



STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH
Office of Health Care Access

September 20, 2013

IN THE MATTER OF:

An Application for a Certificate of Need
filed Pursuant to Section 19a-638, C.G.S.
by:
New York Society for the Relief of the
Ruptured and Crippled, Maintaining the
Hospital for Special Surgery

Notice of Reconsideration of Final Decision
Office of Health Care Access
Docket Number: 12-31780-RCN
Acquisition of a Magnetic Resonance Imaging
Scanner to be Located in Stamford,
Connecticut.

To: Stacey L. Malakoff
Executive Vice President/CFO
The Hospital for Special Surgery
535 East 70th Street
New York, NY 10021

Dear Ms. Malakoff:

This letter will serve as notice of the Reconsideration of the Final Decision of the Office of Health Care Access in the above matter, as provided by Connecticut General Statutes § 4-181a(3). On September 20, 2013, the Final Decision was affirmed by Deputy Commissioner Davis as the final decision of the Office of Health Care Access. A copy of the Final Decision is attached hereto for your information.

Kimberly R. Martone
Director of Operations

Enclosure
KRM:bac

cc: Paul E. Knag, Esq., Murtha Cullina LLP

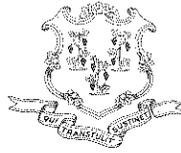
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STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH

Jewel Mullen, M.D., M.P.H., M.P.A.
Commissioner



Dannel P. Malloy
Governor
Nancy Wyman
Lt. Governor

IN THE MATTER OF:

An Application for a Certificate of Need filed
Pursuant to Conn. Gen. Stat. § 19a-638
by:
New York Society for the Relief of the
Ruptured and Crippled, Maintaining the
Hospital for Special Surgery

Affirmation of Final Decision
Office of Health Care Access
Docket Number: 12-31780-RCN
Acquisition of a Magnetic Resonance Imaging
Scanner to be Located in Stamford,
Connecticut.

This letter will serve as notice that, after reconsideration, the Final Decision rendered in this matter on June 14, 2013 is affirmed and remains the Final Decision for purposes of any appeal under Conn. Gen. Stat. § 4-183. A copy of the Final Decision dated June 14, 2013 is attached hereto for your reference.

Date

9/20/13


Lisa A. Davis, MBA, BSN, RN
Deputy Commissioner



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STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH
Office of Health Care Access

June 14, 2013

IN THE MATTER OF:

An Application for a Certificate of Need
filed Pursuant to Section 19a-638, C.G.S. by:

Notice of Final Decision
Office of Health Care Access
Docket Number: 12-31780-CON

**New York Society for the Relief of the
Ruptured and Crippled, maintaining the
Hospital for Special Surgery**

**Acquisition of a Magnetic Resonance
Imaging Scanner to be Located in
Stamford, Connecticut**

To: Stacey L. Malakoff
Executive Vice President/CFO
The Hospital for Special Surgery
535 East 70th Street
New York, NY 10021

Dear Ms. Malakoff:

This letter will serve as notice of the Final Decision of the Office of Health Care Access in the above matter, as provided by Section 19a-638, C.G.S. On June 14, 2013, the Final Decision was rendered as the finding and order of the Office of Health Care Access. A copy of the Final Decision is attached hereto for your information.

A handwritten signature in cursive script that reads "Kimberly R. Martone".

Kimberly R. Martone
Director of Operations

Enclosure
KRM:av

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**Department of Public Health
Office of Health Care Access
Certificate of Need Application**

Final Decision

Applicants: New York Society for the Relief of the Ruptured and Crippled,
maintaining the Hospital for Special Surgery
535 East 70th Street, New York, New York 10021

Docket Number: 12-31780-CON

Project Title: Acquisition of a Magnetic Resonance Imaging Scanner to be
Located in Stamford, Connecticut

Project Description: New York Society for the Relief of the Ruptured and Crippled, maintaining the Hospital for Special Surgery ("HSS" or "Applicant") seeks to acquire a Magnetic Resonance Imaging ("MRI") scanner to be located in Stamford, Connecticut, with an associated capital expenditure of \$3,245,583.

Procedural History: The Applicant published notice of its intent to file a CON application in *The Advocate* (Stamford) on June 26, 27 and 28, 2012. On August 13, 2012, the Office of Health Care Access ("OHCA") received the Certificate of Need ("CON") application from the Applicant for the above-referenced project. On November 2, 2012, OHCA deemed the application complete.

