



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

March 19, 2014

Denise Gunter  
Nelson Mullins Riley & Scarborough LLP  
380 Knollwood Street, Suite 530  
Winston-Salem, NC 27103

**No Review**

Facility: Novant Health Forsyth Medical Center  
Project Description: Install linear accelerator purchased in June 2005 in Vault 1  
County: Forsyth  
FID #: 923174

Dear Ms. Gunter:

The Certificate of Need Section (CON Section) received your letters dated November 1, 2013, December 11, 2013, and December 20, 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.

This decision is based on the following:

1. Pursuant to N.C. Gen Stat § 131E-178(a), *"No person shall offer or develop a new institutional health service without first obtaining a certificate of need from the Department...."*
2. Pursuant to N.C. Gen Stat § 131E-176(16)f1, a "new institutional health service" includes *"The acquisition by purchase, donation, lease, transfer, or comparable arrangement of any of the following equipment by or on behalf of any person...5a. linear accelerator. ..."*
3. Pursuant to N.C. Gen Stat § 131E-176(16)p, *"The acquisition by purchase, donation, lease, transfer, or comparable arrangement by any person of major medical equipment"* is a "new institutional health service" which requires a certificate of need.



**Certificate of Need Section**

[www.ncdhhs.gov](http://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



4. Pursuant to N.C. Gen Stat § 131E-176(14o), *“Major medical equipment means a single unit or single system of components with related functions which is used to provide medical and other health services and which costs more than seven hundred fifty thousand dollars (\$750,000). In determining whether the major medical equipment costs more than seven hundred fifty thousand dollars (\$750,000), the cost of the equipment, studies, surveys, designs, plans, working drawings, specification, construction, installation, and other activities essential to acquiring and making operation the major medical equipment shall be included. The capital expenditure for the equipment shall be deemed to be the fair market value of the equipment or the cost of the equipment, whichever is greater. ...”*
5. The letter dated November 1, 2013, and Exhibit A, indicates Novant Health Forsyth Medical Center (NHFMC) purchased three refurbished linear accelerators from RS&A, Inc. on June 3, 2005, before the certificate of need (CON) law changed effective August 26, 2005 to specifically regulate the acquisition of linear accelerators.
6. Therefore, since the linear accelerator listed in Exhibit A was purchased prior to August 26, 2005 for a capital cost less than \$750,000, the purchase of this linear accelerator in 2005 was not subject to CON review.
7. According to your letter dated November 1, 2013, and Exhibits A & C:
  - NHFMC proposes to install one of the three refurbished linear accelerators in Vault 1, which is currently vacant. The linear accelerator it is proposing to install is a Varian Clinac 2100-C linear accelerator, manufactured in 1991, serial number 318. According to the invoice provided in Exhibit A, the total capital cost of purchasing the refurbished linear accelerator in 2005 was \$176,380.00.
  - NHFMC did not install the linear accelerator at the time of purchase. The linear accelerator listed in Exhibit A has been in storage at RS&A, Inc. since 2005. The cost of storage is \$350 per month, after the first year of free storage.
  - NHFMC provides cost estimates in Exhibit C for the installation of the linear accelerator. The total capital cost of the project is \$338,553 which includes the following costs:

2005 Cost of linear accelerator	\$176,380
IT hardware and software	\$ 37,725
Storage (91 months @ \$350/month)	\$ 31,850
Equipment	\$ 28,080
Construction	\$ 43,800
Other - Testing	\$ 14,051
License transfer/state license	<u>\$ 6,667</u>
Total capital cost	\$338,553

8. Since the total capital cost of the project does not cost more than \$750,000, the installation of this linear accelerator at NHFMC would not constitute the acquisition of "major medical equipment" as defined in N.C. Gen. Stat. § 131E-176(14o).

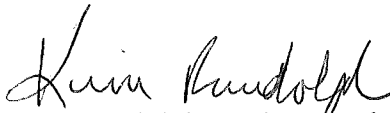
Consequently, NHFMC may install the linear accelerator described in Exhibit A and purchased on June 3, 2005 without first obtaining a certificate of need.


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 Construction Section and the Acute and Home Care Licensure and Certification Section 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 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,

  
Kim Randolph, Project Analyst

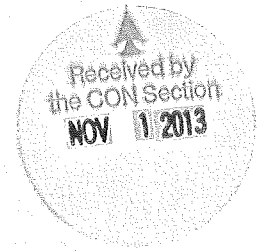
  
Martha J. Frisone, Interim Chief  
Certificate of Need Section

cc: Medical Facilities Planning Section, DHSR  
Construction Section, DHSR  
Acute and Home Care Licensure and Certification Section, DHSR  
June S. Ferrell, DOJ  
Maureen Murray, Smith Moore Leatherwood LLP  
Matthew Fisher, Bode Hemphill, LLP  
Gary Qualls, K&L Gates

# Nelson Mullins

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*Denise*



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denise.gunter@nelsonmullins.com

November 1, 2013

## Hand Delivered

Craig R. Smith, Chief  
Martha J. Frisone, Assistant Chief  
Certificate of Need Section  
North Carolina Department of Health and Human Services  
Division of Health Service Regulation  
809 Ruggles Drive  
Raleigh, North Carolina 27603

Re: Request for No Review Determination  
Novant Health Forsyth Medical Center  
Forsyth County  
Health Service Area II

Dear Mr. Smith and Ms. Frisone:

This letter requests a determination that the following proposal is not subject to the Certificate of Need ("CON") Law, N.C. Gen. Stat. § 131E-175 *et seq.* This letter replaces and supersedes the July 24, 2013 letter I sent you concerning the above-referenced subject; we are hereby withdrawing the July 24 letter. In this correspondence, we are revising the July 24 request to request only that Novant Health Forsyth Medical Center ("NHFMC") be allowed to install a Varian 2100-C refurbished linear accelerator that it purchased on June 3, 2005. We do not propose to substitute any equipment.

On June 3, 2005, NHFMC purchased three (3) refurbished linear accelerators. This was before the CON Law changed in July 2005 to specifically regulate the acquisition of linear accelerators. *See* N.C. Gen. Stat. § 131E-176(16) f1.5a. A copy of the invoice for the linear accelerator in question is attached as Exhibit A (the "Refurbished Linear Accelerator"). The purchase price was \$176,380.00, and included installation costs. The unit shown in Exhibit A is the unit NHFMC proposes to install.

Mr. Smith and Ms. Frisone  
November 1, 2013  
Page 2

All three refurbished linear accelerators, including the unit shown in Exhibit A, have been reported on NHFMC's annual Hospital License Renewal Applications ("HLRA") since the 2006 HLRA. However, none of the three has ever been installed at NHFMC because none of the four linear accelerator vaults at NHFMC has ever been available. The vendor of the refurbished linear accelerators, RS&A of Rural Hall, North Carolina, has been keeping them in storage since 2005. The four vaults at NHFMC have always been continuously occupied by other linear accelerators.

In December 2010, NHFMC received approval to relocate one of its previously-approved linear accelerators from NHFMC to Novant Health Kernersville Medical Center ("NHKMC"). See Exhibit B. This linear accelerator began delivering radiation therapy treatments for patients on September 16, 2013 and is located in the Medical Office Building on the NHKMC campus, in a building where Novant Health-affiliated Radiation Oncologists, Hematologist Oncologists, Surgical Oncologists, Nutritionists, and Oncology Nurse Navigators also have offices. Thus, for the first time, one of the four vaults at NHFMC ("Vault #1) is now available to be used by one of the refurbished linear accelerators (the "Vacated Vault").

The D.L. Davis Cancer Center at NHFMC is a major cancer treatment center for thousands of patients in northwest North Carolina. As radiation therapy sessions typically last for several weeks, and may entail lengthy travel for some patients and their family/friends, it is critical that NHFMC provide timely access to radiation therapy services. To ensure that cancer patients at NHFMC have timely access to radiation therapy services at NHFMC, NHFMC determined that it would make sense to install one of the three refurbished linear accelerators in the Vacated Vault. Specifically, NHFMC proposes to install the Refurbished Linear Accelerator shown in Exhibit A.

NHFMC Vault #1 is now empty because the linear accelerator that formerly occupied that vault has moved to Kernersville. Thus, NHFMC is able to access only three linear accelerators at its Cancer Center on the Winston-Salem hospital campus. On average, NHFMC is serving 97 radiation therapy patients per day on three linear accelerators. The NHFMC Radiation Therapy Director has indicated that this has required scheduling patients for radiation therapy treatments during evening hours and often the day's schedule of radiation therapy treatments is not completed until 9 pm to 10 pm. These three linear accelerators are operational Monday-Friday. One of those three linear accelerators is used primarily for specialized radiation therapy treatments such as Stereotactic Radiosurgery and SABR (stereotactic ablative body radiotherapy) cases which typically tie up that linear accelerator for two to six hours per case. Thus, NHFMC is eager to be able put the empty Vault #1 into productive use with a refurbished linear accelerator.

