

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

IN RE: REQUEST FOR)	
DECLARATORY RULING BY)	DECLARATORY RULING
ALLIANCE IMAGING, INC. and)	
SMT HEALTH SERVICES, INC.)	

I, Jeff Horton, Acting Director of the Division of Health Service Regulation (the “Department”), hereby issue this declaratory ruling to Alliance Imaging, Inc. (“Alliance”) and SMT Health Services, Inc. (“SMT”) (collectively “Petitioners”) pursuant to N.C.G.S. § 150B-4, 10A NCAC 14A.0103, and the authority delegated to me by the Secretary of the North Carolina Department of Health and Human Services. Petitioners have filed a Declaratory Ruling Request (the “Request”) asking the Department to issue a ruling as to the applicability of N.C.G.S. Chapter 131E, Article 9 to the facts described below. Petitioners also style their petition as a “Notice of Exempt Acquisition of Replacement Equipment.” For the reasons given below, I conclude that Petitioners’ requested ruling should be denied.

This ruling is binding on the Department and the persons requesting it if the material facts stated in the Request are accurate and no material facts have been omitted from the Request. The ruling applies only to this request. Except as provided by N.C.G.S. § 150B-4, the Department reserves the right to change the conclusions that are contained in this ruling. Wallace C. Hollowell of Nelson Mullins Riley & Scarborough, LLP has requested this ruling on behalf of Petitioners and has provided the statement of facts upon which this ruling is based. The material facts as provided by counsel for Petitioners and as shown in records of the Department are set out below.

STATEMENT OF THE FACTS

Petitioners state that SMT is a wholly owned subsidiary of Alliance. Petitioners represent that prior to changes in the Certificate of Need (“CON”) law that were effective March 18, 1993, SMT owned and operated a mobile MRI scanner in North Carolina (the “Removed Unit”). The Removed Unit did not require a CON at the time it was acquired, and therefore, for the Removed Unit, Petitioners do not have a CON with which they are now required to materially comply. In 1999, Alliance acquired SMT, a mobile diagnostic program and all MRI scanners owned by SMT.

Alliance states that it has provided MRI scanner services to Arthur Doshier Memorial Hospital (“Doshier”) in Southport, Brunswick County, since September 2005 “via a mobile unit parked two days per week on the Doshier campus. The unit used at Doshier (the “Doshier Unit”) is not the Removed Unit, because Alliance suggests that if this request is granted, it would seek to move the two days of services that the Doshier Unit currently provides at Doshier to another existing or new host site.

Petitioners state that because of the age of the Removed Unit, they intend to replace it with a new fixed MRI scanner (the "Replacement Unit"). They state their intention that the Request serve as notice of the exempt acquisition of replacement equipment pursuant to N.C. Gen. Stat. § 131E-184(a)(7).

Petitioners propose to replace the Removed Unit with a new, fixed MRI scanner (the “Replacement Unit”). Following the acquisition of the Replacement Unit, Petitioners state that they intend to cease providing MRI services to Doshier with the Doshier Unit two days a week. They intend to install the Replacement Unit at Doshier Medical Plaza, an outpatient hospital

location about four miles from the Doshier main campus that is the location of the present services.

Petitioners state that after installation of the Replacement Unit, the Removed Unit will be disposed of outside of North Carolina.

Additional facts supplied by Petitioners, related to the costs of their proposed transaction are not material given the disposition of this Request.

ANALYSIS

Unless otherwise exempt, the acquisition of the Replacement Unit by the Petitioners would constitute a new institutional health service pursuant to N.C.G.S. § 131E-176(16)(f)(7). This acquisition is exempt from CON review pursuant to N.C.G.S. § 131E-184(a)(7) if it constitutes the acquisition of replacement equipment. “Replacement equipment” is defined as

equipment that costs less than two million dollars (\$ 2,000,000) and is purchased for the sole purpose of replacing comparable medical equipment *currently in use* which will be sold or otherwise disposed of when replaced. In determining whether the replacement equipment costs less than two million dollars (\$ 2,000,000), the costs of equipment, studies, surveys, designs, plans, working drawings, specifications, construction, installation, and other activities essential to acquiring and making operational the replacement equipment shall be included. The capital expenditure for the equipment shall be deemed to be the fair market value of the equipment or the cost of the equipment, whichever is greater.

N.C.G.S. § 131E-176(22a) (emphasis added). *See* 10A NCAC 14C.0303 (defining terms used in statute).

Petitioners do not represent that the Removed Unit is currently in use. Consequently, Petitioners did not demonstrate that the Replacement Unit satisfies the requirements to be exempt replacement equipment for the Removed Unit. Instead, Petitioners focus on the Doshier Unit, and make it clear that the Replacement Unit is a functional replacement for the Doshier

Unit. However, since the Doshier Unit is not being disposed of outside of North Carolina, the Replacement Unit, by definition, is not exempt replacement equipment for the Doshier Unit.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the Request to be true, I conclude that Petitioners' proposal does not meet the criteria for replacement equipment for either the Removed Unit or the Doshier Unit. Petitioners' request, therefore, is denied.

This ____ day of January, 2009.

Jeff Horton, Acting 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 a first class, postage prepaid envelope addressed as follows:

CERTIFIED MAIL

Wallace C. Hollowell, III
Nelson Mullins Riley & Scarborough, LLP
Glen Lake One, Suite 200
4140 Parklake Avenue
Raleigh, North Carolina 27612

This _____ day of _____, 2009.

Jesse B. Goodman
Acting Chief Operating Officer