

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

IN RE: REQUEST FOR DECLARATORY)	
RULING BY PRESBYTERIAN MOBILE)	
IMAGING, LLC AND JACKSONVILLE)	DECLARATORY RULING
DIAGNOSTIC IMAGING, LLC)	
Project I.D. Nos. F-6626-02 and F-7164-04)	

I, Drexdal Pratt, 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.

Presbyterian Mobile Imaging, LLC (“PMI”) and Jacksonville Diagnostic Imaging, LLC (“JDI”) (collectively, “Petitioners”) have requested a declaratory ruling that would allow PMI to use its mobile MRI scanner to provide weekend service at RoMedical, a Novant Medical Group practice located at 1035 Lincolnton Road, Salisbury, North Carolina 28144, a site that is presently served by JDI, 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 Petitioners 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.

On November 23, 2009 JDI was permitted to add RoMedical, which JDI serves on the weekends.

Effective January 25, 2006 the CON Section issued a CON to PMI for Project # F-7164-04 to acquire a mobile MRI scanner (the “PMI Scanner”) to provide MRI services at two or more host sites each week. The specified host sites were Presbyterian Medical Plaza University, 8401 Medical Plaza Drive, Charlotte, North Carolina (the “University Site”), and Southern Piedmont Primary Care, 1640 E. Roosevelt Boulevard, Monroe, North Carolina (the “Southern Piedmont Site”). In 2008, service at the Southern Piedmont Site ended. On 24 April 2009, the Department issued a Declaratory Ruling that allowed PMI to add Presbyterian Diagnostic Center-Steele Creek (the “Steele Creek Site”) to PMI’s route.

On November 23, 2009 the Department approved PMI to provide service at 900 Cox Road, Suite C, Gastonia, North Carolina and 118 Gateway Boulevard, Suite E, Mooresville, North Carolina.

ANALYSIS

The CON law would require a full review of PMI’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:

PMI represents that it will comply with all other representations in the original CON Application for the PMI Scanner.

The addition of the RoMedical site to the PMI route will not change the scope of the project or the costs and charges to PMI or the public.

RoMedical already has a mobile pad and an electrical hook up so there will be no capital costs associated with adding RoMedical to the PMI route.

Rowan County is adjacent to Iredell County, where the PMI mobile has been approved for use. Rowan County is located in the same mobile MRI region (Western) and the same Health Service Area (HSA III) as the other counties where the PMI mobile has been approved for use.

The service agreement that will be used for the PMI mobile at the RoMedical site will be substantially similar to the service agreement that JDI has for the RoMedical site.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw PMI's CON if PMI 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. Petitioner 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 service from PMI's mobile MRI scanner, Project I.D. No. F-7164-04, 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, 2010.

Drexdal Pratt, 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, 2010.

Jeff Horton
Chief Operating Officer