

STATE OF NEVADA

BRIAN SANDOVAL
Governor

RICHARD WHITLEY, MS
Director



CODY PHINNEY, MPH
Administrator

TRACEY D. GREEN, MD
Chief Medical Officer

DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH

4150 Technology Way, Suite 300

Carson City, Nevada 89706

Telephone: (775) 684-4200 · Fax: (775) 684-4211

September 11, 2015

MEMORANDUM:

To: Stephen Kendall Jones, MD, Chairperson
State Board of Health

From: Cody Phinney, Secretary
State Board of Health

Re: Case #674: University Medical Center of Southern Nevada: requests for variance to Nevada Administrative Code (NAC) chapter 449 regulations for hospitals.

STAFF REVIEW

The Division of Public and Behavioral Health received an application for variance from University Medical Center of Southern Nevada, hereinafter referred to as "UMC", requesting relief from NAC 449.3154.

UMC is currently licensed as a 541 bed general hospital. The license for UMC also includes the following endorsements: Level 1 trauma services, Level 2 pediatric trauma services, open heart surgery, renal organ transplant services and Level 3 neonatal intensive care unit. UMC is one of the largest hospitals in Clark County. In addition to these services, UMC has a very active emergency department and like other major hospitals, provides medical clearance services and holding capacity for several psychiatric patients prior to their transfer to other facilities.

Upon receipt of the variance application, UMC and the Division worked in collaboration to identify specific areas of non-compliance and agreed that the variance request was limited to four subsections of an adopted reference found at NAC 449.3154.2. Note: The facility did not have time to officially amend the variance prior to this memorandum and Board of Health presentation.

UMC has requested variance to four subsections of an adopted reference found in NAC 449.3154.2, "Construction, remodeling, maintenance and change of use: General requirements; prerequisites to approval of licensure.

2. Except as otherwise provided in this section, any new construction, remodeling or change in the use of a hospital must comply with the Guidelines for Design and Construction of Hospital and Health Care Facilities, adopted by reference pursuant to [NAC 449.0105](#), unless the remodeling is limited to refurbishing an area of the hospital, including, without limitation, painting the area, replacing the

flooring in the area, repairing windows in the area and replacing window or wall coverings in the area.”

The four subsections of the American Institute of Architects (AIA), “*Guidelines for Design and Construction of Hospital and Health Care Facilities,*” include:

- 1) AIA Section 2.1-5.1.3.7(1)(d)(i) Emergency Department Treatment Space. “(1) Examination and treatment room(s), (d) Treatment cubicles, (i) Where treatment cubicles are in the open multiple-bed area, each cubicle shall have a minimum of 80 Square feet of clear floor space and shall be separated from adjoining cubicles by curtains.”
- 2) AIA Section 2.1-5.1.3.8(2), 2.1-10.1.4 and Table 2.1-5 Piped-in Medical Gas Systems. “2.1-10.1.4 Medical gas Systems. The installation, testing and certification of nonflammable medical gas and air systems shall comply with the requirements of NFPA 99. (See table 2.1-5 for room requiring station outlets.); Table 2.1-5, 2.1-5.1.3.8(2) Definitive emergency care observation unit: 1 Oxygen outlet/bed and 1 Vacuum outlet/bed.”
- 3) AIA Section 2.1-10.3.7.2(7) Emergency Department Electrical Duplex Outlets. “Emergency department. Examination and treatment rooms in the emergency department shall have a minimum of six duplex outlets located convenient to the head of each bed. Approximately 50 percent of emergency care outlets shall be connected to emergency system power and be so labeled.”
- 4) AIA Section 2.1-10.3.8.4(2) Nurse Call – Emergency Code Staff Summons. Limited call system. “In areas such as critical care recovery, pre-op and emergency, where patients are under constant surveillance, the nurse call may be limited to the following: (2) An emergency code resuscitation alarm to summon medical assistance from the code team.”

The variance application does identify the affected area as follows: outpatient oncology area will be converted to hold patients who have been medically cleared, but are currently on a legal hold awaiting placement in a psychiatric facility. The length of stay for person on a Legal 2000 can be up to (and at times beyond) 72 hours. Legal 2000 is the State of Nevada's involuntary civil commitment process.

