

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

IN RE: REQUEST FOR DECLARATORY)	
RULING BY DVA HEALTHCARE)	
RENAL CARE, INC. CONCERNING THE)	DECLARATORY RULING
DEVELOPMENT AND OPERATION OF)	
CHARLOTTE EAST DIALYSIS CENTER)	
Project I.D. No. F-8809-12)	

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 July 17, 2012, Petitioner received a certificate of need (CON) that authorized it to relocate and replace an existing dialysis facility with sixteen (16) stations in Charlotte, North Carolina, and add four (4) dialysis stations at the new site for a total of 20 stations. By request dated April 1, 2013, Petitioner is requesting a declaratory ruling permitting it to change the project’s site location to 5627 Albemarle Road in Charlotte, rather than the original site location at 3061 North Sharon Amity Road in Charlotte. 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. F-8809-12 in which it was authorized to relocate and replace the facility known as Charlotte East Dialysis Center, an existing 16 dialysis station facility in Charlotte and add 4 previously approved dialysis stations to that facility. Petitioner proposed to relocate the facility to a site at 3061 North Sharon Amity Road in Charlotte. Due to the original site being leased by a third party and the secondary site being deemed no longer suitable for the development of the facility, Petitioner located a new site at 5627 Albemarle Road in Charlotte, approximately 0.7 miles from the original proposed location.

Petitioner represents that the new site is available and suitable in all respects for the relocation and development of the dialysis facility as originally configured and designed. Petitioner further represents that development and operation of the facility at the new site will not entail capital costs exceeding 115% of the original proposal. 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 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.

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.

Cheryl Ouimet
Chief Operating Officer