



North Carolina Department of Health and Human Services  
Division of Health Service Regulation

Pat McCrory  
Governor

Aldona Z. Wos, M.D.  
Ambassador (Ret.)  
Secretary DHHS

Drexdal Pratt  
Division Director

September 26, 2013

William R. Shenton  
Poyner Spruill  
301 Fayetteville Street  
Suite 1900  
Raleigh, NC 27602

**Exempt from Review - Replacement Equipment**

Facility: Roanoke Valley Cancer Center  
Project Description: Replacement of existing Linear Accelerator  
County: Halifax  
FID #: 130385

Dear Mr. Shenton:


In response to your letter of September 5, 2013, the above referenced proposal is exempt from certificate of need review in accordance with N.C.G.S 131E-184(a)(7). Therefore, you may proceed to acquire, without a certificate of need, the Varian Clinac iX linear accelerator, serial number 5528 to replace the existing Varian Clinac 6/100 linear accelerator. This determination is based on your representations that the existing unit will be removed from North Carolina and will not be used again in the State without first obtaining a certificate of need. Further please be advised that as soon as the replacement equipment is acquired, you must provide the CON Section and the Medical Facilities Planning Section with the serial number of the new equipment to update the inventory, if not already provided.

Moreover, you need to contact the Construction and Acute and Home Care Licensure and Certification Section to determine if they have any requirements for development of the proposed project.

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,

  
Bernetta Thorne-Williams  
Project Analyst

  
Craig R. Smith, Chief  
Certificate of Need Section

cc: Construction Section, DHSR  
Acute and Home Care Licensure and Certification Section, DHSR  
Certificate of Need Section



www.ncdhhs.gov

Telephone: 919-855-3873 • Fax: 919-733-8139

Location: Edgerton Building • 809 Ruggles Drive • Raleigh, NC 27603

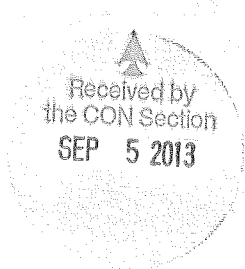
Mailing Address: 2704 Mail Service Center • Raleigh, NC 27699-2704

An Equal Opportunity/ Affirmative Action Employer



*Bewell*

Poyner Spruill<sup>LLP</sup>



September 5, 2013

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

**VIA 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: Replacement of Linear Accelerator at Roanoke Valley Cancer Center

Dear Mr. Smith and Ms. Frisone:

We are writing on behalf of North Carolina Radiation Therapy Management Services, Inc. ("NCRRTMS") and the wholly-owned subsidiary of NCRRTMS that will be formed soon ("New LLC") to provide advance notice of plans to replace the linear accelerator that has been in operation in Roanoke Rapids at the Roanoke Valley Cancer Center. You will recall that the CON Section issued a letter on August 27, a copy of which is attached as Exhibit A, confirming that New LLC may acquire the ownership interests in Roanoke Valley Cancer Center.

The purpose of this letter is to provide advance notification in order to get confirmation from the CON Section that the replacement of the linear accelerator that has been in operation at Roanoke Valley Cancer Center may also proceed without obtaining a certificate of need. In the interest of time, we presented the acquisition of the ownership interests first, while assembling the information required to demonstrate that the replacement of the current equipment should also be exempt. Before proceeding with the transaction, NCRRTMS would like confirmation that the existing linear accelerator may be replaced without a certificate of need, after the acquisition of ownership interests is complete. This letter presents the basis for a determination that the replacement of the linear accelerator should be exempt under N.C. Gen. Stat. § 131E-184(a)(7).

**THE EXISTING LINEAR ACCELERATOR**

The existing linear accelerator at the Roanoke Valley Cancer Center is a Varian Clinac 6/100 linear accelerator. As noted in the letter of July 25 concerning the acquisition of the ownership interests, this linear accelerator was acquired late in 1995 as a refurbished machine and it has been in operation at Roanoke Valley Cancer Center since then, providing ionizing radiation to destroy cancer cells.