A diagram of the affected area was provided as well. The revised application contained attached information regarding each of the four issues above with UMC’s position and justification as to the necessity of the variance.

INTENT OF THE REGULATION

The intent of NAC 449.3154.2 is to ensure hospitals are designed, constructed and operated in compliance with American Institute of Architects (AIA), “*Guidelines for Design and Construction of Hospital and Health Care Facilities,*” to ensure that patients are provided with sufficient infrastructure to support their care. The specific intent for each of the requested regulations to be varied are:

(1) Emergency department treatment space (open bay arrangement) must have at least 80 square feet; to allow for staff to position themselves and their medical equipment for treatment, either medically or restraining a patient. The space requirement also prevents overcrowding of patients in a limited area, which can exacerbate negative behaviors.

(2) Piped-in medical gas systems are necessary for providing oxygen to patients in emergent and non-emergent situations. Vacuum is necessary to help clear airways.

(3) Each treatment bay requires six electrical duplex outlets, wherein half are to be connected to the emergency electrical system. The purpose is to support any number of electrical medical devices that would aide in supporting an emergency department patient. Having half of the duplex outlets connected to emergency power would ensure that continuous electrical power would be available in the event of a utility electrical power outage.

(4) The staff summon nurse call is necessary to alert staff within an area that adverse medical event is occurring, so that staff can respond in an appropriate manner to get qualified staff assistance.

EXCEPTIONAL AND UNDUE HARDSHIP

The facility has presented along with this variance request Attachment #3, Variance Case #656. Variance Case #656 was an approved variance for a different population. Variance Case #656 population was not Legal 2000 patients, not medically cleared patients, and were typically emergency department patients awaiting radiology or laboratory results with a length of stay of 4-5 hours. Variance Case #656 was a UMC variance for patients known as RMA (Rapid Medical Assessment) patients. UMC's purpose for including Attachment C with this variance (Case #674) is to help justify the sharing of a single 80 square foot bay space between two (Legal 2000) patients. The present variance (Case #674) is for Legal 2000 patients, and other similar type patients, that are medically cleared and pending up to 72 hours length of stay. The observation unit regulations were stratified through interpretation for Variance Case #656 in order to support both the short-term and long-term stay patients. The interpretation was not intended for blending of the two dissimilar populations.

A brief summary of the facility's position concerning the hardship related to this variance are as follows:

- (1) The facility wants 16 bays and has indicated that any number less than that would not allow them to breakeven on their staffing costs, no evidence of the staffing cost was provided.
- (2) The facility has indicated originally that the medical gas was \$3000.00, changed to \$15,000.00 with variance revision.
- (3) The facility indicated that the cost to add the missing required electrical outlets (and supporting electrical panels) would be approximately \$35,000.00.
- (4) The facility indicated that the cost to add the staff summon emergency call would be approximately \$10,000.00.
- (5) The facility indicated that the cost to add the staff summon emergency call was unbudgeted and that moneys could be spent on other items.
- (6) The facility states that if they do not move forward with 16 bays with the above allowances, the facility would continue to spend 5.5 million due to expenditures to currently maintain the Legal 2000 patients within the emergency department.

The Division does not agree that the applicant will suffer undue hardship as a result of compliance with the regulations in NAC 449.3154. The facility currently has space and medical gas for 13 treatment spaces. Leaving the electrical outlets and nurse call issue expenditures of total of \$45,000.00 (hospital projections). This amount would be nominal ($45,000/5,500,000 = .008\%$) to the overall gain the facility indicated can be obtained with the 5.5 million in savings. This savings projection would be a significant return on infrastructure investment.

Even at 81% recovery with 13 of the 16 treatment spaces, the facility would gain 4.468 million. This should be more than sufficient to offset the non-optimal staffing position by the facility for having less than 16 treatment spaces. The facility currently has space to expand to 16 treatment bays to obtain the additional three treatment bays at this time (with some minor remodeling).

Just as important as the cost is that the patients would have all of the necessary infrastructure available to support their care in both routine and emergent situations. By having an observation unit with completed infrastructure would match most of the hospitals in Nevada (only two have diminished level of infrastructure) with observation units.

Over the course of time, the type and mix of patients for this observation unit may change or evolve to where the infrastructure becomes even more necessary to support the variety of patients.

