

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY EXCEL IMAGING, LLC d/b/a)
FORSYTH MEDICAL CENTER) DECLARATORY RULING
IMAGING--THE BREAST CLINIC AND)
NOVANT HEALTH, INC.)**

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 to Excel Imaging, LLC d/b/a Forsyth Medical Center Imaging--The Breast Clinic and Novant Health, Inc. (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. Petitioners have filed a Declaratory Ruling Request (the “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. For the reasons given below, I conclude that Petitioners’ requested ruling should be granted.

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 Petitioners and have provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Petitioners state that in 1999, Forsyth Radiological Associates, P.A. (“FRA”) acquired a 4-slice CT scanner and installed it at the Greystone Building, which houses The Breast Clinic at 2025 Frontis Plaza Boulevard in Winston-Salem. In 2004, FRA replaced the 4-slice with a 64-slice CT scanner. In 2006, FRA replaced the 64-slice scanner with a 40-slice scanner. The CON Section approved the replacement equipment exemption on March 8, 2006.

Novant and FRA were formerly part of a joint venture called Excel Imaging, LLC, to which the parties contributed their outpatient imaging assets located in Forsyth County. In late 2008, Novant acquired all of FRA’s interests in Excel, which included the The Breast Clinic and another diagnostic center called Greystone Imaging Center, also located 2025 Frontis Plaza Boulevard in Winston-Salem.

Novant proposes to relocate the 40-slice CT scanner to the radiology department of Winston-Salem Health Care, 250 Charlois Boulevard, Winston-Salem, North Carolina 27103. Since the original 4-slice scanner was acquired under a settlement agreement that expressly stated that FRA was not required to obtain a CON, and since the 64-slice and 40-slice scanners that replaced the 4-slice were acquired through exemptions, there is no CON for the 40-slice scanner with which Petitioners must materially comply.

Petitioners project that the total cost to de-install the CT scanner, move it to WSHC and re-install it at WSHC is \$255,535.

ANALYSIS

If Petitioners were offering or developing a new institutional health service, they would be required to obtain a CON. *See* N.C. Gen. Stat. § 131E-178(a). The relocation of the 40-slice scanner to WSHC does not constitute a new institutional health service for the following reasons:

No “major medical equipment” is being acquired, nor is any specifically regulated equipment being acquired. *See* N.C. Gen. Stat. §§ 131E-176(16)f1 and p.

WSHC is already a diagnostic center, so a new diagnostic center is not being established.

Both The Breast Clinic and WSHC are located in the same zip code (27103) and they serve overlapping patient populations.

With a total capital cost of \$255,535 the relocation of this CT scanner is below the \$2 million threshold in N.C. Gen. Stat. § 131E-176(16)b.

There are no ownership changes involved, and there is no CON with which the Petitioners are required to materially comply.

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 de-install the 40-slice CT scanner from The Breast Clinic and re-install it at WSHC. This ruling is conditioned on the costs of the project remaining as represented by Petitioners.

This the _____ day of February, 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 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, North Carolina 27103

This the _____ day of February, 2010.

Jesse Goodman
Acting Chief Operating Officer