September 5, 2013  
Page 2

### ***COST OF THE REPLACEMENT LINEAR ACCELERATOR***

The replacement linear accelerator will be used for the same treatment purposes, and here are details about the linear accelerator and the associated purchase costs:

- The linear accelerator that is planned for installation at Roanoke Valley Cancer Center is a Varian Clinac iX (Serial Number 5528) which is currently in operation in Naples, Florida. It employs the same ionizing beam technology as the Varian 6/100 linear accelerator. Its present book value is \$1,206,458.78, as documented in the attached Exhibit C.
- There is an additional cost of \$35,000.00 for associated hardware and software bringing the machine-related costs to \$1,241,459.00.
- After adding Halifax County's seven per cent sales tax<sup>1</sup> the total cost associated with acquisition of the Varian Clinac iX machine is \$1,328,361.00.

A few other costs associated with relocating the Varian Clinac iX machine have been identified:

- Varian rigging and transportation costs of \$36,238 (per Varian quote in Exhibit D);
- An additional \$60,000.00 for internal costs to be incurred by NCR TMS, including the costs associated with removing the existing Varian 6/100 unit from North Carolina;
- Vault remodeling costs of \$180,000.00, including installation of base frame; and
- Costs for installing additional shielding, estimated at \$300,000.00.

No other costs will be necessary to deploy the Varian Clinac iX linear accelerator to replace the existing machine at the Roanoke Valley Cancer Center. When all of the above costs are summed the result is a grand total of \$1,904,599.00. NCR TMS also has instructed us to confirm that as noted above, the Varian 6/100 linear accelerator will be moved out of state; and that its replacement by the Varian Clinac iX linear accelerator will not result in more than a ten percent increase in patient charges or procedure operating expenses within the first 12 months of its operation.

### ***ANALYSIS OF RELEVANT PROVISIONS IN THE CON LAW AND RULES***

Based on the above information, the proposed replacement of the linear accelerator meets all requirements of 10A NCAC 14C .0303(d)(3). The cost to buy the replacement linear accelerator and make it operational, including sales tax, is less than \$2 Million and hence it qualifies as "Replacement Equipment" under the definition in the Certificate of Need Law. NC Gen.Stat. § 131E-176(22a). The proposal also meets each of the requirements set out in 10A NCAC 14C .0303. The existing machine has been in operation for more than three years. The replacement equipment has the same technology, is functionally similar, will be used for the same treatment purposes, and will not result in increases in patient charges or per procedure operating costs that exceed the 10 per cent level set in the rule.

---

<sup>1</sup> See [http://www.dornc.com/taxes/sales/salesrates\\_4-13.html](http://www.dornc.com/taxes/sales/salesrates_4-13.html).

September 5, 2013  
Page 3

**CONCLUSION**

Thank you for your attention to the information in this letter and we look forward to your confirmation that the proposed replacement of the Roanoke Valley Cancer Center linear accelerator is exempt under N.C. Gen. Stat. § 131E-184(a)(7).

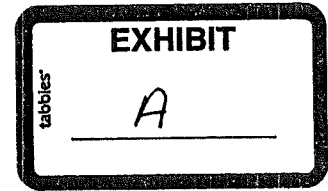
Very truly yours,



**William R. Shenton**  
*Partner*

WRS/opr

Attachments



North Carolina Department of Health and Human Services  
Division of Health Service Regulation

Pat McCrory  
Governor

Aldona Z. Wos, M.D.  
Ambassador (Ret.)  
Secretary DHHS

Drexdal Pratt  
Division Director

August 27, 2013

William R. Shenton  
Poyner Spruill  
301 Fayetteville Street  
Suite 1900  
Raleigh, NC 27602

**No Review**

Facility or Business: Roanoke Valley Cancer Center

Project Description:

- o Transfer of 100% of Roanoke Valley Cancer Center, P.A ownership interests in the linear accelerator and other assets to New LLC
- o Acquisition of 100% of New LLC by NCR TMS

County: Halifax  
FID #: 130385

Dear Mr. Shenton:

The Certificate of Need Section (CON Section) received your letter of July 25, 2013 regarding the above referenced proposal. Based on the CON law **in effect on the date of this response to your request**, the proposal described in your correspondence is not governed by, and therefore, does not currently require a certificate of need. However, please note that if the CON law is subsequently amended such that the above referenced proposal would require a certificate of need, this determination does not authorize you to proceed to develop the above referenced proposal when the new law becomes effective.

Moreover, you need to contact the Acute and Home Care Licensure and Certification Sections 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



**Certificate of Need Section**

www.ncdhhs.gov

Telephone: 919-855-3873 • Fax: 919-733-8139

Location: Edgerton Building • 809 Ruggles Drive • Raleigh, NC 27603

Mailing Address: 2704 Mail Service Center • Raleigh, NC 27699-2704

An Equal Opportunity/ Affirmative Action Employer



Mr. Shenton  
August 27, 2013  
Page 2

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.

Please contact the CON Section if you have any questions. Also, in all future correspondence you should reference the Facility I.D. # (FID) if the facility is licensed.

Sincerely,



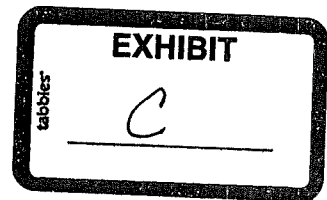
Bernetta Thorne-Williams, Project Analyst



Craig R. Smith, Chief  
Certificate of Need Section

cc: Medical Facilities Planning Section, DHSR  
Acute and Home Care Licensure and Certification Section, DHSR

<b>LINAC Replacement Costs</b>		
Varian iX LINAC Book Value	1,206,459	
Hardware/Software	35,000	
Pre-Sales Tax Total	1,241,459	
Total with Sales Tax at 7 %		1,328,361
Varian Installation Costs		36,238
21C Installation Costs		60,000
Shielding Costs		300,000
Vault Remodeling Costs		180,000
<b>Total</b>		<b>1,904,599</b>



21st Century Oncology  
Net Book Value Report

Book = Internal  
FYE Month = December

Sys No	Ext	Co Asset No	In Svc Date	Depr Meth	Rem Life	Basis	(+) Salvage Value	Thru Date	(-) Current Accum Depreciation	(=) Net Book Value	Pct Dep
Location = 10078											
Class = ME											
016704		VARIAN CLINAC IX 000 20114	08/24/12	SLMM	09 01	\$ 769,431.68	\$ 0.00	07/31/13	\$ 70,531.24	\$ 698,900.44	9.17%
016705		WAVEGUIDE 000 20114A	08/24/12	SLMM	09 01	120,000.00	0.00	07/31/13	11,000.00	109,000.00	9.17%
016706		KLYSTRON 000 20114B	08/24/12	SLMM	09 01	68,000.00	0.00	07/31/13	6,233.34	61,766.66	9.17%
016707		MEGATRON 000 20114C	08/24/12	SLMM	02 01	63,000.00	0.00	07/31/13	19,250.00	43,750.00	30.56%
016708		PULSE TANK 000 20114D	08/24/12	SLMM	09 01	70,000.00	0.00	07/31/13	6,416.66	63,583.34	9.17%
016709		BENDING MAGNET 000 20114E	08/24/12	SLMM	09 01	105,000.00	0.00	07/31/13	9,625.00	95,375.00	9.17%
016710		ACCELERATOR SOLENOID 000 20114F	08/24/12	SLMM	09 01	40,000.00	0.00	07/31/13	3,666.66	36,333.34	9.17%
016711		CONE BEAM X-RAY GENERATOR 000 20114G	08/24/12	SLMM	04 01	60,000.00	0.00	07/31/13	11,000.00	49,000.00	18.33%
016712		KV & NV PANELS 000 20114H	08/24/12	SLMM	01 01	70,000.00	0.00	07/31/13	32,083.34	37,916.66	45.83%
016713		X-RAY TUBE 000 20114I	08/24/12	SLMM	01 01	20,000.00	0.00	07/31/13	9,166.66	10,833.34	45.83%
		Class = ME				\$ 1,385,431.68	\$ 0.00		\$ 178,972.90	\$ 1,206,458.78	12.92%
		Less disposals and transfers				0.00	0.00		0.00	0.00	0.00%
		Net Subtotal				\$ 1,385,431.68	\$ 0.00		\$ 178,972.90	\$ 1,206,458.78	12.92%
		Location = 10078				\$ 1,385,431.68	\$ 0.00		\$ 178,972.90	\$ 1,206,458.78	12.92%
		Less disposals and transfers				0.00	0.00		0.00	0.00	0.00%
		Net Subtotal				\$ 1,385,431.68	\$ 0.00		\$ 178,972.90	\$ 1,206,458.78	12.92%
		Grand Total				\$ 1,385,431.68	\$ 0.00		\$ 178,972.90	\$ 1,206,458.78	12.92%
		Less disposals and transfers				0.00	0.00		0.00	0.00	0.00%
		Net Grand Total				\$ 1,385,431.68	\$ 0.00		\$ 178,972.90	\$ 1,206,458.78	12.92%



