



Office of Health Care Access Certificate of Need Application

Final Decision

Applicants: The William W. Backus Hospital
Constitution Eye Surgery Center East, LLC

Docket Number: 06-30722-CON

Project Title: Establishment and Operation of the Waterford
Ambulatory Surgery Center, LLC

Statutory Reference: Section 19a-638 of the Connecticut General Statutes

Filing Date: September 25, 2007

Hearing Date: November 15, 2007

Presiding Officer: Cristine A. Vogel, Commissioner

Decision Date: December 17, 2007

Default Date: December 24, 2007

Staff Assigned: Laurie K. Greci and Alexis Fedorjaczenko

Project Description: William W. Backus Hospital and Constitution Eye Surgery Center East, LLC (“Applicants”) propose to establish and operate the Waterford Ambulatory Surgery Center, LLC at 174 Cross Road in Waterford, Connecticut, at a total capital expenditure of \$989,313. The proposal is for the establishment of a multi-specialty surgery center through the lease of existing space, equipment, and staff from Constitution Eye Surgery Center East (“CESCE”). The Waterford Ambulatory Surgery Center, LLC proposes to obtain a license to operate a multi-specialty outpatient surgical facility.

Nature of Proceeding: On September 25, 2007, the Office of Health Care Access (“OHCA”) received the Applicants’ Certificate of Need (“CON”) application seeking authorization to establish and operate the Waterford Ambulatory Surgery Center, LLC at 174 Cross Road in Waterford, Connecticut, at a total capital expenditure of \$989,313. The proposal is for the establishment of a multi-specialty surgery center through the lease of existing space, equipment, and staff from Constitution Eye Surgery Center East (“CESCE”). The Applicants

are health care facilities or institutions as defined by Section 19a-630, of the Connecticut General Statutes (“C.G.S.”).

Pursuant to Section 19a-638, C.G.S., a notice to the public concerning OHCA’s receipt of the Applicants’ Letter of Intent was published in *The Day* (New London) on April 2, 2006. On November 20, 2006, OHCA received a request from Lawrence & Memorial Hospital to hold a public hearing in this matter.

Pursuant to Section 19a-638, C.G.S., a public hearing regarding the CON application was held on November 15, 2007. On October 11, 2007, the Applicants were notified of the date, time, and place of the hearing. On October 19, 2007, a notice to the public announcing the hearing was published in *The Day*. Commissioner Cristine A. Vogel served as Presiding Officer. The hearing was conducted as a contested case in accordance with the provisions of the Uniform Administrative Procedure Act (Chapter 54 of the Connecticut General Statutes) and Section 19a-638, C.G.S.

Lawrence & Memorial Hospital petitioned for Party status in the proceeding and was denied Party status by the Presiding Officer. In addition, Lawrence & Memorial Hospital (“Intervenor”) petitioned for Intervenor status in the proceeding with full rights of participation. Lawrence & Memorial Hospital was granted Intervenor status with the right to cross-examine witnesses for the Applicants by the Presiding Officer.

The Presiding Officer heard testimony from the Applicants’ and the Intervenor’s witnesses and in rendering this decision, considered the entire record of the proceeding. OHCA’s authority to review and approve, modify or deny this application is established by Section 19a-638, C.G.S. The provisions of this section, as well as the principles and guidelines set forth in Section 19a-637, C.G.S., were fully considered by OHCA in its review.

Findings of Fact

Clear Public Need

Impact of the Proposal on the Applicants’ Current Utilization Statistics

Proposal’s Contribution to the Quality of Health Care Delivery in the Region

Proposal’s Contribution to the Accessibility of Health Care Delivery in the Region

1. The William W. Backus Hospital (“Hospital”) is an acute care hospital located at 326 Washington Street, Norwich, CT. (*August 18, 2006, Initial CON Submission, pages 49 and 52*)
2. Constitution Eye Surgery Center East, LLC (“CESCE”) owns and operates an outpatient surgical facility (“CES Center East”) at 174 Cross Road, Waterford, CT. (*August 18, 2006, Initial CON Submission, page 259*)
3. The Hospital and CESCE (“Applicants”) propose to establish and operate the Waterford Ambulatory Surgery Center, LLC (“WASC”) at the CES Center East through the lease of existing space, equipment, and staff from CESCE. (*August 18, 2006, Initial CON Submission, page 2*)