NHFMC has consistently been one of the five-busiest cancer treatment programs in North Carolina as measured by the annual ESTV-weighted radiation therapy treatment volumes reported in the NHFMC HLRA's and presented in the annual State Medical Facilities Plans ("SMFP"). ESTV-weighting factors account for the complexity of a variety of radiation

therapy treatments, the types of patients treated, and imaging that occurs concurrent with the radiation therapy treatments. For the past three years, the D.L. Davis Cancer Center at NHFMC has operated the 3<sup>rd</sup> or 4<sup>th</sup> busiest radiation therapy treatment program, of the 71 radiation therapy facilities in North Carolina. *See* the tables below.

In addition, the NHFMC linear accelerators have operated consistently at annual volumes well above the North Carolina statewide average annual ESTV-weighted linear accelerator radiation therapy treatments. For example, using FFY 2012 data, the North Carolina statewide annual average ESTV radiation therapy treatments per linear accelerator was 4,967 and NHFMC's annual average per (operational) linear accelerator was 6,181. *See* the tables below.

NHFMC, its physicians, and other highly-trained and expert clinical personnel are a very skilled team and high-quality operators of radiation therapy programs. The types of radiation therapy treatments offered include: external beam radiation therapy, intensity-modulated radiation therapy, and stereotactic radiosurgery. During FFY 2012, while statewide radiation therapy treatment volumes dropped by almost 15,000, NHFMC remained one of the top five busiest radiation therapy programs in North Carolina. This is a testament to the accessibility of the service and the quality of care and outcomes. For more information, *see* the following links:

[www.facingcancerwithforsyth.com](http://www.facingcancerwithforsyth.com) and  
[www.forsythmedicalcenter.org/home/services/cancer.aspx](http://www.forsythmedicalcenter.org/home/services/cancer.aspx)

**FFY 2012 Radiation Therapy Treatment Data**

Hospital	Annual FFY 2012 ESTV Weighted Radiation Therapy Volumes	# of Linear Accelerators	Avg ESTV-Weighted Radiation Therapy Treatments Per Linac*	Rank based on Total Annual ESTV-Weighted Radiation Therapy Treatments
Mission Hospital	19,161	3	6,387	7th
CMC	18,862	3	6,287	8th
NHFMC	24,723	4	6,181	4th
Cone Health	29,386	4	7,347	2nd
NCBH	18,670	4	4,667	9th
UNC	27,450	5	5,490	3rd
Duke	33,593	6	5,599	1st
First Health Moore Regional	18,276	3	6,092	10th
Cape Fear Valley Medical Center	20,967	5	4,193	5th
Rex Healthcare	19,401	4	4,850	6th
<b>Total NC</b>	<b>601,061</b>	<b>121</b>	<b>4,967</b>	

Source: Table 9G, Draft 2014 SMFP (with FFY 2012 data), available at <http://ncdhhs.gov/dhsr/ncsmfp/2014/proposed2014smfp.pdf>

**FFY 2011 Radiation Therapy Treatment Data**

Hospital	Annual FFY 2011 ESTV Weighted Radiation Therapy Volumes	# of Linear Accelerators	Avg ESTV-Weighted Radiation Therapy Treatments Per Linac*	Rank based on Total Annual ESTV-Weighted Radiation Therapy Treatments
Mission Hospital	19,222	3	6,407	6th
CMC	19,612	3	6,537	5th
NHFMC	26,881	4	6,720	3rd
Cone Health	26,642	4	6,660	4th
NCBH	18,310	4	4,578	9th
UNC	30,387	6	5,065	2nd
Duke	35,177	5	7,035	1st
First Health Moore Regional	18,900	3	6,300	7th
Cape Fear Valley Medical Center	18,279	5	3,656	10th
Rex Healthcare	18,898	4	4,724	8th
<b>Total NC</b>	<b>615,889</b>	<b>121</b>	<b>5,090</b>	

Source: Table 9G, 2013 SMFP pages 145-146 (with FFY 2011 data)

**FFY 2010 Radiation Therapy Treatment Data**

Hospital	Annual FFY 2010 ESTV Weighted Radiation Therapy Volumes	# of Linear Accelerators	Avg ESTV-Weighted Radiation Therapy Treatments Per Linac*	Rank based on Total Annual ESTV-Weighted Radiation Therapy Treatments
Mission Hospital	20,415	3	6,805	5 <sup>th</sup>
CMC	16,393	3	5,464	10th
NHFMC	27,242	4	6,811	3rd
Cone Health	25,756	4	6,439	4th
NCBH	17,945	4	4,486	9th
UNC	30,238	6	5,040	2nd
Duke	34,771	8	4,346	1st
First Health Moore Regional	19,954	2	9,977	6th
Cape Fear Valley Medical Center	19,668	5	3,934	7th
Rex Healthcare	19,636	4	4,909	8th
<b>Total NC</b>	<b>600,749</b>	<b>123</b>	<b>4,884</b>	

Source: Table 9E, 2012 SMFP pages 138-139 (with FFY 2010 data)

Total costs to make the Refurbished Linear Accelerator operational are \$338,553.<sup>1</sup> This includes everything, including the Refurbished Linear Accelerator, hardware and

<sup>1</sup> These costs are lower than the costs stated in the July 24 letter because certain accessories/attachments are not needed with the linear accelerator shown in Exhibit A. Thus, NHFMC was able to reduce its capital cost.

software, construction costs, the internal staff time for physics planning and commissioning, information technology services, storage fees paid to RS&A since 2005, and North Carolina licensing fees for linear accelerators, needed to make the Refurbished Linear Accelerator operational in the Vacated Vault. The certified cost estimate is included as Exhibit C. The back up for Exhibit C is found in Exhibits C-1 (a crosswalk), and C-2 through C-9.<sup>2</sup> Exhibit C-10 is a memo from Curtis Whiddon, PhD, Chief Medical Physicist for Novant Health, explaining that no additional shielding is needed to comply with the appropriate radiation dose limits as defined in Chapter 11 of the North Carolina Regulations for Protection Against Radiation. A floor plan showing where the Refurbished Linear Accelerator will go is attached as Exhibit D.

Major medical equipment is defined in the CON Law as:

a single unit or single system of components with related functions which is used to provide medical and other health services and which costs more than seven hundred fifty thousand dollars (\$750,000). In determining whether the major medical equipment costs more than seven hundred fifty thousand dollars (\$750,000), the costs of the equipment, studies, surveys, designs, plans, working drawings, specifications, construction, installation, and other activities essential to acquiring and making operational the major medical equipment shall be included. The capital expenditure for the equipment shall be deemed the fair market value of the equipment or the cost of the equipment, whichever is greater. Major medical equipment does not include replacement equipment as defined in this section.

N.C. Gen. Stat. § 131E-176(14o).

As reflected in Exhibit C, the total cost to operationalize the Refurbished Linear Accelerator, \$338,553 is well below \$750,000. This proposal does not involve the acquisition of a linear accelerator since the Refurbished Linear Accelerator was purchased in June 2005 before the law changed.

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<sup>2</sup> Exhibit C-3 is a Varian license transfer quote. Only the top part of the second page of Exhibit C-3 applies here (the license fee of \$5,167). Nothing else shown on Exhibit C-3 is being acquired. The license fee is included in the \$241,477 amount shown on Rows 13 and 14 of Exhibit C. The license fee was also broken out in line (13a) in the capital cost form, but it should not be double counted. As the crosswalk in Exhibit C-1 shows, the \$241,477 amount on Row 13 and 14 of Exhibit C includes the linear accelerator, the Varian license, the Sun Nuclear QA device and scanner, the storage fees and the Varian engineer expense.



Mr. Smith and Ms. Frisone  
November 1, 2013  
Page 6

I am aware that Cone Health, High Point Regional Health and North Carolina Baptist Hospital ("NCBH")<sup>3</sup> opposed Novant's July 24 letter concerning the substitution of the Refurbished Linear Accelerator. Those comments are moot since we do not propose a substitution of equipment and the July 24 letter has been withdrawn.

