

**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)	
IMAGING, LLC, PRESBYTERIAN)	DECLARATORY RULING
HOSPITAL MINT HILL, LLC AND)	
NOVANT HEALTH, INC.)	
Project I.D. Nos. F-7415-05 & F-7648-06)	

I, Drexdal Pratt, as 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”), Presbyterian Hospital Mint Hill, LLC (“PHMH”) and Novant Health, Inc. (“Novant”) (collectively, “Petitioners”) have requested a declaratory ruling for Project I.D. No. F-7415-05 (“Project”) allowing for a location change on the grounds that it does not constitute a material change in scope or physical location or a failure to materially comply with the representations made by PMI in its Certificate of Need (“CON”) application or the conditions imposed upon the CON. N.C.G.S. §§ 131E-181(a) and (b). Petitioners further seek a declaratory ruling that they have shown good cause to transfer the CON for the Project to PHMH (Project I.D. No. F-7648-06). This ruling will be binding upon the Department and the entities 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 has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

PMI and PHMH are owned by Novant, and both are located in Mecklenburg County. Effective 21 December 2006, the CON Section issued a CON for Project I.D. No. F-7415-05 authorizing PMI to develop a new freestanding diagnostic center and to acquire a new 64-slice computerized tomography (“CT”) scanner (“Project Unit”) to be located on the first floor of the Presbyterian Medical Tower at 1718 East Fourth Street in Charlotte, North Carolina (the “Original Site”). Subsequent to the issuance of the CON, Petitioners determined that locating the Project Unit at the Original Site would not provide for patient privacy and would create administrative inefficiencies.

Effective 2 July 2007, the CON Section issued a CON for Project I.D. No. F-7648-06 authorizing PHMH to relocate no more than 50 existing acute care beds and 5 existing operating rooms from Presbyterian Orthopaedic Hospital and 1 existing gastrointestinal endoscopy room from Presbyterian Hospital Matthews to establish a new hospital in Mint Hill, Mecklenburg County, North Carolina. PHMH is scheduled to open in November 2012 at 12325 Albemarle Road, Charlotte, North Carolina. The conditions of PHMH’s CON (Project ID No. F-7648-06) provide that PHMH shall not acquire a new CT scanner but shall relocate one of Novant’s existing CT scanners currently located in Mecklenburg County to the hospital. Petitioners state that they considered relocating an existing CT scanner from one of Novant’s four hospitals or six outpatient imaging centers in Mecklenburg County but determined that the existing scanners at these facilities were too integral to their operations and relocating them was not feasible. Petitioners further state that they also considered locating the Project Unit at one of Novant’s

existing locations and then relocating it to PHMH when the hospital becomes operational but determined that doing so would create additional expenses and cause disruption upon disabling the Project Unit for relocation.

Therefore, in this request, Petitioners propose to change the site of the Project Unit from the Original Site to PHMH and to transfer PMI's CON for Project I.D. No. F-7415-05 to PHMH. Petitioners represent that both the Original Site and PHMH are in Mecklenburg County and are approximately 13.2 miles apart. Petitioners further represent that they do not contemplate any change to the scope of services proposed in their original applications nor will there be any increase in patient charges as a result of the site change.

ANALYSIS

The CON law would require a full review of Petitioners' proposed changes if those changes were to represent a material change in the physical location or scope of the project. N.C.G.S. § 131E-181(a).

The proposed change of the site for Petitioners' project does not constitute a material change in the physical location or the scope of the proposed project. PHMH is approximately 13.2 miles from the Original Site and within the same county. PHMH was approved for CT scanner services, so the scope of services for Project I.D. No. F-7648-06 would remain the same. Developing the Project Unit at PHMH rather than the Original Site would lower the cost to make the Project Unit operational by approximately \$130,000. The development of the Project Unit at PHMH is in material compliance with the CONs issued for both PHMH and PMI.

The Petitioners have shown good cause for the proposed transfer of PMI's CON to PHMH. While ownership of the Project Unit will change from PMI to PHMH, Novant is the parent of both entities. The transfer would not result in any change in services to patients or in

the ultimate number of CT scanners owned by Novant in Mecklenburg County. In addition, Novant represents that “[t]he cost of services and patient charges will not increase as a result of this proposed relocation.”

N.C.G.S. § 131E-189(b) allows the Agency to withdraw a CON if the applicant 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. Petitioners will not be developing their projects in a manner that is materially different from the representations made in their applications, nor will they be developing their projects in a manner that is inconsistent with any of the conditions that were placed on their CONs.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the substitution of PHMH for the Original Site for PMI’s new 64-slice CT scanner as approved in Project I.D. No. F-7415-05 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). I further conclude that development of the Project Unit at PHMH will not constitute a material change in the physical location or scope of Project I.D. No. F-7648-06, 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). In addition, I find that good cause exists to transfer the CON for Project I.D. No. F-7415-05 to PHMH.

This the _____ day of August, 2010.

Drexdal Pratt, 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, Suite 530
Winston-Salem, NC 27103

This the _____ day of August, 2010.

Jeff Horton
Chief Operating Officer