STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH

Raul Pino, M.D., M.P.H.
Commissioner

Dannel P. Malloy
Governor
Nancy Wyman
Lt. Governor

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

Agreed Settlement

Applicant: **Orthopedic & Neurosurgery Specialists, PC**
6 Greenwich Office Park
Greenwich, CT 06831

Docket Number: **16-32063-CON**

Project Title: **Acquisition of a Magnetic Resonance Imaging Scanner**

Project Description: Orthopedic & Neurosurgery Specialists, PC ("ONS" or "Applicant") is proposing to acquire and operate a new 1.5 Tesla magnetic resonance imaging ("MRI") scanner to be located at 6 Greenwich Office Park, Greenwich, Connecticut at an associated capital cost of $1,500,337.

Procedural History: The Applicant published notice of its intent to file a Certificate of Need ("CON") application in *The Greenwich Time* and *The Advocate* (Stamford) on December 9, 10 and 11, 2015. On January 21, 2016, the Office of Health Care Access ("OHCA") received the CON application from the Applicant for the above-referenced project and deemed the application complete on June 10, 2016.

On August 5, 2016, the Applicant was notified of the date, time, and place of the public hearing. On August 8, 2016, a notice to the public announcing the hearing was published in the *The Advocate*. Commissioner Pino designated Attorney Kevin T. Hansted as the hearing officer in this matter. Thereafter, pursuant to Connecticut General Statutes ("Conn. Gen. Stat.") § 19a-639a (f)(2), a public hearing regarding the CON application was held on August 30, 2016.

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On August 25, 2016, Advanced Radiology Consultants, LLC ("ARC") filed a petition requesting intervenor status. ARC was granted intervenor status with full rights in this matter on August 29, 2016.

By petition dated August 25, 2016, The Stamford Hospital requested Intervenor status with full rights of cross-examination regarding the Applicant's CON application. The Stamford Hospital was granted intervenor status with limited rights of cross-examination on August 29, 2016. 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 (f)(2) and the Hearing Officer heard testimony from witnesses for the Applicant and the Intervenors.

On September 20, 2016, OHCA closed the record in this matter. On November 17, 2016, OHCA issued a Proposed Final Decision. On December 7, 2016, the Applicant filed Exceptions to the Proposed Final Decision. Thereafter, oral argument was held in this matter on January 31, 2017. In rendering this decision, Deputy Commissioner Addo considered all evidence in the record.

Findings of Fact and Conclusions of Law

1. Orthopedic & Neurosurgery Specialists, PC ("ONS" or "Applicant") is a private physician practice with offices at 6 Greenwich Office Park, Greenwich, Connecticut and 5 High Ridge Road, Stamford, Connecticut. Ex. A, p. 14

2. ONS provides comprehensive, integrated physician and medical services in orthopedics, neurosurgery, sports medicine and physical therapy specialties. Ex. A, p. 14

3. On November 4, 2008, ONS received OHCA approval (Docket Number 08-31120-CON) to operate a fixed 1.5 Tesla (1.5T) Magnetom Espree Open Bore MRI scanner at its practice located at 6 Greenwich Office Park, Greenwich. Ex. A, p. 14

4. ONS proposes to obtain a second MRI scanner ("Proposed Scanner") for the Greenwich office. The proposed scanner, a Siemens Aera 1.5T MRI, will have the same strength and capability as the existing scanner. Ex. A, pp. 13-15

5. The proposed scanner offers various types of scans including orthopedic, arthrogram, spine, head, neck, chest and angiography. Ex. A, pp. 14, 15

6. ONS provides MRI services to patients who are under the direct care of ONS physicians. Ex. A, pp. 14, 20

7. ONS has extended its hours of operation to 86 hours per week including weeknights and both weekend days. Ex. A, p. 14, Ex. C, pp. 85-86

8. ONS contracts with Greenwich Radiology to provide professional radiological services, including review and interpretation of all MRI scans. ONS bills for all MRI services. Ex. A, p. 14.

9. ONS currently serves patients from Connecticut and New York towns. In 2015, 57% of scans were performed on persons residing within the Connecticut primary service area towns of: Greenwich, Stamford, Darien, New Canaan and Norwalk. Ex. A, p. 30

10. Based on time slot availability[1], in 2014 and 2015, the existing scanner had an average utilization of 91% and 92%, respectively[2]. Ex. A, p. 17, Ex. C, pp. 85-86

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[1] ONS offers approximately 21 slots each day, Monday-Friday, 15 slots on Saturday and 8 on Sunday (128 slots per week). Each slot is 40 minutes long. In 2014 and 2015, 6,276 and 6,300 slots were available, and 5,719 and 5,813 were used, respectively. Due to the nature of different types of scans, some scans might require more than one time slot.
ONS hours of operations are as follows: Monday-Friday 7am-9pm, Saturday 7am-5pm and Sunday 7am-1pm. Ex. C, pp. 85-86

[2] The 2012 Statewide Health Care Facilities and Services Plan established capacity guidelines indicating the possible need for an additional MRI scanner if 85% capacity is exceeded, however these guidelines have not been formally adopted into regulation.

