



Office of Health Care Access

A Modification of Previously Authorized Certificate of Need

Applicant: Naugatuck Valley Surgical Center, Limited Partnership

**Modification Docket
Number:** 07-20020-MDF

Modification Project Title: A Request to modify Condition #8 of Docket Number 85-510 to remove the present restriction on ownership by individual physicians and physician family members of no more than one percent.

**Original Project Docket
Number and Title** Docket Number 85-510:
The Establishment and Operation of the Naugatuck
Valley Surgery Center in Waterbury, Connecticut

Statutory Reference: Sections 4-181a(b), Connecticut General Statutes

Filing Date: March 12, 2007

Decision Date: May 17, 2007

Staff Karen Roberts

Project Description: Naugatuck Valley Surgical Center Limited Partnership proposes a modification of the Certificate of Need authorized under Docket Number 85-510, as subsequently modified by Docket Numbers 86-525R and 89-538R, in order to revise the wording of Condition #8 thereby removing the restriction on ownership by individual physicians and physician family members to no more than one percent.” The Applicant also requests OHCA to vacate Conditions Number Three and Four.

Findings of Fact

1. On October 1, 1985, under Docket Number 85-510, the Commission on Hospitals and Health Care (“CHHC”)¹ authorized a Certificate of Need (“CON”) to St. Mary’s Hospital d/b/a Naugatuck Valley Surgical Center to establish the Naugatuck Valley Surgical Center. Conditions #3, #4 and #8 of the CON authorization state the following:
 - “3. *The applicant shall submit its initial rates for review by the Commission 30 days prior to opening. The applicant shall submit all subsequent rate increases to the Commission for review, but in no case shall the applicant’s rates be submitted to the Commission for review less than on an annual basis.*”
 - “4. *The applicant shall submit to the Commission a report which shows payor mix and changes in case mix at the facility on an annual basis.*”
 - “8. *The ownership of the facility shall be St. Mary’s Hospital – 50%, Medical Management and Development Corporation² – 20%, physicians – 30%. Prior to opening, the applicant shall submit a list of all individuals having an ownership share in the project. No physician nor physician family member shall own more than 1% of the facility. If St. Mary’s Hospital should decide in the future to alter their ownership, the Hospital shall show publicly why the sale of said ownership would be in the best interest of the community, physicians and the hospital. Also any change of ownership interest of St. Mary’s Hospital must have prior Commission approval.*”
2. On November 25, 1986, under Docket Number 86-525R, CHHC modified the CON authorization to increase the authorized capital expenditure for the project.
3. On May 31, 1989, under Docket Number 89-538R, CHHC further modified the CON authorization to allow the utilization of a fourth operating room.
4. On March 12, 2007, OHCA received a modification request from Naugatuck Valley Surgical Center Limited Partnership³ (“NVSC” or “Applicant” or “Partnership”) to “*remove the condition presently restricting ownership by individual physicians and physician family members to no more than one percent.*” The Applicant also requests OHCA to vacate Conditions #3 and #4. (*March 12, 2007 modification request under Docket Number 07-20020-MDF*)

¹ Commission on Hospitals and Health Care is the predecessor agency of the Office of Health Care Access.

² Medical Management and Development Corp. is no longer an owner as discussed in a May 31, 2002 CON Determination under Report Number 02-U.

³ Naugatuck Valley Surgical Center Limited Partnership has been fully operational as a legal entity since 1986. Therefore, NVSCLP is now the appropriate Applicant for this modification.

