

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY JACKSONVILLE DIAGNOSTIC) DECLARATORY RULING
IMAGING, LLC)
Project I.D. No. F-6626-02)**

I, Jeff Horton, as Acting 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.

Jacksonville Diagnostic Imaging, LLC (hereinafter “JDI”) has requested a declaratory ruling that would allow JDI to add a location for a mobile MRI scanner utilized in North Carolina pursuant to CON Project I.D. No. F-6626-02 on the grounds that the change does not constitute a material change in scope or physical location or a failure to materially comply with the representations made in the Certificate of Need (“CON”) application for the 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 M. Gunter of Nelson Mullins Riley & Scarborough, LLP has requested this ruling on behalf of JDI and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Effective October 21, 2004 the CON Section issued a CON to Imaging Associates of the Carolinas, LLC (“IAC”) for Project # F-6626-02 to acquire a mobile MRI scanner (the “JDI Scanner”) to provide MRI services at “at least two” host sites. The specified host sites were Orion Imaging, LLC, 10420 Park Road Extension, Suite 100, Pineville, North Carolina (the “Park Road Site”), and Orion Imaging, LLC, 900 Cox Road, Suite C, Gastonia, North Carolina (the “Cox Road Site”).

On May 3, 2007 the Department issued a Declaratory Ruling allowing IAC to add a site for the operation of the JDI Scanner at 10710 Ballantyne Commons Parkway, Winslow Building, Charlotte, North Carolina (the “Ballantyne Site”). On February 20, 2008 the Department issued an exemption for Novant Health, Inc. (“Novant) and/or its subsidiaries to acquire IAC. JDI is the Novant subsidiary which now owns the assets of IAC. MedQuest Associates, Inc., (“MedQuest”), a Novant subsidiary, manages the operations of the JDI Scanner.

On November 18, 2008 the Department issued a Declaratory Ruling allowing JDI to add Presbyterian Diagnostic Center-Steele Creek (the “Steele Creek Site”) as a host site for the operation of the JDI Scanner on Mondays and Fridays because the mobile service agreements for both Orion Imaging Sites had expired. The JDI Scanner was to continue to service the Ballantyne Site on Tuesdays through Thursdays.

On April 23, 2009 the Department issued a Declaratory Ruling allowing JDI to provide services at Presbyterian Medical Plaza University, 8401 Medical Plaza Drive, Charlotte, North Carolina (the “University Site”) on Mondays, the Ballantyne Site Tuesdays through Thursdays, and the Steele Creek Site on Fridays.

JDI now proposes to add another site for weekend service. JDI proposes to serve RoMedical, a Novant Medical Group practice located at 1035 Lincolnton Road, Salisbury, North Carolina 28144.

Rowan County is located in the same HSA (HSA III) as Mecklenburg County, Union County and Gaston County.

ANALYSIS

The CON law would require a full review of JDI's proposed addition of RoMedical as a host site if that addition 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 RoMedical as a host site does not constitute a material change in the physical location or the scope of the proposed project for the following reasons:

The service agreements for the RoMedical site will be substantially similar to those in place at the existing sites.

JDI will comply with all representations in the original CON application for the JDI Scanner.

The route expansion to include RoMedical will not affect the scope of services offered by JDI or the costs, but will allow JDI to serve an additional host site with the same equipment.

There is already a mobile pad and electrical hook up at the RoMedical site so there will be no capital costs associated with adding RoMedical to the JDI route for weekend service.

With the addition of RoMedical as a host site, the JDI Scanner will be in service seven days per week, which will promote better utilization of the scanner.

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

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the addition of RoMedical, located at 1035 Lincolnton Road, Salisbury, North Carolina, as a host site receiving weekend service from JDI's mobile MRI scanner, Project I.D. No. F-6626-02, 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 the _____ day of November, 2009.

Jeff Horton, Acting 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

Denise M. Gunter
Nelson Mullins Riley & Scarborough, LLP
380 Knollwood Street, Suite 530
Winston-Salem, North Carolina 27103

This the _____ day of November, 2009.

Jesse Goodman
Acting Chief Operating Officer