

**Minutes of Meeting
Health Services Council
Project Review Committee-II**

DATE: 10 May 2007

TIME: 2:30 PM

LOCATION: Health Policy Forum

ATTENDANCE:

Committee II: Present: Victoria Almeida, Esq., (Vice Chair), Raymond C. Coia, Esq., Wallace Gernt, Robert Hamel, Robert J. Quigley, DC, (Chair), Larry Ross, Reverend David Shire (Secretary)

Not Present: Maria R. Gil, Denise Panichas

Excused Absence: Rosemary Booth Gallogly, Sen. Catherine E. Graziano, RN, Ph.D.

Staff: Valentina D. Adamova, Michael K. Dexter, Joseph G. Miller, Esq.

Public: (Attached)

1. Call to Order, Approval of Minutes, Conflict of Interest Forms and Time Extension for the Minutes Availability

The meeting was called to order at 2:40 PM. The Chairman noted that conflict of interest forms are available to any member who may have a conflict. Minutes of the 3 May 2007 Project Review Committee-II meeting were approved. The Chairman requested a motion for the extension of time for the availability of minutes pursuant to the Open Meetings Act. A motion was made, seconded and passed by seven in favor and none opposed (7-0) that the availability of the minutes for this meeting be extended beyond the time frame provided for under the Open Meetings Act. Those members voting in favor were: Almeida, Coia, Gernt, Hamel, Quigley, Ross, Shire.

2. General Order of Business

The first item on the agenda was the change order request of Radiation Oncology Associates, Inc. to prior Certificate of Need applications to operate three linear accelerators. Staff distributed data on utilization by payor mix provided by the applicant, conditions of approval required on the last Certificate of Need of the applicant and a letter from Nixon Peabody with respect to the review process of this application. Staff noted that with regards to the review process the Department issued a declaratory ruling and that a request for an appeal of that ruling, of Stephen Zubiago, was sent to administrator of adjudication.

Mr. Miller, legal counsel to the Department, noted that the Department has requested that the appeal request be denied. He noted that the Committee should proceed with the review process of Radiation Oncology Associates, Inc. (“ROA”)

Mr. Zubiago stated that the request for an appeal was made and stated that the purpose of the letter was to make the Committee aware of this.

Ms. Warren, legal counsel to the applicant, stated that people don’t get an administrative review of a declaratory ruling and that this is an inappropriate way to seek further delay of the application review. She stated that there is no stay in place. She stated the applicant is here today, seeking consideration of its application.

Mr. Cameron, legal counsel to the applicant, stated that the letter from Nixon Peabody is trying to get the application delayed and requested that the review of the application not be delayed. He stated that Mr. Zubiago is representing a competitor.

The Chairman requested that the review continue unless there were any objections from members of the Committee. There were no objections from members of the Committee.

Ms. Warren distributed information regarding the applicant’s presentation. Mr. Miller noted that one of the handouts states that it is

confidential and noted that this would become part of the public record. The applicant agreed.

Dr. Masko, from ROA, stated that the request is to transfer three linear accelerators to a joint venture. She stated that ROA would be a part owner of that venture. She stated that there would be no changes in treatment or utilization.

Mr. Ross raised concern whether this review should be of change in ownership. Ms. Warren noted the declaratory ruling's decision that this is a change order.

The applicant noted that Vantage Oncology, the proposed capital partner, are involved with 23 medical centers and provide administrative support for 18 centers.

Mr. Ross questioned the terms of the agreements with regards to charity care and fair market value reference which the applicant addressed.

Mr. Ross requested clarification regarding which conditions of approval from the 1994 CON would be applicable. Staff noted that the applicant is not requesting a change to any of the conditions of approval, to which the applicant confirmed. Staff noted that conditions one through three are no longer applicable but that conditions four, five, six and seven would be maintained.

Staff noted that the change order request is to the project as originally approved and would reflect all the new information provided by the applicant.

Mr. Coia inquired if the Committee was bound by the declaratory ruling decision. Mr. Miller stated yes. Mr. Coia inquired what would happen if this application were required to be processed as full CON. Mr. Miller stated that the applicant is proceeding at its own peril and requested that the applicant confirm that they understand. Mr. Cameron stated that the applicant is aware of the risks.

Mr. Ross and Mr. Gernt noted their concerns with review process and impact on future projects. Mr. Gernt stated that he would be voting no because he is not comfortable with the process and precedent.

A motion was made, seconded and passed by four in favor, two opposed and one abstention (4-2-1) to recommend that the application be approved with previous conditions of approval four through seven remaining. Those members voting in favor were: Almeida, Hamel, Quigley, Shire. Those opposed were: Coia, Gernt. Ross abstained.

The next item on the agenda was the change order request by Roger Williams Radiation Therapy, LLC to the 31 May 2006 approval of the

Certificate of Need to acquire, own and operate a Varian Clinac iX linear accelerator to provide radiation therapy services in Providence

Dr. Lingos discussed the advantage of the proposed CT scanner. Mr. Zubiago stated that there would be no change in operating costs or reimbursement. The applicant agreed.

Mr. Oldenburg, from ROA, noted concern with the applicant's utilization data. Staff requested that the applicant update their data.

A motion was made, seconded and passed by seven in favor and none opposed (7-0) to recommend that the application be approved with conditions of approval. Those members voting in favor were: Almeida, Coia, Gernt, Hamel, Quigley, Ross, Shire.

Staff noted for the record that application of ARA-Rhode Island Dialysis II, LLC for initial licensure of an organized ambulatory care facility in East Providence and an organized ambulatory care facility in Woonsocket has been rescheduled for next week's meeting per request of the applicant.

There will be no further business and the meeting was adjourned 3:45 PM.

Respectfully submitted,

Valentina D. Adamova