



Office of Health Care Access Certificate of Need Application

Final Decision

Applicant: Saint Raphael Healthcare System Hamden Surgery Center, LLC

Docket Number: 08-31254-CON

Project Title: Terminate Ambulatory Surgical Services at the Hamden Surgery Center

Statutory Reference: Section 19a-638, Connecticut General Statutes

Filing Date: February 13, 2009

Hearing Date: March 26, 2009

Presiding Officer: Cristine A. Vogel

Decision Date: May 1, 2009

Default Date: May 14, 2009

Staff: Paolo Fiducia
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Project Description: Saint Raphael Healthcare System Hamden Surgery Center, LLC (“the LLC or Applicant”) proposes to terminate ambulatory surgical services at the Hamden Surgery Center, 2080 Whitney Avenue, Hamden, Connecticut, at an estimated total capital cost of \$0.

Nature of Proceedings: On February 13, 2009, the Office of Health Care Access (“OHCA”) received the Certificate of Need (“CON”) application of Saint Raphael Healthcare System Hamden Surgery Center, LLC seeking authorization to terminate ambulatory surgical services at the Hamden Surgery Center, 2080 Whitney Avenue, Hamden, Connecticut, at an estimated total capital cost of \$0. The Applicant is a health care facility or institution 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 Hospital's Letter of Intent was published on October 28, 2008 in the *New Haven Register*.

Pursuant to Section 19a-638, C.G.S., a public hearing regarding the CON application was held on March 26, 2009. On March 5, 2009, the Applicant was notified of the date, time, and place of the hearing. On March 5, 2009, a notice to the public announcing the hearing was published in the *New Haven Register*. 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.

OHCA's authority to review and approve, modify or deny the CON application is established by Section 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 of the Proposal on the Applicant's 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. It is found that Saint Raphael Healthcare System Hamden Surgery Center, LLC ("the LLC or Applicant") is a non-profit facility that currently operates a free-standing, multi-specialty ambulatory surgery center ("the ASC") with three operating rooms located at 2080 Whitney Avenue, Hamden, Connecticut. (*October 21, 2008, Letter of Intent, page 7*)
2. It is found that the ASC is licensed by the Connecticut Department of Public Health ("DPH") as an Outpatient Surgical Facility. (*October 21, 2008, Letter of Intent, page 7*)
3. It is found that the sole member of the LLC is DePaul Health Services Corporation ("DePaul"). The sole member of DePaul is Saint Raphael Healthcare System, Inc. ("SRHS"). DePaul and the Hospital of Saint Raphael ("SRH"), an acute care hospital located at 1450 Chapel Street in New Haven, Connecticut, are affiliates and subsidiaries of SRHS. (*October 21, 2008, Letter of Intent, page 7*)
4. It is found that on May 19, 1999, the Office of Health Care Access ("OHCA") in a Final Decision rendered under Docket Number: 98-552 approved the Certificate of Need ("CON") request of SRHS and DePaul to established the ASC. (*May 19, 1999, Final Decision, DN: 98-553*)
5. The Applicant contends that the ASC has offered the following specialty procedures: cardiovascular, neurology, thoracic, general surgery, ophthalmology, otolaryngology, orthopedics, gynecology, oral maxillofacial, urology, podiatry, plastic surgery as well as pain management and gastroenterology procedures. (*December 22, 2008, Initial CON Application, page 11*)

6. According to the Applicant, the proposal to terminate services at the ASC accomplishes the following:
- a. Eliminates an underutilized healthcare facility;
 - b. Reduces duplication of services in the service area; and
 - c. Eliminates significant operating losses to SRHS.
(December 22, 2008, Initial CON Application, page 11)
7. The Applicant states that the rationale for this service termination is based on the following:
- a. The declining caseload; and
 - b. The departure of physician users to surgery facilities where they are part or full owners;
 - c. The departure of physician users to other surgery facilities;
 - d. The associated net operating loss of continuing operations as a free-standing ambulatory surgery center; and
 - e. The decrease of number of cases per physician.
(December 22, 2008, Initial CON Application, page 12)
8. The Applicant contends that the following table shows the % of total volume since the Center opened by patient town of origin for their proposed primary service area:

Table 1: % of Total Volume by Patient Town of Origin

Patient Town of Origin	% of Total Volume
Hamden	20.85
New Haven	8.64
North Haven	8.59
West Haven	7.28
Wallingford	6.22
East Haven	5.32

(December 22, 2008, Initial CON Application, page 21)

9. The Applicant contends the following actual number of cases, number of physician users, average case/month and net income/(loss) for the ASC by fiscal year:

Table 2: Actual ASC Utilization Statistics and Financial Results

Fiscal Year	Case Volume	Physician User	Ave. Cases/Month	Net Income/(Loss)
FY 00	101	20	2.5	(\$839)
FY 01	1522	68	4.5	(\$718)
FY 02	3088	86	6.4	(\$240)
FY 03	4427	92	7.1	\$310
FY 04	5425	98	8.1	\$388
FY 05	5401	91	8.1	\$223
FY 06	5286	91	7.8	\$328
FY 07	4793	92	7.6	(\$599)
FY 08	4386	82	7.2	(\$1,007)
FY 09*	692	57	6.1	(\$396)

