

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY JACKSONVILLE) DECLARATORY RULING
DIAGNOSTIC IMAGING, LLC)
Project I.D. No. F-6626-02)**

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.

Jacksonville Diagnostic Imaging, LLC (hereinafter “JDI”) has requested a declaratory ruling allowing for an additional host site at Presbyterian Imaging Center – Gastonia, 920 Cox Road, Suite C, Gastonia, North Carolina (hereinafter “ PIC - Gastonia Site”) for a mobile MRI scanner for Project I.D. No. F-6626-02 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 JDI in its Certificate of Need (“CON”) application for its 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 JDI and has provided the material facts upon which this ruling is based:

STATEMENT OF THE FACTS

On October 21, 2004, JDI, formerly and at the time known as Imaging Associates of the Carolinas, LLC (hereinafter “IAC”), was issued a certificate of need, Project I.D. #F-6626-02, to acquire a mobile MRI scanner (hereinafter “JDI Scanner”) to serve the following two host sites: Orion Imaging, LLC in Pineville (Mecklenburg County) and Orion Imaging, LLC in Gastonia (Gaston County). A declaratory ruling issued May 3, 2007 permitted an additional site Presbyterian Imaging Center – Ballantyne (hereinafter “PIC - Ballantyne Site”) located at 10710 Ballantyne Commons Parkway in Charlotte (Mecklenburg County).

On February 18, 2008, Novant Health Inc. (hereinafter “Novant”), the ultimate parent entity of JDI, provided notice that it proposed to acquire all assets of IAC. On February 20, 2008, the Department issued an exemption pursuant to N.C.G.S. §§ 131E-181(a)(8) for acquisition of the assets by Novant. Novant determined that JDI would be the Novant subsidiary that would own the assets of IAC. Through a series of declaratory ruling requests, JDI dropped the Orion Imaging site (Gaston County) from the route of the MRI, continued with the PIC - Ballantyne site, and added 3 additional host sites: University (Mecklenburg County), Steel Creek (Mecklenburg County), and RoMedical (Rowan County). The JDI scanner, however, no longer provides services at the RoMedical site.

In its request, JDI proposes to add PIC - Gastonia Site as a host site for the above-described mobile MRI scanner and requests a determination that the new host site is in material compliance with the certificate of need issued for Project I.D. #F-6626-02. JDI proposes using the JDI Scanner as a “back-up” or “relief” scanner for another mobile MRI scanner that is owned by Novant and currently serves the PIC – Gastonia Site. The JDI Scanner would only be brought to the PIC - Gastonia Site when the existing mobile scanner is down for maintenance or repairs.

Thus JDI has requested flexibility in scheduling and that the JDI Scanner not be restricted to particular days because JDI has no way of determining when the MRI scanner currently at PIC - Gastonia Site will be down for maintenance or repairs.

ANALYSIS

The CON law requires a full review of JDI's proposed additional host site if that change were to represent a material change in the physical location or scope of the project. N.C. Gen. Stat. §131E-181(a) states that a CON is "valid only for the defined scope, physical location and person named in the application." However, the Agency has allowed approved applicants to change physical location named in their application where convenience dictates or the objectives of the CON law are otherwise advanced. The proposed addition of a host site at PIC - Gastonia is in material compliance with its original CON for the following reasons:

JDI's original CON application proposed to develop host sites in two locations: Orion Imaging in Pineville (Mecklenburg County) and Orion Imaging in Gastonia (Gaston County). In this request for a declaratory ruling, JDI seeks approval to add the PIC - Gastonia Site as a host site for the mobile MRI scanner approved in Project I.D. #F-6626-02. The PIC - Gastonia Site is located next door to one of the original sites identified in the CON and is therefore in material compliance with the CON. The service agreement for the PIC - Gastonia Site will be substantially similar to those in place at existing sites served by the JDI Scanner. JDI will comply with all other representations in the original CON application for Project I.D. #F-6626-02. The addition of PIC - Gastonia will not change the scope of Project I.D. #F-6626-02 or increase costs and charges to JDI or the public. There are no capital costs associated with this request because the PIC - Gastonia Site already has a mobile MRI pad and the required electrical connections.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request and previous requests to be true, I conclude JDI may include Presbyterian Imaging Center – Gastonia, 920 Cox Road, Suite C, Gastonia, North Carolina as an additional host site for its mobile MRI Scanner, Project ID No. F-6626-02, as this additional host site will not constitute a change in the scope or physical location of the Project; will not violate N.C. Gen. Stat. §131E-181; and will not constitute a failure to satisfy a condition of the CON in violation of N.C. Gen. Stat. §131E-189(b).

This the _____ day of March, 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

Denise M. Gunter
Nelson Mullins Riley & Scarborough LLP
380 Knollwood Street, Suite 530
Winston-Salem, North Carolina 27103

This the _____ day of March, 2012.

Jeff Horton
Chief Operating Officer