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MAY 02 2017

STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

Sirote & Permutt, PC  
2311 Highland Avenue South  
Birmingham, AL 35205-2972

Lenora W. Pate  
Attorney at Law  
lpate@sirote.com  
Tel: 205-930-5162  
Fax: 205-212-3801

PO Box 55727  
Birmingham, AL 35255-5727

May 1, 2017

VIA E-MAIL ([shpda.online@shpda.alabama.gov](mailto:shpda.online@shpda.alabama.gov))

Alva M. Lambert  
Executive Director  
State Health Planning and Development Agency  
100 North Union Street, Suite 870  
Montgomery, AL 36140

Re: *Urology Centers of Alabama, P.C.  
Notice of Intent to Acquire  
Request for Non-Reviewability Determination*


Dear Mr. Lambert:

On behalf of Urology Centers Alabama, P.C. ("UCA") and pursuant to the Alabama Certificate of Need ("CON") Program Rules and Regulations ("CON Rules") § 410-1-7-.03, § 410-1-7-.02, and § 410-1-3-.09, attached hereto as **Exhibit A** is (1) a Notice of Intent to Acquire Major Medical Equipment which will not be owned by or located in a healthcare facility and (2) a Request for your determination that the proposed installation of a replacement Varian Medical System in the private physician office of UCA in Homewood, Alabama, is **not** subject to Certificate of Need ("CON") review under Alabama Code § 22-21-260 *et. seq.* and the CON Rules, and does **not** require a CON in that it does not involve a new institutional health service or any health care facility expenditures in excess of the statutory thresholds requiring CON Review.

In accordance with CON Rule § 410-1-3-.09, a pdf copy of this Request is being submitted electronically on the 1<sup>st</sup> day of May, 2017, to [shpda.online@shpda.alabama.gov](mailto:shpda.online@shpda.alabama.gov); a paper original will be preserved in our files; and a fee of \$1,000.00 is being sent via overnight FedEx to SHPDA on the 1<sup>st</sup> day of May, 2017, for delivery on the next business day, May 2<sup>nd</sup> 2017.

Please give me a call if you have any questions.

With kindest personal regards,

  
Lenora W. Pate  
FOR THE FIRM



Alva M. Lambert  
May 1, 2017  
Page 2

LWP/lcc  
Enclosure

c: Debbie Crompton  
David W. Sorrells

**EXHIBIT A**

**BEFORE THE STATE HEALTH PLANNING  
AND DEVELOPMENT AGENCY OF THE STATE OF ALABAMA**

**IN THE MATTER OF:** )  
 )  
**UROLOGY CENTERS OF ALABAMA, P.C.** ) **Notice of Intent to Acquire**  
 ) **Replacement Varian Medical System**  
 )  
 ) **Request for Non-Reviewability**  
 ) **Determination**  
 ) **RV-\_\_\_\_\_**

**NOTICE OF INTENT TO ACQUIRE**  
**REQUEST FOR NON-REVIEWABILITY DETERMINATION**

On behalf of Urology Centers of Alabama, P.C. (“UCA”) and pursuant to the Alabama Certificate of Need Program Rules and Regulations (“CON Rules”) § 410-1-7-.03, § 410-1-7-.02, and § 410-1-3-.09, and Alabama Code § 22-21-260, *et.seq.*, this (1) Notice of Intent to Acquire a Replacement Varian Medical System (“Notice”) which will not be owned by or located in a health care facility, and (2) Request for Non-Reviewable Determination are hereby filed with the State Health Planning and Development Agency (“SHPDA”) to provide the requisite Notice to SHPDA and to Request a determination from SHPDA that UCA’s proposed acquisition and installation of a Replacement Varian Medical System in the UCA private physician office located in Homewood, Alabama, more fully described below, is not subject to CON review for the reasons stated below, and that no CON is required for this UCA proposal (“Proposal”).

The following factual and legal information is hereby included in support of this Notice and Request, and a Urology Centers of Alabama, P.C. check in the amount of \$1,000.00 made payable to the State Health Planning and Development Agency is being filed in accordance with CON Rule § 410-1-3-.09 as the required filing fee for this Request pursuant to CON Rule § 410-1-7-.02.

