

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY CAPE FEAR MOBILE) DECLARATORY RULING
IMAGING, LLC)**

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.

Cape Fear Mobile Imaging, LLC (“CFMI”) has requested a declaratory ruling allowing CFMI to use its mobile MRI scanner (the “CFMI Scanner”) to serve a new host site one day a week, 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 CFMI in their 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 CFMI and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Pursuant to a Settlement Agreement dated February 23, 2004 (“2004 Settlement”), Wesvill, LLC was issued a CON for the Wesvill Project, and authorized to acquire a mobile MRI

scanner to provide mobile MRI services at Brunswick Community Hospital in Brunswick County, and at Atlantic Diagnostic Center in New Hanover County. Subsequently, CFMI became the successor in interest to Wesvill, LLC (the “Wesvill Project” is hereafter referred to as the “CFMI Project”). A Settlement Agreement executed in May 2006, and amended in June 2006 (the “2006 Settlement Agreement”) provides “in the event that the CFMI mobile scanner should no longer serve the Greensboro site authorized herein, CFMI shall request a declaratory ruling to relocate it to (1) an alternative site within the city limits of Greensboro if the alternate site will serve the same provider, or (2) an alternate site in HSAs IV, V or VI.”

Declaratory rulings issued in 2006 and 2007 have authorized the CFMI Project to serve Carolina Imaging, LLC of Fayetteville, located at 3628 Cape Center Drive, Fayetteville, Cumberland County and Southern Pines Diagnostic Imaging in Southern Pines, Moore County, both of which are in HSA V. A declaratory ruling issued in 2008 permits the CFMI mobile to serve Cary Diagnostic Imaging, located at 3700 NW Cary Parkway, Cary, Wake County. The CFMI Scanner currently serves Southern Pines Diagnostic Imaging, Cary Diagnostic Imaging and Raleigh Radiology (which was added as a host site in 2012).

If approved, CFMI proposes to serve Cary Orthopaedics and Sports Medicine on Saturdays but CFMI would like to retain the flexibility to use the CFMI Scanner at Cary Orthopaedics and Sports Medicine on the day(s) that are best suited for the schedules of CFMI and Cary Orthopaedics and Sports Medicine.

ANALYSIS

The CON law would require a full review of CFMI’s request for a change in host sites if that 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 site change does not constitute a material change in the physical location or the scope of the proposed project for the following reasons:

The addition of the Cary Orthopaedics and Sports Medicine site to the CFMI route will not change the scope of the project or the costs and charges to CFMI or the public.

Cary Orthopaedics and Sports Medicine has a flat asphalt area adjacent to the high voltage transformer that it plans to use as a mobile MRI pad. CFMI will fabricate ½ inch steel plates for the mobile landing gear. These additions (steel plates and a power source) are expected to cost less than \$7,000.00.

Cary Orthopaedics and Sports Medicine is in Health Service Area IV which is consistent with the 2006 Settlement Agreement CON and the sites that the CFMI Scanner has been serving (locations in Health Service Area IV and V).

Cary Orthopaedics and Sports Medicine is on the opposite end of Cary Parkway, about 7.5 miles from the Cary Diagnostic Imaging site.

The service agreement that will be used for the CFMI Scanner at the Cary Orthopaedics and Sports Medicine site will be substantially similar to the service agreements that CFMI has for its other host sites.

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

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that CFMI may add as a host site Cary Orthopaedics and Sports Medicine, 1120 Southeast Cary Parkway, Cary, NC 27518, and it 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 October, 2012.

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 electronic and 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 October, 2012.

Patricia Bryant
Administrative Assistant