To the extent that any of these providers suggests that the CON Law does not permit NHFMC to operationalize the Refurbished Linear Accelerator, their comments are incorrect. The CON Law governs only "[t]he acquisition by purchase, donation, lease, transfer, or comparable arrangement" of a linear accelerator. See N.C. Gen. Stat. § 131E-176(16)f1.5a. The law does not address installing or operating a linear accelerator that was purchased before the law changed in July 2005. The plain language of an unambiguous statute such as this must be applied as written. See *Wiggs v. Edgecombe Cty.*, 361 N.C. 318, 322, 643 S.E.2d 904, 907 (2007). It is not permissible to add language to the statute that is not there. *Sonopress, Inc. v. Town of Weaverville*, 139 N.C. App. 378, 383, 533 S.E.2d 537, 539 (2000). Further, to the extent any of the commenters suggests that an acquisition of equipment is not complete until the equipment is in operation, such a suggestion is without basis. N.C. Gen. Stat. § 131E-176(16)f1.5a. only regulates acquisition; it does not regulate operation. See *Evans v. Diaz*, 333 N.C. 774, 779–80, 430 S.E.2d 244, 247 (1993) ("Under the doctrine of *expressio unius est exclusio alterius*, when a statute lists the situations to which it applies, it implies the exclusion of situations not contained in the list."). Had the General Assembly wanted the law to regulate the operation of linear accelerators, it would have been a simple matter to include the word "operation" in subsection 5a. See *In re Appeal of Bass Income Fund*, 115 N.C. App. 703, 706, 446 S.E.2d 594, 596 (1994). But the General Assembly did not do so.

The Refurbished Linear Accelerator was acquired in June 2005 before the law changed. None of the providers submitting comments suggests otherwise. Indeed, NCBH states that "[i]t is undisputed that FMC obtained these Linacs prior to the August 2005 change in N.C. Gen. Stat. § 131E-176. . . ." See Letter of Matthew J. Fisher to Martha Frisone and Kim Randolph, September 13, 2013, p. 1.<sup>4</sup>

NCBH further states:

Arguably, FMC could place one of its three grandfathered Linacs into operation in the existing vault at FMC, so long as the total costs associated with making the Linac operational did not exceed

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<sup>3</sup> Of these providers, only NCBH operates linear accelerators in Linear Accelerator Service Area 10. Cone Health and its manager, the Charlotte Mecklenburg Hospital Authority, do not own, manage or operate any linear accelerators in Linear Accelerator Service Area 10. Likewise, High Point and its owner, UNC Healthcare, do not own, manage, or operate any linear accelerators in Linear Accelerator Service Area 10.

<sup>4</sup> To the extent that the providers suggest that a need determination in the 2013 SMFP is required, such a suggestion is incorrect. The Refurbished Linear Accelerator was acquired in 2005; subsequent need determinations in the SMFP are irrelevant. Similarly, performance standards in 10A NCAC 14C .1903 are not relevant, since a CON application is not required for NHFMC's proposal.

Mr. Smith and Ms. Frisone  
November 1, 2013  
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\$750,000 threshold set forth in the N.C. Gen. Stat. § 131-176(14o).

*Id.*, p. 2.

As documented in Exhibit C, NHFMC's capital costs are well below the \$750,000 threshold and none of the providers who submitted comments suggests otherwise. *See Cape Fear Mem. Hospital v. N.C. Dep't of Human Resources*, 121 N.C. App. 492, 494, 466 S.E.2d 299, 301 (1996) ("We believe the expansive interpretation proposed by the Department, thereby allowing micro-management over relatively minor capital expenditures, does not effectuate the overriding legislative intent behind the CON process, *i.e.*, regulation of major capital expenditures which may adversely impact the cost of health care services to the patient.").

Since none of the definitions of "new institutional health service" in the CON Law applies to this request, NHFMC respectfully requests a determination that a CON is not required for NHFMC to install the Refurbished Linear Accelerator in the Vacated Vault.

NHFMC thanks the CON Section for its prompt attention to this request. Please let me know if there are any questions.

Sincerely,



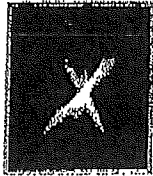
Denise M. Gunter

Enclosures

### **Exhibit List**

- Exhibit A:** June 2005 RS&A Quote for Varian 2011-C Linear Accelerator
- Exhibit B:** 1/4/2011 CON Section No Review Decision For Relocation of Existing NHFMC Linear Accelerator to Kernersville
- Exhibit C:** Total Capital Cost Sheet
- Exhibit C-1:** Worksheet For Total Capital Cost Sheet
- Exhibit C-2:** Elekta Connectivity to Varian quote
- Exhibit C-3:** Varian License Transfer (note: only top part of second page is relevant; nothing else shown on Ex. C-3 is being acquired)
- Exhibit C-4:** Physics Commissioning and testing
- Exhibit C-5:** Sun Nuclear Vendor Quote for Daily QA 3
- Exhibit C-6:** Sun Nuclear scanner
- Exhibit C-7:** Storage fees for linear accelerator shown in Exhibit A
- Exhibit C-8:** Architect's letter
- Exhibit C-9:** Varian engineer MQA expense
- Exhibit C-10:** Physicist's letter regarding shielding
- Exhibit D:** Line Drawing for NHFMC Linear Accelerator Vault #1

Exhibit A



PROVIDING YOU WITH A CHOICE.

PRICE QUOTATION/SALES AGREEMENT

To Purchaser: Forsyth Medical Center  
3333 Silas Creek Parkway  
Winston-Salem, NC 27103

Date: 06-03-05

This quote is firm for 60 days after above date.

Quotation No: KW050603

Qty	Description	Price
One	Refurbished Varian Clinac 2100-C Linear Accelerator	\$166,500.00

Specifications: Dual photon energies. Counterweighted gantry. Electron applicators. New Paint on accelerator fiberglass covers.

5 Electron energies  
100cm target to isocenter distance.  
Photon wedges,  
ETR treatment couch,

This quotation includes the Base Frame, Delivery and Installation.  
RS&A will provide standard site preparation drawings and a service representative to be available during the site planning meeting.  
Purchaser is responsible for providing a clear path to the linear accelerator vault.  
The purchaser is responsible for grouting the base frame in. RS&A will level the base frame and supervise grouting.  
Purchaser is responsible for site preparation: Electrical (including lasers, monitors and intercom), plumbing, mechanical, etc.  
This unit is warranted to operate at all manufacturers specifications at time of acceptance by Forsyth Medical Center,

One Laser Package Includes: (3) Centralite DLL-2s Red Diode Cross Lasers, \$ 8,625.00  
(1) Centralite DLL-4 Red Diode Sagittal Laser,  
These lasers carry a two year parts warranty. The quoted price includes all shipping costs.  
Laser installation will be included.

One Intercom System - Control Console to Treatment Vault Includes: \$ 471.00  
(1) Alphone LEE-3 Master intercom station.  
(1) Alphone Intercom substation LE-A,  
(1) 12V Power Supply  
The quoted price includes all shipping costs. Installation and wiring is the responsibility of the customer,

One Video Observation System Includes: \$ 784.00  
(2) Monitors and (6) cameras  
• Plug and play cameras are powered by monitor  
• Includes six 80' Camera Connection Cables  
The quoted price includes all shipping costs. Installation and wiring is the responsibility of the customer

RS&A will include one year of free storage. Thereafter, there will be a storage fee of \$350.00 per month.

Subject to prior sale: **TOTAL PRICE** \$176,380.00

PAYMENT TERMS

- (i) 35% (\$61,733.00) of purchase price at signing of contract.
- (ii) 45% (\$79,371.00) of purchase price on the earlier of: machine delivery or 12 months after contract signature.
- (iii) 20% (\$35,276.00) of purchase price on completion of the installation and acceptance testing by the customer.

Accepted by Purchaser as quoted

By: [Signature] on: \_\_\_\_\_ Quoted by: [Signature] on: 6-3-05  
Kenneth Wolff, President, RS&A, Inc.

RS&A INCORPORATED

465 FORUM PARKWAY • RURAL HALL, NC - 27045-8927

VOICE: 336-969-0583 / 800-320-4332 FAX: 336-969-0584 - www.rsa-inc.com

EXHIBIT B



North Carolina Department of Health and Human Services  
Division of Health Service Regulation  
Certificate of Need Section  
2704 Mail Service Center v Raleigh, North Carolina 27699-2704

Beverly Hayes Perdue, Governor  
Lanier M. Cansler, Secretary

[www.ncdhs.gov/dhsr](http://www.ncdhs.gov/dhsr)

Craig R. Smith, Section Chief  
Phone: 919-855-3873  
Fax: 919-733-8139

January 4, 2011

Denise M. Gunter  
Nelson Mullins Riley & Scarborough LLP  
380 Knollwood Street, Suite 530  
Winston-Salem, NC 27103

RE: No Review / Forsyth Memorial Hospital, Inc. d/b/a Forsyth Medical Center / Relocation of a linear accelerator / Forsyth County

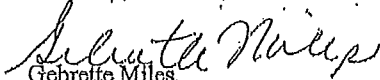
Dear Ms. Gunter:


The Certificate of Need (CON) Section received your letter of December 21, 2010 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.