4. The CES Center East currently operates two days per week utilizing two operating rooms to perform ophthalmic surgery. The Applicants will provide their services on the remaining three days of the week. *(August 18, 2006, Initial CON Submission, pages 4, 5, and 12)*
5. The Hospital will initially have complete ownership of the WASC. The Hospital intends to syndicate ownership interest to physicians allowing them to purchase minority equity interest. The Hospital will at all times own no less than 51% of the WASC, enabling it to exercise its charitable mission at the Center. *(August 18, 2006, Initial CON Submission, page 3)*
6. The Hospital stated that the proposal will accommodate particular surgeons, specifically those who perform shorter procedures of a predominantly outpatient nature, and are likely to operate on all patients with similar procedures in a discreet block of time. *(August 18, 2006, Initial CON Submission, page 3)*
7. The Hospital based need for the proposal on patient preference for having certain less invasive procedures done in a freestanding ambulatory surgery center rather than in a hospital, and indicated that the proposal is based on a desire to address the demands of patients, payers, and providers. *(August 18, 2006, Initial CON Submission, page 3)*
8. The proposal will also assist the Hospital in retaining a quality group of anesthesiologists by providing opportunities to these physicians to work at a freestanding facility as well as at the Hospital. *(August 18, 2006, Initial CON Submission, page 3)*
9. The CESCE is an established managerial company with expertise in the field of ambulatory surgery. The arrangement to lease space in the CES Center East is an opportunity for the Hospital to improve its delivery of patient care. *(August 18, 2006, Initial CON Submission, page 3)*
10. The surgical service utilization for the Hospital is reported in the following table by service type and by fiscal year:

Table 1: Surgical Service Utilization at the Hospital

Procedure Type	Fiscal Year					
	2000	2001	2002	2003	2004	2005
Inpatient	3,353	3,471	3,457	3,719	3,662	3,687
Outpatient	6,352	7,735	7,935	7,492	7,647	7,697
Total	9,705	11,206	11,392	11,211	11,309	11,384

*(August 18, 2006, Initial CON Submission, page 5
and May 18, 2007, First Completeness Response, Attachment A)*

11. The Hospital's actual procedures for FY 2005 and FY 2006 as reported on its Supplemental Schedule 500 of the FY 2006 Twelve Months Actual Filing submitted to OHCA reported the following:

Table 2: Surgical Service Utilization for FY 2005 and FY 2006

Surgical Service	Total Actual Procedures by Fiscal Year		
	2005	2006	2007
Inpatient	3,687	3,572	-
Outpatient	7,697	7,444	7,800*
Total	11,384	11,016	-

*Reported by Bruce Cummings during Hearing Testimony.

(William W. Backus Hospital, Twelve Months Actual Filing Supplemental Schedule 500, FY 2006)

12. The Hospital expects to provide the following number of outpatient cases at its main campus in Norwich with, or without, the proposal:

Table 2: Proposed Outpatient Cases at the Hospital’s Main Campus

Number of Procedures	Year 1	Year 2	Year 3
Without the Proposal	7,980	8,036	8,092
With the Proposal	7,580	7,633	7,686
Difference	400	403	406

Note: The ratio of cases to procedures is 1.5 procedures to case, i.e., patient.

(May 18, 2007, First Completeness Response, page 6)

13. The Hospital will initially utilize 40% of the capacity of the WASC by using the two operating rooms two days per week. The initial service to be provided by the Hospital at the WASC will be orthopedic surgery. (May 18, 2007, First Completeness Response, pages 6 and 7)
14. In addition to the CES Center East, Lawrence & Memorial Hospital (“L&M Hospital”) provides ambulatory surgery services at its main campus in New London and at its Pequot Medical Center in Groton. (August 18, 2006, Initial CON Submission, page 11)
15. The approximate distance in miles from the Center to L & M Hospital and to the Pequot Medical Center are given in the following table:

Table 3: Driving Times and Distances between Facilities

Facility	Driving Distance In Miles
Backus Hospital	14.4
L & M Hospital	5.7
Pequot Medical Center	8.0

(August 18, 2006, Initial CON Submission, page 10 and November 15, 2007, Daniel Rissi, MD, Hearing Testimony)

16. The following table reports the Applicants' projected incremental cases for the proposal by service type and by fiscal year:

Table 4: Applicants' Projected Incremental Cases for the Proposal by Service Type and by Fiscal Year

Fiscal Year:	FY 2007	FY 2008	FY 2009
Projected Procedures/Cases:			
Orthopedics	309	348	385
Plastic Surgery	184	207	230
Urology	128	144	160
Podiatry	192	216	240
ENT (Ear, Nose, and Throat) and/or Pain Management	160	180	200
Total Incremental	973	1,095	1,215

(August 18, 2006, Initial CON Submission, page 9)

17. The CES Center East is licensed by the State of Connecticut Department of Public Health as an outpatient surgical facility. It has been accredited by the Accreditation Association for Ambulatory Health Care, Inc. ("AAAHHC") through August 2008. *(August 18, 2006, Initial CON Submission, pages 258 and 261)*