## PROPOSAL

### 1. Facts

1.1 UCA is a professional corporate group practice solely owned by physicians, and is currently comprised of twenty-seven (27) practicing physicians, all of whom are licensed in the State of Alabama. UCA has been providing physician services as a group practice in Birmingham for many years. UCA is a comprehensive Urology group practice providing the full scope of urology services including integrated urologic radiation oncology services through UCA employed specialists who treat only urology cancers for UCA patients in the UCA private physician office in Homewood, Alabama. The UCA Team Mission is to provide state of the art patient centered urologic care in all areas with integrity and compassion. A list of the current practicing UCA physician owners and/or employees is attached hereto and incorporated herein as **Exhibit 1**.

1.2 As a part of the total scope of urologic services being provided currently by UCA at its private physician office on Independence Drive, Homewood, Alabama 35209, UCA provides existing Varian Medical System True Beam Linear Accelerator services in accordance with the 2005 UCA Request and SHPDA Determination of Non-Reviewability of the acquisition, installation, and operations by UCA of the Varian Medical System High Energy 21.X Linear Accelerator pursuant to SHPDA's approval as set forth in the LNR Request and the SHPDA RV 2006-003 Determination, attached hereto and incorporated herein as **Exhibit 2**. ("**Existing Varian Linear Accelerator**").

1.3 The Existing Varian Linear Accelerator has been used solely by UCA Physicians and UCA personnel for UCA physician office out-patient services for over ten (10) years at the UCA Independence Drive, Homewood, Alabama office. It has not been used for any Hospital in-patient services, nor operated by, through, or on behalf of any health care facility. It has been operated solely as a physician office service, treating UCA patients only for urogenital cancers including prostate, kidney, bladder, testicular cancer and bone metastasis, which may have occurred as the cancer progresses.

1.4 Since the Existing Varian Linear Accelerator is now over ten (10) years old, UCA is hereby notifying SHPDA, pursuant to CON Rule § 410-1-7-.03, of its intent to acquire the

proposed Replacement Varian Vital Beam Linear Accelerator (“**Replacement Vital Beam Linear Accelerator**”) which will not be owned by or located in a health care facility.

1.5 The Replacement Vital Beam Linear Accelerator has technological advances that will benefit UCA patients, and will cost approximately **\$2,906,647.00**.

1.6 Attached hereto and incorporated herein as **Exhibit 3** is a summary of three (3) of the recent improvements in the proposed Replacement Vital Beam Linear Accelerator which will allow for more accurate treatment, maximize curative doses to targeted tissues, and minimize unintended radiation to nearby structures leading to unwanted side effects.

1.7 All the current billings for the services by UCA using the Existing Varian Linear Accelerator are currently by, through, and on behalf of UCA and its owners and/or employed physicians. Such billing involves only physician office billing for the professional and technical component of the Existing Varian Linear Accelerator, with no additional “facility” fee billing of any type. All of the Existing Varian Linear Accelerator billing by UCA is for physician office billing in accordance with Federal and State laws and regulations and various third-party payors.

1.8 The proposed Replacement Vital Beam Linear Accelerator will also be used exclusively by, and billed exclusively by, through, and on behalf of UCA and its owners and/or employed physicians. Such billing will involve only the professional and technical component of the Replacement Vital Beam Linear Accelerator, with no additional “facility” fee billing of any type, and all proposed Replacement Vital Beam Linear Accelerator billing will be for UCA physician office services in accordance with Federal and State laws and regulations and various third-party payor requirements.

1.9 A Linear Accelerator, like the Existing Varian Linear Accelerator and the proposed Replacement Vital Beam Linear Accelerator, uses precisely focused beams of radiation to treat patients with cancer. Each patient is treated based on a unique treatment protocol developed by a Radiation Oncologist with a Radiation Dosimetrist. The patient is treated according to the protocol with a specific dose of radiation directed at different sections of the organ for specific periods of time each day based on the protocol. The patient is monitored by a Radiation Physicist, a Radiation Technologist,

and by the Radiation Oncologist before, during, and after the treatment each day, and examined weekly by the Radiation Oncologist. The radiation is administered by trained Radiation Technologists, and all such required Radiation professionals and staff are UCA employed personnel and UCA employed physicians providing urologic oncology services to UCA physician office patients only.

