



STATE OF CONNECTICUT
OFFICE OF HEALTH CARE ACCESS

M. JODI RELL
GOVERNOR

CRISTINE A. VOGEL
COMMISSIONER

November 18, 2008

Robert D. Russo, M.D.
President
Russo & Associates Radiology
917 Bridgeport Avenue
Shelton, CT 06484

Geoffrey F. Cole
President and CEO
Norwalk Hospital
34 Maple Street
Norwalk, CT 06856

Alan Richman, M.D.
President and CEO
Norwalk Radiology Consultants
148 East Street
Norwalk, CT 06856

Re: Certificate of Need Determination; Report Number: 08-31200-DTR
Sale of Westport Radiology and Mammography Center by Robert D. Russo, M.D. & Associates Radiology, P.C., to Norwalk Radiology and Mammography Center, a Joint Venture between an Affiliate of Norwalk Health Services Corporation and an Affiliate of Norwalk Radiology Consultants, PC

Dear Gentlemen:

On July 3, 2008, the Office of Health Care Access ("OHCA") received your initial filing of a Certificate of Need ("CON") Determination request for the above referenced sale and acquisition of the Westport Radiology and Mammography Center at a capital expenditure of \$1,500,000. OHCA requested and received additional information regarding this matter on the following dates: August 4th, 2008, August 28th, 2008 and October 9th, 2008. Please be advised that OHCA has reviewed your initial submission as well as additional information received in support of your request. OHCA makes the following findings:

1. Robert D. Russo, M.D. & Associates Radiology, P.C. ("RDR"), owns and operates Westport Radiology and Mammography Center ("WRMC"), a private practice radiological office that provides routine radiography, mammography and ultrasound services.
2. WRMC is located at 125 Kings Highway in Westport, Connecticut.
3. RDR recently entered into an asset purchase agreement to sell WRMC to Norwalk Radiology and Mammography Center.
4. The seller and buyer of WRMC are collectively identified as the "Petitioners".

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5. When the transaction is completed the Westport Radiology and Mammography Center will:
 - a. Be owned by Norwalk Radiology and Mammography Center (“NRMC”), a joint venture entity currently providing radiological services at its office in Norwalk; and
 - b. Continue to be conducting business as Westport Radiology and Mammography Center.
6. The parties to the NRMC joint venture with their declared percentage ownership interest in the WRMC are as follows:
 - a. Southwest Connecticut Corporation (“SWC Corporation”) is a for-profit subsidiary of Norwalk Health Services Corporation and an affiliate of Norwalk Hospital Association. SWC Corporation will have a 40% ownership share in WRMC; and
 - b. NRC Equipment Associates, LLC, a limited liability company comprised of radiologists from Norwalk Radiology Consultants, PC, the contracted private radiologist practice serving Norwalk Hospital. NRC Equipment Associates, LLC, will have a 60% ownership share in WRMC.
7. The proposal represents the same ownership structure and the same joint venture relationship that has existed since 1985 for NRMC.
8. SWC Corporation and NRC Equipment Associates, LLC will be responsible for equipping, maintaining and providing the non-medical aspects of the WRMC operation.
9. Norwalk Radiology Consultants, PC, currently provides professional services and operational management for NRMC and will provide the same services for WRMC.
10. Westport Radiology and Mammography Center is a health care facility pursuant to Section 19a-630(1) of the Connecticut General Statutes (“C.G.S.”). Section C.G.S. 19a-630(1) provides in relevant part:

(1) "Health care facility or institution" means any facility or institution engaged primarily in providing services for the prevention, diagnosis or treatment of human health conditions, including, ... general hospitals.....". "Health care facility or institution" includes any parent company, subsidiary, affiliate or joint venture, or any combination thereof, of any such facility or institution ..."
11. Section 19a-638(2) of the Connecticut General Statutes (“C.G.S.”) states, in part, that

(2) "Each health care facility or institution..., which intends to introduce any additional function or service into its program of health care shall submit to the office, prior to the proposed date of the institution of such function or service, a request for permission to undertake such function or service."

12. After the asset purchase agreement is completed, NRMC intends to maintain the routine radiography, mammography and ultrasound services at the office's current location.

13. The transaction regarding WRMC is valued at \$1,500,000.

Based on the above findings OHCA determines the following with regard to the proposed sale and acquisition of a private practice radiological office:

- a. The transaction represents, in part, the acquisition and ownership of a private practice radiological office by a joint venture entity. As such, the Petitioners' proposal does not require Certificate of Need approval, pursuant to Section 19a-638(2) of the C.G.S.; and
- b. The transaction represents, in part, an introduction of an additional function or service into a program of outpatient radiological services by NRMC in Westport. Consequently, the Petitioners' proposal requires the filing of a Certificate of Need request for permission to undertake such function or service, pursuant to Section 19a-638(2) of the C.G.S.

The Petitioners may file a letter of Intent with the Office of Health Care Access to request the initiation of the Certificate of Need process.

If you have any questions concerning this letter, please contact Jack A. Huber, OHCA Health Care Analyst, at (860) 418-7034.

Sincerely,

Signed by Commissioner Vogel on November 18, 2008

Cristine A. Vogel
Commissioner

CAV;jah

Copy: Rose McLellan, License and Applications Supervisor, DPH, DHSR
David L. Quatrella, Esq., Quatrella & Rizio, LLC, legal counsel for RDR
John D. Blair, Esq., Brown Rudnick, legal counsel for the Hospital and SWC Corporation
Patrick J. Monahan, II, Garfunkel, Wild & Travis, P.C., legal counsel for NCR & its affiliates