

**STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD**

In re: Application of Vermont Open MRI,)
 LLC, Operation of Existing 0.6T) GMCB-003-14con
 MRI and Purchase of Replacement)
 1.2T MRI)
_____)

STATEMENT OF DECISION AND ORDER

Introduction

Vermont Open MRI, LLC (Vermont Open, or the applicant) is a free-standing, independently operated MRI imaging center located on 620 Hinesburg Road in South Burlington. In this certificate of need (CON) application, Vermont Open is seeking to: (1) continue offering MRI imaging services with a Philips Panorama 0.6T Open MRI machine (0.6T MRI); and (2) purchase and install a Hitachi Oasis 1.2T MRI machine (1.2T MRI) in 2017¹ to replace the 0.6T unit.

For the reasons outlined in this decision, we approve the continued operation of Vermont Open MRI, LLC using the existing 0.6T MRI, but postpone our review and decision concerning the future purchase and installation of the 1.2T MRI.

Procedural Background

On May 16, 2014, the applicant filed a CON application with the Board to continue operation of Vermont Open MRI utilizing the existing 0.6T MRI and to purchase and install a replacement 1.2T MRI in 2016. The Board granted expedited review of the CON on June 2, 2014.

The Board requested additional information from the applicant on June 12, July 23, November 7, and December 11, 2014 to which the applicant provided responses on June 27, October 31, November 25, 2014 and May 14, 2015, respectively. The application was closed on July 8, 2015. Because the application was granted expedited review, no hearing is required.

Findings of Fact

1. Todd Kummer is the owner of Minglewood Medical Imaging Management Company (Minglewood), which in turn owns and operates New Hampshire Open MRI in West Lebanon, NH, an independent diagnostic imaging center. On January 12, 2011, Kummer advised the Department of Banking, Insurance, Securities and Health Care Administration

¹ Although the application states that the applicant would purchase and install the new equipment in 2016, its revised balance sheet indicates that the date has changed to 2017.

(BISHCA)² that he intended to purchase Vermont Radiologists, LLP, a free-standing imaging center located at 620 Hinesburg Road in South Burlington, which began operating in Vermont in 2000.

2. Because the business's annual operating expenses exceeded the \$500,000 statutory threshold, BISHCA asserted CON jurisdiction on June 3, 2011. Thereafter, Kummer provided BISHCA revised documentation indicating that the annual operating expenses fell below the jurisdictional threshold and on July 19, 2011, BISHCA rescinded its assertion of jurisdiction. Based on inconsistencies in the financial information provided, however, BISHCA required that Kummer submit a profit and loss statement annually for a three-year period.
3. In June of 2011, Kummer purchased Vermont Radiologists, LLP and began doing business as Vermont Open MRI, LLC. The sale included the Philips Panorama 0.6T Open MRI, related office equipment, furniture, computers, telephone systems and fixtures.
4. For the twelve months ended June 30, 2013, Kummer submitted annual operating expenses of \$651,429. The Board, having acquired statutory authority over the CON program at the start of 2013, advised Kummer on February 7, 2014 that Vermont Open must file for a CON because its annual operating expenses exceed the statutory threshold.
5. On May 16, 2014 Vermont Open submitted a CON application with a total project cost of \$1.7 million that includes \$400,000 for purchase of the existing 0.6T fixed equipment it had acquired as part of 2011 purchase of Vermont Radiologists, LLP, and \$1,300,000 for the future purchase and installation of the 1.2T MRI equipment. Application, Table 1.
6. On May 14, 2015, the applicant submitted documentation showing annual operating expenses of \$711,727 in 2014, and projected annual operating expenses of \$650,732 in 2015 and \$646,075 in 2016. In 2017, after installing the 1.2T MRI equipment, the applicant projects annual operating expenses of \$811,409. Responses (5/14/15).
7. The applicant has estimated a purchase price of \$1,200,000 for the 1.2T MRI machine, \$85,000 for related construction/renovation work, and \$15,000 for contingencies. Responses (10/31/14), Table 1. The only vendor quote provided by the applicant exceeds the applicant's cost estimate, which expired on August 1, 2014. In addition, the applicant did not include approximately \$10,000 it would need to spend to upgrade the shielding. Responses (5/14/15) at 1.
8. The applicant will finance the costs associated with the continued operation of its business with a \$200,000 loan, and the purchase and installation of the 1.2T MRI with a \$1,300,000 loan. Responses (10/31/14), Table 2. The applicant has not provided commitment letters from a lender confirming the availability of financing for the new equipment, but has shown that it has sufficient net revenues to cover the \$200,000 for continued operation of the existing business, and that the debt associated with its operation will be retired in 2016.

