



STATE OF CONNECTICUT
OFFICE OF HEALTH CARE ACCESS

M. JODI RELL
GOVERNOR

CRISTINE A. VOGEL
COMMISSIONER

September 15, 2009

Mr. Harry Evert
Vice President
28 Crescent Street
Middletown, CT 06457

RE: Docket Number 09-31262-MDF; A request to modify Docket Number 08-31262-CON
The replacement of an existing Linear Accelerator

Dear Mr. Evert:

On May 14, 2009, under Docket Number 08-31262-CON, the Office of Health Care Access ("OHCA") entered into a stipulated Agreed Settlement with Middlesex Hospital ("Hospital") regarding the Hospital's request to "acquire a second Linear Accelerator ("Linac") equipped with Image-Guided Radiation Therapy ("IGRT") at Middlesex Hospital at a proposed total capital expenditure of \$5,226,899." OHCA and the Hospital agreed to the following stipulations #1-#4 in that settlement:

1. *The Hospital's request to acquire a second Linac equipped with IGRT at Middlesex Hospital at a proposed total capital expenditure of \$5,226,899 is **denied**.*
2. *The Hospital is hereby **approved** to replace the existing Linac, located at the Hospital's Cancer Center at 536 Saybrook Road in Middletown, with the proposed Linac equipped with IGRT at Middlesex Hospital at a proposed total capital expenditure of \$5,226,899.*
3. *The Applicants and OHCA agree that the existing linear accelerator may be maintained as property owned by Middlesex Hospital. The Applicants agree that the existing unit shall not be used for purposes of any direct or indirect patient care. This unit shall not be used for the scheduling of radiation therapy services or for the purpose of a back up unit during scheduled or unscheduled downtime on the new unit. No radiation therapy treatments, nor any other diagnostic or therapeutic services, may be performed using the existing unit by Middlesex Hospital or any other entity.*
4. *At the time that the Hospital finds that it has sufficient utilization to warrant the reactivation of the existing unit as a functioning Linac providing patient care services, the Hospital shall then seek a determination from OHCA. This agreed settlement does not specifically guarantee OHCA authorization in the future regarding the reactivation of the existing unit.*

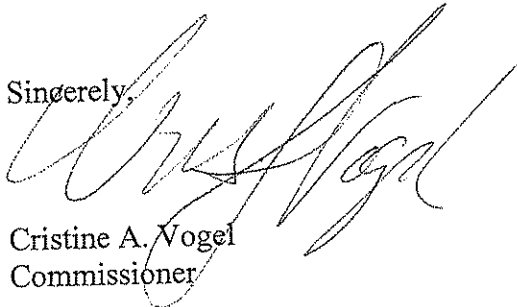
Harry Evert, Vice President
Middlesex Hospital
Docket Number 09-31262-MDF

September 15, 2009
Page 2

On August 21, 2009, three months after entering into this Agreed Settlement, the Hospital filed a Form 2050 request to modify the CON authorized under Docket Number 08-31262-CON requesting that OHCA vacate Condition #3 from the Agreed Settlement in order to allow the Hospital to continue to operate the existing Linear Accelerator after the new unit is operational". The Hospital has not begun operation of the new Linear Accelerator and has therefore not deactivated the existing Linear Accelerator. The Hospital expects that the new unit will "be installed and operational during the second quarter (January – March) of FY 2010."

Modifications of OHCA's final decisions are allowed pursuant to Section 4-181a(b) of the Connecticut General Statutes, which states in part: (b) *On a showing of changed conditions, the agency may reverse or modify the final decision, at any time, at the request of any person or on the agency's own motion.*" Your August 21, 2009 request for modification does not provide sufficient evidence that there has been an unforeseen change in conditions under which the CON was originally reviewed and granted by Agreed Settlement three months ago. OHCA concludes that this does not constitute changed conditions. As such, the stipulated Agreed Settlement under Docket Number 08-31262-CON stands as previously ordered by OHCA. The Hospital may seek a determination from OHCA regarding this matter as specifically agreed upon in Stipulation #4 of the Certificate of Need Agreed Settlement.

Sincerely,



Cristine A. Vogel
Commissioner

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