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In addition, you should contact the Construction Section to determine if they have any requirements for development of the proposed project. 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,

  
Gebrette Miles,  
Project Analyst

  
Craig R. Smith, Chief  
Certificate of Need Section

cc: Construction Section, DHSR



# Nelson Mullins

Nelson Mullins Riley & Scarborough LLP  
Attorneys and Counselors at Law  
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www.nelsonmullins.com

Denise M. Gunter  
Tel: 336.774.3322  
Fax: 336.774.3372  
denise.gunter@nelsonmullins.com

December 21, 2010

VIA FEDEX

Craig Smith, Chief  
Martha Frisone, Assistant Chief  
Gebrette Miles, Project Analyst for Forsyth County  
Certificate of Need Section  
North Carolina Department of Health and Human Services  
701 Barbour Drive  
Raleigh, North Carolina 27603

Re: No Review Request for a Linear Accelerator on the Campus of Kernersville  
Medical Center

Dear Mr. Smith, Ms. Frisone and Ms. Miles:

On April 5, 2010, Forsyth Memorial Hospital d/b/a Forsyth Medical Center ("FMC") filed a declaratory ruling request (the "Original Declaratory Ruling Request") proposing to relocate one of its existing linear accelerators from FMC in Winston-Salem to a new medical office building in Kernersville on the campus of Kernersville Medical Center ("KMC"). A copy of the Original Declaratory Ruling Request is attached hereto as Exhibit A, and is incorporated by reference. On May 18, 2010, the Department denied the Original Declaratory Ruling Request. See Exhibit B.

There were two stated reasons for the denial: (1) relocating the linear accelerator to a medical office building on the campus of KMC prior to completion of KMC is a change in scope of the CON that was issued for KMC and is therefore a new institutional health service; and (2) the cost of the linear accelerator proposed to be relocated, plus the cost of relocating the linear accelerator, together exceed the \$2 million threshold in N.C. Gen. Stat. § 131E-176(16)b, in one year and therefore constitutes a new institutional health service.

FMC has since revised its proposal to resolve the issues raised by the Department. Ms. Brennan of the Attorney General's Office advised that we should submit our revised proposal to the CON Section in the form of no review request. We therefore request a no review

~#4811-9135-2328 v.1~

With twelve office locations in the District of Columbia, Florida, Georgia, Massachusetts, North Carolina, South Carolina, and West Virginia

Mr. Smith  
Ms. Frisone  
Ms. Miles  
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determination based on the facts set forth below.<sup>1</sup> Specifically, the linear accelerator will not treat patients in Kernersville until KMC has been open for a year and a day. Therefore, there will be no change in scope to KMC pursuant to N.C. Gen. Stat. § 131E-176(16)e. The linear accelerator at issue was purchased in 2009 and will not be relocated until sometime in 2012. Therefore, there will be no issue with spending more than \$2 million in the course of one year.

Since the time of the April 5, 2010 Declaratory Ruling Request, we have updated the capital costs. The capital cost to implement the project is \$1,104,570.20, which includes:

- Removing the linear accelerator from FMC (as stated in the Original Declaratory Ruling Request, the linear accelerator proposed to be relocated was installed at FMC as replacement equipment in 2009);
- Moving the linear accelerator to Kernersville;
- All construction needed to make the linear accelerator operational (including the vault, the control room, the exam room, the dressing room, the patient toilet, the staff's office space, the nursing station, the soiled utility room, the clean utility/supply room, and the physics work room);
- Calibration of the linear accelerator, the physics report, and physics acceptance and commissioning of the linear accelerator;
- Hardware and software, and MapCHECK, a dosage verification system;
- Regulatory fees, such as any fees that Licensure, the Construction Section and the Radiation Safety Protection Division of NC DENR may charge;
- Signage;
- Architecture and engineering fees; and
- Contingency.<sup>2</sup>

See Exhibit C.

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<sup>1</sup>Nothing in this letter is intended as an admission by FMC that the Department's May 2010 denial of the Original Declaratory Ruling Request was correct.

<sup>2</sup>If the linear accelerator is added to the costs, the total is \$1,863,565.20. FMC does not believe, however, that it is appropriate to add the costs of the linear accelerator to the total because that cost has already been incurred at the time the linear accelerator (a replacement unit) was purchased and installed at FMC's Cancer Center in 2009.  
~#4811-9135-2328 v.1~

Mr. Smith  
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All other facts set forth in Exhibit A remain the same.

### ANALYSIS

The CON law would require a full review of FMC's proposal if it involved: (1) a change in scope of KMC; (2) a capital expenditure of greater than \$2 million; or (3) an acquisition of a linear accelerator. See N.C. Gen. Stat. §§ 131E-176(16)b., e. and f.1.5a. None of these circumstances exists here.

#### A. No Change in Scope of KMC

N.C. Gen. Stat. § 131E-176(16)e., defines "new institutional health service" as:

A change in a project that was subject to certificate of need review and for which a certificate of need was issued, if the change is proposed during the development of the project or within one year after the project was completed. For purposes of this subdivision, a change in a project is change of more than fifteen percent (15%) of the approved capital expenditure amount or the addition of a health service that is to be located in the facility or portion thereof, that was constructed or developed in the project.

KMC will open in the Spring of 2011. The linear accelerator will not begin treating patients until KMC has been open for 366 days, which is greater than one year. Therefore, there will be no change in scope in the KMC project.<sup>3</sup>

So that the radiation therapy services can be offered in Kernersville on Day 366, FMC will need to construct the vault and move the linear accelerator from Winston-Salem to Kernersville prior to Day 366. These actions do not implicate N.C. Gen. Stat. § 131E-176(16)e, because no health service will be offered until Day 366.

#### B. No capital expenditure greater than \$2 million

The cost to build the vault, relocate the linear accelerator and obtain other items essential to the operation of the linear accelerator is \$1,104,570.20. Even if one "double counts" the cost of the linear accelerator itself (which was purchased in 2009), the project does

<sup>3</sup>Based on Exhibit B, FMC understands that the Department views the "campus" of KMC to include the medical office building and that the radiation therapy services provided in the medical office building should be viewed as part of KMC since both KMC and the radiation therapy services in the medical office building will be licensed under FMC. While FMC does not agree with the Department's position on this issue, the issue is moot since the radiation therapy services will not be offered until Day 366 of KMC's operations.  
~#4811-9135-9328 v.1~



Mr. Smith  
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not exceed \$2 million. As noted above, so that the linear accelerator can treat patients on Day 366 of KMC's operations, construction of the vault and the relocation of the linear accelerator will take place prior to Day 366. However, construction and relocation will not occur until sometime 2011, so there is no issue with spending more than \$2 million in one year.<sup>4</sup>

### C. Not Acquiring a Linear Accelerator

FMC will not be acquiring a linear accelerator as part of this project; rather, the project involves the relocation of an existing linear accelerator. Thus, there is no issue with N.C. Gen. Stat. § 131B-176(16)f1.5a, which requires a CON for the acquisition of a linear accelerator.

Further, there is no CON with which the linear accelerator is required to comply. In Kernersville, FMC will continue to offer the same service on the linear accelerator that it now offers in Winston-Salem: radiation therapy services. The relocation will occur within Forsyth County, so there will be no change in the inventory of linear accelerators within Forsyth County as part of this project. Additionally, the Department has previously approved a linear accelerator relocation in Mecklenburg County that involved comparable distances. See Exhibit D.

Accordingly, the proposed relocation is not a "new institutional health service" that is regulated by the CON Law.

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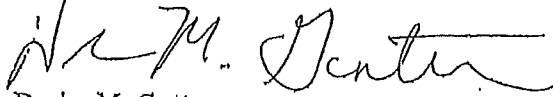
<sup>4</sup>Based on Exhibit B, FMC understands that the Department aggregates the costs incurred over a one year period to determine if a proposal crosses the \$2 million threshold in N.C. Gen. Stat. § 131B-176(16)b. While FMC disagrees with this interpretation, the issue is moot because the costs for the vault construction and linear accelerator relocation (CY 2011) will not be incurred in the same year (CY 2009) as the cost for acquiring the linear accelerator.

Mr. Smith  
Ms. Frisone  
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CONCLUSION

Based on the facts set forth in this letter, FMC respectfully requests that the CON Section determine that the proposal described in this letter is not subject to CON review.