² On January 1, 2013, responsibility for administering the certificate of need program was transferred from BISHCA (now the Department of Financial Regulation) to the Board.

9. Vermont Open employs a full-time patient coordinator and a full-time MRI technologist, and contracts with a radiologist for review of all images. Application at 4. The applicant performed 1,552 MRI's in 2014 with the 0.6T MRI, which it projects will increase to 1,650 annually in 2015 and 2016. Responses (5/14/15).
10. The cost of a scan at Vermont Open MRI is less than a scan at hospital-based facilities. Vermont Open MRI advertises charges of \$799 for most MRI scans and \$1,199 for most MRI scans that require contrast injections. Application at 11. Its contracted rates, however, are lower; for example, the average reimbursement from Medicaid is below \$200, Medicare is \$280, and reimbursement agreements with private insurers typically provide for lower reimbursement less than the advertised rate. Application at 11.

Standard of Review

Vermont's certificate of need process is governed by 18 V.S.A. §§ 9431-9446 and Green Mountain Care Board Rule 4.000: *Certificate of Need*. The applicant bears the burden to demonstrate that each criterion set forth in 18 V.S.A. § 9437(1)-(7) is met. Rule 4.000, §4.302(3).

Conclusions of Law

Section 9437 of Title 18 contains criteria that must be satisfied before the Board may grant an applicant a certificate of need. We conclude that the applicant has met the applicable criteria for the continued operation of its business and use of the existing 0.6T MRI equipment. Because the applicant does not intend to purchase and install replacement equipment until 2017, however—and has therefore not provided current or sufficient documentation of its costs and financing—we do not approve that portion of this CON at this time.

Accordingly, our review of each criterion, below, applies solely to the request for continued operation of the business using the 0.6T MRI equipment.

I. The applicant has shown that its application is consistent with the health resource allocation plan (HRAP). 18 V.S.A. § 9437(1).

Based on our review, we find that the applicant has met the applicable HRAP standards relative to the continued operation of the 0.6T MRI.³

STANDARD 1.3: To the extent neighboring health care facilities provide the services proposed by a new health care project, an applicant shall demonstrate that a collaborative approach to delivering the service has been taken or is not feasible or appropriate.

Initially, although the applicant is only now seeking the issuance of a CON—and is therefore technically a “new” health care project offering services in this state—Vermont Open has been in continual operation as Vermont's sole free-standing MRI imaging facility for years;

³ We do not address HRAP standards 3.7 or 3.20 because neither is applicable to the continued operation of the business and use of the 0.6T MRI. These standards will be relevant in the future, when and if the applicant moves forward with its planned purchase and installation of replacement MRI equipment.

prior to the applicant's purchase of the business in 2011, it was operated since 2000 as Vermont Radiologists, LLP. Based on its longevity and continuity as a health care facility in this state, we question whether it would be appropriate to disrupt what appears to be a stable, contributing partner in the health care community.

There is also little likelihood of overutilization of the service offered by the applicant that could impact neighboring facilities that offer MRIs. Vermont Open relies on physician referrals for its patients, and will not conduct an MRI scan without that physician's written order. Moreover, if the patient has insurance coverage, a scan can be performed only with a showing of medical necessity. The facility's MRI is an "open" model, which does not require patients to enter a cylindrically shaped tube, and can more comfortably accommodate bariatric patients, or those that are claustrophobic.

Because we find that the applicant's services have only marginal impact on neighboring facilities that offer MRIs, we conclude that the applicant has satisfied this standard.

STANDARD 3.5: Magnetic resonance imaging (MRI) capacity shall not be increased until current capacity is in excess of valid state, regional and/or national benchmarks for medically necessary exams per year and sufficient additional need is demonstrated based on such benchmarks. An applicant proposing a project involving MRI shall provide information on current use, document the effectiveness of the internal program utilized by the applicant to prevent overuse, and verify that the applicant does not have financial incentives in place to encourage MRI utilization.

As stated earlier in this decision, the applicant has operated continually as Vermont Open since 2011. Because it relies on outside physician referrals and requires written orders prior to performing scans and a determination of medical need for insurance coverage of such imaging, overutilization is unlikely. Moreover, the applicant confirms that it does not have any financial incentives in place internally or with outside providers to encourage MRI utilization, nor does it anticipate a significant increase of scans through 2016 with the existing equipment.

Accordingly, the Applicant has satisfied this standard.

II. The Applicant has met its burden to show that the cost of the project is reasonable pursuant to 18 V.S.A. § 9437(2) (Criterion 2.)

