



## Office of Health Care Access Certificate of Need Application

### Final Decision

**Applicants:** Wilton Surgery Center, LLC, Stamford Health System, Inc. and National Surgical Care, Inc.

**Docket Number:** 07-30994-CON

**Project Title:** Sale of 62.5% Ownership Interest in Wilton Surgery Center, LLC to an Entity Owned 50% each by Stamford Health System, Inc. and National Surgical Care, Inc.

**Statutory Reference:** Sections 19a-638 and 19a-639, C.G.S.

**Filing Date:** November 21, 2007

**Public Hearing Date:** January 10, 2008

**Decision Date:** February 13, 2008

**Default Date:** February 19, 2008

**Project Description:** Wilton Surgery Center, LLC (“WSC”) proposes to sell 62.5% ownership interest in Wilton Surgery, LLC to an entity owned 50% each by Stamford Health System, Inc. (“SHS”) and Wilton NSC, LLC, a wholly-owned subsidiary of National Surgical Care, Inc. (“NSC”), at total capital expenditure of \$7,360,000.

**Nature of Proceedings:** On November 21, 2007, the Office of Health Care Access (“OHCA”) received the completed Certificate of Need (“CON”) application of WSC to sell 62.5% ownership interest in Wilton Surgery, LLC to an entity owned 50% each by SHS and Wilton NSC, LLC, a wholly-owned subsidiary of NSC, at total capital expenditure of \$7,360,000. WSC, SHS and NSC are considered to be health care facilities or institutions for purposes of this CON as defined by Section 19a-630 of the Connecticut General Statutes (“C.G.S.”).

A notice to the public concerning OHCA's receipt of the Applicant's Letter of Intent was published on July 28, 2007, in *The Hour*. Pursuant to Section 19a-639 (b)(3), three individuals or an individual representing an entity with five or more people had until December 12, 2007, the twenty-first calendar day following the filing of the Applicant's CON Application, to request that OHCA hold a public hearing on the Applicant's proposal. On December 10, 2007, OHCA received a request from Norwalk Hospital to hold a public hearing in this matter.

Pursuant to Sections 19a-638 and 19a-639, C.G.S., a public hearing regarding the CON application was held on January 10, 2008. On December 13, 2007, the Applicant was notified of the date, time, and place of the hearing. On December 13, 2007, a notice to the public announcing the hearing was published in *The Hour*.

By petition dated January 4, 2008, Norwalk Hospital requested Intervenor status regarding the Applicant's CON application. The Presiding Officer granted Intervenor status with limited rights.

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 Sections 19a-638 and 19a-639, C.G.S. The Presiding Officer heard testimony from the Applicant, the Intervenor and their witnesses, in rendering this decision and considered the entire record of the proceeding.

OHCA's authority to review and approve, modify or deny this proposal is established by Sections 19a-638 and 19a-639, 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**

