

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY PRESBYTERIAN HOSPITAL)
MINT HILL, LLC, PRESBYTERIAN)
MEDICAL CORPORATION d/b/a) **DECLARATORY RULING**
PRESBYTERIAN HOSPITAL MATTHEWS)
AND NOVANT HEALTH)
Project I.D. #F-8688-11)
Project I.D. #F-7648-06)**

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.

Presbyterian Hospital Mint Hill, LLC, Presbyterian Medical Care Corporation d/b/a Presbyterian Hospital Matthews (hereinafter “PH Mint Hill”) and Novant Health, Inc. (collectively “Petitioners”) request a declaratory ruling to relocate a fixed MRI scanner, Project I.D. #F-8688-11 to PH Mint Hill, Project I.D. # F-7648-06. 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 Petitioners and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Effective July 2, 2007, the Healthcare Planning and Certificate of Need Section issued a CON to PH Mint Hill for Project I.D. #F-7648-06 to relocate 50 existing acute care beds and 5 existing

operating rooms from Presbyterian Orthopaedic Hospital and 1 existing gastrointestinal endoscopy room from Presbyterian Hospital Matthews to establish a new hospital in Mint Hill, Mecklenburg County. According to the CON application filed for Project I.D. #F-7648-06, PH Mint Hill will contract with an existing mobile imaging services vendor to provide mobile MRI scanner services on-site two to three days per week.

In addition, effective April 10, 2012, the Healthcare Planning and Certificate of Need Section issued a CON to Presbyterian Medical Care Corporation d/b/a Presbyterian Hospital Matthews and Novant Health, Inc. (hereinafter “PH Matthews”) for Project I.D. #F-8688-11 to acquire no more than one fixed MRI scanner for a total of no more than two fixed MRI scanners at PH Matthews upon project completion. PH Matthews’ application for the additional MRI scanner was in response to a need determination published in the 2011 State Medical Facilities Plan. The Agency disapproved the application, however the additional MRI scanner was granted to PH Matthews in settlement. The ultimate parent company for both projects, Project I.D. #F-7648-06 and Project I.D. #F-8688-11, is Novant Health, Inc. Both projects are under development and both are located in Mecklenburg County.

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). The CON law would require a full review of PH Mint Hill, PH Matthews, and Novant Health, Inc.’s proposed change of site for the fixed MRI scanner 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).

Based on the facts presented by Petitioners, the proposed change of the site for the fixed MRI scanner from PH Matthews to PH Mint Hill does not constitute a material change in the physical location of the proposed project because the fixed MRI scanner will still be located in Mecklenburg County, the same service area. In addition, at the time PH Matthews proposed to acquire a second fixed MRI scanner, utilization of its one fixed MRI scanner was growing. However, the growth in PH Matthews' MRI scanner services was not sustained. Utilization declined each year from 2011 to 2015. Therefore, a second, fixed MRI scanner at PH Matthews will likely be underutilized. Furthermore, there are currently no fixed MRI scanners in the Mint Hill area of Mecklenburg County. A relocation of the fixed MRI scanner under development at PH Matthews to PH Mint Hill would provide patients with continuous access to MRI scanner services and obviate the need to contract for mobile, part-time MRI scanner services. PH Mint Hill had already proposed to offer MRI scanner services under contract with a mobile MRI provider, so Petitioners' request will not constitute a material change in the scope of the project so long as PH Mint Hill continues to materially comply with all conditions in its CON application.

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) since the ultimate parent company of Project I.D. #F-7648-06 and Project I.D. #F-8688-11 is Novant Health, Inc. Petitioners state that the costs to relocate and develop the fixed MRI scanner will be consistent with the costs stated in Project I.D. #F-8688-11, and that there will be no change in costs or charges to the public. The capital cost of Project I.D. #F-8688-11, when added to the capital cost of Project I.D. #F-7648-06, will not result in greater than 115% of the total capital cost of Project I.D. #F-7648-06.

North Carolina General Statutes Section 131E-189(b) allows the Department to withdraw Petitioners' CONs if Petitioners fail to develop the service in a manner consistent with the

representations made in its applications or with any conditions that were placed on the CONs. Petitioners will not be developing its project in a manner that is materially different from the representation made in its applications, nor will it be developing its project in a manner that is inconsistent with any of the conditions that were place on its CONs.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that Petitioners' 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 August, 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

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

This the _____ day of August, 2015.

Cheryl Ouimet
Chief Operating Officer