




STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

100 NORTH UNION STREET, SUITE 870
MONTGOMERY, ALABAMA 36104

MEMORANDUM

DATE : August 4, 2023
TO: All Interested Parties
FROM: Emily T. Marsal 
Executive Director
SUBJECT: Reviewability Determination Request (RV2023-026)

The attached request for a reviewability determination has been received. Any affected person may file written comments regarding this request, per 410-1-7-.02 of the *Alabama Certificate of Need Program Rules and Regulations*, by September 15, 2023.

Pursuant to ALA. ADMIN. CODE r 410-1-3-.09, all documents to be filed with the Agency must be submitted to shpda.online@shpda.alabama.gov in PDF, text searchable format.

Enclosure: see attached

August 2, 2023

VIA E-MAIL (shpda.online@shpda.alabama.gov)

Emily T. Marsal
Executive Director
State Health Planning and Development Agency
100 North Union Street Suite 870
Montgomery, AL 36130

RV2023-026

RECEIVED

Aug. 02, 2023

STATE HEALTH PLANNING AND
DEVELOPMENT AGENCY

**Re: Urology Centers of Alabama, P.C.
Reviewability Determination Request
Physician Office Exemption – Leased Employee
Electronically Filed August 2, 2023**

Dear Ms. Marsal:

On behalf of Urology Centers of Alabama, P.C. ("UCA") and pursuant to the Alabama Certificate of Need Program Rules and Regulations ("CON Rules") 410-1-7-.02 and 410-1-3-.09 and Ala. Code §§ 22-21-260 *et seq.*, please accept this letter as UCA's request for a Letter of Non-Reviewability ("LNR") determination that its existing linear accelerator equipment may be operated by a leased radiation oncologist physician employee pursuant to the Physician Office Exemption ("POE") and that such arrangement is not subject to Certificate of Need ("CON") review (the "Request"). The following factual and legal information is included in support of this Request.

1. Linear Accelerator LNR History

1.1 UCA is a group practice owned by physicians which provides the full scope of urology services, including integrated urologic radiation oncology services through UCA's employed specialists who treat urology cancers for UCA patients in UCA's private physician offices located in Homewood, Alabama.

1.1 UCA first submitted a request for an LNR for the acquisition and operation of a Varian Medical System linear accelerator on September 30, 2005, and submitted a related supplemental filing providing additional information to SHPDA concerning the request on October 20, 2005 (collectively, the "2005 Request"). The 2005 Request involved UCA's proposed initial acquisition of a linear accelerator for the treatment of UCA's patients. SHPDA issued a determination of non-reviewability in response to the 2005 Request.

1.2 UCA later submitted an additional request for an LNR on May 1, 2017, for the replacement of the Varian Medical System linear accelerator acquired pursuant to the 2005 Request and submitted additional information to SHPDA concerning the request on June 5, 2017 (collectively, the "2017 Request"). The 2017 Request, which includes a copy of the 2005 Request, is attached hereto as **Exhibit 1**.

1.4 UCA represented in the 2017 Request that the linear accelerator replacement ("Linear Accelerator") met all requirements of the four-part POE test, as outlined in *Ex parte Sacred Heart Health Sys., Inc.*, as follows:

- a. The Linear Accelerator services would be provided and the equipment used exclusively by physician owners or employees of UCA for the care of UCA patients exclusively;
- b. The Linear Accelerator services would be provided, and related equipment used, at UCA's physician office in Homewood, Alabama;
- c. All patient billings related to the Linear Accelerator services would be through, or expressly on behalf of, the UCA physician group practice; and
- d. The Linear Accelerator would not be used for inpatient care and would not be used by, through, or on behalf of a health care facility.

See 2017 Request (*citing Ex parte Sacred Heart Health Sys., Inc.*, 155 So. 3d 980, 988 (Ala. 2012)). SHPDA issued a determination of non-reviewability in response to the 2017 Request.

1.5 UCA continues to provide services using the Linear Accelerator consistent with the facts outlined in the 2017 Request. As discussed further below, UCA now proposes to provide the Linear Accelerator services through a leased radiation oncologist physician employee within the scope of the POE.

2. Physician Employee Lease Agreement

2.1 Following the 2005 Request and subsequent 2017 Request, UCA has employed radiation oncologists to provide radiation oncology and medical director physician services in connection with the Linear Accelerator. Recently, UCA learned that its currently employed radiation oncologist will be retiring from medical practice. UCA has been unable to recruit a radiation oncologist employee replacement for continued operation of the Linear Accelerator, and, according to a recent national survey from the American Society of Radiation Oncology ("ASTRO"), 9 in 10 radiation oncologists report that their practices are facing clinical staff shortages, causing treatment delays for patients. ASTRO, *Widespread Staff Shortages Exacerbate Pressures Facing Radiation Oncology Clinics; ASTRO Advocacy Day Calls for Action*, <https://www.astro.org/News-and-Publications/News-and-Media-Center/News-Releases/2023/Widespread-staff-shortages-exacerbate-pressures-fa>.

2.2 In order to meet its need for a new radiation oncologist despite physician and radiation oncology-specific shortages, UCA proposes to enter the Physician Employee Lease Agreement ("Agreement"), attached as **Exhibit 2**,¹ which provides that UCA will lease the professional radiation oncology and medical director services (the "Services") of a leased physician employee ("Leased Physician") from The University of Alabama Health Services Foundation, P.C. ("Foundation"). The parties will be co-employers of the Leased Physician; however, as noted in Sections 1(a) and 2(c) of the Agreement, the Leased Physician will provide Services at and on behalf of UCA three (3) days per week and provide the Services "at the direction, control and supervision of UCA to the same extent as other physician employees of UCA." As set forth in Section 2(c) of the Agreement, the Leased Physician "shall follow all reasonable standards set by UCA for its employed physicians" and will perform the Services in accordance with all UCA bylaws, policies, procedures, standards and protocols, any accreditation standards applicable to UCA, and all requirements for UCA's participations in third-party reimbursement programs.

¹ Note that the Agreement attached to this Request as Exhibit 2 does **not** include the exhibits referenced in the Agreement, including the compensation terms referenced as Exhibit A and the HIPAA Business Associate Agreement referenced as Exhibit B within the Agreement.

2.3 Pursuant to the Agreement, UCA will be responsible for maintaining professional liability insurance for the Leased Physician with respect to the Services provided by the Leased Physician at and on behalf of UCA. See Agreement, Section 5(a). UCA will also provide administrative support staff, space, and equipment to assist and support the Leased Physician as necessary in the provision of Services at UCA. See Agreement, Section 3(a)-(b). UCA will have the exclusive right to bill and receive payment for all fees generated by the Leased Physician for the provision of the Services on behalf of UCA under the Agreement. See Agreement, Section 12.

3. Legal Analysis

3.1 This Request does not involve a "new institutional health service," by or on behalf of a "health care facility" subject to CON review as set forth in Ala. Code § 22-21-263 and CON Rule 410-1-4-.01, in that the Request does not include:

- a. The construction, development, acquisition through lease or purchase or other establishment of a new health care facility or health maintenance organization; or
- b. Any expenditure by or on behalf of a health care facility which is a capital expenditure exceeding the CON statutory threshold for major medical equipment, new annual operating costs, or any other capital expenditure by or on behalf of a health care facility; or
- c. The addition of any new health care facility bed or stations; or
- d. Any health service which is proposed to be offered in or through a health care facility which was not offered on a regular basis in or through a health care facility within the preceding twelve (12) month period; or
- e. Any other reviewable event under the existing CON Rules.

3.2 Under Ala. Code § 22-21-260(6), the "offices of private physicians, whether for individual or group practices and regardless of ownership," are exempted from the CON review process and the definition of "health care facility." UCA is a private physician office which is exclusively owned by physicians and operates exclusively as a physician group practice.

3.3 In the 2012 *Sacred Heart* decision, the Alabama Supreme Court adopted the following four-part test to be used in determining whether an arrangement qualifies for the POE:

- a. The proposed services are to be provided, and related equipment used, exclusively by the physicians identified as owners or employees of the physicians' practice for the care of their patients.
- b. The proposed services are to be provided, and related equipment used, at any office of such physicians.
- c. All patient billings related to such services are through, or expressly on behalf of, the physicians' practice.
- d. The equipment shall not be used for inpatient care, nor by, through, or expressly on behalf of a health care facility.

3.4 This Request meets the four-part POE test because:

- a. The Linear Accelerator services will be provided and the equipment used exclusively by physician owners or employees, including the Leased Physician, of UCA for the care of UCA patients exclusively. As discussed further in Section 2 above, the Leased Physician will provide services at UCA solely under UCA's direction, control, and supervision to the same extent as any other employee of UCA. The Leased Physician will perform the Services in accordance with all UCA bylaws, policies, procedures, standards, and protocols. UCA will be responsible for maintaining the Leased Physician's professional liability insurance in connection with the Services and will have the exclusive right to bill and receive payment for fees generated by such Services. For the purposes of evaluation of the POE requirements, the Leased Physician will not substantively differ from any other physician employee of UCA.
- b. The Linear Accelerator services, including those provided by the Leased Physician, will continue to be provided, and related equipment used, at UCA's physician office in Homewood, Alabama.
- c. All patient billings related to the Linear Accelerator services will continue to be through, or expressly on behalf of, the UCA physician group practice. UCA will have the exclusive right to bill and receive payment for all fees generated by the Leased Physician for the provision of the Services on behalf of UCA under the Agreement.
- d. The Linear Accelerator will continue to be used only for the outpatient care of UCA's patients. The Linear Accelerator will not be used for inpatient care and will not be used by, through, or on behalf of any health care facility.

4. Conclusion and Request

4.1 UCA has and will continue to provide the Linear Accelerator services to UCA's patients in its private office. The Linear Accelerator will be used to treat only UCA's patients for urology cancers and will not be used for any hospital inpatient services and will not be operated by, through, or on behalf of any health care facility. The Linear Accelerator services will be provided and the equipment used exclusively by UCA's physician owners or employees, including the Leased Physician.

4.2 This Request does not involve a new institutional health service subject to CON Review pursuant to the CON Rules 410-1-4-.01 *et seq.* and Ala. Code §§ 22-21-260 *et seq.* The Request involves only services which will be provided in the offices of private physicians independent of any health care facility pursuant to Ala. Code § 22-21-260(6), Ala. Code § 22-21-260(8), and CON Rule 410-1-2-.05(2)(a). The Request is also consistent with the four-part POE test set forth in *Sacred Heart*. Therefore, this Request is due to be determined as non-reviewable in accordance with the CON Rules in that it does not involve any new institutional health services or any health care facility expenditure in excess of statutory CON thresholds or any other reviewable event under the CON Rules.

In accordance with CON Rule 410-1-3-.09, a PDF copy of this Request is being submitted electronically on August 2, 2023, to shpda.online@shpda.alabama.gov, and a fee of \$1,000.00 is being submitted via SHPDA's online payment portal on August 2, 2023.

If you have any questions, please give us a call.

Best regards,

Jordan Jackson

Jordan Jackson
Senior Managing Associate
Dentons Sirote PC

cc:

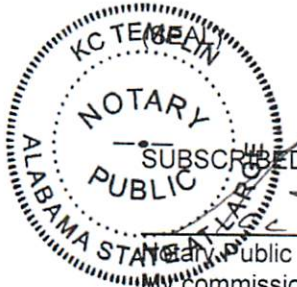
Joseph T. Ritchey, Esq.