Sincerely,



Denise M. Gunter

Enclosures

cc: Stephanie Brennan (via FedEx)(with enclosures)

**PROJECT CAPITAL COST: Novant Health Forsyth Medical Center Linear Accelerator Vault #1 Equipment Backfill (Stored Linac Unit)-Revised October 2013**

<b>A. Site Costs</b>	
(1) Full purchase price of land	\$0
(2) Closing costs	\$0
(3) Site Inspection and Survey	\$0
(4) Legal fees and subsoil investigation	\$0
(5) Site Preparation Costs Include: Soil Borings, Clearing and Grading, Roads and Parking, Sidewalks, Water and Sewer, Excavation and Backfill, Termite Treatment	\$0
Sub-Total Site Preparation Costs	\$0
(6) Other (N/A)	\$0
<b>(7) Sub-Total Site Costs -Rows (1)-(6)</b>	<b>\$0</b>
<b>B. Construction Contract</b>	
(8) Cost of Materials Include: General Requirements, Concrete/Masonry, Woods/Doors & Windows/Finishes, Thermal & Moisture Protection, Equipment/Specialty Items, Mechanical/Electrical	
Sub-Total Cost of Materials	\$12,000
(9) Cost of Labor	\$18,000
(10) Other (N/A)	\$0
<b>(11) Sub-Total Construction Contract -Rows (8)-(11)</b>	<b>\$30,000</b>
<b>C. Miscellaneous Project Costs</b>	
(12) Building Purchase	N/A
(13) & (14) Fixed & Movable Equipment Purchase (Equipment, Equipment Components, & Installation)	\$241,477
(13a) Other Equip-Related Components (Varian License, Hardware & Software for Linac Control Room)	\$5,167
(14a) Information Technology (Software, Hardware)	\$32,725
(15) Furniture	\$0
(16) Landscaping	\$0
(17) Consultant & Other Fees	
Architect/Engineering Fees (+ Reimbursables)	\$10,000
DHSR Review Fee	\$1,800
NC State Linear Accelerator License	\$1,500
Physics Commissioning & Testing	\$14,051
SubTotal Consultant Fees	\$27,351
(18) Financing Costs (e.g. Bond, Loan, etc.)	
(19) Interest During Construction	\$0
(20) Other: Project Contingency	\$2,000
<b>(21) Sub-Total Miscellaneous-Rows (12)-(20)</b>	<b>\$308,553</b>
<b>Total Capital Cost of Project (Sum A-C above-Rows (7), (11), &amp; (21))</b>	<b>\$338,553</b>

(note: this license fee is included in the \$241,477 in Row 13-14)

Actually equals \$338,553

I certify that, to the best of my knowledge, the above construction related costs of the proposed project are complete and correct.

Nelson C Soyars 10/23/13 (Signature of Licensed Architect or Engineer)

I assure that to the best of my knowledge, the above capital costs for the proposed projects are complete and correct and that it is my intent to carry out the proposed project as described.

Jette Drummond (Signature of Officer Authorized to Represent Provider/Company)

Exhibit C-1

Backfill Empty Vault #1 at FMC with Refurbished Varian Linear Accelerator Model 2100C  
 Capital Cost Worksheet--Revised Oct. 2013

Row Number	Description	Cost Category	COST	Exhibit #
5	Cost of Linac (includes installation)	Equipment	\$176,380	Exhibit A
6	Elekta Connectivity to Varian	IT	\$32,725	Exhibit C-2
7	Varian: License Transfer	Equip-Related License	\$5,167	Exhibit C-3; only top part of second page applies here
8	NC State Linear Accelerator Licensure	License	\$1,500	Estimate by Novant Radiation Physicist
9	Physics commissioning & testing	Other	\$14,051	Exhibit C-4 Based on 2013 Salary info
10	Sun Nuclear Daily QA device	Equipment	\$8,250	Exhibit C-5 expires 8/30/13
11	Sun Nuclear scanner	Equipment	\$4,250	Exhibit C-6 expires 8/30/13
12	Storage Fees Linac (SN#318) - RS&A	Refurb Linac	\$31,850	Exhibit C-7 until 12/31/13
13	DHSR review fee	Construction	\$1,800	Estimate by Novant Facilities Planning
14	Materials	Construction	\$12,000	Exhibit C-8
15	Labor	Construction	\$18,000	Exhibit C-8
16	A&E fee	Construction	\$10,000	Exhibit C-8
16A	Project Contingency	Construction	\$2,000	Estimate by Novant Facilities Planning
17	Varian Engineer MCA expense	Equipment	\$15,580	Exhibit C-9
18	Computer Hardware for Linac Control Room	IT	\$5,000	PCs & Printer ordered thru Novant IT
	<b>Total</b>		<b>\$338,553</b>	

valid until 8/1/13  
 valid until 12/31/13

Row #s on This Worksheet	Found on State's Capital Cost Form
Rows 6 & 18	IT Subtotal \$37,725 Row 14
Row 8	NC Linac License \$ 1,500 Row 17
Rows 5, 7, 10, 11, 12, 17	Equipment Subtotal \$241,477 Rows 13 and 14; Varian License of \$5,167 is included in the 241,477 subtotal on Row 13 & 14
Rows 12, 13, 14, 15, 16, 16A	Construction Subtotal \$ 43,800 Rows 8-11; 17-20
Row 9	Other \$ 14,051 Row 17
	<b>Total Capital Cost \$ 338,553</b>

File: CON Cost Worksheet Linac backfill BF KD 10222013.xls



EXHIBIT  
C-2

Quotation Number: 2013-26117-CB Version Number: 2 Quotation Date: May 28, 2013

Valid Until: August 1, 2013

*Prepared For:*

Noyant Health  
ACCOUNTS PAYABLE PO BOX 25000  
WINSTON SALEM, North Carolina 27114-5000  
US  
(t) +1 336-277-1075  
(f) +1 910-718-9257  
Currency: USD

*Prepared By:*

Chris Broyles  
North Carolina Sales Client Manager  
Elekta Inc.  
400 Perimeter Center Terrace, Suite 60  
Atlanta, GA 30346  
(t) 704-322-3493  
(c) +1 704-698-8788  
chris.broyles@elekta.com

Elekta is pleased to submit the following Quotation for the products, software licenses, and/or services described herein at the prices and terms stated.

MOSAIQ®	Offer Price:	\$32,725.00
---------	--------------	-------------

*The price under this Quotation reflects a discount of \$6,775.00 USD. If customer is an entity that reports its costs on a cost report required by the Department of Health and Human Services of a state healthcare program, the customer must fully and accurately report any discount that has been provided by Elekta under this final agreement between the parties in the applicable cost report and provide information upon request by the Secretary of Health and Human Services or a state agency.*

*Subject to Elekta, Inc. Terms & Conditions or those previously negotiated.*

*State, local and other taxes, and import/export licenses are not included in this Quotation.*



**ELEKTA**

Quotation Number: 2019-28117-CB Version Number: 2 Quotation Date: May 28, 2019

Valid Until: August 1, 2019

## Scope of Supply

Part Number	Name	Qty	Extended List Price	License Term
45010001000IQRO	Connectivity to Varian Linac (TBD) Interface to Varian Linac Treatment Machine Connectivity connects the MOSAIQ radiation oncology EMR directly to a linear accelerator to verify that the machine is set up according to plan and electronically records actual setup parameters.	1	\$38,500.00	Perpetual
Total Offer Price for				\$32,725.00



ELEKTA

Quotation Number: 2013-26117-CB Version Number: 2 Quotation Date: May 28, 2013 Valid Until: August 1, 2013



**Quotation**

MNM20090827-004A

EXHIBIT  
C-3

Page: 1

*Quotation For:*

K.D. Lanning  
 Radiation Oncology  
 Forsyth Regional Cancer Center  
 3333 Silas Creek Pkwy  
 Winston Salem, NC 27103  
 (336) 718-8599  
 FAX: (336)277-7689

*Please address inquiries and replies to:*

Susan Thomas  
 Varian Medical Systems  
 2250 Newmarket Parkway  
 Suite 120  
 Marietta, GA 30067  
 (770) 955-1367 FAX: (678) 255-3850

Your Reference:	Quotation Firm Until: December 31, 2013
FOB Point: US\$ FOB: Destination	Shipping Allocation: 90 DAYS ARO
Payment Terms: See Terms and Conditions	Varian Terms and Conditions of Sale 1682T Attached

**Forsyth Regional Cancer Center  
 License Transfer for Clinac 2100C  
 s/n TBD  
 PV Workstation Upgrade for CL  
 2100C s/nTBD  
 MLC Workstation Upgrade for CL  
 2100C s/nTBD**

Forsyth Regional Cancer Center Quotation Total of: USD \$19,706 Accepted by: Signature: _____ Name: _____ Title: _____ Date: _____ For this purchase, we designate <u>NOVATION</u> as our Institution's Primary Group Purchasing Organization affiliation. Any change will be indicated below: <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	Varian Medical Systems Submitted by: _____ _____ (Signature) Name: Susan Thomas Title: District Manager
--	--

*This document is confidential and intended solely for the information and benefit of the immediate recipient and Varian*



Item	Qty	Product Description	Offer Price
<b>Section 1 License Transfer for CL 2100C</b>			
1.01	1	License Transfer for C-Series Clinac When ownership of a C-Series Clinac occurs, the new owner is liable to Varian for the transfer of Clinac software (firmware) ownership. The license transfer is in addition to the required Quality Audit for non-Varian serviced machines.	5,167.00
Section Total \$			5,167.00

