



Office of Health Care Access Certificate of Need Application

Final Decision

Applicant: Danbury Surgical Center, LP

Docket Number: 07-31072-CON

Project Title: Sale of Additional Limited Partnership Interests in Danbury Surgical Center, LP, to Other Physicians or Physician Groups

Statutory Reference: Section 19a-638, C.G.S.

Filing Date: September 3, 2008

Decision Date: October 9, 2008

Default Date: December 2, 2008

Analyst: Jack A. Huber

Project Description: Danbury Surgical Center, LP, proposes to sell limited partnership interests in Danbury Surgical Center, LP, to other physicians or physician groups. There is no capital expenditure associated with the proposal.

Nature of Proceedings: On September 3, 2008, the Office of Health Care Access (“OHCA”) received the completed Certificate of Need (“CON”) application of Danbury Surgical Center, LP, (“Applicant”) seeking to sell limited partnership interests in Danbury Surgical Center, LP, to other physicians or physician groups. There is no capital expenditure associated with the proposal. The Applicant is considered to be health care facility or institution 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 to file its CON application was published in *The News Times* of Danbury, Connecticut on December 23, 2007, pursuant to Section 19a-638, C.G.S. OHCA received no responses from the public concerning the Applicant’s proposal.

Pursuant to Section 19a-638, C.G.S, three individuals or an individual representing an entity with five or more people had until September 24, 2008, 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. OHCA received no hearing requests from the public.

OHCA's authority to review and approve, modify or deny the CON 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 on the Applicant's Current Utilization Statistics Contribution of the Proposal to the Accessibility and Quality of Health Care Delivery in the Region

1. Danbury Surgical Center, LP, ("Applicant" or "Center") a freestanding, multi-specialty ambulatory surgery center, has been operating at 73 Sandpit Road in Danbury since 1984. *(May 5, 2008, Initial CON Application, page 3)*
2. The Center provides outpatient surgical services in the following specialties: gastroenterology; general surgery; gynecology; ophthalmology; otolaryngology; orthopedics; pain management; plastic surgery; podiatry and urology. *(May 5, 2008, Initial CON Application, pages 4 and 27)*
3. The Center is authorized for three (3) operating rooms and three (3) procedures rooms. *(May 5, 2008, Initial CON Application, page 5)*
4. The Applicant is requesting permission to sell eleven additional limited partnership interests in Danbury Surgical Center, LP, to area orthopedic surgeons. *(May 5, 2008, Initial CON Application, page 4 and September 3, 2008, Completeness Letter Responses, pages 424 through 426)*
5. The Applicant indicates that its proposal will ensure growth in the Center's procedure volume and will enhance access to and the quality of surgical services in the region. The Applicant believes the proposal will enable the Center to continue operating for the benefit of Danbury area residents. *(May 5, 2008, Initial CON Application, page 5).*
6. The primary service area for Danbury Surgical Center includes the towns/cities of Danbury, Newtown/Sandy Hook, Bethel, Ridgefield, Brookfield, and New Fairfield. The Center's secondary service area includes the towns/cities of New Milford, Southbury, Redding, and Woodbury. *(May 5, 2008, Initial CON Application, page 11)*
7. The Applicant indicates it also serves a number of patients who reside in the state of New York. In FY 2007, approximately six percent (6%) of the Center's total case volume came from out of state residents. *(May 5, 2008, Initial CON Application, page 12)*

