

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

July 15, 2015

**IN THE MATTER OF:**

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

Notice of Decision  
Office of Health Care Access  
Docket Number: 14-31969-CON

Termination of Outpatient Oncology Services  
in Sharon, CT

To: Nancy Rosenthal  
Yale-New Haven Hospital  
20 York Street  
New Haven, CT 06510

Dear Ms. Rosenthal:

Enclosed please find a copy of the decision issued in the above-referenced matter pursuant to Connecticut General Statutes § 19a-639a on July 14, 2015.

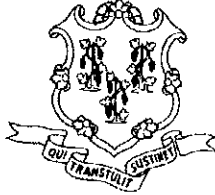
A handwritten signature in black ink, appearing to read "Kim Martone".

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Kimberly R. Martone  
Director of Operations

Enclosure  
KRM:jsh

Cc: Jennifer Willcox, Esq.



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

**Final Decision**

**Applicant:** Yale-New Haven Hospital  
20 York Street, New Haven, CT 06510

**Docket Number:** 14-31969-CON

**Project Title:** Termination of Yale-New Haven's Outpatient Oncology Services at its Satellite Site in Sharon, CT

**Project Description:** Yale New-Haven Hospital ("Hospital" or "Applicant") seeks authorization to terminate its oncology services at its satellite location in Sharon Hospital. There is no associated capital expenditure.

**Procedural History:** The Hospital published notice of its intent to file a Certificate of Need ("CON") application in *Republican-American* (Waterbury) on October 8, 9 and 10, 2014. On December 23, 2014, OHCA received the CON application from the Hospital for the above-referenced project. The application was deemed complete on March 30, 2015.

On April 20, 2015, a notice to the public announcing the hearing was published in *The New Haven Register*. Thereafter a hearing was held pursuant to Connecticut General Statutes ("Conn. Gen. Stat.") § 19a-639a(e) on May 6, 2015.

Commissioner Jewel Mullen designated Attorney Kevin T. Hansted as the hearing officer in this matter. The hearing was conducted in accordance with the provisions of the Uniform Administrative Procedure Act (Chapter 54 of the Conn. Gen. Stat.) and Conn. Gen. Stat. § 19a-639a. The public hearing record was closed on May 19, 2015. Deputy Commissioner Brancifort considered the entire record in this matter.

## Findings of Fact and Conclusions of Law

1. The Applicant is a 1,541-bed teaching and primary, secondary, tertiary and quaternary care non-profit hospital located at 20 York Street, New Haven. Ex. A, p. 13.
2. Smilow Cancer Hospital (“Smilow” or “Applicant”) is affiliated with Yale-New Haven Hospital and offers oncology services including chemotherapy, radiation therapy, advanced imaging and other support care services. In addition to its main campus in New Haven, Smilow operates a network of community-based cancer centers across Connecticut including sites in Derby, Fairfield, Guilford, Greenwich, North Haven, Orange, Sharon, Torrington, Trumbull and Waterbury. Ex. A, p. 13.
3. The Applicant proposes terminating all oncology and non-oncology services at its Sharon site, located in Sharon Hospital at 50 Hospital Hill Road, approximately 60 to 90 days after receiving OHCA approval. Ex. C, p. 74.
4. The Sharon site currently offers both oncology and non-oncology services. Non-oncology services offered include general medicine and non-chemotherapy infusions. Oncology services offered at this site include medical oncology, chemotherapy, hematology and palliative care. Ex. A, p. 13-14. Ex. C, p. 69.
5. Both physicians who practiced out of the Sharon site have retired. Due to low patient volume and limited services, the Hospital has been unable to attract qualified replacements. Ex. P, Testimony of Dr. Annie Chiang, Chief Network Officer, pp. 17-18; Ex. A, p.13-14. Ex. C, p. 67.
6. The Applicant has posted advertisements online and in professional journals in August and September of 2014 but was unable to attract a replacement oncologist for the Sharon site. Ex. B, p. 67; Ex. C, p. 2.
7. An oncology practice cannot provide services without the supervision of a Board Certified oncologist. Ex. P, Testimony of Mr. Abe Lopman, Senior Vice President for Operations, p. 42
8. The Applicant expects to transfer oncology patients primarily to its office in Torrington, which collaborates with Charlotte Hungerford Hospital. Patients will also be provided information about other, non-Smilow locations. Ex. A, p. 13, 18.
9. Sharon Smilow patients’ records are currently available at other Smilow sites via the Epic electronic medical system. Alternatively, if patients wish to be treated at a non-Smilow site, the Applicant will provide patients with their records. Ex. A, p. 18; Ex. P, Testimony of Mr. Lopman, p. 7.
10. The Sharon site does not offer comprehensive oncology care or radiation. More than 42 percent of Sharon Smilow patients travel to other Smilow sites to receive services not offered in Sharon, such as radiation therapy. Ex. A, p. 15, 28; Ex. C, p. 68.