18. The Hospital testified that:

- The Hospital's operating room is at or near capacity.
- The operating rooms are at peak, and fully operational and utilized from 7:30 a.m. to 3:00 p.m., accounting for approximately 80% of the surgical volume.
- Block times are scheduled until late in the night.
- The proposal is designed to work collaboratively with its surgeons to meet the needs of the patients.
- The Hospital has added a number of surgeons to its medical staff and is actively engaged in the recruitment of additional physicians.
- The impact of use of 0.8 to 1.2 equivalent operating rooms per week will be minimal.
- The Hospital's surgeons do not regard the Pequot Medical Center as an option for their operating room needs.
- The Hospital does not have a freestanding outpatient surgical facility to offer to its patients.

(November 8, 2007, Thomas P. Pipicelli, Prefiled Testimony)

19. L & M Hospital testified that:

- L & M Hospital has a long tradition of providing to the community critical services that are not financially self-supporting.
- L & M Hospital has operating room capacity to accommodate any incremental increase in surgical demand through 2012.
- The Pequot Medical Center uses two of the four available operating rooms.

(November 8, 2007, Bruce Cummings and Daniel Rissi, MD, Prefiled Testimony)

20. L & M Hospital's actual procedures for FY 2005 and FY 2006 as reported on its Supplemental Schedule 500 of the FY 2006 Twelve Months Actual Filing submitted to OHCA reported the following:

Table 2: Surgical Service Utilization for FY 2005 and FY 2006

Surgical Service	Total Actual Procedures by Fiscal Year	
	2005	2006
Inpatient	2,938	2,917
Outpatient*	10,217	11,638
Total	13,155	14,555

* Includes procedures performed at the Pequot Medical Center.

(Lawrence & Memorial Hospital, Twelve Months Actual Filing Supplemental Schedule 500, FY 2006)

21. Mr. Pipicelli, President and Chief Executive Officer of the Hospital testified that the Facility Master Plan of 1999 did not include additional operating rooms, but did include renovations to provide additional post-anesthetic care units and processing space to accommodate same-day surgeries. *(November 15, 2007, Thomas P. Pipicelli, Hearing Testimony)*

22. The Applicants did not provide the following documentation:

- That demonstrates the lack of operating room capacity at the Hospital's main campus.
- The number of blocks available for surgeons.
- Average case turnover by physician or by specialty.
- Utilization by physician or by specialty.
- Cancellation rates.
- Names of the physicians, particularly orthopedic surgeons that will utilize the WASC.
- Actual utilization volumes for FY 2007.
- Updated utilization and financial projections that included FY 2010.
- Transfer agreements.
- That supports the capability of the WASC to be licensed by the State of Connecticut, Department of Public Health, in that the WASC and The CES Center East will operate as outpatient surgical facility within the same physical space.

**Financial Feasibility of the Proposal and its Impact on the Applicants' Rates
and Financial Condition
Rates Sufficient to Cover Proposed Capital and Operating Costs
Impact of the Proposal on the Interests of Consumers of Health Care Services
and Payers for Such Services
Consideration of Other 19a-637, C.G.S. Principles and Guidelines**

23. The total capital expenditure for the proposal of \$989,313 includes the following components:

Table 5: Total Capital Expenditure

Medical Equipment (purchase)	\$939,313
Construction/Renovation	50,000
Total Capital Expenditure	\$989,313

(August 18, 2006, Initial CON Submission, page 19)

24. The proposal involves no new construction; the construction/renovation expense is for outfitting the WASC for gases and anesthesia. *(August 18, 2007, Initial CON Submission, page 20 and May 18, 2007, First Completeness Response, page 5)*
25. The Applicants propose to finance the project with the Hospital's equity from operations. *(August 18, 2006, Initial CON Submission, page 21)*
26. The Applicants are projecting the following incremental revenues and expenses for the first three years of operation at WASC:

Table 6: Incremental Financial Projections for WASC

Description	FY 2007	FY 2008	FY 2009
Incremental Revenue from Operations	\$1,985,100	\$2,229,420	\$2,473,740
Incremental Total Operating Expense	\$1,440,606	\$1,510,035	\$1,580,507
Incremental Gain from Operations	\$544,494	\$719,385	\$893,233

(September 25, 2007, Second Completeness Response, page 17)

27. The Hospital projects that the shift of hospital volume to the Center will result in incremental losses of \$540,000, \$543,656, and \$547,594 in Years 1 through 3, respectively. However with income from the WASC, the Hospital will realize gains of \$4,494, \$175,729, and \$345,639 in years 1 through 3, respectively. *(September 25, 2007, Second Completeness Response, pages 16 to18)*