5. The Applicant indicates the following in its modification request:
 - a) Condition #8 is “*obsolete in view of today’s ownership structures for hospital / physician joint ventures. Typically, the joint venture’s organizational documents govern the division of ownership between the hospital and physicians. These same documents are also controlling to the extent that the parties agree on limiting the size of any single investor’s ownership interest.*”
 - b) The Applicant is “*seeking the flexibility to offer qualified physician investors an ownership interest of greater than one percent. This will allow NVSC to compete more effectively with similarly situated freestanding ambulatory surgery centers in Connecticut and thereby ensure the long-term viability of NVSC for its patients, the community and its owners. Accordingly, NVSC proposes to delete the present Condition #8 and revise it as follows:*
 8. Physician ownership of the facility shall be permitted to the extent that it does not cause the ownership interest of St. Mary’s Hospital to fall below fifty percent (50%) or otherwise result in St. Mary’s Hospital no longer having a controlling interest in the facility. Changes in ownership that do not cause the ownership interest of St. Mary’s Hospital to fall below the 50% threshold or result in St. Mary’s Hospital losing its controlling interest shall not require OHCA approval.”
 - c) The Applicant indicates that Conditions #3 and #4 suggest ongoing reporting requirements which are no longer applicable. (*March 12, 2007 modification request under Docket Number 07-20020-MDF*)
6. The Applicant states that Saint Mary’s Hospital, Inc. is “*currently the only general partner of NVSC, and will remain so following the requested CON modification. The proposed CON modification will not result in any change to the designation or number of general partners.*” (*April 24, 2007 submission, page 1*)
7. The current Limited Partnership Agreement for NVSC provides that the General Partner (Saint Mary’s Hospital, Inc.) shall have the “*exclusive management and control of all aspects of the business of the Partnership and shall be responsible for the day-to-day operation of the Partnership.*” The proposed modification will not change, alter or modify the rights of the General Partner set forth in the Partnership Agreement. (*April 24, 2007 submission, pages 1-2*)
8. The General Partner appoints the members of the Executive Committee for the Partnership. The proposed CON modification will not result in any change in the governing powers of the General Partner or the Executive Committee, through which the General Partner effects control of the Limited Partnership. (*April 24, 2007 submission, pages 1-2*)

9. NVSC is authorized to issue 35 Limited Partnership Units all of which are issued and outstanding. Saint Mary's Hospital, Inc. currently owns 15 limited partnership units, representing 42.86% of the issued and outstanding limited partnership units. *(April 24, 2007 submission, page 2)*
10. Saint Mary's Hospital, Inc. has a 71.4268% equity interest in NVSC by virtue of its holdings as General Partner. The limited partnership units held by Saint Mary's Hospital, Inc. represent an additional 12.24449% equity interest, bringing its total equity interest in NVSC to 83.6735%. *(April 24, 2007 submission, revised page 3)*
11. The Applicant indicates that there will be no immediate affect to Saint Mary's Hospital, Inc.'s equity interest in NVSC following the proposed CON modification; however, it is contemplated that in the future, some or all of the limited partnership units held by Saint Mary's Hospital, Inc. will be redeemed by NVSC and reissued to new investors. *(April 24, 2007 submission, revised page 3)*
12. Saint Mary's Hospital, Inc. is seeking the flexibility to further reduce its total equity interest in NVSC to as low as 51% should it be advantageous to do so, but that at all times Saint Mary's Hospital, Inc. "would retain a controlling interest in NVSC." *(April 24, 2007 submission, revised page 3)*
13. The legal entity, Naugatuck Valley Surgical Center Limited Partnership will remain a subsidiary of Saint Mary's Hospital, Inc. on its Corporate Chart of Organization. *(April 24, 2007 submission, revised page 3)*
14. This modification request will not result in any change in the location of or services offered by or at Naugatuck Valley Surgical Center.

Discussion

OHCA has reviewed this request for a modification to a previously authorized CON and finds that the relationship of the CON authorized under Docket Number 85-510 to Section 19a-637, C.G.S. is not significantly altered by this request for a modification under Docket Number 07-20020-MDF. Neither the services provided at and by Naugatuck Valley Surgical Center nor the control of the operations by the General Partner, Saint Mary's Hospital, Inc. will be specifically affected by this modification.

Order

Based on this and the reasons provided in the Applicant's modification request, OHCA hereby modifies the CON authorized under Docket Number 85-510, as subsequently modified by Docket Numbers 86-525R and 89-538R. Conditions #3 and #4 are hereby vacated. Condition #8 is replaced with the following language⁴:

Condition Number Eight is hereby vacated and replaced with the following:

8. Physician ownership shall be permitted to the extent that it does not cause the ownership interest of St. Mary's Hospital to fall below fifty percent (50%) or otherwise result in St. Mary's Hospital no longer having a controlling interest in the facility. Ownership by individual physicians and physician family members may exceed 1%. St. Mary's Hospital must remain General Partner of the Partnership. OHCA requires the filing of a list of limited partnership interests at the following points in time: October 31, 2007 and April 30, 2008. Such updated limited partnership lists shall contain the name and profession, including medical specialty, of the limited partners and the associated limited partnership percentages.

All other conditions set forth in the final decision issued under Docket Number 85-510, as subsequently modified by Docket Numbers 86-525R and 89-538R, will remain in full effect.

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

By Order of the
Office of Health Care Access

Signed by Commissioner Vogel on May 17, 2007

Date

Cristine A. Vogel
Commissioner

CAV/kr

⁴ Note that modified language for Condition #8 differs from the specific language requested by the Applicant.