On November 16, 2012, the Applicant was notified of the date, time, and place of the public hearing. On November 19, 2012, a notice to the public announcing the hearing was published in the *Record Journal*, *The Advocate* and *The News Times*. Thereafter, pursuant to Conn. Gen. Stat. § 19a-639a, a public hearing regarding the CON application was held on December 18, 2012.

Commissioner Jewel Mullen designated Attorney Kevin T. Hansted as the hearing officer in this matter. The hearing was conducted as a contested case in accordance with the provisions of the Uniform Administrative Procedure Act (Chapter 54 of the General Statutes) and Conn. Gen. Stat. § 19a-639a. The public hearing record was closed on December 24, 2012.

A Proposed Final Decision was issued on April 8, 2013. Thereafter, the Applicant filed Exceptions to the Proposed Final Decision on May 10, 2013. Included in the Exceptions was a claim that the Applicant had not been given notice that OHCA would rely on certain information in its Proposed Final Decision. In order to allow the Applicant an opportunity to submit evidence to refute the information upon which OHCA partially relied, the matter was remanded back to the Hearing Officer and the public hearing record was opened on May 21, 2013. In response, the Applicant notified OHCA on May 21, 2013 that it would not be submitting additional evidence, but rather, would rely on the information included in its Exceptions. The public hearing record was closed again on May 21, 2013.

Findings of Fact

1. HSS is a not-for-profit, acute care, academic medical center located at 535 East 70th Street, New York, NY 10021. HSS is a health care facility or institution as defined by Conn. Gen. Stat. § 19a-630. Ex. A, p. 8.
2. HSS currently provides physician services, diagnostic x-ray and fluoroscopic guidance imaging services at 143 South Beach Avenue, in Old Greenwich, Connecticut. Ex. A, p. 6.
3. HSS is a top ranked hospital in the orthopedic and rheumatology fields; its MRI centers specialize in musculoskeletal exams. Ex. A, p. 6; Ex. F, p. 340.
4. HSS is planning to expand and relocate its services from 143 South Beach Avenue, Old Greenwich, Connecticut to 1 Blachley Road, Stamford, Connecticut. Ex. A, p. 6.
5. HSS is seeking approval for the acquisition of a 1.5 Tesla Magnetic Resonance Imaging (MRI) unit at this new location. Ex. A, p. 6.
6. HSS currently operates ten MRI units at or in close proximity to its main hospital campus in Manhattan, and has received approval from the state of New York to operate a new unit at a satellite location in Uniondale, NY. Ex. A, p. 7; Ex. B, p. 347.

7. Table 1 shows historical, current and projected utilization for all MRI scanners operated by HSS.

Table 1: HSS Existing MRI Units and Volumes by Location:

	Actual Volume (Last 3 Completed CYs)			CY Vol. (d)	Projected Volume (First 3 Full Operational CYs)		
	2009	2010	2011		2012	2014	2015
HSS Main Campus (a)(b):							
- Unit A	4,555	4,054	3,825	3,267	3,359	3,464	3,568
- Unit B	3,700	3,232	3,244	3,008	3,094	3,191	3,287
- Unit C	3,892	3,963	3,996	3,810	3,919	4,042	4,162
- Unit D	4,194	4,031	3,863	3,567	3,667	3,781	3,895
- Unit E	3,787	3,420	3,382	3,215	3,306	3,409	3,512
- Unit F	2,974	3,648	3,835	3,470	3,568	3,679	3,790
- Unit G (11/3/09)	754	3,754	3,654	3,489	3,587	3,699	3,811
- Unit H (c)	1,708	1,303	2,327	3,397	3,491	3,600	3,709
- Unit I (3/26/12)	-	-	-	1,934	2,591	2,672	2,753
75 th St (11/28/11)	-	-	190	2,443	2,512	2,590	2,668
Uniondale, NY (1/1/13)	-	-	-	-	2,400	2,400	2,400
Stamford, CT (1/1/14)	-	-	-	-	2,175	2,540	2,540
Total	25,564	27,405	28,316	31,600	37,669	39,067	40,095

Ex. F, p. 347.

