



IN THE MATTER OF:

A Petition by The Stamford Hospital For Declaratory Ruling
Connecticut General Statutes, Section 4-176
Regulations of Connecticut State Agencies, Section 19a-643-24

Docket Number DR02-001
October 17, 2002

DECLARATORY RULING

Background:

On April 24, 2002, The Stamford Hospital filed a Petition for Declaratory Ruling with the Office of Health Care Access (OHCA). The question presented was whether Advanced Radiology Consultants and its affiliates, operating an office in Stamford, Connecticut, could operate a MRI unit and a CT scanner without prior approval from OHCA.

Advanced Radiology Consultants filed two Certificate of Need Determination letters with OHCA on April 16, 2001.¹ On July 3, 2001, OHCA issued a single Certificate of Need Determination under Report Numbers 01-L1 and 01-N1 and determined that "since BMRI is wholly owned by BRA, and the equipment will be located at the same site, the cost must be combined. The total combined capital cost of the open MRI and the CT scanner exceeds the statutory threshold of \$400,000 for the acquisition of major medical equipment. Therefore, Certificate of Need approval is required from OHCA pursuant to Section 19a-639 of the Connecticut General Statutes."

On September 25, 2001, OHCA received a letter from BMRI and BRA indicating that BRA had elected not to proceed with the acquisition of the CT scanner as originally presented in the CON Determination request. Rather, BMRIC represented that it would proceed with the MRI only, keeping the expenditure under the threshold for CON review. On October 1, 2001, OHCA responded with a letter that modified the original CON Determination letter. The OHCA modification confirmed that BRA had elected not to proceed with the acquisition of a CT scanner and that BMRIC planned only to proceed with the purchase of the MRI unit, which was priced under the \$400,000 threshold. Further, the modification letter stated that "BRA is currently evaluating various equipment alternatives for the acquisition of a CT scanner. Once the

¹Bridgeport Magnetic Resonance Imaging Center, LP d/b/a Connecticut Open MRI (BMRI), filed a request for the acquisition of a Magnetic Resonance Imaging (MRI) unit at a cost of \$340,558.00 to be located in Stamford. Bridgeport Radiology Associates, P.C. (BRA) filed a request for the acquisition of a Computerized Tomography Scanner (CT) at a cost of \$213,016.00 to be located in the same office in Stamford.

determination of the appropriate CT scanner has been completed, BRA will submit a Letter of Intent for the acquisition of a CT scanner.”

Approximately four months later, in a letter to OHCA dated February 5, 2002, Advanced Radiology Consultants, LLC indicated that it had installed its MRI in Stamford on or about August 1, 2001 and commenced operation of a CT scanner (a 1995 GE High-Speed Advantage RP-2X System) on January 7, 2002 at the same Stamford location.² On March 22, 2002, Advanced Radiology Consultants, LLP filed a CON Application for the purchase of a Multi-Slice Computed Technology Scanning Unit at a total capital cost of \$1,107,239.00.

Advanced Radiology Consultants, LLC began the operation of one piece of imaging equipment (an MRI) on August 1, 2001. This piece of equipment, by itself, did not require certificate of need approval because it was below the statutory threshold. Approximately five months later, Advanced Radiology Consultants began operating a CT scanner at the same Stamford location without CON approval because this piece of imaging equipment was also below the statutory threshold.

Section 19a-639(c) of the Connecticut General Statutes states in part that, “... each person or facility, other than a health care or state health care facility or institution subject to subsection (a) of this section, proposing to acquire or replace imaging equipment or a linear accelerator, requiring a capital expenditure ... in excess of four hundred thousand dollars ... shall submit a request for approval of any such imaging equipment ...”. In its Petition for Declaratory Ruling, the Stamford Hospital requested a ruling as to whether Advanced Radiology Consultants was required to obtain Certificate of Need approval from OHCA prior to placing the open MRI and CT scanner in service in their Stamford office.

On June 21, 2002, pursuant to Connecticut General Statute §4-176 and Regulations of Connecticut State Agencies §19a-643-24, OHCA issued a Notice of Determination to Issue Declaratory Ruling. The legal questions presented are:

- 1. Is the term “imaging equipment” as used in Conn. Gen. Stat. Section 19a-639(c) singular or plural?*
- 2. If a person or facility acquires a piece of imaging equipment that costs less than \$ 400,000.00 and then at a later date acquires another piece of imaging equipment which is also under the capital expenditure threshold, but the total of the two pieces of imaging equipment exceeds the \$ 400,000.00 threshold, at what point in time does OHCA add the two pieces together for Certificate of Need purposes?*

Notice of OHCA’s consideration of these two legal questions was published in the Connecticut Law Journal in its July 2, 2002 edition. In the June 21, 2002 Notice, OHCA granted Advanced Radiology Consultants, LLC Party Status in the matter of a petition for Declaratory Ruling and OHCA granted The Stamford Hospital Intervenor Status in the matter. On July 25, 2002, OHCA granted Intervenor Status to the Greenwich Hospital, The Connecticut Hospital Association, and The Connecticut State Medical Society in the matter of a petition for Declaratory

² This CT scanner was represented as being under the \$400,000 statutory threshold.