DEGREE OF RISK TO HEALTH AND SAFETY

The Board has previously approved compliance agreements with regards to the medical gas requirements.

Review of past, approved variances and compliance agreements revealed the following:

- 1) Piped-in medical gas systems were varied to not have to be installed with the stipulation that only patients that would not require oxygen be admitted into the observation unit; and
- 2) That the facility had a crash cart equipped with oxygen cylinder(s) and portable vacuum devices in the observation unit.
- 3) Other observation unit requirements in compliance agreements include:
 - a. That patients must be medically cleared before being admitted into the observation unit;
 - b. That the facility have policies to compensate for the missing infrastructure;
 - c. That video surveillance be added to compensate for partition walls that would not allow for ready observation of the patients from the nurse's station; and
 - d. For one hospital, to conduct special monitoring of patients while toileting.

Issues that present for the observation unit that would be of significant concern relative to this variance request:

- A) There needs to be at least one emergency electrical duplex outlet for each patient treatment bay.
- B) The facility currently has nurse call for patient convenience and assistance (NC-CA) and not the nurse call staff summons (NC-SS), which is more important in this setting given the proposed sitters within the observation unit. The NC-CA have pull cords, which are a potential hazard for the Legal 2000 patients.
- C) Along the same theme as B) above, there is no reference to any tamper-proofing within the unit.

- D) Surveillance cameras may be necessary for the north patient area given the pony wall that conceals the direct line of sight for viewing a patient in this area. The sitter assignment may provide sufficient coverage, but this is unknown at this time.
- E) This variance request is prior to any plan review and functional program submittal. Consequently, this has created a lack of sufficient detail in establishing costs, available alternatives, knowledge of existing available infrastructure, and the facility's intent other than not wanting to spend any money on this project; thus to make an optimum recommendation for each item to be varied difficult. The pro-offered recommendations will be based on existing information.

Granting this variance without stipulations would impair the purpose of the regulation and cause a detriment to public health.

PUBLIC COMMENT RECEIVED

None.

STAFF RECOMMENDATION

Staff recommends that the Board approve the variance with the following stipulations:

- 1) Limit the number of treatment spaces to 13. (When the facility has additional resources, it can remodel to increase to the desired 16 treatment spaces.)
- 2) For each treatment space have at least one emergency electrical duplex outlet and one utility (normal) electrical duplex outlet for each patient treatment space. (When the facility has additional resources, it can add the other required duplex electrical outlets per treatment space.)
- 3) Provide a nurse call staff summons (NC-SS) between treatment spaces, singular treatment spaces will need to add NC-SS.
- 4) Ensure tamper-proofing throughout the unit.
- 5) If the facility cannot establish that it can provide continuous surveillance of all patients within the observation unit to the Division's satisfaction, then video surveillance will need to be added to those deficient areas.

PRESENTER:

Kyle Devine, Chief, Bureau of Health Care Quality and Compliance

KD/sg

Case #674



NEVADA STATE BOARD OF HEALTH
NEVADA STATE HEALTH DIVISION
4150 Technology Way, Suite 300
CARSON CITY, NV 89706

APPLICATION FOR VARIANCE

Please check the appropriate box that pertains to the NAC for which you are requesting a variance.

Division Administration
(NAC 439, 441A, 452, 453A, & 629)

Health Care Quality & Compliance
(NAC 449, 457, 459 & 652)

Child, Family & Community Wellness
(NAC 392, 394, 432A, 439, 441A, & 442)

Health Statistics, Planning &
Emergency Response
(NAC 440, 450B, 452, 453, 453A, & 695C)

Frontier and Rural Health Services
(NAC 211, 444, 446, 447, 583, & 585)

Date: 4-29-2015

Name of Applicant: University Medical Center So. Nevada Phone: 702-383-2000

Mailing Address: 1800 West Charleston Blvd.

City: Las Vegas State: Nevada Zip: 89102

We do hereby apply for a variance to chapter/section NAC 449.3154 of the Nevada Administrative Code (NAC). (For example: NAC 449.204)

Title of section in question: Construction, remodeling, maintenance and change of use

Statement of existing or proposed conditions in violation of the NAC:
Allowable square footage and additional requirements per patient bay.