1.10 UCA patients are normally treated using the Existing Varian Linear Accelerator five (5) days per week for eight (8) weeks but which may vary with the cancer and the treatment protocol. The Existing Varian Linear Accelerator will continue to operate during the eight (8) weeks that it may take for any patient to complete the patient's unique regimen and protocol on the Existing Varian Linear Accelerator, once the proposed Replacement Vital Beam Linear Accelerator is fully installed and operational. Hence, there will be a slight overlap prior to the Existing Varian Linear Accelerator being taken out of service which is necessary because protocols are designed and developed per patient, which are unique to the specific linear accelerator and the patient's treatments must be completed on the specific Linear Accelerator, e.g., Existing Varian Linear Accelerator. Hence, any patient in an eight (8) week regimen of treatment could not be switched from the Existing Varian Linear Accelerator to the proposed Replacement Vital Beam Linear Accelerator.

1.11 Once all patients, who started in treatment prior to the Replacement Vital Beam Linear Accelerator commences operations, have completed their existing protocols on the Existing Varian Linear Accelerator, the Existing Varian Linear Accelerator will be taken out of service and removed from the UCA office. The current space in the UCA physician office in which the Existing Varian Linear Accelerator has been operating will then be used for other UCA physician office functions after the removal of the Existing Varian Linear Accelerator.

1.12 The proposed Replacement Vital Beam Linear Accelerator will be located, installed, and become fully operational in the UCA physician office space on Independence Drive, Homewood, Alabama, adjacent to the Existing Varian Linear Accelerator space at the same UCA physician office address. It will function as an integral and integrated part of the UCA physician office services in the exclusively used office space of UCA on Independence Drive, Homewood, Alabama.

1.13 The acquisition, installation, and operation of the proposed Replacement Vital Beam Linear Accelerator will not be owned by or located in a health care facility, but owned and exclusively operated by and located in the UCA physician office meeting all the requirements of the CON statutory Physician Office Exemption set forth in Alabama Code § 22-21-260(6), which provides an exemption from CON review for the **“Office of private physicians..., whether for individual or group practices and regardless of ownership.”**

1.14 The installation of the proposed Replacement Vital Beam Linear Accelerator in the UCA physician office does **not** include the construction, development, acquisition, or involvement of any health care facility; nor any capital expenditure by or on behalf of any healthcare facility; nor does it involve the addition of any healthcare facility bed or the offering of any inpatient health services. UCA has no affiliated healthcare facility members, investors, nor any health care facility financial involvement in any way in the acquisition, installation, or operations of the proposed Replacement Vital Beam Linear Accelerator, which will be used at all times exclusively by UCA in its physician office for UCA physician office patients only, and exclusively by UCA physicians listed on **Exhibit 1**, and UCA employed personnel and staff.

1.15 This Proposal is necessary to replace an over ten (10) year old Existing Varian Linear Accelerator with a state of the art improved Replacement Vital Beam Linear Accelerator to provide the latest technology to ensure current state of the art and beneficial services for Urology Centers of Alabama patients. With the proposed replacement Varian Vital Beam Linear Accelerator, UCA will be providing exactly the same services UCA currently provides to treat the Urology Centers of Alabama, P.C. patients in the UCA physician office in Homewood, Alabama.

## 2. Legal Analysis

2.1 This Proposal does not involve a “new institutional health service”, by or on behalf of a health care facility, subject to CON review as set forth in § 22-21-263 of the Alabama Code and CON Rule § 410-1-01, in that the Proposal does not include:

(a) the construction, development, acquisition through lease or purchase or other establishment of a new health care facility or health maintenance organization; or

(b) any expenditure by or on behalf of a health care facility which as a capital expenditure exceeds the CON statutory threshold for major medical equipment, new annual operating costs, or any other capital expenditure by or on behalf of a health care facility; or

(c) the addition of any new healthcare facility bed or stations; or

(d) any health service which is proposed to be offered in or through a healthcare facility which was not offered on a regular basis in or through a healthcare facility within the preceding twelve (12) month period; or

(e) any other reviewable event under the existing CON Laws, Rules, or Regulations in the State of Alabama.

2.2 Alabama Code §22-21-260(6) exempts from the CON review process and the definition of “healthcare facility”, the “offices of private physicians...., whether for individual or group practices and regardless of ownership.” UCA is a private physician office which is exclusively owned by physicians and operates as a physician group practice exclusively.

