

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

<b>IN RE: REQUEST FOR DECLARATORY</b>	)	
<b>RULING BY EXCEL IMAGING, LLC d/b/a</b>	)	
<b>FORSYTH MEDICAL CENTER</b>	)	<b>DECLARATORY RULING</b>
<b>IMAGING-SALEM AND NOVANT</b>	)	
<b>HEALTH, INC.</b>	)	

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.

Excel Imaging, LLC d/b/a Forsyth Medical Center Imaging-Salem and Novant Health, Inc. (collectively, “Petitioners”) has requested a declaratory ruling allowing them to replace a .7T Hitachi Open MRI scanner now located at Salem MRI Center, 1701 Hawthorne Road, Winston-Salem, North Carolina 27103 and relocate it to Winston-Salem Health Care, 250 Charlois Boulevard, Winston-Salem, North Carolina 27103. N.C. Gen. Stat. § 131E-184(a)(7). 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 the Petitioners and has provided the material facts upon which this ruling is based.

## STATEMENT OF THE FACTS

In March 1992, Carolina Medicorp, Inc. (“CMI”), the predecessor organization to Novant Health, Inc. (“Novant”), purchased Southeastern Medical Imaging (“SEMI”). SEMI was later renamed Salem MRI Center (“Salem”). At the time of the acquisition, SEMI owned a .3T Philips magnet. CMI subsequently built an addition to the Salem Building and installed a 1.0T Siemens magnet. The 1.0T Siemens magnet became operational in October 1992. The Siemens magnet became operational in 1992 before MRI services were specifically regulated under the CON Law beginning March 18, 1993. In February 1993, the .3T Philips magnet was replaced with a 1.5T Siemens magnet.

On April 8, 2002, Novant filed a replacement equipment exemption with the CON Section in which Novant proposed to replace the 1.0T Siemens with a .7T Hitachi Open MRI scanner (“Existing Scanner”). The CON Section approved the exemption request on June 11, 2002. Since the Existing Scanner was acquired via an exemption pursuant to N.C. Gen. Stat. § 131E-184(a)(7), there is no CON for the Existing Scanner.

Novant now proposes to replace the Existing Scanner with a Siemens 1.5T Espree Open Bore MRI Scanner (“Replacement Scanner”) and relocate the Replacement Scanner to Winston-Salem Health Care (“WSHC”), located at 250 Charlois Boulevard, Winston-Salem, North Carolina 27103.

The total capital cost for the Replacement Scanner, including acquisition of the MRI scanner and contrast injector, shipping, installation, shielding, architectural fees and construction and contingency amount, is \$1,833,762.

## ANALYSIS

If Petitioners were offering or developing a new institutional health service, they would be required to obtain a CON. N.C. Gen. Stat. § 131E-178(a). On the facts of this case, the replacement and relocation of the Existing Scanner does not constitute a new institutional health service, because N.C. Gen. Stat. § 131E-184(a)(7) provides that if the Agency receives prior written notice, it shall exempt from CON review the acquisition of replacement equipment.

“Replacement equipment” is defined in N.C. Gen. Stat. § 131E-176(22) 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. In determining whether the replacement costs less than two million dollars (\$2,000,000), the costs of the equipment, studies, surveys, designs, plans, working drawings, specifications, construction, installation and other activities essential to acquiring and making operational the replacement equipment shall be included. The capital expenditure for the equipment shall be deemed the fair market value of the equipment or the cost of the equipment, whichever is greater.

With a total cost of \$1,839,612, the proposed replacement equipment is well within the \$2,000,000 limit contained in the statute. Once the Replacement Scanner is in place, Novant will dispose of the Existing Scanner by taking it out of North Carolina. The Existing Scanner will not be brought back into North Carolina without CON approval.

The proposed replacement equipment also meets the requirements of 10A NCAC 14C.0303(d), because: (1) the equipment has the same technology currently in use, although it may possess expanded capabilities due to technological improvements; (2) it is functionally similar to the existing equipment and is used for the same treatment and diagnostic purposes as the equipment currently in use, and will not be used to provide a new institutional health service; and (3) it 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 is acquired.

With respect to the location change, the WSHC location is approximately 1.12 miles and 3 minutes from Salem MRI. Having the Replacement Scanner installed at WSHC will allow Novant to offer 5-day a week MRI service at WSHC, which is not possible with the current mobile unit, which is being moved between multiple locations.

Excel Imaging, LLC owns both WSHC and Salem MRI. Both WSHC and Salem MRI are located in the same zip code. Salem MRI and WSHC are existing diagnostic centers. Therefore, locating the proposed replacement MRI scanner at WSHC does not result in the development of a new diagnostic center, which is a new institutional health service that would require a certificate of need.

### **CONCLUSION**

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the Petitioners may replace a .7T Hitachi Open MRI scanner now located at Salem MRI Center, 1701 Hawthorne Road, Winston-Salem, North Carolina 27103 and relocate it to Winston-Salem Health Care, 250 Charlois Boulevard, Winston-Salem, North Carolina 27103, pursuant to N.C. Gen Stat. § 131E-184(a)(7).

This the \_\_\_\_\_ day of March, 2010.

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Jeff Horton, 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 March, 2010.

\_\_\_\_\_  
Jesse Goodman  
Chief Operating Officer