

Greer, Leslie

From: Martone, Kim
Sent: Friday, August 30, 2013 11:57 AM
To: Riggott, Kaila; Hansted, Kevin
Cc: Olejarz, Barbara; Greer, Leslie
Subject: FW: Naugatuck Valley MRI Limited Partnership
Attachments: 8-30-13 NVMRI Letter to OHCA.pdf

From: Cindy Atterrato [mailto:catterrato@nvrnet.com] **On Behalf Of** Geoff Manton
Sent: Friday, August 30, 2013 11:55 AM
To: Martone, Kim
Cc: Lazarus, Steven
Subject: Naugatuck Valley MRI Limited Partnership

Good Morning Ms Martone:

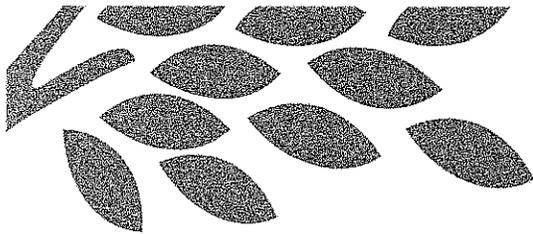
I have attached a letter on behalf of Naugatuck Valley Radiological Associates, P.C. ("NVRA"), the Managing General Partner of Naugatuck Valley MRI, Limited Partnership ("NVMRI").

Thank you for your attention in this matter. Please do not hesitate to contact us if you have any questions.

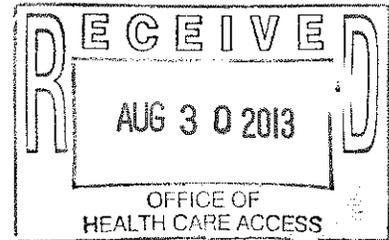
*Cindy Atterrato
NVRA/CRN
Administration
Phone: 203-267-3340 Ext. 1100
Fax: 203-267-3342*

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NAUGATUCK VALLEY
RADIOLOGY



August 30, 2013

Kimberly Martone
Director of Operations
Office of Health Care Access
410 Capitol Ave.
MS #13HCA
Hartford, CT 06134-0308

Via e-mail: Kimberly.Martone@ct.gov
and U.S. Mail

Re: Naugatuck Valley MRI Limited Partnership

Dear Ms. Martone:

I am writing on behalf of Naugatuck Valley Radiological Associates, P.C. ("NVRA"), the Managing General Partner of Naugatuck Valley MRI, Limited Partnership ("NVMRI"). NVMRI is the owner of an MRI facility and equipment located on the St. Mary's Hospital campus which was approved for a Certificate of Need under CON Docket No. 88-512 and received a CON Waiver for an equipment upgrade under OHCA Docket No. 07-31056-WVR. NVRA has been the Managing General Partner of NVMRI from its inception.

We are taking this opportunity to inform you, in our capacity of Managing General Partner of NVMRI, that the unaffiliated limited partners of NVMRI have voted, by unanimous written consent delivered to NVRA on August 26, 2013, to remove St. Mary's Hospital Corporation as a General Partner of NVMRI. After receipt of this unanimous written consent, NVRA acting in its role as Managing General Partner and pursuant to the terms of the NVMRI limited partnership agreement, served a Notice of Removal on St. Mary's with an effective date of removal of September 26, 2013.

We wish to advise you further that the removal of St. Mary's as a General Partner of NVMRI, if and when it becomes effective, will not alter the day to day management of NVMRI, which is controlled by NVRA as the Managing General Partner. Under the terms of the NVMRI limited partnership agreement, NVRA, as Managing General Partner, has "the exclusive right and full authority to manage, conduct and operate the partnership business," with the exception of certain major decisions that require the consent of all General Partners. Further, such removal would not affect the ownership of NVMRI, as the ownership interest of St. Mary's would continue to exist in the form of a limited partnership interest.

Our purpose in writing this letter is to ensure that we have properly communicated these facts, although we do not view the potential removal of St. Mary's as a General Partner as having any effect on the business or operations of NVMRI that would require further action by NVMRI or by OCHA.

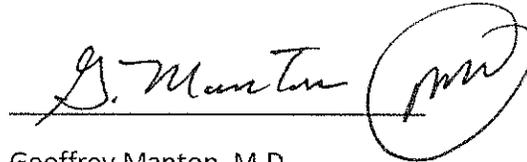
Thank you for your attention to this matter. Please do not hesitate to contact me if you have any questions or concerns.

Very truly yours,

Naugatuck Valley MRI Limited Partnership

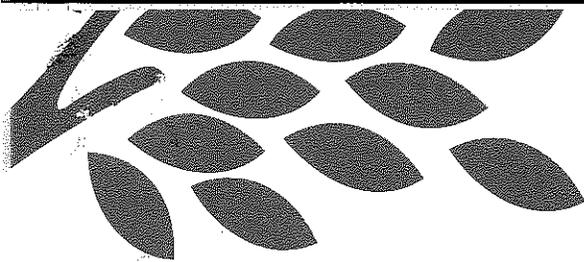
By: Naugatuck Valley Radiological Associates, P.C.,
Managing General Partner

By:

A handwritten signature in cursive script, appearing to read "G. Manton", is written over a horizontal line. To the right of the signature is a circular stamp or mark containing the initials "G.M.".

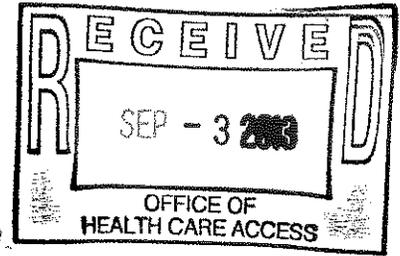
Geoffrey Manton, M.D.
Vice President, NVRA

cc: Steven Lazarus (by e-mail only to: Steven.Lazarus@ct.gov)



**NAUGATUCK VALLEY
RADIOLOGY**

August 30, 2013



Kimberly Martone
Director of Operations
Office of Health Care Access
410 Capitol Ave.
MS #13HCA
Hartford, CT 06134-0308

Via e-mail: Kimberly.Martone@ct.gov
and U.S. Mail

Re: Naugatuck Valley MRI Limited Partnership

Dear Ms. Martone:

I am writing on behalf of Naugatuck Valley Radiological Associates, P.C. ("NVRA"), the Managing General Partner of Naugatuck Valley MRI, Limited Partnership ("NVMRI"). NVMRI is the owner of an MRI facility and equipment located on the St. Mary's Hospital campus which was approved for a Certificate of Need under CON Docket No. 88-512 and received a CON Waiver for an equipment upgrade under OHCA Docket No. 07-31056-WVR. NVRA has been the Managing General Partner of NVMRI from its inception.

We are taking this opportunity to inform you, in our capacity of Managing General Partner of NVMRI, that the unaffiliated limited partners of NVMRI have voted, by unanimous written consent delivered to NVRA on August 26, 2013, to remove St. Mary's Hospital Corporation as a General Partner of NVMRI. After receipt of this unanimous written consent, NVRA acting in its role as Managing General Partner and pursuant to the terms of the NVMRI limited partnership agreement, served a Notice of Removal on St. Mary's with an effective date of removal of September 26, 2013.

We wish to advise you further that the removal of St. Mary's as a General Partner of NVMRI, if and when it becomes effective, will not alter the day to day management of NVMRI, which is controlled by NVRA as the Managing General Partner. Under the terms of the NVMRI limited partnership agreement, NVRA, as Managing General Partner, has "the exclusive right and full authority to manage, conduct and operate the partnership business," with the exception of certain major decisions that require the consent of all General Partners. Further, such removal would not affect the ownership of NVMRI, as the ownership interest of St. Mary's would continue to exist in the form of a limited partnership interest.