11. The table below shows historical utilization for the existing scanner:

TABLE 1
UTILIZATION BY FISCAL YEAR*

Scan Type:	2012	2013	% change	2014	% change	2015	% change
Orthopedic	2,557	2,669	4%	2,991	12%	2,911	-3%
Neurologic	2,008	2,131	1%	2,198	3%	2,351	7%
Total Number of Scans	**4,565**	**4,800**	**5%**	**5,189**	**8%**	**5,262**	**1%**

*Applicant's fiscal year is January 1 to December 31.
\Ex. A, pp. 80, 82; Ex. C, pp. 85-86 and Ex. E, p. 94

12. The Applicant states that it has some available capacity to conduct MRI scans. Exhibit X, Transcript, Testimony of Dr. Mark Camel, Vice President of ONS, pp. 74-75

13. As shown in the table below, the Applicant projects a 22% increase in utilization during the first year after acquiring the proposed MRI.

TABLE 2
PROJECTED NUMBER OF SCANS BY FISCAL YEAR*

Scanner	2016	% change	2017**	% change	2018	% change	2019	% change
Existing	5,474		3,338		3,471		3,515	
Proposed	0		3,337		3,471		3,514	
Total	**5,474**	**4%**	**6,675**	**22%**	**6,942**	**4%**	**7,029**	**1%**

*Applicant's fiscal year is January 1 to December 31.
**The proposed MRI would become operational in 2017
Note: Projection is based on the Applicant's assumption of 267 scans per physician.
Ex. A, p. 82 and Ex. C, p. 91

14. ONS had 19 physicians in 2012 and had expanded to 23 physicians by 2015. ONS projects growth by up to three physicians per year and having 27 physicians by 2019.

TABLE 3
SCANS PER PHYSICIAN BY FISCAL YEAR*

Description	2012	2013	2014	2015	2016
Number of Scans	4,565	4,800	5,189	5,262	5,474
Number of Physicians	19	21	21	23	26
Scans per Physician	240	229	247	229	211

*Applicant's fiscal year is January 1 to December 31.
Ex. A, p. 14; Ex. C, p.85; Ex. E, p. 94

15. Dr. Camel testified that it takes approximately 18 months for a new physician in the practice to operate at 90 to 100% of full patient case load. Exhibit X, Transcript, p. 79; Ex. E, p. 94.

16. ONS claims that it would realize a 1,200, or 22%, increase in volume in the first year the proposed scanner is operational. The Applicant based the increase in volume on the assumption of each physician performing 267 scans. Exhibit X, Transcript, Dr. Mark Camel, pp. 74-96

17. The table below shows the number of ONS patients requiring MRI scans in 2015 and who performed those scans.

TABLE 4
2015 PATIENT AND SCANS STATISTICS

Total # of ONS Patients	# of MRI Scans Required	# of MRI Scans Performed by ONS	# of MRI Scans Performed by Another Provider
51,597	6,769	5,262	1,507

Ex. O, p.31, Exhibit X, Transcript, Dr. Mark Camel, p. 22.

18. ONS states that it does not have data regarding reasons why its patients would have an MRI scan done by another provider. Exhibit X, Transcript Dr. Mark Camel pp. 72-75

19. The Applicant did state however, that its patients may opt for MRI scans by providers other than ONS when ONS' scanner type is clinically contraindicated, for insurance reasons, the availability of providers closer to a patient's home or a number of other reasons. Exhibit X, Transcript Dr. Mark Camel pp. 72-75

20. ONS states that for certain head injury patients, it is best to perform scans on a 3T scanner that can provide diffusion tensor imaging[3], which is not possible on a 1.5T scanner, such as the proposed scanner. Exhibit X, Transcript, Dr. Mark Camel, pp. 22, 59. Testimony of Dr. Scott Sullivan, Neuroradiologist of ONS, p. 59

21. In addition to head injury patients, patients with embedded hardware, patients who require diffusion tensor imaging or patients who cannot handle a longer duration scan may also require scans performed on a 3T scanner. Ex. O, p. 31

22. From 2012 through 2016 year-to-date, 366 ONS patients received MRI scans at ARC. Ex. X, Transcript, p. 50

[3] Diffusion tensor imaging is a method that provides a description of the diffusion of water through tissue, and can be used to highlight structural changes in tissue tracts. Johns Hopkins Medicine, *Diffusion Tensor Imaging (DTI)*, available at http://www.hopkinsmedicine.org/psychiatry/research/neuroimaging/

23. There are nine MRI providers operating in ONS' service area that accept Medicaid. They are all located between 1.6 and 15.6 miles from the ONS Greenwich location.