Affirmation of Requesting Party:

The undersigned, being first duly sworn, hereby makes oath or affirms that he, **PAUL P. STOREY**, as the Executive Administrator of Urology Centers of Alabama, P.C., has knowledge of the facts in this Request, and to the best of his information, knowledge, and belief, such facts are true and correct.

Paul P. Storey

Paul P. Storey



SUBSCRIBED AND SWORN to before me this the 2 day of August, 2023.

[Signature]
Notary Public

My commission expires: 1/2/24

Exhibit 1

2017 Request



RECEIVED

MAY 02 2017

STATE HEALTH PLANNING
AND DEVELOPMENT AGENCY

Sirote & Permutt, PC
2311 Highland Avenue South
Birmingham, AL 35205-2972

Lenora W. Pate
Attorney at Law
lpate@sirote.com
Tel: 205-930-5162
Fax: 205-212-3801

PO Box 55727
Birmingham, AL 35255-5727

May 1, 2017

VIA E-MAIL (shpda.online@shpda.alabama.gov)

Alva M. Lambert
Executive Director
State Health Planning and Development Agency
100 North Union Street, Suite 870
Montgomery, AL 36140

Re: *Urology Centers of Alabama, P.C.
Notice of Intent to Acquire
Request for Non-Reviewability Determination*

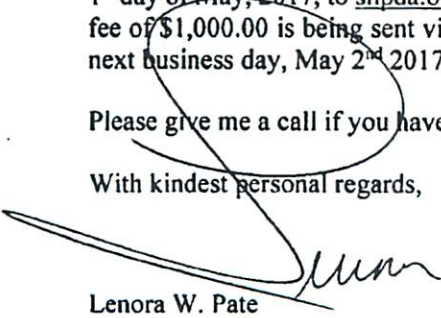
Dear Mr. Lambert:

On behalf of Urology Centers Alabama, P.C. ("UCA") and pursuant to the Alabama Certificate of Need ("CON") Program Rules and Regulations ("CON Rules") § 410-1-7-.03, § 410-1-7-.02, and § 410-1-3-.09, attached hereto as **Exhibit A** is (1) a Notice of Intent to Acquire Major Medical Equipment which will not be owned by or located in a healthcare facility and (2) a Request for your determination that the proposed installation of a replacement Varian Medical System in the private physician office of UCA in Homewood, Alabama, is **not** subject to Certificate of Need ("CON") review under Alabama Code § 22-21-260 *et. seq.* and the CON Rules, and does **not** require a CON in that it does not involve a new institutional health service or any health care facility expenditures in excess of the statutory thresholds requiring CON Review.

In accordance with CON Rule § 410-1-3-.09, a pdf copy of this Request is being submitted electronically on the 1st day of May, 2017, to shpda.online@shpda.alabama.gov; a paper original will be preserved in our files; and a fee of \$1,000.00 is being sent via overnight FedEx to SHPDA on the 1st day of May, 2017, for delivery on the next business day, May 2nd 2017.

Please give me a call if you have any questions.

With kindest personal regards,



Lenora W. Pate
FOR THE FIRM

Birmingham Huntsville Mobile Pensacola

DOCSBHM\2172754\4

sirote.com



Alva M. Lambert
May 1, 2017
Page 2

LWP/lcc
Enclosure

c: Debbie Crompton
David W. Sorrells

EXHIBIT A

**BEFORE THE STATE HEALTH PLANNING
AND DEVELOPMENT AGENCY OF THE STATE OF ALABAMA**

IN THE MATTER OF:)
)
UROLOGY CENTERS OF ALABAMA, P.C.) **Notice of Intent to Acquire**
) **Replacement Varian Medical System**
)
) **Request for Non-Reviewability**
) **Determination**
) **RV-_____**

NOTICE OF INTENT TO ACQUIRE
REQUEST FOR NON-REVIEWABILITY DETERMINATION

On behalf of Urology Centers of Alabama, P.C. ("UCA") and pursuant to the Alabama Certificate of Need Program Rules and Regulations ("CON Rules") § 410-1-7-.03, § 410-1-7-.02, and § 410-1-3-.09, and Alabama Code § 22-21-260, *et seq.*, this (1) Notice of Intent to Acquire a Replacement Varian Medical System ("Notice") which will not be owned by or located in a health care facility, and (2) Request for Non-Reviewable Determination are hereby filed with the State Health Planning and Development Agency ("SHPDA") to provide the requisite Notice to SHPDA and to Request a determination from SHPDA that UCA's proposed acquisition and installation of a Replacement Varian Medical System in the UCA private physician office located in Homewood, Alabama, more fully described below, is not subject to CON review for the reasons stated below, and that no CON is required for this UCA proposal ("Proposal").

The following factual and legal information is hereby included in support of this Notice and Request, and a Urology Centers of Alabama, P.C. check in the amount of \$1,000.00 made payable to the State Health Planning and Development Agency is being filed in accordance with CON Rule § 410-1-3-.09 as the required filing fee for this Request pursuant to CON Rule § 410-1-7-.02.

PROPOSAL

1. Facts

1.1 UCA is a professional corporate group practice solely owned by physicians, and is currently comprised of twenty-seven (27) practicing physicians, all of whom are licensed in the State of Alabama. UCA has been providing physician services as a group practice in Birmingham for many years. UCA is a comprehensive Urology group practice providing the full scope of urology services including integrated urologic radiation oncology services through UCA employed specialists who treat only urology cancers for UCA patients in the UCA private physician office in Homewood, Alabama. The UCA Team Mission is to provide state of the art patient centered urologic care in all areas with integrity and compassion. A list of the current practicing UCA physician owners and/or employees is attached hereto and incorporated herein as **Exhibit 1**.

1.2 As a part of the total scope of urologic services being provided currently by UCA at its private physician office on Independence Drive, Homewood, Alabama 35209, UCA provides existing Varian Medical System True Beam Linear Accelerator services in accordance with the 2005 UCA Request and SHPDA Determination of Non-Reviewability of the acquisition, installation, and operations by UCA of the Varian Medical System High Energy 21.X Linear Accelerator pursuant to SHPDA's approval as set forth in the LNR Request and the SHPDA RV 2006-003 Determination, attached hereto and incorporated herein as **Exhibit 2. ("Existing Varian Linear Accelerator")**.

1.3 The Existing Varian Linear Accelerator has been used solely by UCA Physicians and UCA personnel for UCA physician office out-patient services for over ten (10) years at the UCA Independence Drive, Homewood, Alabama office. It has not been used for any Hospital in-patient services, nor operated by, through, or on behalf of any health care facility. It has been operated solely as a physician office service, treating UCA patients only for urogenital cancers including prostate, kidney, bladder, testicular cancer and bone metastasis, which may have occurred as the cancer progresses.

1.4 Since the Existing Varian Linear Accelerator is now over ten (10) years old, UCA is hereby notifying SHPDA, pursuant to CON Rule § 410-1-7-.03, of its intent to acquire the

proposed Replacement Varian Vital Beam Linear Accelerator (“**Replacement Vital Beam Linear Accelerator**”) which will not be owned by or located in a health care facility.

1.5 The Replacement Vital Beam Linear Accelerator has technological advances that will benefit UCA patients, and will cost approximately **\$2,906,647.00**.

1.6 Attached hereto and incorporated herein as **Exhibit 3** is a summary of three (3) of the recent improvements in the proposed Replacement Vital Beam Linear Accelerator which will allow for more accurate treatment, maximize curative doses to targeted tissues, and minimize unintended radiation to nearby structures leading to unwanted side effects.

1.7 All the current billings for the services by UCA using the Existing Varian Linear Accelerator are currently by, through, and on behalf of UCA and its owners and/or employed physicians. Such billing involves only physician office billing for the professional and technical component of the Existing Varian Linear Accelerator, with no additional “facility” fee billing of any type. All of the Existing Varian Linear Accelerator billing by UCA is for physician office billing in accordance with Federal and State laws and regulations and various third-party payors.

1.8 The proposed Replacement Vital Beam Linear Accelerator will also be used exclusively by, and billed exclusively by, through, and on behalf of UCA and its owners and/or employed physicians. Such billing will involve only the professional and technical component of the Replacement Vital Beam Linear Accelerator, with no additional “facility” fee billing of any type, and all proposed Replacement Vital Beam Linear Accelerator billing will be for UCA physician office services in accordance with Federal and State laws and regulations and various third-party payor requirements.

1.9 A Linear Accelerator, like the Existing Varian Linear Accelerator and the proposed Replacement Vital Beam Linear Accelerator, uses precisely focused beams of radiation to treat patients with cancer. Each patient is treated based on a unique treatment protocol developed by a Radiation Oncologist with a Radiation Dosimetrist. The patient is treated according to the protocol with a specific dose of radiation directed at different sections of the organ for specific periods of time each day based on the protocol. The patient is monitored by a Radiation Physicist, a Radiation Technologist,

and by the Radiation Oncologist before, during, and after the treatment each day, and examined weekly by the Radiation Oncologist. The radiation is administered by trained Radiation Technologists, and all such required Radiation professionals and staff are UCA employed personnel and UCA employed physicians providing urologic oncology services to UCA physician office patients only.

1.10 UCA patients are normally treated using the Existing Varian Linear Accelerator five (5) days per week for eight (8) weeks but which may vary with the cancer and the treatment protocol. The Existing Varian Linear Accelerator will continue to operate during the eight (8) weeks that it may take for any patient to complete the patient's unique regimen and protocol on the Existing Varian Linear Accelerator, once the proposed Replacement Vital Beam Linear Accelerator is fully installed and operational. Hence, there will be a slight overlap prior to the Existing Varian Linear Accelerator being taken out of service which is necessary because protocols are designed and developed per patient, which are unique to the specific linear accelerator and the patient's treatments must be completed on the specific Linear Accelerator, e.g., Existing Varian Linear Accelerator. Hence, any patient in an eight (8) week regimen of treatment could not be switched from the Existing Varian Linear Accelerator to the proposed Replacement Vital Beam Linear Accelerator.

1.11 Once all patients, who started in treatment prior to the Replacement Vital Beam Linear Accelerator commences operations, have completed their existing protocols on the Existing Varian Linear Accelerator, the Existing Varian Linear Accelerator will be taken out of service and removed from the UCA office. The current space in the UCA physician office in which the Existing Varian Linear Accelerator has been operating will then be used for other UCA physician office functions after the removal of the Existing Varian Linear Accelerator.

1.12 The proposed Replacement Vital Beam Linear Accelerator will be located, installed, and become fully operational in the UCA physician office space on Independence Drive, Homewood, Alabama, adjacent to the Existing Varian Linear Accelerator space at the same UCA physician office address. It will function as an integral and integrated part of the UCA physician office services in the exclusively used office space of UCA on Independence Drive, Homewood, Alabama.

1.13 The acquisition, installation, and operation of the proposed Replacement Vital Beam Linear Accelerator will not be owned by or located in a health care facility, but owned and exclusively operated by and located in the UCA physician office meeting all the requirements of the CON statutory Physician Office Exemption set forth in Alabama Code § 22-21-260(6), which provides an exemption from CON review for the **“Office of private physicians..., whether for individual or group practices and regardless of ownership.”**

1.14 The installation of the proposed Replacement Vital Beam Linear Accelerator in the UCA physician office does **not** include the construction, development, acquisition, or involvement of any health care facility; nor any capital expenditure by or on behalf of any healthcare facility; nor does it involve the addition of any healthcare facility bed or the offering of any inpatient health services. UCA has no affiliated healthcare facility members, investors, nor any health care facility financial involvement in any way in the acquisition, installation, or operations of the proposed Replacement Vital Beam Linear Accelerator, which will be used at all times exclusively by UCA in its physician office for UCA physician office patients only, and exclusively by UCA physicians listed on **Exhibit 1**, and UCA employed personnel and staff.