Our purpose in writing this letter is to ensure that we have properly communicated these facts, although we do not view the potential removal of St. Mary's as a General Partner as having any effect on the business or operations of NVMRI that would require further action by NVMRI or by OCHA.

Thank you for your attention to this matter. Please do not hesitate to contact me if you have any questions or concerns.

Very truly yours,

Naugatuck Valley MRI Limited Partnership

By: Naugatuck Valley Radiological Associates, P.C.,
Managing General Partner

By:  

Geoffrey Manton, M.D.
Vice President, NVRA

cc: Steven Lazarus (by e-mail only to: Steven.Lazarus@ct.gov)

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TANYA A. SPURLIN

*Also Admitted in NY
**Board Certified Trial Attorney

PLEASE REPLY TO:

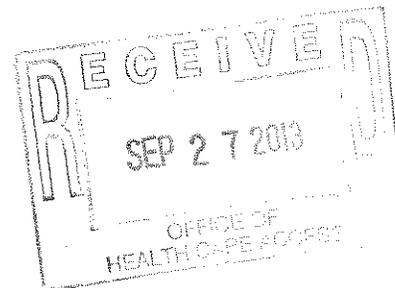
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TELECOPIER (203) 596-9036
E-MAIL: lwest@tnrdlaw.com

September 27, 2013

Kimberly Martone
Director of Operations
Office of Health Care Access
410 Capitol Ave.
MS #13HCA
Hartford, CT 06134-0308

Hand Delivered



Re: Naugatuck Valley MRI Limited Partnership

Dear Ms. Martone:

I am writing to you as counsel to Naugatuck Valley Radiological Associates, P.C. ("NVRA"), the Managing General Partner of Naugatuck Valley MRI, Limited Partnership ("NVMRI"). NVMRI is the owner and operator of an MRI facility and equipment located in leased premises on the St. Mary's Hospital campus (the "MRI Equipment") which was approved for a Certificate of Need under CON Docket No. 88-512 and received a CON Waiver for an equipment upgrade and replacement under OHCA Docket No. 07-31056-WVR.

The purpose of this letter is to advise you of several critical and urgent facts and to request immediate action by OHCA to address these facts:

1. **NVMRI continues in existence as the owner and operator of the MRI Equipment.**

The enclosed Certificate of Amendment of Certificate of Limited Partnership of Naugatuck Valley MRI, Limited Partnership, dated September 27, 2013 and filed with the Secretary of the State of Connecticut, confirms that NVMRI continues to be the owner and operator of the MRI Equipment and the MRI facility that it has lawfully owned and continuously and successfully operated since 1988. (Exhibit A hereto)

2. **The removal of St. Mary's Hospital Corporation ("St. Mary's") as a General Partner of NVMRI became effective on September 26, 2013. St. Mary's no longer is a General Partner of NVMRI.**

By letter dated August 30, 2013, Dr. Manton of NVRA, acting on its behalf as the Managing General Partner of NVMRI, specifically advised OHCA that the unaffiliated limited partners of NVMRI had voted, by unanimous written consent delivered to NVRA on August 26, 2013, to remove St. Mary's Hospital Corporation ("St. Mary's") as a General Partner of NVMRI and that NVRA had served a Notice of Removal of St. Mary's as a General Partner with an effective date of removal of September 26, 2013.

3. **The Notice of Removal of St. Mary's as a General Partner of NVMRI and proof of service of the same on August 27, 2013, demonstrate that St. Mary's was fully aware prior to issuance of OHCA's August 28, 2013 Determination Report Number 13-31858-DTR of its imminent removal as a General Partner of NVMRI.**

The Marshal's proof of service of the Notice of Removal of St. Mary's as a General Partner of NVMRI reflects that the Notice of Removal was served by in-hand delivery on to the Administrative Assistant to Chad Wable, St. Mary's CEO and on an Administrative Assistant in St. Mary's legal department, on Tuesday August 27, 2013 at 2:35 p.m. See Notice of Removal and Proof of Service (**Exhibit B hereto**) Obviously, therefore, St. Mary's was fully aware of these facts, including its imminent removal as a General Partner of NVMRI, prior to OHCA's issuance to St. Mary's (by facsimile only) of Certificate of Need Determination Report Number 13-31358-DTR on August 28, 2013.

4. **As of August 27, 2013, when it was served with the Notice of Removal, and while St. Mary's Determination Request remained pending at OHCA, St. Mary's knew full well of its imminent removal as a General Partner of NVMRI.**

St. Mary's also knew that NVRA, as Managing General Partner, had determined that its fiduciary duties to the partners and the partnership required that NVRA take action in accordance with the partnership agreement to prevent the dissolution of NVMRI and St. Mary's attempt to usurp the partnership business that had been built over twenty-five years through the investment of millions of dollars of NVMRI partners' funds. Rather than promptly report these facts to OHCA, St. Mary's elected to ignore the facts and to begin shopping for a portable MRI machine.

5. **St. Mary's at no time had the right or authority to request a Determination from OHCA with respect to its purported plans to "upgrade" and "replace" MRI Equipment that it does not own, but which is lawfully owned and operated by NVMRI.**

The MRI Equipment has been at all times and continues to be properly and legally owned and operated by NVMRI. Accordingly, St. Mary's Determination Request was unauthorized and was premised upon a hypothetical set of facts that does not reflect actual facts.

6. **We have been advised that St. Mary's is in the process of setting up a facility for its portable MRI machine on the St. Mary's hospital campus, within a few steps from the door to NVMRI's existing and currently operating MRI facility.**

UNLESS IMMEDIATE ACTION IS TAKEN, ST. MARY'S WILL BEGIN SEEING PATIENTS AT ITS NEW PORTABLE MRI FACILITY ON TUESDAY, OCTOBER 1, 2013.

If St. Mary's is permitted to continue to railroad through these unlawful plans, the result will be an untenable and unlawful situation in which NVMRI's lawfully authorized MRI facility, which has operated successfully and contributed to the efficient delivery of medical services for twenty five years, will face unlawful competition from an MRI facility right outside its door.

Any claim of "authorization" for this competing facility depends upon two demonstrably incorrect premises: (1) that NVMRI would cease to exist as of September 30, 2013; and (2) that St. Mary's had acquired, upgraded and currently owns the MRI equipment at St. Mary's hospital.

The 1988 CON application stated clearly:

The Naugatuck Valley MRI Limited Partnership will be a Connecticut Limited Partnership formed to purchase, own and operate a magnetic imaging system.

1988 CON Application, Response to Question D1, page 7.

Moreover, OHCA approved the 2007 Waiver Application for the upgrade and replacement of the MRI Equipment as a joint application by NVRA. St. Mary's and NVMRI. Final Decision, Docket No. 07-31056-WVR, February 5, 2008, page 1. In connection with the 2007 Waiver Application, the applicants confirmed to OHCA that NVMRI had acquired the MRI equipment in 1988 directly from the manufacturer, as follows:

4. Please explain when Saint Mary's Hospital and Naugatuck Valley Radiology Associates, P.C. gave ownership of the existing MRI to NVMRI.

Response:

The NVMRI system was acquired directly by NVMRI from the manufacturer in 1988, as described in the CON application on page 7, in response to question D1, regarding ownership of the equipment (see excerpt quoted above in response to question 1) and in Paragraph 1.7 of the NVMRI limited partnership agreement, Ownership of Property. Refer to Exhibit 1.

Docket No. 07-31056-WVR, Response to OHCA Completeness Letter dated December 12, 2007.

The current untenable situation thus is the direct result of St. Mary's false pretenses regarding its ownership of MRI Equipment acquired, upgraded and owned by NVMRI and St. Mary's wishful thinking regarding the demise of NVMRI.