Date of initial operation (if existing): N/A

ATTENTION: Please read this section closely. Your request for variance will be examined against these criteria:

Any person who, because of unique circumstances, is unduly burdened by a regulation of the State Board of Health and thereby suffers a hardship and the abridgement of a substantial property right may apply for a variance from a regulation. (NAC 439.200(1))

1. The State Board of Health will grant a variance from a regulation only if it finds from the evidence presented at the hearing that:
 - (a) There are circumstances or conditions which:
 - (1) Are unique to the applicant;
 - (2) Do not generally affect other persons subject to the regulation;
 - (3) Make compliance with the regulation unduly burdensome; and
 - (4) Cause a hardship to and abridge a substantial property right of the applicant; and
 - (b) Granting the variance:
 - (1) Is necessary to render substantial justice to the applicant and enable him to preserve and enjoy his property; and
 - (2) Will not be detrimental or pose a danger to public health and safety.
2. Whenever an applicant for a variance alleges that he suffers or will suffer economic hardship by complying with the regulation, he must submit evidence demonstrating the costs of his compliance with the regulation. The Board will consider the evidence and determine whether those costs are unreasonable. (NAC 439.240)

Therefore, it is important for your variance request to be as complete as possible. It is your responsibility to attach documentation supportive of your variance request.

Statement of degree of risk of health This variance will not affect or present any degree of health risk to patients cared for in this area. The old outpatient oncology area will be converted to hold patients who have been medically cleared but are currently on a legal hold awaiting placement in a psychiatric facility. This patient population will continue to receive the same level of care they are currently receiving in various locations. Moving patients to a single location will decrease costs and help facilitate movement to appropriate facilities.

Please state in detail the circumstances or conditions which demonstrate that:

1. An exceptional and undue hardship results from a strict application of the Regulation:
 1. L2K population awaiting placement in appropriate psychiatric facilities currently costs \$5,514,312.24 proposed new area will decrease costs by more than half if area can accommodate up to 16 patients to reach a 3.2:1 staffing ratio (see attachment A). 2. The area currently contains 12 gas stations increasing this number to 16 will add additional construction costs of approx. \$3,000. As patients in this area will never need the use of medical gases the addition of more medical gas stations seems unnecessary.

2. The variance, if granted, would not:
 - A. Cause substantial detriment to the public welfare.

Will not cause substantial detriment to public welfare; will actually improve public welfare through better access to emergency services for additional population.

B. Impair substantially the purpose of the regulation from which the application seeks a variance.

Will not substantially impair the purpose of the regulation.

The bureau may require the following supporting documents to be submitted with and as a part of this application:

1. Legal description of property concerned
2. General area identification map
3. Plat map showing locations of all pertinent items and appurtenances
4. Well log (if applicable)
5. Applicable lab reports
6. Applicable engineering or construction/remodeling information
7. Other items (see following pages)

This application must be accompanied by evidence demonstrating the costs of your compliance with regulations or specific statutory standards. Your request will be placed on the Board of Health agenda 40 days or more after receipt in this office if accompanied by the required fee (NAC 439.210). The application

and supporting documentation will form the basis for the Health Division staff report and recommendation to the Board. Failure to respond to the above statements may cause the Board to deny consideration of the application at the requested Board meeting.

Please schedule this hearing as:

The next regularly scheduled Board of Health meeting, regardless of location.

The next scheduled meeting in Carson City.

The next scheduled meeting in Las Vegas.

Signature:

Mason Vanhouweling

Printed Name: Mason Vanhouweling

Title: Chief Executive Officer, UMCSN

Date: 4/24/15

**PLEASE MAKE YOUR CHECK OR MONEY ORDER PAYABLE TO:
NEVADA STATE HEALTH DIVISION AND RETURN THIS APPLICATION,
ALONG WITH THE REQUIRED FEE PURSUANT TO NAC 439.210, TO:**

Richard Whitley, MS, Administrator
Nevada State Health Division
4150 Technology Way, Suite 300
Carson City, NV 89706

