



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

January 11, 2010

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: 09-31347-CON

Neurology Associates, LLC

**Request for Additional Function of the
Existing Certificate of Need Authorized 1.5
Tesla Magnetic Resonance Imaging
Scanner**

David J. Shiling, M.D.
Manager
Neurology Associates, LLC
One Towne Park Plaza
Norwich, CT 06134-0308

Dear Dr. Shiling:

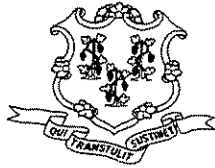
This letter will serve as notice of the Agreed Settlement between the Office of Health Care Access and Neurology Associates, LLC in the above matter, as provided by Section 19a-638, C.G.S. On January 11, 2010, the Agreed Settlement was adopted as the finding and order of the Office of Health Care Access. A copy of the Agreed Settlement is attached hereto for your information.

By Order of the
Office of Health Care Access


Cristine A. Vogel
Deputy Commissioner

Enclosure
CAV:swl

An Equal Opportunity Employer
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**Department of Public Health
Office of Health Care Access
Certificate of Need Application**

Agreed Settlement

Applicant: Neurology Associates, LLC

Docket Number: 09-31347-CON

Project Title: Request for Additional Function of the Existing Certificate of Need Authorized 1.5 Tesla Magnetic Resonance Imaging Scanner

Filing Date: October 13, 2009

Hearing Date: December 22, 2009

Agreed Settlement Date: January 11, 2010

Default Date: January 11, 2010

Staff Assigned: Steven W. Lazarus

Project Description: Neurology Associates, LLC ("Applicant") requests authorization to utilize its existing authorized 1.5 Tesla Magnetic Resonance Imaging ("MRI") scanner for all patients regardless of whether it is related to a neurological condition.

Procedural History: On August 28, 2006, the Office of Health Care Access ("OHCA") under Docket No.: 06-30674-CON, authorized the Practice to acquire its existing 1.5 Tesla Magnetic Resonance Imaging ("MRI") scanner and limited the use of the acquired 1.5 Tesla MRI to the Practice's own patients, specifically for the use of neurological conditions. On July 3, 2007, the Practice sought a determination from OHCA with respect to performing all MRI imaging irrespective of whether the MRI scan was related to a neurological condition. On August 21, 2007, OHCA advised the Practice that CON authorization was required.

Accordingly, on August 31, 2007, the Practice filed a modification request, which was subsequently denied on April 29, 2008, due to the failure to demonstrate a change in conditions.

Pursuant to Section 19a-638, C.G.S., a notice to the public concerning OHCA's receipt of the Applicant's Letter of Intent was published in the *Norwich Bulletin*, on April 14, 2009. On October 13, 2009, the Office of Health Care Access ("OHCA") received the Certificate of Need ("CON") application from the Applicant requesting authorization for an additional function of its existing CON authorized 1.5 Tesla MRI scanner located in Norwich, Connecticut, with no associated capital expenditure.

On December 7, 2009, the Applicant was notified of the date, time, and place of the hearing. On December 8, 2009, a notice to the public announcing the hearing was published in the *Connecticut Post*. A public hearing regarding the CON application was held on December 22, 2009. Deputy 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).

FINDINGS OF FACT

1. It is found that Neurology Associates, LLC ("Applicant" or "Practice") is a private physician practice specializing in neurology and radiology, located at One Town Park Plaza in Norwich, Connecticut. The Practice is comprised of neurologists and an on-site radiologist. (*July 31, 2009, Initial CON Application Filing, page 6*)
2. Dr. Shiling testified that the Practice is currently comprised of six (6) physicians including one full-time radiologist. (*December 22, 2009, Public Hearing Testimony of David J. Shiling, M.D.*)
3. It is found that on August 28, 2006, the Office of Health Care Access ("OHCA") under Docket No.: 06-30674-CON, authorized the Practice to acquire its existing 1.5 Tesla Magnetic Resonance Imaging ("MRI") scanner and limited the use of the acquired 1.5T MRI to the Practice's own patients, specifically for the use of neurological conditions. (*August, 28, 2006, Office of Health Care Access, Final Decision, Docket No.: 06-30674-CON*)
4. The Practice contends that it is accredited by the American College of Radiology. (*July 31, 2009, Initial CON Application Filing, page 8*)
5. The Practice contends that the existing 1.5T MRI scanner authorized under DN: 06-30674-CON became operational on April 4, 2007 and the MRI scanner has only been used for patients with neurological conditions. (*July 31, 2009, Initial CON Application Filing, page 6*)
6. Dr. Shiling testified that the Practice's diagnostic imaging services include MRI studies, nerve conduction testing, diagnostic x-ray, ultrasound, EEG laboratory and EMG testing. (*December 18, 2009, Pre-file Testimony of David J. Shiling, M.D.*)