The resulting untenable situation is antithetical to OHCA's governing statutes, regulations and to OHCA's articulated mission to ensure that the citizens of Connecticut have access to a quality health care delivery system. OHCA has consistently demonstrated that it is an integral part of this mission to protect from unfair and unauthorized competition those who, at great expense and through proper means, lawfully acquire and operate medical equipment and facilities.

Based upon all of the foregoing, we respectfully submit that OHCA's August 28, 2013 Determination Report Number 13-31858-DTR, issued in response to and in reliance upon the facts set forth in St. Mary's August 8, 2013 request, must be considered void and of no effect.

NVRA, as the Managing General Partner of NVMRI, accordingly requests that OHCA take the following immediate action:

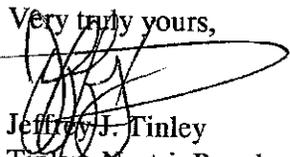
Issuance by OHCA of an Order to St. Mary's to immediately *CEASE AND DESIST* any and all preparations to install or operate any MRI equipment at the St. Mary's campus, whether portable or permanent in nature, and to *CEASE AND DESIST* any from and all actual operation of any such equipment.

We respectfully request your immediate attention to this matter in order to bring a halt to the unlawful conduct and untenable situation described herein.

Finally, submitted herewith is an **Appendix** of relevant facts from the record of OHCA proceedings under CON Docket No. 88-512 and CON Waiver for an equipment upgrade, OHCA Docket No. 07-31056-WVR, many of which were either misstated or incompletely stated in St. Mary's August 8, 2013 letter and Determination Request.

Please do not hesitate to contact us if you have any questions or concerns or require any additional information.

Very truly yours,


Jeffrey J. Tinley
Tinley, Natri, Renehan & Dost, LLP.
60 North Main Street, 2nd Floor
Waterbury, CT 06702
Telephone: (203) 596-9030
Facsimile: (203) 596-9036
E-mail: jtinley@tnrdlaw.com

Counsel to:
Naugatuck Valley Radiological Associates, P.C.,
Managing General Partner,
Naugatuck Valley MRI Limited Partnership

encls. (Exhibits A and B and Appendix)

cc: Steven Lazarus (by e-mail only to: Steven.Lazarus@ct.gov)
Michael Hinton, Esq., Counsel to Naugatuck Valley MRI Limited Partnership
Richard P. Weinstein, Esq., Counsel to Certain Limited Partners of NVMRI
Steven Klaffky, Esq., Counsel to St. Mary's Hospital Corporation

**APPENDIX TO SEPTEMBER 27, 2013 LETTER FROM NVRA, P.C. to OHCA
CONCERNING RECORD FACTS FROM : (1) CON DOCKET NO. 88-512; and (2) CON
WAIVER FOR AN EQUIPMENT UPGRADE, OHCA DOCKET NO. 07-31056-WVR**

The following facts are established in the record of OHCA's proceedings relating CON Docket No. 88-512 and CON Waiver for an equipment upgrade, OHCA Docket No. 07-31056-WVR:

- 1. The Commission on Hospitals and Health Care and OHCA have considered the 1988 CON application as submitted jointly by St. Mary's, NVRA and the NVMRI Limited Partners and have treated the CON approval as authorizing NVMRI's ownership and operation of the MRI Equipment.**

The fact that the Commission on Hospitals and Health Care and OHCA have treated the 1988 CON application as a joint application and the CON having been issued for the benefit of NVMRI, authorizing its ownership and operation of NVMRI equipment, is reflected clearly in the CON record, including in the following statements:

- After review of the 1988 CON application, the Commission on Hospitals and Health Care submitted follow-up requests for additional information. Included in OHCA's requests was the following statement:

Inasmuch as N.V.R.A., P.C. and the L.P.A.P.¹ would have a limited partnership with St. Mary's Hospital, these two entities should be identified as applicants in this CON request. This applicant should resubmit Core pages 1, 2, and 3 to reflect N.V.R.A., P.C. and the L.P.A.P. as co-applicants.

- An OHCA Completeness Letter dated December 12, 2007 in connection with the replacement and upgrade of the MRI scanner equipment states explicitly:

According to NVMRI, this request for waiver from CON for the proposed replacement and upgrade of the 1.5 Tesla Signa S2 MRI scanner equipment was approved under CON Docket Number 880512. However, CON Authorization under DN: 88-512 was for Saint Mary's Hospital and Naugatuck Radiological Associates, P.C. Please explain the current structure of the MRI scanner approved under DN: 88-512 (Emphasis added).

¹"L.P.A.P." is an acronym that OHCA used to refer to the "Limited Partner Area Physicians" who provided the investment capital to fund NVMRI. See Commission on Hospitals and Health Care Questions dated April 25, 1988, Question 3, page 2.

OHCA Completeness Letter Dated December 12, 2007, Naugatuck Valley MRI Limited Partnership, Docket DN: 07-31056-WVR. (Emphasis supplied).

2. **At the time the CON application was submitted, the project was expressly stated to be not a hospital project; and the project was approved on the express condition that the NVMRI partnership would own and operate the MRI Equipment and the express representation that the outpatients receiving treatment at the facility would not be hospital patients.**

In responses to additional questions presented by the Commission on Hospitals and Health Care after review of the 1988 CON Application, St. Mary's made the following statements concerning the essential nature of the proposed MRI facility:

This project is not a Hospital project. All costs for the partnership will be borne by the partnership.²

Responses to Commission's Questions, March 24, 1988, Response to Question 23, page 11.

The proposal will not result in the establishment of an additional outpatient revenue center for the Hospital.

(*Id.*), Response to Question 25, p. 12.

3. **The MRI Equipment currently on-site and in use by NVMRI was authorized under as upgrade and replacement equipment on the joint application for a CON Waiver filed under OHCA Docket No. 07-31056-WVR by NVMRI.**

As noted above, in connection with OHCA Docket No. 07-31056-WVR, OHCA expressly stated that the CON authorization under DN: 88-512 was for "Saint Mary's Hospital and Naugatuck Radiology Associates, P.C."

If there was any doubt, however, as to who is authorized to own and operate the MRI Equipment which NVMRI has continuously and lawfully owned and operated for the past five

² In fact, this has been true for the past twenty-five years of NVMRI's operations. The investors in NVMRI have invested millions of dollars in this business, in the form of equity contributions, loan proceeds, and reinvestment of earnings of the business. Moreover, under the terms of the NVMRI Limited Partnership Agreement, submission of which was a condition of the 1988 CON approval (and which was re-submitted in connection with the 2007 Waiver) the General Partners were to be reimbursed for all reasonable and necessary expenses incurred in their capacities as General Partners, "including reimbursement of expenses incurred in applying for a certificate of Need for the Equipment." NVMRI Limited Partnership Agreement, ¶ 5.5. The CON rights which St. Mary's now seeks to usurp thus were acquired through the expenditure of NVMRI partnership funds.

years, however, such doubt is resolved by the CON Waiver application and approval submitted to OHCA and approved in 2007.

The legal name of the applicant on the Commission on Hospitals and Health Care CON Waiver of Replacement Equipment Request Form 2040 is "Naugatuck Valley MRI, Limited Partnership." The application states: "The original equipment was authorized by the Commission on Hospitals and Health Care in Docket Number 88-512." A copy of the 1988 CON decision was attached to the 2007 Waiver Application. The application states further:

The Applicant, Naugatuck Valley MRI, Limited Partnership ("NVMRI") is a joint venture entity established between St. Mary's Hospital Corporation and Naugatuck Valley Radiological Associates, P.C. which has been serving the residents of Greater Waterbury since 1988.

2007 Waiver Application, Section V. Project Description, page 6. The 2007 Waiver application was submitted under cover of a letter on NVRA letterhead, signed by its President, Robert Gumbardo, M.D.