- (a) HSS Main Campus MRIs operate 13.5 hours/day (Unit A – 16 hours/day) and on weekends (limited hours), whereas the units at the offsite locations operate 10 hours/day and no weekends. 75th St, which is in close proximity to the Main Campus, operates 11.5 hours/day.
- (b) Nine of the above listed units are 1.5 Tesla units and three are 3.0 Tesla units. Tesla measures the strength of the magnet. HSS operates mostly 1.5T units since these are most effective for orthopedic imaging in most cases.
- (c) Unit H was converted from an Open to a 1.5T MRI in May 2011 due to obsolescence.
- (d) Represents projected 2012 totals based on actual volumes through August 2012.

Note: All above years represent calendar years (CYs). Above totals are for outpatients only.

8. The Applicant states that the proposed service area would include the following towns: Stamford, Greenwich, Darien and New Canaan, Connecticut, and Scarsdale, Rye, and Mamaroneck, New York. Ex. A, p. 15.

9. Based on CY 2012 volumes, HSS projects that it will perform approximately 3,250 MRI scans for its patients residing in Connecticut and Westchester County. Of the total projected volume, 896 scans (28%) would originate from the Connecticut portion of the proposed service area. Ex. A, p. 7.

Table 2: HSS Historical/Projected MRI Volumes for the Proposed Service Area:

Town	2011	Actual through June 2012	Projected through end of 2012
Stamford	144	67	134
Greenwich	454	243	486
Darien	174	68	136
New Canaan	109	70	140
CT Portion of Proposed Service Area	881	448	896
Scarsdale	229	114	228
Rye	217	110	220
Mamaroneck	219	144	288
NY Portion of Proposed Service Area	665	368	736
Total Proposed Service Area	1,546	816	1,632
Other CT Residents	725	465	930
Other NY Residents	616	344	688
Total HSS MRI Volume	2,887	1,625	3,250

Ex. A, p. 15.

10. HSS claims that the maximum capacity of the MRI requested in this proposal will be 2,540 scans; based on a five day-per-week, 10-hour-per-day schedule. As the projected volume of 3,250 scans exceeds the claimed maximum capacity of 2,540 scans, a portion of patients would thus need to receive their MRI scan in Manhattan. Ex. A, pp. 16-17.
11. HSS is projecting the following utilization for its proposed MRI scanner:

	Projected MRI Volume		
	FY 2014	FY 2015	FY 2016
MRI Total	2,175	2,540	2,540

Ex. A, p. 27.

12. HSS states that its MRI scans use proprietary protocols that are customized to meet the needs and specifications of individual patients and their physicians. HSS claims the protocols/customization allows each physician to maximize the usefulness of the MRI as a tool for diagnosis and to help develop effective treatment plans. The protocols used by HSS do not require specialized equipment; however, they do require specialized software for prototype pulse sequences, which is the property of General Electric (GE). Ex. A, pp. 6-7; Ex. F, p. 340.
13. HSS has a comprehensive and collaborative research agreement with GE, allowing it to use these newer sequence and MRI techniques that are not currently available to other providers in the tri-state area. Ex. F, p. 341.
14. HSS sends the majority of its patients (approximately 3,250) to its Manhattan campus to receive MRI scans. Only a small percentage of patients are referred to Connecticut providers. HSS will continue to refer patients to the HSS MRI department, regardless of whether the MRI is located in Manhattan, Stamford or another location. Ex. A, p. 7; Ex. F, pp. 349, 352.
15. HSS stated that patients are sent to New York to be imaged due to the focus on MRI quality. Transcript of December 18, 2012 Public Hearing ("Tr."), Testimony of Dr. Jo A. Hannafin, Attending Orthopedic Surgeon at the Hospital for Special Surgery.
16. HSS stated that it had only anecdotal cases to support its claim that HSS MRI protocols are better than those used by Connecticut providers. HSS' peer-reviewed literature is not based on any specific Connecticut facility. Transcript of December 18, 2012 Public Hearing ("Tr."), Testimony of Dr. Hollis Potter, Chief of the MRI department at the Hospital for Special Surgery.
17. HSS stated that it had not specifically addressed improvement in surgical outcomes as a result of using its MRI protocols. Transcript of December 18, 2012 Public Hearing ("Tr."), Testimony of Dr. Hollis Potter, Chief of the MRI department at the Hospital for Special Surgery.

18. The Applicant asserts that clear public need for this proposal is demonstrated by the following:

- An MRI site in Stamford provides a more convenient location for Connecticut and Westchester County, NY patients than the HSS main campus in Manhattan. Ex. A, pp. 7, 13.
- The ability to free up needed capacity and alleviate current issues with MRI backlog at HSS's Manhattan location. Ex. A, pp. 7, 13.