<b>Section 2 PV Workstation Upgrade for CL 2100C</b>			
2.01	1	PortalVision Workstation Upgrade Upgrade PortalVision Workstation hardware with latest manufacturing released hardware. Software upgrade must be purchased separately.	5,167.00
2.02	1	PortalVision Software App Upg Standalone Upgrade includes latest software release of the PortalVision Application for Version 7. Applies to Standalone environments.  LICENSE: PortalVision software license for ONE (1) PortalVision connected to C-Series Clinac  FEATURES: 1. 'Next field' button versus manual selection of next field name to be imaged. 2. Ability to acquire IMRT Integrated Images. 3. Digital graticule. 4. Enhanced filters for selection of images to be reviewed. 5. More robust Field Edge Detection. 6. Improved automated matching with 'mutual information algorithm'. 7. New image review display filters. 8. Pre-requisite software for Portal Dosimetry capability (separate purchasable option).	6,200.00
Section Total \$			11,367.00

<b>Section 3 MLC Workstation Upgrade for CL 2100C</b>			
3.01	1	MLC Workstation Hardware Upgrade Upgrade MLC Workstation hardware with latest manufacturing released hardware. Software upgrade must be purchased separately. For CR or Millennium MLC design.	3,172.00
Section Total \$			3,172.00



# Quotation

MNVM20130607'006A

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Forsyth Regional Cancer Center, Winston Salem, NC

Item	Qty	Product Description	Offer Price
Quotation Total \$			19,708.00

## Terms & Conditions of Sale

This offer is subject to credit approval and is exclusive of any applicable sales taxes or duties.

Unless otherwise provided in this Quotation, Varian warrants that for a period of ninety (90) days after completion of installation, any upgrade for Varian Hardware shall operate in conformity with its applicable Specifications.

Varian shall be entitled to perform a system performance audit prior to installation of any upgrade Products. If the audit reveals that the system is not operating to Varian specifications, the Customer is responsible for bringing the system to the Varian specifications at its own cost as a prerequisite condition to Varian's installation of the upgrade Products.

\* Freight and insurance for upgrade products is included unless otherwise specified.

\* Installation is included in the upgrade price.

\* Hardware is not included unless specified in the product description.

NOVATION payment terms are as follows:

10% with purchase order

85% upon shipment to hospital

5% upon installation

For orders equal or less than \$75K, 100% upon shipment, net 30.

SHIPPING Terms: Destination

FINANCING AVAILABLE: For lease and finance plans, call Tony Susen, Director of Varian Customer Finance, at (608) 668/4609.

EXHIBIT C-4



June 10, 2013

Re: CON Exemption request to install Linac at FMC

C/O: Denise Gunter

~~To Whom It May Concern:~~

Included in the cost estimate to implement a Varian 2100C Linear accelerator at Novant Health Forsyth Medical Center is the salary cost for acceptance testing and commissioning. The work for acceptance and commissioning of a Linear Accelerator will be done by Novant Health employed medical physics staff. The average hourly rate of a Medical Physicist at Forsyth Medical Center; based on 2013 salary information is \$78.06/hr. The average amount of time to perform this testing and commissioning is about 170 hours, or 4 ½ work weeks.

$\$78.06 * 180 \text{ hours} = \$14,050.80$

Thank you,

*Katherine D. Lanning*

Katherine D. Lanning RN, MSN, OCN

Director, Radiation Oncology

Novant Health

EXHIBIT C-5



425-A Pineda Court  
Melbourne, FL 32940  
Phone: +1 321-269-6862  
Fax: +1 321-757-0066

# Quotation

Questions? Contact: Andrea Matarazzo x331 AndreaMatarazzo@sunnuclear.com

BILL TO

Forsyth Regional Cancer Center  
Katherine Lanning  
3333 Silas Creek Parkway  
Winston-Salem, NC 27103

SHIP TO

Forsyth Regional Cancer Center  
Katherine Lanning  
3333 Silas Creek Parkway  
Winston-Salem, NC 27103

Date	06/10/13
Quote #	00331636
Date Exp	08/30/13
Terms	Net 30
Ship Via	UPS Ground
Service	
FOB	Shipping Point

For Purchase Order processing, please email orders to [Orders@sunnuclear.com](mailto:Orders@sunnuclear.com)

Item	Part #	Description	Qty	Unit Price	Extended Price
1	1093000-0	Daily QA 3 13 total ion chambers for daily output, flatness and symmetry, electron & photon energy trending (no buildup or additional attenuation required). 12 total diode detectors for Light : Radiation field coincidence. Real-time air density correction with results displayed on PC Windows software. Includes advanced comprehensive database manager for graphical data presentation and daily therapist guide, 25 meter power-data cable, USB power-data interface, USB cable, 1 year warranty included. See product datasheet for minimum PC requirements.	1	\$ 8,250.00	\$ 8,250.00
Total Investment:					\$ 8,250.00

This quotation is a confidential document containing privileged information that is not to be disclosed to parties outside of quotee and Sun Nuclear Corporation. Disclosure of this information to third parties voids terms outlined in the quotation.

06/10/13  
Quote # 00331636  
Prepared by Andrea Matarazzo



425-A Pineda Court  
Melbourne, FL 32940  
Phone: +1 321-259-0862  
Fax: +1 321-767-0066

# Quotation

Questions? Contact: Andrea Matarazzo x331 AndreaMatarazzo@s-unnuclear.com

## Sun Nuclear Corporation Terms & Conditions

1. All purchases approved for Net terms are due 30 days from the shipping date or services.
2. Shipping terms are FOB Shipping Point
3. Payment with credit cards is restricted to SNC products and services of less than \$2,600. A 3% convenience charge will be added to any payment processed for special order products (resale items) and any SNC product of service with a sales price greater than \$2,500
4. Prices do not include applicable taxes. SNC will collect and remit the appropriate taxes for some U.S. states, if applicable taxes are not on Customer Purchase Order, Customer is responsible for remittance of appropriate taxes.
5. Undisputed past due accounts are subject to a late service fee charge of 18% per annum (1.5% per month), or the maximum allowed by law.
6. Any payment made in respect of credit transactions shall first be applied to the accumulated service charge, if any, and thereafter to the principal amount of the outstanding debt.
7. SNC will assess handling charges in the amount of \$100.00 for any dishonored check received from the Customer.
8. All products shipped are subject to recourse by SNC until paid in full. Upon request from SNC, Customer agrees to immediately relinquish and return all unpaidd equipment in its original condition to the SNC, subject to a 20% restock fee or costs required to return equipment to its original condition, whichever is higher.
9. The parties agree that the Customer's sole and exclusive remedy for defective products shall be limited to the stated warranty provided by SNC for its manufactured products, or the warranty assigned by SNC to the extent provided by the manufacturer (resale items) of the particular component or system. The Customer agrees that no other remedy (including, but not limited to, incidental or consequential damages for lost profits, lost sales, injury to person or property, transportation charges or other incidental or consequential loss) shall be available.
10. Customers who cancel or postpone scheduled training/education/installation services are subject to cancellation fees (minimum of \$500 not to exceed \$3,000) for resource allocations and non-recoverable scheduling costs (i.e., hotels, airfare, reservations, etc.).
11. Customer agrees to advise SNC of any defective product(s) and/or any disputed invoice(s) in writing within 10 days of receipt. Failure to properly notify SNC of any dispute and/or defective goods constitutes a waiver of any and all such disputes, provided, however, that this provision shall in no way affect or limit Customer's rights under SNC warranty, or where such is limited by law.
12. Subject to SNC approval, Customer may return unused product within 30 days from the shipping date subject to a 20% restocking fee and Customer must pay for the return shipping charges. Generally, returns after 30 days will not be considered. All approved returns must have an RMA (Return Materials Authorization) number issued by SNC. Special order products (Resale items) cannot be returned without the express written consent of the manufacturer. Customer must pay for the return shipping charges. Unauthorized returns i.e., those without an RMA # provided) will be rejected and returned at Customer's expense.
13. SNC Support Contracts and Maintenance Agreements are non-refundable or transferable. Multi-year SNC Support Contracts may not be cancelled for current coverage period amounts that have been billed to the customer by SNC. Remaining Multi-year SNC Support Contract coverage periods that have not been billed to the customer by SNC may be cancelled if the customer no longer offers Radiation Oncology Services or should SNC no longer be able to provide services associated with the Agreement. SNC at its discretion may prorate the charges should one of these circumstances arise.
14. Customer hereby agrees to indemnify SNC for all collection fees, legal fees and all other fees and expenses which SNC incurs, should Customer's account be in arrears.
15. SNC software is only licensed to the original purchaser and the license is not transferable.
16. SNC requires that when (i) the standard warranty has ended and lapsed by more than 365 days, (ii) a previously purchased contract has expired and lapsed by more than 365 days or (iii) there has been a transfer of product ownership, the equipment must be inspected and a reinstatement fee paid before placing such equipment under a new support services contract. The inspection and reinstatement fee is non-refundable and does not apply to the purchase of the support services contract. Equipment which has had a transfer of ownership and has not been inspected by SNC is eligible for standard repair pricing.
17. SNC reserves the right to modify these terms, require advance payment, and cancel any order.
18. SNC sales representatives do not have the authority to bind SNC or make any representation in respect of credit or any other matter which deviates from standard policy. All special arrangements or requirements must be confirmed in writing with an authorized person from SNC.

