



North Carolina Department of Health and Human Services  
Division of Health Service Regulation

Pat McCrory  
Governor

Aldona Z. Vos, M.D.  
Ambassador (Ret.)  
Secretary DHHS

Drexdal Pratt  
Division Director

**RESPONSE REQUIRED**

October 29, 2013

Catharine Cummer  
3100 Tower Boulevard, Suite 1300  
Durham, NC 27707

**Conditional Approval**

Project I.D. #: J-10164-13  
Facility: Duke Raleigh Hospital  
Project Description: Replace Linear Accelerator  
County: Wake  
FID #: 923421

Dear Ms. Cummer:

The Certificate of Need (CON) Section, Division of Health Service Regulation, Department of Health and Human Services has conditionally approved the above referenced certificate of need application. This decision was made after a review of the applications submitted for this cycle and after consideration of the Certificate of Need Law, G.S. 131E-175 et. seq. and regulations promulgated there under, the State Medical Facilities Plan, and other applicable information. Attached to this letter are the required findings made with respect to your application. The applicant shall not proceed with the construction, offering or development of this project until the certificate of need is issued. Further, the Department shall not issue the certificate of need until all applicable conditions of approval that can be satisfied before issuance of the certificate of need have been met pursuant to G.S. 131E-187(a). The conditions are as follows:

1. Duke University Health System d/b/a Duke Raleigh Hospital shall materially comply with all representations made in this certificate of need application.
2. Duke University Health System d/b/a Duke Raleigh Hospital shall acquire no more than one linear accelerator to replace the existing Varian 2/EX linear accelerator for a total of no more than one linear accelerator upon project completion.
3. Duke University Health System d/b/a Duke Raleigh Hospital shall dispose of the Varian 2/EX linear accelerator by removing it from North Carolina.

**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. Duke University Health System d/b/a Duke Raleigh Hospital shall not acquire as part of this project, any equipment that is not included in the project's proposed capital expenditure in Section VIII of the application and that would otherwise require a certificate of need.
5. Duke University Health System d/b/a Duke Raleigh Hospital shall develop and implement an Energy Efficiency and Sustainability Plan for the project that conforms to or exceeds energy efficiency and water conservation standards incorporated in the latest editions of the North Carolina State Building Codes. The plan must be consistent with the applicant's representations in the written statement as described in paragraph one of Policy GEN-4.
6. Duke University Health System d/b/a Duke Raleigh Hospital shall acknowledge acceptance of and agree to comply with all conditions stated herein to the Certificate of Need Section in writing prior to issuance of the certificate of need.

**Response to the above conditions should be submitted to the CON Section no later than 35 days from the date of the decision. Failure to respond within this time period may result in the CON Section making a determination not to issue a certificate of need for the project referenced above.**

The conditional approval is valid only for a capital expenditure of \$8,292,201. If a cost overrun occurs that exceeds the approved capital expenditure amount, a new certificate of need may be required as determined by G.S. 131E-176(16)(e).

The applicant should be aware that according to the Certificate of Need Law any affected person shall have thirty (30) days after the date of decision to file a petition for a contested case on this approval. Further, if you are aggrieved by the conditions of the decision you may file a petition for a contested case hearing in accordance with G.S. 150B, Article 3, as amended. This petition must be filed with the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, North Carolina 27699-6714 within thirty (30) days of the date of this decision. [Note: Effective October 1, 2009, OAH requires a filing fee with submittal of petitions for contested cases. Please direct all questions regarding this fee to OAH Clerk's Office (919-431-3000).]

G.S. 150B-23 provides that a party filing a petition must also serve a copy of the petition on all parties to the petition. Therefore, if you file a petition for a contested case hearing, you must serve a copy of the petition on the Department of Health and Human Services by mailing a copy of your petition to:

Emery Milliken  
Department of Health and Human Services,  
Office of Legal Affairs,  
Adams Building – Room 154  
2001 Mail Service Center  
Raleigh, North Carolina, 27699-2001

It is requested that a copy of the petition also be served on the Certificate of Need Section.

Catharine Cumber

October 29, 2013

Page 3

The certificate of need will not be issued before the completion of this 30 day period ending November 29, 2013. If a contested case request is received within the thirty (30) day period, the certificate will not be issued until the appeal is resolved (10A NCAC 14C .0208).

The timetable for completion of the project is the timetable outlined in the certificate of need application, unless an adjustment has been made by the CON Section because the review period was extended. The timetable for this project is as follows:

25% Completion of Construction _____	September 15, 2014
Order Equipment _____	March 1, 2015
Equipment Arrival _____	June 1, 2015
75% Completion of Construction _____	August 31, 2015
Completion of Construction _____	January 31, 2016
Offering of Services _____	January 31, 2016

If the decision is appealed, the timetable set forth in this letter will be adjusted accordingly before the Certificate of Need is issued. Please contact us if any clarification of this decision is required.

Please refer to the Project I.D. # and Facility I.D. # (FID) in all correspondence.

Sincerely,

F. Gene DePorter, Project Analyst

Craig R. Smith, Chief  
Certificate of Need Section

FGD:CRS:se

Attachment

cc: Medical Facilities Planning Section, DHSR  
Acute & Home Care Licensure & Certification Section, DHSR  
Construction Section, DHSR

**CERTIFICATE OF SERVICE**

I hereby certify that I have served the foregoing notice of **conditional approval** on the following person by placing a copy in an official depository of the United States Postal Service in a postage-paid, first class envelope addressed as follows:

Catharine Cummer  
3100 Tower Boulevard, Suite 1300  
Durham, NC 27707

Project I.D. # J-10164-13

FID #923421

This the 29<sup>th</sup> day of October, 2013

---

F. Gene DePorter, Project Analyst