11. The Torrington site provides a full range of diagnostic, treatment and ancillary services, including radiation, psycho-social and family support services, for cancer patients through its collaboration with Charlotte Hungerford Hospital. Ex P, Testimony of Dr. Debra Brandt, Medical Director of Smilow Cancer Center in Torrington, pp 29-31.
12. Pharmaceutical companies that fund oncology research conducted by the Applicant bar smaller offices, like Sharon Smilow, from participating in clinical trials. Ex. P, Testimony of Mr. Lopman, p. 38.
13. The Applicant anticipates the development of more targeted therapies based on genetic and molecular testing that can only be conducted at more comprehensive treatment centers such as the Torrington Smilow site. Ex. P, Testimony of Mr. Lopman, p.9.
14. The Torrington site can accommodate all oncology patients whose treatment may be impacted by the closing of the Sharon office. Ex. A, p. 17; Ex. B, p. 68.
15. Sharon Smilow’s non-oncology patients may continue to receive general care at Sharon Hospital. Alternatively, they may transfer to other local physicians. Ex. A, p. 16; Ex. P, Testimony of Mr. Lopman, p. 7, 14; Ex. P, Testimony of Dr. Brandt p. 37.
16. The Applicant’s oncologists have made themselves available to local Sharon healthcare providers via phone consultations. Ex. P, Testimony of Dr. Brandt, pp. 34-35.
17. The Applicant treated 535 patients at the Sharon site in FY14.

**TABLE 1**  
SHARON SMILOW’S CT PATIENTS BY TOWN OF ORIGIN  
(FY 2014\*)

| Town         | Oncology   | Non-Oncology | Total** Patients | Percent |
|--------------|------------|--------------|------------------|---------|
| Salisbury    | 45         | 30           | 75               | 29%     |
| Sharon       | 34         | 20           | 54               | 21%     |
| Canaan       | 48         | 6            | 54               | 21%     |
| Cornwall     | 16         | 3            | 19               | 7%      |
| Kent         | 7          | 6            | 13               | 5%      |
| Torrington   | 9          | 1            | 10               | 4%      |
| New Milford  | 4          | 2            | 6                | 2%      |
| Other        | 22         | 9            | 31               | 8%      |
| <b>TOTAL</b> | <b>184</b> | <b>78</b>    | <b>262</b>       |         |

\* Fiscal year: October 1<sup>st</sup> through September 30<sup>th</sup>

\*\* In FY14, an additional 273 New York residents were treated  
Ex. A, p. 21; Ex. C. p. 70.

18. More than a quarter of FY14 patient visits were for non-oncology services. The historical utilization by service type for the total visit volume is shown below.

**TABLE 2**  
TOTAL VISIT VOLUME AT SMILOW SHARON SITE BY FISCAL YEAR

|              | Fiscal Year* |            |            |           |
|--------------|--------------|------------|------------|-----------|
|              | 2012**       | 2013       | 2014       | 2015***   |
| Oncology     | 471 (60%)    | 1882 (69%) | 2443 (74%) | 511 (80%) |
| Non-Oncology | 315 (40%)    | 864 (31%)  | 864 (26%)  | 130 (20%) |
|              | 786          | 2746       | 3307       | 641       |

\* The fiscal year is from October 1 to September 30  
\*\* Includes only 4 months of data as Applicant acquired the site in July  
\*\*\* Volume reflects retirement of two physicians  
Ex. A, p. 22-23.

19. There is no capital expenditure associated with this proposal. Ex. A, p. 12
20. With the termination of services at Sharon Smilow, the Applicant projects increasing gains from operations in each of the three fiscal years of the proposal. As shown in the table below, there are no overall losses associated with this proposal.

**TABLE 3**  
PROJECTED SMILOW GAIN / (LOSS)\*

|                             | FY 2014**<br>(Actual) | FY 2015         | FY 2016         | FY 2017         |
|-----------------------------|-----------------------|-----------------|-----------------|-----------------|
| Revenue from Operations     | \$2,484,377,632       | \$2,488,423,901 | \$2,595,753,586 | \$2,743,281,579 |
| Total Operating Expenses    | \$2,332,122,279       | \$2,401,448,469 | \$2,485,211,194 | \$2,616,297,053 |
| Gain/(Loss) from Operations | \$152,255,353         | \$86,975,432    | \$110,542,392   | \$126,984,527   |

\* The fiscal year is from October 1 to September 30  
\*\* Break out of solely Sharon site not available  
Ex. C, p. 81.

