



# Birch Horton Bittner & Cherot

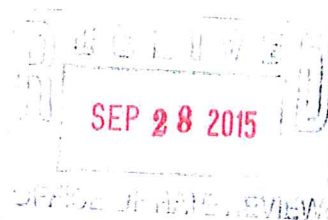
*a professional corporation*

**Stanley T. Lewis**

Respond to Anchorage Office  
T 907.263.7251 • F 907.276.3680  
slewis@bhb.com

September 22, 2015

Valerie Davidson  
Commissioner  
Alaska Department of Health and Social Services  
PO Box 240249  
Anchorage, AK 99503



RE: Diagnostic Health Anchorage  
Request for Determination Dated July 27, 2015  
Our Client: Imaging Associates, LLC  
Our File No.: 507,362.9

Dear Commissioner Davidson:

This law firm represents Imaging Associates, LLC ("Imaging Associates"). The purpose of this letter is to request that the State of Alaska Department of Health and Social Services ("DHSS") reconsider its decision that Diagnostic Health Anchorage's ("DHA") proposed multi-modality imaging center in Wasilla, Alaska, does not require a Certificate of Need ("CON") because the estimated cost of the project is below the \$1.5 million threshold. As explained below, Imaging Associates believes that DHSS failed to properly administer and enforce Alaska's CON laws with respect to DHA's July 27, 2015 request for determination and that reconsideration and further investigation of DHA's estimated cost will disclose that the project exceeds the \$1.5 million threshold, requiring a CON.

DHA is a health care provider specializing in multi-modality imaging. DHA is a "health care facility" as defined by AS 18.07.111(8), subject to the provisions of AS 18.07.031 with respect to the requirements of the State of Alaska's CON program. DHA wants to open a new multi-modality imaging center at 1751 E. Gardner Way, Suite A, in Wasilla, Alaska (the "Premises").

On July 27, 2015 DHA wrote DHSS requesting a determination whether a CON was required for its proposed project. The letter stated that the components of DHA's proposed project will include the purchase of CT and MRI units, a lease for the imaging center to operate from, leasehold improvements, and the purchase of additional equipment and services needed to facilitate the project. The letter claimed that the cost of the lease will be \$276,000 based on a proposed two (2) year lease of 7,827 SF at a rental rate of \$11,500 per month. The letter claimed that the estimated total cost of the proposed project will be \$1,272,817.73.

On August 6, 2015 DHSS wrote DHA requesting additional information and clarification regarding the scope of leasehold improvements, furniture and accessory costs, and the location of the lease.

DHA responded to DHSS's request for additional information on August 17, 2015. DHA's response included an "updated" estimated cost of the project totaling \$1,242,282.07.

Alaska Statute 18.07.031 provides that a CON is required whenever the intended cost of constructing a new health care facility is over the statutory threshold. The statutory threshold for DHA's request for determination is \$1.5 million. Because the claimed estimated total cost of DHA's project was under the threshold, DHSS determined that the project does not require a CON. DHSS published its Notice of Decision on September 1, 2015.

Imaging Associates is a "health care facility" as defined by AS 18.07.111(8). Imaging Associates is also a direct competitor of DHA in Wasilla and a member of the public who is substantially and adversely affected by activities conducted by DHA if it fails to obtain a required CON. *See Mat-Su Valley Medical Center, LLC v. Advanced Pain Centers of Alaska, Inc., 218 P.3d 698, 702-03 (Alaska 2009)*. Imaging Associates expended several million dollars on its imaging facility in Wasilla in full compliance with Alaska's CON laws and fully expecting that DHSS would properly administer and enforce those laws.

Imaging Associates believes that the State of Alaska DHSS failed in its responsibility to administer and enforce Alaska's CON statutes and regulations with respect to DHA's request for determination in several respects. First, DHSS failed to require DHA to provide clear, complete, and current documentation supporting the total cost of each proposed component as required by 7 AAC 07.031. For example, DHA did not provide required documentation supporting the cost of planned leasehold improvements.

Next, DHSS failed to require DHA to provide a certified estimate of the total cost of each proposed component as required by 7 AAC 07.031(b)(2). For example, there is no certified estimate of the cost of planned leasehold improvements. Moreover, it appears that DHA's contractor did not perform a site inspection before rendering its "estimate" that is expressly conditioned on site conditions. DHA did not include the cost of service contracts for its MRI and CT units, notwithstanding that it is customary and usual for DHA and other imaging businesses to have such contracts in place.

Third, DHSS improperly accepted DHA's cost estimate for the lease. The cost estimate does not represent a true and accurate estimate of space cost because the initial term of the lease is for only two (2) years. It is highly unlikely that DHA is willing to expend \$1,242,282.07 on equipment, leasehold improvements, and miscellaneous items; and spend up to six (6) months of work prior to operation to implement those improvements, but then not extend the lease past the initial 2 year term. DHSS must know that a lease term of seven (7) years is more typical for this type of investment and facility in Alaska. If the option term of the lease (5 years) (which the landlord must grant) is added to the initial term (2 years) the true and accurate cost of the lease is increased by at least \$690,000, bringing the total estimated cost of the project to \$1,932,282.20, well in excess of the \$1.5 million threshold. Moreover, DHA does not appear to even be a party to the proposed lease which identifies Alliance HealthCare Services, Inc., as lessee. Clearly, DHSS should have further investigated the lease.

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Imaging Associates requests that DHSS properly administer and enforce Alaska's CON laws by reconsidering its September 1, 2015 decision and further investigating DHA's claimed costs to ensure that its project complies with the CON laws.

Sincerely yours,

BIRCH HORTON BITTNER & CHEROT



for Stanley T. Lewis

STL:alk

- ✓ cc: Alexandria Hicks, Coordinator Certificate of Need Program
- cc: Jim Whitaker, Chief of Staff, Governor for State of Alaska
- cc: Imaging Associates, LLC