1.15 This Proposal is necessary to replace an over ten (10) year old Existing Varian Linear Accelerator with a state of the art improved Replacement Vital Beam Linear Accelerator to provide the latest technology to ensure current state of the art and beneficial services for Urology Centers of Alabama patients. With the proposed replacement Varian Vital Beam Linear Accelerator, UCA will be providing exactly the same services UCA currently provides to treat the Urology Centers of Alabama, P.C. patients in the UCA physician office in Homewood, Alabama.

2. **Legal Analysis**

2.1 This Proposal does not involve a “new institutional health service”, by or on behalf of a health care facility, subject to CON review as set forth in § 22-21-263 of the Alabama Code and CON Rule § 410-1-01, in that the Proposal does not include:

(a) the construction, development, acquisition through lease or purchase or other establishment of a new health care facility or health maintenance organization; or

(b) any expenditure by or on behalf of a health care facility which as a capital expenditure exceeds the CON statutory threshold for major medical equipment, new annual operating costs, or any other capital expenditure by or on behalf of a health care facility; or

(c) the addition of any new healthcare facility bed or stations; or

(d) any health service which is proposed to be offered in or through a healthcare facility which was not offered on a regular basis in or through a healthcare facility within the preceding twelve (12) month period; or

(e) any other reviewable event under the existing CON Laws, Rules, or Regulations in the State of Alabama.

2.2 Alabama Code §22-21-260(6) exempts from the CON review process and the definition of **“healthcare facility”**, the **“offices of private physicians...., whether for individual or group practices and regardless of ownership.”** UCA is a private physician office which is exclusively owned by physicians and operates as a physician group practice exclusively.

2.3 In 2012, the Alabama Supreme Court adopted the following four-part test to be used to determine whether a Proposal qualifies for the Physician Office Exemption, as follows:

(a) The proposed services are to be provided, and related equipment used exclusively by the physicians identified as owners or employees of the physicians’ practice for the care of their patients.

(b) The proposed services are to be provided and related equipment used at any office of such physicians.

(c) All patients billings related to such services are through, or expressly on behalf of, the physicians’ practice.

(d) The equipment shall **not** be used for inpatient care, nor by, through, or expressly on behalf of the health care facility.

Ex parte Sacred Heart Health Sys., Inc., 155 So. 3d 980, 988, (Ala. 2012).

2.4 This Proposal meets all of the four-part Physician Office Exemption:

- The proposed Replacement Vital Beam Linear Accelerator services are to be provided and the equipment used exclusively by the physicians identified as owners or employees of UCA listed on the attached **Exhibit 1** for the care of UCA patients exclusively;
- The proposed Replacement Vital Beam Linear Accelerator services are to be provided, and related equipment used, at the UCA Independence Drive physician office in Homewood, Alabama;
- All patient billings related to the proposed Replacement Vital Beam Linear Accelerator services will be through, or expressly on behalf of, the UCA physician group practice;
- The proposed Replacement Vital Beam Linear Accelerator shall not be used for in-patient care, nor by, through, or on behalf of a health care facility.

3. Conclusion and Request.

3.1 This Proposal does not involve a new institutional health service subject to CON Review pursuant to CON Rules § 410-1-4-.01 *et. seq.* and § 22-21-260 *et. seq.* of the Alabama Code. UCA is merely (1) notifying SHPDA of its intent to acquire the proposed Replacement Vital Beam Linear Accelerator that will not be owned by or located in a health care facility, and (2) requesting that its Proposal to acquire, install, and operate the proposed Replacement Vital Beam Linear Accelerator in the UCA physician office for use by UCA employed physicians and UCA personnel and staff exclusively for UCA physician office out-patients at the Independence Drive, Homewood, Alabama UCA group practice location is not subject to CON review.

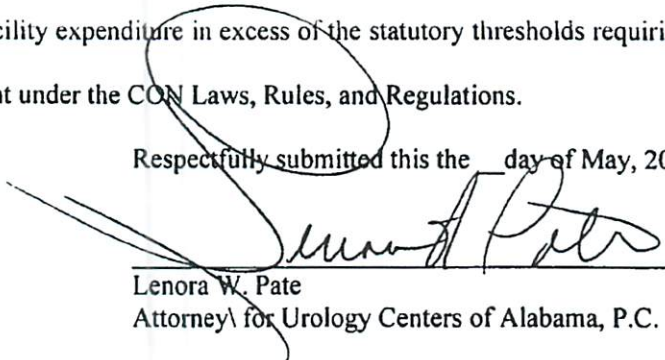
3.2 Alabama Code § 22-21-260(6) excludes from the definition of "health care facility" the "offices of private physicians... whether for individual group practice and regardless of ownership."

3.3 CON Rule § 410-1-2-.05(2)(a) provides that the term "health care facility" shall not include private offices of any duly licensed physicians whether for individual group practice and regardless of ownership.

3.4 Also, Alabama Code § 22-21-260(a) excludes from the definition of "health services" the "lawful practice of any profession or vocation conducted independently of a health care facility."

3.5 Therefore, this Proposal is due to be determined as non-reviewable in accordance with the Alabama CON Laws, Rules, and Regulations in that it does not involve any new institutional health services or any health care facility expenditure in excess of the statutory thresholds requiring CON Review or any other reviewable event under the CON Laws, Rules, and Regulations.

Respectfully submitted this the _____ day of May, 2017,



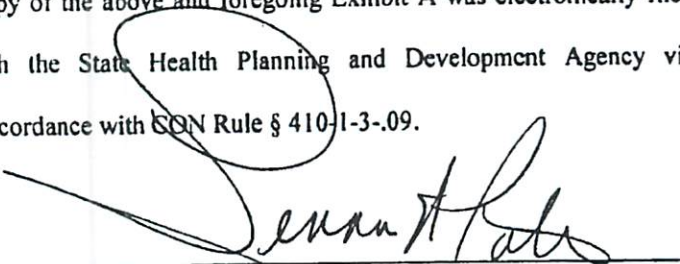
Lenora W. Pate
Attorney for Urology Centers of Alabama, P.C.

OF COUNSEL:

Sirotc & Permutt, P.C.
2311 Highland Avenue South
Birmingham, Alabama 35205
205.930.5162

CERTIFICATE OF SERVICE

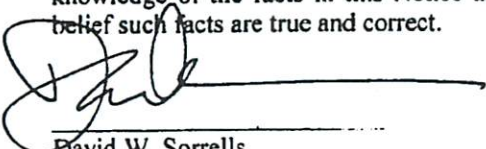
I hereby certify that a PDF copy of the above and foregoing Exhibit A was electronically filed this the ___ day of May, 2017, with the State Health Planning and Development Agency via shpda.online@shpda.alabama.gov in accordance with SON Rule § 410-1-3-.09.



Of Counsel

Affirmation of Requesting Party:

The Undersigned, being first duly sworn, hereby makes oath or affirms that he, **DAVID W. SORRELLS**, the Practice Administrator and Assistant Secretary of the Urology Centers of Alabama, P.C. has knowledge of the facts in this Notice and Request, and to the best of his information, knowledge and belief such facts are true and correct.



David W. Sorrells

Seal

Subscribed and Sworn to before me this the 1st day of May, 2017.



Notary Public

My Commission Expires: 8-19-2020

EXHIBIT 1 TO EXHIBIT A

UCA PHYSICIANS

I. UCA SHAREHOLDERS/OWNERS/EMPLOYEES

Mark DeGuenther, M.D.
Vincent Michael Bivins, M.D.
Brian Wade, M.D.
Jason Burrus, M.D.
Charles Bugg, M.D.
Thomas Holley, M.D.
Taylor Bragg, M.D.
Andrew Strang, MD
A. Scott Tully, M.D.
Lee Hammontree, M.D.
Nicole DeSouza Massie, M.D.
Brian Christine, M.D.
Rupa Kitchens, M.D.
Brian Larson, M.D.
Bryant Poole, M.D.
Eric Brewer, M.D.
Jared Cox, M.D.
Mel Duggan, M.D.
Patrick Mills, M.D.
John Wilbanks, M.D.
Jason Moellinger, MD
Paula Rookis, MD
Leon Hamrick

II. UCA EMPLOYEES

Joelle Hamilton, M.D.
Elbert Duncan, M.D. (Part-Time)
Austin Lutz, M.D.
Tyler Poston, M.D. (Starting 8/1/17)

III. UCA remains in the physician recruiting process and may add other physician employees in the future.

EXHIBIT 2 TO EXHIBIT A
RV 2006-003 UROLOGY CENTERS OF ALABAMA

equipment



STATE HEALTH PLANNING AND DEVELOPMENT AGENCY
100 NORTH UNION STREET, SUITE 870
MONTGOMERY, ALABAMA 36104

October 31, 2005

Lenora W. Pate, Esquire
Sirote & Permutt
Post Office box 55727
Birmingham, AL 35255-5727

RE: RV2006-003
Urology Centers of Alabama, P.C.

Dear Ms. Pate:

This is written in response to your letter dated October 20, 2005 in which you provided names and locations of physicians who will be using the Varian Medical System High Energy Clinic 21:XLiner Accelerator w/80 MLC with VARIS Vision Record & Verify, Eclipse Treatment Planning System and ZMed SonArray Plus. This equipment will be located in the office of a private physician's office located on Independence Drive, Homewood, AL 35209. The cost of the referenced equipment is \$1,375,330 which is below Certificate of Need thresholds.

Based on information you have provided, this project is nonreviewable. This decision is made with a clear understanding that this proposal will not result in the addition of any health care facility beds, the offering of any new health services, or any capital expenditure in excess of the Certificate of Need capital expenditure thresholds, that the proposed services are to be provided, and related equipment used, exclusively by the physicians identified as owners or employees of the physicians' practice for the care of their patients, and that the proposed services are to be provided, and related equipment used, at the primary office of such physicians.

Pursuant to Rule 410-7-.02 *Alabama Certificate of Need Program Rules and Regulations*, this opinion is for informational purposes only and is based on circumstances as they currently exist. Should there be any deviation from facts and premises provided to this agency and should circumstances prove to be other than represented, this letter may become null and void. If you have questions, please call Betty Schoenfeld at (334) 242-4103.

Sincerely,

A handwritten signature in cursive script that reads "Alva M. Lambert".

Alva M. Lambert
Executive Director

AML:bws

cc: Guy Nevins

MAILING ADDRESS: P.O. BOX 303025, MONTGOMERY, ALABAMA 36130-3025
PHONE: (334) 242-4103 FAX: (334) 242-4113

LENORA W. PATE

ATTORNEY AT LAW

(205) 930-5162

lpate@sirote.com

S I R O T E
— & —
P E R M U T T
A PROFESSIONAL CORPORATION

October 20, 2005

RECEIVED

OCT 24 2005

STATE HEALTH PLANNING
AND DEVELOPMENT AGENCY

Mr. Alva M. Lambert
Executive Director
State Health Planning & Development Agency
100 North Union Street, Suite 870
Montgomery, AL 36104

Re: RV2006-003
Urology Centers of Alabama, P.C.
C/M No.: 020771-00028

Dear Mr. Lambert:

Thank you for your letter of October 4, 2005, in response to my letter of September 30, 2005, copies of which are enclosed for your convenience.

