

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

IN RE: REQUEST FOR)	
DECLARATORY RULING BY)	
TRIANGLE ORTHOPAEDIC)	DECLARATORY RULING
ASSOCIATES)	
Project I.D. No. J-8453-09)	

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 me by the Secretary of the Department of Health and Human Services.

Triangle Orthopaedic Surgery Center (“Petitioner” or “TOA”) requests a declaratory ruling that the addition of one mobile MRI host site and the discontinuance of one current mobile MRI host site 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. Charles Wilson, Chief Executive Officer of TOA, has requested this ruling on TOA’s behalf and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Petitioner has a CON (Project I.D. # J-8453-09) for a mobile MRI scanner and trailer to provide MRI services. The scanner was approved to serve three host sites at TOA medical offices: (1) 120 William Penn Plaza in Durham in Durham County; (2) 3100 Duraleigh Road in Raleigh in Wake County; and (3) 910 West Williams Street in Apex in Wake County.

In this request, Petitioner proposes to add the TOA medical offices located at 171 N.C. Highway 125 in Roanoke Rapids in Halifax County as a host site and to discontinue services from this MRI at the TOA medical offices at William Penn Plaza in Durham.

Accordingly, Petitioner requests a declaratory ruling that its proposal is in material compliance with the CON for the project.

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 scope of the project, the CON law would require a full review of the proposal. N.C.G.S. § 131E-181(a).

Petitioner states that the addition of the proposed host site will not affect the scope of services offered or the costs and charges to TOA or to the public of providing mobile MRI services. Furthermore, Petitioner agrees to satisfy all the requirements and representations made regarding the host sites in its original CON application. Therefore, Petitioner’s proposal does not constitute a material change in the scope of the project. Upon issuance of this Declaratory Ruling, mobile MRI scanner services are approved at the following TOA medical office sites: (1) 3100 Duraleigh Road in Raleigh in Wake County; (2) 910 West Williams Street in Apex in Wake County; and (3) 171 N.C. Highway 125 in Roanoke Rapids in Halifax County.

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 June, 2015.

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

Charles Wilson
Triangle Orthopaedic Associates, P.A.
120 William Penn Plaza
Durham, NC 27704

This the _____ day of May, 2015.

Cheryl Ouimet
Chief Operating Officer