

**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, 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” of “Petitioner”), has requested a declaratory ruling for Project I.D. No. F-7164-04 (“Project”) allowing it to add an additional host site for Project I.D. No. F-7164-04 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). 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 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 a mobile magnetic resonance imaging (“MRI”) scanner (the “Project Unit”) to provide MRI services at two or more host sites each week. The initial host sites named in the CON application were Presbyterian Medical Plaza University located at 8401 Medical Plaza Drive, Charlotte (the “University site”) and Southern Piedmont Primary Care located at 1640 E. Roosevelt Boulevard, Monroe (the “Southern Piedmont site”).

After service at the Southern Piedmont site ended in 2008, the Department issued a declaratory ruling allowing PMI to add Presbyterian Diagnostic Center-Steele Creek (the “Steele-Creek site”) as a host site for the Project Unit. The Department subsequently issued declaratory rulings allowing PMI to provide MRI service at 900 Cox Road, Suite C, Gastonia (the “Cox Road site”), 118 Gateway Boulevard, Suite E, Mooresville (the “Gateway site”), and weekend service at RoMedical, a physician practice located at 1035 Lincolnton Road, Salisbury (the “RoMedical site”).

In this request, PMI seeks to add an additional host site for its mobile MRI scanner. The proposed host site is at Barron and Homesley Orthopaedic Specialists located at 449 Wendover Road, Charlotte (the “Proposed Site”). PMI states that the addition of the Proposed Site will not change the scope of the project or the costs and charges to PMI or to the public. PMI further represents that Barron and Homesley will pay the costs of building a mobile pad and installing all necessary electrical hookups. PMI states that the service agreement used for the Proposed Site will be substantially similar to the service agreements that PMI uses for its other host sites.

To accommodate the addition of the Proposed Site, PMI states that MedQuest, the Novant Health, Inc. subsidiary that manages PMI’s operations, will substitute a grandfathered

“King’s Medical” mobile MRI scanner to serve the University site in lieu of PMI. The King’s Medical mobile MRI scanner is owned by King’s Medical and currently serves two MedQuest sites: 3700 NW Cary Parkway, Cary (two times per week), and 1124 N. Church Street, Greensboro (three times per week). PMI represents that the King’s Medical mobile MRI scanner will be able to serve PMI’s University site without disruption of service to the existing Cary and Greensboro sites because MedQuest has the availability of three additional grandfathered mobile MRI scanners that can be used to service the sites.

ANALYSIS

The CON law would require a full review of PMI’s proposed addition of host site 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 additional host site for PMI’s project does not constitute a material change in the physical location or the scope of the proposed project. The proposed addition of the Proposed Site does not constitute a material change in the physical location or the scope of the proposed project because the use of the Proposed Site as a host site 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. Mecklenburg County was included in the original CON for the Project Unit. Therefore, addition of the Proposed Site, which is located in Mecklenburg County, as a host site is consistent with the CON. 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 Site as a host site 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). Following this addition of the Proposed Site, the PMI mobile MRI scanner will serve: (1) Presbyterian Diagnostic Center-Steele Creek, (2) 900 Cox Road, Suite C, Gastonia, (3) 118 Gateway Boulevard, Suite E, Mooresville, (4) RoMedical located at 1035 Lincolnton Road, Salisbury, and (5) Barron and Homesley Orthopaedic Specialists located at 449 Wendover Road, Charlotte.

This the _____ day of January, 2011.

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 January, 2011.

Jeff Horton
Chief Operating Officer