*Note: FY 09 data represents 1st quarter volume only
 (February 13, 2009, Completeness Responses, page 73)

10. The Applicant contends that the ASC projections for the next three fiscal years will continue as follows:

Table 3: Projected ASC Utilization Statistics and Financial Results

Fiscal Year	Case Volume	Physician User	Ave. Monthly Utilization	Net Income/(Loss)
FY 09	3530	57	4.9	(\$1,261)
FY 10	2875	46	5.2	(\$1,084)
FY 11	2725	46	4.9	(\$1,304)

(February 13, 2009, Completeness Responses, page 73)

11. The Applicant contends that the actual, annualized and projected volume of inpatient, ambulatory, and the sum total of all surgical cases at HSR for the next three fiscal years:

Table 4: HSR Actual, Annualized and Projected data for the next three fiscal years

# Cases	Actual FY 2008	Annualized FY 2009*	Projected FY 2010	Projected FY 2011	Projected FY 2012
Inpatient	7,026	8,013	8,028	8,110	8,180
Ambulatory	10,512	11,520	11,720	11,877	11,992
Total Cases	17,538	19,533	19,748	19,987	20,172

*Annualized based on first quarter data.

(February 13, 2009, Completeness Responses, pages 74 & 75)

12. The Applicant contends that HSR is installing a new scheduling system at the Hospital which will provide more flexibility in defining the types and frequency of cases, needs for block time and more sophisticated ways of reporting block time utilization. This new system which is expected to be operational March 1, 2009 will ensure that surgeon block time is better utilized which will help improve surgeon efficiency, improve the accuracy of scheduling and increase the availability of operating rooms. (February 13, 2009, Completeness Responses, page 76)

13. The Applicant contends the following actual number of ambulatory surgical cases by specialty and by total performed at ASC from FY 2000 through the current fiscal year:

Table 5: Actual ASC Surgical Cases by Specialty and by Total

# Cases	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009*
Cardiovascular	6	3	1	1	8	0	0	0	0	0
Gastroenterology	0	0	624	1478	1778	1822	2075	1996	1937	361
General	10	102	82	89	104	58	54	63	68	9
Gynecology	0	36	47	53	29	16	25	19	9	0
Ophthalmology	13	697	1144	1094	1278	1152	718	305	204	19
Oral/Maxillofacial	0	25	44	44	36	26	39	13	0	1
Orthopedic	23	247	501	538	552	525	549	683	623	81
Otolaryngology	11	120	195	223	220	207	230	276	261	18
Pain Management	0	9	29	386	809	994	1094	907	760	136
Plastics	34	204	285	318	420	389	308	342	335	31
Podiatry	4	78	128	193	188	205	193	184	182	34
Urology	0	1	8	8	3	7	1	5	7	2
Total Cases	101	1522	3088	4425	5425	5401	5286	4793	4386	692

*Note: FY 09 data represents 1st quarter volume only
(February 13, 2009, Completeness Responses, page 72)

14. The Applicant contends the following existing ambulatory surgery providers in the total service area: Hospital of Saint Raphael, Yale-New Haven Hospital, Temple Surgical Center, Gastroenterology Center of CT, Connecticut Orthopaedic Specialists, PC., North Haven Pain Medicine Center, Shoreline Surgery Center, Connecticut Eye Surgery Center, Connecticut Foot Surgery, Milford Hospital, Griffin Hospital and MidState Medical Center. (December 22, 2008, Initial CON Submission, pages 24-26)

15. Dr. David Van Ess, Medical Director, Saint Raphael Healthcare System Hamden Surgery Center, LLC testified that:

- The primary reason physicians left was for monetary gains in doing procedures in their own facilities which the Applicant had no means to match.
(March 26, 2009, Public Hearing, Dr. David Van Ess)

16. Mr. David W. Benfer, President and Chief Executive Officer, Saint Raphael Healthcare System, Inc. testified to the following:

- There are many other venues available in the market.
- Physicians migrated their practice to other locations, some came to the Hospital, others joined ventures.
- Out migration of physicians was the biggest challenge, physicians could become equity investors in for profit ventures where they could receive a return on their investment by capturing part of the facility fee and the professional fee.