21. The payor mix at the Sharon Smilow site for FY12 through CFY14 is as follows:

**TABLE 4**  
HISTORICAL PAYER MIX BY FISCAL YEAR\*

| Payer                     | FY 2012**  |            | FY 2013    |            | FY 2014    |            |
|---------------------------|------------|------------|------------|------------|------------|------------|
|                           | Patients   | %          | Patients   | %          | Patients   | %          |
| Medicare                  | 200        | 68%        | 370        | 68%        | 366        | 68%        |
| Medicaid                  | 5          | 2%         | 13         | 2.0%       | 16         | 3%         |
| CHAMPUS & TriCare         | 0          | 0%         | 0          | 0%         | 0          | 0%         |
| <b>Total Government</b>   | <b>205</b> | <b>70%</b> | <b>383</b> | <b>70%</b> | <b>382</b> | <b>71%</b> |
| Commercial Insurers       | 22         | 19%        | 140        | 26%        | 152        | 28%        |
| Other (incl uninsured and | 32         | 11%        | 18         | 3%         | 1          | 0%         |

|                             |            |             |            |            |            |            |
|-----------------------------|------------|-------------|------------|------------|------------|------------|
| self-pay)                   |            |             |            |            |            |            |
| Workers Compensation        | 0          | 0%          | 0          | 0%         | 0          | 0%         |
| <b>Total Non-Government</b> | <b>87</b>  | <b>30%</b>  | <b>158</b> | <b>29%</b> | <b>153</b> | <b>28%</b> |
| <b>Total Payer Mix***</b>   | <b>292</b> | <b>100%</b> | <b>541</b> | <b>99%</b> | <b>535</b> | <b>99%</b> |

\* The fiscal year is from October 1 to September 30

\*\* Includes only 4 months of data as Applicant acquired the site in July

\*\*\* Includes both NY and CT patients

Ex. C, p. 73.

22. Smilow will continue to offer Medicaid patients the same level treatment by Yale School of Medicine physicians at all its sites remaining in operation. Ex. A, p. 18; Ex. C, p. 74.
23. The Applicant will continue to offer oncology services, previously provided in Sharon, at other Smilow sites at the same cost to patients. Ex. C, p. 74.
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 regulations not yet adopted by OHCA. (Conn. Gen. Stat. § 19a-639(a)(1)).
25. This CON application is consistent with the overall goals of the Statewide Health Care Facilities and Service Plan. (Conn. Gen. Stat. § 19a-639(a)(2)).
26. The Applicant has established that there is a clear public need for its proposal. (Conn. Gen. Stat. § 19a-639(a)(3)).
27. The Applicant has demonstrated that the proposal is financially feasible. (Conn. Gen. Stat. § 19a-639(a)(4)).
28. The Applicant has satisfactorily demonstrated that access to and the quality and cost-effectiveness of services in the region will be maintained for all relevant patient populations. (Conn. Gen. Stat. § 19a-639(a)(5)).
29. The Applicant has shown that there would be no adverse change in the provision of health care services to the relevant populations and payer mix, including Medicaid patients and indigent persons. (Conn. Gen. Stat. § 19a-639(a)(6)).
30. The Applicant has satisfactorily identified the population to be affected by this proposal. (Conn. Gen. Stat. § 19a-639(a)(7)).
31. The Applicant's historical provision of care in the service area supports this proposal. (Conn. Gen. Stat. § 19a-639(a)(8)).

32. The Applicant has satisfactorily demonstrated that this proposal will not result in an unnecessary duplication of existing services in the area. (Conn. Gen. Stat. § 19a-639(a)(9)).
33. The Applicant has demonstrated access to services for Medicaid recipients and indigent persons will be maintained. (Conn. Gen. Stat. § 19a-639(a)(10)).
34. The Applicant has demonstrated that the proposal will not negatively impact the diversity of health care providers and patient choice in the geographic region. (Conn. Gen. Stat. § 19a-639(a)(11)).
35. The Applicant has satisfactorily demonstrated that the consolidation resulting from the proposal will not adversely affect health care costs or accessibility to care. (Conn. Gen. Stat. § 19a-639(a)(12)).