TABLE 5
EXISTING PROVIDERS

ID	MRI FACILITY	TESLA STRENGTH	TOTAL SCANS 2014	Distance from ONS Practice
1	Darien Imaging Center	1.5	1,827	10.8 miles
2	Greenwich Hospital	1.5	4,693	1.6 miles
		3	3,128	
3	Greenwich Hospital Diagnostic Center	1.5	1,991	5.9 miles
4	ONS	1.5	4,800	-------
5	Norwalk Hospital	1.5	3,174	15.1 miles
6	Norwalk Hospital Radiology & Mammography Center	1.5 (2) & .7	9,797	15.6 miles
7	Stamford Advance Radiology Center	1.5	6,705	7.7 miles
8	Stamford Hospital	1.5	6,427	6.8 miles
9	Tully Health Center	1.5	4,360	8.3 miles
10	Hospital for Special Surgery *	1.5	1,981	8.8 miles

*Hospital for Special Surgery figure includes scans from February 2015 through January 2016 Source: *Statewide Healthcare Facilities and Services Inventory-2014*, Exhibit AA
http://www.huskyhealthct.org/provider_lookup.html

24. The Applicant claims that nearly all MRI providers in the service area are operating at capacity. Ex. O, p. 23

25. Six out of nine providers have some capacity. Greenwich Hospital is operating at 80% of its capacity, Norwalk Hospital is at 79%, Norwalk Hospital Radiology & Mammography Center is, among its three scanners, operating at 82% capacity. Two other providers within an 11 mile radius of ONS each have 50% or more available capacity. Ex O, p. 34

26. The Applicant does not anticipate any changes to the clinical services it offers. Ex. A, p. 20

27. The Applicant claims that quality and accessibility will be improved because "more ONS patients will be able to receive MRI scans at their physician's office and thus benefit from the enhanced communication and coordination that physician-based in-office imaging provides." Ex. O, p. 14

28. ONS will continue to be the sole referral source for the proposed scanner. Ex. A, p. 27

29. According to *The Practice of Imaging Self-Referral Doesn't Produce One-Stop Service,* self-referring entities provided same-day MRI imaging in only 15% of those cases studied. Ex. P, pp. 101-102

30. In an analysis of 65,517 "episodes of outpatient care," according to the *New England Journal of Medicine*, self-referring physicians obtain imaging examinations 4 to 4.5 times more often than radiologist-referring physicians. Ex. P, p. 71

31. In its 2012 study, the Government Accountability Office's review of Medicaid payments for scans found that self-referring providers refer patients for about two times as many scans as providers who do not self-refer. Ex Y, p. 6; Ex. P, p. 90; Ex. X, Transcript, Dr. Alan Kaye, Former CEO of ARC p. 37

32. Dr. Alan D. Kaye criticized the practice of self-referrals, stating that there is a "financial incentive to maximize referrals to the scanner." He additionally highlights the $1.5 million cost of ONS' proposed additional scanner and the 1,071 scans that ONS would need to perform during the first year of operations to break-even financially. Ex. P, p. 65

33. In addition, Dr. Kaye stated that private radiology practices, which only perform examinations referred by non-affiliated providers, "make MRI referrals for one reason only, their need for information to take care of their patients…" Ex. P, p. 65

34. ONS does not have a written charity care policy or sliding fee scale. The Applicant states that it is "available to work one on one with patients who may be unable to pay part or all of the bill for any reason, including but not limited to insurance status or financial status...ONS will try and accommodate that patient and that patient's financial needs," however, the applicant has not provided any MRI services to the Medicaid population. Ex. A, p. 22; Ex. C, p. 86; Ex. D, p.94; Exhibit X, Transcript Dr. Mark Camel, pp. 65-66

