

SECURITIES AND EXCHANGE COMMISSION

FORM 8-K

Current report filing

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FILER

**TomoTherapy Inc**

CIK: **1317872** | IRS No.: **000000000** | State of Incorporation: **WI** | Fiscal Year End: **1231**  
Type: **8-K** | Act: **34** | File No.: **001-33452** | Film No.: **10869795**  
SIC: **3845** Electromedical & electrotherapeutic apparatus

Mailing Address  
1240 DEMING WAY  
MADISON WI 53717-1954

Business Address  
1240 DEMING WAY  
MADISON WI 53717-1954  
608-824-2800

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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of Earliest Event Reported):

May 27, 2010

**TomoTherapy Incorporated**

\_\_\_\_\_  
(Exact name of registrant as specified in its charter)

Wisconsin

001-33452

39-1914727

\_\_\_\_\_  
(State or other jurisdiction  
of incorporation)

\_\_\_\_\_  
(Commission  
File Number)

\_\_\_\_\_  
(I.R.S. Employer  
Identification No.)

1240 Deming Way, Madison, Wisconsin

53717

\_\_\_\_\_  
(Address of principal executive offices)

\_\_\_\_\_  
(Zip Code)

Registrant's telephone number, including area code:

608-824-2800

Not Applicable

\_\_\_\_\_  
Former name or former address, if changed since last report

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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### Item 1.01. Entry into a Material Definitive Agreement.

On May 28, 2010, TomoTherapy Incorporated (the "Company"), Avalon Portfolio, LLC, one of the Company's shareholders ("Avalon"), and certain of Avalon's affiliates (such affiliates, together with Avalon, the "Avalon Parties") entered into a Termination Agreement (the "Termination Agreement"). Pursuant to the Termination Agreement, the Settlement Agreement, dated April 7, 2009 (as amended by letter dated October 12, 2009, the "Settlement Agreement"), among the Company and the Avalon Parties was terminated effective as of May 27, 2010. Under the Termination Agreement, the Company and the Avalon Parties have acknowledged that there has been no breach of the Settlement Agreement, and the Company acknowledged that it had received notice from the Avalon Parties that they no longer satisfy the Minimum Condition (as defined in the Settlement Agreement).

The foregoing summary of the Termination Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Termination Agreement, a copy of which is filed as Exhibit 10.1 to this current report on Form 8-K, and which is incorporated by reference herein.

### Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

<u>Number</u>	<u>Description</u>
10.1	Termination Agreement dated May 28, 2010, effective as of May 27, 2010, among TomoTherapy Incorporated, Avalon Capital Group, Inc., Avalon Portfolio, LLC and Avalon Technology, LLC

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### SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

TomoTherapy Incorporated

June 1, 2010

By: /s/ Thomas E. Powell

Name: Thomas E. Powell

Title: Chief Financial Officer

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### Exhibit Index

<u>Exhibit No.</u>	<u>Description</u>
10.1	Termination Agreement dated May 28, 2010, effective as of May 27, 2010, among TomoTherapy Incorporated, Avalon Capital Group, Inc., Avalon Portfolio, LLC and Avalon Technology, LLC

## TERMINATION AGREEMENT

This Termination Agreement, dated as of May 28, 2010 (this “**Termination Agreement**”), is by and among TomoTherapy Incorporated, a Wisconsin corporation (the “**Company**”), and the entities listed on Exhibit A hereto (each, an “**Avalon Party**” and collectively, the “**Avalon Parties**”).

**WHEREAS**, the Company and the Avalon Parties entered into that certain Agreement, dated as of April 7, 2009 (as amended on October 12, 2009, the “**Agreement**”, all capitalized terms not defined herein shall have the meaning set forth for such term in the Agreement), which Agreement grants the Avalon Parties certain rights to representation on the Company’s board of directors so long as the Avalon Parties continue to satisfy the Minimum Condition;

**WHEREAS**, Jonathan McCloskey served as the Avalon Nominee pursuant to the Agreement;

**WHEREAS**, the Avalon Parties have delivered notice to the Company (the “**Notice**”) that the Minimum Condition is no longer satisfied, that Mr. McCloskey ceased to be an employee of any of the Avalon Parties or their Affiliates on February 28, 2010 and that none of the Avalon Parties nor any of their Affiliates has had any communication with Mr. McCloskey relating to the Company since such date;

**WHEREAS**, the Company desires that Mr. McCloskey continue to serve on the Company’s board of directors, notwithstanding the Avalon Parties’ failure to satisfy the Minimum Condition and that Mr. McCloskey is no longer associated with the Avalon Parties or their Affiliates; and

**WHEREAS**, the Avalon Parties and the Company desire to terminate the Agreement, effective as of May 27, 2010 (the “**Effective Date**”);

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. Termination of the Agreement. Notwithstanding Section 4.8 of the Agreement, effective as of the Effective Date, the Agreement shall be terminated and shall cease to remain in force and effect.

Section 2. Acknowledgement. Each of the parties agrees and acknowledges that there has been no breach of the Agreement. The Company acknowledges that it has received the Notice and that the Avalon parties have informed the Company that Jonathan McCloskey ceased his employment with the Avalon Parties and/or their Affiliates on February 28, 2010 and that the Avalon Parties and their Affiliates have had no communication relating to the Company with Jonathan McCloskey since such date.

Section 3. Governing Law. This Termination Agreement shall be governed by and construed in accordance with the internal laws (as opposed to the conflicts of law provisions) of the State of Wisconsin.

Section 4. Counterparts. This Termination Agreement may be executed in two or more counterparts (each of which shall be deemed an original, but all of which together shall constitute one and the same instrument).

Section 5. No Third-Party Beneficiaries. Nothing in this Termination Agreement, expressed or implied, is intended or shall be construed to confer upon or give to any person other than the parties hereto and their successors and permitted assigns any right, remedy or claim under or by reason of this Termination Agreement.

**IN WITNESS WHEREOF**, and intending to be legally bound hereby, each of the undersigned parties has executed or caused this Termination Agreement to be executed as of the date first above written.

**TomoTherapy Incorporated**

By: /s/ Frederick A. Robertson

Name: Frederick A. Robertson

Title: President and Chief Executive Officer

**Avalon Capital Group, Inc.**

By: /s/ Nicole S. Blakely

Name: Nicole S. Blakely

Title: VP, General Counsel

**Avalon Portfolio, LLC**

By its Manager, Avalon Capital Group, Inc.

By: /s/ Nicole S. Blakely

Name: Nicole S. Blakely

Title: VP, General Counsel

**Avalon Technology, LLC**

By its Manager, Avalon Portfolio, LLC

By its Manager, Avalon Capital Group, Inc.

By: /s/ Nicole S. Blakely

Name: Nicole S. Blakely

Title: VP, General Counsel

**Exhibit A**

**Avalon Parties**

Avalon Capital Group, Inc.

Avalon Portfolio, LLC

Avalon Technology, LLC