4. **OHCA's Final Decision on the joint application for a CON Waiver filed under OHCA Docket No. 07-31056-WVR approved NVMRI's upgrade, replacement and ownership and operation of the MRI Equipment that continues to be owned by NVMRI.**

The Final Decision on the 2007 Waiver Application includes the following Findings of Fact:

SMH, NVRA and NVMRI (collectively referred to as "Applicants") are requesting a waiver of CON requirements for the purpose of replacement and upgrade of its existing General Electric 1.5 Tesla Signa S2, Magnetic Resonance Imaging ("MRI") scanner acquired by the Applicants and authorized by the CHHC.

Final Decision, Findings of Fact, paragraph 6.

The Final Decision also reflects the following:

Order

Based on the foregoing Findings and Rationale, OHCA has determined that Saint Mary's Hospital, Naugatuck Valley Radiology Associates, P.C. and Naugatuck Valley MRI, Limited Partnership request for a waiver of CON requirements for replacement equipment in order to replace and upgrade an existing 1.5T MRI scanner operated by NVMRI at Saint Mary's Hospital, at a total capital cost of \$1,000,000, meets the requirements for waiver of the CON process pursuant to Section 19a-639c, C.G.S. and is hereby Granted . . .

Thus, the MRI Equipment which has been in place and operated by NVMRI since 1988 is

not the equipment authorized under CON Docket No. 88-512, but is the equipment and related items acquired by NVMRI in 1988 at a cost of \$1 million that is owned and operated by NVMRI.

These facts reveal the truth about St. Mary's request to "upgrade and replace" MRI equipment at the St. Mary's hospital campus as, quite simply, a request to upgrade and replace equipment that St. Mary's never owned. The extent that St. Mary's requested a Determination that it may upgrade and replace equipment acquired under Docket No. 88-512, St. Mary's request was related not only to equipment that it does not and never did own, it was a request to upgrade and replace equipment that no longer exists. St. Mary's request thus was, and continues to be, a sleight of hand and a pretext by which St. Mary's has attempted to usurp the established business and legal rights of NVMRI as the owner and operator of the MRI Equipment.

5. **Because St. Mary's had no authority to request a Determination as to NVMRI's MRI Equipment and because its request was premised upon the demise of NVMRI, St. Mary's cannot lawfully acquire or operate MRI equipment at the St. Mary's campus without submission and approval of a new CON application, for new equipment. Such a request must be denied if filed, because of the lack of need and the unfair and devastating impact that would result to NVMRI's long-established and successful MRI service. The project approved under Docket No. 88-512 is not the project described in St. Mary's Determination Request, as reflected in statements of the purpose of the MRI facility made in the 1988 CON application, including the following:**

- *Naugatuck Valley MRI Limited Partnership will be a Connecticut Limited Partnership formed to purchase, own and operate a magnetic resonance imaging system. (CON Application, Sec. D, Ownership, Response to Question #1)*
- *NVRA "shall be the Managing General Partner, [and] shall have primary responsibility for management and administration of the business." (Id.)*
- *The Hospital plans to operate the MRI as a joint venture with the community and radiologists in a limited partnership. (Id.)*
- *The proposed MRI is intended as a regional resource. (Id.)*
- *This project is not a Hospital project. (Responses to Commission's Questions, March 24, 1988, Response to Question 23, page 11)*

6. **There is no current need to upgrade or replace NVMRI's MRI Equipment. Such a step would be unjustified and wasteful at this time.**

The 1988 CON application described the duties of NVRA, as Managing General Partner of NVMRI to include "*Recommendation of the purchase of equipment to the Partnership.*" (1988 CON Application, Response to Question 5, page 9).

NVRA has made no recommendation to the NVMRI Partnership for the replacement and upgrade of equipment at this time. In particular, NVRA has not recommended the replacement and upgrade described in St. Mary's August 8, 2013 correspondence and Determination Request submitted to OHCA.

St. Mary's filed this correspondence and Determination Request with OHCA without NVRA's or the Partnership's knowledge, authority or approval. St. Mary's had no right, as a non-managing General Partner, to submit such correspondence and Determination Request without such knowledge, approval and authorization. In fact, as St. Mary's knows or should know, NVMRI currently is operating with the latest available upgrade from GE, the manufacturer of the MRI Equipment. An upgrade at this time therefore would not be possible and replacement would be a wholly unjustified waste of resources.

The Commission on Hospitals and Health Care approved a Certificate of Need on July 22, 1988 under Docket No. 88-512 subject to the express condition that "[t]he Partnership must acquire an MRI system" and that within ninety days the Commission must receive "an executed partnership agreement" which includes policies and procedures which would govern compliance by the Partnership with the order of the Commission regarding the Certificate of Need.

In response to the 2007 Waiver Application, OHCA posed the following question and received the following response:

Explain the relationship of NVMRI's proposal, joint venture between Saint Mary's Hospital and Naugatuck Valley Radiology Associates, P.C.

Response:

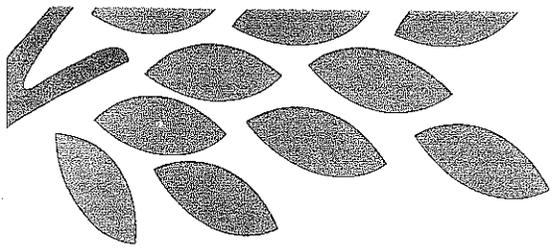
NVMRI was formed for purposes of purchasing, owning and operating the MRI System that was approved by the Commission on Hospitals and Health Care in the CON application Docket # 88-512, which was submitted as a joint venture between Saint Mary's Hospital and Naugatuck Valley Radiological Associates, P.C.

St. Mary's was never granted permission by OHCA to own or to operate the MRI Equipment that NVMRI operated from 1988 to 2008.

The MRI Equipment that currently exists was authorized on the joint application of St. Mary's, NVRA and NVMRI filed under Docket No. No. 07-31056-WVR, to be owned and operated by NVMRI. That MRI Equipment continues to be owned and operated by NVMRI in the same leasehold space on the St. Mary's hospital campus.

END OF APPENDIX





**NAUGATUCK VALLEY
RADIOLOGY**

**CERTIFICATE OF AMENDMENT OF CERTIFICATE OF LIMITED PARTNERSHIP
OF
NAUGATUCK VALLEY MRI, LIMITED PARTNERSHIP**

SECTION 1. NAME

The name of the limited partnership is Naugatuck Valley MRI, Limited Partnership (the "Partnership").

SECTION 2. DATE CERTIFICATE FILED

The Certificate of Limited Partnership of the Partnership was filed with the Secretary of State of the State of Connecticut on July 6, 1988.

SECTION 3. AMENDMENT

The Certificate of Limited Partnership of the Partnership and the Limited Partnership Agreement are being amended to change the date upon which the Partnership is to dissolve. Specifically, the Certificate of Limited Partnership of the Partnership and the Limited Partnership Agreement are hereby amended by changing the provision concerning the latest date on which the partnership will dissolve from September 30, 2013 to March 31, 2014.

The Certificate of Limited Partnership of the Partnership and the Limited Partnership Agreement also are hereby amended to reflect that St. Mary's Hospital Corporation is no longer a General Partner of the Partnership. Naugatuck Valley Radiological Associates, P.C. remains as the Managing General Partner and is now the sole General Partner of the Partnership.

This Amendment is made without prejudice to the right to further amend the Certificate of Limited Partnership in the future.