8. On June 8, 1982, the Commission on Hospitals and Health Care, predecessor to the Office of Health Care Access (“OHCA”) established the Center pursuant to a Certificate of Need (“CON”) authorization, issued under Docket Number: 82-506. The Center was acquired by HealthSouth Corporation in 1997. *(May 5, 2008, Initial CON Application, page 3)*
9. On November 2, 2000, by way of a Certificate of Need Determination issued under Report Number: 00-B4, OHCA authorized HealthSouth Surgery Center of Danbury, Inc., former licensee of Danbury Surgical Center, to transfer ownership of the Center to HealthSouth Surgery Center of Danbury, LP, an indirect wholly owned subsidiary of HealthSouth Corporation. OHCA also authorized the sale of forty-nine percent (49%) of the limited partnership interests in HealthSouth Surgery Center of Danbury, LP, to physicians, their families and trusts for the benefit of such physicians and/or their professional practices. *(May 5, 2008, Initial CON Application, page 3 and November 2, 2000, CON Determination Report Number: 00-B4, page2)*
10. On February 10, 2006, by way of a CON Determination issued under Report Number: 05-30611-DTR, OHCA determined that CON approval was required for HealthSouth Surgery Center of Danbury, LP, to sell an additional eleven percent (11%) of its ownership to physicians and physician practices. *(May 5, 2008, Initial CON Application, page 3)*
11. On August 16, 2007, under Docket Number: 07-30955-CON, OHCA approved the sale of Danbury Surgical Center along with three other Connecticut outpatient surgical facilities owned by HealthSouth Corporation to ASC Acquisition, LLC, at an approved capital cost of \$30,032,000 for the Danbury Center and \$60,047,000 in the aggregate for the four Connecticut facilities. *(May 5, 2008, Initial CON Application, page 3 and August 16, 2007, Final Decision Order, Stipulation 3, page 15)*
12. The current ownership structure of Danbury Surgical Center, LP, is as follows and is presented in organizational chart form as Attachment 1 of this final decision.
 - a. SCA Danbury Surgical Center, LLC owns fifty-one percent (51%) of the partnership interests in Danbury Surgical Center, LP, as general partner. SCA Danbury Surgical Center, LLC, is a wholly owned subsidiary of SUN Surgery, LLC, which is a wholly owned subsidiary of Surgical Care Affiliates, LLC, which is a wholly owned subsidiary of ASC Acquisition LLC.
 - b. The remaining forty-nine percent (49%) of the partnership interests of Danbury Surgical Center, LP, are held by twenty-four (24) individual physicians and/or their practices as limited partners. Each physician limited partner owns between one percent (1%) and three percent (3%) of the interest in Danbury Surgical Center, LP.
(May 5, 2008, Initial CON Application, page 4 and Exhibit A, page 38)
13. With the proposed sale of limited partnership interests, the Center’s ownership structure will be as follows:
 - a. SCA Danbury Surgical Center, LLC, will own forty percent (40%) of Danbury Surgical Center, LP, as general partner, and

- b. Individual physicians and their practices will own sixty percent (60%) of the partnership interests as limited partners.

An organizational chart for Danbury Surgical Center, LP after the proposed sale of additional limited partnership interests is presented as Attachment 2 of this final decision. (May 5, 2008, Initial CON Application, pages 4 and Exhibit A page 39)

14. SCA Danbury Surgical Center, LLC, will at all times retain at least forty percent (40%) of the interests and will remain the controlling general partner of Danbury Surgical Center, LP. The operating agreements that govern physician investors' participation in a facility, which are signed by the physicians themselves, make it clear that as limited partners/members these individuals have no control over the Center's operations. (May 5, 2008, Initial CON Application, pages 4 through 6)
15. The Applicant indicates that in recent years the Center has seen a loss of physicians with a corresponding decline in surgical volume. Physician attrition is due to a number of factors including: retirement, decisions by physicians to use local hospitals and/or their own offices for more of their procedures, and the ability of physicians to buy into and/or utilize other surgical centers in the area. (May 5, 2008, Initial CON Application, page 6)
16. In fiscal year ("FY") 2005, sixty (60) members of the active medical staff performed procedures at the Center, compared with FY 2008 when forty-seven (47) members of the active medical staff performed procedures at the Center. The Applicant reported the following decrease in physicians by fiscal year as follows:

Table 1: Physicians Utilizing Danbury Surgical Center, LP

Fiscal Year	# Physicians Performing Procedures	Change From Previous Year	% Change
2005	60	--	--
2006	53	(7)	(11.7%)
2007	53	--	--
2008	47	(6)	(11.3%)

(May 5, 2008, Initial CON Application, page 6)

17. The Applicant believes that its Center's decline in procedure volume will continue if physicians are unable to acquire interests in Danbury Surgical Center, LP and are able to participate in other ambulatory surgery facilities. (May 5, 2008, Initial CON Application, page 11)
18. There are currently no limited partnership interests available for physicians who want to buy into Danbury Surgical Center because all authorized interests have already been sold to physician investors. (May 5, 2008, Initial CON Application, page 6)
19. The Applicant indicates that with physician attrition, the Center has seen an eight percent (8%) decline in volume since FY 2005. The number of annual surgical procedures is 9,632, 9,364, and 8,871 for FYs 2005 through 2007, respectively. (May 5, 2008, Initial CON Application, page 7)