28. The projected payer mix for the Center, based on Gross Patient Revenue, is as follows:

Table 7: Three-Year Projected Payer Mix for the Center

Payer	Year 1	Year 2	Year 3
Medicare	21%	21%	21%
Medicaid	1%	1%	1%
CHAMPUS and TriCare	1%	1%	1%
Total Government	23%	23%	23%
Commercial Insurers	71%	71%	71%
Uninsured	6%	6%	6%
Total Non-Government	77%	77%	77%
Total Payer Mix	100%	100%	100%

(September 25, 2007, Second Completeness Response, page 17)

29. There is no State Health Plan in existence at this time. *(August 18, 2006, Initial CON Submission, page 2)*
30. The Applicants have adduced evidence that this proposal is consistent with their long-range plans. *(August 18, 2006, Initial CON Submission, page 32)*
31. The Applicants have improved productivity and contained costs through energy conservation and applications of technology. *(August 18, 2006, Initial CON Application, page 15)*
32. The proposal will not result in any change to the Applicants' teaching or research responsibilities. *(August 18, 2006, Initial CON Submission, page 16)*
33. There are no distinguishing characteristics of the Applicants' patient/physician mix that make this proposal unique. *(August 18, 2006, Initial CON Submission, page 16)*
34. The Applicants have sufficient technical, financial, and managerial competence and expertise to provide efficient and adequate service to the public. *(August 18, 2006, Initial CON Submission, page 14 and Exhibit 14)*
35. The Applicants' rates are sufficient to cover the proposed capital and operating costs associated with the proposal. *(September 25, 2007, Second Completeness Response, pages 16- 18)*

Rationale

The Office of Health Care Access (“OHCA”) approaches community and regional need for Certificate of Need (“CON”) proposals on a case by case basis. CON applications do not lend themselves to general applicability due to a variety of factors, which may affect any given proposal; e.g. the characteristics of the population to be served, the nature of an existing service, the specific type of service proposed to be offered, the current utilization of the service and the financial feasibility of the proposal.

The William W. Backus Hospital (“Hospital”) is an acute care hospital located in Norwich, CT. Constitution Eye Surgery Center East, LLC (“CESCE”) owns and operates an outpatient surgical facility (“CES Center East”) in Waterford, CT. The CES Center East currently operates two days per week utilizing two operating rooms to perform ophthalmic surgery. The Hospital and CESCE (together referred to as “Applicants”) propose to establish and operate the Waterford Ambulatory Surgery Center, LLC (“WASC”) at the CES Center East through the Hospital’s leasing of existing space, equipment, and staff from CESCE. The Applicants propose to provide the additional services on the three days of the week not utilized by CES Center East.

The Hospital stated that the proposal will accommodate its surgeons that perform shorter procedures of a predominantly outpatient nature. However, there was no documentation submitted to OHCA that demonstrated a lack of existing operating room capacity at the Hospital. The Applicants failed to provide scheduling backlogs, operating room turnover rates, current block schedules for its surgeons, or cancellation rates. In Fiscal Year (“FY”) 2002, the Hospital reported its total surgical volume to be 11,392 procedures; the reported volume for each of the following the four fiscal years (FY 2003 through FY 2006) never exceeded the FY 2002 volume. Without any documentation to the contrary, it does not appear that the capacity of the Hospital’s operating rooms is reaching maximum volumes. Lawrence & Memorial Hospital (“L & M”) testified that its ambulatory surgical facility in Groton, the Pequot Medical Center, has available capacity as it currently utilizes only two of its four operating rooms. Therefore, there is existing capacity for the performance of additional outpatient surgical procedures in the greater New London area. The Applicants failed to demonstrate a public need for the proposal.

The total capital cost for the CON proposal is \$989,313. The Applicants projected net income incremental to the project of \$4,494, \$175,729, and \$345,639 for FYs 2007, 2008, and 2009, respectively. The Applicants did not report the projected financial information for FY 2010. Therefore, without a complete financial submission or clear demonstration of need, OHCA is unable to evaluate the cost-effectiveness of the proposal. Finally, since OHCA cannot conclude definitively that there is a need for the proposal, OHCA is unable to evaluate the financial viability of the proposal.

Order

Based upon the foregoing Findings of Fact and Rationale, the Certificate of Need request of William W. Backus Hospital and Constitution Eye Surgery Center East, LLC (“Applicants”) to establish and operate the Waterford Ambulatory Surgery Center, LLC at 174 Cross Road in Waterford, Connecticut, at a total capital expenditure of \$989,313, is hereby denied.

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 December 17, 2007

Date

CAV: lkg:agf

Cristine A. Vogel
Commissioner