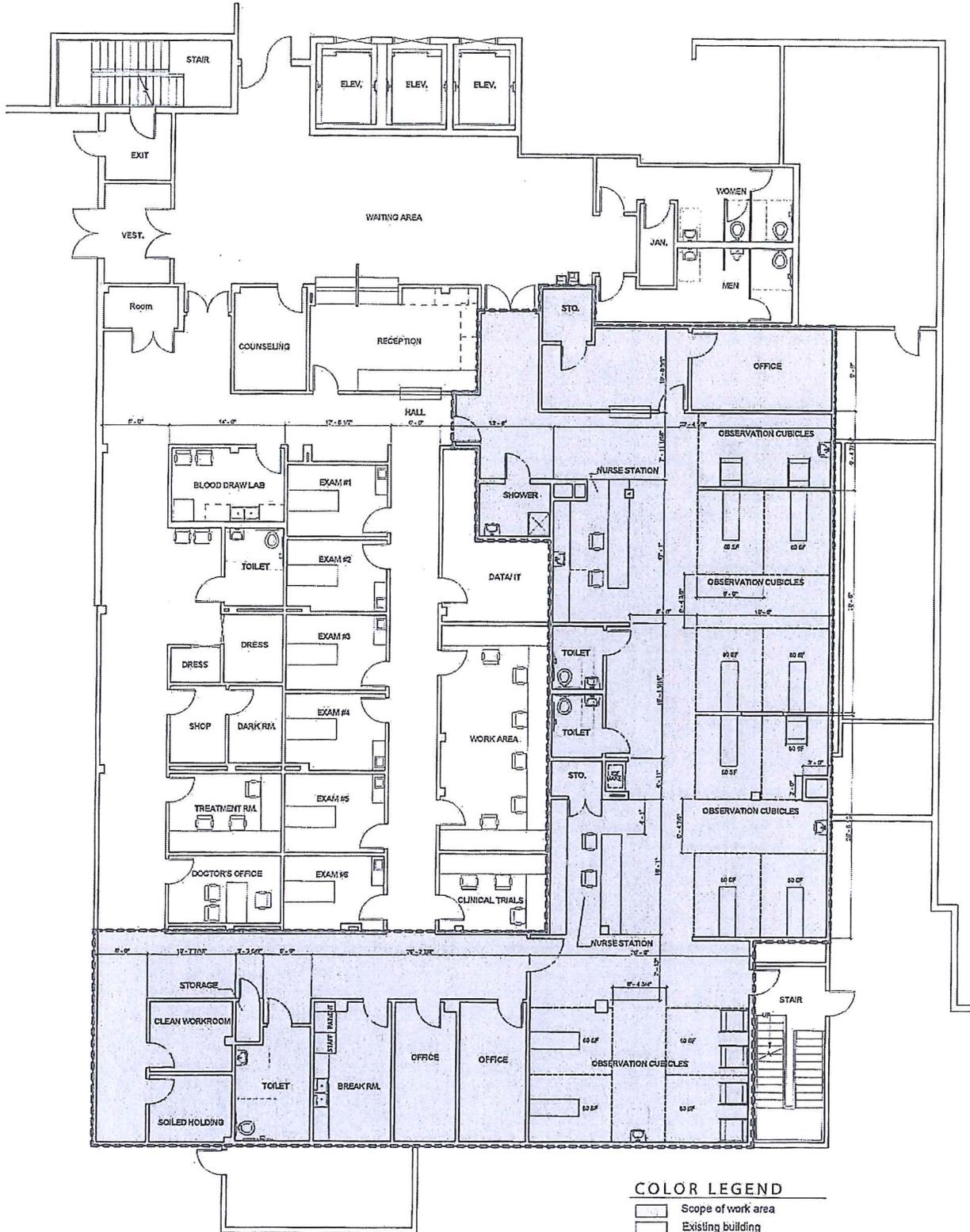
(See the attached table to determine the appropriate fee)

ATTACHMENT A

Cost Burden

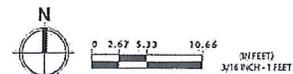
Location	Sitters (All)	Cost of staffing (non-sitters)	Total staffing Costs
Current Holding Location for L2K patient's awaiting Placement (Staffing Ratio is 1.5:1)	\$2,108,258.80	\$3,406,053.44	\$5,514,312.24
Proposed New Location for L2K patient's awaiting Placement (staffing ratio 3.2:1)	\$1,378,211.30	\$1,519,028	\$2,897,239.30
Savings	\$730,047.50	\$1,887,025.44	\$2,617,072.94

Proposed layout in grey of holding area.