35. The Applicant's payer mix will remain unchanged as a result of this proposal.

TABLE 6
APPLICANT'S CURRENT & PROJECTED PAYER MIX

Payer	FY 2015		Projected by Fiscal Year							
			2016		2017		2018		2019	
	Scans	%	Scans	%	Scans	%	Scans	%	Scans	%
Medicare	1,240	24%	1,294	24%	1,578	24%	1,642	24%	1,662	24%
Medicaid	0		0		0		0		0	
CHAMPUS & TriCare	1	>1%	1	>1%	1	>1%	1	>1%	1	>1%
NY Gov*	148	3%	154	3%	188	3%	196	3%	199	3%
Total Government	**1,389**	**26%**	1,450	**26%**	1,768	**26%**	1,839	**26%**	1,862	**26%**
Commercial Insurers	3,712	71%	3,875	71%	4,725	71%	4,914	71%	4,976	71%
Uninsured/ Self Pay	16	>1%	17	>1%	20	>1%	21	>1%	21	>1%
Private Pay	15	>1%	16	>1%	19	>1%	20	>1%	20	>1%
Workers Compensation	112	2%	117	2%	143	2%	148	2%	150	2%
Total Non-Government	**3,855**	**73%**	**4,024**	**73%**	**4,907**	**73%**	**5,103**	**73%**	**5,167**	**73%**
Total Payer Mix	**5,244**	**100%**	**5,474**	**100%**	**6,675**	**100%**	**6,942**	**100%**	**7,029**	**100%**

* New York State's employees covered by United/Oxford insurance contract
Note: Numbers may not add up due to rounding.
Ex. A, p. 33, Ex. C, p. 87

36. According to the Applicant, there is not an appreciable population of Medicaid beneficiaries in the service area, citing the Hospital for Special Surgery in Stamford's outreach efforts that resulted in only 1.9% of its MRI scans paid for by Medicaid. Ex. O, p. 16

37. GE's *Market At-a-Glance Report*, commissioned by ARC, projects that the Medicaid population in greater Stamford area[4] is expected to grow by 14% over the next five years. Ex. P, p. 28

38. According to ARC, it provided 79 scans to ONS patients in FY2015 and estimates it will, based on the year-to-date data, provide 110 scans in FY2016. It states that the majority of these patients were commercial payees, and were it to lose these referrals, its payer mix would further skew toward Medicaid and other governmental payers, which tend to reimburse approximately 50% compared to commercial payors. Ex. P, pp. 6-7

39. Ruth Cardiello, The Stamford Hospital's Vice President for Enterprise Risk Management, states that, as a "closed model" MRI provider, ONS has been able to "insulate itself from serving the large number of Medicaid and indigent patients, while hospitals such as The Stamford Hospital as well as the other established MRI providers in the Stamford, Darien

[4] The study looked at the following zip codes: 06612, 06807, 06820, 06830, 06831, 06840, 06850, 06851, 06853, 06854, 06855, 06870, 06878, 06880, 06883, 06896, 06897, 06901, 06902, 06903, 06905, 06906, 06907, 10576.

and Norwalk area take referrals from outside their own organizations and accept such patients. Ex. Q, p. 9

40. Mrs. Cardiello testified that adding another MRI in the Stamford area with a provider that does not accept Medicaid patients will "dilute the pool of commercially insured as well as Medicare patients" and would "add unnecessary cost to the health care delivery system and weaken rather than strengthen its financial health". Exhibit X, Testimony of Stamford Hospital VP Ruth Cardiello. pp. 41-42, Ex. R, pp. 3, 4-5

41. Since the Applicant does not currently provide, and is not projecting to provide, services to the Medicaid population, this proposal will not impact access by Medicaid recipients or indigent persons and as such will not reduce access to services by Medicaid recipients. Ex. A, p. 22

42. ONS does not charge facility fees. No change in billing or pricing is anticipated with the addition of the proposed scanner. Ex. A, p. 23

43. The Applicant will be leasing the proposed scanner from Siemens Corporation under a 60-month contract for $1,250,337. The lease payments will be paid by revenue from operations. The construction cost will be funded by the Applicant's existing line of credit with the bank serving the practice. Ex. A, pp. 23, 24

44. The proposal's total capital expenditure is shown below:

TABLE 7
TOTAL PROPOSED CAPITAL EXPENDITURE

Description	Cost
MRI scanner lease	$1,250,337
Leasehold improvements to accommodate the MRI	250,000
Total Cost	$1,500,337

Ex. A, p. 26

45. The Applicant projects an incremental increase in operating expenses but an overall gain from operations in each of the first three years following the proposed equipment acquisition.