Rev. 10/13/2012



**SUN NUCLEAR**  
corporation

425-A Pineda Court  
Melbourne, FL 32940  
Phone: +1 321-259-6862  
Fax: +1 321-757-0066

## Quotation

Questions? Contact: Andrea Matarazzo x331 AndreaMatarazzo@sunnuclear.com

<b>Customer's Acceptance</b> (ONLY to be completed in lieu of a hard copy purchase order)	
By:	_____
Printed Name:	_____
Title:	_____
Date:	_____ PO#: _____
After completion, please scan and email to <a href="mailto:Orders@sunnuclear.com">Orders@sunnuclear.com</a> or fax to +1 321-757-0066.	



**SUN NUCLEAR**  
corporation

425-A Pineda Court  
Melbourne, FL 32940  
Phone: +1 321-269-6862  
Fax: +1 321-757-0066

**EXHIBIT C-6**  
**Quotation**

Questions? Contact: Andrea Matarazzo x331 AndreaMatarazzo@sunnuclear.com

**BILL TO**  
Forsyth Regional Cancer Center  
Katherine Lanning  
3333 Silas Creek Parkway  
Winston-Salem, NC 27103

**SHIP TO**  
Forsyth Regional Cancer Center  
Katherine Lanning  
3333 Silas Creek Parkway  
Winston-Salem, NC 27103

Date: 06/10/13  
Quote #: 00331637  
Date Exp: 06/30/13  
Terms: Net 30  
Ship Via: UPS Ground  
Service:  
FOB: Shipping Point

For Purchase Order processing, please email orders to [Orders@sunnuclear.com](mailto:Orders@sunnuclear.com)

Item	Part #	Description	Qty	Unit Price	Extended Price
1	1233000-0	1D Scanner 1D Scanner positions detectors for calibration measurements with depths up to 300 mm (with 0.1 mm accuracy). Features include automatic positioning of the physical center of the detector to water surface and support for all common electron cones. Optional scanning software module is also available to enable full PDD functionality (1230-1DS). Control is through a local control display or through a single cable connection to a PC using included software. Includes universal detector holder and vertical holder. Optional leveling platform is available (1080000-0).	1	\$ 4,250.00	\$ 4,250.00
<b>Total Investment:</b>					<b>\$ 4,250.00</b>



425-A Pineda Court  
Melbourne, FL 32940  
Phone: +1 321-259-6862  
Fax: +1 321-757-0066

## Quotation

Questions? Contact: Andrea Matarazzo x331 AndreaMatarazzo@sunnuclear.com

This quotation is a confidential document containing privileged information that is not to be disclosed to parties outside of quotee and Sun Nuclear Corporation. Disclosure of this information to third parties voids terms outlined in the quotation.

### Sun Nuclear Corporation Terms & Conditions

1. All purchases approved for Net terms are due 30 days from the shipping date or services.
2. Shipping terms are FOB Shipping Point.
3. Payment with credit cards is restricted to SNC products and services of less than \$2,500. A 3% convenience charge will be added to any payment processed for special order products (resale items) and any SNC product of service with a sales price greater than \$2,500.
4. Prices do not include applicable taxes. SNC will collect and remit the appropriate taxes for some U.S. states. If applicable taxes are not on Customer Purchase Order, Customer is responsible for remittance of appropriate taxes.
5. Undisputed past due accounts are subject to a late service fee charge of 18% per annum (1.6% per month), or the maximum allowed by law.
6. Any payment made in respect of credit transactions shall first be applied to the accumulated service charge, if any, and thereafter to the principal amount of the outstanding debt.
7. SNC will assess handling charges in the amount of \$100.00 for any dishonored check received from the Customer.
8. All products shipped are subject to recourse by SNC until paid in full. Upon request from SNC, Customer agrees to inventory, relinquish and return all unpaid equipment in its original condition to the SNC, subject to a 20% restock fee or costs required to return equipment to its original condition, whichever is higher.
9. The parties agree that the Customer's sole and exclusive remedy for defective products shall be limited to the stated warranty provided by SNC for its manufactured products, or the warranty assigned by SNC to the extent provided by the manufacturer (resale items) of the particular component or system. The Customer agrees that no other remedy (including, but not limited to, incidental or consequential damages for lost profits, lost sales, injury to person or property, transportation charges or other incidental or consequential loss) shall be available.
10. Customers who cancel or postpone scheduled training/education/installation services are subject to cancellation fees (minimum of \$500 not to exceed \$3,000) for resource allocations and non-recoverable scheduling costs (i.e., hotels, airfare, reservations, etc.).
11. Customer agrees to advise SNC of any defective product(s) and/or any disputed invoice(s) in writing within 10 days of receipt. Failure to properly notify SNC of any dispute and/or defective goods constitutes a waiver of any and all such disputes, provided, however, that this provision shall in no way affect or limit Customer's rights under SNC warranty, or where such is limited by law.
12. Subject to SNC approval, Customer may return unused product within 30 days from the shipping date subject to a 20% restocking fee and Customer must pay for the return shipping charges. Generally, returns after 30 days will not be considered. All approved returns must have an RMA (Return Materials Authorization) number issued by SNC. Special order products (Resale Items) cannot be returned without the express written consent of the manufacturer. Customer must pay for the return shipping charges. Unauthorized returns (i.e., those without an RMA # provided) will be rejected and returned at Customer's expense.
13. SNC Support Contracts and Maintenance Agreements are non-refundable or transferable. Multi-year SNC Support Contracts may not be cancelled for current coverage period amounts that have been billed to the customer by SNC. Remaining Multi-year SNC Support Contract coverage periods that have not been billed to the customer by SNC may be cancelled if the customer no longer offers Radiation Oncology Services or should SNC no longer be able to provide services associated with the Agreement. SNC at its discretion may prorate the charges should one of these circumstances arise.
14. Customer hereby agrees to indemnify SNC for all collection fees, legal fees and all other fees and expenses which SNC incurs should Customer's account be in arrears.
15. SNC software is only licensed to the original purchaser and the license is not transferable.
16. SNC requires that when (i) the standard warranty has ended and lapsed by more than 365 days, (ii) a previously purchased contract has expired and lapsed by more than 365 days or (iii) there has been a transfer of product ownership, the equipment must be inspected and a reinstatement fee paid before placing such equipment under a new support services contract. The inspection and reinstatement fee is non-refundable and does not apply to the purchase of the support services contract. Equipment which has had a transfer of ownership and has not been inspected by SNC is eligible for standard repair pricing.
17. SNC reserves the right to modify these terms, require advance payment, and cancel any order.
18. SNC sales representatives do not have the authority to bind SNC or make any representation in respect of credit or any other matter which deviates from standard policy. All special arrangements or requirements must be confirmed in writing with an authorized person from SNC.

Rev. 10/13/2012





425-A Pineda Court  
Melbourne, FL 32940  
Phone: +1 321-259-0862  
Fax: +1 321-757-0066

# Quotation

Questions? Contact: Andrea Matarazzo x331 [AndreaMatarazzo@sunnuclear.com](mailto:AndreaMatarazzo@sunnuclear.com)

Customer's Acceptance (ONLY to be completed in lieu of a hard copy purchase order)	
By:	_____
Printed Name:	_____
Title:	_____
Date:	_____ PO#: _____
After completion, please scan and email to <a href="mailto:Orders@sunnuclear.com">Orders@sunnuclear.com</a> or fax to +1 321-757-0066.	

