

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

IN RE: REQUEST FOR DECLARATORY RULING)
BY CAROLINAS IMAGING SERVICES, LLC) DECLARATORY RULING
Project I.D. Nos. F-7040-04 and F-7167-04)

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.

Carolinas Imaging Services, LLC (“CIS”) has requested a declaratory ruling allowing for a change in host sites for Project I.D. No. F-7040-04, and a relocation of its fixed MRI scanner for Project No. F-7167-04 on the grounds that these changes do not constitute a material change in physical location or a failure to materially comply with the representations made by CIS in its Certificate of Need (“CON”) applications for its projects. 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. Robert V. Bode, of Bode, Call & Stroupe, L.L.P., has requested this ruling on behalf of CIS and has provided the material facts upon which this ruling is based. Some of the facts are based on information from the files of the Department.

STATEMENT OF THE FACTS

CIS seeks a declaratory ruling related to two separate MRI scanners authorized pursuant to two separate CONs. One of these scanners is a mobile MRI scanner to be acquired for Project ID No. F-7040-04 (the “Mobile Unit”); the other is a fixed MRI scanner acquired for Project I.D. No. F-7167-04 (the “Fixed Unit”).

The Mobile Unit was approved in 2004 to provide mobile MRI services to three locations: Ashe Memorial Hospital in Jefferson, Carolinas Medical Center-University in Charlotte and Cleveland Regional Medical Center in Shelby. Subsequently, in connection with a contested case arising from another Project, CIS advised the Department that Ashe Memorial Hospital had committed by contract to another mobile provider for the foreseeable future and that Cleveland Regional Medical Center had determined it no longer required CIS’s mobile services because of internal solutions to the MRI need in addition to the impending commencement of fixed MRI services in nearby Kings Mountain. In a Global Settlement Agreement executed for that litigation in August, 2005, the Department approved CIS to provide mobile MRI services (with either the Mobile Unit or another CIS mobile MRI scanner) at all of the following locations: NorthCross Imaging Center, Carolinas Medical Center (“CMC”), CMC-Pineville, CMC-University and CMC-Mercy. CIS now proposes to serve NorthCross Imaging Center with the Mobile Unit.

On December 4, 2007, the CON Section gave CIS notice of its consideration of withdrawal of the CON for the Mobile Unit. As part of its response to that notice, CIS advised the Section of its intention to apply for this declaratory ruling.

The Fixed Unit is located at NorthCross Imaging Center (“NorthCross”), 16455 Statesville Road, Huntersville, Mecklenburg County. CIS represents that NorthCross is owned

and operated by CIS. The CON for the Fixed Unit, which is Project No. F-7167-04, was issued to CIS effective 25 January 2006. CIS now seeks to relocate the Fixed Unit to an existing diagnostic imaging center at its Ballantyne site. CIS was issued a CON effective December 1, 2005, for Project I.D. No. F-7315-05 to develop the diagnostic imaging center at the Ballantyne site, which is located at 15110 John J. Delaney Drive, Suite 130, Charlotte, Mecklenburg County. CIS states that the purpose of this relocation is to meet growth in demand at the Ballantyne site. CIS states that the cost of relocation is approximately \$186,185. It represents that it intends to meet the remaining need at the NorthCross site with the Mobile Unit.

ANALYSIS

The Mobile Unit

In the Global Agreement, the Department specifically approved the NorthCross site as a site for the Mobile Unit. CIS does not, therefore, require the requested declaratory ruling for the Mobile Unit, and it is not aggrieved by the absence of such a ruling. *See* N.C.G.S. § 150B-4(a). I will therefore decline to issue a ruling with respect to the Mobile Unit.

The Fixed Unit

The CON law would require a full review of CIS's proposed change of site for the Fixed Unit 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 change of the site for the Fixed Unit to Ballantyne does not constitute a material change in the physical location of the proposed project because the Fixed Unit will still be located in Mecklenburg County. It will not constitute a material change in the scope of the project so long as CIS continues to materially comply with all conditions in its CON application. In addition, there is no proposed change in the person named in the application that would result in a violation of N.C.G.S. § 131E-181(a).

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

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I decline to issue a declaratory ruling with respect to the Mobile Unit. I also specifically make no ruling with respect to the CON Section's consideration of withdrawal of the CON for Project I.D. No. F-7040-04.

I conclude that the relocation of the Fixed Unit from the NorthCross site to the Ballantyne site 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) so long as CIS continues to materially comply with all conditions of the original CON for Project I.D. No. F-7167-04.

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 _____, 2008.

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 _____, 2008.

Jeff Horton
Chief Operating Officer