

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

**IN RE: REQUEST FOR DECLARATORY )  
RULING BY HOKE IMAGING, LLC )       DECLARATORY RULING  
Project I.D. No. N-8352-09 )**

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.

Hoke Imaging, LLC (hereinafter “Hoke Imaging”) has requested a declaratory ruling allowing for a change in location for Project I.D. No. N-8352-09 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 by Hoke Imaging 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. S. Todd Hemphill of Bode, Call & Stroupe, L.L.P. has requested this ruling on behalf of Hoke Imaging and has provided the material facts upon which this ruling is based.

## STATEMENT OF THE FACTS

Hoke Imaging was issued a Certificate of Need on December 30, 2009 to construct an outpatient diagnostic center in Raeford, Hoke County, to include digital mammography, digital ultrasound, and digital x-ray services.

The original primary site identified in Hoke Imaging's CON was on land optioned by Hoke Health Services, LLC, a subsidiary of Cumberland County Hospital System, Inc., d/b/a Cape Fear Valley Health Systems ("CFVHS").

The Hoke Imaging application proposed to locate the diagnostic center in a physician office building to be developed by Hoke Health Services on that site. Hoke Health Services received an exemption from CON review in June 2009 to develop a physician office building at the site, pursuant to N.C. Gen. Stat. § 131E-184(a)(9).

After the CON was issued, Hoke Health Services discovered a more suitable site to develop the physician office building, which is 1.3 miles from the original proposed site. The original site is two miles from the Hoke County/Cumberland County border, on Fayetteville Road (NC State Hwy 401) and Pittman Grove Church Road (SR 1413), Raeford, Hoke County, North Carolina. The new site is located on a tract of approximately sixty (60) acres, fronting on both Johnson Mill Road and Fayetteville Road (NC State Hwy 401), Raeford, North Carolina.

The 60-acre tract will also be the location of the recently-approved Hoke Healthcare, LLC CON application to develop a hospital in Hoke County with 41 acute care beds, 9 observation beds, two operating rooms, obstetrical services, surgical services, 24-hour emergency services, diagnostic imaging, laboratory, and pharmacy services, Project I.D. No. N-8499-10. The Hoke Health Services physician office building will be on a separate part of that 60-acre tract.

## ANALYSIS

The CON law would require a full review of Hoke Imaging's site relocation from the original primary site to the site at Fayetteville Road and Johnson Mill Road, Raeford, Hoke County, North Carolina, if that relocation were to represent a material change in the physical location or scope of the project. N.C.G.S. § 131E-181(a). The proposed site relocation does not constitute a material change in the physical location or the scope of the proposed project for the following reasons:

Hoke Imaging represents that the alternate site is properly zoned for the development of a physician office building and for a diagnostic imaging center.

The alternate site will provide the same accessibility by patients as the originally approved site, since it is 1.3 miles away from the site proposed in the application, and since it will be located on the same 60-acre tract approved for the Hoke County hospital in Project I.D. No. N-8499-10.

Access to the medically underserved will be equivalent because the population to be served is the same due to the proximity of the two sites.

Hoke Imaging does not expect the configuration of the physician office building or the space to be constructed for its diagnostic center to change, and does not expect that the construction cost related to its space will increase.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw Hoke Imaging's CON if Hoke Imaging 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. Hoke Imaging 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 site relocation from Fayetteville Road and Pittman Grove Church Road, Raeford, Hoke County, North Carolina to Fayetteville Road and Johnson Mill Road, Raeford, Hoke County, North Carolina for Project I.D. No. N-8352-09 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 February, 2011.

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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**

S. Todd Hemphill  
Bode, Call & Stroupe, L.L.P.  
Post Office Box 6338  
Raleigh, NC 27628-6338

This the \_\_\_\_\_ day of February, 2011.

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Jeff Horton  
Chief Operating Officer