Per your request, Urology Centers of Alabama, P.C. ("UCA") physicians, all of whom practice at the Independence Drive location, are:

Albert J. Tully, Jr., M.D.
Douglas L. Modling, M.D.
Carl J. Sanfelippo, M.D.
Rodney L. Dennis, M.D.
Vincent Michael Bivins, M.D.
Nicole DeSousa Massie, M.D.
Brian Christine, M.D.
A. Scott Tully, M.D.
Mark S. DeGuenther, M.D.
W. Andrew Daniel, M.D.
Thomas Moody, M.D.
Walter G. Pittman, M.D.
Charles Edward Bugg, M.D.

In addition, UCA has the following six other physician offices in the Greater Birmingham metropolitan area, with some of the physicians practicing, as noted below, at certain times in those offices as well:

DOCSBHM\1335236\1

LUP OFFICES AND MEDIATION CENTERS
2311 HIGH AND AVENUE SOUTH BIRMINGHAM, ALABAMA 35205
POST OFFICE BOX 55727 BIRMINGHAM, ALABAMA 35255-5727

TELEPHONE | 205.930.5100 FAX | 205.930.5101 URL | <http://www.sirote.com>
Birmingham | Huntsville | Mobile

Mr. Alva M. Lambert
October 20, 2005
Page 2

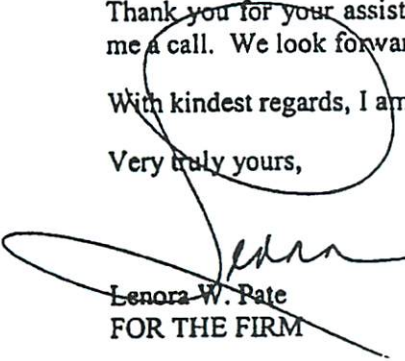
- 880 Montclair Road, POB III, Suite 377, Birmingham, AL (Drs. Modling, Sanfelippo and DeGuenther)
- 985 9th Avenue Southwest, Suite 408, Bessemer, AL (Drs. Christine, Daniel, Bivins)
- Princeton Professional Building I, 801 Princeton Avenue Southwest, Suite 615, Birmingham, AL (Drs. Bivins and Modling)
- St. Vincent's Professional Building II, 2660 10th Avenue South, Suite 735, Birmingham, AL (Drs. Tully, Bugg, Massie, and Moody)
- 209 W. Spring Street, Suite 104, Sylacauga, AL (Dr. DeGuenther)
- Gardendale Medical Clinic, 2217 Decatur Highway, Gardendale, AL 35071 (Drs. Moody and Massie)

UCA is constantly in the physician recruiting process and will be adding three to five additional physicians over the next year or so.

Thank you for your assistance in this matter. If you have any additional questions, please give me a call. We look forward to receiving your determination at your earliest opportunity.

With kindest regards, I am,

Very truly yours,



Lenora W. Pate
FOR THE FIRM

LWP/cm
Enclosures

cc: David W. Sorrells, Administrator



STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

100 NORTH UNION STREET, SUITE 870
MONTGOMERY, ALABAMA 36104

October 4, 2005

Lenora W. Pate, Esquire
Sirote & Permutt
Post Office Box 55727
Birmingham, AL 35255-5727

RE: RV2006-003
Urology Centers of Alabama, P.C.

Dear Ms. Pate:

Please provide the names of the thirteen (13) physician owners of Urology Centers of Alabama, P.C. If their practice is located in offices other than Independence Drive in Homewood, Alabama, please provide the address. Usage will be limited to the named individuals. If you have questions, please contact this Agency.

Sincerely,

A handwritten signature in cursive script that reads "Alva M. Lambert".

Alva M. Lambert
Executive Director

AML:bws

MAILING ADDRESS: P.O. BOX 303025, MONTGOMERY, ALABAMA 36130-3025
PHONE: (334) 242-4103 FAX: (334) 242-4113

LENORA W. PATE

ATTORNEY AT LAW

(205) 930-5162

lpate@sirote.com

SIROTE
— & —
PERMUTT
A PROFESSIONAL CORPORATION

September 30, 2005

Mr. Alva M. Lambert
Executive Director
State Health Planning & Development Agency
100 North Union Street, Suite 870
Montgomery, AL 36104

RECEIVE

OCT - 3 2005

STATE HEALTH PLANNING
AND DEVELOPMENT AGENCY

Re: Urology Centers of Alabama, P.C.:
1) Notice of Intent to Acquire Varian Medical System
2) Request for Letter of Non-Reviewability
C/M No.: 20771-00028

Dear Mr. Lambert:

Pursuant to the Alabama Certificate of Need Program Rules and Regulations ("CON Rules") Section 410-1-7-.03 and Section 410-1-7-.02, this letter is to serve as a Notice of Intent to Acquire and to request a determination that the proposed installation of a Varian Medical System in the private physician office of Urology Centers of Alabama, P.C. ("UCA") is not subject to Certificate of Need ("CON") review under Alabama Code Section 22-21-260, *et seq.*, and the CON Rules. A filing fee in the amount of Five Hundred Dollars and no/100 (\$500.00) made payable to the Alabama State Health Planning and Development Agency is enclosed. To assist your determination, we submit the following information.

Proposal

The Varian Medical System will be located in the private physician office of UCA on Independence Drive, Homewood, Alabama 35209. UCA is a professional corporate group practice solely owned by physicians, and is currently comprised of thirteen (13) practicing physicians, all of whom are licensed in the State of Alabama. UCA has been providing physician services as a group practice in Birmingham for many years.

The proposed Varian Medical System is a High Energy Clinic 21:XLiner Accelerator w/80 MLC with VARIS Vision Record & Verify, Eclipse Treatment Planning System and ZMed SonArray Plus ("Varian Medical System"), costing approximately \$1,375,330.00, and shall be used solely by UCA physicians and UCA personnel for UCA physician office outpatients. It shall not be used for any hospital inpatient services, nor operated by, through, or on behalf of a healthcare facility. The Varian Medical System, together with the office space and all furniture, fixtures, and other equipment, used in the operations of the UCA Independence Drive physician office will be either owned outright or leased directly by UCA.

All the billings for the services using the Varian Medical System will be by, through, and on behalf of UCA physicians. Such billing will involve physician office billing only for the professional and technical component of the Varian Medical System, with no additional "facility" fee billing of any type. All Varian

DOCSBHM\1330880\1\

LAW OFFICES AND MEDIATION CENTERS

2311 HIGHLAND AVENUE SOUTH BIRMINGHAM, ALABAMA 35205

POST OFFICE BOX 55727 BIRMINGHAM, ALABAMA 35255-5727

TELEPHONE | 205.930.5100

FAX | 205.930.5101

URL | <http://www.sirote.com>

Birmingham | Huntsville | Mobile

Mr. Alva M. Lambert
September 30, 2005
Page 2

Medical System billing will be for physician office services in accordance with federal and state laws and regulations and various third-party payor requirements.

The installation of the Varian Medical System in the UCA physician office does not include the construction, development, acquisition, or involvement of any healthcare facility; nor any capital expenditure by or on behalf of any healthcare facility; nor does it involve the addition of any healthcare facility bed or the offering of any inpatient health services. UCA has no affiliated healthcare facility members, investors, nor any healthcare facility financial involvement in any way in the installation of the Varian Medical System, which will be used at all times exclusively by UCA in its physician office for UCA physician office patients.

Conclusion

Alabama Code Section 22-21-260(6) excludes from the definition of "healthcare facility" the "offices of private physicians . . . whether for individual group practices and regardless of ownership." See also CON Rules Section 410-1-2-.05(2)(a), providing that the term healthcare facility shall not include "private office of any duly licensed physicians whether for individual group practices and regardless of ownership". In addition, Alabama Code Section 22-21-260(8) excludes from the definition of "health services" the "lawful practice of any profession or vocation conducted independently of a healthcare facility." See CON Rules Section 410-1-2-.06.

Accordingly, based on the above, we request your determination that the installation of the Varian Medical System by UCA in its Independence Drive, Birmingham, Alabama, office is not subject to CON review under Alabama Code Section 22-21-260, et seq., and the CON Rules. We appreciate your prompt response to this request.

Please give me a call immediately if you have any questions.

Very truly yours,



Lenora W. Pate
FOR THE FIRM

LWP/cm

c: David W. Sorrells, Administrator

EXHIBIT 3 TO EXHIBIT A

(205) 930-0920 800-452-1464

3485 Independence Drive
Homewood, AL 35209

A. Scott Tully, M.D.
Mark S. DeGuenther, M.D.
Nicole DeSouza Massie, M.D.
Vincent Michael Bivins, M.D.
Charles E. Bugg, Jr., M.D.
Brian S. Christine, M.D.
Lee N. Hammontree, M.D.

Urology
Rupa K. Kitchens, M.D.
Bryant E. Poole, M.D.
Thomas D. Holley, M.D.
M. Eric Brewer, Jr., M.D.
Patrick L. Mills II, M.D.
John T. Wilbanks, M.D.
Jason K. Burrus, M.D.
Mell L. Duggan, Jr., M.D.

D. Taylor Bragg, M.D.
Brian K. Wade, M.D.
Jared M. Cox, M.D.
Leon C. Hamrick, Jr., M.D.
Jason D. Moellinger, M.D.
Paula J. Rookis, M.D.
Andrew M. Strang, M.D.

Radiation Oncology
Brian J. Larson, M.D.

Oncology
Joelle Hamilton, M.D.

Pathology
Amanda Crowe, M.D.

March 6, 2017

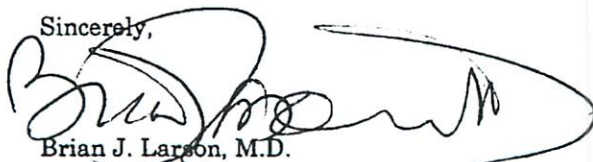
To Whom It May Concern:

Our current linear accelerator, the Varian iX, is now 10 years old. The newer Varian Vital Beam linear accelerator has some recent technological advances that would benefit our patients. Here is a summary of three of those improvements.

1. 120 multi leaf collimator (MLC) Our current iX machine has 80 MLC, 40 1.0 cm leaves on each side. The 120 MLC has 60 leaves on each side with the 40 central leaves having a thickness of 0.5 cm. Reduction in the leaf size provides better dosimetry which is especially important when treating patients with lymph node involvement. This will allow more accurate treatment, thereby maximizing the curative dose to the target tissue and minimizing unintended radiation to nearby structures which leads to unwanted side effects.
2. Rapid Arc is a form of Volumetric Arc Therapy (VMAT). Rapid Arc is an advanced form of radiation therapy that delivers precisely-sculpted 3D dose distributions with a 360 degree rotation of the gantry. Our current technique has the gantry rotating and stopping at 7-9 different angles, each delivering a partial treatment. Rapid Arc is much faster, about 2 minutes to perform an arc. As with a higher MLC as above, Rapid Arc also helps spare normal healthy tissues, reducing side effects.
3. Cone Beam CT (CBCT) Method of image guidance that allows precise targeting of tissue. We currently use implanted fiducial markers for ensuring that the patient is in the proper treatment position. CBCT uses the patient's internal anatomic features to achieve this goal, and would allow avoidance of the use of implanted fiducial markers in certain high risk patients such as those on blood thinners. This will decrease cost and increase patient convenience.

