

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY BIO-MEDICAL APPLICATIONS)
OF NORTH CAROLINA, INC. d/b/a FMC) **DECLARATORY RULING**
SOUTHWEST CHARLOTTE)
Project I.D. No. F-10052-12)**

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 Statutes § 150B-4 and 10A NCAC 14A .0103 under the authority granted me by the Secretary of the Department of Health and Human Services.

Bio-Medical Applications, Inc. d/b/a FMC Southwest Charlotte (“BMA”) has requested a declaratory ruling allowing for a change in location for Project I.D. No. F-10052-12 (“Project”) 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 BMA in its Certificate of Need (“CON”) application for this 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. Jim Swann, Director of Operations of Certificate of Need for Fresenius Medical Care, the parent company of BMA, has requested this ruling on behalf of BMA and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

On March 1, 2013, BMA was issued a Certificate of Need to develop a new 10-station dialysis facility in Mecklenburg County. The approved location for the facility was 10000 South Tryon Street, Charlotte, Mecklenburg County, North Carolina (“Original Site”). BMA seeks to change the facility site to a new location at the intersection of South Tryon Street and Steele Creek Road (PIN # 21906109), Charlotte, Mecklenburg County, North Carolina (“Proposed Site”).

ANALYSIS

The CON law would require a full review of BMA’s relocation to the Proposed Site if that relocation were to represent a material change in the scope or physical location of the Project. N.C.G.S. § 131E-181(a). The relocation to the Proposed Site does not constitute a material change in the scope or physical location of the Project for the following reasons:

As the site and building plans for the Project were being developed, it became apparent that traffic ingress and egress to and from the Original Site was problematic. Specifically, South Tryon Street is a divided highway at the Original Site, and ingress to and egress from South Tryon Street at the Original Site is via right turn only. BMA and its property developers concluded that this traffic pattern is not ideal for the patients to be served at the facility. BMA also considered the secondary site identified in its CON application, but determined that the secondary site also was not the best location for the patients to be served. The new Proposed Site is located at the intersection of South Tryon Street and Steele Creek Road (PIN # 21906109) in Charlotte, approximately 2.7 miles from the Original Site. The Proposed Site will be equally convenient for the patients to be served; is easily accessible from South Tryon Street via a signalized intersection; is properly zoned for medical use; and BMA’s facility will be a part of a multi-tenant building, which will distribute the development costs among several tenants, as opposed to BMA incurring

the total development costs as the sole tenant. BMA states that it will not incur any additional costs to develop the facility as a result of the change in site location and, similarly, there will be no increase in costs or charges to the public. BMA proposes to develop the Project in a manner that will satisfy all other requirements and representations made in its original CON application and with the conditions placed on the CON. BMA proposes that the Project will be complete and the stations certified by December 31, 2015, an extension of six (6) months to the original timetable.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw BMA's CON if BMA 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. BMA will not develop this Project in a manner that is materially inconsistent with the representations made in its application or in a manner that is inconsistent with any of the conditions that were placed on its CON.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the change of location of the facility from 10000 South Tryon Street, Charlotte, Mecklenburg County, North Carolina to a new location at the intersection of South Tryon Street and Steele Creek Road (PIN # 21906109), Charlotte, Mecklenburg County, North Carolina, will not constitute a material change in the scope or physical location 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 December, 2014.

Drexdal Pratt, Director
Division of Health Service Regulation
N.C. Department of Health and Human Services

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Declaratory Ruling upon the PETITIONER by certified mail, return receipt requested, by causing a copy of same to be placed in the United States Mail, first-class, postage pre-paid envelope addressed as follows:

CERTIFIED MAIL

Jim Swann
FRESENIUS MEDICAL CARE
3717 National Drive, Suite 206
Raleigh, North Carolina 27612

This the _____ day of December, 2014.

Cheryl Ouimet
Chief Operating Officer