

### Office Of Health Care Access Certificate of Need Application

### **Final Decision**

Applicants:	The William W. Backus Hospital and Norwich Radiology Group, P.C.
Docket Number:	06-30766-CON
Project Title:	Acquisition of Norwich Radiology Group, P.C.'s Norwich Office and its Assets, including a CT scanner and an MRI scanner by The William W. Backus Hospital
Statutory Reference:	Section 19a-638 and 19a-639 of the Connecticut General Statutes
Filing Date:	September 18, 2006
Hearing Date:	October 17, 2006
Decision Date:	December 14, 2006
Default Date:	December 17, 2006
Staff Assigned:	Steven W. Lazarus

**Project Description:** The William W. Backus Hospital ("Hospital) and Norwich Radiology Group, P.C. ("NRG") and proposes the acquisition of NRG's Norwich office and its assets, including a Computer Tomography ("CT") scanner and a Magnetic Resonance Imaging ("MRI") scanner by the Hospital, at a total capital cost of \$2,213,336.

**Nature of Proceedings:** On September 18, 2006, the Office of Health Care Access ("OHCA") received the initial Certificate of Need ("CON") application from the Hospital and NRG (collectively known as "Applicants"), seeking authorization for the acquisition of NRG's Norwich office and its assets, including a Computer Tomography ("CT") scanner and a Magnetic Resonance Imaging ("MRI") scanner by the Hospital, at a total capital cost of \$2,213,336. The Applicants are health care facilities or institutions as defined by Section 19a-630 of the Connecticut General Statutes ("C.G.S.").

On July 3, 2006, a notice to the public regarding OHCA's receipt of the Applicants' Letter of Intent to file its CON application was published in *The Norwich Bulletin* pursuant to Sections 19a-638 and 19a-639, C.G.S. On July 3, 2006, OHCA received a letter from Neurology Associates, LLC requesting that a hearing be held on the Applicants' CON application.

Pursuant to Sections 19a-638 and 19a-639, C.G.S., a public hearing regarding the CON application was held on October 17, 2006. On October 2, 2006, the Applicants were notified of the date, time and place of the hearing. On September 27, 2006, a notice to the public was published in *The Norwich Bulletin*. Commissioner Cristine A. Vogel served as Presiding Officer. The hearing was conducted as a contested case in accordance with the provisions of the Uniform Administrative Procedure Act (Chapter 54 of the Connecticut General Statutes) and Sections 19a-638 and 19a-639, C.G.S.

By petition dated October 12, 2006, Neurology Associates, LLC requested Intervenor status regarding the Applicants' CON application. The Presiding Officer denied the Neurology Associates, LLC status in the public hearing.

The Presiding Officer heard testimony from the Applicants' witnesses, in rendering this decision and considered the entire record of the proceeding. OHCA's authority to review and approve, modify or deny the CON application is established by Sections 19a-638 and 19a-639, C.G.S. The provisions of this section, as well as the principles and guidelines set forth in Section 19a-637, C.G.S., were fully considered by OHCA in its review.

### **Findings of Fact**

#### **Clear Public Need**

Impact of the Proposal on the Applicants' Current Utilization Statistics Proposal's Contribution to the Quality of Health Care Delivery in the Region Proposal's Contribution to the Accessibility of Health Care Delivery in the Region

- 1. The William W. Backus Hospital ("Hospital") is an acute care hospital located at 326 Washington Street, Norwich Connecticut. (OHCA CON Determination, Docket No.: 06-30766, June 28, 2006)
- 2. Norwich Radiology Group, P.C. ("Practice" or "NRG") is a private radiology practice and an Independent Diagnostic Testing Facility, located at 12 Case Street, Suite 101, Norwich, Connecticut. (OHCA CON Determination, Docket No.: 06-30766, June 28, 2006 and OHCA CON Determination, Report Number 01-C2, August 23, 2001)
- 3. Under CON Docket Number: 00-1005, OHCA denied NRG, its acquisition of an Open MRI scanner. (OHCA CON Final Decision, Docket Number 00-1005, July 2, 2001)

