



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/dhst/>

Drexdal Pratt, Director

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

Craig R. Smith, Section Chief
Phone: (919) 855-3873
Fax: (919) 733-8139

July 19, 2012

Mr. William R. Shenton
PoynerSpruill
PO Box 1801
Raleigh, NC 27602

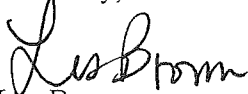
RE: Exempt from Review / Theriac Enterprises of Florida, LLC / Develop physician office building / Buncombe County


Dear Mr. Shenton:

In response to your letter of July 5, 2012, the above referenced proposal is exempt from certificate of need review in accordance with N.C.G.S 131E-184(a)(9). Therefore, you may proceed to offer, develop or establish the above referenced project without a certificate of need.

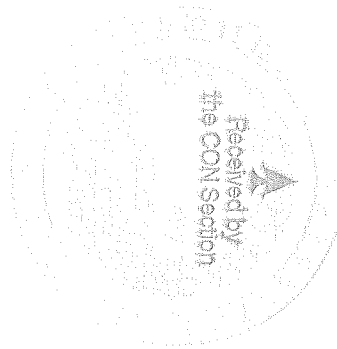
It should be noted that this Agency's position is based solely on the facts represented by you and that any change in facts as represented would require further consideration by this Agency and a separate determination. If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,


Les Brown
Project Analyst


Craig R. Smith, Chief
Certificate of Need Section





July 5, 2012

William R. Shenton
Partner
D: 919.783.2947
F: 919.783.1075
wshenton@poynerspruill.com

HAND DELIVERY

Craig R. Smith
Chief
CON Section
809 Ruggles Drive
Raleigh, NC 27603

Martha Frisone
Assistant Chief
CON Section
809 Ruggles Drive
Raleigh, NC 27603

RE: Notice of Development of Exempt Physician Office Building in Weaverville, Buncombe County

Dear Mr. Smith and Ms. Frisone:

We are writing on behalf of Theriac Enterprises of Florida, LLC ("Theriac") to inform the Certificate of Need Section that, pursuant to N.C. Gen. Stat. § 131E-184(a)(8), Theriac plans to construct a new physician office building on property which it controls through an option to purchase in Weaverville, in Buncombe County. Theriac is involved in the development of medical office buildings in Florida, North Carolina and other states.

Theriac's planned physician office building will be constructed on a 1.4 acre parcel of land located on Old Mars Hill Highway at Exit 17 - the interchange of US Highways 19 and 23 in Weaverville (the "Weaverville Site"). The building will be comprised of 11,000 square feet. Theriac plans to lease the space in the building to North Carolina Radiation Therapy Management Services, Inc. ("NCRRTMS"). NCRRTMS has a management services agreement with a physician practice which includes medical oncologists and radiation oncologists. Under the terms of that agreement, NCRRTMS will make available a total of approximately 6,309 square feet in the building to the physician group for the operation of their medical practice. This space will consist of physician and staff offices, patient examination rooms, and related support space.

NCRRTMS also will furnish 2,819 square feet to the physician group for use in providing radiation therapy services on a linear accelerator. As explained in a separate no review request letter that is being submitted on behalf of NCRRTMS contemporaneously with this letter, NCRRTMS plans to deploy an existing linear accelerator and CT scanner to the building at the Weaverville Site. A vault will be constructed to house the linear accelerator, as well as a control room for the operation of the linear accelerator. The vault and control room will consist of approximately 1,600 square feet. This space also will include a 500-square foot area for operation of the CT scanner.

Finally, the remaining 1,872 square feet in the building will be comprised of a front desk/waiting area which will be used by all of the tenants and their patients.

Theriac will be responsible for financing and constructing the physician office building, and it will own the building. The terms of the lease between Theriac and NCRRTMS will be at fair market, reflecting the cost and value of the various areas in the building. Details about those costs are included in the no review request letter and its attachments. By way of further background, Theriac does not own NCRRTMS or any medical practice to which it plans to lease space in the physician office building; nor does NCRRTMS or any parent company of NCRRTMS own Theriac.

Craig R. Smith
Martha Frisone
July 5, 2012
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Poyner Spruill^{LLP}

Physician office buildings are expressly exempt from certificate of need review. The Certificate of Need Law provides that upon receiving prior written notice, the CON Section shall exempt from CON review a proposal "to develop or acquire a physician office building regardless of cost, unless a new institutional health service other than defined in G.S. 131E-176(16) b is offered or developed in the building." N.C. Gen. Stat. § 131E-184(a)(9). This provision exempts from CON review any activities or costs associated with the development or acquisition of a physician office building, regardless of cost, so long as no new institutional health service (other than a capital expenditure exceeding \$2,000,000) is to be offered or developed in the building. Thus, the exemption expressly directs that the \$ 2 Million capital expenditure threshold set forth in N.C. Gen. Stat. § 131E-176(16) (b) should be disregarded in determining whether the physician office space is exempted under this provision.

The information and analysis submitted in the no review request establishes that no new institutional health service will be offered or developed as a result of the deployment of the linear accelerator and CT scanner at the Weaverville Site. That letter accounts for all of the costs of developing the entire space to be used for radiation therapy services associated with the linear accelerator; and it also goes on to also include in that cost computation a pro rata share of the land, site work, architectural and engineering costs, and the front desk and waiting area. Taking all of those costs into account, the total capital expenditure associated with the deployment of the linear accelerator does not constitute a new institutional health service. Accordingly, the information presented in this letter, taken with the information in the no review request describing the deployment of the linear accelerator, establishes that the construction of the building and the physician office space on the Weaverville Site should be exempt from certificate of need review under N.C. Gen. Stat. § 131E-184(a)(9). We request your confirmation of this exemption and thank you in advance for your consideration of this request.

Very truly yours,



William R. Shenton
Partner