



**Office of Health Care Access**  
**Reconsideration of a Final Decision**

**Applicant:** Advanced Radiology Consultants, LLC d/b/a  
Advanced Radiology MRI Center, LP

**Reconsideration Docket  
Number:** 07-30983-RCN

**Description of Proposed  
Reconsideration:** Reconsideration of the Final Decision under Docket  
No.: 07-30983-CON

**Original Decision Docket  
Numbers and Title:** Docket No.: 07-30983-CON,  
Acquisition of Three 1.5 Tesla Magnetic Resonance  
Imaging Scanners for Offices Located in the Towns of  
Trumbull, Orange and Shelton, Connecticut

**Intervenors:** Milford Hospital, and  
Diagnostic Imaging of Milford, P.C.

**Statutory Reference:** Sections 4-181a, Connecticut General Statutes

**Filing Date:** March 26, 2008

**Hearing Date:** May 7, 2008

**Decision Date:** June 24, 2008

**Staff** Steven W. Lazarus

**Project Description:** Advanced Radiology Consultants, LLC d/b/a Advanced Radiology MRI Centers, LP request a reconsideration of the Certificate of Need Final Decision issued under Docket Number 07-30983-CON.

**Nature of Proceedings:** On March 13, 2008, the Office of Health Care Access (“OHCA”) received a request from Advanced Radiology Consultants, LLC d/b/a Advanced Radiology MRI Center, LP (“Applicant”) for OHCA to reconsider its final decision rendered under Docket No.: 07-30983-CON.

OHCA is allowed to reconsider its previous final decision based on error of fact or law, new evidence that materially affects the merits of the case or for good cause, pursuant to Section 4-181a of the Connecticut General Statutes (“C.G.S.”). On March 26, 2008, OHCA communicated to the Applicant that “[a]fter careful consideration, OHCA has decided to reconsider its final decision rendered on February 27, 2008, under Docket Number 07-30983-CON based solely upon new evidence presented in the Petition for Reconsideration.”

A public hearing regarding this matter was held on May 7, 2008. On April 8, 2008, the Applicant was notified of the date, time, and place of the hearing. A notice was published in the Connecticut Post on April 3, 2008. Commissioner Cristine A. Vogel served as Presiding Officer in this matter.

Milford Hospital petitioned for Party Status or Intervenor Status with full procedural rights in the proceedings, including the right to present evidence and argument as well as the right to cross-examine witnesses. Diagnostic Imaging of Milford, P.C. petitioned for Intervenor Status with full procedural rights in the proceeding, including the right to present evidence and argument as well as the right to cross-examine witnesses. The Presiding Officer at the public hearing granted both Milford Hospital and Diagnostic Imaging of Milford, P.C., Intervenor Status with full rights.

The Presiding Officer heard testimony from witnesses representing the Applicant and both Intervenors. In rendering this decision, the Presiding Officer considered the entire record of the proceeding under Docket No.: 07-30983-RCN. OHCA’s authority to review and determine whether any change of conditions has occurred is established by Section 4-181a, C.G.S.

## Findings of Fact

1. On February 27, 2008, the Office of Health Care Access (“OHCA”) denied a Certificate of Need (“CON”) under Docket Number 07-30983-CON, to Advanced Radiology Consultants, LLC d/b/a Advanced Radiology MRI Center, LP (“Applicant”) for the acquisition of three 1.5 Tesla Magnetic Resonance Imaging (“MRI”) scanners for offices located in the towns of Trumbull, Orange and Shelton, Connecticut<sup>1</sup>. This acquisition was for replacement of three MRI scanners currently operated by the Applicant which previously had not received CON authorization. (*February 27 2008, Final Decision under Docket No.: 07-30983-CON*)

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<sup>1</sup> Milford Hospital and Diagnostic Imaging of Milford were designated as Intervenors in the matter under Docket Number 07-30983-CON.

2. On March 13, 2008, OHCA received the Applicant's request for reconsideration of the final decision rendered under Docket No.: 07-30983-CON.