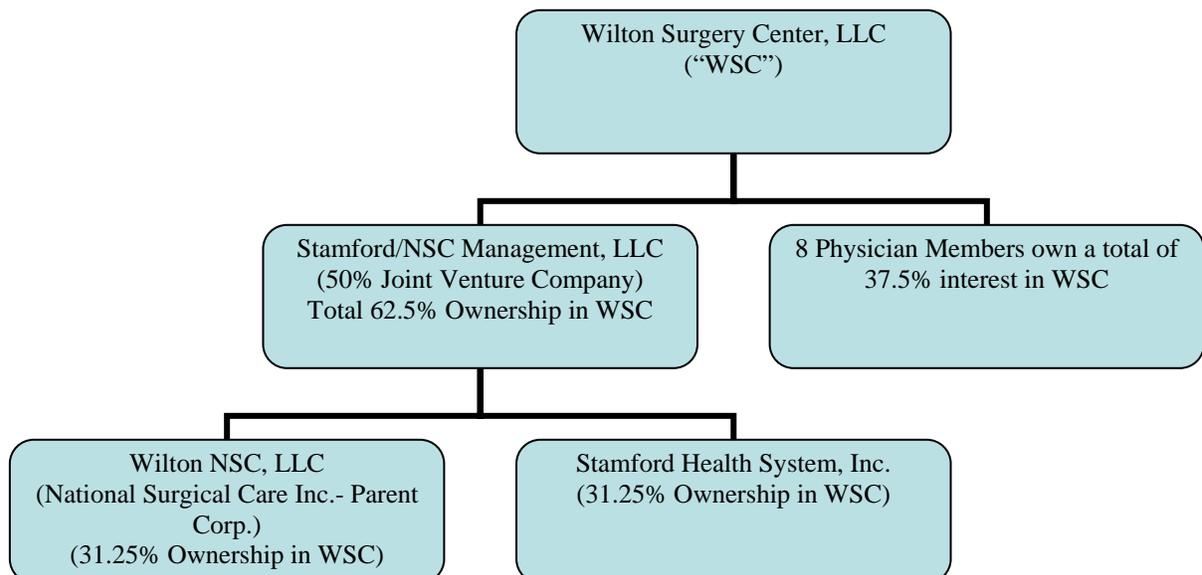
### **Clear Public Need**

#### **Impact on the Hospital's Current Utilization Statistics Contribution of the Proposal to the Accessibility and Quality of Health Care Delivery in the Region**

1. Wilton Surgery Center, LLC ("WSC" or "Facility" or "Center") is a free standing outpatient surgical facility, operating two (2) operating rooms and two (2) procedure rooms and located at 195 Danbury Road, Wilton, Connecticut. (*June 26, 2007 and September 13, 2007, Letter of Intent and November 21, 2007, Completeness Letter Responses, Exhibit A, page 26*)
2. Stamford Health System Inc. ("SHS") located at 30 Shelburne Road, Stamford, Connecticut, is the parent corporation of The Stamford Hospital located at 30 Shelburne Road, Stamford Connecticut and Tully Health Center located at 32 Strawberry Hill Court, Stamford Connecticut. (*October 18, 2007, Initial CON Application pages 2,8, 28*)

3. National Surgical Care (“NSC”) is a Chicago, Illinois based national developer and operator of ambulatory surgery centers. NSC currently owns and operates nineteen ambulatory surgery centers throughout United States, including five that are partnerships with existing hospitals. *(January 4, 2008, Pre-File Testimony of Sami Abbasi, Chairman and Chief Executive Officer)*
4. SHS and NSC formed a 50 percent each ownership, joint venture company known as Stamford/NSC Management, LLC (“SHS/NSC”). *(October 18, 2007, Initial CON Application, page 2)*
5. WSC, SHS and NSC for the purposes of this CON application will be referred to as “Applicants.”*(November 21, 2007, page 2)*
6. WSC is proposing to sell 62.5 percent ownership interest in WSC to SHS/NSC. *(November 21, 2007, page 2)*
7. WSC currently offers pain management and ophthalmology procedures as approved under Office of Health Care Access’ (“OHCA”) final decision under Docket No.: 04-30251. *(July, 7, 2004, OHCA’ Final Decision, Docket No.: 04-30251-CON)*
8. WSC’s primary service area consists of the cities of Stamford and Danbury, whose residents account for approximately 30 percent of all patient visits. *(October 18, 2007, Initial CON Application, page 6)*
9. WSC’s secondary service area towns consists of Norwalk, Bethel, Southbury, Ridgefield, Brookfield, New Milford, Westport, New Canaan, New Fairfield, Wilton, Newtown, Darien, Redding, Sandy Hook and Weston. *(October 18, 2007, Initial CON Application, page 6)*
10. WSC’s current physicians will retain the remaining 37.5 percent ownership in WSC after the sale of the 62.5 percent to Stamford/NSC Management, LLC. The chart below illustrates the proposed ownership structure: *(October 18, 2007, Initial CON Application, pages 2, 18 and Attachment 15)*

**Chart One: Proposed WSC Ownership Structure:**



11. According to the Applicants, “[t]he rationale for offering ownership interest sale is based upon: (1) Merritt’s interest in selling 100% of its ownership in WSC, equating to a 48% interest; and (2) certain physician members selling a portion (26% to 35%) of their ownership share in WSC, equating to another 14.5 percent interest.” *(November 21, 2007 Completeness Letter Responses, page 2)*
12. The pre and post transaction membership interest in WSC at individual investment level is illustrated in the following table:

**Table 1: Pre-Post Transaction Individual Membership Interest**

Seller’s Name	Pre-Transaction Membership Interest	Membership Interest Transfer	Post Transaction Membership Interest
Merritt	18.06%	(18.06)%	0.00%
Command Enterprise Solutions, Inc.	11.89%	(11.89)%	0.00%
MGN Capital, Inc.	11.89%	(11.89)%	0.00%
Amanda Gunthel	4.40%	(4.40)%	0.00%
William Mulball	1.76%	(1.76)%	0.00%
KCVC, LLC	11.01%	(3.87)%	7.14%
Yuting Xiong, MD	11.01%	(3.87)%	7.14%
Leslie Doctor, MD	6.61%	(1.72)%	4.89%
Richard Casden, MD	6.17%	(2.11)%	4.06%
Daniel Southern, MD	5.64%	(1.47)%	4.17%
Jaqueline Littzi, MD	5.64%	(1.47)%	4.17%
Hubbard Associates, LLC	3.92%	0.00%	3.92%
Peter Libre, MD	2.0%	0.00%	2.0%
SHS/NSC	0.00%	62.5%	62.50%
<i>Total</i>	<i>100%</i>		<i>100%</i>

*(October 18, 2007, Initial CON Application, Attachment 15)*

13. The current managing member of WSC, Merritt Healthcare, LLC (“Merritt”) will divest its holding in WSC to provide growth resources for the company. *(October 18, 2007, Initial CON Application, page 4)*
14. Merritt is a privately-held development and management company distinct from the physician members in WSC whom will remain owners of WSC. *(October 18, 2007, Initial CON Application, page 4)*
15. In addition to purchasing a 62.5 percent ownership share in WSC, NSC will pay an additional amount to Merritt to terminate its management agreement with WSC. *(October 18, 2007, Initial CON Application, page 4)*
16. SHS/NSC will become the managing member of WSC and will own and operate WSC in a joint venture relationship with the physician owners. *(October 18, 2007, Initial CON Application, page 4)*
17. As managing member, SHS/NSC will have the authority to manage the operations of WSC, including the authority to contract with a subsidiary of NSC, Wilton NSC, LLC, to provide day-to day management services at WSC. *(October 18, 2007, Initial CON Application, page 4)*

18. This transaction between the Applicants began as a request for proposal (“RFP”). *(October 18, 2007, Initial CON Application, page 4)*
19. The RFP was issued as a Confidential Information Memorandum (“CIM”) by Cain Brothers & Company, LLC (Cain Brothers”) acting as WSC’s financial advisor. *(November 21, 2007 Completeness Letter Responses, page 1)*
20. Cain Brothers is an investment banking and financial advisor firm that focuses exclusively on the medical services and medical technology industries and their related businesses. *(November 21, 2007 Completeness Letter Responses, page 1)*
21. In February 2007, Cain Brothers contacted approximately twenty eight health care organizations, including national ambulatory surgery center firms and local hospitals that it believed might have an interest in acquiring an ownership stake in WSC. *(November 21, 2007 Completeness Letter Responses, page 1)*
22. A total of thirteen parties signed the confidential and non-disclosures agreement, entitling them to receive the CIM in WSC. Thereafter, Merritt received six proposals for the purchase of its interest in WSC. *(November 21, 2007 Completeness Letter Responses, page 1)*
23. The decision to accept the proposal from SHS/NSC was made jointly by the physician members and Merritt members of WSC for the following reasons:
  - (1) The SHS/NSC partnership provided clear benefits to WSC and the community it services in terms of financial wherewithal, third party payer contracting ability, management expertise and other operational capabilities; and
  - (2) SHS/NSC offered what the WSC members considered to be fair market value for the 62.5 percent ownership interest in WSC.  
*(November 21, 2007 Completeness Letter Responses, pages 1-2)*
24. Matthew Searles, current manager of WSC testified to the following: “Our criteria for selecting a buyer included (1) the ability of the buyer to maintain and improve the operations of the Facility, (2) the clinical and administrative experience and expertise of the buyer, (3) the financial strength of the buyer and (4) receipt of an acceptable valuation for the Facility.”  
*(January 4, 2008, Applicants’ Pre-File Testimony)*
25. This proposal will offer the following benefits:
  - a. Clinical integration and improved continuity of care;
  - b. Improved access for managed care patients;
  - c. Enhanced management and administration of services; and
  - d. Long-term viability and operational synergies.  
*(October 18, 2007, Initial CON Application pages 4-6)*
26. SHS’ investment in WSC will allow for improved clinical integration between the services offered by WSC and TSH for the purpose of improving continuity of care and providing TSH patients with greater access to pain management and ophthalmic surgical services. Physicians performing procedures at WSC will be able to utilize the resources of a major tertiary hospital in