SECTION 4. MANAGING GENERAL PARTNER

The name and the business address of the Managing General Partner of the Partnership is as follows:

Name of Managing General Partner

Address

Naugatuck Valley Radiological Associates, P.C

385 MAIN STREET SOUTH,
UNION SQ PLAZA BLDG#1,
SOUTHBURY, CT, 06488

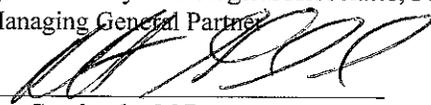
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9/27/13

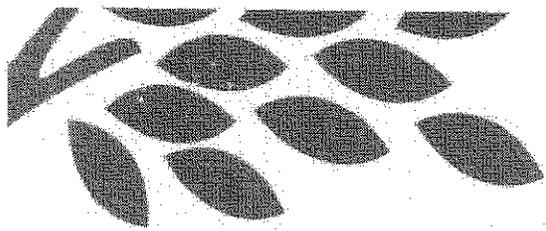
Naugatuck Valley MRI, Limited Partnership

By: Naugatuck Valley Radiological Associates, P.C.,
Its Managing General Partner

By:


Robert Gumbardo, M.D.
Its President





NAUGATUCK VALLEY
RADIOLOGY

August 27, 2013

Mr. Chad Wable
President and Chief Executive Officer
St. Mary's Hospital
56 Franklin Street
Waterbury, CT 06708

Dear Mr. Wable:

Enclosed please find a notice of removal of St. Mary's Hospital Corporation as a General Partner of Naugatuck Valley MRI Limited Partnership. We are serving this notice pursuant to our obligations as Managing General Partner of the NVMRI Limited Partnership. We regret that this matter has come to this point and view this as a dispute between St. Mary's and the unaffiliated limited partners.

We would point out however that pursuant to terms of the limited partnership agreement there remains a thirty day window within which the parties may attempt to find an amicable resolution which we would encourage and support.

If there is any way that we can be of assistance within our proper role as Managing General Partner please let me know.

Sincerely,

Geoffrey Manton, M.D.
Vice President
NVRA

Enclosure

cc: Attorney Michael Hinton, Attorney Robert Anthony, Attorney Richard Weinstein,
Attorney Jeffrey Tinley (with enclosures)

Extension A

From: Tina MacGillvary [mailto:tina@weinsteinwisser.com]
Sent: Thursday, August 15, 2013 2:57 PM
To: Jeff Tinley
Subject: Naugatuck Valley MRI

Dear Jeff,

As you undoubtedly are well aware, this office represents limited partners of Naugatuck Valley Magnetic Resonance Imaging ("NVMRI") who have a financial interest in the entity which is a joint venture between St. Mary's Hospital and the Naugatuck Valley Radiological Associates. My understanding is that the entity which constitutes the limited partnership is about to terminate the end of September, 2013. Once again, the hospital has sought to piece meal extensions and now seeks to use this artificial expiration date as a means to force a fire sale in regard to the entity's assets, or worse merely appropriate same.

From the time since the initial demand letter of August, 2008, the Hospital has continued to display oppressive conduct toward it's limited partners, has breach its implied covenant of good faith and fair dealing, has engaged in self-dealing and CUTPA violations, including but not limited to the promotion and control over a competing center. While my clients had hoped that there could be a meaningful resolution and had agreed to the extension to continue the entity until the end of September, it is now apparent that the Hospital seeks to allow the entity to dissolve and thereby appropriate the assets, the good will and the business opportunity of the entity to itself, all to the special loss and damage of my client.

Demand is hereby made that the Hospital be removed immediately as a general partner. We request that this be done without any further leave to allow the Hospital to remain a general partner and we respectfully request that your client's entity continue to perpetuate the existence of the business entity.

If you have any questions in regard to same, please contact me.

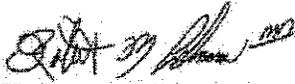
Richard

Tina MacGillvary
Asst. to Richard P. Weinstein, Esq.
Weinstein & Wisser, P.C.
29 S. Main Street, Suite 207
West Hartford, CT 06107
Tel: 860.561.2628
Fax: 860.521.6150

EXHIBIT B

CONSENT OF LIMITED PARTNERS

We hereby agree and affirm the removal of St. Mary's Hospital as a partner in regard to Naugatuck Valley Magnetic Resonance Imaging, L.P. and consent to the continuation of the limited partnership, including the conversion of same into a limited liability company.



Robert Lehman

August 16, 2013
Date

Raymond Gibney, MD

Date

Ying-Sek Chan, MD

Date

Mark G. Johnson, MD

Date

Mahadevan Shetty, MD

Date

Richard Synott

Date

Robert Gumbardo, MD

Date

Jessica Winograd

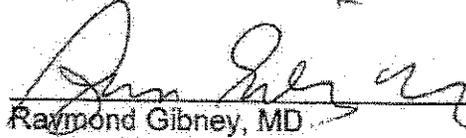
Date

CONSENT OF LIMITED PARTNERS

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Robert Lehman

Date



Raymond Gibney, MD

Date 19 Aug 13

Ying-Sek Chan, MD

Date

Mark G. Johnson, MD

Date

Mahadevan Shetty, MD

Date

Richard Synott

Date

Robert Gumbardo, MD

Date

Jessica Winograd

Date

CONSENT OF LIMITED PARTNERS

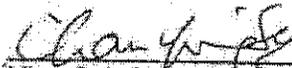
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Robert Lehman

Date

Raymond Gibney, MD

Date



Ying-Sek Chan, MD

24th August 2013

Date

Mark G. Johnson, MD

Date

Mahadevan Shetty, MD

Date

Richard Synott

Date

Robert Gumbardo, MD

Date

Jessica Winograd

Date

CONSENT OF LIMITED PARTNERS

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Robert Lehman

Date

Raymond Gibney, MD

Date

Ying-Sek Chan, MD

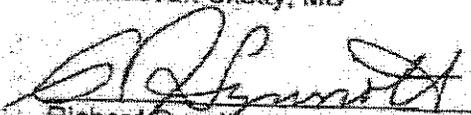
Date

Mark G. Johnson, MD

Date

Mahadevan Sheffy, MD

Date


Richard Synok 203-578-0701

8/20/13
Date

Robert Gumbardo, MD

Date

Jessica Winograd

Date

CONSENT OF LIMITED PARTNERS

We hereby agree and affirm the removal of St. Mary's Hospital as a partner in regard to Naugatuck Valley Magnetic Resonance Imaging, L.P. and consent to the continuation of the limited partnership, including the conversion of same into a limited liability company.

Robert Lehman

Date

Raymond Gibney, MD

Date

Ying-Sek Chan, MD

Date

Mark G. Johnson, MD

Date

Mahadevan Shetty, MD

Date

Richard Synott

Date

Robert Gumbardo, MD

Date

Jessica Winograd

Jessica Winograd

8/15/13

Date

STATE OF CONNECTICUT :

DATE: 8/27/13

ss: Waterbury

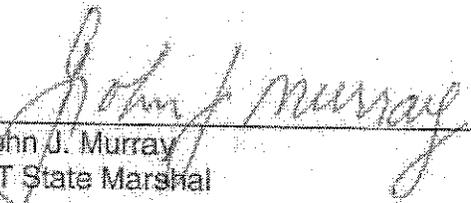
COUNTY OF NEW HAVEN :

Then and there by virtue hereof and by direction of the plaintiff's attorney, I served the within named defendant, **Saint Mary's Hospital Corporation, c/o Chad Wable, President & CEO**, by leaving with and in the hands of Victoria Cipriano, Sr. Administrative Assistant to Chad Wable, 56 Franklin Street, Waterbury, CT, person duly authorized to accept service for said defendant, a true and attested copy of the original Letter, Notice Of Removal Of General Partner Of Naugatuck Valley MRI Limited Partnership, Exhibits A & B, with my endorsements thereon at 2:35 pm.

