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RICHARD E. VOLLERTSEN
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CHRISTOPHER J. SLOTTEE
PETER A. SCULLY

Of Counsel:
BRUCE E. GAGNON
PATRICK B. GILMORE

LAW OFFICES OF
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RETIRED
KENNETH R. ATKINSON
JOHN M. CONWAY
(1936-2009)

September 18, 2014

VIA EMAIL AND U.S. MAIL

Alexandria Hicks
CON Coordinator Alaska DHSS
P.O. Box 11060
Juneau, AK 99811-0601

Dear Ms. Hicks:

This is a request for a determination that the requirements of AS 18.07 and 7 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 operate a CyberKnife radiosurgery center in Anchorage for the reasons discussed below.

Alaska CyberKnife Center, LLC proposes to operate an outpatient CyberKnife stereotactic radiosurgery center that will provide stereotactic external beam radiation treatment of cancers and some noncancerous tumors. A CyberKnife delivers beams of high-dose radiation to tumors with extreme accuracy and is designed to noninvasively treat tumors throughout the body. All patient treatments are completed in 5 days or less, as compared to as long as 45 days on current equipment available in the area. The next closest Cyberknife facility is located in Seattle, WA, which is a significant distance to travel for patients and adds significant expense to their costs of treatment. The Cyberknife service will be located in medical office space leased at the Providence Health Park in Anchorage. Radiation oncologists will maintain physician control of services and 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 date for improvements and installation of the CyberKnife is November 1, 2014. The Alaska CyberKnife Center will begin to treat patients on or about February 1, 2015. The estimated total cost for each component of the project is:

\$ 5M	CyberKnife
\$ 1M	Associated Software and Information Technology
\$ 1M	Vault/Fixed Equipment
\$ 2.5M	Service Contract
\$ 9.5M	TOTAL COSTS

We believe that the facility, CyberKnife, and the program of treatment that the client proposes to provide is exempt from Certificate of Need review because the facility will not be a "health care facility" as defined in AS 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 AS 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 AS 47.32.010. It will not be an independent testing facility or kidney dialysis center. *See* 7 AAC 07.900.

The owners will be Anchorage Associates of Radiation Medicine, Inc. (75% owner, 100% physician owned) and Select HealthCare Solutions, LLC (25% owner, 0% physician owned).

We call your attention to your determinations of October 3, 2013 and February 9, 2012 (copies enclosed). There you determined that similar services involving the use of linear accelerators to provide radiotherapy are not subject to CON requirements.

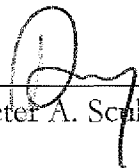
If you require any additional information to make your determination, please advise. Please respond to the undersigned with a copy to the client at:

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Alaska CyberKnife Center, LLC
C/O Select HealthCare Solutions, LLC
PO Box 9947
Rancho Santa Fe, CA 92067-4947
ATTN: Matthew Cutler

Very truly yours,

ATKINSON, CONWAY & GAGNON

By  _____
Peter A. Scully

PAS/jgh
Enclosures
cc: Matthew Cutler
30-716/7952.1



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

**Department of
Health and Social Services**

Division of Health Care Services
Office of Rate Review
Certificate of Need Program

3601 C Street, Suite 978
Anchorage, Alaska 99503-5936
Main: 907.269.3469
Fax: 907.334.2220

RECEIVED
BY MAIL

OCT 04 2013

October 3, 2013

Via E-mail and US Mail

ATKINSON, CONWAY
& GAGNON, INC.

RBS Evolution
Attn: Dan Moore
1044 Jackson Felts Road
Joelton, TN 37080-4839

Reference: Additional information provided concerning Request for Determination to obtain a Certificate of Need to construct a Linear Accelerator in Juneau, Alaska via email from Debbie Pratt on 9-16-13.

This letter is in response to your subsequent request for determination dated 9/13/2013 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 Juneau, Alaska near Bartlett Hospital using leased space 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 \$1.45M (the current monetary threshold as of July 1, 2013 per AS 18.07.031 (d)) for construction of a health care facility. Health care facilities are defined in AS 18.07.111. A freestanding 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 stated earlier, a Certificate of Need will not be required for construction of your facility.

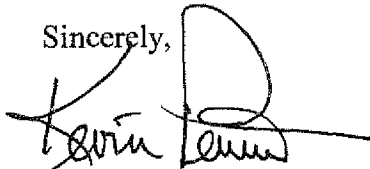
Should plans for the intended use of the facility change prior to completion of construction and if operation of the facility would require licensure under AS 47.32 or change the definition of the facility to one that would be included in AS 18.07.111 or 7 AAC 07.900, please notify the department as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

Please note my address is on the upper right hand corner of the first page of this letter.

Lastly, if you have any questions regarding this matter, please do not hesitate to contact me at the above address or phone number. My e-mail address is kevin.perron@alaska.gov

Sincerely,



Kevin Perron, MS
Acting CON Coordinator

✓ CC: Patrick Gilmore at Atkinson, Conway, and Gagnon, 420 L Street, Suite 500, Anchorage, AK 99501.

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