2.3 In 2012, the Alabama Supreme Court adopted the following four-part test to be used to determine whether a Proposal qualifies for the Physician Office Exemption, as follows:

(a) The proposed services are to be provided, and related equipment used exclusively by the physicians identified as owners or employees of the physicians’ practice for the care of their patients.

(b) The proposed services are to be provided and related equipment used at any office of such physicians.

(c) All patients billings related to such services are through, or expressly on behalf of, the physicians’ practice.

(d) The equipment shall not be used for inpatient care, nor by, through, or expressly on behalf of the health care facility.



*Ex parte Sacred Heart Health Sys., Inc., 155 So. 3d 980, 988, (Ala. 2012).*

2.4 This Proposal meets all of the four-part Physician Office Exemption:

- The proposed Replacement Vital Beam Linear Accelerator services are to be provided and the equipment used exclusively by the physicians identified as owners or employees of UCA listed on the attached **Exhibit 1** for the care of UCA patients exclusively;
- The proposed Replacement Vital Beam Linear Accelerator services are to be provided, and related equipment used, at the UCA Independence Drive physician office in Homewood, Alabama;
- All patient billings related to the proposed Replacement Vital Beam Linear Accelerator services will be through, or expressly on behalf of, the UCA physician group practice;
- The proposed Replacement Vital Beam Linear Accelerator shall not be used for in-patient care, nor by, through, or on behalf of a health care facility.

3. **Conclusion and Request.**

3.1 This Proposal does not involve a new institutional health service subject to CON Review pursuant to CON Rules § 410-1-4-.01 *et. seq.* and § 22-21-260 *et. seq.* of the Alabama Code. UCA is merely (1) notifying SHPDA of its intent to acquire the proposed Replacement Vital Beam Linear Accelerator that will not be owned by or located in a health care facility, and (2) requesting that its Proposal to acquire, install, and operate the proposed Replacement Vital Beam Linear Accelerator in the UCA physician office for use by UCA employed physicians and UCA personnel and staff exclusively for UCA physician office out-patients at the Independence Drive, Homewood, Alabama UCA group practice location is not subject to CON review.

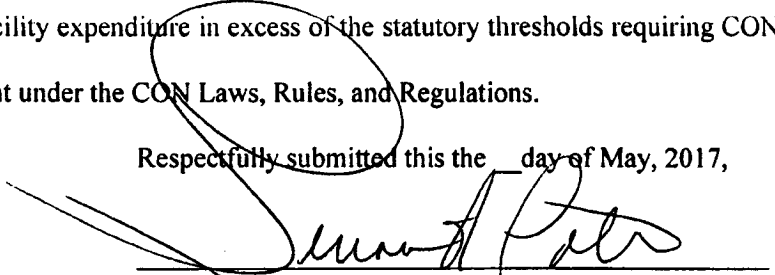
3.2 Alabama Code § 22-21-260(6) excludes from the definition of “health care facility” the “offices of private physicians... whether for individual group practice and regardless of ownership.”

3.3 CON Rule § 410-1-2-.05(2)(a) provides that the term “health care facility” shall not include private offices of any duly licensed physicians whether for individual group practice and regardless of ownership.

3.4 Also, Alabama Code § 22-21-260(a) excludes from the definition of “health services” the “lawful practice of any profession or vocation conducted independently of a health care facility.”

3.5 Therefore, this Proposal is due to be determined as non-reviewable in accordance with the Alabama CON Laws, Rules, and Regulations in that it does not involve any new institutional health services or any health care facility expenditure in excess of the statutory thresholds requiring CON Review or any other reviewable event under the CON Laws, Rules, and Regulations.

Respectfully submitted this the \_\_\_\_\_ day of May, 2017,



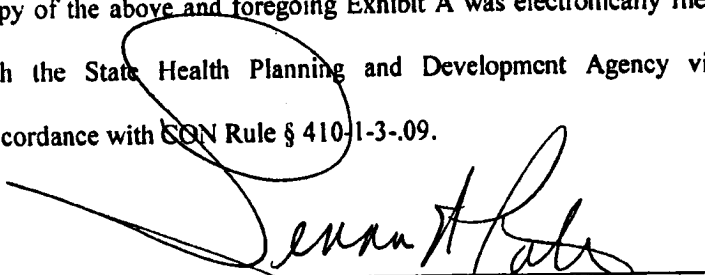
Lenora W. Pate  
Attorney for Urology Centers of Alabama, P.C.