19. The Applicant asserts that this proposal will not impact the volumes of existing Connecticut MRI providers, due to the following:

- MRI volume will shift from Manhattan to Stamford;
- HSS can fill the capacity of the proposed MRI with its own patients;
- The proposed MRI scanner will not be marketed to non-HSS physicians or patients.

Ex. A, p. 7.

20. Although HSS does not directly market its services to non-HSS physicians, testimony received stated that HSS does currently accept referrals from non-HSS orthopedic surgeons in New York. HSS also stated that it would like to market its MRI services to an orthopedic practice affiliated with The Stamford Hospital and located within the same building (Chelsea Piers complex) where the proposed MRI would be operated. Transcript of December 18, 2012 Public Hearing ("Tr."), Testimony of Lou Shapiro, President and Chief Executive Officer for the Hospital for Special Surgery.

21. The projected patient population mix presented below is based on HSS's current MRI payer mix and assumes that the mix of patients treated in Stamford will be similar:

Table 4: HSS Projected Payer Mix:

Coverage Type	Year 1 FY 2014	Year 2 FY 2015	Year 3 FY 2016
Medicare*	18.1%	18.1%	18.1%
Medicaid*	2.1%	2.1%	2.1%
CHAMPUS & TriCare	0.0%	0.0%	0.0%
Total Government	20.2%	20.2%	20.2%
Commercial Insurers*	74.7%	74.7%	74.7%
Uninsured	1.4%	1.4%	1.4%
Workers Compensation	3.7%	3.7%	3.7%
Total Non-Government	79.8%	79.8%	79.8%
Total Payer Mix	100.0%	100.0%	100.0%

Ex. A, p. 36.

*Includes managed care activity.

22. The total capital expenditure is \$3,245,583 and will be funded from HSS operations. The capital costs include: \$1,800,000 for imaging equipment and \$1,445,583 for construction and renovation.
23. The Applicant projects incremental gains from operations of \$1,341,000 in FY 2014, \$1,659,000 in FY 2015, and \$1,708,000 in FY 2016.

Table 5: Financial Projections Incremental to the Project:

Description	FY 2014	FY 2015	FY 2016
Incremental Revenue from Operations ¹	\$2,176	\$2,614	\$2,686
Incremental Total Operating Expenses ²	\$835	\$955	\$978
Incremental Gain from Operations	\$1,341	\$1,659	\$1,708

Ex. A, pp. 336-339.

Note: figures are in thousands.

¹ Forecasts consider volume, payer mix and payment rate trends as well as the impacts of proposed regulatory reforms, capacity constraint, and anticipated capital initiatives.

² Operating expenses include rent, depreciation, facility, supply and staffing costs needed to operate the MRI unit and support the forecasted volumes.

24. OHCA is currently in the process of establishing its policies and standards as regulations. Therefore, OHCA has not made any findings as to this proposal's relationship to any policies and standards not yet adopted as regulations by OHCA. (Conn. Gen. Stat. § 19a-639(a)(1))
25. This CON application was deemed complete by OHCA prior to the state wide health care facilities and services plan being published. Therefore, OHCA has not made any findings as to the relationship between this CON application and the state wide health care facilities and services plan. (Conn. Gen. Stat. § 19a-639(a)(2))
26. The Applicant has failed to establish that there is a clear public need for its proposal. (Conn. Gen. Stat. § 19a-639(a)(3))
27. The Applicant has satisfactorily demonstrated that the proposal is financially feasible. (Conn. Gen. Stat. § 19a-639(a)(4))
28. The Applicant has failed to satisfactorily demonstrate that the proposal would improve quality, accessibility and cost effectiveness of health care delivery in the region. (Conn. Gen. Stat. § 19a-639(a)(5))
29. The Applicant has shown that there would be no change to the provision of health care services to the relevant populations and payer mix. (Conn. Gen. Stat. § 19a-639(a)(6))

30. The Applicant has satisfactorily identified the population to be served by its proposal, but has failed to satisfactorily demonstrate that this population has a need as proposed. (Conn. Gen. Stat. § 19a-639(a)(7))
31. The utilization of existing health care facilities and services in the service area does not support this proposal. (Conn. Gen. Stat. § 19a-639(a)(8))
32. The Applicant has failed to satisfactorily demonstrate that its proposal would not result in an unnecessary duplication of existing MRI services in the area. (Conn. Gen. Stat. § 19a-639(a)(9))

Discussion

CON applications are decided on a case by case basis and do not lend themselves to general applicability due to the uniqueness of the facts in each case. In rendering its decision, OHCA considers the factors set forth in General Statutes § 19a-639(a). The Applicant bears the burden of proof in this matter by a preponderance of the evidence. *Goldstar Medical Services, Inc., et al. v. Department of Social Services, 288 Conn. 790 (2008)*.