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- 4. Under CON Determination, Report No.: 01-X2, OHCA determined that the acquisition of an Open MRI scanner by NRG would not require a Certificate of Need ("CON") as it was below the \$400,000 statutory threshold at the time. *(OHCA CON Determination, Report Number 01-X2, August 23, 2001)*
- 5. Under CON Docket Number: 01-559, OHCA authorized NRG to replace its existing CT scanner with a new Helical CT scanner. (OHCA CON Docket Number: 01-559, February 19, 2002)
- 6. The Hospital and the Practice (collectively referred to as "Applicants") are proposing the acquisition of the Practice's Norwich Office and its assets by the Hospital, including an MRI Scanner and a CT scanner. (*Initial CON Application Filing, August 17, 2006, pages 2-3*)
- 7. As a result of the proposed acquisition of NRG's Norwich office and its assets, the following will occur:
  - The Hospital will acquire NRG's Norwich office assets for a total of \$1,515,000;
  - The Hospital will assume the leases for the MRI and CT scanners; and
  - The radiologists affiliated with NRG will join the Hospital's contracted radiology group, Norwich Diagnostic Imaging and will continue to provide imaging services to NRG's existing patients. (*Initial CON Application Filing, August 17, 2006, page 3 and Asset Purchase Agreement filed with the CON Application pages 51-83*)
- 8. The primary service area ("PSA") and the secondary service area ("SSA") for the proposed acquisition includes the following towns and municipalities:

Table One: Service Are	le One: Service Area by PSA & SSA	
PSA	SSA	
Bozrah	Colchester	
Canterbury	Lebanon	
Franklin	Ledyard	
Griswold	Montville	
Lisbon	North Stonington	
Norwich	Plainfield	
Preston	Salem	
Sprague	Scotland	
Voluntown	Sterling	

#### Table One: Service Area by PSA & SSA

(Initial CON Application Filing, August 17, 2006, page 3)

- 9. The Applicants based the need for the proposed acquisition on the following:
  - Increased access to radiology services for the Hospital's existing patients;
  - Enhancement in delivery of services; and
  - Improved quality of care for the radiology patients. (*Initial CON Application Filing, August 17, 2006, page 2*)

- 10. Additionally, the Hospital testified at the public hearing that they based the need for this proposal on the current utilization of the existing equipment. *(October 17, 2006, Applicants' Public Hearing Testimony)*
- 11. The Practice currently offers the following radiology services at its Norwich Office:
  - MRI scanning;
  - CT scanning;
  - Ultrasound;
  - Nuclear medicine;
  - Bone Densitometry ("Dexa");
  - Mammography; and
  - X-ray. (Initial CON Application Filing, August 17, 2006, page 2)
- 12. The proposed acquisition of the Practice does not involve any new services for the Hospital, as it currently offers all the services offered by the Practice. (*Initial CON Application Filing, August 17, 2006, page 3*
- 13. The Applicants stated that this proposal will increase access to radiology services for the Hospital's existing patients by augmenting the Hospital's existing radiology services. The Hospital proposes to acquire the following imaging equipment:
  - A HiSpeed FX/I CT scanner, which has been in operation since April, 2002; and
  - A Hitachi 0.3 Tesla Open MRI scanner, which has been in operation since February, 2002. (*Initial CON Application Filing, August 17, 2006, page 2*)
- 14. The Hospital's historical volumes for its existing two (2) CT scanners and for its existing two (2) MRI scanners were reported as follows:

	FY 2004	FY 2005	FY 2006
MRI Scans	7,284	7,365	7,860
CT Scans	26,286	28,722	30,036

Note: The historical volumes listed in this table are the combined volumes for the Hospital's 2 MRI scanners, one which travels to the Colchester Health Center and 2 CT scanners. *(Initial CON Application Filing, August 17, 2006, pages 17-18)* 

- 15. The Practice has been providing CT scanning services to its patients since 1987 and MRI scanning services since February, 2002. (*Initial CON Application Filing, August 17, 2006, page 3*)
- 16. The Practice's historical volumes for the CT scanner and MRI scanner were reported as follows:Table Three: The Practice's Historical MPI and CT Scans

Table Three: The Fractice's Historical WKT and CT Scans				
	FY 2003	FY 2004	FY 2005	FY 2006
MRI Scans	928	1,117	1,002	846
CT Scans	703	1,077	748	766

(Initial CON Application Filing, August 17, 2006, pages 17-18 and Applicant Testimony, Public Hearing, October 17, 2006)

17. If approved the Hospital will have a total of three (3) MRI scanners and (3) CT scanners within its system. The Hospital's projected MRI and CT scan volume for FY 2007 through FY 2009 are as follows:

Table Four: Hospital's Total Projected Volumes with Existing and Acquired Scanner			d Acquired Scanners
	FY 2007	FY 2008	FY 2009
Hospital MRI Service	7,900	8,050	8,200
Hospital CT Service	33,750	36,250	38,750
Acquired MRI Scanner	897	906	915
Acquired CT Scanner	1,047	1,152	1,267

Note: The projections are based on FY 2006, year-to-date actual, annualized, plus 1% per year increase in MRI volume and 10% increase in CT volume. These projections are based on the Hospital's historical growth trend from FY 2003-2006. (*Initial CON Application Filing, August 17, 2006, page 6*)

18. The following table illustrates the existing providers of CT and MRI services in the Applicants' PSA:

Provider	Equipment Type	Hours of Operation	Current
	MRI Scanners		Utilization*
Neurology Associates	1.0 Tesla Closed MRI	M-F 7:30 am- 6:30 pm	3,760
Norwich Radiology	0.3 Tesla Open MRI	M-F 8 am – 5 pm	1,002
Group			
William W. Backus	1.5 Tesla Closed MRI	7 days/week,	7,499
Hospital	(2 units)	6 am- 9:30 pm	
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Provider	Equipment Type	Hours of Operation	Current
Provider	CT Scanners	Hours of Operation	Utilization
Norwich Radiology		M-F 8 am – 5 pm	
	CT Scanners	-	Utilization
Norwich Radiology	CT Scanners	-	Utilization
Norwich Radiology Group	CT Scanners CT HI Speed FX/I	M-F 8 am – 5 pm	Utilization 748
Norwich Radiology Group William W. Backus	CT Scanners CT HI Speed FX/I	M-F 8 am – 5 pm 7 days/week,	Utilization 748

 Table Five: Existing Providers of CT and MRI services in the Applicants' PSA

\*Number of scans performed by Provider for the most recent 12 month period. (*Initial CON Application Filing, August 17, 2006, pages 6-7 and Final Decision, Docket No.: 06-30674-CON*)

- 19. The hours of operation for the proposed scanners are and will continue to be 8:00 a.m. to 5:00 p.m. Monday through Friday. (*Initial CON Application Filing, August 17, 2006, page* 5)
- 20. The Applicants did not provide OHCA with the following:
  - Actual volumes for each current Hospital scanner,
  - Scheduling backlogs for the existing Hospital scanners,
  - Demand for Open MRI scanning services. (September 18, 2006, Completed CON Application and October 17, 2006, Public Hearing)

- 21. The Applicants testified to the following:
  - a. They could not provide actual total capacity for the existing Hospital MRI equipment as capacity for the MRI is not an issue; and
  - b. When patient delays reach a certain point, the Hospital alleviates the patient delays by adding a day to its mobile MRI service,
  - c. The Hospital could not provide the specific number of patients referred to the open MRI scanner, as most referrals are through physicians not through the Hospital,
  - d. Volume projections for open MRI are lower for the imaging equipment located at the proposed NRG's Norwich office, due to the limited nature of the Open MRI scanner, and

(October 17, 2006, Applicants' Public Hearing Testimony)

#### Financial Feasibility and Cost Effectiveness of the Proposal and its Impact on the Applicants' Rates and Financial Condition Impact of the Proposal on the Interests of Consumers of Health Care Services and the Payers for Such Services Consideration of Other Section 19a-637, C.G.S. Principles and Guidelines

22. The total capital cost for the proposal is as follows:

#### Table 6: Total Proposal Cost

Medical Equipment (Purchase)	\$595,000
Non-Major Medical Equipment (Purchase)	\$45,000
Land/Building/Assets(Purchase)	\$365,000
Total Capital Expenditure	\$1,515,000
Major Medical Equipment (Lease/FMV)	\$698,336
Total Capital Cost	\$2,213,336
	)

(Initial CON Application Filing, August 17, 2006, page 12)

23. The major medical equipment (CT scanner and the MRI scanner) being leased as part of this proposal is listed below along with the individual equipments fair market value:

**Table 7: Total Capital Cost** 

Equipment	FMV	
Open MRI	\$56,064	
CT Scanner	\$160,994	
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(Initial CON Application Filing, August 17, 2006, page 88)

- 24. The total capital cost of \$2,213,336 for the CON proposal will be financed through an equity contribution from the Hospital's Operating Funds. (*Initial CON Application Filing, August 17, 2006, pages 12-13*)
- 25. The Hospital projects incremental gains from operations related to the project of \$511,164, \$583,575 and \$962,165 for FY 2007, FY 2008 and FY 2009, respectively.(*Initial CON Application Filing, August 17, 2006, page 89*)

