

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY NOVANT HEALTH, INC.) DECLARATORY RULING
and FORSYTH MEMORIAL HOSPITAL, INC.)
d/b/a FORSYTH MEDICAL CENTER)
Project I.D. No. G-7065-04)**

I, Robert J. Fitzgerald, as Director of the Division of Facility Services, North Carolina Department of Health and Human Services (“Department”), 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.

Novant Health, Inc. (“Novant”) and Forsyth Memorial Hospital, Inc. d/b/a Forsyth Medical Center (“Forsyth”) (collectively “Petitioners”) have requested a declaratory ruling allowing for an additional host site for Project I.D. No. G-7065-04 on the grounds that the change does not constitute a material change in physical location or a failure to materially comply with the representations made by Petitioners in their Certificate of Need (“CON”) application for their project. 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 Gunter of Nelson Mullins Riley & Scarborough LLP has requested this ruling on behalf of Petitioners and has provided the material facts upon which this ruling is based.

Letters opposing Petitioners’ request were received from the following:

North Carolina Baptist Hospital, by Len B. Preslar, Jr., President and Chief Executive Officer (“Baptist”);

Davie County Hospital (“Davie”), by Lynne T. Doss, Administrator; and

Alliance Imaging, Inc. (“Alliance”), by Shirley Silva, Director New Business, Southeast Region.

Petitioners responded to the Baptist letter by letter from Denise Gunter dated 6 October 2006.

STATEMENT OF THE FACTS

Effective 13 November 2004, the CON Section issued to Petitioners a CON for Project G-7065-04 to acquire a mobile MRI scanner (the “Project Unit”) to provide MRI services at the following sites: Mountainview Medical in King, Stokes County; Winston-Salem Health Care in Winston-Salem, Forsyth County; and Central Triad Imaging Center, Kernersville, Forsyth County (the “Original Host Sites”).

Petitioners represent that the Project Unit is not being used at the Original Host Sites on Sundays between the hours of 1 pm and 9 pm. They propose to provide service one day per week, on Sundays between 1 pm and 9 pm, at Medical Associates of Davie (“Medical Associates”), a physician practice at 485 Valley Road in Mocksville, Davie County. Petitioners state that Medical Associates is owned by Forsyth, which is a subsidiary of Novant. Petitioners represent that they do not intend to make any changes in the Schedule for the Original Host Sites.

Petitioners represent that they will assure compliance with the requirements of 10A NCAC 14C.2705 at Medical Associates. They represent that the only capital cost for the addition of Medical Associates to the mobile route is construction of a pad. The estimated cost

of the pad is \$108,143.00, which is less than 15% of the approved capital expenditure for the Project Unit.

The letters opposing the Petitioners' Request argue that Davie and Alliance are currently able to meet the demand for MRI procedures in Davie County, and that adding the requested additional services could create financial hardship by diverting patient referrals from Davie County Hospital. However, a review of the patient origin data reported to the State in the most recent annual registration and inventory of medical equipment shows that during FY 2005, the total number of Davie County residents who had an MRI procedure was 2,974. Of those, only 480 residents (16.14%) had their MRI procedure in Davie County.

Petitioners, in their response to the Baptist letter, emphasized that they wished to provide MRI services in Davie County on Sundays only, and stated that there is no current MRI service on Sundays in Davie County.

ANALYSIS

The CON law would require a full review of Petitioners' proposed additional host site if that change were to represent a material change in the physical location or scope of the project. N.C.G.S. § 131E-181(a). The proposed addition of Medical Associates as a host site for Petitioners' project does not constitute a material change in the physical location or the scope of the proposed project because the use of Medical Associates as a host site will not affect the scope of services offered or the costs and charges to the public for the provision of mobile MRI services. In addition, there is no proposed change in the person named in the application such that a violation of N.C.G.S. § 131E-181(a) would result. The addition of Medical Associates will result in better utilization of the Project Unit.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw Petitioners' CON if Petitioners fail 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. Petitioners will not be developing their project in a manner that is materially different from the representations made in its application, nor will they be developing their project in a manner that is inconsistent with any of the conditions that were placed on their CON.

Baptist, Davie and Alliance suggest that the addition of Medical Associates as a host site between 1 pm and 9 pm on Sundays may divert patients from Davie County Hospital. However, the data suggests that there is ample demand for MRI procedures in Davie County to support the additional host site. Petitioners state that there is no current MRI service in Davie County on Sundays.

CONCLUSION

For all the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that subject to the conditions set out herein, the addition of Medical Associates as a host site for the Petitioners' mobile MRI scanner (Project I.D. No. G-7065-04) 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 CON in violation of N.C.G.S. § 131E-189(b). This ruling is subject to the condition that Petitioners may only offer MRI services at Medical Associates on Sundays.

This ruling is not intended, and should not be interpreted, to authorize any increases in the approved capital expenditure for this project, a change in the approved timetable, a change in the conditions placed on the certificate of need, or any other change in the approved project.

This the _____ day of October, 2006.

Robert J. Fitzgerald, Director
Division of Facility Services
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

Denise M. Gunter
Nelson Mullins Riley & Scarborough LLP
380 Knollwood Street
Winston-Salem, NC 27103

With a courtesy copy to:

Lynne T. Doss
Administrator
Davie County Hospital
P.O. Box 1209
Mocksville, NC 27028

Shirley Silva
Director, New Business, Southeast Region
Alliance Imaging
1009 Slater Road
Durham, NC 27703

Len B. Preslar, Jr.
President and Chief Executive Officer
North Carolina Baptist Hospital
Medical Center Boulevard
Winston-Salem, NC 27157

This the 10th day of October, 2006.

Jeff Horton
Chief Operating Officer