the area for the purpose of obtaining consults and coordinating pre- and post-operative care. Further, affiliation with TSH will facilitate cross training continuing education programs and open up other staffing opportunities between the two organizations. (*October 18, 2007, CON Application, page 5*)

27. Currently, WSC only contracts with two commercial payers, Health Net and Connecticare, representing 8 percent of the total payer mix. It is expected that the affiliation with SHS will facilitate WSC's procurement of contracts with other major health plans. Obtaining these additional commercial contracts will allow more patients to avail themselves of the lower cost services that freestanding ambulatory surgery center provide and enhance the ability of physician investors to fully utilize WSC as an extension of their medical practices. (*October 18, 2007, CON Application, page 5*)
28. NSC provides a wide range of management and support services for newly developed and established surgery centers, including managed care contracting information systems development, human resources, marketing and purchasing. (*October 18, 2007, CON Application, page 5*)
29. Affiliation with a major hospital system and national management company will provide various operational efficiencies for WSC in terms of instituting proven financial controls, risk management strategies and the introduction of economies of scale into WSC's purchasing and supply arrangement. (*October 18, 2007, CON Application, page 6*)
30. Leslie Doctor, M.D., a physician member of WSC, testified that "[t]he involvement of Stamford Health System will provide clinical benefits in terms of continuity of care and will provide the Facility with its best opportunity to obtain additional managed care contracts, increasing access to the Facility for patients who currently may be unable to utilize it because it is out-of-network under their insurance plan. The participation of NSC offers cost synergies and management expertise and management expertise based on NSC's national experience." (*January 4, 2008, Applicants' Pre-File Testimony, page 4 of Dr. Leslie Doctor*)
31. WSC's current hours of operation are 7 a.m. to 5 p.m., Monday through Friday. (*October 18, 2007, Initial CON Application page 7*)
32. Under OHCA's CON authorization, Docket No.: 02-554, Wilton Pain Management, LLC projected to perform 2,970 and 3,375 pain management procedures during FY 2005 and 2006, respectively. (*OHCA's Final Decision, Docket No.: 02-554*)
33. Under OHCA's CON authorization, Docket No.: 04-30251, Wilton Pain Management, LLC d/b/a Wilton Surgery Center, LLC projected to perform 491, 516 and 541 ophthalmology procedures for the first three years of operations. (*OHCA's Final Decision, Docket No.: 04-30251*)
34. Matthew Searles, the current manager of WSC and an individual member testified to the following: "As originally contemplated in WSC's prior CON approvals, the Facility projected third year volume of 3,375 pain procedures and 541 ophthalmic procedures. Our actual results for 2007 our third year in operation, show that nearly 6,000 pain procedures and over 1,100 ophthalmic procedures were performed at Wilton ASC." (*January 4, 2008, Applicants' Pre-File Testimony*)

35. Vincent Carlesi, M.D., a physician member of WSC testified to the following:

- i. “Before the establishment of the Center, my practice faced significant barriers in the provision of pain management services to patients. Because of lack of surgical time available to my practice, my patients experienced significant backlogs and I was forced to provide services in my office.”
- ii. “Without access to the highly specialized Wilton ASC, I would not have been able to meet the needs of my practice, which has expanded to over 4,000 patients since its inception in 2001.”
- iii. “It should be noted that my colleague, Dr. David Xiong, and I accounted for 49% of the cases and 64% of the procedures performed at the Wilton Surgery Center in 2007.”  
*(January 4, 2008, Applicants’ Pre-File Testimony, page 2 of Dr. Carlesi’s Testimony)*