Please let me know if I can be of further assistance.

Sincerely,



Brian J. Larson, M.D.



Sirote & Permutt, PC
2311 Highland Avenue South
Birmingham, AL 35205-2972

PO Box 55727
Birmingham, AL 35255-5727

June 5, 2017

VIA EMAIL (shpda.online@shpda.alabama.gov)

Alva M. Lambert
Executive Director
State Health Planning & Development Agency
100 North Union Street, Suite 870
Montgomery, AL 36130

**Re: Urology Centers of Alabama, P.C.
Request for Non-Reviewability Determination
(RV 2017-020 "Request")
Additional Information:
Varian Medical System – Halcyon Linear Accelerator**

Dear Mr. Lambert:

On behalf of Urology Centers of Alabama, P.C. ("UCA"), this letter is to provide additional information in support of the UCA RV 2017-020 Request for a determination that the proposed installation of a replacement Varian Medical System in the private office of UCA in Homewood, Alabama, is **not** subject to Certificate of Need ("CON") review under Alabama Code § 22-21-260 *et. seq.* and the CON Rules, and does **not require** a CON in that it does not involve a new institutional health service or any healthcare facility expenditures in excess of the statutory thresholds requiring CON Review.

Pursuant to our discussions on June 1, 2017, we hereby provide the following additional information to support the UCA RV2017-020 Request and to assure SHPDA that there will be **no overlapping use** by UCA of its existing Varian Medical System and the proposed replacement Varian Medical System.

1. Since filing the RV2017-020 Request on May 1, 2017, UCA has identified the latest state of the art Varian Medical System that will **not** require any overlapping use of the existing UCA Varian Medical System with the proposed replacement Varian Medical System as described in the UCA RV 2017-020 Request.
2. The newly identified **Varian Medical System - Halcyon Linear Accelerator** has all of the same comparable capabilities and features as well as the latest state of the art quality, for approximately the same cost, as outlined for the proposed replacement Varian Vital Beam Linear Accelerator described in the UCA RV2017-020 Request. UCA only recently discovered the availability of the Varian Medical System- Halcyon Linear Accelerator.

RECEIVED

JUN 06 2017

STATE HEALTH PLANNING
AND DEVELOPMENT AGENCY

Lenora W. Pate
Attorney at Law
lpate@sirote.com
Tel: 205-930-5162
Fax: 205-212-3801



Alva M. Lambert
June 5, 2017
Page 2

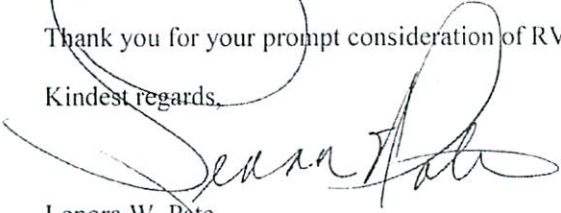
3. Per our discussions on June 1, 2017, this letter hereby substitutes the proposed replacement **Varian Medical System – Halcyon Linear Accelerator** for the originally proposed replacement Varian Medical System Vital Beam Linear Accelerator described in RV 2017-020 and hereby provides SHPDA with the requested assurances that there will be **no overlap** in the usage of UCA's Existing Varian Medical System with the substituted proposed replacement **Varian Medical System – Halcyon Linear Accelerator**.
4. The substituted proposed replacement **Varian Medical System – Halcyon Linear Accelerator** will actually be installed in the exact space in the UCA physician office from which the UCA Existing Varian Medical System will be removed. Installation of the **Varian Medical System - Halcyon Linear Accelerator** will be quicker, more efficient, more effective, and requires no conditioning since the Halcyon Linear Accelerator is preconditioned. Therefore, no lengthy installation and conditioning of the replacement Halcyon Linear will occur and, hence, **no overlap** of services between the Existing Varian Medical System and the substituted proposed replacement **Varian Medical System – Halcyon Linear Accelerator** will be necessary.
5. All other information contained in the UCA RV2017-020 Request remains the same. We respectfully request that this additional information be included in the file of RV2017-020 Request for your consideration in making the requested determination.

The Proposal in the UCA RV2017-020 Request, with this substitution of the proposed **replacement Varian Medical System – Halcyon Linear Accelerator** requiring no lengthy installation, conditioning, or overlapping usage with the UCA Existing Varian Medical System which will be removed from the UCA physician office and taken out of service prior to the installation of the Halcyon Linear Accelerator, is due to be determined as non-reviewable in accordance with the Alabama CON Law, Rules, and Regulations in that it does **not** involve any new institutional health services or any healthcare expenditure in excess of the statutory thresholds requiring CON Review or any other reviewable event under the CON Laws, Rules, and Regulations.

In accordance with CON Rule 410-1-3-.09, a pdf text searchable copy of this Letter of Additional Information and Support of the UCA RV2017-020 Request is being submitted electronically to be included in the RV2017-020 Request SHPDA file, on the 5th day of June, 2017, to shpda.online@shpda.alabama.gov; with a paper original being preserved in our files.

Thank you for your prompt consideration of RV2017-020 Request.

Kindest regards,



Lenora W. Pate
FOR THE FIRM

LWP/lcc

Birmingham Huntsville Mobile Pensacola

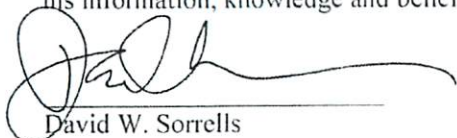


Alva M. Lambert
June 5, 2017
Page 3

c: Deborah Compton
David Sorrells

Affirmation of Requesting Party:

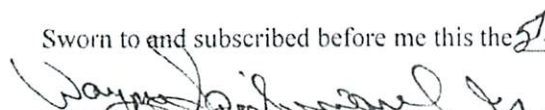
The Undersigned, being first duly sworn, hereby makes oath or affirms that he, **DAVID W. SORRELLS**, the Practice Administrator and Assistant Secretary of the Urology Centers of Alabama, P.C. has knowledge of the facts in this Letter of Additional Information and Support of the UCA RV2017-020 Request and to the best of his information, knowledge and belief such facts are true and correct.



David W. Sorrells

Seal

Sworn to and subscribed before me this the 5th day of June, 2017.



Notary Public
My Commission Expires: 8-19-20

Exhibit 2

Physician Employee Lease Agreement

PHYSICIAN EMPLOYEE LEASE AGREEMENT

THIS PHYSICIAN EMPLOYEE LEASE AGREEMENT (“Agreement”) is made and entered into as of the [] day of [], 2023 (“Effective Date”), by and between **Urology Centers of Alabama, P.C.**, an Alabama professional corporation (“UCA”) and **The University of Alabama Health Services Foundation, P.C.**, an Alabama nonprofit professional corporation recognized as tax-exempt pursuant to Section 501(c)(3) of the Internal Revenue Code (“Foundation”).

RECITALS:

WHEREAS, UCA provides urological care to patients at its locations across the greater Birmingham metro area, including at the following location: 3485 Independence Drive, Homewood, Alabama 35209 (the “Office”);

WHEREAS, UCA is in need of a part-time physician specializing in the field of radiation oncology (“Leased Physician”), who has the training, experience and qualifications to provide professional services in the field of radiation oncology (the “Services”);

WHEREAS, Foundation employs a physician who is skilled and experienced in providing the Services and, therefore, suitable to act in the capacity of a Leased Physician;

WHEREAS, UCA desires to lease the professional services of the Leased Physician from Foundation, and Foundation desires to provide the professional services of the Leased Physician under a leasing arrangement to UCA; and

WHEREAS, UCA and Foundation, as the parties to this Agreement, wish to establish a mutually beneficial, co-employer relationship as hereinafter described, and to define herein their respective rights and responsibilities with respect to said relationship, each to the other.

NOW, THEREFORE, in consideration of: (a) the foregoing recitals which are adopted as part of this Agreement, and (b) the mutual covenants and conditions contained herein, the sufficiency and receipt of which are hereby acknowledged by each party hereto, UCA and Foundation agree as follows:

1. OBLIGATIONS OF FOUNDATION. In consideration of UCA’s undertaking to provide the facilities, staffing, supplies and other support for the Leased Physician, during the Term of this Agreement, Foundation will lease to UCA the Leased Physician to provide the following staffing and related services at the Office:

(a) Staffing Services. UCA shall lease the Leased Physician from Foundation, who shall be available at the Office to provide Services for UCA’s patients. Such Leased Physician shall be mutually selected by the parties hereto to provide the Services outlined by this Agreement, and shall not be substituted, except when such Leased Physician takes vacation, sick leave, continuing medical education time off or is otherwise on legally recognized leave and except as set forth in Section 13 below. The name and NPI number of such Leased Physician is set forth on Schedule 1(a) attached hereto, as the same may be amended from time to time by the mutual, written agreement of the parties. Leased Physician shall provide such Services, including Medical Director Services, as defined below, on a six-tenths (0.6) full-time equivalent (“FTE”) basis for three (3) days per week on a schedule reasonably determined by UCA and agreed to by Foundation. Except as otherwise agreed to by the parties, the Leased Physician shall provide Services during UCA’s normal hours of operation, excluding holidays and those days that UCA is closed for patient care services. Without limiting the foregoing and without

limiting the provisions of Section 1(c) below, the Leased Physician shall provide the following services for UCA's patients:

- i. Provide radiation oncology services and care at the Office;
- ii. Provide administrative oversight for the radiation oncology services at the Office (hereinafter, "Medical Director Services"), as set forth more fully in Section 1(b) below;
- iii. Keep and maintain (or causing to be kept and maintained) appropriate and accurate medical and other records relating to all Services rendered by Leased Physician pursuant to this Agreement, in a form reasonably acceptable to UCA;
- iv. Support and utilize any electronic medical/health record, patient tracking and other electronic clinical system(s) implemented or otherwise utilized by UCA that is applicable to patient care and/or health information created or maintained for patients of UCA;
- v. Assist with billing issues concerning the patient care rendered by the Leased Physician; and
- vi. Perform such other duties in connection with and consistent with the Services as Foundation and UCA may mutually agree from time to time.

(b) Medical Director Services. Leased Physician shall perform the following Medical Director Services for UCA:

- i. Assist with the oversight of radiation oncology services at the Office;
- ii. Participate in the selection of equipment and development of policies regarding the operation of UCA's radiation oncology equipment;
- iii. Assist with the development of radiation oncology safety protocols and regulations designed to ensure compliance with governmental requirements;
- iv. Assist UCA in developing specific outcome measurements, policies and procedures related to radiation oncology;
- v. With respect to radiation oncology services at the Office, assist UCA in the conduct of and preparation of responses to surveys by The Joint Commission and/or any other regulatory and accrediting national, state, or local agency's requirements and standards;
- vi. Assist UCA in the development and implementation of appropriate quality performance improvement activities and metrics and patient satisfaction goals with respect to radiation oncology services at the Office;
- vii. Assist UCA staff to evaluate the efficiency and effectiveness of radiation oncology services at the Office by monitoring for specific outcomes and performance indicators as specified by UCA; and

viii. Assist, when reasonably requested by UCA, to assure that radiation oncology services at the Office are provided in accordance with all requirements of The Joint Commission, Medicare Conditions of Participation, all applicable licensing requirements, and all other relevant requirements promulgated by any federal, state or local agency.