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- 26. The Hospital projects gains from operation without the proposed CON of \$2,074,715, \$2,624,328, and 3,242,861 for FYs 2007-2009. (*Initial CON Application Filing, August 17, 2006, page 89*
- 27. The Hospital's projected payer mix during the first three years of implementation and operation of the proposed acquisition is as follows:

Payer Mix	Year 1 Year 2		Year 3	
Medicare	29.7%	29.7%	29.7%	
Medicaid	5.8%	5.8%	5.8%	
TriCare (CHAMPUS)	1.6%	1.6%	1.6%	
Total Government	37.1%	37.1%	37.1 %	
Commercial Insurers	53.8%	53.8%	53.8%	
Uninsured	5.2%	5.2%	5.2%	
Workers Compensation	3.9%	3.9%	3.9%	
<b>Total Non-Government</b>	62.9%	62.9%	62.9%	
Total Payer Mix	100.00%	100.00%	100.00%	

(Initial CON Application Filing, August 17, 2006, page 14)

- 26. There is no State Health Plan in existence at this time. (*Initial CON Application Filing, August 17, 2006, page 2*)
- 27. The Applicants have adduced evidence that the proposal is consistent with the Applicants' long-range plans. (*Initial CON Application Filing, August 17, 2006, page 2*)
- 28. The Applicants have improved productivity and contained costs by energy conservation, group purchasing and through the application of new technology. (*Initial CON Application Filing, August 17, 2006, page 10*)
- 29. The proposal will not result in any change to the Applicants' teaching and research responsibilities. (*Initial CON Application Filing, August 17, 2006, page 10*)
- 30. The proposal will not result in any change to the Applicants' patient/physician mix. (*Initial CON Application Filing, August 17, 2006, page 10*)
- 31. The Applicants have sufficient technical, financial and managerial competence and expertise to provide efficient and adequate service to the public. (*Initial CON Application Filing, August 17, 2006, page 8 and Attachment D*)
- 32. The Hospital's rates are sufficient to cover the proposed capital and operating costs associated with the proposal. (*Initial CON Application Filing, August 17, 2006, page 89*)

## Rationale

The Office of Health Care Access ("OHCA") approaches community and regional need for Certificate of Need ("CON") proposals on a case by case basis. CON applications do not lend themselves to general applicability due to a variety of factors, which may affect any given proposal; e.g. the characteristics of the population to be served, the nature of the existing services, the specific types of services proposed to be offered, the current utilization of services and the financial feasibility of the proposal.

The William W. Backus Hospital ("Hospital") is an acute care hospital located in Norwich, Connecticut. Norwich Radiology Group, P.C. ("NRG") is a private radiology practice with an office located at 12 Case Street, Suite 101, Norwich, Connecticut. The Hospital and NRG (collectively known as "Applicants") are seeking authorization for the acquisition of NRG's Norwich office and its assets, including a Computer Tomography ("CT") scanner and a Magnetic Resonance Imaging ("MRI") scanner by the Hospital.

In July of 2001, under CON Docket No. 00-1005, OHCA denied NRG's request for a CON for the acquisition of an Open MRI scanner. However; in August of 2001, NRG did acquire an Open MRI scanner under CON Determination Report No.: 01-X2. OHCA determined that NRG was not required to receive CON authorization due to the cost of the acquired MRI scanner being below the \$400,000 statutory threshold at that time.

As a result of this proposal, the Hospital will acquire NRG's Norwich office assets for a total of \$1,515,000, assume the leases for the proposed MRI and CT scanners, and the radiologists affiliated with NRG will join the Hospital's contracted radiology group, Norwich Diagnostic Imaging will continue to provide imaging services to NRG's existing patients.

The Applicants' proposal is based on the following assertions: increased access to radiology services for the Hospital's existing patients, enhancement of the delivery of service and improved quality of care for the radiology patients. For FY 2006, the Hospital's actual total CT scan volume for both CT scanners was 30,036 scans. The Applicants testified that the need for the proposal was based on the existing utilization of the services/scanners. Based on the evidence presented by the Applicants in their testimony at the hearing and the fact that need for NRG's existing CT scanner was established when OHCA approved NRG's CON Application for the acquisition of the CT scanner under Docket Number: 01-559, the acquisition of NRG's Norwich office and its assets, including the CT Scanner by the Hospital appears to be reasonable and prudent.