36. WSC’s historical surgery volume is as follows:

**Table 2: WSC’s Historical Volume**

	9/05-12/31/05	CY 2006	CY 2007 Annualized
Ophthalmic	315	703	1,136
Pain Management	2,247	5,295	5,955
Total	2,562	5,998	7,091

*(November 21, 2007, Completeness Letter Responses, page 3)*

37. There are currently eight (8) physician members performing surgeries at WSC, the physician members and historical discharges are as follows:

**Table 3: WSC’s Physician Owners and Their Historical Discharges**

Physician Member	9/05-12/05	CY 2006	CY 2007 YTD
Carlesi	134	785	699
Casden	68	347	326
Doctor	37	211	209
Fucigna	-	-	13
Libre	-	-	61
Litzi	-	40	100
Southern	-	225	245
Xiong	58	470	457

*(November 21, 2007, Completeness Letter Responses, page 8)*

38. The eight physician members currently perform procedures at the following facilities:

**Table 4: WSC’s Historical Volume**

Physician Member	Other Facilities Used	Hospital Privileges	% Cases Performed Outside of WSC
Carlesi	Tully, Danbury Hospital & Danbury HealthSouth	Stamford Hospital & Danbury Hospital	20%
Casden	Danbury Hospital	Danbury Hospital	10%
Doctor	Norwalk Hospital & West Haven VA	Norwalk Hospital & West Haven VA	10%
Fucigna	Tully	Stamford Hospital	90%
Libre	Norwalk Hospital	Norwalk Hospital	10%
Littzi	Tully	Stamford Hospital	20%
Southern	Danbury Hospital & Danbury HealthSouth	Danbury Hospital	40%
Xiong	Danbury Hospital & Tully	Stamford Hospital & Danbury Hospital	20%

*(November 21, 2007, Completeness Letter Responses, page 8)*

39. Matthew Searles, the current manager of WSC, testified to the following: “More than 70% of the procedures and over 56% of the cases performed at the WSC in calendar year 2007 were performed by physicians on staff at TSH.”

*(January 4, 2008, Applicants’ Pre-File Testimony)*

40. Additional physicians other than physician members have performed procedures at WSC, and they include, Drs. Hindola Konrad, Jeffrey Kurilec, Peter Liggett, Jeffrey Oberman, Joseph Sokol and Eric Wasserman. *(November 21, 2007, Completeness Letter Responses, page 9)*

41. The Applicants projected the following surgery volumes at WSC for the first three years of operation after the sale of the ownership interest:

**Table 5: WSC’s Projected Volume**

	Year One	Year Two	Year Three
Ophthalmic	1,161	1,344	1,523
Pain Management	5,920	6,302	6,577
Total	7,081	7,646	8,100

Note: The Applicants based the projected volumes on the following:

- a) Year 1 volume is based on the current rate of patient encounters
- b) Year 2 and Year 3 are based on moderate growth in ophthalmology and pain management encounters, in addition:
  - i) Migration of ophthalmology cases from TSH’s Tully Health Center (“Tully”); and
  - ii) Shift of pain management cases from Tully and other facilities with in network contracting.

*(October 18, 2007, CON Application, page 8 and January 17, 2008, Applicants’ Late File)*

42. The projected impact on Tully for the first three years of projections is as follows:

**Table 6: Impact on Tully Health Center**

Projected Year	Ophthalmic Cases	Pain Management Cases
One	0	0
Two	85	37
Three	122	52

Notes: Financial projections assume a project start date of January 1, 2008.  
 Year One assumes no changes as a result of the project.  
 (November 21, 2007, Completeness Letter Responses, page 5)

43. WSC utilizes the Practice Guidelines of the American Society of Anesthesiologists as well as the Standards, Recommended Practices and Guidelines of the Association of Perioperative Registered Nurses. (October 18, 2007, CON Application, page 11)

44. Under this proposal, there will be no change in services or licensure categories for WSC and it will continue to bill the technical fee associated with all procedures. (October 18, 2007, CON Application, page 2)

45. The current billing practice will continue post transaction, facility fee billing will continue to be performed by WSC and the professional fees will be billed directly by the physicians performing the procedures. (November 21, 2007, Completeness Letter Responses, page 10)

