

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

<b>IN RE: REQUEST FOR DECLARATORY</b>	)	
<b>RULING BY FORSYTH MEMORIAL</b>	)	<b>DECLARATORY RULING</b>
<b>HOSPITAL, INC. DBA FORSYTH MEDICAL</b>	)	
<b>CENTER</b>	)	
	)	

I, Jeff Horton, 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.

Forsyth Memorial Hospital, Inc. d/b/a Forsyth Medical Center (“FMC”) has requested a declaratory ruling to allow it to relocate one of its existing linear accelerators from FMC in Winston-Salem to a new medical office building in Kernersville. S. Todd Hemphill of Bode, Call & Stroupe, LLP provided written comments in response to the request for declaratory ruling and said comments were reviewed prior to the issuance of this ruling.

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 FMC and has provided the material facts upon which this ruling is based.

## STATEMENT OF THE FACTS

On September 16, 2009, the CON Section approved FMC's replacement equipment exemption request to replace a linear accelerator ("replacement linear accelerator") in Winston-Salem. The replacement linear accelerator was subsequently installed at the hospital. FMC currently has four linear accelerators located on its Winston-Salem campus. FMC has requested a declaratory ruling to allow it to relocate one of its existing linear accelerators from FMC in Winston-Salem to a new medical office building in Kernersville.

## ANALYSIS

N.C. Gen. Stat. §131E-181 (a) states "*A certificate of need shall be valid only for the defined scope, physical location, and person named in the application.*" The Agency has previously allowed approved applicants to change the physical location named in their application where convenience dictates or the objectives of the CON law are otherwise advanced. However, as addressed below, FMC's proposal to relocate the replacement linear accelerator would constitute a new institutional health service and a change in scope of a previous project.

In 2006, FMC received a CON, pursuant to a settlement agreement, to develop a new hospital in Kernersville (Project I.D. #G-7604-06). Kernersville Medical Center, which was proposed to be operated as a satellite hospital under FMC's license, is expected to be completed in 2011. The CON application included a list of services to be offered and equipment to be purchased as part of the project. FMC did not represent that it would provide radiation therapy services or that it would acquire a linear accelerator as part of the project.

In this declaratory ruling request, FMC is seeking to relocate the replacement linear accelerator to a medical office building on the campus of Kernersville Medical Center. N.C.G.S. 131E-176(2c) defines a "campus" as:

the adjacent grounds and buildings, or grounds and buildings not separated by more than a public right-of-way, of a health service and related health care entities.

Additionally, G.S 131E-176(16)e defines a “new institutional health service,” in part, as:

a change in a project that was subject to certificate of need review and for which a certificate of need was issued, if the change is proposed during the development of the project or within one year after the project was completed.

FMC states the replacement linear accelerator will continue to be operated under FMC’s license. Relocating the replacement linear accelerator to a medical office building on the campus of Kernersville Medical Center prior to completion of the project is a change in scope of Project I.D. #G-7604-06 and, therefore, is a new institutional health service.

On September 16, 2009, the CON Section approved FMC’s replacement equipment exemption request to replace a linear accelerator. The replacement linear accelerator was subsequently installed at the hospital at a cost of \$1,742,951.00. In this declaratory ruling request, FMC projects it will cost \$1,935,439.00 to relocate the replacement linear accelerator to the medical office building in Kernersville. G.S 131E-176(16)b defines a “new institutional health service,” in part, as:

...the obligation by any person of a capital expenditure exceeding two million dollars (\$2,000,000) to develop or expand a health service or a health service facility, or which relates to the provision of a health service. The cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities, including staff effort and consulting and other services, essential to the acquisition, improvement, expansion, or replacement of any plan or equipment with respect to which and expenditure is made shall be included in determining if the expenditure exceeds two million dollars (\$2,000,000).

The cost of the replacement linear accelerator and the proposed cost to relocate the replacement linear accelerator, together, exceed the \$2,000,000 threshold, in less than one year after seeking and obtaining the exemption request. Therefore, relocating the replacement linear accelerator constitutes a new institutional health service.

### **CONCLUSION**

For the foregoing reasons, assuming the statements of fact in the request are true, the request of FMC to relocate the replacement linear accelerator from Winston-Salem to Kernersville is denied.

This the \_\_\_\_\_ day of May, 2010.

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Jeff Horton, 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 350  
Winston-Salem NC 27103

This the \_\_\_\_\_ day of May, 2010.

\_\_\_\_\_  
Jesse Goodman  
Chief Operating Officer