

**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 )  
IMAGING, LLC, ) DECLARATORY RULING  
Project I.D. # F-7164-04 )**

I, Mark Payne, 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 Statutes § 150B-4 and 10A NCAC 14A .0103, under the authority granted me by the Secretary of the Department of Health and Human Services.

On September 11, 2017, Presbyterian Mobile Imaging, LLC, (hereinafter, “PMI”), requested a declaratory ruling allowing PMI to cease serving two (2) host sites and to add one (1) host site for a mobile MRI scanner for Project I.D. No. F-7164-04 (“Project”) on the grounds that the change does not constitute a material change in scope or a failure to materially comply with the representations made in the Certificate of Need (“CON”) application for the Project, pursuant to N.C.G.S. §§ 131E-181(a) and (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. 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**

On January 25, 2006, the Certificate of Need Section issued a CON to PMI allowing PMI to acquire one (1) mobile MRI scanner to serve two (2) host sites each week: Presbyterian Medical Plaza University in Charlotte, Mecklenburg County, North Carolina, and Southern Piedmont Primary Care in Monroe, Union County, North Carolina. Through subsequent Declaratory Rulings, the mobile scanner has been allowed to serve other sites. The mobile scanner now serves the following sites: Novant Health Imaging Mooresville (“Mooresville”) in Mooresville, Iredell County, North Carolina; Novant Health Imaging Steele Creek (“Steele Creek”) in Charlotte, Mecklenburg County, North Carolina; and Novant Health Imaging University (“University”) in Charlotte, Mecklenburg County, North Carolina. PMI now proposes to cease serving the Steele Creek and University sites in Charlotte, Mecklenburg County, North Carolina, and add the following host site for the mobile MRI scanner: Novant Health Imaging Monroe (“Monroe”), located at 2000 Wellness Boulevard, Suite 110, Monroe, Union County, North Carolina.

## **ANALYSIS**

The CON law would require a full review of PMI’s addition of the host site if the addition were to represent a material change in the scope or physical location of the Project. N.C.G.S. § 131E-181(a). The addition of the proposed host site does not constitute a material change in the scope or physical location of the Project because the proposed host site is located approximately 7.1 miles from Southern Piedmont Primary Care, Monroe, Union County, North Carolina, which was one of the original host sites approved for the mobile MRI scanner. In addition, PMI states that the proposed host site already has the required mobile MRI docking pad and electrical connections. Therefore, there will be no capital costs associated with adding this site. Further, the Mooresville site in Iredell County combined with the addition of the proposed site would provide

mobile MRI services consistent with the condition placed on the CON that the mobile MRI scanner serve at least two (2) sites each week.

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 states that it will not develop the Project in a manner that is materially different from the representations made in the application or in a manner that is inconsistent with any of the conditions that were placed on the CON.

### **CONCLUSION**

For the foregoing reasons, assuming the statement of facts and representations in the request to be true, I conclude that PMI's proposal to cease serving the Steele Creek and University sites in Charlotte, Mecklenburg County, North Carolina, and its addition of Novant Health Imaging Monroe, located at 2000 Wellness Boulevard, Suite 110, Monroe, Union County, North Carolina, as a host site for the mobile MRI scanner will not constitute a material change in the scope or physical location 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).

This the \_\_\_\_\_ day of November, 2017.

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Mark Payne, 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 PETITIONER 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**

Denise M. Gunter  
NELSON MULLINS RILEY & SCARBOROUGH, LLP  
308 Knollwood Street  
Suite 530  
Winston-Salem, North Carolina 27103  
ATTORNEY FOR PRESBYTERIAN MOBILE  
IMAGING, LLC

This the \_\_\_\_\_ day of November, 2017.

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Diana Barbry  
Executive Assistant to the Director  
Division of Health Service Regulation