(c) Non-Exclusivity. Nothing in this Agreement shall be construed to create an exclusive relationship between the parties for the provision of Services in the specialty of radiation oncology. UCA agrees and acknowledges that the Leased Physician staffing the Office will not be exclusive to UCA and the Office, and the Leased Physician will continue to provide services for the Foundation.

2. **STANDARDS OF FOUNDATION AND PHYSICIAN**. The Foundation represents and warrants to UCA as of the Effective Date and during the Term of this Agreement as follows:

(a) Leased Physician shall be licensed without restriction to practice medicine in the State of Alabama and shall maintain all necessary DEA and state certificates needed to prescribe controlled substances in the State of Alabama. Further, Leased Physician shall be board certified or board eligible by or through the American Board of Medical Specialties (ABMS) in his/her specialty. The term “board eligible” means Leased Physician has completed all education and residency training requirements in his/her specialty and is eligible to take, but has not yet passed, the certifying board examination.

(b) Neither the Foundation nor Leased Physician have been and throughout the Term of this Agreement will not be suspended, excluded, barred or sanctioned by the Medicare or Medicaid programs or other federal or state program (as defined at 42 U.S.C. § 1320a-7b(f)) or convicted of a health care offense that falls within the ambit of 42 U.S.C. § 1320a-7(a).

(c) Leased Physician shall perform the Services in accordance with: (i) the provisions of this Agreement, (ii) all bylaws, policies, procedures, standards and protocols of UCA, (iii) all applicable local, state and federal laws, rules and regulations, (iv) all applicable ethical standards set forth by county, state and national bodies having authority to set standards for physicians, (v) all accreditation standards applicable to UCA, if any, (vi) generally accepted medical professional standards, and (vii) all requirements for UCA’s participation in third-party reimbursement programs, including, without limitation, the Medicare and Medicaid programs and the BlueCross BlueShield of Alabama program. In addition, Leased Physician shall perform the Services at the direction, control and supervision of UCA to the same extent as other physician employees of UCA. While at the Office and/or providing the Services and Medical Director Services, the Leased Physician shall follow all reasonable standards, policies, rules, procedures, compliance programs, employee manuals, and regulations set or adopted by UCA for its employed physicians, including, but not limited to, wearing UCA-branded attire, as reasonably requested by UCA.

(d) Leased Physician shall enroll as a participating provider and shall maintain participating provider status in the Medicare and Medicaid programs, the BlueCross BlueShield of Alabama program and all other HMO, PPO, managed care programs and third-party payer programs in which UCA participates in order for UCA to obtain reimbursement for professional services rendered by Leased Physician pursuant to this Agreement.

(e) Foundation shall be solely responsible for all employment obligations with respect to Leased Physician, including without limitation, paying any and all salary, wages, commissions, fringe benefits and other remuneration, for paying any and all Social Security taxes, state and federal

unemployment taxes, employment taxes and all other taxes and governmental assessments, and for paying all workers' compensation insurance and benefits.

3. OBLIGATIONS OF UCA. In consideration of Foundation's undertaking to lease the Leased Physician to provide the Services and to facilitate the discharge of such duties, during the Term of this Agreement, UCA shall provide the following to Foundation and Leased Physician:

(a) Administrative support staff personnel as is reasonably necessary to assist and support Leased Physician in the provision of Services at the Office and to enable UCA to operate in an efficient and legally compliant manner;

(b) Space, equipment and furniture at the Office as is reasonably necessary for the operation of UCA and for use by Leased Physician in furnishing Services pursuant to this Agreement;

(c) In accordance with applicable laws, access to all UCA charts, records and other financial and/or medical information relating to patients treated at UCA by Leased Physician;

(d) Such supplies, drugs and medications as UCA deems reasonably necessary for use by Leased Physician in furnishing Services to UCA patients; and

(e) UCA shall work cooperatively with Foundation and Leased Physician to expeditiously credential Leased Physician to provide professional services at UCA.

All support personnel provided by UCA to staff the Office or otherwise to assist Leased Physician in the provision of Services at the Office shall be employees or contractors of UCA and shall be selected, retained and disciplined in accordance with the applicable policies of UCA. Such UCA personnel shall not be considered employees of Foundation for any purpose and shall not participate in or receive any compensation, retirement or fringe benefits from Foundation. Except as set forth herein, neither Foundation nor Leased Physician shall have any responsibility for oversight or control of the employees and agents of UCA.

4. STANDARDS OF UCA. UCA represents and warrants to the Foundation as of the Effective Date and during the Term of this Agreement as follows:

(a) All UCA personnel working at the Office with respect to the provision of radiation oncology services shall have the requisite training, education and experience to provide the services to be offered by such personnel.

(b) Neither UCA nor any UCA employees have been and throughout the Term of this Agreement will not be suspended, excluded, barred or sanctioned by the Medicare or Medicaid programs or other federal or state program (as defined at 42 U.S.C. § 1320a-7b(f)) or convicted of a health care offense that falls within the ambit of 42 U.S.C. § 1320a-7(a).

(c) UCA shall operate the Office and perform its services hereunder in accordance with: (i) the provisions of this Agreement, (ii) all bylaws, policies, procedures, standards and protocols of UCA, (iii) all applicable local, state and federal laws, rules and regulations, (iv) all applicable ethical standards set forth by county, state and national bodies having authority to set standards for radiation oncology centers and its personnel, (v) all accreditation standards applicable to UCA, if any, (vi) generally accepted medical professional standards, and (vii) all requirements for the UCA's participation

in third-party reimbursement programs, including, without limitation, the Medicare and Medicaid programs and the BlueCross BlueShield of Alabama program.

(d) UCA shall maintain without restriction all applicable licenses, certificates, permits, certificates of need, accreditations and other local, state and federal authorizations necessary to operate the Office for its intended purpose.

(e) UCA shall be solely responsible for all employment obligations with respect to its employees performing services pursuant to this Agreement and at the Office, including without limitation, paying any and all salary, wages, commissions, fringe benefits and other remuneration, for paying any and all Social Security taxes, state and federal unemployment taxes, employment taxes and all other taxes and governmental assessments, and for paying all workers' compensation insurance and benefits.

5. INSURANCE.

(a) Professional Liability Insurance. At all times during the Term of this Agreement, UCA shall obtain and maintain or cause to be maintained professional liability insurance for UCA and its employees working at the Office, including the Leased Physician with respect to Services provided by the Leased Physician for UCA pursuant to this Agreement. Such coverage shall cover their acts and omissions in providing/performing professional services in the minimum amount of One Million Dollars (\$1,000,000) per claim or occurrence and Three Million Dollars (\$3,000,000) in the annual aggregate. If such coverage is on a claims made basis, UCA shall require that appropriate tail or prior acts coverage be maintained in order to provide continuing insurance protection for all professional services rendered by UCA and its employees during the Term of this Agreement, including the Leased Physician. UCA shall, upon request, provide the Foundation proof of such coverage.

(b) Worker's Compensation Insurance. As required by law, Foundation shall obtain and maintain or cause to be maintained at all times during the Term of this Agreement, workers' compensation insurance covering Leased Physician in the amount of at least the statutory limits in the State of Alabama for workers' compensation insurance. As required by law, UCA shall obtain and maintain at all times during the Term of this Agreement, workers' compensation insurance covering each UCA employee working at the Office in the amount of at least the statutory limits in the State of Alabama for workers' compensation insurance. Either party shall, upon request of the other party, provide the requesting party proof of such coverage.

6. COMPENSATION TO FOUNDATION.

(a) Compensation. As full compensation for the Services provided by Foundation pursuant to this Agreement, UCA shall compensate Foundation in the amounts set forth in Exhibit A.

(b) Past Due Amounts. Any past due amounts owed by UCA shall accrue interest at the rate of ten percent (10%) per annum or the maximum rate allowed by law, whichever is less.

(c) No Withholdings. UCA shall not withhold on behalf of Foundation pursuant to this Agreement any sums for income tax, unemployment insurance, social security or other withholdings pursuant to any law or requirements of any governmental body. All such payments, withholdings and benefits, if any, are the sole responsibility of Foundation.

(d) Regulatory Matters. UCA and Foundation hereby acknowledge and agree that the compensation paid to Foundation as set forth in this Agreement is reasonable and fair market value for the

services to be rendered and was determined as part of an arm's-length negotiation. The parties expressly acknowledge and agree that none of the benefits granted hereunder are conditioned upon any requirement that either party, or their employees, officers or agents, make referrals to, be in a position to make or influence referrals to, or otherwise generate business for the other party. It is the expectation of the parties that existing referral patterns not be impacted by this Agreement, and that Leased Physician may continue to perform professional services at such other locations and health care facilities regardless of affiliation with UCA. Notwithstanding any unanticipated effect of this Agreement, neither party will knowingly or intentionally conduct itself in a manner that violates the federal Anti-kickback Statute, the federal Criminal and Civil False Claims Act, the federal Self-Referral Statute, any federal or state laws addressing health care fraud, or any federal or state patient confidentiality laws. Except for the compensation set forth in this Section 6 and Exhibit A, UCA shall not provide or be responsible for providing any other benefit to Foundation or Leased Physician.

7. RELATIONSHIP OF THE PARTIES; NO BRANDING, MARKETING OR ADVERTISING.

(a) Status. This Agreement is intended to create a co-employer relationship between UCA and Foundation with respect to the Leased Physician. Notwithstanding such relationship, in performing the services herein, Foundation is acting as an independent contractor of UCA. Nothing contained in this Agreement shall be construed to create a partnership or a joint venture between or among Foundation and UCA. Neither Foundation nor UCA shall have the authority to bind the other party, and they may not incur any financial obligation on behalf of the other party, without the prior written approval of the other party. In the event the Internal Revenue Service should question or challenge the independent contractor status of Foundation and UCA, the parties hereto mutually agree to notify one another immediately of such inquiry or challenge, and Foundation and UCA shall have the right to participate jointly in any discussions or negotiations occurring with the Internal Revenue Service, irrespective against whom or by whom such discussions or negotiations are initiated. Each party shall bear its respective costs in the event of such an investigation.

(b) No Branding, Marketing or Advertising. UCA shall not brand, market or advertise itself as affiliated in any way with Foundation or The Board of Trustees of The University of Alabama, a constitutionally created public corporation and instrumentality of the State of Alabama, acting through its operating division the University of Alabama at Birmingham ("UAB"), or any of its affiliates, including the UAB Health System. Nothing in this Agreement shall be construed to allow UCA to use the name, brand, image or logo of UAB or Foundation, or any of UAB or Foundation's branding, marketing or advertising materials or information.

8. TERM. This Agreement shall commence on the Effective Date and continue for an initial term of one (1) year, subject to the termination provisions set forth herein (the "Initial Term"). Thereafter, this Agreement shall automatically renew for successive one (1) year terms, subject to the termination provisions set forth herein (each, a "Renewal Term", and together with the Initial Term, the "Term"). Each twelve (12) month term of this Agreement beginning with the Effective Date shall be referred to herein as a "Contract Year".

9. TERMINATION.

(a) Termination for Cause. Either party shall have the right to terminate this Agreement immediately upon written notice to the other party in the event the other party commits a material breach of any of its obligations under this Agreement and the breaching party fails to cure such

breach within twenty (20) days after written notice from the non-breaching party stating the specific nature of the breach and requesting that it be cured.

(b) Termination without Cause. Either UCA or Foundation may terminate this Agreement without penalty or cause at any time by giving the other party at least sixty (60) days' prior written notice of such termination.