7. The following table illustrates the historical utilization of the existing 1.5 tesla MRI scanner, as presented by the Applicant:

Table 1: Historical 1.5 T MRI Scanner Utilization

	FY 2007	FY 2008	FY 2009
MRI Utilization	4,332	4,767	5,318*

* FY 2009 utilization annualized by the Applicant based on the actual partial FY 2009 data.

(July 31, 2009, Initial CON Application Filing, page 22 and October 13, 2009, Completeness Letter Responses, page 176)

8. Dr. Shiling testified that the Practice's radiologist maintains his own patient base that encompasses patients with all conditions and which are not limited to patients with neurological conditions. *(December 18, 2009, Pre-file Testimony of David J. Shiling, M.D.)*
9. The Applicant contends on the average, the Practice performs approximately one thousand (1,000) x-ray and ultrasounds per year. Further, the Practice asserts that it's been the Practice's experience that approximately ten percent (10%) of these cases indicate the need for a subsequent MRI for a non-neurological patient. *(October 13, 2009, Completeness Letter Responses, page 164)*
10. The Applicant is projecting the following MRI utilization for the first three years of this proposal based on its experience other imaging modalities that are done at the Practice which require follow-up studies including MRI studies:

Table 2: Projected 1.5 T MRI Scanner Utilization

	FY 2010	FY 2011	FY 2012
MRI Utilization	5,410	5,415	5,420

Note: After the initial FY 2010, 5-10 scans per month projection, the Applicant projects the annual volumes to remain virtually constant. *(July 31, 2009, Initial CON Application Filing, pages 13&22)*

11. The Practice contends that the estimated 5-10 patients seen by its radiologist, who require a subsequent MRI scan, receive their MRI scans from the Hospital or from a provider outside the Practice's service area. This amounts to approximately ninety (90) patients per year. This is based on 7.5 patients per month over a 12 month period. *(October 13, 2009, Completeness Letter Responses, page 164)*
12. OHCA finds that the Applicant's projections with respect to the number of patients seen by its radiologist who require a follow up MRI scan are reasonable based upon the evidence provided. Accordingly, the volume projections FY 2010, 2011 and 2012 appear to be reasonable as well.
13. OHCA further finds that the existing MRI scanner can accommodate the increase in volume that will result from allowing the Practice to utilize the scanner for non-neurological conditions.

14. There is no capital expenditure associated with this proposal. *(July 31, 2009, Initial CON Application Filing, page 17)*
15. The Applicant contends that based on its projected utilization, it is projecting a gain from Revenues from operations incremental to the proposal of \$41,910 for each of the first three years of this proposal (FYs 2010-2012). *(October 13, 2009, Completeness Letter Responses, page 176)*
16. The Applicant contends that based on its patient population mix, the following table illustrates that there will be no change in its current and/or three year projected payer mix for the Practice:

Table 5: Three-Year Projected Payer Mix

Description	Current Payer Mix	Year 1	Year 2	Year 3
Medicare*	20%	20%	20%	20%
Medicaid*	4%	4%	4%	4%
CHAMPUS and TriCare	3%	3%	3%	3%
Total Government	27%	27%	27%	27%
Commercial Insurers*	62%	62%	62%	62%
Uninsured	1%	1%	1%	1%
Workers Compensation	10%	10%	10%	10%
Total Non-Government	73%	73%	73%	73%
Total Payer Mix	100%	100%	100%	100%

(July 31, 2009, Initial CON Application Filing, page 19)

17. OHCA finds that vacating the condition will not result in any additional costs to the Practice.

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.