And afterwards on the same day, by virtue hereof and by direction of the plaintiff's attorney, I serviced the within named defendant, **Saint Mary's Hospital Corporation, c/o Attorney Robert Anthony**, by leaving with and in the hands of Ann Ferraro, Administrative Assistant, 56 Franklin Street, Waterbury, CT, person duly authorized to accept service for said defendant, a true and attested copy of the original Letter, Notice Of Removal Of General Partner Of Naugatuck Valley MRI Limited Partnership, Exhibits A & B, with my endorsements thereon at 2:35 pm.

The within and foregoing is the original Letter, Notice Of Removal Of General Partner Of Naugatuck Valley MRI Limited Partnership, Exhibits A & B; with my doings thereon.

ATTEST:


John J. Murray
CT State Marshal

Saint Mary's Hospital

Ann Ferraro

Admin. Assistant

Atty Bob Anthony ^{2:35 PM}
8-27-13

Victoria Cipriano

Saint Mary's Hospital

Sr. Admin Assistant to

Chad Wable

^{2:35 PM} 8-27-13

Greer, Leslie

From: Hansted, Kevin
Sent: Monday, October 07, 2013 7:14 AM
To: Greer, Leslie
Cc: Martone, Kim
Subject: FW: Naugatuck Valley Limited Partnership - Attorney Tinley Correspondence
Attachments: Tinley Letter to Hansted re NVMRI Ltd Partnership 10.04.13.pdf

Leslie, Please add the attached to the record. Thank you.

Kevin T. Hansted
Staff Attorney
Department of Public Health
Office of Health Care Access
410 Capitol Ave., MS #13HCA
P.O. Box 340308
Hartford, CT 06134
Phone: 860-418-7044

CONFIDENTIALITY NOTICE: This email and any attachments are for the exclusive and confidential use of the intended recipient. If you are not the intended recipient, please do not read, distribute or take action in reliance on this message. If I have sent you this message in error, please notify me immediately by return email and promptly delete this message and any attachments from your computer system. We do not waive attorney-client or work product privilege by the transmission of this message.

From: Laura L. West [<mailto:LWest@tnrdlaw.com>]
Sent: Friday, October 04, 2013 4:54 PM
To: Hansted, Kevin
Cc: Jeff Tinley
Subject: Naugatuck Valley Limited Partnership - Attorney Tinley Correspondence

Attorney Hansted,

Attached for your attention please find a copy of Attorney Tinley's letter to you regarding the above referenced matter. Hard copy to follow via first class mail.

Laura L. West, Paralegal
Tinley, Nastri, Renehan & Dost, LLP
60 N. Main St., 2nd Fl., Waterbury, CT 06702
Phone: (203) 596-9030 / Fax: (203) 596-9036
lwest@tnrdlaw.com

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TINLEY, NASTRI, RENEHAN & DOST, LLP
ATTORNEYS AT LAW

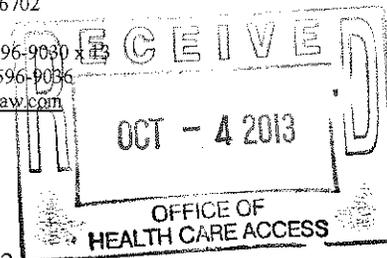
JEFFREY J. TINLEY*
ROBERT NASTRI, JR.**
RICHARD P. RENEHAN
MARK W. DOST
STEPHEN E. PLIAKAS
JOHN P. MAJEWSKI
TANYA A. SPURLIN

*Also Admitted in NY
**Board Certified Trial Attorney

PLEASE REPLY TO:

60 NORTH MAIN STREET
SECOND FLOOR
WATERBURY, CT 06702

TELEPHONE (203) 596-9030
TELECOPIER (203) 596-9036
E-MAIL: jwest@tnrdlaw.com



October 4, 2013

Kevin Hansted, Esq.
Department of Public Health
Office of Health Care Access
410 Capitol Ave.
MS #13HCA
Hartford, CT 06134-0308

**By e-mail (Kevin.Hansted@ct.gov)
and U.S. Mail**

Re: Naugatuck Valley MRI Limited Partnership

Dear Attorney Hansted:

Thank you for taking the time to speak with me today. As you know, I am counsel to Naugatuck Valley Radiological Associates, P.C. ("NVRA"), the Managing General Partner of Naugatuck Valley MRI, Limited Partnership ("NVMRI") the owner and operator of an MRI facility and equipment located in leased premises at the St. Mary's Hospital campus on Franklin Street in Waterbury, Connecticut.

The purpose of this letter is to supplement my letter of September 27, 2013 to Kimberly Martone concerning NVMRI and Saint Mary's Hospital's announced intention to acquire and put into service a new MRI machine at the same Franklin Street location.

This letter will confirm the following facts:

1. As of Tuesday, October 1, 2013, Saint Mary's new MRI machine was installed, operational and receiving patients. An announcement issued by Saint Mary's Health System stated, in part:

Effective October 1, 2013, Saint Mary's has a new, state-of-the-art MRI

- **Saint Mary's Hospital is pleased to announce the addition of a new, state of the art MRI unit at our Franklin Street location**

(See Saint Mary's broadcast fax Announcement, **Attachment A** hereto).

2. NVMRI continues in existence and in operation with its MRI facility at the same location.
3. Since opening this new MRI unit, Saint Mary's has been directing both inpatients and outpatients to its new facility and away from NVMRI's pre-existing facility. , located within a few steps of the new facility. In fact, there have been instances of outpatients arriving at the hospital location *for a scheduled appointment at NVMRI* being misdirected to Saint Mary's new MRI unit. In addition, announcements have been made to medical staff and to referring physicians that NVMRI is no longer providing MRI services to hospital patients.
4. ***The fundamental premise of Saint Mary's Determination Request dated August 8, 2013 and OHCA's August 28, 2013 Determination Report Number 13-31858-DTR, was that Saint Mary's owned MRI equipment that it intended to upgrade and replace.*** A necessary condition of Saint Mary's lawful ability to act on any such Determination would be that Saint Mary's owned, and was in a position to remove, replace and dispose of, the then-existing MRI equipment. However, there is no factual issue – indeed there is no possible dispute – that Saint Mary's did not own the then-existing MRI equipment. The only MRI equipment at the hospital campus for twenty-five years prior to October 2, 2013, was purchased, owned, ungraded and replaced, and continues to be owned, by NVMRI.
5. NVMRI's ownership of the MRI equipment is an undisputed fact in the OHCA record. For example, the 1988 CON application stated clearly:

The Naugatuck Valley MRI Limited Partnership will be a Connecticut Limited Partnership formed to purchase, own and operate a magnetic imaging system.

(1988 CON Application, Response to Question D1, page 7).

The record of the Waiver Request under OHCA Docket No. 07-31056-WVR, also includes the following question and answer regarding ownership of the MRI equipment:

Please explain when Saint Mary's Hospital and Naugatuck Valley Radiology Associates, P.C. gave ownership of the existing MRI to NVMRI.

Response:

The NVMRI system was acquired directly by NVMRI from the manufacturer in 1988, as described in the CON application on page 7, in response to question D1, regarding ownership of the equipment (see excerpt quoted above in response to question 1) and in Paragraph 1.7 of the NVMRI limited partnership agreement, Ownership of Property. Refer to Exhibit 1.

(Docket No. 07-31056-WVR, Response to OHCA Completeness Letter dated December 12, 2007).

In its 2008 Waiver Decision, OHCA expressly stated that the original CON authorization in 1988 was for "Saint Mary's Hospital and Naugatuck Radiology Associates, P.C."

