

**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 UNIVERSAL PROPERTIES/</b>	)	
<b>FUQUAY-VARINA, LLC AND UNIVERSAL</b>	)	<b>DECLARATORY RULING</b>
<b>HEALTHCARE FUQUAY-VARINA, INC.</b>	)	
<b>Project I.D. No. J-8449-09</b>	)	

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 to me by the Secretary of the Department of Health and Human Services.

Universal Properties/Fuquay-Varina, LLC and Universal Healthcare Fuquay-Varina, Inc. (collectively, “Universal”) has requested a declaratory ruling allowing for a change in location for Project I.D. No. J-8449-09 on the grounds that the change does not materially alter the conditions of the CON issued for Universal’s proposed facility. N.C.G.S. §§ 131E-181 (b). 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. S. Todd Hemphill of Bode, Call & Stroupe, L.L.P. has requested this ruling on behalf of Universal and has provided the material facts upon which this ruling is based.

## **STATEMENT OF THE FACTS**

On May 11, 2010, Universal was issued a Certificate of Need to construct a replacement nursing facility with 49 nursing facility beds and 31 adult care home beds in Fuquay-Varina, Wake County, North Carolina.

As of the date of the original CON application filing, Universal was considering two available sites. The proposed primary site was located at the east side of Highway 401 in Fuquay-Varina. Universal projected that the purchase price of the site would be approximately \$1,000,000.00.

Since the issuance of the CON, Universal has found an alternative site near the intersection of Judd Parkway and Barneswyck Drive, Fuquay-Varina (the “Parker site”), which is approximately 3 miles from the original proposed primary site. The Parker site is a more effective alternative for the development of Universal’s replacement facility due to its lower cost. The purchase price of the Parker site is projected to be only \$832,500.00, which is less than the cost of the originally approved site. Universal does not expect to incur any additional capital cost beyond those originally projected in the CON application. Therefore, the total capital cost of the project is now expected to be lower than the approved capital expenditure of \$7,585,165.00.

## **ANALYSIS**

The CON law would require a full review of ARMC’s site relocation, if that relocation 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 site for Universal’s nursing facility will not materially change the representation in Universal’s CON application or the conditions imposed upon Universal’s CON for the following reasons.

Universal's request provides an alternate location that is acceptable for the development of the facility. The initial site and the new proposed site are approximately 3 miles from each other, and both are located in Fuquay-Varina in Wake County.

The cost of the new site is lower than the cost of the primary site in the application. The service area will be consistent with the service area listed in the application, the service offerings will be consistent with those proposed in the application, and there will be no changes in volume projections and demand as a result of the site or equipment change.

The site change will result in no increase in charges, capital cost or operating, and no changes in staffing.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw Universal's CON if Universal 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. Universal 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 development of Universal's proposed replacement nursing facility in Wake County on the Parker site will not violate N.C. Gen. Stat. § 131E-181(a), because it will not constitute a material change in the terms of the CON related to location, will not materially increase the capital cost of the project, and will not constitute a failure to satisfy a condition of the CON in violation of N.C.G.S. § 131E-189(b).

This the \_\_\_\_\_ day of July, 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**

S. Todd Hemphill  
Bode, Call & Stroupe, L.L.P.  
Post Office Box 6338  
Raleigh, NC 27628-6338

This the \_\_\_\_\_ day of July, 2011.

---

Jeff Horton  
Chief Operating Officer