**OF COUNSEL:**

Sirota & Permutt, P.C.  
2311 Highland Avenue South  
Birmingham, Alabama 35205  
205.930.5162

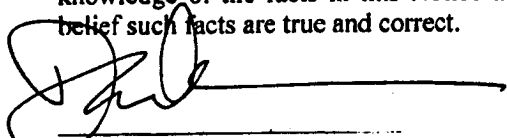
**CERTIFICATE OF SERVICE**

I hereby certify that a PDF copy of the above and foregoing Exhibit A was electronically filed this the    day of May, 2017, with the State Health Planning and Development Agency via shpda.online@shpda.alabama.gov in accordance with CON Rule § 410-1-3-.09.

  
\_\_\_\_\_  
Of Counsel

**Affirmation of Requesting Party:**

The Undersigned, being first duly sworn, hereby makes oath or affirms that he, **DAVID W. SORRELLS**, the Practice Administrator and Assistant Secretary of the Urology Centers of Alabama, P.C. has knowledge of the facts in this Notice and Request, and to the best of his information, knowledge and belief such facts are true and correct.

  
\_\_\_\_\_  
David W. Sorrells

Seal

Subscribed and Sworn to before me this the   1<sup>st</sup>   day of May, 2017.

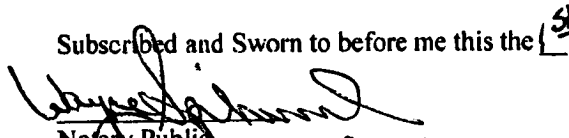
  
Notary Public  
My Commission Expires: 8-19-2020

EXHIBIT 1 TO EXHIBIT A

UCA PHYSICIANS

I. UCA SHAREHOLDERS/OWNERS/EMPLOYEES

Mark DeGuenther, M.D.  
Vincent Michael Bivins, M.D.  
Brian Wade, M.D.  
Jason Burrus, M.D.  
Charles Bugg, M.D.  
Thomas Holley, M.D.  
Taylor Bragg, M.D.  
Andrew Strang, MD  
A. Scott Tully, M.D.  
Lee Hammontree, M.D.  
Nicole DeSouza Massie, M.D.  
Brian Christine, M.D.  
Rupa Kitchens, M.D.  
Brian Larson, M.D.  
Bryant Poole, M.D.  
Eric Brewer, M.D.  
Jared Cox, M.D.  
Mel Duggan, M.D.  
Patrick Mills, M.D.  
John Wilbanks, M.D.  
Jason Moellinger, MD  
Paula Rookis, MD  
Leon Hamrick

II. UCA EMPLOYEES

Joelle Hamilton, M.D.  
Elbert Duncan, M.D. (Part-Time)  
Austin Lutz, M.D.  
Tyler Poston, M.D. (Starting 8/1/17)

III. UCA remains in the physician recruiting process and may add other physician employees in the future.

EXHIBIT 2 TO EXHIBIT A  
RV 2006-003 UROLOGY CENTERS OF ALABAMA

equipment



STATE HEALTH PLANNING AND DEVELOPMENT AGENCY  
100 NORTH UNION STREET, SUITE 870  
MONTGOMERY, ALABAMA 36104

October 31, 2005

Lenora W. Pate, Esquire  
Sirote & Permutt  
Post Office box 55727  
Birmingham, AL 35255-5727

RE: RV2006-003  
Urology Centers of Alabama, P.C.

Dear Ms. Pate:

This is written in response to your letter dated October 20, 2005 in which you provided names and locations of physicians who will be using the Varian Medical System High Energy Clinic 21:XLiner Accelerator w/80 MLC with VARIS Vision Record & Verify, Eclipse Treatment Planning System and ZMed SonArray Plus. This equipment will be located in the office of a private physician's office located on Independence Drive, Homewood, AL 35209. The cost of the referenced equipment is \$1,375,330 which is below Certificate of Need thresholds.