## 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 Conn. Gen. Stat. § 19a-639(a). The Applicant bears the burden of proof in this matter by a preponderance of the evidence. *Jones v. Connecticut Medical Examining Board*, 309 Conn. 727 (2013).

Yale-New Haven Hospital is a 1,541-bed teaching and primary, secondary, tertiary and quaternary care not-for-profit hospital located at 20 York Street, New Haven, Connecticut. *FF1*. Smilow Cancer Hospital (“Smilow” or “Applicant”) is affiliated with Yale-New Haven Hospital and offers oncology services including chemotherapy, radiation therapy, advanced imaging and other support care services. *FF2*. In addition to its main campus in New Haven, Smilow operates a network of cancer centers across Connecticut, including sites in Derby, Fairfield, Guilford, Greenwich, North Haven, Orange, Sharon, Torrington, Trumbull and Waterbury. *FF 2*.

The Applicant proposes terminating all services at its Sharon site within 60 to 90 days of receiving OHCA approval. *FF 3*. The Sharon site, located within Sharon Hospital at 50 Hospital Road, offers both oncology and non-oncology services. *FF 4*. Non-oncology services include general medicine and non-chemotherapy infusions. Oncology services offered at the Sharon site include medical oncology, chemotherapy, hematology and palliative care. It does not, however, offer radiation treatment. *FF 4*.

Both physicians who staffed the Sharon site have retired and the Applicant has been unable to recruit replacement physicians due to its low patient-volume and remote location. *FF 5,6*. An oncology practice cannot legally provide services without the supervision of a Board Certified oncologist and, as such, the Applicant has opted to terminate services in Sharon. *FF 7*.

Access to services will be maintained by the proposal, as alternative health care providers are available. The Applicants’ non-oncology patients, of which there were 78 from Connecticut in FY14, can receive general medical care from other, local physicians or from Sharon Hospital. Oncology patients, of which there were 184 from Connecticut in FY14, will likely transfer to the closest Smilow site, which is in Torrington. *FF8, 17*. Patients will also have the option to visit another Smilow location or a different provider entirely for oncology treatment. *FF15*. Notably, at least 42 percent of Sharon Smilow oncology patients are already travelling to another Smilow location as the Sharon site does not offer radiation treatment. *FF10*. Patients’ records are available via the Epic record management system at all Smilow sites and the Applicant will also make records available for transfer to non-Smilow providers at a patient’s request. *FF 9*.

Additionally, the Applicant has satisfactorily demonstrated that the proposal will maintain the quality of care offered to patients. The Torrington site provides a full range of diagnostic, treatment and ancillary services, including radiation, psycho-social and family support services for cancer patients through its collaboration with Charlotte Hungerford Hospital. *FF 11*. The Torrington site is a larger location offering more services and Smilow’s oncology patients may



benefit from access to more advanced treatments available there but not in Sharon. Pharmaceutical companies that fund the Applicant's oncology research bar smaller offices, like Sharon Smilow, from participating in clinical trials. *FF12*. Additionally, the Applicant anticipates the development of more targeted therapies based on genetic and molecular testing that can only be conducted at more comprehensive treatment centers, such as the Torrington site. *FF13*.

The Applicant has also satisfactorily demonstrated that the proposal will not change access to services for Medicaid recipients and indigent persons. The Applicant currently accepts and treats Medicaid patients at its Sharon site and will continue to do so at its other locations. *FF22*.

Smilow is projecting a slight incremental loss from FY14 to FY15 as it anticipates a decline in patients from other states. However, the proposal requires no capital expenditure and is financially feasible. *FF19, 20*. Additionally, the costs to oncology patients for services previously provided at the Sharon site will be the same as at other Smilow sites. *FF23*.

Smilow has, despite its recruitment efforts, no physicians available to treat patients in the Sharon site and an oncology provider must have a supervising oncological physician to supervise treatment. *FF7*. The Applicant has demonstrated that other comparable services are available in the area that will maintain the quality of and access to health care. Furthermore, the Applicant's proposal is consistent with the Statewide Health Care Facilities and Services Plan given the collaboration between health care providers resulting in a regional approach to oncological services.

## Order

Based upon the foregoing Findings of Fact and Discussion, the Certificate of Need application of Yale-New Haven Hospital to terminate the operation of its outpatient Smilow center in New Sharon, Connecticut, is hereby **APPROVED**.

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

By Order of the  
Department of Public Health  
Office of Health Care Access

7/14/15  
Date

Janet M. Brancifort  
Janet M. Brancifort, MPH, RRT  
Deputy Commissioner