Storage Cost for FMC Refurbished Linear Accelerator

VARIAN Clinac 2100C (Serial #318)

Vendor Quote Signed 6/3/2005

Time Period	Year One	\$0 First Year Storage Free per Vendor Quote (Exhibit A)
6/3/2006-12/31/2006	Partial Year Two	\$ 2,450 = 7 Months X \$350/Month per vendor quote (Exhibit A)
	7-Month Interim	
1/1 - 12/31, 2007	Year Three	\$ 4,200 = 12 Months X \$350/Month per vendor Quote (Exhibit A)
1/1 - 12/31, 2008	Year Four	\$ 4,200 = 12 Months X \$350/Month per vendor Quote (Exhibit A)
1/1 - 12/31, 2009	Year Five	\$ 4,200 = 12 Months X \$350/Month per vendor Quote (Exhibit A)
1/1 - 12/31, 2010	Year Six	\$ 4,200 = 12 Months X \$350/Month per vendor Quote (Exhibit A)
1/1 - 12/31, 2011	Year Seven	\$ 4,200 = 12 Months X \$350/Month per vendor Quote (Exhibit A)
1/1 - 12/31, 2012	Year Eight	\$ 4,200 = 12 Months X \$350/Month per vendor Quote (Exhibit A)
1/1 - 12/31, 2013	Year Nine	\$ 4,200 = 12 Months X \$350/Month per vendor Quote (Exhibit A)
<b>Total Storage Cost</b>		<b>\$ 31,850</b>



architecture

engineering

interior design

planning

October 23, 2013

Mr. Barry Harper  
Novant Health  
3600 Country Club Road, Suite 102  
Winston-Salem, NC 27104

Re: Forsyth Medical Center  
Linear Accelerator #1 Replacement

Dear Barry:

As required for the Certificate of Need application to be submitted by Peterson Associates, we have prepared a project construction cost estimate and do certify the following:

Construction Cost

Labor:	\$18,000.00
Material:	\$12,000.00
Total CERTIFIED COST:	\$30,000.00

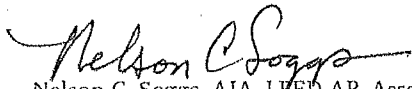
Related Cost (A/E Fees, other)	\$10,000.00
Total Cost:	\$40,000.00

The costs as projected are based on the work required to install a replacement linear accelerator in the existing Vault #1 at FMC. To the best of our knowledge and based upon our experience with similar projects, we concur that these costs are reasonable, accurate, and complete.

Please note that this certification does not include other miscellaneous costs, which may be included in the total project costs.

Sincerely,

PETERSON ASSOCIATES, p.a.

  
Nelson C. Soggs, AIA, LEED AP, Associate  
Sr. Project Manager

NCS/pfm

2115 Rexford Road  
Suite 500  
Charlotte NC 28211  
P704.364.3400  
F704.364.7080  
www.peterson-ae.com

EXHIBIT C-9

Varian Medical Systems  
2250 Newmarket Pkwy, Suite 120  
Marietta, Georgia 30067  
tel 770.955.1775  
fax 770.984.6249  
www.varian.com

Date: June 2013  
To: K.D. Lanning, Forsyth Medical Center  
From: Dan Spurgeon, Varian Medical Systems

Pages: 1

Re: Maintenance Quality Audit (MQA) for 2100C SN TBD (C#1287)

Below is an estimation of the costs associated with MQA on a 2100C for Forsyth Regional Medical Center. The MQA will identify areas of refurbishment in order to improve reliability and performance, extend the life of the Clinac, and make it eligible for a service contract. Below is a breakdown of the estimated time and cost associated with a MQA. The quote below is for a Senior Service Rep and a local Service Rep. Invoice will reflect actual hours. Please let me know if you have any questions.

Travel to site, 4.0 hrs @ \$240.00 / hr.....	\$960.00
Overnight charge, 2 nights @ \$230.00.....	\$460.00
16 hours of labor for Senior Field Service Engineer @300/hr.....	\$4,800.00
4 hours of OT labor for Senior Field Service Engineer @\$450/hr.....	\$1,800.00
16 hours of labor for Local Service Rep @ \$300/hr.....	\$4,800.00
4 hours of OT labor for Local Service Rep @\$450/hr.....	\$1,800.00
Return Travel, 4.0 hrs @ \$240.00 / hr.....	\$960.00
<b>Total estimate for the MQA on 2100C, s/n TBD.....</b>	<b>\$15,580.00</b>

NOTE: Any parts that need replacing or additional work requested will be added to the invoice or billed to a separate purchase order. Applicable sales tax will be applied to invoice.

Customer Acceptance \_\_\_\_\_ Date: \_\_\_\_\_

Purchase Order Number: \_\_\_\_\_

EXHIBIT C-10



June 10, 2013  
Re: Radiation Vault Shielding Evaluation  
C/O: Denise Gunter

To Whom It May Concern:

The linear accelerator area designated as Vault 1 at Novant Health Forsyth Medical Center is currently shielded and approved by the State of North Carolina's Department of Health and Human Services for radiation treatments with a maximum photon energy of 15MV. No additional shielding modifications will be necessary to comply with the appropriate radiation dose limits as defined in Chapter 11 of the North Carolina Regulations for Protection Against Radiation for the installation of a 6MV Varian 2100C linear accelerator.

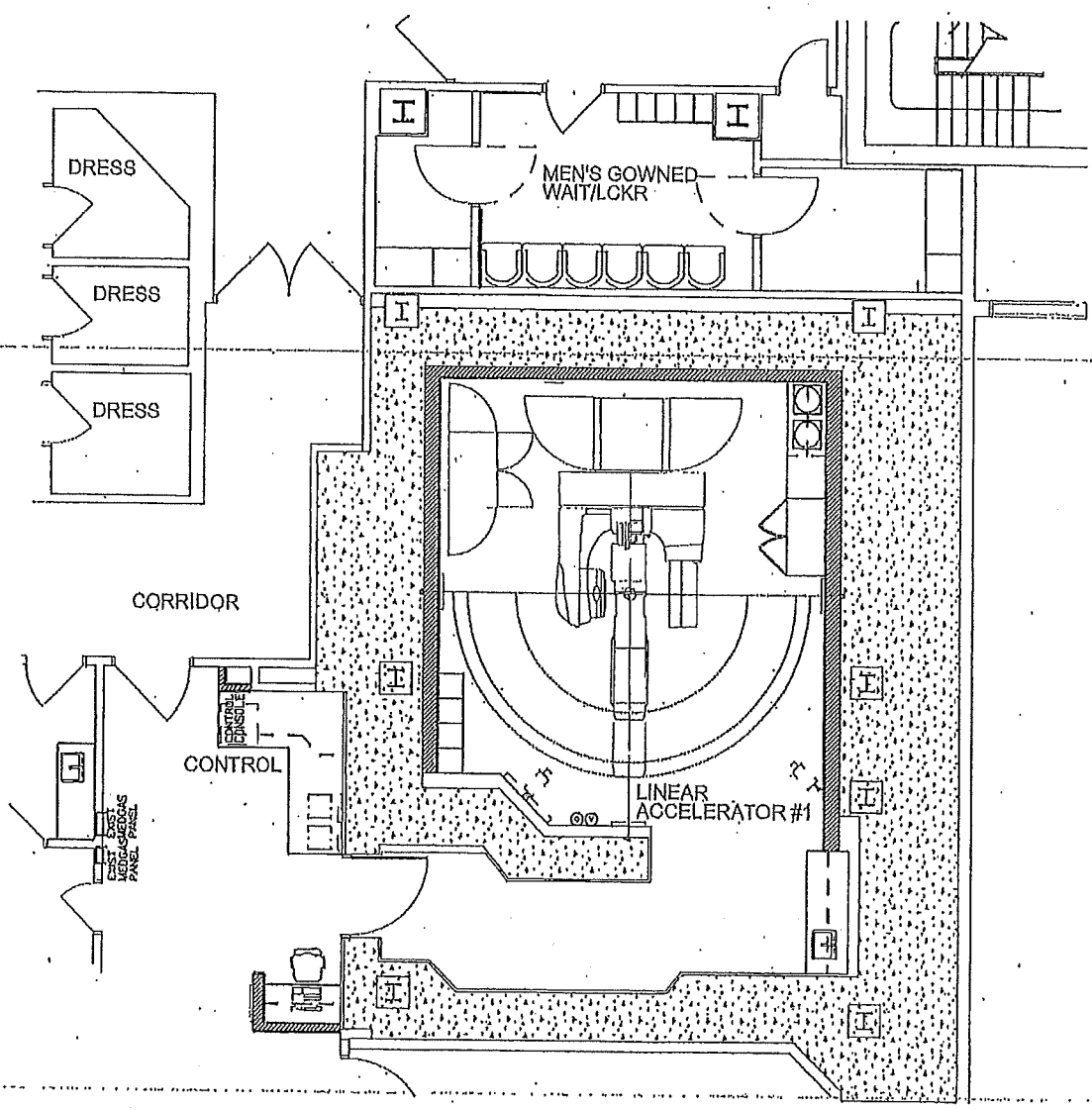
As a board-certified medical physicist by the American Board of Medical Physics, I am qualified to perform radiation shielding calculations for Novant Health.

Thank you,

A handwritten signature in cursive script that reads "Curtis Whiddon".

Curtis Whiddon, PhD  
Chief Medical Physicist  
ABMP Certified Physicist

EXHIBIT D



PARTIAL LOWER LEVEL FLOOR PLAN  
LINEAR ACCELERATOR VAULT #1



FORSYTH MEDICAL CENTER  
WINSTON-SALEM, NC