

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

IN RE: REQUEST FOR DECLARATORY)	
RULING BY BIO-MEDICAL)	
APPLICATIONS OF NORTH CAROLINA,)	DECLARATORY RULING
INC. d/b/a FMC SEA SPRAY)	
Project I.D. No. P-10051-12)	

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 April 3, 2013, Petitioner received a certificate of need (CON) authorizing it to relocate stations to develop a new kidney disease treatment center at 400 Taylor Norton Road, Cape Carteret, North Carolina 28584. By request dated August 9, 2013, Petitioner is requesting a declaratory ruling permitting it to change the project’s site location to 1175 Cedar Point Boulevard, Cedar Point, North Carolina 28584. 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. Jim Swann, Director of Certificate of Need for Petitioner, 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. P-10051-12 in which it was authorized to relocate stations to develop a new kidney disease treatment center at 400 Taylor Norton Road, Cape Carteret, North Carolina 28584. Due to the availability of a different location available at a lower cost, Petitioner requests to relocate the project to 1175 Cedar Point Boulevard, Cedar Point, NC 28584.

Petitioner represents that the new site is less than two miles from the original site and will be equally convenient to the end stage renal disease (ESRD) patients in the project's service area. Petitioner represents that the new site can be leased at a significantly lower rate than the originally proposed site, resulting in lower operational costs. 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. The new site is located in close proximity to the original location and will be as convenient for patients as the approved site. The change of site will not affect the ability of Petitioner to

develop this project in a manner consistent with the representations in the CON Application and with the conditions placed on the CON.

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 October, 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

Kathleen K. Gormley
Executive Vice-President
Operations & Ambulatory Development
WakeMed
3000 New Bern Avenue
Raleigh, North Carolina 27610

This the _____ day of October, 2013.

Cheryl Ouimet
Chief Operating Officer