46. The Applicants listed the following providers of freestanding ambulatory surgery service in their proposed total service area:

**Table 7: Existing Providers and Their Current Capacity**

Existing Provider Name	Number of Operating/ Procedure Rooms				Estimated Capacity for Proposal		Current Utilization
	Avail- Able	Utilized	Not Utilized	Equipped for Proposal	Minimum	Maximum	
HealthSouth Surgery Center of Danbury, LP	3	3	0	Unknown	1,150	1,550	9,363
New Vision Cataract Center	2	2	0	Unknown	Unknown	Unknown	Unknown
Tully Health Center	8	6	2	6	834	1,334	6,600
Ridgefield Surgical Center, LLC*	5	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown
HealthSouth Surgery Center of Norwalk, L.P. *	4	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown

Notes: Tully Health Center's estimated capacity:  
 Avg. case time, including room turn-around time is 68.5 minutes.  
 Tully Operating rooms are available 7.5 hour per day, 254 day per year.  
 Minimum utilization rates for the operating rooms is 50%.  
 Maximum utilization rates for the operating rooms is 80% in order to accommodate add-on cases and longer than average cases.  
 Minimum capacity calculation:  $(7.5 \text{ hours} * 60 \text{ minutes} / 68.5) \times 254 \times .50$

Maximum capacity calculation:  $(7.5 \text{ hours} * 60 \text{ minutes} / 68.5) * 254 * .80$

\*Information gathered from OHCA's Final Decisions, Docket Numbers: 04-30383 & 05-30439  
(November 21, 2007, Completeness Letter Responses, page 6, OHCA Final Decision Docket Numbers 04-30383 & 05-30439))

47. Norwalk Hospital intervened in this proposal and stated that it "provides a wide range of medical services to patients on an inpatient and outpatient basis, including pain management services and ophthalmic surgery." (January 4, 2008, Norwalk Hospital's Petition to OHCA, page 2)
48. Dr. Carlesi stated that "[w]ithin my practice we performed a total of 20% of our procedures outside the Wilton ASC. Many of these procedures will remain in the hospital setting for the following reasons:
- i. The medical status of some patients makes a hospital setting more appropriate for their care;
  - ii. Some patients prefer a hospital setting and therefore request that their procedures be performed at the hospital; and
  - iii. We need to perform a certain number of procedures in the hospital to maintain privileges." (January 4, 2008, Applicants' Pre-File Testimony, page 5 of Dr. Carlesi's Testimony)
49. Sami Abbasi, the Chairman and Chief Executive Officer of NSC testified to the following:
- i. "NSC is a Chicago, Illinois based owner and operator of ASCs that was founded in 2002;
  - ii. Since inception, NSC has invested approximately \$150 million in surgery centers acquired and managed by our company. NSC has also secured \$100 million senior revolving credit facility from five major financial institutions and, as of September 30, 2007, the Company had \$48 million outstanding on this line and expects to have approximately \$65 million outstanding in the coming months after additional acquisitions are finalized; and
  - iii. Finally, WSC, while already operating quite successfully, is ideally suited to benefit from cost efficiencies to be delivered by NSC, such as group purchasing of supplies, drugs, equipment, etc., discounts on professional liability insurance, general liability insurance, D&O insurance, health insurance, and improvements in the business office operations." (January 4, 2008, Applicants' Pre-File Testimony, page 5 of Sami Abasi's Testimony)
50. David L. Smith, Senior Vice President of Strategy and Market Development at TSH, testified to the following:
- i. "Given the already strong affiliation between TSH, the physicians who maintain privileges there and WSC, we believe SHS's investment WSC will improve the clinical integration between the services provided by WSC and TSH, strengthen the continuity of care for patients moving between the two facilities, and afford greater access to pain management and ophthalmic surgical services to patients within TSH's service area;" and

- ii. The Financial projections submitted at Exhibit 18 to the CON Application demonstrate that SHS and NSC's ownership will Bolster WSC's profitability in the years ahead, thereby ensuring its future viability and providing a positive return on investment for all of its owners."  
*(January 4, 2008, Applicants' Pre-File Testimony, page 5 of David L. Smith's Testimony)*