TABLE 8
PROJECTED INCREMENTAL REVENUES AND EXPENSES

Description	FY 2017	FY 2018	FY 2019
Revenue from Operations	$1,584,305	$1,814,561	$1,880,427
Total Operating Expenses	$1,271,794	$1,334,800	$1,361,803
Gain/Loss from Operations	$ 312,512	$ 479,761	$518,624

Ex. A, p. 77, Ex. C, pp. 92-93

46. 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))

47. This CON application is not consistent with the Statewide Health Care Facilities and Service Plan. (Conn. Gen. Stat. § 19a-639(a)(2))

48. The Applicant has not sufficiently demonstrated that there is a clear public need for the proposal. (Conn. Gen. Stat. § 19a-639(a)(3))

49. The Applicant has demonstrated that the proposal is financially feasible. (Conn. Gen. Stat. § 19a-639(a)(4))

50. The Applicant has not sufficiently demonstrated that the proposal will improve the accessibility, quality or cost effectiveness of health care delivery in the region. (Conn. Gen. Stat.§ 19a-639(a)(5))

51. The Applicant has demonstrated that there would be no adverse change in the provision of health care services to the relevant population and payer mix, including access to services by Medicaid recipients and indigent persons. (Conn. Gen. Stat. § 19a-639(a)(6))

52. The Applicant has not satisfactorily identified the population to be served by this proposal. (Conn. Gen. Stat. § 19a-639(a)(7))

53. The Applicant's historical provision of treatment in the area supports this proposal. (Conn. Gen. Stat. § 19a-639(a)(8))

54. The Applicant has not satisfactorily demonstrated that this proposal would not result in an unnecessary duplication of existing services in the area. (Conn. Gen. Stat. § 19a-639(a)(9))

55. The Applicant has demonstrated that there will be no reduction in access to services by Medicaid recipients or indigent persons. (Conn. Gen. Stat. § 19a-639(a)(10))

56. The Applicant has demonstrated that the proposal will not negatively impact the diversity of health care providers and patient choice in the region. (Conn. Gen. Stat. § 19a-639(a)(11))

57. The Applicant has satisfactorily demonstrated that the proposal will not result in any consolidation that would affect health care costs or access 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 § 19a-639(a) of the Statutes. 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).*

The Applicant, Orthopedic & Neurosurgery Specialists, P. C. ("ONS"), is a private physician practice with offices in Greenwich and Stamford. *FF1.* ONS provides comprehensive, integrated physician and medical services in the specialties of orthopedics, neurosurgery, sports medicine and physical therapy. *FF2.* The Applicant currently operates a 1.5T MRI scanner at its Greenwich office. *FF3.* ONS' practice has continued to grow and in order to accommodate the needs of its patients, ONS has extended its hours of operation to 86 hours per week, including nights and weekends. *FF7.*

The Applicant is seeking authorization to acquire a second 1.5T MRI scanner for its Greenwich office. *FF4.* ONS' proposal is based upon its assertion that a new MRI scanner would provide access to patients in a more efficient and timely manner while allowing for greater flexibility in patient scheduling.

The Applicant has not satisfactorily demonstrated that it has considered the utilization of existing providers

The Applicant acknowledges that the number of scans ordered will always be greater than the number of scans actually performed at ONS. ONS states that even though they do not track the reason why patients go to another MRI provider, in general it is based on a combination of different factors such as a scanner's required strength, insurance requirement or a patient's preference. *FF17-18.* In 2015, approximately 22% of scans required for ONS patients were performed at another provider's office. *FF17.* ARC testified that from 2012 through 2016 year-to-date, 366 ONS patients had their scans performed at ARC. *FF22.*

There are 13 MRI scanners (including ONS') that operate in the Applicant's service area. *FF23.* Two providers are within 10 miles of ONS, both with 50% or more available capacity. *FF23, 25.* Greenwich Hospital is operating at 80% of its capacity, Norwalk Hospital is at 79%, Norwalk Hospital Radiology & Mammography Center is, among its three scanners, operating at 82% capacity. *FF25.* This suggests that ONS' patients have access within ONS' service area to meet their imaging needs.

Additionally, unlike ONS, other area providers, including ARC, accept Medicaid. According to ARC, it provided 79 scans to ONS patients in FY2015 and estimates it will, based on the year-to-date data, provide 110 scans in FY2016. It states that the majority of these patients were commercial payees, and were it to lose these referrals, its payer mix would further skew toward Medicaid and other governmental payers, which tend to reimburse approximately 50% compared to commercial payers. *FF38.*

The Stamford Hospital has expressed similar concerns. Ruth Cardiello, The Stamford Hospital's Vice President for Enterprise Risk Management, stated that, as a "closed model" MRI provider, ONS has been able to "insulate itself from serving the large number of Medicaid and indigent patients, while hospitals such as The Stamford Hospital as well as the other established MRI providers in the Stamford, Darien and Norwalk area take referrals from outside their own organizations and accept Medicaid and indigent patients. *FF39.*

The Applicant has provided an insufficient basis for its projected patient population and utilization

ONS states that expanding the number of physicians in the practice increases demand for MRI scans. ONS had 19 physicians in 2012 generating 4,565 scans, and expanded to 23 by 2015, generating 5,262 scans. ONS plans to continue to grow by up to three physicians per year and projects having 27 physicians by 2019. *FF14.*

The Applicant projects it will perform an estimated 6,675 scans in FY2017, the first year during which the proposed MRI would be in operation. This represents an additional 1,201 scans over FY2016—or a 22% increase in volume during its first year. Prior year-to-year increases ranged from 1.06% to 8.1%. *FF13, 16.* The Applicant claimed this significant increase was based on the average number of scans performed per physician and the expected addition of physicians employed by ONS.