The New York Society for the Relief of the Ruptured and Crippled, maintaining the Hospital for Special Surgery ("Applicant" or "HSS"), a not-for-profit hospital located in New York City, proposes to acquire a 1.5 Tesla MRI scanner to be located in Stamford, Connecticut. *FF1&5*.

The proposal is based upon the assertion that a new MRI unit in Stamford would provide a more convenient location for HSS patients residing in Connecticut and Westchester County to receive HSS' MRI services. The relevant portion of HSS' patient volume would shift from Manhattan to a new location in Stamford. HSS has stated that the approval of this proposal would help alleviate capacity constraints and backlog at the hospital's main campus in Manhattan. *FF18-19*.

HSS claims that its use of proprietary and customized MRI protocols result in higher quality images and improved diagnostic accuracy. *FF12-13&15*. Thus, the application is not based on whether the service area needs additional capacity, but rather upon the claimed unique benefits of HSS' MRI protocols.

Although HSS has provided credible testimony as to its experience and expertise generating musculoskeletal MRI scans, it has failed to provide conclusive evidence (i.e., comparative scientific studies or empirical evidence) to validate their claim that HSS' MRI protocols provide significantly better imaging results or lead to better surgical outcomes than MRI protocols used by existing Connecticut providers. *FF3; FF16-17*. Given this lack of evidence to substantiate the Applicant's claim of a unique benefit, approval of this proposal would result in the duplication of services in the region.

HSS represented that it would not directly market its services to non-HSS physicians even though HSS' current practice is to accept referrals from non-HSS physicians, if presented. In addition, HSS stated that it would like to provide MRI services to a local orthopedic practice located within the same building as the proposed MRI. *FF20*. Both of these factors support the conclusion that approval of this proposal would lead to decreased patient volumes and revenues for existing MRI providers in the service area and result in an unnecessary duplication of MRI services in the region.

OHCA's determination on the acquisition of an MRI is based, in part, on the demonstrated need for the acquisition, not whether an MRI may provide a more convenient location for the patient or help to address capacity issues outside of Connecticut. *FF18*. Although HSS provided numerous anecdotal examples and testimony about the quality of its MRI services and overall system of care, both the application and testimony lack evidence to substantiate that access or health care outcomes for Connecticut patients would be improved as a result of this proposal. After considering all of the factors listed above, OHCA concludes that the Applicant did not demonstrate clear public need for its proposal.

New York Society for the Relief of the Ruptured and Crippled,
maintaining the Hospital for Special Surgery
Docket Number: 12-31780-CON

Page 11 of 11

Order

Based upon the foregoing Findings and Discussion, the Certificate of Need application of New York Society for the Relief of the Ruptured and Crippled, maintaining the Hospital for Special Surgery to acquire a Magnetic Resonance Imaging scanner to be located in Stamford, Connecticut, with an associated capital expenditure of \$3,245,583, is hereby **DENIED**.

All of the foregoing constitutes the final order of the Office of Health Care Access in this matter.

By Order of the
Office of Health Care Access

6/14/2013
Date

Lisa A. Davis
Lisa A. Davis, MBA, BSN, RN
Deputy Commissioner

*** TX REPORT ***

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STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH
OFFICE OF HEALTH CARE ACCESS

FAX SHEET

TO: PAUL KNAG, Esq.

FAX: 860-240-5711

AGENCY: MURTHA CULLINA

FROM: OHCA

DATE: 9/20/13 Time: _____

NUMBER OF PAGES: _____

(including transmittal sheet)



Comments:

Sorry, I sent you the wrong fax sheet. It should have been addressed to Murtha Cullina. Could you please switch the fax sheet I sent with this one. The attachment was correct.

Thank you

See attached regarding DN: 12-31780, The Hospital for Special Surgery