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

51. The associated capital expenditure for this proposal is as follows

**Table 8: Associated Capital Expenditure**

Purchase Price 62.5 % Membership Interest in WSC	\$6,860,000
NSC's Purchase of Merritt's Management Contract	\$500,000
<b>Total Capital Expenditure</b>	<b>\$7,360,000</b>

*(October 18, 2007, Initial CON Application pages 4&187)*

52. SHH/NSC proposed to fund this proposal as follows:

- SHS will fund their 50% share of the purchase of the 62.5% membership interest in WSC of \$3,430,000 through its equity, specifically through operating funds.
- NSC will fund their 50% share of the purchase of the 62.5% membership interest in WSC of \$3,430,000, plus the additions \$500,000 for the purchase of Merritt's Management Contract in WSC for a total of \$3,930,000, through an existing line of credit through JP Morgan Chase.

*(October 18, 2007, Initial CON Application pages 18-19)*

53. WSC projected gains from operations, incremental to the proposal of \$154,656, \$280,283 and \$291,998, for the first three years of the proposal. *(October 18, 2007, Initial CON Application, page 538)*
54. SHS is projecting losses form operation, incremental to the proposal of \$(257,000), \$(507,000) and \$(598,000), for the first three years of this proposal; however, SHS is projecting gains from operations, with the proposal of \$12,920,000, \$15,850,000 and \$17,703,000, for the first three years of proposal. *(October 18, 2007, Initial CON Application, page 539)*
55. NSC is projecting gains from operation, incremental to the proposal of \$1,615,792, \$1,758,203 and \$1,899,605, for the first three years of this proposal. *(November 21, 2007, Completeness Letter Responses, page 64)*

56. The current and projected payer mix for WSC is as follows:

**Table 9: Current and Three-Year Projected Payer Mix with the CON Proposal**

<b>Payer Description</b>	<b>Current</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>
Medicare (including managed care)	26.8%	27.0%	29.0%	33.0%
Medicaid (including managed care)	0.0%	1.0%	1.0%	1.0%
CHAMPUS or TriCare	0.0%	0.0%	0.0%	0.0%
<b>Total Government</b>	<b>26.8%</b>	<b>28.0%</b>	<b>30.0%</b>	<b>34.0%</b>
Commercial Insurers	67.9%	66.0%	64.0%	60.0%
Uninsured	0.2%	1.0%	1.0%	1.0%
Workers Compensation	5.1%	5.0%	5.0%	5.0%
<b>Total Non-Government</b>	<b>73.2%</b>	<b>72.0%</b>	<b>70.0%</b>	<b>66.0%</b>
<b>Total Payer Mix</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

*(October 18, 2007, Initial CON Application, page 21)*

57. There is no State Health Plan in existence at this time. *(October 18, 2007, Initial CON Application, page 3)*
58. The Applicants stated that this proposal is consistent with its long-range plan. *(October 18, 2007, Initial CON Application, page 3)*
59. The Applicants has improved productivity and contained costs in the past year by the application of technology and energy conservation. *(October 18, 2007, Initial CON Application, page 14)*
60. The proposal will not result in any change to WSC's teaching or research responsibilities. *(October 18, 2007, Initial CON Application, page 14)*
61. There are no distinguishing characteristics of the Hospital's patient/physician mix that makes the proposal unique. *(October 18, 2007, Initial CON Application, page 14)*
62. The Applicants have sufficient technical and managerial competence and expertise to provide efficient and adequate service to the public. *(October 18, 2007, Initial CON Application, page 12 and Exhibit 10)*

## 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 the existing services, the specific types of services proposed to be offered, the current utilization of services and the financial feasibility of the proposal.

Wilton Surgery Center, LLC (“WSC”) is a freestanding ambulatory surgery center, located at 195 Danbury Road, Wilton Connecticut. WSC currently offers pain management and ophthalmology procedures through the operation of its facility which includes two operating rooms and two procedure rooms. This proposal was initiated by WSC through a request for proposal (“RFP”), for WSC to sell 62.5 percent ownership interest in WSC to Stamford/NSC Management, LLC, a joint venture company owned 50 percent each by Stamford Health System, Inc. (“SHS”) and National Surgical Care (“NSC”).