The Applicant's estimates, however, are not sufficiently founded in the historical data provided and conflicts with other assumptions it asserted. It stated that it expected each physician to generate 267 scans. According to the Applicant, it employed 19 physicians in 2012, increasing to 23 in 2015. Assuming the data provided by the Applicant is accurate, each physician would have generated an average of 240 scans in 2012, declining to 229 in 2015. *FF14.* The assumption of 267 scans per physician in FY2017 was not adequately explained or supported by the evidence put forth.

Furthermore, the Applicant's calculations purporting a direct increase in volume with the hiring of additional physicians seems to contradict statements made elsewhere. The Applicant states that it takes eighteen months for new physicians to develop a patient base and associated MRI volume. *FF15.* Based on that assertion, it is unclear whether new physicians recruited in 2016 would yield the immediate and dramatic increase in the number of MRIs generated in 2017 as projected by the Applicant.

The Applicant's analysis and assumptions of potential ONS growth and projected 267 scans per physician fail to support the estimated 1,200 scans or 22% increase in volume in the first year of the proposed scanner's operation. *FF16.* As such, the Applicant has not adequately identified its patient population to be served.

The Applicant has not shown the proposal will improve access to or quality and cost of care

The Applicant stresses that the additional scanner will help address capacity issues in lower Fairfield County. *FF24.* However, the proposed scanner will provide imaging services only to

patients who are under the direct care of ONS physicians, and therefore overall access or health care outcomes for Fairfield County patients will not improve as a result of this proposal.

According to *The Practice of Imaging Self-Referral Doesn't Produce One-Stop Service,* self-referring entities provided same-day MRI imaging in only 15% of those cases studied. *FF29.* As such, patients will likely be required to make multiple trips, regardless of whether an additional MRI is located in the physician's office.
Although the cost of performing an MRI at a non-hospital location may be less than at a hospital, evidence suggests that the practice of self-referring patients for scans may result in inflating the number of MRIs performed. *FF30.* In an analysis of 65,517 "episodes of outpatient care," according to the New England Journal of Medicine, self-referring physicians obtained imaging examinations 4 to 4.5 times more often than radiologist-referring physicians. *FF30.* In its 2012 study, the Government Accountability Office's review of Medicaid payments for scans found that self-referring providers referred patients for about two times as many scans as providers who did not self-refer. *FF31.*

Dr. Alan D. Kaye, former CEO of ARC, echoed this concern, stating there is a "financial incentive to maximize referrals to the scanner" and highlighted the $1.5 million cost of the additional scanner and the 1,071 scans that would need to be performed during the first year of operations to break-even. *FF32.* He compared this with private radiology practices which "only perform examinations referred by non-affiliated providers," and stated "providers make MRI referrals for one reason only, their need for information to take care of their patients..." *FF33.*

The quality of care afforded to ONS' patients is also unlikely to be improved. The proposed scanner is the same strength and capability of the existing MRI and henceforth no improvement in quality of care will be achieved.

Based on the existence of multiple other area providers that accept Medicaid patients, have more comprehensive charity care policies and are not self-referral based, the Applicant has not adequately demonstrated there is a clear public need for the proposal

ONS stated that it does not accept Medicaid and has no written charity care or sliding scale policy *FF34.* Instead the Applicant is "available to work one on one with patients who may be unable to pay part or all of the bill for any reason, including but not limited to insurance status or financial status...ONS will try and accommodate that patient and that patient's financial needs" *FF34.*

As stated above, there are multiple existing MRI providers in the service area that accept Medicaid patients. *FF23.* Adding an additional MRI that does not provide services to this population will raise the risk of diluting the pool of commercially-insured and Medicare population payer mix and may have a negative impact on the financial strength of the imaging providers in lower Fairfield County. *FF439-40.*

Furthermore, there is a discrepancy as to the extent of the need for Medicaid-participating providers. According to the Applicant, there is not an appreciable population of Medicaid beneficiaries, citing the Hospital for Special Surgery in Stamford's outreach efforts that resulted

in only 1.9% of its MRI scans paid for by Medicaid *FF36*. However, GE's *Market At-a-Glance Report*, commissioned by ARC, projects that the Medicaid population in the Stamford area is expected to grow by 14% over the next five years. *FF37*. Regardless of the ultimate need for Medicaid approved health care providers, Conn. Gen. Stat. § 19a-639(10) requires applicants that "fail to provide . . . services to Medicaid recipients," must demonstrate "good cause for doing so, which shall not be demonstrated solely on the basis of differences in reimbursement rates between Medicaid and other health care payers." The Applicant has not shown good cause for failing to provide MRI services to Medicaid patients.