(c) Termination by Foundation Upon the Occurrence of Certain Events. Foundation may immediately terminate this Agreement by written notice to UCA: (i) upon a breach of Section 4(b), unless such breach is due to the act or omission of a UCA employee and UCA immediately removes such employee from providing services at UCA and makes available a suitable replacement for such removed employee, and (ii) upon a breach of Section 4(d).

(d) Termination by UCA upon the Occurrence of Certain Events. UCA may immediately terminate this Agreement by written notice to Foundation upon a breach of Section 2(b), unless such breach is due to the act or omission of Leased Physician and Foundation immediately removes the Leased Physician from providing Services pursuant to this Agreement and makes available to UCA a replacement physician that meets the qualifications of Leased Physician pursuant to this Agreement.

(e) Automatic Termination. This Agreement shall automatically terminate: (i) in the event a party shall: (a) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of it or any of its property, (b) admit in writing its inability to pay its debts as they mature, (c) make a general assignment for the benefit of creditors, (d) be adjudicated bankrupt or insolvent or be the subject of an order for relief under Title 11 of the United States Code, or (e) file a voluntary petition in bankruptcy, or (ii) if there shall be filed against a party an involuntary petition seeking reorganization of such party, the appointment of a receiver, trustee, custodian or liquidator of such party, or an involuntary petition under any bankruptcy, reorganization or insolvency law of any applicable jurisdiction, and such involuntary petition shall not have been dismissed within ninety (90) days after the filing of such involuntary petition.

(f) Termination for Changes in Law. If: (i) Medicare, Medicaid or any federal, state or local law, rule, regulation or interpretation at any time during the Term of this Agreement prohibits, materially restricts or in any way materially and adversely affects the arrangements contemplated by this Agreement or creates a material adverse economic effect on either party, or (ii) there is any change in any Medicare, Medicaid, federal, state, or local law, rule, regulation or interpretation which materially and adversely affects either party, including any material adverse economic effect on either party, ((i) and (ii) separately and in the aggregate a "Material Change"), then the parties shall use their good faith best efforts to amend this Agreement and/or the applicable Exhibit in a manner which is consistent with any such Material Change and which substantially preserves for the parties the relative economic benefit of this Agreement. If the parties cannot reach agreement on such amendment within thirty (30) days after notice from one party to the other of such Material Change, such notice to include an opinion of legal counsel regarding the Material Change, this Agreement shall automatically terminate.

(g) Rights and Actions upon Termination. Upon termination of this Agreement, neither party shall have any further rights against or obligations to the other party except with respect to any rights or obligations accruing prior to the date and time of termination and any obligations, promises or agreements which expressly extend beyond the date of termination, including earned but unpaid amounts pursuant to Exhibit A. Upon termination of this Agreement, Foundation shall not own any interest in the accounts receivable, work in process or other assets of UCA. Notwithstanding the

termination of this Agreement, Leased Physician shall be required to complete applicable medical records and cooperate with UCA on any malpractice or other actions or suits, whether pending or threatened, that relate to the medical services rendered to patients by Leased Physician pursuant to this Agreement.

10. CONFIDENTIAL INFORMATION; MEDICAL RECORDS.

(a) Confidential Information of UCA. Foundation agrees that all data and information which it receives and which Leased Physician receives from UCA in connection with this Agreement shall be considered confidential and proprietary information of UCA. Foundation and Leased Physician shall hold such data and information in strictest confidence and shall not make use of such data and information other than as permitted under this Agreement. Foundation and Leased Physician shall not disclose, distribute or otherwise divulge such data and information to any other person without the prior written consent of UCA, except as required for legal, accounting or regulatory purposes or pursuant to the terms of this Agreement. Upon request of UCA and/or upon termination of this Agreement, Foundation shall return (and shall cause Leased Physician to return) to UCA all data and information which Foundation or Leased Physician received from UCA in connection with this Agreement. Notwithstanding anything contained in this Section to the contrary, the obligations of Foundation and Leased Physician under this Section shall not apply to information or property which Foundation can demonstrate is: (i) now in the public domain or later publicly available through no fault of Foundation or Leased Physician, (ii) has been or is in the future rightfully obtained without restriction by Foundation or Leased Physician from other sources not subject to a confidentiality agreement, or (iii) independently developed without use of UCA's confidential information.

(a) Confidential Information of Foundation. UCA agrees that all data and information which it receives from Foundation or Leased Physician in connection with this Agreement (except as related to the Services provided by the Leased Physician to UCA) shall be considered confidential and proprietary information of Foundation. UCA shall hold such data and information in strictest confidence and shall not make use of such data and information other than as permitted under this Agreement. UCA shall not disclose, distribute or otherwise divulge such data and information to any other person without the prior written consent of Foundation, except as required for legal, accounting or regulatory purposes or pursuant to the terms of this Agreement. Upon request of Foundation and/or upon termination of this Agreement, UCA shall return (and shall cause each UCA employee to return) to Foundation all data and information which UCA received from Foundation in connection with this Agreement. Notwithstanding anything contained in this Section to the contrary, the obligations of UCA under this Section shall not apply to information or property which UCA can demonstrate is: (i) now in the public domain or later publicly available through no fault of UCA, (ii) has been or is in the future rightfully obtained without restriction by UCA from other sources not subject to a confidentiality agreement, or (iii) independently developed without use of Foundation's confidential information.

(b) Confidentiality of Patient Information. All medical records pertaining to Services rendered to patients of UCA, including all patient lists, case records and histories, films/images, physician-patient notes, reports, interpretations, consultations and other related information, shall be the sole property of UCA; provided, however that Foundation shall be entitled to obtain a copy of such records and information without charge in accordance with applicable law. UCA, Foundation and Leased Physician shall comply with all federal and state privacy laws, privileges and regulations concerning patient health information, including the Health Insurance Portability and Accountability Act of 1996, The Health Information Technology for Economic and Clinical Health Act, and all rules and regulations adopted thereunder. With respect to only the Medical Director Services provided by Foundation pursuant to this Agreement, the parties shall execute a HIPAA Business Associate Agreement, the form of which is attached hereto as Exhibit B and incorporated herein.

(c) Confidentiality of Agreement. The parties agree that the terms and conditions of this Agreement shall remain confidential. Unless required by law or otherwise agreed to by both parties in writing, no party hereto shall discuss the substance of this Agreement with or distribute this Agreement, or any part thereof, to any third party. Notwithstanding the foregoing, either party shall be entitled to disclose the existence and substance of this Agreement in accordance with state or federal law, UCA's request for a letter of Non-Reviewability under the Certificate of Need Laws of the State of Alabama, or to the parties' corporate members, representatives, accountants, financial advisors, and legal advisors, so long as such individuals are required to maintain the confidentiality of this Agreement in accordance with the terms of this Section.

(d) Reformation. If a court determines that any provision of this Section 10 is unreasonably broad, such provision shall not be declared invalid but rather shall be modified by such court to the extent necessary to cause it to be reasonable and lawful.

11. INDEPENDENT PRACTICE OF MEDICINE. Notwithstanding any provision in this Agreement to the contrary, Leased Physician shall perform all professional services pursuant to this Agreement in such manner as he or she, in the independent exercise of professional judgment, deems to be in the best interest of patients. Nothing contained in this Agreement will be construed to require Leased Physician to recommend or perform any procedure or course of treatment which Leased Physician deems medically unacceptable under the circumstances. Leased Physician shall provide health care services to patients without discrimination as to race, religion, sex, age, nationality, ancestry, marital status, disability, source of payment or other legally protected status.

12. BILLING. UCA shall have the exclusive right to bill and receive payment for, and shall own all accounts receivable for, all fees, including all facility and technical fees and all professional fees generated by Leased Physician in the rendering of radiation oncology services for UCA pursuant to this Agreement. UCA shall be solely responsible to ensure that any claims submitted by UCA are accurate, complete and in compliance with all applicable laws and third-party payer requirements, including those imposed by the Medicare and Medicaid programs. The parties agree to cooperate reasonably with each other in billing and collection efforts related to Services rendered to UCA patients.

13. REMOVAL OF A PHYSICIAN. In the event that the Leased Physician assigned by Foundation to work at UCA is "unacceptable" to UCA in its reasonable discretion, UCA shall notify Foundation in writing of the concerns and thereafter the parties shall meet in good faith to try to resolve the issues. If the issues are not resolved to the reasonable satisfaction of UCA within thirty (30) days following the date of delivery of the written notice, Foundation shall use its best efforts to replace Leased Physician with another physician who meets the criteria for a Leased Physician as set forth in this Agreement as soon as possible. Leased Physician will be deemed "unacceptable" if Leased Physician breaches Section 2(c) or Leased Physician's conduct has or could materially affect the quality of professional care provided to patients at UCA in the reasonable judgment of UCA. Notwithstanding the above, the Foundation shall automatically remove Leased Physician from providing services pursuant to this Agreement in the event that Leased Physician breaches the requirements of Sections 2(a) or 2(b) and Foundation shall provide a replacement physician.

14. RESOLUTION OF DISPUTES.

(a) Definition of Dispute. "Dispute" means any and all questions, claims, controversies or disputes arising out of or relating to this Agreement, including the validity, construction, meaning, performance, effect or breach of this Agreement. In addition, the arbitrator selected according to the procedures set forth below shall determine the arbitrability of any matter brought to him/her, and

his/her decision shall be binding on the parties and on the courts. The parties agree and acknowledge that this Agreement affects interstate commerce.

(b) Negotiation. In the event of any Dispute between the parties, the parties shall first promptly, amicably, and in good faith attempt to resolve such Dispute through negotiations. A disputing party shall give written notice of the Dispute to the other party that shall contain a brief statement of the nature of the Dispute. If the parties are unable to resolve the Dispute within thirty (30) days after receipt by the other party of the written notice of Dispute, the parties shall submit the Dispute to mediation as set forth in Section 14(c) below.

(c) Mediation. If the parties are unable or fail to settle their Dispute through negotiation as provided in Section 14(b) above, the Dispute shall be submitted to mediation in accordance with the Commercial Mediation Rules and Procedures of the American Arbitration Association (“AAA”), unless otherwise agreed to by both parties in writing. The parties shall attempt to agree upon an impartial mediator to mediate the Dispute, but if they are unable or fail to appoint a mediator within twenty (20) days of the filing of a written request for mediation with the AAA, the AAA will appoint a qualified mediator to serve. The mediation shall be held in Birmingham, Alabama within thirty (30) days of appointment of the mediator, unless otherwise agreed to by both parties in writing. Each party shall be responsible for its own expenses of mediation. The cost of the mediator shall be borne equally by both parties.

(d) Arbitration. If the parties are unable or fail to settle their Dispute through mediation as provided in Section 14(c) above, the Dispute shall be settled by binding arbitration administered by the AAA in accordance with its Commercial Arbitration Rules and Procedures, unless otherwise agreed to by both parties in writing. Unless the parties hereto are able to agree on a single arbitrator within ten (10) days after the initiation of an arbitration proceeding, the arbitrator shall be appointed in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitrator shall be qualified by training, education and experience to rule on the issues presented. The arbitration shall be held in Birmingham, Alabama, unless otherwise agreed to by both parties in writing. The parties expressly agree to consolidation of arbitral proceedings that concern common issues of fact or law. The arbitration award shall be in writing and shall state the reasoning on which the award rests. A judgment on the award shall be entered in any court of competent jurisdiction. Except as set forth in Section 14(e) below, each party shall be responsible for its own expenses of arbitration and the cost of the arbitrator shall be borne equally by both parties.