Merritt Healthcare, LLC (“Merritt”), the current managing member of WSC, received six proposals for the purchase of interest in WSC. SHS/NSC was chosen as the purchaser from the RFP by physician and Merritt members of WSC. Merritt will terminate its current management agreement with WSC and will sell 100 percent of its ownership interest, which equates to 48 percent interest and certain physician members will also be selling a portion (26 to 35 percent) of their ownership interest WSC, equating to another 14.5 percent, for a total of 62.5 percent share in WSC. SHS/NSC will become the managing member of WSC and will own and operate WSC in a joint venture relationship with the physician owners.

Having SHS as a partner in WSC will have several benefits for WSC and The Stamford Hospital (“TSH”), including, improved continuity of care for patients and shared resources. Mr. Smith from SHS testified that SHS’s investment in WSC will improve clinical integration between the services provided by WSC and TSH, strengthen the continuity of care for patients moving between the two facilities, and afford greater access to pain management and ophthalmic surgical services to patients within the TSH’s service area. Additionally, partnering with NSC provides a wide range of management and support services. Mr. Abbasi, from NSC, testified that this partnership will benefit from cost efficiencies to be delivered by NSC, such as group purchasing of supplies, drugs, equipment, etc., discounts on various professional insurances and improvements in the business office operations. This proposal does not include any changes in the services currently offered at WSC. Based on the evidence, the purchase of 62.5 percent interest in WSC by SHS/NSC will improve both the accessibility and quality of care for patients in its service area.

The total capital expenditure associated with this proposal is \$7,360,000. SHS/NSC will pay the physician members \$6,860,000 for their share of the ownership interest, in addition to that, NSC will pay Merritt \$500,000, for Merritt to terminate its management contract with WSC, for a total purchase price of \$7,360,000. SHS will fund their fifty percent share membership interest through equity, specifically through operating funds and NSC will fund their share of the membership interest and the additional \$500,000 payment to Merritt to terminate its management contract through an existing line of credit.

WSC projects gains from operations, incremental to the proposal of \$154,656, \$280,283 and \$291,998, for the first three years of this proposal. Even though SHS is projecting losses from operations, incremental to the proposal of \$(257,000), \$(507,000) and \$(598,000), it is projecting gains from operations, with the proposal are \$12,920,000, \$15,850,000 and \$17,703,000, for the first three years of this proposal. NSC is projecting gains from operations, incremental to the proposal of \$1,615,792, \$1,758,203 and \$1,899,605, for the first three years of this proposal. Although OHCA can not draw any conclusions, WSC, SHS and NSC's financial projections and volumes upon which they are based appear to be reasonable and achievable.

## ORDER

Based on the foregoing Findings and Rationale, the Certificate of Need application of Wilton Surgery Center, LLC (“WSC”), Stamford Health System, Inc. (“SHS”) and National Surgical Care, Inc. (“NSC”) for WSC to sell 62.5% ownership interest in WSC to an entity owned 50% each by SHS and Wilton NSC, LLC, a wholly-owned subsidiary of National Surgical Care, Inc. NSC, at total capital expenditure of \$7,360,000, is hereby **Approved**, subject to the following conditions:

1. This authorization expires on December 31, 2008. Should WSC, SHS and NSC’s (collectively known as “Applicants”) proposal not be completed by that date, the Applicants must seek further approval from OHCA to complete the project beyond that date.
2. The Applicants shall not exceed the approved capital expenditure of \$7,360,000. In the event that the Applicants learn of potential cost increases or expect that the final project costs will exceed those approved, the Applicants shall notify OHCA immediately
3. Within 60 days of the completion of the sale of the 62.5 percent ownership interest to SHS/NSC, the Applicants shall file with OHCA, a copy of all signed, dated and completed final purchase agreements indicating the sale of the 62.5 percent ownership interest in WSC between the Applicants.
4. If in the future there is any change in the percentage of ownership interest of WSC, any change in control of WSC and/or change in the number of current operating/procedure rooms the Applicants shall file a CON Determination Form with OHCA.
5. The Applicants shall continue reporting patient data as delineated in the order under Certificate of Need, Final Decision, Docket No.: 04-30251-CON.

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 February 13, 2008*

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Date

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Cristine Vogel  
Commissioner

CAV:swl