Based on the aforementioned, the Applicant failed to demonstrate how this proposal would improve accessibility, quality or cost effectiveness of health care delivery in the region. OHCA's decision on the acquisition of an MRI is based, in part, on the demonstrated need for the acquisition, not whether an MRI will provide more convenient access for their patients or allow greater flexibility in scheduling. After considering all of the factors listed above, OHCA concludes that the Applicant also failed to demonstrate clear public need for its proposal.

The Applicant has shown that the proposal is financially feasible

The Applicant projects incremental gains from operations in each of the first three fiscal years following the proposed equipment acquisition. *FF45*. The proposed acquisition will be funded from the Applicant's operational cash. *FF43*. Although the Applicant has provided an insufficient basis for its projected MRI volume growth, OHCA finds that the Applicant overall has adequate funds to finance this proposal. Therefore, OHCA finds the proposal financially feasible.

The proposal does not meet the goals of the Statewide Health Care Facilities and Services Plans standards and guidelines pertaining to MRI

The 2012 Standards and Guidelines pertinent to the acquisition of an MRI indicate that the "ability of the applicant to serve an underserved population and not jeopardize the financial viability of the project" should be considered. Additionally the applicant "shall not deny MRI scanner services to any individual based upon the ability to pay or the source of payment, including uninsured, underinsured and Medicaid patients."

As stated above, ONS does not accept Medicaid as a form of payment. Furthermore, it has no written charity care or sliding scale policy, suggesting that self-pay and Medicaid patients would need to seek scans elsewhere.

Although the Applicant demonstrated that this proposal would increase the convenience of care for its patients, ONS has failed to satisfactorily demonstrate a clear public need for the proposal. In addition, the Applicant has neither satisfactorily demonstrated how this proposal would improve the accessibility of care nor how the quality or cost effectiveness of health care delivery in the region would improve as a result of this proposal. After considering all of the factors listed above, OHCA concludes that this proposal is not consistent with The Statewide Health Care Facilities and Services Plan.

Based on the aforementioned findings of fact and discussion originally contained in the Proposed Final Decision, the Applicant was found to have failed to meet its burden of proof in satisfying

the statutory requirements of Conn. Gen. Stat. § 19a-639. However, subsequent to the Proposed Final Decision being issued, the Applicant agreed to serve the Medicaid and uninsured population. Upon review and consideration of the Applicant's revised proposal, OHCA finds that the Applicant has met its burden of proof by a preponderance of the evidence and so orders approval of the application conditional upon the terms outlined in the following Order.

ORDER

Based upon the foregoing Findings of Fact and Discussion, the Applicant's request to acquire and operate a new 1.5 Tesla MRI scanner to be located at 6 Greenwich Office Park, Greenwich, Connecticut, is hereby **Approved** under Conn. Gen. Stat. § 19a-639(a) subject to the enumerated conditions (the "Conditions") set forth below.

Unless expressly provided otherwise, all Conditions of this Order shall, to the extent applicable, be binding on the Applicant, its affiliates, successors and assigns. OHCA and any successor agency shall have the right to enforce the Conditions by all means and remedies available to it under law and equity, including but not limited to, the right to impose and collect a civil penalty under Conn. Gen. Stat. § 19a-653 against any person or health care facility or institution that fails to file required data or information within the prescribed time periods set forth in this Order. All references to days in these Conditions shall mean calendar days.

1. ONS shall not relocate the proposed MRI outside of Greenwich, Connecticut as long as the MRI is in operation.

2. ONS shall ensure that there is equal access to ONS' medical specialty (including, but not limited to: orthopedics, neurosurgery, sports medicine physical therapy specialties) and MRI services, for all patients, including Medicaid recipients and the uninsured.

3. Upon execution of this Agreement, the Applicant shall immediately apply to the Connecticut Department of Social Services and be approved as a Medicaid provider and make all efforts to comply with the requirements of participation. The Applicant shall provide documentation to OHCA evidencing approval of its enrollment application. Such documentation shall be filed within thirty (30) days of approval as a Connecticut Medicaid provider.