As noted above in the procedural history, this CON Application is unique in that Neurology Associates, LLC (“the Practice”) seeks to utilize its existing 1.5 Tesla MRI Scanner for patients regardless of whether they present with a neurological condition. In addition to five neurologists, the Practice employs one full time radiologist, who provides an array of diagnostic imaging services including MRI studies, nerve conduction testing, diagnostic x-ray, ultrasound, EEG laboratory and EMG testing. The Practice estimates that 10% of approximately 1000 x-rays and ultrasounds performed on patients each year require follow up MRI scans for non-neurological conditions. The radiologist, however, is unable to perform these scans due to Condition Number 4 of the Order in Docket Number 06-30674-CON, which limits the use of the MRI scanner to patients with neurological conditions.

OHCA finds that the Practice’s scanner is able to accommodate an additional 100 scans in FY 2010 based upon its current utilization of 5,318 scans in FY 2009. Additionally, the volume projections for FY 2010 and subsequent years appear to be reasonable based upon the Practice’s estimate of an additional 100 scans in the first year once the condition is vacated and an expectation that the volume will remain constant in the following years. OHCA also finds that the unique circumstances that existed in the previous CON and resulted in conditional approval under Docket Number 06-30674-CON, no longer prevail. Finally, the proposal will not result in any additional cost to the applicant and will allow the Practice to provide quality and accessibility to all of its patients.

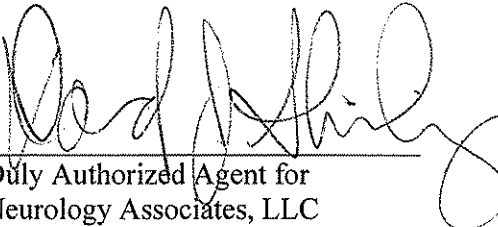
NOW, THEREFORE, the Office of Health Care Access (“OHCA”) and Neurology Associates, LLC, (“Applicant”) hereby stipulate and agree to the terms of settlement with respect to the Applicant’s request to utilize its existing 1.5 Tesla Magnetic Resonance Imaging Scanner for all patients regardless of whether it is related to a neurological condition:

1. The Applicant’s request to provide services to all of its patients irrespective of whether they present with neurological conditions is hereby approved.
2. Condition #4 of the Order under Docket Number 06-30647-CON is hereby vacated.

OHCA and Neurology Associates, LLC, agree that this Agreed Settlement represents a final agreement between OHCA and Neurology Associates, LLC, with respect to this request. The signing of this Agreed Settlement resolves all objections, claims and disputes, which may have been raised by the Applicant with regard to Docket Number: 09-31347-CON.

This Agreed Settlement is an order of the Office of Health Care Access with all the rights and obligations attendant thereto, and the Office of Health Care Access may enforce this Agreed Settlement pursuant to the provisions of Sections 19a-642 and 19a-653 of the Connecticut General Statutes at the Applicant’s expense, if the Applicant fails to comply with its terms.

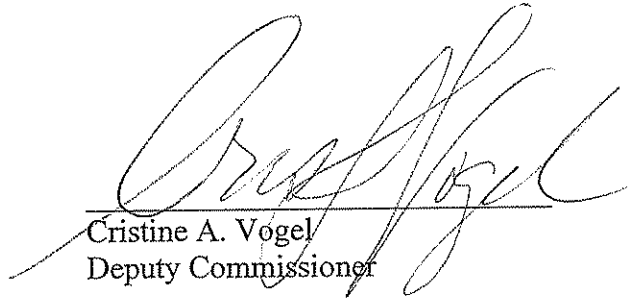
1/8/10
Date



Duly Authorized Agent for
Neurology Associates, LLC

The above Agreed Settlement is hereby accepted and so ordered by the Office of Health Care Access division of the Department of Public Health on January 11, 2010.

1-11-10
Date


Cristine A. Vogel
Deputy Commissioner

*** TX REPORT ***

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

FAX SHEET

TO: Attorney Volpe
FAX: (203) 777-5806
AGENCY: _____
FROM: OHCA
DATE: 1/11/10 TIME: 2:50
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Comments: Agreed Settlement Enclosed
DN: 09-31847

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*** TX REPORT ***

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STATE OF CONNECTICUT
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FAX SHEET

TO: Dr. Shiling
FAX: (~~203~~) (860) 886-4644
AGENCY: _____
FROM: ONCA
DATE: 1/11/10 TIME: 2:50 pm
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Comments: Agreed Settlement
DN: 09-31347

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