditions that were placed on the Certificate of Need. The Petitioner 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 Certificate of Need by substituting the OSC Kernersville site for the Novant site.

CONCLUSION

For the foregoing reasons, assuming the statement of facts in the request to be true, I conclude that the change of host site for the Petitioner's mobile MRI scanner (Project I.D. No. G-7723-06) from the Novant site to the OSC Kernersville site will not constitute a material change in

the physical location or scope of the project, will not violate N.C. Gen. Stat. § 131E-181(a), and will not constitute a failure to satisfy a condition of the Certificate of Need in violation of N.C. Gen. Stat. § 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 January, 2010.

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

Sean A. Timmons, Esq.
Jennifer B. Markham, Esq.
P.O. Box 2611
Raleigh, North Carolina 27602-2611

This _____ day of January, 2010.

Jesse Goodman
Acting Chief Operating Officer