Ruling. OHCA received written testimony from parties and persons otherwise authorized to participate.

In a Ruling dated September 19, 2002, OHCA sought to clarify an issue raised by an intervenor in the matter. The ruling states that “The legal questions which are before OHCA will be interpreted only as to the specific set of facts and circumstances set forth in the “Petition of the Stamford Hospital for Declaratory Ruling” and the documents attached to it”. The ruling also allowed the party and the intervenors additional time to respond with regard to the clarification.

OHCA’s determination in this matter is binding on those who participated in the ruling and may also be used by OHCA on a case by case basis in future proceedings.

Legislative History:

Pertinent excerpts from legislative sessions in 1983 in which Section 19a-639(c) of the Connecticut General Statutes is under discussion are as follows:

Senator Regina Smith: “This would bring into conformity the individual groups of physicians, for example, outside of a hospital setting, to have review of a costly piece of equipment and \$400,000 is in conformance with the federal regulations.”
(Volume 26 Senate Proceedings, Part 3, 1983 Session, page 1098)

Senator John Matthews: “...Senator Smith, in lines 27 and 28 it talks about a cost exceeding \$400,000 and then it goes on to say including the leasing of such equipment. I’m confused about two things; one question is why was \$400,000 selected as a figure and secondly, does the phrase including the leasing of such equipment include leasing it for \$400,000 or just a piece of equipment which costs \$400,000.”
(Volume 26 Senate Proceedings, Part 3, 1983 Session, page 1141)

Senator Regina Smith: “No, it would have to – my understanding is, reach the threshold of \$400,000 and the threshold of \$400,000 is basically in accordance with the limits set by the Secretary of Health and Human Services which is 600,000 for capital expenditures and 400,000 for major medical equipment and this is dealing with the equipment.”
(Volume 26 Senate Proceedings, Part 3, 1983 Session, page 1141)

Senator Regina Smith: “Currently the only pieces of equipment that would fall into this category that exceed \$400,000 are cat scanners and a new piece of equipment that doesn’t exist in this state, referred to as NMR Nuclear Magnetic Residences (*sic*). Now, the cat scanner currently is in the area of \$1 million or more and the new piece of equipment will be over \$2 million.”
(Volume 26 Senate Proceedings, Part 8, 1983 Session, page 2569)

Senator Regina Smith: “When Senator Gunther has proposed we should spell out the kinds of machines that we’re going to use, I simply say to that, currently the only two types of machines that would fall into this category of over \$400,000 would be the cat scanner and the NMR. Now, you don’t write a piece of legislation that’s going to spell out the current pieces of equipment. What do you do? If they do develop some other

piece of equipment that falls into the category of over \$400,000, you come back and amend the Bill each year with a new piece of equipment?"

(Volume 26 Senate Proceedings, Part 8, 1983 Session, page 2575)

Ruling

OHCA has considered the matter of the Petition of Stamford Hospital for Declaratory Ruling and has taken into its consideration the various positions and arguments set forth by the Party and Intervenors in this matter. OHCA hereby declares that the term *Imaging Equipment*, as used in Connecticut General Statutes, Section 19a-639(c), is **singular**. Based on this first declaration, OHCA will not answer Question #2 of the declaratory ruling notice since it is now moot. OHCA has declared the above in order to be consistent with the intent of the Legislature over the past twenty years and to be consistent in the application of same standards between 19a-639a for major medical equipment acquired by health care facilities and institutions and 19a-639c of the Connecticut General Statutes for imaging equipment acquired by other persons and facilities.

Imaging Equipment acquired by all persons other than health care facilities or institutions under Section 19a-639(c) of the Connecticut General Statutes are and will be reviewed by OHCA as units or pieces of equipment. Separate and distinct pieces of medical equipment will not be combined. For example, new or replacement MRI equipment acquired specific to the provision of a MRI service will not be combined with new or replacement CT Scanning equipment acquired specific to the provision of a CT scanning service. The same will be applied to all health care facilities or institutions, such as acute care general hospitals, for the acquisition of major medical equipment acquired under Section 19a-639(a) of the Connecticut General Statutes. The above declaration is in regard only to Section 19a-639 of the Connecticut General Statutes.

Since individual pieces of imaging equipment costing less than \$400,000.00, including all directly associated capital costs, may be purchased without certificate of need authority, Advanced Radiology Consultants is not in violation of the law in regard to the acquisition of a MRI unit and a CT Scanner for its Stamford Connecticut radiology practice location.

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

By Order of the
Office of Health Care Access

Signed by:
Mary M. Heffernan
Commissioner

October 17, 2002