(e) Arbitration Expenses. The prevailing party in any arbitration proceeding shall be entitled to recover from the non-prevailing party all legal costs and expenses incurred by the prevailing party, including, but not limited to, reasonable attorneys’ fees and other legal costs and expenses, whether incurred before or at arbitration or with respect to enforcement of such arbitration award in a court of competent jurisdiction.

(f) Interim Measures. The sole exception to the negotiation, mediation and arbitration provisions set forth herein involves a suit brought on behalf of either party seeking a temporary restraining order, preliminary injunction and/or permanent injunction based upon a violation or anticipated violation of any term of this Agreement. A request for such interim measures to a judicial authority shall not be deemed incompatible with the provisions of this Section 14 or a waiver of a party’s obligation to negotiate, mediate and arbitrate.

(g) Waiver of Trial by Jury; Venue. The parties to this Agreement desire to avoid the additional time and expense related to a jury trial of any Disputes arising hereunder. THEREFORE,

IN THE EVENT THAT ARBITRATION AS SET FORTH ABOVE IS HELD TO BE UNENFORCEABLE AGAINST THE PARTIES, OR WITH RESPECT TO A COURT PROCEEDING PURSUANT TO SECTION 14(F) ABOVE, IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO, AND FOR THEIR SUCCESSORS, HEIRS AND PERMITTED ASSIGNS, THAT THEY SHALL AND HEREBY DO WAIVE TRIAL BY JURY OF ANY CLAIM, COUNTERCLAIM, OR THIRD PARTY CLAIM, INCLUDING ANY AND ALL CLAIMS OF INJURY OR DAMAGES, BROUGHT BY EITHER PARTY AGAINST THE OTHER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT AND/OR THE RELATIONSHIP WHICH ARISES HEREUNDER. THE PARTIES ACKNOWLEDGE AND AGREE THAT THIS WAIVER IS KNOWINGLY, FREELY, AND VOLUNTARILY GIVEN, IS DESIRED BY ALL PARTIES, AND IS IN THE BEST INTEREST OF ALL PARTIES. The parties hereby voluntarily agree that venue for any court proceedings shall be brought exclusively in the state or federal courts with jurisdiction over Jefferson County in the State of Alabama.

15. TAX EXEMPT STATUS. It is mutually agreed that this Agreement is intended to protect the present tax-exempt status of Foundation. Should the Internal Revenue Service determine that any provision, paragraph, clause or term of this Agreement is inconsistent with Foundation's tax-exempt status, such provision shall be immediately null and void and Foundation shall notify UCA in writing of such change and the effect of the change. The parties shall then enter into good faith negotiations to revise this Agreement to compensate for such change. If a revision proposed by Foundation to UCA is not agreed to by UCA within ten (10) days following receipt of notice of such revision, Foundation shall have the right to terminate this Agreement immediately by notice to UCA.

16. NON-SOLICITATION.

(a) Non-Solicitation by UCA. During the Term of this Agreement and for one (1) year thereafter, neither UCA nor an affiliate thereof shall, directly or indirectly, through any individual, person or entity, without the prior written consent of Foundation, engage in any conduct intending or having the effect of soliciting or persuading any Foundation employed physician (including the Leased Physician) to discontinue or forego entering into any business, employment or service relationship with Foundation, or any of its affiliates, or employ, contract with or retain any Foundation employed physician (including the Leased Physician), or any physician employed by Foundation in the prior six (6) months. The parties acknowledge that the restrictions contained in this Section are reasonable and necessary to protect the protectable interests of Foundation (the "Foundation Protectable Interests") and that any violation of these restrictions would result in irreparable injury to Foundation. UCA acknowledges that, in the event of a violation of any restriction contained in this Section 16(a), monetary damages will not be sufficient and Foundation shall be entitled to seek equitable or legal remedy available under the laws of the State of Alabama, including preliminary and permanent injunctive relief as well as an equitable accounting of all earnings, profits and other benefits arising from such violation. In the event of a violation, any period of time referred to in this Section 16(a) shall be extended by a period of time equal to the period beginning with any such violation and ending when such violation shall have been finally ended. The Foundation Protectable Interests include, without limitation, Foundation's confidential information as addressed herein, Foundation's commercial relationships with its patients, patient good will associated with its business, and the unique training of its physician employees (including the Leased Physician), which was and is provided by Foundation at considerable expense. UCA acknowledges and agrees that the Foundation employed physicians (including the Leased Physician) hold positions uniquely essential to the management, organization and service of Foundation.

(b) Non-Solicitation by Foundation. During the Term of this Agreement and for one (1) year thereafter, neither Foundation nor an affiliate thereof shall, directly or indirectly, through any

individual, person or entity, without the prior written consent of UCA, engage in any conduct intending or having the effect of soliciting or persuading any UCA employed physician to discontinue or forego entering into any business, employment or service relationship with UCA, or any of its affiliates, or employ, contract with or retain any UCA employed physician or any physician employed by UCA in the prior six (6) months. The parties acknowledge that the restrictions contained in this Section are reasonable and necessary to protect the protectable interests of UCA (the “UCA Protectable Interests”) and that any violation of these restrictions would result in irreparable injury to UCA. Foundation acknowledges that, in the event of a violation of any restriction contained in this Section 16(b), monetary damages will not be sufficient and UCA shall be entitled to seek equitable or legal remedy available under the laws of the State of Alabama, including preliminary and permanent injunctive relief as well as an equitable accounting of all earnings, profits and other benefits arising from such violation. In the event of a violation, any period of time referred to in this Section 16(b) shall be extended by a period of time equal to the period beginning with any such violation and ending when such violation shall have been finally ended. The UCA Protectable Interests include, without limitation, UCA’s confidential information as addressed herein, UCA’s commercial relationships with its patients, patient good will associated with its business, and the unique training of its physician employees, which was and is provided by UCA at considerable expense. Foundation acknowledges and agrees that the UCA employed physicians hold positions uniquely essential to the management, organization and service of UCA.

17. AMENDMENTS. No amendment or modification of this Agreement shall be deemed effective unless or until executed in writing by the parties hereto, with the same formality attending the original execution of this Agreement.

18. ASSIGNMENT. Neither party may assign this Agreement nor any rights or obligations hereunder except with the prior written consent of the other party, which consent may be given or withheld in such party’s sole and absolute discretion.

19. NOTICES. All notices or communications required or permitted by this Agreement shall be in writing and shall be deemed to have been given on the earlier of: (a) the date on which it is personally delivered, (b) three (3) days after it is deposited in the United States Mail, by certified or registered mail, return receipt requested, postage pre-paid, or (c) one (1) business day after it is sent by a reputable overnight carrier with postage prepaid, all properly addressed to the respective party at its address set forth below, or at such other address as shall be furnished in writing by either party to the other party in accordance with this Section:

If to UCA:

Urology Centers of Alabama, P.C.
3485 Independence Drive
Homewood, Alabama 35209
Attn: Paul Storey, Executive Administrator

If to Foundation:

The University of Alabama Health Services Foundation, P.C.
500 22nd Street South, Suite 502
Birmingham, Alabama 35233
Attn: Jason K. Daniel, Vice President

With a copy to (which shall not constitute notice):

The University of Alabama Health Services Foundation, P.C.
500 22nd Street South, Suite 504
Birmingham, Alabama 35233
Attn: Charles Fry, Vice President and Secretary

20. **SEVERABILITY.** If any provision or part of this Agreement is found to be totally or partially invalid, illegal or unenforceable, then the provision will be deemed to be modified or restricted to the extent and in the manner necessary to make it valid, legal or enforceable, or it will be excised from this Agreement without affecting any other provision of this Agreement, which will be enforced to the maximum extent provided by law as if the modified or restricted provision was originally included or as if the excised provision was originally excluded.

21. **NO WAIVER.** No waiver of a breach of any provision of this Agreement shall be construed to be a waiver of any breach of any other provision, or a continuing or repeated breach of the same provision.

22. **SURVIVAL.** The following provisions of this Agreement shall survive termination of this Agreement, along with such other provisions which by their terms survive termination: Sections 5(a), 6(b), 9(g), 10, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 25, 26 and 27 and Exhibit A with respect to earned but unpaid amounts owed by either party to the other.

23. **ENTIRE AGREEMENT.** This Agreement constitutes the entire Agreement and understanding of the parties hereto, and no statements or representations (oral or written) heretofore made by either party hereto to the other, not expressly set forth herein, shall be binding on the party making same.

24. **AMBIGUITIES.** The general rule that ambiguities are to be construed against the drafter shall not apply to this Agreement. Each of the parties has participated in the drafting and negotiation of this Agreement. In the event that any provision of this Agreement is found to be ambiguous, each party shall have an opportunity to present evidence as to the actual intent of the parties with respect to such ambiguous provision.

25. **HEADINGS.** The subject headings of the sections, articles, paragraphs and exhibits of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

26. **GOVERNING LAW.** This Agreement, and all extensions and modifications thereto, shall be interpreted, construed and enforced according to the laws of the State of Alabama, without regard to conflicts of law principles.

27. **COUNTERPARTS; FACSIMILE SIGNATURES.** This Agreement may be executed in any number of counterparts and all of such counterparts shall for all purposes constitute one instrument, notwithstanding that all parties are not signatories to the same counterpart, and, further, the pages of the counterparts on which appear the signatures of the parties may be detached from the respective counterparts of the Agreement and attached all to one counterpart which shall represent the final instrument. Facsimile or electronically transmitted signatures on this Agreement shall be deemed to be original signatures for all purposes.

[Signatures on the following page]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and effective as of the Effective Date.

UROLOGY CENTERS OF ALABAMA, P.C.

By: _____

Name: _____

Title: _____

**THE UNIVERSITY OF ALABAMA HEALTH SERVICES
FOUNDATION, P.C.**

By: _____

Name: _____

Title: _____

SCHEDULE 1(A)

LEASED PHYSICIAN INFORMATION

Leased Physician Name: _____

Leased Physician NPI: _____

[Remainder of Page Left Blank Intentionally]

Jordan Jackson
Senior Managing Associate
jordan.jackson@dentons.com
D 205-930-5438

Dentons Sirote PC
2311 Highland Avenue South
Birmingham, AL 35205-2972
United States

dentons.com

RV2023-026

RECEIVED

Aug. 03, 2023

STATE HEALTH PLANNING AND
DEVELOPMENT AGENCY

August 3, 2023

VIA E-MAIL

Emily T. Marsal
Executive Director
State Health Planning and Development Agency
100 North Union Street Suite 870
Montgomery, AL 36130

**Re: Urology Centers of Alabama
Reviewability Determination Request – Supplemental Filing
Physician Office Exemption – Leased Employee
Electronically Filed August 3, 2023**

Dear Ms. Marsal:

Per the State Health Planning and Development Agency's ("SHPDA's") request, this letter is submitted as a supplemental filing to the Urology Centers of Alabama, P.C. ("UCA") Reviewability Determination Request ("Request"), filed August 2, 2023, to confirm that the linear accelerator equipment discussed in the Request is located at UCA's physician office at 3485 Independence Drive, Homewood, Alabama 35209 in Jefferson County, Alabama. The leased employee physician discussed in the Request will provide services, including those related to the operation of the linear accelerator equipment, at this location.

Best regards,



Jordan Jackson
Senior Managing Associate
Dentons Sirote PC

cc:

Joseph T. Ritchey, Esq.