4. ONS shall take all practical steps to achieve a payer mix that includes 5% Connecticut Medicaid for its medical specialty and 3% Connecticut Medicaid for its MRI services within the first year of operation. Within sixty (60) days of the execution of this Agreement, ONS shall provide a plan detailing the foregoing steps to be taken to achieve the targeted payer mix. ONS shall report such payer mix to OHCA at the end of its first year of operation from the date of execution of this Agreement, and, if this threshold is not met, ONS shall submit such documentation as OHCA determines appropriate, to demonstrate ONS's efforts to re-evaluate its outreach initiatives and develop strategies to increase utilization by Connecticut Medicaid patients and the uninsured.

5. ONS shall file annual reports with OHCA for the following information outlined below. The annual periods shall be January 1 through December 31 for three (3) full years following the MRI acquisition at the Greenwich facility. The required report is due no later than two (2) months after the end of each annual period. The

first report may be based on a partial reporting period depending on the date the MRI becomes operational and should identify the partial reporting timeframe:

a. The number of ONS MRI scans and patient visits for medical specialty services by zip code and payer category. **Utilize the table format below:**

ONS MRI Scans									
Zip Code	**Medicare**	**CT Medi-caid**	**Out-of-State Medicaid**	**Other Government CHAMPUS/ Tricare**	**Commer-cially Insured**	**Uninsured**	**Self-Pay**	**Workers' Comp.**	**Total for Zip Code**
06001	#of scans	#of scans	#of scans	#of scans	#of scans	#of scans	#of scans	#of scans	#
06002	#of scans	#of scans	#of scans	#of scans	#of scans	#of scans	#of scans	#of scans	#
etc.	#of scans	#of scans	#of scans	#of scans	#of scans	#of scans	#of scans	#of scans	#
etc.	#of scans	#of scans	#of scans	#of scans	#of scans	#of scans	#of scans	#of scans	#
Total for CT Zip codes	# and %	# and %	N/A	# and %	# and %	# and %	# and %	# and %	N/A
Total for Out-of-State Zip Codes	# and %	N/A	# and %	# and %	# and %	# and %	# and %	# and %	N/A
Total for All Zip Codes	# and %	# and %	# and %	# and %	# and %	# and %	# and %	# and %	N/A

ONS Medical Specialty Patients									
Zip Code	**Medicare**	**CT Medi-caid**	**Out-of-State Medicaid**	**Other Government CHAMPUS/ Tricare**	**Commer-cially Insured**	**Uninsured**	**Self-Pay**	**Workers' Comp.**	**Total for Zip Code**
06001	#of patients	#of patients	#of patients	#of patients	#of patients	#of patients	#of patients	#of patients	#
06002	#of patients	#of patients	#of patients	#of patients	#of patients	#of patients	#of patients	#of patients	#
etc.	#of patients	#of patients	#of patients	#of patients	#of patients	#of patients	#of patients	#of patients	#
etc.	#of patients	#of patients	#of patients	#of patients	#of patients	#of patients	#of patients	#of patients	#
Total for CT Zip codes	# and %	# and %	N/A	# and %	# and %	# and %	# and %	# and %	N/A
Total for Out-of-State Zip Codes	# and %	N/A	# and %	# and %	# and %	# and %	# and %	# and %	N/A

ONS Medical Specialty Patients									
Zip Code	**Medicare**	**CT Medi-caid**	**Out-of-State Medicaid**	**Other Government CHAMPUS/ Tricare**	**Commer-cially Insured**	**Uninsured**	**Self-Pay**	**Workers' Comp.**	**Total for Zip Code**
Total for All Zip Codes	# and %	# and %	# and %	# and %	# and %	# and %	# and %	# and %	N/A

6. OHCA and ONS agree that this settlement represents a final agreement between OHCA and ONS with respect to Docket No. 16-32063-CON. The execution of this agreed settlement resolves all objections, claims and disputes, which may have been raised by ONS with regard to Docket Number 16-32063-CON.

7. OHCA may enforce this settlement under the provisions of Conn. Gen. Stat. §§ 19a-642; 19a-653 and all other remedies available at law, with all fees and costs of such enforcement to be paid by ONS or its successor in interest.

Signed by MARK CAMEL, Treasurer
(Print name) (Title)

4/6/17
Date

Duly Authorized Agent for
Orthopedic & Neurosurgery Specialists, P.C.

The above Agreed Settlement is hereby accepted and so ordered by the Department of Public Health Office of Health Care Access on April 7, 2017.

Yvonne T. Addo, MBA
Deputy Commissioner