Under Criterion 2, the applicant must demonstrate that the cost of the project is reasonable by meeting three statutory requirements: First, that it "will sustain any financial burden likely to result from the completion of the project"; second, that "the project will not result in an undue increase in the cost of medical care"; and third, that "less expensive alternatives do not exist, would be unsatisfactory, or are not feasible or appropriate." 18 V.S.A. § 9437(2). We conclude that the applicant has satisfied this criterion and address each requirement in turn.

A. The applicant can sustain the financial burden likely to result from completion of the Project.

The applicant is seeking to continue operation of the existing MRI equipment. The \$200,000 debt associated with the existing 0.6T MRI equipment will be retired in 2016. The financial information submitted shows that there is sufficient cash flow to cover its debt obligation and maintain operations of the existing 0.6T MRI.

B. The Project will not result in an undue increase in the costs of medical care.

To determine whether there is an undue increase in the costs of care, the Board must consider and weigh relevant factors that include the impact on services, expenditures, and charges, and whether such impact is outweighed by the benefit to the public. 18 V.S.A. § 9437(2)(B)(i), (ii).

Allowing Vermont Open to continue operation will not increase the cost of health care. The facility already provides services to the community identical to services proposed, is projecting only a marginal increase in the number of MRIs performed, and plans to purchase a replacement rather than additional MRI machine. The cost of obtaining an MRI at Vermont Open is typically less than at a hospital. Under this set of facts, the project as proposed would not unduly increase costs of health care.

C. Less expensive alternatives are not feasible or appropriate.

The applicant seeks to continue its current operation with the 0.6T MRI. No less expensive alternative exists. Based on the information presented, we conclude that the continued operation of the 0.6T MRI satisfies this criterion and that the applicant has shown that the cost is reasonable.

III. The Applicant has met its burden to show an identifiable need for the proposed project which is appropriate for the applicant to provide.

Under Criterion 3, the Applicant must show that there is “an identifiable, existing, or reasonably anticipated need for the proposed project which is appropriate for the applicant to provide.” 18 V.S.A. § 9437 (3).

The applicant is seeking to continue operation of its existing business using the existing open MRI equipment. Because the open MRI machine does not require that patients enter a cylindrically shaped tube, it more comfortably accommodates certain categories of patients requiring MRIs (bariatric and claustrophobic patients). In addition, the steady utilization of the existing equipment indicates that there is a need for this service, which is appropriate for this existing MRI facility to provide.

IV. The Applicant has shown that the project will provide greater access to health care for Vermonters.

Criterion 4 requires that the applicant show that the project “will improve the quality of health care in the state or provide greater access to health care for Vermont’s residents, or both.” 18 V.S.A. § 9437 (4).

As discussed under Criterion 3, open MRIs are more suitable for and more comfortably accommodate bariatric and claustrophobic patients, making the procedure accessible to this population.

- V. The project will not have an undue adverse impact on any other existing services provided by the Applicant.

The project will continue operation of the 0.6T MRI and does not present any undue adverse impact on the existing services.

- VI. The project will serve the public good.

For the reasons set forth in our discussion of each of the other criterion, we conclude that this criterion has been met.

Conclusion

Based on the foregoing, we conclude that the first component of the project—the continued operation of the existing 0.6T MRI services—meets each of the applicable statutory criterion. The second component, however—replacement of the existing machine with a 1.2T MRI—is not supported by sufficient detail, financial information, and a current vendor quote for the Board give it a green light at this juncture.

We therefore approve the continued operation of Vermont Open MRI, LLC, using the existing 0.6T MRI, and defer a decision on the future replacement and installation of 1.2T MRI equipment until such time that we have sufficient information and assumptions to evaluate the project. Accordingly, the applicant must contact the Board no later than six months prior to the anticipated removal of the existing MRI equipment and the purchase and installation of replacement equipment and provide the Board with complete, updated and accurate information concerning this project component. The Board also requires Vermont Open to submit annually for three consecutive years, using the same 12-month period for each report, total actual volumes and the number and percent of total MRI studies performed with and without contrast. The annual reports shall be submitted through the date documents are filed for the replacement MRI.

ORDER

Pursuant to 18 V.S.A. § 9440(d), the Green Mountain Care Board approves the continued operation of the existing 0.6T MRI and postpones the review of a replacement 1.2T MRI to a later date.

SO ORDERED.

Dated: July 27, 2015 at Montpelier, Vermont
Montpelier, Vermont

s/ Alfred Gobeille)

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s/ Cornelius Hogan)

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s/ Allan Ramsay)

GREEN MOUNTAIN
CARE BOARD
OF VERMONT

**Board members Betty Rambur and Jessica Holmes were not present to vote on this Certificate of Need application.*

Filed: July 27, 2015

Attest: s/ Janet Richard
Green Mountain Care Board
Administrative Services Coordinator