# 21st Century Oncology

## Net Book Value Report

Book = Internal

FYE Month = December

Sys No	Ext	Co Asset No	In Svc Date	Depr Meth	Rem Life	Basis	(+) Salvage Value	Thru Date	(-) Current Accum Depreciation	(=) Net Book Value	Pct Dep
--------	-----	-------------	----------------	--------------	-------------	-------	-------------------------	--------------	--------------------------------------	--------------------------	------------

### Report Assumptions

Report Name: Net Book Value  
Source Report: <Standard Report>

#### Calculation Assumptions:

Include Sec 168 Allowance & Sec 179: No

#### Group/Sorting Criteria:

Group = <Selected Assets> from Simon Depr Report

Include Assets that meet the following conditions:

Internal Book Placed in Service Date is between 01/01/1950 and 12/31/2099

Location is 10078

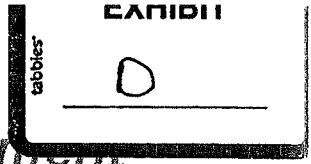
Sorted by: Location (with subtotals), Class (with subtotals), System No, Extension



# Maintenance Agreement

SAW20130815-001

Page: 1



*Quotation Prepared For:*

Daniel Galmarini  
 21st Century Oncology - Corp. Headquarters & Administr.  
 2234 Colonial Blvd.  
 Fort Myers, FL 33907  
 (239) 931 - 7333 FAX: (239) 931 - 7380

*Please address inquiries and replies to:*

Scott A. Walker  
 Varian Medical Systems  
 Service  
 2250 Newmarket Parkway  
 Suite 120  
 Marietta, GA 30067  
 (678) 255 - 3803 FAX: (678) 255 - 3801  
 scott.walker@varian.com

<i>Your Reference:</i>	<i>Quotation Valid Until:</i> <b>February 11, 2014</b>
<i>Agreement Start Date:</i> <b>September 1, 2013</b>	<i>Agreement End Date:</i> <b>August 31, 2014</b>
<i>Comments:</i>	<b>Attachment 1</b> <i>Service Level Specifications</i> <b>Attachment 2</b> <i>Local Business Specifications</i> <b>Attachment 3</b> <i>Legal Specifications</i>

**Relocation of Clinac IX to 21st Century: Roanoke Rapids, VA**  
**H-ROANOKE RAPIDS -NC-US-001**  
**To Replace: 6/100 #0137 (H170137)**

