

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

**IN RE: REQUEST FOR DECLARATORY )  
RULING BY TOTAL RENAL CARE OF )  
NORTH CAROLINA, LLC )           DECLARATORY RULING  
Project I.D. No. B-8063-08 )**

I, Drexdal Pratt, as Director of the Division of Health Service Regulation, North Carolina Department of Health and Human Services (“Department”), do hereby issue this Declaratory Ruling pursuant to North Carolina General Statute § 150B-4 and 10A N.C.A.C. 14A .0103 under the authority granted me by the Secretary of the Department of Health and Human Services.

Total Renal Care, LLC (“Petitioner”) requests a declaratory ruling that a site change for its eight-station dialysis facility is in material compliance with the terms of the certificate of need (“CON”) previously issued to Petitioner. 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. Mr. William R. Shenton of Poyner Spruill LLP has requested this ruling on behalf of Petitioner and has provided the material facts upon which this ruling is based.

**STATEMENT OF THE FACTS**

On July 14, 2008, Petitioner was issued a CON to establish an eight-station dialysis center in Brevard, Transylvania County. On August 27, 2012, Petitioner gave notice to the Department that it wanted to change the approved location from the Transylvania Regional Hospital campus at 260 Hospital Drive in Brevard to a new site at 102 College Station Drive, Suite 10, in Brevard. The original proposed location was to be leased space in a medical office building (“MOB”) to be constructed by Transylvania Regional Hospital on its campus. Since that

time, the hospital has decided not to establish the MOB due to the economic downturn. Petitioner hereby requests a declaratory ruling to determine that the newly proposed site is in material compliance with its CON.

The newly proposed site is a former Blockbuster video store, located in an existing building in an existing shopping center with water, sewer and power services already available on site. Petitioner proposes to lease the space and have it up-fitted with all of the necessary dialysis-specific features, as described in the original application. Petitioner represents that the capital costs to develop the facility on the new site will not exceed 115% of the capital expenditure originally authorized for the project.

Petitioner represents that it will operate the same services as proposed in the original project. Further, Petitioner has confirmed that the new site is close in proximity to key support services, which do not differ materially from those at the original site. In sum, Petitioner represents that the relocation would not entail any material change in the development or operation of the facility from what was proposed in the original application.

### **ANALYSIS**

N.C.G.S. § 131E-181(a) provides that “[a] certificate of need shall be valid only for the defined scope, physical location, and person named in the application.” The recipient of the CON must also materially comply with the representations made in the CON application. N.C.G.S. § 131E-181(b). If Petitioner’s proposal were to represent a material change in the location or scope of the project, the CON law would require a full review of the proposal. N.C.G.S. § 131E-181(a).

Based upon Petitioner’s representations, the proposed site change does not constitute a material change in the physical location or the scope of the proposed project. Petitioner will be

developing its project in the same manner as originally proposed, with respect to both size and services. Petitioner will be developing its project in a manner that is consistent with the conditions and cost limitations contained in its original proposal.

**CONCLUSION**

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that Petitioner's proposal will not violate N.C.G.S. § 131E-181, and will not constitute a failure to satisfy a condition of the certificate of need 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 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**

William R. Shenton  
Poyner Spruill LLP  
301 Fayetteville Street, Suite 1900  
Post Office Box 1801  
Raleigh, North Carolina 27602-1801

This the \_\_\_\_\_ day of October, 2012.

\_\_\_\_\_  
Dr. Patsy Christian, Assistant Director  
Healthcare Quality and Safety