Based on information you have provided, this project is nonreviewable. This decision is made with a clear understanding that this proposal will not result in the addition of any health care facility beds, the offering of any new health services, or any capital expenditure in excess of the Certificate of Need capital expenditure thresholds, that the proposed services are to be provided, and related equipment used, exclusively by the physicians identified as owners or employees of the physicians' practice for the care of their patients, and that the proposed services are to be provided, and related equipment used, at the primary office of such physicians.

Pursuant to Rule 410-7-.02 *Alabama Certificate of Need Program Rules and Regulations*, this opinion is for informational purposes only and is based on circumstances as they currently exist. Should there be any deviation from facts and premises provided to this agency and should circumstances prove to be other than represented, this letter may become null and void. If you have questions, please call Betty Schoenfeld at (334) 242-4103.

Sincerely,

A handwritten signature in cursive script that reads "Alva M. Lambert".

Alva M. Lambert  
Executive Director

AML:bws

cc: Guy Nevins

MAILING ADDRESS: P.O. BOX 303025, MONTGOMERY, ALABAMA 36130-3025  
PHONE: (334) 242-4103 FAX: (334) 242-4113

LENORA W. PATE

ATTORNEY AT LAW

(205) 930-5162

lpate@srote.com

S I R O T E  
— & —  
P E R M U T T  
A PROFESSIONAL CORPORATION

October 20, 2005

RECEIVED

OCT 24 2005

STATE HEALTH PLANNING  
AND DEVELOPMENT AGENCY

Mr. Alva M. Lambert  
Executive Director  
State Health Planning & Development Agency  
100 North Union Street, Suite 870  
Montgomery, AL 36104

Re: RV2006-003  
Urology Centers of Alabama, P.C.  
C/M No.: 020771-00028

Dear Mr. Lambert:

Thank you for your letter of October 4, 2005, in response to my letter of September 30, 2005, copies of which are enclosed for your convenience.

Per your request, Urology Centers of Alabama, P.C. ("UCA") physicians, all of whom practice at the Independence Drive location, are:

Albert J. Tully, Jr., M.D.  
Douglas L. Modling, M.D.  
Carl J. Sanfelippo, M.D.  
Rodney L. Dennis, M.D.  
Vincent Michael Bivins, M.D.  
Nicole DeSousa Massie, M.D.  
Brian Christine, M.D.  
A. Scott Tully, M.D.  
Mark S. DeGuenther, M.D.  
W. Andrew Daniel, M.D.  
Thomas Moody, M.D.  
Walter G. Pittman, M.D.  
Charles Edward Bugg, M.D.

In addition, UCA has the following six other physician offices in the Greater Birmingham metropolitan area, with some of the physicians practicing, as noted below, at certain times in those offices as well:

DOCSBHM\1335236\1\

LAW OFFICES AND MEDIATION CENTERS  
2311 HIGHLAND AVENUE SOUTH BIRMINGHAM, ALABAMA 35208  
POST OFFICE BOX 55727 BIRMINGHAM, ALABAMA 35255-5727  
TELEPHONE | 205.930.5100 FAX | 205.930.5101 URL | <http://www.srote.com>  
Birmingham | Huntsville | Mobile

Mr. Alva M. Lambert

October 20, 2005

Page 2

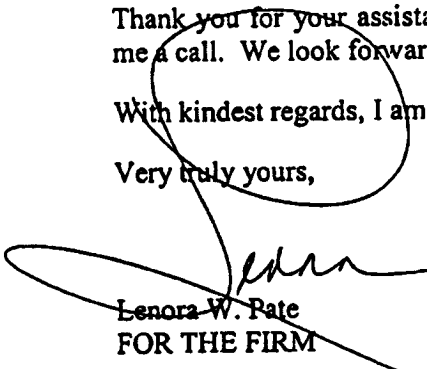
- 880 Montclair Road, POB III, Suite 377, Birmingham, AL (Drs. Modling, Sanfelippo and DeGuenther)
- 985 9<sup>th</sup> Avenue Southwest, Suite 408, Bessemer, AL (Drs. Christine, Daniel, Bivins)
- Princeton Professional Building I, 801 Princeton Avenue Southwest, Suite 615, Birmingham, AL (Drs. Bivins and Modling)
- St. Vincent's Professional Building II, 2660 10<sup>th</sup> Avenue South, Suite 735, Birmingham, AL (Drs. Tully, Bugg, Massie, and Moody)
- 209 W. Spring Street, Suite 104, Sylacauga, AL (Dr. DeGuenther)
- Gardendale Medical Clinic, 2217 Decatur Highway, Gardendale, AL 35071 (Drs. Moody and Massie)

UCA is constantly in the physician recruiting process and will be adding three to five additional physicians over the next year or so.