20. The Applicant indicates that physicians typically want the opportunity to invest in an outpatient surgical facility and that the ability to acquire ownership interest is often a deciding factor in whether a physician uses a particular facility for his/her surgeries. *(May 5, 2008, Initial CON Application, page 9)*
21. In FY 2007, the physician investors accounted for approximately ninety percent (90%) of total surgical volume at Danbury Surgical Center (i.e. 7,935 of the 8,871 surgical procedures). *(May 5, 2008, Initial CON Application, page 9)*
22. With the proposal the Applicant projects the Center’s annual surgical volume of 8,915, 9,263 and 9,555 procedures for FYs 2008 through 2010, respectively. This growth is based upon budgeted FY 2008 figures, plus a two percent (2%) increase in procedures in FY 2009 and a two-and-a-half percent (2.5%) increase in procedures in FY 2010. *(May 5, 2008, Initial CON Application, page 19)*
23. The Applicant reports the following existing providers of ambulatory surgical services in its service area:

Table 2: Existing Service Area Providers – Services & Physicians

Legal Name of Provider	Similar Services Provided
Ridgefield Surgical Center, LLC	Gastroenterology General Surgery Orthopedics Otolaryngology (ENT) Plastic Surgery Urology
Danbury Hospital	Orthopedics General Surgery Gynecology Urology Otolaryngology (ENT) Neurology Plastic Surgery Vascular/Thoracic Ophthalmology Podiatry Oral Surgery
New Milford Hospital	General/Vascular Surgery Breast Colonoscopy Bronchoscopy Orthopedic & Spinal Cosmetic & Plastic Endoscopy Ophthalmology

(May 5, 2008, Initial CON Application, page 16)

24. The Applicant indicates that the proposal will have little or no effect on existing providers, based upon the following factors:
 - a. The Center has been in operation for more than 25 years;
 - b. The Center has an established physician referral base;
 - c. The proposal doesn’t add operating/procedure rooms to the current room complement; and

- d. The expectancy that proposal will not alter in any measurable way the market share held by each of the existing providers.
 (May 5, 2008, Initial CON Application, pages 18 through 21)
25. Current hours of operation at Danbury Surgical Center are Monday through Friday, 6:30 a.m. to 5:00 p.m. There will be no change in hours of operation with the proposal. (May 5, 2008, Initial CON Application, page 15)
26. Danbury Surgical Center is accredited by the Joint Commission on the Accreditation of Health Care Organizations. The Applicant follows the Standard of Practice Guidelines of the American Society of Anesthesiologists, the American Society of Perioperative Nurses and the American Society of Operating Room Nurses. (May 5, 2008, Initial CON Application, pages 22 and 23)

**Financial Feasibility of the Proposal and its Impact on the Applicant's
 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**

27. There is no anticipated capital expenditure regarding this proposal. (May 5, 2008, Initial CON Application, page 30)
28. The Applicant projects gains from operations, incremental to the proposal of \$17,151, \$113,699 and \$150,572, for the first three fiscal years. (May 5, 2008, Initial CON Application, page 34 and Attachment P, page 377)
29. The Applicant projects overall gains from operations of \$3,050,455, \$3,173,744 and \$3,289,689, for the first three fiscal years. (May 5, 2008, Initial CON Application, page 34 and Attachment P, page 377)
30. The current and projected payer mix for Danbury Surgical Center is as follows:

Table 3: Current and Three-Year Projected Payer Mix with the CON Proposal

Payer Description	Current	Year 1	Year 2	Year 3
Medicare (including managed care)	28.86%	28.82%	28.82%	28.82%
Medicaid (including managed care)	0.36%	0.36%	0.36%	0.36%
CHAMPUS or TriCare	0.31%	0.31%	0.31%	0.31%
Total Government	29.49%	29.49%	29.49%	29.49%
Commercial Insurers	63.26%	63.26%	63.26%	63.26%
Uninsured	1.33%	1.33%	1.33%	1.33%
Workers Compensation	5.92%	5.92%	5.92%	5.92%
Total Non-Government	70.51%	70.51%	70.51%	70.51%
Total Payer Mix	100.00%	100.00%	100.00%	100.00%

(May 5, 2008, Initial CON Application, page 32)

31. There is no State Health Plan in existence at this time. (May 5, 2008, Initial CON Application, page 4)
32. The Applicant has adduced evidence that this proposal is consistent with its long-range plans. (May 5, 2008, Initial CON Application, pages 4 and 5)

33. The Applicant has improved productivity and contained costs by participating in activities involving the application of group purchasing practices in the procurement of supplies and equipment. *(May 5, 2008, Initial CON Application, page 24)*
34. The proposal will not result in any change to the Applicant's teaching or research responsibilities. *(May 5, 2008, Initial CON Application, page 25)*
35. There are no distinguishing characteristics of the Applicant's patient/physician mix that makes the proposal unique. *(May 5, 2008, Initial CON Application, page 25)*
36. The Applicant has sufficient technical and managerial competence and expertise to provide efficient and adequate service to the public. *(May 5, 2008, Initial CON Application, page 23 and Exhibit I, pages 184 through 187)*

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.