6. Even if Saint Mary's was otherwise correct in its position (and it is not), that the NVMRI partnership has ended, Saint Mary's sole ownership of a new MRI machine would constitute a change in the ownership, management and the essential nature of the MRI facility located at Saint Mary's Franklin Street campus. As Saint Mary's own announcement states, what occurred on October 2, 2013 was "the addition of a new . . . MRI unit at our Franklin Street location." There has been no upgrade or replacement of NVMRI's existing MRI machine.
7. If Saint Mary's reckless and unlawful conduct is permitted to run its course, it will result in the unauthorized addition of a solely-owned hospital and provider-based MRI facility at the Saint Mary's campus. The NVMRI project was approved, not as a hospital project, but as a joint venture among Saint Mary's, NVRA and limited partner investors. In response to questions presented by the Commission on Hospitals and Health Care, the following unequivocal statement appears: "**This project is not a Hospital project.**" OHCA has never approved and has never been asked to approve, a change of the MRI facility at the Saint Mary's hospital campus from a joint venture to a solely hospital-owned, provider-based, MRI facility.

We wish to be of assistance to OHCA in reaching an appropriate conclusion to the unfortunate situation created by Saint Mary's precipitous actions. NVMRI also intends to take all necessary and appropriate steps to protect the business and hard-earned reputation for providing quality MRI services that it has painstakingly built over the past twenty-five years.

Thank you for your attention to this matter. Please let me know if you have any additional questions or require any additional information.

Very truly yours,

/s/ Jeffrey J. Tinley (Juris No. 304526)

Jeffrey J. Tinley
Tinley, Natri, Renahan & Dost, LLP.
60 North Main Street, 2nd Floor
Waterbury, CT 06702
Telephone: (203) 596-9030
Facsimile: (203) 596-9036
E-mail: jtinley@tnrdlaw.com

Counsel to:
Naugatuck Valley Radiological Associates, P.C.,
Managing General Partner,
Naugatuck Valley MRI Limited Partnership

encl.: (Exhibit A)

cc: Michael Hinton, Esq., Counsel to Naugatuck Valley MRI Limited Partnership
Richard P. Weinstein, Esq., Counsel to Certain Limited Partners of NVMRI
Steven Klaffky, Esq., Counsel to St. Mary's Hospital Corporation

EXHIBIT A



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TINLEY, NASTRI, RENEHAN & DOST, LLP
ATTORNEYS AT LAW

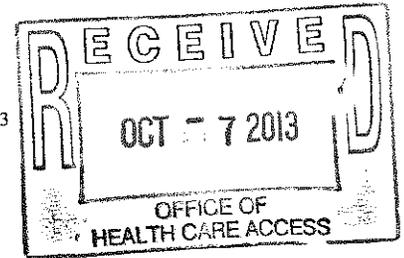
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**Board Certified Trial Attorney

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SECOND FLOOR
WATERBURY, CT 06702

TELEPHONE (203) 596-9030 x 13
TELECOPIER (203) 596-9036
E-MAIL: jwest@trdlaw.com



October 4, 2013

Kevin Hansted, Esq.
Department of Public Health
Office of Health Care Access
410 Capitol Ave.
MS #13HCA
Hartford, CT 06134-0308

By e-mail (Kevin.Hansted@ct.gov)
and U.S. Mail

Re: Naugatuck Valley MRI Limited Partnership

Dear Attorney Hansted:

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Very truly yours,

/s/ *Jeffrey J. Tinley* (Juris No. 304526)

Jeffrey J. Tinley
Tinley, Nastri, Renahan & Dost, LLP.
60 North Main Street, 2nd Floor
Waterbury, CT 06702
Telephone: (203) 596-9030
Facsimile: (203) 596-9036
E-mail: jtinley@tnrdlaw.com

Counsel to:
Naugatuck Valley Radiological Associates, P.C.,
Managing General Partner,
Naugatuck Valley MRI Limited Partnership

encl.: (Exhibit A)

cc: Michael Hinton, Esq., Counsel to Naugatuck Valley MRI Limited Partnership
Richard P. Weinstein, Esq., Counsel to Certain Limited Partners of NVMRI
Steven Klaffky, Esq., Counsel to St. Mary's Hospital Corporation

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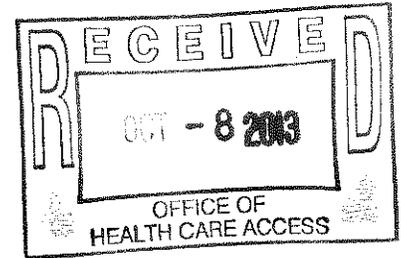
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- Scheduling will be managed by Saint Mary's Central Scheduling Staff



56 Franklin Street
Waterbury, CT 06706

FAX NUMBER (203) 709-3238



FACSIMILE TRANSMITTAL COVER SHEET

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DATE: 10/7/13

PLEASE DELIVER TO: Kimberly Martone, Director of Operations
State of Connecticut
Office of Health Care Access

FROM: Michael A. Novak, VP, Operations

RECIPIENT'S PHONE NUMBER:

RECIPIENT'S FAX NUMBER: (860) 418-7053

The following document(s) are transmitted for delivery to the above named individual and consist of 7 pages, including the cover sheet.

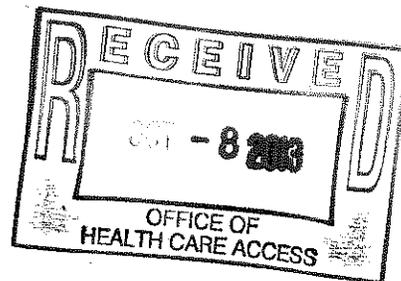
MESSAGE:



Saint Mary's
HOSPITAL

October 7, 2013

Ms. Kimberly Martone
Director of Operations
State of Connecticut
Office of Health Care Access
410 Capitol Avenue, MS#13HCA
Hartford, CT 06134



Re: MRI at Saint Mary's Hospital

Dear Ms. Martone,

This letter is in response to the correspondence dated September 27, 2013, from Jeffrey J. Tinley, Esq. on behalf of his client, Naugatuck Valley Radiology Associates, P.C. ("NVRA").

NVRA (acting as managing general partner) and Saint Mary's Hospital ("Saint Mary's" or the "Hospital"), have both been general partners of Naugatuck Valley MRI Limited Partnership (the "Partnership"), which operated the MRI located at Saint Mary's Hospital until September 30, 2013. September 30th was the expressly agreed-upon date that the Partnership was required to dissolve, as set forth in a signed, written amendment (which was drafted by NVRA) to the Partnership Agreement and the Certificate of Partnership. On September 26, 2013, four (4) days before the Partnership dissolved, NVRA purported to strip Saint Mary's of its right and authority as a general partner of the Partnership and is attempting to continue the Partnership beyond the agreed-upon dissolution date, without the consent of Saint Mary's. The legality of that maneuver is the subject of pending arbitration initiated by Saint Mary's as well as pending litigation initiated by certain limited partners of the Partnership. Saint Mary's maintains that the purported removal is void and that the Partnership must be dissolved as expressly agreed.¹ As is evident from Attorney Tinley's letter, NVRA now hopes to involve the Office of Health Care Access ("OHCA") in this gambit.

¹ Pursuant to the Partnership Agreement, a general partner can only be removed on the grounds of "willful misconduct, fraud or gross negligence in connection with the

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The purpose of this letter is to: (1) explain how MRI services are currently provided at the Hospital; (2) explain why the dispute in no way implicates or alters the conclusions stated in OHCA's Determination Report No. 13-31858-DTR, in which OHCA unequivocally stated that "The Hospital is the sole applicant and owner of the CON issued under Docket Number 88-512" and that "a CON is not required for Saint Mary's Hospital to replace its previously authorized MRI scanner at the Hospital."

1. MRI Services at Saint Mary's

Since 1988, MRI services at Saint Mary's have been provided pursuant to a certificate of need ("CON") issued to Saint Mary's in Docket No. 88-512. Saint Mary's was the sole applicant in Docket No. 88-512 and the sole recipient of the CON issued thereunder. *See* Finding of Fact No. 1 ("St. Mary's Hospital ('SMH') is proposing to establish a 1.5 Tesla General Electric SIGNA Superconducting Magnetic Resonance Imaging ('MRI') unit capable of imaging the entire body."); Order at p. 62 ("The Commission on Hospitals and Health Care hereby approves the application of St. Mary's Hospital").