*(March 13, 2008, Petition for Reconsideration)*

3. In the Petition for Reconsideration, the Applicant stated:

*"New evidence has been discovered and/or circumstances have changed, concerning the accreditation status of the existing MRI units in Orange and Shelton; the Applicant's Centralized Scheduling System; and the high field scan volume amongst various patient populations, each of which materially affects the merits of Advanced Radiology's CON Application."*

*(March 13, 2008, Petition for Reconsideration, page 1)*

4. In a letter dated March 26, 2008, OHCA informed the Applicant that:

*"OHCA has decided to reconsider its final decision rendered on February 27, 2008, under Docket Number 07-30983-CON based solely upon new evidence presented in the Petition for Reconsideration. The other arguments in the Petition for Reconsideration, including alleged errors of law or fact and good cause will not be considered."*

*(March 26, 2008, OHCA's Response to Petition for Reconsideration)*

5. Dr. Kaye's pre-filed testimony on behalf of the Applicant states the following:

- *"As OHCA is aware, on February 26, 2008, Advanced Radiology received notice from the ACR that units in Orange and Shelton were denied re-accreditation."*
- *"Attached as **Exhibit A** are notices dated February 20, 2008, from The Committee on MRI Accreditation with respect to the Orange and Shelton unit, for which the phantom and clinical evaluations, respectively, were "not acceptable" by ACR standards."*
- *"Accordingly, because the Orange and Shelton units have not been re-accredited and the Trumbull unit may suffer the same fate, and because OHCA has precluded Advanced Radiology from replacing these units, the units may ultimately need to be decommissioned."*

*(May 2, 2008, Pre-File Testimony of Dr. Alan D. Kaye, Managing Member of Advanced Radiology Consultants, LLC, pages 147-148)*

6. At the public hearing, OHCA ruled as following:

- The information to be considered in this reconsideration will be that which is germane to the whole accreditation process or the ACR process; and
- Examples of information, testimony and/or exhibits related to the following will be excluded excluded/stricken from the record:
  - The MRI located in Trumbull;
  - Discussions on current capacity or utilization in the area;

- The impact of the final decision on the Applicant;
- Market trends;
- Articles;
- Discussion on the different MRI tesla strengths; and
- The scheduling process.  
*(May 7, 2008, OHCA's Ruling at the Public Hearing)*

7. Dr. Kaye, on behalf of the Applicant testified to the following at the public hearing:

- There are three options available to the Applicant since the two MRI scanners in the offices located in Orange and Shelton were denied ACR accreditation, these options include withdrawal, appeal and reapplication. The Applicant has chosen to reapply;
- The Applicant resubmitted images as part of the process to reapply for the ACR accreditation. The Applicant reapplied for the Orange office and Shelton office MRI scanners on April 10, 2008 and May 5, 2008, respectively; and
- Dr. Shimkin, the physician who chose and submitted the images for the ACR accreditation process for the Orange and Shelton offices was not present at the public hearing.  
*(May 7, 2008, Public Hearing Testimony of Dr. Alan Kaye)*

## Discussion

Section 4-181a of the Connecticut General Statutes relating to Reconsideration of OHCA's final decision states the following:

*“(a)(1) Unless otherwise provided by law, a party in a contested case may, within fifteen days after the personal delivery or mailing of the final decision, file with the agency a petition for reconsideration of the decision on the ground that: (A) An error of fact or law should be corrected; (B) **new evidence has been discovered which materially affects the merits of the case and which for good reasons was not presented in the agency proceeding;** or (C) other good cause for reconsideration has been shown. Within twenty-five days of the filing of the petition, the agency shall decide whether to reconsider the final decision. The failure of the agency to make that determination within twenty-five days of such filing shall constitute a denial of the petition.”*

OHCA finds that the new evidence in this matter does not materially affect the merits of the final decision upon which the original decision was based on. Specifically, the information submitted to OHCA regarding the two MRI scanners located in the Applicant's Orange and Shelton offices not being reaccredited by the American College of Radiology (“ACR”) does not have any impact on the basis for OHCA's denial under Docket No.: 07-30983-CON.

Further, the Applicant in its testimony at the public hearing admitted that it has options related to the ACR accreditation, which include withdrawing, appealing or reapplying. As a matter of fact the Applicant has chosen to reapply for the accreditation of both the Orange and Shelton locations and has already received ACR approval for accreditation of its MRI scanner located in the Orange office. Nevertheless, the accreditation status of the Applicant's existing MRI scanners in Orange and Shelton was not the basis for OHCA's denial of the Applicant's original proposal, and therefore; the new evidence presented does not change any material facts in the original CON final decision rendered under Docket No.: 07-30983-CON.

## Order

Based on the facts presented in this proceeding, there has been no demonstration of new evidence materially affecting the final decision originally rendered pursuant to Section 4-181a of the Connecticut General Statutes; therefore, the request to reconsider the final decision rendered under Docket Number 07-30983-CON is hereby Denied. The Final Decision issued under Docket Number 07-30983-CON stand as previously ordered by OHCA.

Sincerely,

*Signed by Commissioner Vogel on June 24, 2008*

Cristine A. Vogel  
Commissioner

CAV/swl