

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

**IN RE: REQUEST FOR DECLARATORY )  
RULING BY RALEIGH ORTHOPAEDIC )     DECLARATORY RULING  
CLINIC, P.A )  
Project I.D. No. J-7557-06 )**

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.

Raleigh Orthopaedic Clinic, P.A. (“ROC”) has requested a declaratory ruling allowing it to add an additional host site for Project I.D. No. J-7557-06 on the grounds that the addition does not constitute a material change in physical location or a failure to materially comply with the representations made by ROC in its Certificate of Need (“CON”) application for its 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. Wallace C. Hollowell of Nelson, Mullins, Riley and Scarborough, LLP, counsel for ROC, has requested this ruling on behalf of ROC and has provided the material facts upon which this ruling is based.

## **STATEMENT OF THE FACTS**

Effective May 30, 2007, the CON Section issued a CON to ROC for Project I.D. No.J-7557-06 to acquire a mobile magnetic resonance imaging (“MRI”) scanner (the “Project Unit”) to provide MRI services at “two or more” host sites. The proposed host sites were the ROC office at 3515 Glenwood Avenue in Raleigh and the ROC office at 109 Forest Hills Drive in Garner, North Carolina (“the Garner site”). On November 19, 2007, ROC received a Declaratory Ruling from the Department permitting it to substitute its Cary office located at 222 Asheville Avenue as the second host site for the mobile MRI scanner in place of the Garner site.

ROC proposes to add an additional host site for its mobile MRI scanner. The proposed site is ROC’s facility located at 10880 Durant Road, Raleigh, North Carolina (“the Proposed Site”). ROC states that adding the Proposed Site will not result in any changes in the scope of services offered or any increase in costs to patients for its mobile MRI services. ROC represents that it will comply with all conditions of its CON and all applicable regulations.

## **ANALYSIS**

The CON law would require a full review of ROC’s proposed addition of a third 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 the Proposed Site does not constitute a material change in the physical location or the scope of the proposed project because the use of the Proposed Site as a host site will not affect the scope of services offered or the costs and charges to ROC or to the public for the provision of mobile MRI services. The Proposed Site is in the same county as the Original Sites. 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 ROC's CON if ROC 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. ROC 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 conclude that the addition of the Proposed Site as a third host site for ROC's mobile MRI scanner, Project I.D. No.J-7557-06, 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 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.

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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**

Wallace C. Hollowell, III  
Elizabeth B. Frock  
Nelson Mullins Riley & Scarborough, LLP  
GlenLake One, Suite 200  
4140 Parklake Avenue  
Raleigh, NC 27612

This the \_\_\_\_\_ day of \_\_\_\_\_, 2008.

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Jeff Horton  
Chief Operating Officer