



**North Carolina Department of Health and Human Services
Division of Health Service Regulation
Certificate of Need Section**

2704 Mail Service Center • Raleigh, North Carolina 27699-2704
<http://www.ncdhhs.gov/dhsr/>

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Beverly Eaves Perdue, Governor
Albert A. Delia, Acting Secretary

Craig R. Smith, Section Chief
Phone: (919) 855-3873
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December 5, 2012

William R. Shenton
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Raleigh, NC 27602-1801

Pamela A. Scott
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Raleigh, NC 27602-1801

Exempt from Review

Facility: North Carolina Radiation Therapy Management Services
Project Description: Repair to the previously occupied space at 445 Biltmore Ave. damaged by fire
County: Buncombe County

Dear Mr. Shenton and Ms. Scott:

In response to your letter of November 30, 2012, the above referenced proposal is exempt from certificate of need review in accordance with N.C.G.S 131E-184(a)(5). Therefore, you may proceed to offer, develop or establish the above referenced project without a certificate of need.

However, you need to contact the Construction Section of the Division of Health Service Regulation to determine if they have any requirements for development of the proposed project.

It should be noted that this determination is binding only for the facts represented by you. Consequently, if changes are made in the project or in the facts provided in your correspondence referenced above, a new determination as to whether a certificate of need is required would need to be made by the Certificate of Need Section. Changes in a project include, but are not limited to: (1) increases in the capital cost; (2) acquisition of medical equipment not included in the original cost estimate; (3) modifications in the design of the project; (4) change in location; and (5) any increase in the number of square feet to be constructed.

If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,

Julie Halatek

Julie Halatek
Project Analyst

Craig R. Smith

Craig R. Smith, Chief
Certificate of Need Section

cc: Steven Lewis, Construction Section, DHSR



November 30, 2012



William R. Shenton
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VIA HAND DELIVERY

Craig R. Smith
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Martha Frisone
Assistant Chief
CON Section
2704 Mail Service Center
Raleigh, NC 27699-2704

RE: Notice of Repairs at 445 Biltmore Avenue in Asheville

Dear Mr. Smith and Ms. Frisone:

We are writing on behalf of our client North Carolina Radiation Therapy Management Services, Inc. ("NCRRTMS") to inform the Certificate of Need Section that NCRRTMS plans to proceed with repairs to the space at 445 Biltmore Avenue that was damaged by a fire in July of 2011. For reasons explained in this letter, these repairs should be deemed to be exempt from review under N.C. Gen. Stat. § 131E-184(a)(5).

The focus of this letter will be on the exemption of the repairs at 445 Biltmore Avenue. NCRRTMS also is investigating the acquisition of a linear accelerator to replace one of the two linear accelerators that had been operated at that location before the fire. You will recall that there was a prior exchange of letters, regarding a proposal by NCRRTMS to relocate the Siemens linear accelerator that had been operated at 445 Biltmore Avenue, and install it at a site in Weaverville, and that the CON Section confirmed that proposal could proceed without certificate of need review.

As the repairs at 445 Biltmore Avenue proceed, NCRRTMS will be identifying a replacement for the Varian 600 Linear Accelerator that was operated at that location before the fire, and NCRRTMS will present that to the CON Section at a later point, along with the documentation needed to show that its acquisition of the replacement machine should be exempted under N.C. Gen. Stat. § 131E-184(a)(7). We understand that under the current CON Law and rules, the costs associated with repairing the fire damage at 445 Biltmore Avenue that are described in this letter will not be a factor or consideration in determining whether the replacement of the linear accelerator should be exempt from review.

Background

As explained previously, in July of 2011, there was a fire at the 445 Biltmore Avenue location in Asheville, North Carolina where NCRRTMS had operated the two linear accelerators. As a result of the significant damage to the premises, NCRRTMS had to remove both linacs and place them in storage. Since that time, NCRRTMS has made arrangements for the treatment of patients at other locations in the area. Now that the availability of space at 445 Biltmore has been confirmed, NCRRTMS is ready to proceed with repairing and fitting out the space and identifying a replacement linac for the Varian 600 Linac that had been operated there.

The Repairs at 445 Biltmore Avenue

The repairs and related costs that will restore the capability of operating a linac in one of the two existing vaults at 445 Biltmore avenue consist of the following:

	<u>Square Footage</u>	<u>Cost</u>
Architectural & Engineering Fees		\$100,000.00
Repairs to Vault Areas	3,000	3000 Sq. Ft. x \$200.00 = \$600,000.00
Repairs to CT Area	500	500 Sq. Ft. x \$100.00 = \$50,000.00
Repairs to Medical Office	4,500	4500 Sq. Ft. x \$50.00 = \$225,000.00
Contingency		\$100,000.00
TOTAL	8,000	\$1,075,000.00

Each of these costs will be incurred as a direct result of the damage from the fire in July of 2011. Repairs to one vault will allow the installation of a replacement linear accelerator for the Varian 600 machine, once a suitable replacement machine is identified; and the repairs to the other vault will allow NCRTMS to use that second vault to continue to offer high dose radiation treatments as it had before the fire. Since all of these costs will be incurred to repair the damage caused by the fire, and will simply restore the vaults and other parts of the premises to working condition, they should be determined to be exempt from review under N.C. Gen. Stat. § 131E-184(a)(8). At a later point, NCRTMS will present information about a replacement for the Varian 600 Linac.

Conclusion

Please confirm that the repairs to the 445 Biltmore Avenue location which are described above are activities that are not subject to CON review or are exempt from CON review pursuant to N.C. Gen. Stat. § 131E-184(a)(5). We look forward to your confirmation that the repairs may proceed, and thank you in advance for your prompt consideration of this request.

Very truly yours,



William R. Shenton
Partner



Pamela A. Scott
Partner

File

Poyner Spruill^{LLP}

November 30, 2012



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Partner



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