COLOR LEGEND
 [Grey Box] Scope of work area
 [White Box] Existing building

1 FLOOR PLAN
 SCALE: 3/16" = 1'-0"



A2.01

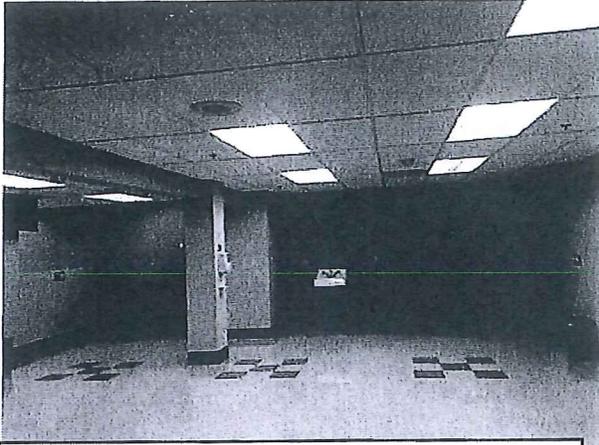
Existing Floor Plan
 03.05.2015
 R11-15102

AS BUILT UMC ED OBSERVATION UNIT
 1800 W. CHARLESTON BLVD., LAS VEGAS NV 89012

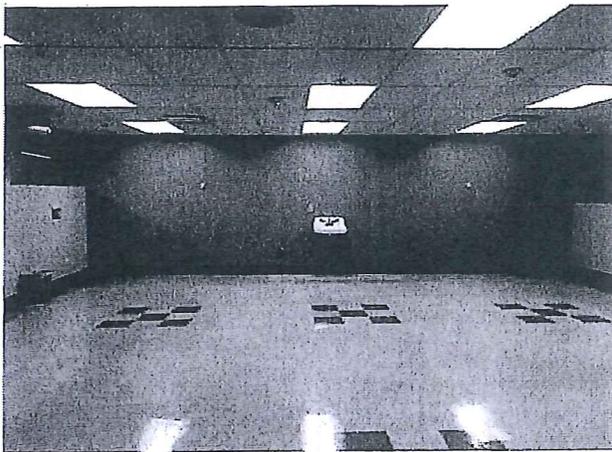


ATTACHEMENT B2.

Photos of bays in proposed areas.



SECTION 1



SECTION 2



SECTION 3

Previous approval of similar variance.

NEVADA STATE BOARD OF HEALTH
NEVADA STATE HEALTH DIVISION
4150 Technology Way, Suite 300
CARSON CITY, NV 89706

APPLICATION FOR VARIANCE

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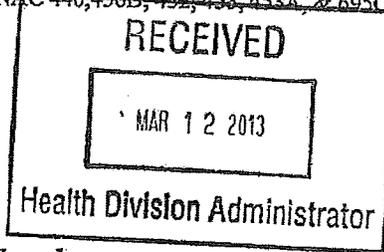
Division Administration
(NAC 439, 441A, 452, 453A, & 629)

Health Care Quality & Compliance
(NAC 449, 457, 459 & 652)

Child, Family & Community Wellness
(NAC 392, 394, 432A, 439, 441A, & 442)

Health Statistics, Planning &
Emergency Response
(NAC 446, 450B, 452, 453, 453A, & 695C)

Frontier and Rural Health Services
(NAC 211, 444, 446, 447, 583, & 585)



Date: 3-5-13

Name of Applicant: University Medical Center So. Nevada Phone: (702) 383-2000

Mailing Address: 1800 W. Charleston Blvd.

City: Las Vegas State: NV Zip: 89102

We do hereby apply for a variance to chapter/section NAC 449.3154 / ATA#2.1-5.1.3.8(2) of the Nevada Administrative Code (NAC). (For example: NAC 449.204)

Title of section in question: Observation Unit: Shower Room

Statement of existing or proposed conditions in violation of the NAC:

Patients cared for in this area will not be typical "observation" patients. Their lengths of stay will be limited to a few hours. The average length of stay for this patient population is approximately 4-5 hours. Therefore showering would not be a part of this patient's care. Showers are available on the Inpatient unit if admitted

to a true "observation" status.

