

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

**IN RE: REQUEST FOR DECLARATORY )  
RULING BY PARKWAY UROLOGY, PA )  
d/b/a CARY UROLOGY, PA )       **DECLARATORY RULING**  
Project I.D. No. J-8331-09 )**

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 to me by the Secretary of the Department of Health and Human Services.

Parkway Urology, PA d/b/a Cary Urology, PA (“Cary Urology”) has requested a declaratory ruling allowing for a change of site for Project I.D. No. J-8331-09 on grounds that it does not constitute a material change in physical location nor a failure to materially comply with the representation made by Cary Urology in their Certificate of Need (“CON”) application. N.C.G.S. §§ 131E-181(a) and (b).

This ruling will be binding upon the Agency 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-5, the Agency expressly reserves the right to make a prospective change in interpretation of the statutes and regulations at issue in this Declaratory Ruling. Cary Urology has requested this ruling and has provided the material facts upon which this ruling is based.

## **STATEMENT OF THE FACTS**

On April 15, 2009, Cary Urology filed a CON application, designated project ID No. J-8331-09, to acquire a linear accelerator and develop a multidisciplinary prostate health center demonstration project on Waverly Drive in Raleigh, NC 27610.

On September 25, 2009, the CON Section conditionally approved Cary Urology's CON application to acquire a linear accelerator and develop a multidisciplinary prostate health center demonstration project on Waverly Drive in Raleigh, NC 27610.

On February 23, 2011, the CON Section issued a CON for Cary Urology's project to acquire a linear accelerator and develop a multidisciplinary prostate health center demonstration project on Waverly Drive in Raleigh, NC 27610.

The Waverly Drive site is not longer available for purchase. Thus, the applicants identified an alternative composed of three contiguous parcels of land located at 117 Sunnybrook Road (PIN 1723397021), 0 Carl Sandberg Court (PIN 1723399011), and 200 Michael J. Smith Lane (PIN 1723482960) in Raleigh, NC 27610.

The alternative site is located on Capital Transit bus routes #15 and #19.

Cary Urology now requests a declaratory ruling approving a change in site for Project I.D. No. J-8331-09 on the grounds that doing so would not be a material change in location or scope of the project for purposes of N.C.G.S. § 131E-181(a) and would not affect the material compliance of Cary Urology's project with representations made in its CON application or the conditions on its CON.

## **ANALYSIS**

The CON law would require a full review of Cary Urology's proposed changed of site, if the 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 change of site for Cary Urology does not constitute a material change in the physical location or the scope of the proposed project for the following reasons:

The alternative site is located approximately one mile and 3 minutes driving time from the Waverly Drive location, and is located on Capital Area Transit bus routes #15 and #19.

Locating the project at the alternative site will not affect the population to be served or the scope of the services to be provided as proposed in Cary Urology's CON application.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw Cary Urology's CON if Cary Urology 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. Cary Urology 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, other than previously discussed.

### **CONCLUSION**

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that Cary Urology's request to change the site of its multidisciplinary prostate health center from Waverly Drive, Raleigh, NC 27610 to a site composed of three contiguous parcels of land located at 117 Sunnybrook Road (PIN 1723397021), 0 Carl Sandberg Court (PIN 1723399011), and 200 Michael J. Smith Lane (PIN 1723482960) in Raleigh, NC 27610, 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 increase in the approved capital expenditure for this project, a change in the approved timetable, a change in the conditions placed on the CON, or any other changes in the approved project.

This the \_\_\_\_\_ day of August, 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**

Kevin Khoudary, M.D.  
Cary Urology, PA  
105 SW Cary Parkway, Suite 300  
Cary, NC 27511

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

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Jeff Horton  
Chief Operating Officer