

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

**IN RE: REQUEST FOR DECLARATORY )  
RULING BY WACCAMAW ULTRASOUND )  
& DIAGNOSTICS, INC. )           **DECLARATORY RULING**  
Project I.D. No. O-7340-05 )**

I, Jeff Horton, as Acting 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.

Waccamaw Ultrasound & Diagnostics, Inc. (“Waccamaw”) has requested a declaratory ruling allowing for an additional host site for Project I.D. No. O-7340-05 on the grounds that the change does not constitute a material change in physical location or a failure to materially comply with the representations made by Waccamaw in its Certificate of Need (“CON”) application, the representations made in its settlement agreements with the Department and the conditions placed on its CON. 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. Renee J. Montgomery and Robert A. Leandro of Parker Poe Adams & Bernstein, LLP, counsel for Waccamaw, have requested this ruling on behalf of Waccamaw and have provided the material facts upon which this ruling is based.

## STATEMENT OF THE FACTS

Effective November 30, 2006, the CON Section issued a CON to Waccamaw for Project I.D. No. O-7340-05 to acquire a mobile magnetic resonance imaging (“MRI”) scanner and trailer (the “Project Unit”) to provide MRI services at two host sites. As the result of an appeal of a declaratory ruling denial, a Settlement Agreement was executed on October 23, 2008, that established Waccamaw’s service area for its mobile MRI scanner as Columbus, Robeson, Bladen, Pender, Brunswick, and New Hanover Counties.

Currently, pursuant to prior settlement agreements and declaratory rulings, Waccamaw’s mobile MRI scanner serves the following six host sites:

619 Jefferson Street  
Whiteville, NC

604 North Madison Street  
Whiteville, NC

823 Jefferson Street  
Whiteville, NC

27 Commerce Drive  
Rocky Point, NC

404 Hatfield Court  
Lumberton, NC

1414 39<sup>th</sup> Street  
Wilmington, NC

Waccamaw proposes to serve one additional host site on Saturdays. The proposed site is Randy M. Sloan, MD Family Medicine, PA d/b/a Sea Breeze Physicians at 14905 US Highway 17 North, Hampstead, Pender County, NC (the “Proposed Site”). Waccamaw represents that the Saturday it proposes to serve the Proposed Site is currently unused time on the schedule of the mobile MRI scanner.

Waccamaw states that the Proposed Site currently contains a mobile MRI docking pad, and that there are no capital costs associated with the addition of the Proposed Site. In addition, the additional host site will not affect the scope of services offered or the charges to the public, but will merely allow Waccamaw to serve more sites with the same equipment. Waccamaw represents that it will comply with all conditions of its CON and all applicable regulations.

### **ANALYSIS**

The CON law would require a full review of Waccamaw's proposed change of host site 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 addition of the Proposed Site for Waccamaw's mobile MRI scanner does not constitute a material change in the physical location or the scope of the proposed project because the use of the Proposed Site as a host site will not affect the scope of services offered or the costs and charges to Waccamaw or to the public for the provision of mobile MRI services. The Proposed Site is in Waccamaw's service area as defined by the October 23, 2008 Settlement Agreement. In addition, there is no proposed change in the person named in the application that would result in a violation of N.C.G.S. § 131E-181(a).

N.C.G.S. § 131E-189(b) allows the Agency to withdraw Waccamaw's CON if Waccamaw 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. Waccamaw will not be developing its project in a manner that is materially different from the representations made in its application and the settlement agreements, 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 all the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that subject to the conditions set out herein, the addition of the Proposed Site as a host site for Waccamaw's mobile MRI scanner, Project I.D. No. O-7430-05 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 March, 2009.

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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 first-class, postage pre-paid envelope addressed as follows:

**CERTIFIED MAIL**

Renee J. Montgomery, Esq.  
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Wachovia Capitol Center  
150 Fayetteville Street  
Suite 1400  
Raleigh, NC 27601

This the \_\_\_\_\_ day of March, 2009.

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Jesse Goodman  
Acting Chief Operating Officer