

BRUCE E. GAGNON  
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PATRICK B. GILMORE  
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CHRISTOPHER J. SLOTTEE  
SARAH A. MARSEY

LAW OFFICES OF  
ATKINSON, CONWAY & GAGNON, INC.  
A PROFESSIONAL CORPORATION  
420 L STREET  
SUITE 500  
ANCHORAGE, ALASKA 99501

PHONE: (907) 276-1700  
FAX: (907) 272-2082  
www.acglaw.com  
RETIRED  
KENNETH R. ATKINSON  
JOHN M. CONWAY  
(1936-2009)

September 13, 2013

**VIA E-MAIL AND U.S. MAIL**

Kevin J. Perron  
Acting CON Coordinator Alaska DHSS  
P.O. Box 11060  
Juneau, AK 99811-0601

Dear Mr. Perron:

This is a request for a determination that the requirements of A.S. 18.07 and 07 AAC 07.031 do not apply to the following proposal. We do not believe that our client is required to obtain a Certificate of Need to own and operate a linear accelerator in Juneau for reasons discussed below.

Anchorage Associates of Radiation Medicine, LLC and RBS Evolutions, Inc. propose to construct and operate an outpatient radiation therapy service which consists of a cancer treatment center that will provide external beam radiation treatment of cancers and some non-cancerous tumors using a linear accelerator for treatment. The service will be located in Juneau near Bartlett Hospital. The proposed service will allow residents of Juneau to more quickly and easily access external beam radiation therapy services than is currently available. It is important to the residents of Juneau to have this access since radiation therapy generally requires a course of 25 to 30 separate treatments over several days. Treatments can be daily and can last 5 to 6 weeks. Currently there is no linear accelerator treatment available within the City and Borough of Juneau. Radiation oncologists will maintain physician control of services and of operations and will direct all services. All appropriate staff (radiation physicist, radiation therapist, as well as radiation oncologist) for this service will be provided.

The estimated start and completion dates for the project are October 15, 2013 and December 15, 2013. The estimated total cost for each component of the project is:

\$2,230,000	Linear Accelerator
\$ 350,000	Associated Software and Information Technology
\$ 140,000	Fixed Equipment

\$ 135,000	Movable Equipment
\$ 65,000	Financing Costs
\$ 45,000	Comissioning of Linear Accelerator
<b>\$2,965,000</b>	<b>TOTAL COSTS</b>

The project will lease space in a building in Juneau. The leased space will be used as the site for a linear accelerator for the treatment of cancer.

We believe that the facility, linear accelerator and the program of treatment that the client proposes to provide is exempt from Certificate of Need review since this service will be owned by physicians and since the facility will not be a health care facility as defined in A.S. 18.07.111.

(8) "health care facility" means a private, municipal, state, or federal hospital, psychiatric hospital, independent diagnostic testing facility, residential psychiatric treatment center, tuberculosis hospital, skilled nursing facility, kidney disease treatment center (including freestanding hemodialysis units), intermediate care facility, and ambulatory surgical facility: the term excludes (A) the Alaska Pioneers' Home and the Alaska Veterans' Home administered by the Department of Health and Social Services under A.S. 47.55; and (B) the offices of private physicians or dentists whether in individual or group practice; . . .

No license is required for this service under A.S. 47.32.010. It will not be an independent testing facility or a kidney dialysis center. See 7 AAC 07.900.

The owners will be Anchorage Associates of Radiation Medicine, Inc. (30% owner, 100% physician owned), and RBS Evolutions, Inc. (70% owner, 80% physician owned).

We call your attention to your determination of February 9, 2012 (copy enclosed). There, you determined that a virtually identical service that the client operates in Soldotna is not subject to CON requirements.

If you require any additional information to make your determination, please advise.

Please respond to the undersigned with a copy to the client at:


Kevin J. Perron  
September 13, 2013  
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Attn: Dan Moore  
RBS Evolution  
1115 Main Street  
Pleasant View, TN 37146

We appreciate your prompt attention to this matter.

Very truly yours,

ATKINSON, CONWAY & GAGNON

By   
Patrick B. Gilmore

PBG/dap  
Enclosure  
cc: Dan Moore  
27-4623/7788.1

# STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES  
DIVISION OF HEALTH CARE SERVICES  
*Certificate on Need Program*

SEAN PARNELL, GOVERNOR

P.O. BOX 110660  
JUNEAU, ALASKA 99811-0660  
PHONE: (907) 465-8616  
FAX: (907) 465-6861

February 9, 2012

RBS Evolution  
115 Main Street  
Pleasant View, TN 37146

Dear Mr. Moore:

This letter is in response to your request for determination dated 1/6/2012 from Patrick Gilmore of the Law Offices of Atkinson, Conway, and Gagnon in Anchorage, Alaska.

The request for determination involves the construction of a facility in Soldotna Alaska for operation of a linear accelerator to be used for patient treatment by a radiation physicist, a radiation therapist, and a radiation oncologist.

Based on review of your stated intent I have determined that a Certificate of Need is not required for the following reasons:

1. AS 18.07.031 states a person may not make an expenditure of over \$1.35M (the current monetary threshold as of July 1, 2011 per AS 18.07.031(d)) for construction of a health care facility. Health care facilities are defined in AS 18.07.111. While your costs associated with this facility are over the current monetary threshold, a facility that would house a linear accelerator for patient treatment is not considered a health care facility under AS 18.07.111
2. 7 AAC 07.001 outlines what health care facilities are to be considered under the State's certificate of need program. It states that the department will only consider an application for certificate of need from a health care facility if the health care facility meets each of the following standards:
  - 1) the facility is a health care facility defined in AS 18.07.111
  - 2) the facility
    - (A) would be required to obtain a license after completion of the construction or to operate the facility under AS 47.32; or
    - (B) is an independent diagnostic testing facility or a kidney treatment center, including a freestanding hemodialysis unit;
    - (C) the facility is located or providing services in the state.

While your facility will be operating in the state, it is not required to be licensed under AS 47.32 and it does not meet the definition of an independent diagnostic

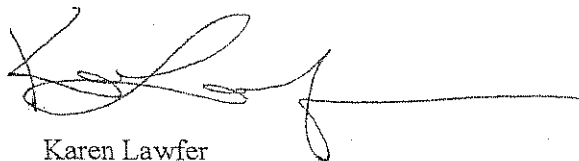
testing facility or a kidney dialysis center as outlined in 7 AAC 07.900.

As previously stated a Certificate of Need will not be required for construction of your facility.

Should plans for the intended use of the facility change prior to completion of construction and if operation of the facility which would require licensure under AS 47.32 or change the definition of the facility to one that would be included in AS 18.07.111 or 7 AAC 07.900, please notify the department as a Certificate of Need application and review may become necessary.

If you are dissatisfied with this decision you may request reconsideration under 7 AAC 07.033 within 30 days after the date of the published notice of the determination by the department.

Sincerely,

A handwritten signature in black ink, appearing to read 'Karen Lawfer', with a long horizontal line extending to the right.

Karen Lawfer  
Certificate of Need Coordinator

cc: Patrick Gilmore at Atkinson, Conway, and Gagnon