Thank you for your assistance in this matter. If you have any additional questions, please give me a call. We look forward to receiving your determination at your earliest opportunity.

With kindest regards, I am,

Very truly yours,



Lenora W. Pate  
FOR THE FIRM

LWP/cm  
Enclosures

cc: David W. Sorrells, Administrator





**STATE HEALTH PLANNING AND DEVELOPMENT AGENCY**

**100 NORTH UNION STREET, SUITE 870  
MONTGOMERY, ALABAMA 36104**

**October 4, 2005**

**Lenora W. Pate, Esquire  
Sirote & Permutt  
Post Office Box 55727  
Birmingham, AL 35255-5727**

**RE: RV2006-003  
Urology Centers of Alabama, P.C.**

**Dear Ms. Pate:**

**Please provide the names of the thirteen (13) physician owners of Urology Centers of Alabama, P.C. If their practice is located in offices other than Independence Drive in Homewood, Alabama, please provide the address. Usage will be limited to the named individuals. If you have questions, please contact this Agency.**

**Sincerely,**

**Alva M. Lambert  
Executive Director**

**AML:bws**

**LENORA W. PATE**

ATTORNEY AT LAW

(205) 930-5162

lpate@sirote.com

**S I R O T E**  
— & —  
**P E R M U T T**  
A PROFESSIONAL CORPORATION

September 30, 2005

Mr. Alva M. Lambert  
Executive Director  
State Health Planning & Development Agency  
100 North Union Street, Suite 870  
Montgomery, AL 36104

**RECEIVE**  
OCT - 3 2005  
STATE HEALTH PLANNING  
AND DEVELOPMENT AGENCY

Re: Urology Centers of Alabama, P.C.:  
1) Notice of Intent to Acquire Varian Medical System  
2) Request for Letter of Non-Reviewability  
C/M No.: 20771-00028

Dear Mr. Lambert:

Pursuant to the Alabama Certificate of Need Program Rules and Regulations ("CON Rules") Section 410-1-7-.03 and Section 410-1-7-.02, this letter is to serve as a Notice of Intent to Acquire and to request a determination that the proposed installation of a Varian Medical System in the private physician office of Urology Centers of Alabama, P.C. ("UCA") is not subject to Certificate of Need ("CON") review under Alabama Code Section 22-21-260, *et seq.*, and the CON Rules. A filing fee in the amount of Five Hundred Dollars and no/100 (\$500.00) made payable to the Alabama State Health Planning and Development Agency is enclosed. To assist your determination, we submit the following information.

**Proposal**

The Varian Medical System will be located in the private physician office of UCA on Independence Drive, Homewood, Alabama 35209. UCA is a professional corporate group practice solely owned by physicians, and is currently comprised of thirteen (13) practicing physicians, all of whom are licensed in the State of Alabama. UCA has been providing physician services as a group practice in Birmingham for many years.

The proposed Varian Medical System is a High Energy Clinic 21:XLiner Accelerator w/80 MLC with VARIS Vision Record & Verify, Eclipse Treatment Planning System and ZMed SonArray Plus ("Varian Medical System"), costing approximately \$1,375,330.00, and shall be used solely by UCA physicians and UCA personnel for UCA physician office outpatients. It shall not be used for any hospital inpatient services, nor operated by, through, or on behalf of a healthcare facility. The Varian Medical System, together with the office space and all furniture, fixtures, and other equipment, used in the operations of the UCA Independence Drive physician office will be either owned outright or leased directly by UCA.

