

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

**IN RE: REQUEST FOR DECLARATORY )  
RULING BY FRYE REGIONAL )       DECLARATORY RULING  
MEDICAL CENTER )  
Project I.D. No. E-7059-04 )**

I, Robert J. Fitzgerald, 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.

Frye Regional Medical Center (“Frye”) has requested a declaratory ruling allowing for a change in host sites for Project I.D. No. E-7059-04 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 Frye in its Certificate of Need (“CON”) application for its project. N.C.G.S. §§ 131E-181(a) and (b). For the reasons stated below, I must deny the request.

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. Robert V. Bode of Bode, Call & Stroupe, L.L.P. has requested this ruling on behalf of Frye and has provided the material facts upon which this ruling is based.

## **STATEMENT OF THE FACTS**

Effective 18 January 2005, the CON Section issued a CON to Frye for Project I.D. No. E-7059-04 to acquire a mobile MRI scanner (the “Project Unit”) to provide mobile MRI services . Among the conditions of the CON was that the equipment “shall not, at any time, serve less than two host sites each week.” The CON conditions also provided that “Frye shall use the mobile MRI scanner only at Frye Regional Medical Center’s FryeCare located at 1781 Eighteenth Street, S.E. Hickory, N.C. 28602 and at Alexander Hospital, 226 NC Highway 16 South, Taylorsville, NC 28681” unless a change in host sites were authorized by the Director of the Division of Facility Services. Hickory is in Catawba County; Taylorsville is in Alexander County.

Frye states in its request that Alexander Hospital has ceased operations and that site is “not adequate” for mobile MRI services. Frye now proposes to continue to provide five days of service per week at the FryeCare site in Hickory, and to provide one-half day per week of services at the Unifour Pain Treatment Center, located at 250 18<sup>th</sup> Street Circle, S.E., Hickory, NC. Frye states in its request that the Unifour site is approximately three miles east of the Frye Regional Medical Center campus. However, from the addresses provided, it appears that the Unifour Site is only two-tenths of a mile from the FryeCare site authorized in the Project’s CON.

## **ANALYSIS**

In the 2004 CON application for this Project, the need for mobile MRI services in Alexander County was a key factor in demonstrating the need for the Project Unit, and it was considered by the CON Section in awarding the CON to Frye. That application projected 521 MRI procedures at Alexander Hospital by the third year of operation (April 2007 – March 2008). The Frye Regional Medical Center – Alexander Campus 2007 Hospital License Renewal

Application does not show that any mobile MRI procedures were performed at this hospital during the reporting period, which was 1 October 2005 through 30 September 2006. In fact, Frye does not represent in its request that it ever provided services in the Alexander County .

Frye's request for an additional site in Hickory, with no site in Alexander County, constitutes a material change in the physical location and scope of the Project. I therefore must deny Frye's request.

This Ruling does not address the issue of whether Frye is now, or has been, operating its mobile MRI scanner in a manner consistent with the representations made in the application or with any conditions that were placed on the CON

### **CONCLUSION**

For the foregoing reasons, I conclude that the substitution of Unifour for Alexander as a host site for Frye's mobile MRI scanner, Project I.D. No. E-7059-04, would constitute a material change in the physical location and scope of the project, and Frye's request, therefore, is DENIED.

This the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

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Robert J. Fitzgerald, Director  
Division of Health Service Regulation  
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**

Robert V. Bode  
Bode, Call & Stroupe, LLP  
3105 Glenwood Avenue, Suite 300  
Raleigh, NC 27612

This the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

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Jeff Horton  
Chief Operating Officer