**Covered Equipment and Services**

<b>Customer Representative:</b>  Signature: _____ Name: _____ Title: _____ Date: _____	<b>Varian Representative:</b>  _____ Name: <b>Scott A. Walker</b> Title: <b>National Accounts Manager</b> Date: <b>August 15, 2013</b>
---	---

**Payment Terms - Net 30 days from invoice date**

Item	Support Description	Price
------	---------------------	-------

<b>Section 1</b>
------------------

**1 Year Value Added Services**

- **Relocation Services**

*This service includes relocation of the Low Energy Clinac (LE Clinac), High Energy Clinac (HE Clinac) or the TrueBeam system. The relocation service includes the different components that are shown in this section of the quotation.*

*The relocation service is provided to the customer under the standard Terms and Conditions of Sale included with this quotation. The following additional terms and conditions apply.*

**TITLE TO THE USED EQUIPMENT**

*CUSTOMER warrants and represents that CUSTOMER is the lawful owner of the Used Equipment and there are no restrictions preventing the removal of the Used Equipment such as security interests, liens, claims, UCC-1 financing statements, or encumbrances of any kind. Title shall remain with CUSTOMER at all times.*

**TRANSPORTATION AND RISK OF LOSS**

*All shipments are FOB CUSTOMER's site of origin (or Storage site in case of shipment from Storage) with all transportation and insurance at the expense of CUSTOMER. Risk of loss or damage to the Used Equipment shall remain with CUSTOMER.*

**REMOVAL AND STORAGE**

*Removal ("Removal") shall mean rigging the Used Equipment out of CUSTOMER's current site and transportation of the Used Equipment to CUSTOMER's new site or to Storage at a location mutually agreeable to both parties. VMS will be responsible for supervising the Removal and properly packaging the Used Equipment. Rigging amount listed on the VMS Quotation does not include special shoring of the floor to support the weight, room demolition for removal or if a crane is required to remove the Used Equipment. If the Used Equipment is transported to Storage, VMS is responsible for an inventory audit, using the list created in (1.) above. VMS shall provide CUSTOMER with a copy of the inventory list. CUSTOMER shall be responsible for all cost and expense of removal, freight and insurance for shipment, rigging and for any Storage fees as defined on VMS's Quotation.*

**NO VARIAN WARRANTIES**

*Notwithstanding VMS's possible Removal of the Used Equipment to Storage, if required, VMS disclaims (1) all warranties of title or warranties of right to transfer the Used Equipment; (2) all warranties that the Used Equipment will be free of any security interests, liens, claims, UCC-1 financing statements, or encumbrances of any kind, and (3) any warranty that possession of the Used Equipment will not be disturbed. These VMS disclaimers apply whether a warranty arises from Uniform Commercial Code section 2312 (1), from expressions of VMS, by implication, or from the common law.*

- **Relocation/License Transfer for ARIA**

- **Relocation/License Transfer for Eclipse**

- **Test & Validation of Existing PV**

*No upgrade involved. VMS will test and validate the proper functioning of the existing Portal Vision (PV) according to VMS specifications. This service requires an additional 1-2 days.*

Item	Support Description	Price
	<p>- <b>Test &amp; Validation of Existing OBI/CBCT</b>  <i>No upgrade involved. VMS will test and validate the proper functioning of the existing On-Board Imager and Cone Beam CT (OBI/CBCT) according to VMS specifications. This service required an additional 7 - 10 days.</i></p>	
	<b>Agreement Total \$</b>	<b>36,238</b>

**End of Support:** Varian may terminate the Agreement at the end of support of the Product that is the object of the Support Services by giving twenty-four (24) months written notice to the Customer. However, Varian may shorten this notice period in its sole discretion if termination is required due to key component obsolescence issues or product quality concerns.

# Attachment 1

## Payment Schedule

SAW20130815-001

21st Century Oncology - Corp. Headquarters & Administr., Fort

Grand Total: \$36,238.00

Annually	Year 1
1.	\$36,238.00
	\$36,238.00

Payment Terms - Net 30 days from invoice date