Danbury Surgical Center, LP ("Applicant" or "Center") is a freestanding, multi-specialty ambulatory surgery center that has been operating at 73 Sandpit Road in Danbury since 1984. With a complement of three (3) operating rooms and three (3) procedures rooms, the Center provides outpatient surgical specialties in gastroenterology, general surgery, gynecology, ophthalmology, otolaryngology ("ENT"), orthopedics, pain management, plastic surgery, podiatry and urology.

The Applicant's corporate parent is ASC Acquisition, LLC, who acquired the Center as well as three (3) other Connecticut outpatient surgical facilities from HealthSouth Corporation in August 2007. SCA Danbury Surgical Center, LLC owns fifty-one percent (51%) of the partnership interests in Danbury Surgical Center, LP, as general partner. The remaining forty-nine percent (49%) of the partnership interests of Danbury Surgical Center, LP are held by individual physicians and/or their practices as limited partners. There are currently no limited partnership interests available for physicians who want to buy into the Center because all authorized interests have already been sold to physician investors.

The Applicant indicates that in recent years the Center has seen a loss of practicing physicians with a corresponding decline in procedural volume. Since fiscal year ("FY") 2005, the Center has experienced a twenty-two percent (22%) reduction in the number of practicing medical staff. The physician attrition is primarily due to the following factors: retirement, decisions by physicians to use local hospitals and/or their own offices for more of their procedures, and the ability of physicians to buy into and/or utilize other ambulatory surgical facilities in the area. The Applicant indicates that with physician attrition, the Center has seen an eight percent (8%) decline in surgical volume since FY

2005. The actual number of annual surgical procedures performed over the last three (3) fiscal years is 9,632 procedures in FY 2005, 9,364 procedures in FY 2006 and 8,871 procedures in FY 2007.

The Applicant is requesting permission to sell eleven (11) additional limited partnership interests in Danbury Surgical Center, LP. With the sale of the limited partnership interests, SCA Danbury Surgical Center, LLC, will own forty percent (40%) of the Center as general partner with individual physicians and their practices owning sixty percent (60%) of the partnership interests as limited partners. SCA Danbury Surgical Center, LLC would at all times retain at least forty percent (40%) of the interests, while remaining as the controlling general partner of Danbury Surgical Center, LP. The operating agreements that govern physician investors' participation in a facility, which are signed by each physician investor, makes it clear that as limited partners/members these individuals have no control over a facility's operations. OHCA finds that the Applicant's ability to sell additional limited partnership interests is expected to ensure growth in Center's procedure volume and will enhance access to and the quality of surgical services in the region. OHCA concludes that the proposal will allow the Center to become a more viable health care provider and will enable the Center to continue operating for the benefit of residents in the greater Danbury area.

There is no proposed capital expenditure associated with the proposal. The Applicant projects gains from operations, incremental to the offering of \$17,151, \$113,699 and \$150,572, for the first three years of the proposal. The Applicant projects overall gains from operations of \$3,050,455, \$3,173,744 and \$3,289,689 for the first three years of the proposal. The 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 (“CON”) application of Danbury Surgical Center, LP, (“Applicant”) to sell additional limited partnership interests to other physicians or physician groups, at no associated capital expenditure, is hereby **Approved**, subject to the following conditions:

1. This authorization is contingent upon the Applicant commencing the sale of additional limited partnership interests by no later than November 1, 2010. The CON authorization shall expire if the sale does not commence by that date.
2. Within sixty (60) days of the completion of the initial sale of the limited partnership interests to the physicians, the Applicant shall file with OHCA a copy of all signed, dated and completed final purchase agreements indicating the sale of the limited partnership interests in DSC between the Applicant and the physicians.
3. SCA Danbury Surgical Center, LLC, shall at all times remain the controlling general partner of Danbury Surgical Center, LP.
4. If in the future there is any change in the percentage of ownership interest of Danbury Surgical Center, LP, or any change in control of Danbury Surgical Center, LP, the Applicant shall file a CON Determination Form with OHCA.

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 October 9, 2008

Date

Cristine A. Vogel
Commissioner

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