All the billings for the services using the Varian Medical System will be by, through, and on behalf of UCA physicians. Such billing will involve physician office billing only for the professional and technical component of the Varian Medical System, with no additional "facility" fee billing of any type. All Varian

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LAW OFFICES AND MEDIATION CENTERS  
2311 HIGHLAND AVENUE SOUTH BIRMINGHAM, ALABAMA 35205

POST OFFICE BOX 55727 BIRMINGHAM, ALABAMA 35255-5727

TELEPHONE | 205.930.5100

FAX | 205.930.5101

URL | <http://www.sirote.com>

Birmingham | Huntsville | Mobile

Mr. Alva M. Lambert  
September 30, 2005  
Page 2

Medical System billing will be for physician office services in accordance with federal and state laws and regulations and various third-party payor requirements.

The installation of the Varian Medical System in the UCA physician office does not include the construction, development, acquisition, or involvement of any healthcare facility; nor any capital expenditure by or on behalf of any healthcare facility; nor does it involve the addition of any healthcare facility bed or the offering of any inpatient health services. UCA has no affiliated healthcare facility members, investors, nor any healthcare facility financial involvement in any way in the installation of the Varian Medical System, which will be used at all times exclusively by UCA in its physician office for UCA physician office patients.

**Conclusion**

Alabama Code Section 22-21-260(6) excludes from the definition of "healthcare facility" the "offices of private physicians . . . whether for individual group practices and regardless of ownership." See also CON Rules Section 410-1-2-.05(2)(a), providing that the term healthcare facility shall not include "private office of any duly licensed physicians whether for individual group practices and regardless of ownership". In addition, Alabama Code Section 22-21-260(8) excludes from the definition of "health services" the "lawful practice of any profession or vocation conducted independently of a healthcare facility." See CON Rules Section 410-1-2-.06.

Accordingly, based on the above, we request your determination that the installation of the Varian Medical System by UCA in its Independence Drive, Birmingham, Alabama, office is not subject to CON review under Alabama Code Section 22-21-260, et seq., and the CON Rules. We appreciate your prompt response to this request.

Please give me a call immediately if you have any questions.

Very truly yours,



Lenora W. Pate  
FOR THE FIRM

LWP/cm

c: David W. Sorrells, Administrator

**EXHIBIT 3 TO EXHIBIT A**

(205) 930-0920 800-452-1464

3485 Independence Drive  
Homewood, AL 35209

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Radiation Oncology  
Brian J. Larson, M.D.

Oncology  
Joelle Hamilton, M.D.

Pathology  
Amanda Crowe, M.D.

March 6, 2017

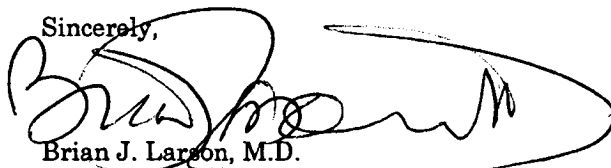
To Whom It May Concern:

Our current linear accelerator, the Varian iX, is now 10 years old. The newer Varian Vital Beam linear accelerator has some recent technological advances that would benefit our patients. Here is a summary of three of those improvements.

1. 120 multi leaf collimator (MLC) Our current iX machine has 80 MLC, 40 1.0 cm leaves on each side. The 120 MLC has 60 leaves on each side with the 40 central leaves having a thickness of 0.5 cm. Reduction in the leaf size provides better dosimetry which is especially important when treating patients with lymph node involvement. This will allow more accurate treatment, thereby maximizing the curative dose to the target tissue and minimizing unintended radiation to nearby structures which leads to unwanted side effects.
2. Rapid Arc is a form of Volumetric Arc Therapy (VMAT). Rapid Arc is an advanced form of radiation therapy that delivers precisely-sculpted 3D dose distributions with a 360 degree rotation of the gantry. Our current technique has the gantry rotating and stopping at 7-9 different angles, each delivering a partial treatment. Rapid Arc is much faster, about 2 minutes to perform an arc. As with a higher MLC as above, Rapid Arc also helps spare normal healthy tissues, reducing side effects.
3. Cone Beam CT (CBCT) Method of image guidance that allows precise targeting of tissue. We currently use implanted fiducial markers for ensuring that the patient is in the proper treatment position. CBCT uses the patient's internal anatomic features to achieve this goal, and would allow avoidance of the use of implanted fiducial markers in certain high risk patients such as those on blood thinners. This will decrease cost and increase patient convenience.

Please let me know if I can be of further assistance.

Sincerely,



Brian J. Larson, M.D.