With respect to the acquisition of the Open MRI scanner, the Hospital's actual total MRI volume was 7,860 scans in FY 2006. The Hospital did not provide OHCA with actual volumes for each of its scanners, scheduling backlogs or demand for the open MRI scanning service. The Hospital testified that they could not provide actual total capacity for the existing MRI equipment and that capacity was not an issue. Further, the Hospital's testified when the patient delays for the MRI reach a certain point, the Hospital can alleviate the patient delays by adding a day to its part-time mobile service at the Hospital.

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NRG reported actual MRI volume of 846 MRI scans for FY 2006. It is important to note that NRG's request to acquire a MRI in the year 2000 was denied due to lack of volume. The Applicants did not provide evidence documenting the demand for open MRI scanning in the service area. The Applicants also testified that their projections for growth of imaging utilization at NRG's Norwich office are lower than at the Hospital due to the limited nature of the Open MRI scanner. Based on the Hospital's existing MRI volume and available capacity, OHCA finds the Applicants provided insufficient evidence supporting need for a third (3<sup>rd</sup>) MRI scanner for the Hospital.

The total capital cost for the CON proposal is \$2,213,336. The project will be financed through an equity contribution and lease financing. The Hospital projects an incremental gain from operations of \$511,164, \$563,575 and \$962,165 for FYs 2007-2009, related to this proposal. The Hospital projects gain from operations without the project of \$2,074,715, \$2,624,328 and \$3,242,861 for FYs 2007-2009. Although OHCA can not draw any conclusions, the Hospital's volume and financial projections upon which they are based appear to be reasonable.

In summary, the Hospital will acquire the CT scanner located at NRG's Norwich office. The need for the proposed MRI scanner has not been justified by the Applicants. OHCA concludes that there is sufficient MRI scanning capacity at the Hospital and the Hospital can add additional days to its existing mobile MRI scanner if it approaches capacity at the Hospital.

Based upon the foregoing Findings and Rationale, the Certificate of Need application of The William W. Backus and Norwich Radiology Group, P.C.'s proposal for the acquisition of NRG's Norwich office and its assets, including a CT scanner and an MRI scanner by The William W. Backus Hospital, at a total capital cost of \$2,213,336, is hereby **MODIFIED** and subject to the findings and conditions stipulated in the Order.

## Order

The proposal of The William W. Backus Hospital ("Hospital") and Norwich Radiology Group, P.C.'s' ("NRG") (collectively known as "Applicants") proposal for the acquisition of NRG's Norwich office and its assets including a CT scanner and an MRI scanner by the Hospital, at a total capital cost of \$2,213,336, is hereby modified and is subject to the following conditions:

- 1. The Applicants' request for the Hospital to acquire the NRG's MRI scanner located at its Norwich office, at a total capital cost of \$56,064 is **denied**.
- 2. NRG may retain the MRI scanner and operate it for NRG patients only at its current location, or it shall dispose of the MRI scanner. NRG shall not lease the MRI scanner to any other entity. NRG shall notify OHCA within 60 days of this authorization as to its intentions regarding the disposition of its MRI services.
- 3. The Applicants' request for the Hospital to acquire NRG's other Norwich office assets including a CT scanner, at a total capital cost of \$2,157,272 is **approved**.
- 4. This authorization shall expire on January 1, 2008. Should the authorized acquisition of NRG's Norwich assets including the CT scanner not be completed by that date, the Hospital must seek further approval from OHCA to complete the project beyond that date.
- 5. Within 30 days of the acquisition of NRG's Norwich office assets including the CT scanner, the Hospital must submit to OHCA a final agreement, which would include evidence of the following items:
  - a. The Hospital's acquisition of NRG's Norwich office and its assets;
  - b. The Hospital's acquisition of the CT scanner; and
  - c. NRG's existing radiologists becoming members of Norwich Diagnostic Imaging.
- 6. Should the Hospital or NRG intend or plan any change in the scope or location of the imaging services located at 12 Case Street, Suite 101, Norwich, Connecticut, the Hospital and/or NRG shall file with OHCA a Certificate of Need, Determination Request or Letter of Intent regarding the intended or planned service change or location.

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

December 14, 2006

Signed by Cristine A. Vogel Commissioner

CAV: swl