

**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 DVA HEALTHCARE</b>	)	
<b>RENAL CARE, INC. CONCERNING THE</b>	)	<b>DECLARATORY RULING</b>
<b>DEVELOPMENT AND OPERATION OF</b>	)	
<b>ROXBORO DIALYSIS CENTER</b>	)	
<b>Project I.D. No. K-8818-12</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 me by the Secretary of the Department of Health and Human Services.

On November 28, 2012, Petitioner received a certificate of need (CON) that authorized it to relocate and replace a twenty-four (24) station dialysis facility within Person County and add six (6) previously approved dialysis stations for a total of 30 dialysis stations upon completion of the project. By request dated March 22, 2013, Petitioner is requesting a declaratory ruling permitting it to change the project’s site location to 1005 Ridge Road in Roxboro, North Carolina, rather than the original site location at the intersection of Main Street and Madison Boulevard in Roxboro. 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. William R. Shenton of Poyner Spruill LLP has

requested this ruling on behalf of Petitioner and has provided the material facts upon which this ruling is based.

### **STATEMENT OF THE FACTS**

Petitioner applied for and received a CON for Project I.D. No. K-8818-12 in which it was authorized to relocate and replace the facility known as Roxboro Dialysis Center, an existing 24 dialysis station facility in Roxboro and add 6 previously approved dialysis stations to that facility. Petitioner proposed to relocate the facility to a site at the intersection of Main Street and Madison Boulevard in Roxboro. Due to a determination that the chosen site was considered hazardous and, therefore, unsuitable for a dialysis facility, Petitioner located a new site at 1005 Ridge Road in Roxboro, approximately 0.2 miles from the original proposed location.

Petitioner represents that it will operate the same size facility and offer the same services at the new site as were proposed in the application. Petitioner further represents that the capital costs associated with the development of the facility will not exceed the original capital cost of \$1,767,214 by more than 15%. Petitioner has confirmed that water, sewer and power are available at the new site, and the new site's proximity to key support services identified in the application will not be materially different from the existing site. Petitioner represents that the site change would not entail any material change in the development or operation of the facility from that originally proposed in the application.

### **ANALYSIS**

N.C.G.S. § 131E-181(a) provides that “[a] certificate of need shall be valid only for the defined scope, physical location, and person named in the application.” The recipient of the CON must also materially comply with the representations made in the CON application. N.C.G.S. § 131E-181(b). If Petitioner's proposal were to represent a material change in the

physical location or scope of the project, the CON law would require a full review of Petitioner's proposal. N.C.G.S. § 131E-181(a).

Given the close proximity to the originally proposed site, Petitioner's proposal does not constitute a material change in the physical location or scope of the project and is allowable. Petitioner's facility will be the same size as proposed in its application and will offer the same services as those proposed in the application. Furthermore, the facility's proximity to other health services will not be materially different from the original site identified in the application. Petitioner further represents that the cost of development will not exceed 115% of the capital expenditure originally proposed.

### **CONCLUSION**

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that Petitioner's proposed site change 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 certificate of need in violation of N.C.G.S. § 131E-189(b).

This the \_\_\_\_\_ day of May, 2013.

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Drexdal Pratt, Director  
Division of Health Service Regulation  
N.C. Department of Health and Human Services

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this day served the foregoing Declaratory Ruling upon the PETITIONERS by certified mail, return receipt requested, by causing a copy of same to be placed in the United States Mail, first-class, postage pre-paid envelope addressed as follows:

**CERTIFIED MAIL**

William R. Shenton  
Poyner Spruill LLP  
301 Fayetteville Street, Suite 1900 (27601)  
Post Office Box 1801  
Raleigh, North Carolina 27602-1801

This the \_\_\_\_\_ day of May, 2013.

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Cheryl Ouimet  
Chief Operating Officer