In Docket No. 88-512, Saint Mary's established the need for the MRI service to be located at the hospital. Although Saint Mary's itself applied for and obtained the CON, it advised the Commission at that time that it subsequently intended to form a limited partnership with NVRA and its principals, in which Saint Mary's and NVRA would serve as general partners, to purchase and operate the MRI equipment. The Commission permitted this arrangement and required, as a condition of approval, that a copy of the Partnership Agreement be submitted. *See* Order, Condition No. 1. That Partnership Agreement expressly acknowledges that Saint Mary's – not NVRA or the Partnership – was the sole applicant for and recipient of the CON issued by the Commission for an MRI to be located at the Hospital itself. It states:

On April 25, 1988, St. Mary's Hospital Corporation, one of the of the General Partners, completed its application to the Connecticut

Partnership affairs." Partnership Agreement, § 9.1. Saint Mary's has never engaged in such misconduct and cannot be removed simply because NVRA desires to continue the Partnership longer than agreed.

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Commission on Hospitals and Health Care (the "Commission") for a Certificate of Need pursuant to the Connecticut General Statutes Sections 19a-154 and 19a-155 to establish magnetic resonance imaging services at the Hospital. The Commission granted the Certificate of Need on July 22, 1988, subject to the following conditions . . .

Partnership Agreement, § 14.1.

The agreement further provides that the Partnership would not continue indefinitely. To the contrary, the agreement sets forth an unambiguous, predetermined dissolution date of December 31, 2010. Partnership Agreement, § 10.1(d). Although the parties have extended that dissolution date until September 30, 2013, in the hopes of resolving the current dispute, Saint Mary's has never agreed to continue the Partnership beyond September 30, 2013, and the parties are nowhere nearer to an amicable resolution than they were in 2010.

To prepare for the scheduled dissolution of the Partnership, Saint Mary's, acting on its own behalf, submitted a determination request to OHCA received August 15, 2013. The request identified the upcoming dissolution date and stated Saint Mary's intention not to agree to any further continuation of the Partnership. The request indicated that Saint Mary's anticipated acquiring the existing MRI from the dissolved Partnership and to compensate the Partnership in accordance with the agreement, but also noted the pressing need to update the MRI. As Saint Mary's stated in the request: "There have been recent work stoppages due to mechanical failure that have disrupted the MRI scanning for patients, including inpatients at the Hospital. It is time to upgrade this MRI because of its age (25 years) which is well beyond its useful life."

OHCA responded in Determination Request 13-31858-DTR, issued August 28, 2013, by confirming that Saint Mary's is the sole holder of the CON under which the MRI has historically operated at the Hospital and that Saint Mary's did not require a CON to replace the MRI located at the Hospital.

Consistent with this determination, Saint Mary's began operating a state-of-the-art, 2013 model 1.5T Siemens Espree open, short bore MRI on October 1, 2013. The new MRI has advanced technology and software in comparison to the former MRI, providing superior image quality and new diagnostic applications and utility. It is also

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more accessible and comfortable for patients. Whereas the former MRI required the patient's entire body to be inside of the MRI and had a maximum patient weight capacity of 350 lbs., the new MRI allows the patient's head and feet to remain outside of the magnet and has a maximum patient weight capacity of 550 lbs.

The new MRI is the only MRI that Saint Mary's intends to utilize at the Hospital. It is being leased on a temporary basis and located in a mobile unit attached to the Hospital, adjacent to the former MRI. Once the dispute over the dissolution of the Partnership is resolved, Saint Mary's intends to install a permanent replacement to the former MRI. Moreover, due to advancements in MRI technology since 1988, a replacement MRI will occupy significantly less space and will enable the Hospital to utilize the remainder of this area for other needs.

Since 1988, a great deal has changed in terms of technology, hospital management and quality of patient care. Saint Mary's, with the fifth largest emergency department in the State of Connecticut, needs to upgrade the quality of MRI scanning, and will pay for the necessary technology on its own. Saint Mary's must be responsive to physician and patient needs and replacing outdated technology is a necessary aspect of doing so. Saint Mary's also needs to be able to integrate imaging services into the Hospital's programs of care without having to involve the interests of outside third parties.

2. CON Authority

OHCA has never before found that the CON issued in Docket No. 88-512 was issued to any party other than the Hospital. Rather, as noted above, the Commission's decision in 88-512 and the Partnership Agreement both acknowledge that the Hospital was the sole applicant and that the CON was granted to Saint Mary's. The Commission merely permitted the Hospital to form a limited partnership, in which the Hospital would be a general partner, to own and operate the MRI. It did not grant the CON to the Partnership or transfer the CON thereafter.

Although NVRA cites the Partnership's application in Docket No. 07-31056-WVR as evidence that the CON was issued to the Partnership, OHCA's Final Decision refutes that claim. It states:

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[In] the Final Decision under the Docket Number 88-512, SMH received Certificate of Need ("CON") authorization from the Office of Health Care Access ("OHCA") predecessor agency known as Commission on Hospital's and Health Care ("CHHC") to own and operate a MRI scanner at 56 Franklin Street, Waterbury, Connecticut, at a total capital cost of \$2,876,750.

[In] 1988, SMH indicated that it intended on forming a partnership with NVRA to own and operate the MRI unit after CON approval was granted.

Docket No. 07-31056-WVR, Findings of Fact Nos. 4-5 (emphasis added).

Although the Partnership and NVRA are listed as co-applicants with Saint Mary's on the waiver request in 2007, it is my understanding that the designation was determined by OHCA to be necessary for the specific request before OHCA at that time. It did not change the underlying Partnership Agreement between the parties, nor did it spring back and give NVRA or NVMRI any entitlement to the original CON authorizing the MRI. As long as NVRA and its limited partners were partners with Saint Mary's in NVMRI, they were held jointly responsible for the operations of the MRI service. However, as the Partnership Agreement has ended, NVRA and the limited partners who together created NVMRI no longer have the authority to control the MRI service at the Hospital.

OHCA's conclusion in Determination Report 13-31858-D'IR agrees with its decisions in both 88-512 and 07-31056-WVR. "The Hospital is the sole applicant and owner of the CON issued under Docket Number 88-512." The CON authority to provide MRI services at the Hospital resides with the Hospital.

NVRA takes the position that – simply because OHCA permitted Saint Mary's to form a limited partnership to own and operate the MRI – NVRA can strip Saint Mary's of its authority as a general partner and still operate an MRI at the Hospital, under a CON issued to the Hospital, beyond the date that the parties agreed to dissolve the Partnership. No decision or finding from OHCA remotely supports that position.

Although NVRA has attempted to circumvent its unambiguous obligation to dissolve the Partnership, it has no colorable basis for doing so. The lawfulness of its conduct will ultimately be decided in either arbitration or litigation. Saint Mary's

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maintains that the Partnership dissolved on September 30, 2013, and it has conducted itself accordingly. But even if NVRA rightfully removed Saint Mary's, that act would not transfer the CON to the Partnership or NVRA. It would only deprive the Partnership of the CON it has been permitted to utilize since 1988.

If you have questions regarding any of the information in the Determination Form submitted to OHCA on August 15, 2013, or about any of the information contained in this letter, please do not hesitate to contact me. Saint Mary's would be happy to meet with OHCA, to provide further information, or to submit a more detailed legal brief upon request.

Sincerely,



Michael A. Novak
Vice President, Operations

cc: Kevin Hansted, Esq.
Department of Public Health
Jeffrey J. Tinley, Esq.
Stephen R. Klaffky, Esq.