

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

IN RE: REQUEST FOR)
DECLARATORY RULING BY) **DECLARATORY RULING**
EXCEL IMAGING, LLC)

I, Robert J. Fitzgerald, Director of the Division of Health Service Regulation (the “Department” or “Agency”), hereby issue this declaratory ruling to Excel Imaging, LLC pursuant to N.C.G.S. § 150B-4, 10A N.C.A.C. 14A.0103, and the authority delegated to me by the Secretary of the North Carolina Department of Health and Human Services. Excel Imaging, LLC has filed a Declaratory Ruling Request (the “Request”) asking the Department to issue a ruling as to the applicability of Chapter 131E, Article 9 of the North Carolina General Statutes and of the Agency’s rules to the facts described below.

For the reasons given below, I conclude that Excel Imaging, LLC is permitted to change the location of a 1.5 Tesla Siemens Magnetom Avanto Scanner located at Salem MRI Center to Maplewood Imaging Center on the grounds that the change in location will not constitute a material change in the scope of the project, will not violate any provision of the Certificate of Need (“CON”) Law, N.C. Gen. Stat. § 131E-175 *et seq.*, and would not constitute a failure to satisfy any of the rules of the Department.

This ruling is binding on the Department and the person requesting it if the material facts stated in the Request are accurate and no material facts have been omitted from the request. The ruling applies only to this request. Except as provided by N.C.G.S. § 150B-4, the Department reserves the right to change the conclusions which are contained in this ruling. Denise M. Gunter of Nelson Mullins Riley & Scarborough LLP has requested this ruling on behalf of Excel

Imaging, LLC and has provided the statement of facts upon which this ruling is based. The material facts as provided by counsel for Excel Imaging, LLC are set out below.

STATEMENT OF THE FACTS

In 2006, Novant Health, Inc. (“Novant”) and Forsyth Radiological Associates (“FRA”) formed a joint venture called Excel Imaging, LLC (“Excel”). Novant owns 60% of Excel and FRA owns the remaining 40% of Excel. In 2007, Excel acquired certain outpatient imaging assets formerly owned 100% either by Novant or FRA. These assets included Salem MRI Center, located at 1701 South Hawthorne Road in Winston-Salem and Maplewood Imaging Center, located at 3155 Maplewood Avenue in Winston-Salem. *See* Exhibits A and B of the Request.

Since 2004, Salem MRI has had a Siemens 1.5 Tesla Magnetom Avanto MRI Scanner (the “Siemens Scanner”). *See* Exhibit C of the Request. Excel now desires to relocate the Siemens Scanner from Salem MRI to Maplewood Imaging Center. Maplewood Imaging Center is .46 miles and 1 minute’s driving distance from Salem MRI. *See* Exhibit D of the Request. Both Salem MRI and Maplewood Imaging Center are located in Winston-Salem zip code 27103.

Maplewood Imaging Center has sufficient space to house the Siemens Scanner. According to the certified cost estimate prepared by Landmark Builders, the cost to relocate the Siemens Scanner and build space for it at Maplewood Imaging Center is \$355,006. This total comprises everything needed to remove the Siemens Scanner from Salem MRI, re-install it and make it operational at Maplewood Imaging Center, including Siemens’ charge of \$81,980 to remove the Siemens Scanner and re-install it at Maplewood Imaging Center. *See* Exhibit E of the Request.

The scanner that will be moved is the same Siemens Scanner discussed in the 2004 Replacement Equipment Exemption Request. *See* Exhibit C of the Request. Excel represents

that the move will not change the scope of services offered to patients, or increase costs or charges to patients.

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 in the named application.” The 2004 Replacement Equipment Exemption Request for the Siemens Scanner represented that the scanner would be located at Salem MRI. This proposal to relocate the Siemens Scanner from Salem MRI to Maplewood Imaging Center does not constitute a material change to the scope of the project for the following reasons:

Salem MRI and Maplewood Imaging Center are located less than one-half mile from each other.

Maplewood Imaging Center is already a diagnostic imaging center, so a new diagnostic imaging center would not be created by the installation of the Siemens Scanner at Maplewood Imaging Center.

The change in location from Salem MRI to Maplewood Imaging Center will not affect the type of scanner being used, the scope of services offered, the costs of providing MRI services, or charges to the public.

The cost of the relocation, \$355,006 is below the \$2 million capital cost threshold of N.C. Gen. Stat. § 131E-176(16)b.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the Request to be true, I conclude that Petitioner may change the location of the Siemens Scanner from Salem MRI Center, 1701 South Hawthorne Road, Winston-Salem to Maplewood Imaging Center, 3155

Maplewood Avenue, Winston-Salem. This change in location will not constitute a material change in the scope of the project, and will not violate any provision of the CON Law or any rules of the Department.

This ____ day of March, 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 a first class, postage prepaid envelope addressed as follows:

CERTIFIED MAIL

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

This _____ day of March, 2008.

Jeff Horton
Chief Operating Officer