Date of initial operation (if existing): Pending

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(a) There are circumstances or conditions which:

- (1) Are unique to the applicant;
- (2) Do not generally affect other persons subject to the regulation;
- (3) Make compliance with the regulation unduly burdensome; and
- (4) Cause a hardship to and abridge a substantial property right of the applicant; and

(b) Granting the variance:

- (1) Is necessary to render substantial justice to the applicant and enable him to preserve and enjoy his property; and
- (2) Will not be detrimental or pose a danger to public health and safety.

2. Whenever an applicant for a variance alleges that he suffers or will suffer economic hardship by complying with the regulation, he must submit evidence demonstrating the costs of his compliance with the regulation. The Board will consider the evidence and determine whether those costs are unreasonable. (NAC 439.240)

Therefore, it is important for your variance request to be as complete as possible. It is your responsibility to attach documentation supportive of your variance request.

Statement of degree of risk of health None

Please state in detail the circumstances or conditions which demonstrate that:

1. An exceptional and undue hardship results from a strict application of the Regulation:

Patients cared for in this area are not true "observation" patients. There would be no patients in this area with 23 hour stays. In fact, the average length of stay for this patient population should not exceed 4-5 hours. Estimated expense on the organization to apply this regulation would include: \$26,143.60 and loss of critical space in the Adult Emergency Department.

2. The variance, if granted, would not:

A. Cause substantial detriment to the public welfare.

None

B. Impair substantially the purpose of the regulation from which the application seeks a variance.

None

The bureau may require the following supporting documents to be submitted with and as a part of this application:

- 1. Legal description of property concerned _____
- 2. General area identification map (See attachment A & B)
- 3. Plat map showing locations of all pertinent items and appurtenances
- 4. Well log (if applicable)
- 5. Applicable lab reports
- 6. Applicable engineering or construction/remodeling information
- 7. Other items (see following pages)

This application must be accompanied by evidence demonstrating the costs of your compliance with regulations or specific statutory standards. Your request will be placed on the Board of Health agenda 40 days or more after receipt in this office if accompanied by the required fee (NAC 439.210). The application

and supporting documentation will form the basis for the Health Division staff report and recommendation to the Board. Failure to respond to the above statements may cause the Board to deny consideration of the application at the requested Board meeting.

Please schedule this hearing as:

- The next regularly scheduled Board of Health meeting, regardless of location.
- The next scheduled meeting in Carson City.
- The next scheduled meeting in Las Vegas.

Signature: 

Printed Name: Brian Brannman

Title: Chief Executive Officer

Date: 3-5-13

**PLEASE MAKE YOUR CHECK OR MONEY ORDER PAYABLE TO:
NEVADA STATE HEALTH DIVISION AND RETURN THIS APPLICATION,
ALONG WITH THE REQUIRED FEE PURSUANT TO NAC 439.210, TO:**

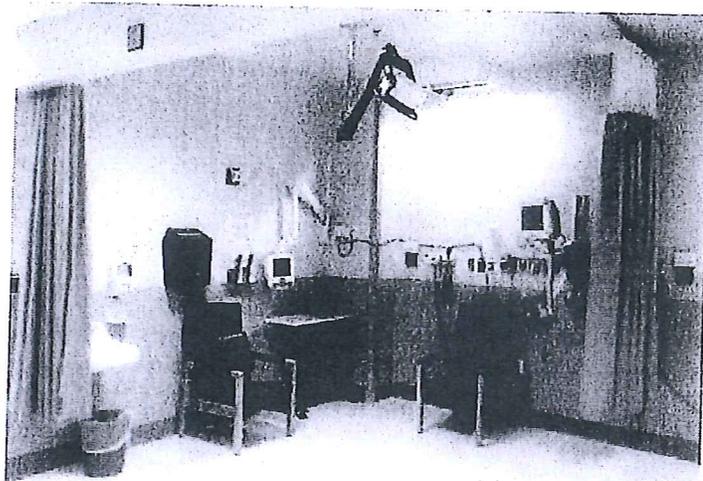
Richard Whitley, MS, Administrator
Nevada State Health Division
4150 Technology Way, Suite 300
Carson City, NV 89706

(See the attached table to determine the appropriate fee)

Proposed CDA Treatment Spaces
2 Former Treatment Spaces, now holding 4 chairs



CDA 1-2



CDA 3-4