17. Mr. David W. Benfer, President and Chief Executive Officer, Saint Raphael Healthcare System, Inc. also testified that:

- On three separate occasions the Applicant looked at the option of a physician joint venture with the facility.
- As recently as July 2008, the Applicant evaluated the economics of the proposed joint venture and the impact on the Hospital, while the joint venture would have been profitable it would have resulted in a migration of cases out of the Hospital and increase the operation losses at the Hospital.
- In each occasion there were regulatory or financial issues that voided the effort.
- Tried to propose a joint venture with the physicians back in 2001, the difficulty is that the Hospital does not control what the physician individually does with the respect to their own personal equity investment.
(March 26, 2009, Public Hearing, Mr. Benfer)

18. Ms. J. Lubin-Szafranski, Esq., Vice-President/General Counsel, HSR testified that:

- At this time, need does not exist for a multi-specialty service center in Hamden, but need can be created at any point in a variety of different structures ranging from a single specialty to multi-specialty centers.
(March 26, 2009, Public Hearing Ms Lubin-Szafranski)

Financial Feasibility and Cost Effectiveness of the Proposal and its Impact on the Hospital's Rates and Financial Condition

19. The Applicant contends that there is no projected capital cost with the proposal. *(December 17, 2008, Initial CON Application, pages 9)*

20. The Applicant reports the following results in Gain/Loss from Operations for fiscal years ("FYs") 2005 through 2008:

Table 6: Actual Operating Gains and Losses (FY 2005 – FY 2008)

Description	FY 2005	FY 2006	FY 2007	FY 2008
Gain/(Loss) from Operations	\$223,000	\$328,000	(\$599,000)	(\$1,007,000)

(December 17, 2008 Initial CON Application and February 13, 2009, CON completeness response, page 73)

21. The Applicant projects operating losses continuing from FYs 2009 through 2011 as follows:

Table 7: Projected Operating Losses

Description	FY 2009*	FY 2010**	FY 2011**
(Loss) from Operations	(\$1,261,000)	(\$1,084,000)	(\$1,304,000)

*FY 2009 Budgeted Loss

**FY 2010 and FY 2011 Full Year Projections

(December 17, 2008 Initial CON application page 13, February 13, 2009, CON completeness responses, page 73 and March 26, 2009 CON Hearing Testimony of Terrie B. Estes.)

22. The Applicant states the surgical center's actual loss from operations in FY 2007 and FY 2008 and projected loss in FY 2009 through FY 2011 are primarily due to a steady decline in physician users and surgical case volume (*December 17, 2008, CON Application, page 11 and page 20*)
23. The Applicant states that the Chairman of Surgery at the HSR is working with medical staff to make appropriate accommodations to meet the ASC's surgical case load at the main hospital facility. Scheduling and operating time will be made available to physicians at the HSR who are currently credentialed at the LLC, provided such physicians maintain their current medical staff membership and privileges in good standing at the LLC. (*December 22, 2008, Initial CON Application, page 10*)
24. The Applicant states that 580 cases from the surgery center are expected to be transferred to the Hospital of St. Raphael. The incremental contribution margin to the Hospital for the 580 cases is estimated to \$1,009,441. (*February 13, 2009, CON completeness responses page 80*)
25. Ms. Terrie B. Estes, Executive Director, Hamden Surgery Center, testified that:
- The 580 cases that would be transferred to the HSR are from four surgeons (two ENT, one Orthopedic, and one General Surgeon) that would move their cases that they had at the ASC to the Hospital. (*March 26, 2009, Public Hearing, Ms. Estes*)
26. The Applicant testified that in the current fiscal year beginning in October 2008, to March 26, 2009, the ASC has lost about \$500,000. (*March 26, 2009, CON Hearing Testimony of Terrie B. Estes*)
27. The Applicant testified that in FY 2007, while reviewing operations, they found \$590,000 in accounts receivable that went uncollected from FY 2000 to FY 2006. The ASC continued to "cleanup" their accounts receivable in FY 2008 which resulted in an additional increase to the ASC's bad debt in FY 2008. A high level of bad debt was not expected to continue in FY 2009, as all accounts had been brought up to date. (*March 26, 2009, CON Hearing Testimony of Terrie B. Estes*)
28. The Applicant reported its current payer mix as of November 2008 to be as follows:

**Table 8: Current Payer Mix Based
on Gross Patient Revenue**

Description	Current Percentage
Medicare	18.0%
Medicaid	0.1%
TriCare (CHAMPUS)	0.1%
Total Government	18.2%
Commercial Insurers	71.7%
Uninsured	2.5%
Workers Compensation	7.6%
Total Non-Government	81.8%
Total Payer Mix	100.00%

(*December 17, 2008, Initial CON Application, page 29*)

29. There is no State Health Plan in existence at this time. *(December 22, 2008, Initial CON Application, page 11)*
30. The Applicant has adduced evidence that the proposal is consistent with its long-range plan. *(December 22, 2008, Initial CON Application, page 10)*
31. The Applicant has succeeded in reducing its operating costs by implementing the following expense reduction initiatives at the surgical center:
- a. Effectuated savings on medical supplies and administrative expenses through an Employee Suggestion Program;
 - b. Reduced its professional and commercial liability expenses, as well as expenses associated with its employee health coverage;
 - c. Executed new group purchasing contracts for medical supplies; and
 - d. Reduced energy costs by entering into an agreement with CBIA Constellation New Energy Electricity Supply.
(December 17, 2008, Initial CON Application, page 29)
32. The proposal will not result in any change to the Applicant's teaching and research responsibilities. *(December 22, 2008, Initial CON Application, page 28)*
33. The proposal will not result in changes to the Applicant's patient/physician mix. *(December 22, 2008, Initial CON Application, page 28)*

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 current utilization of services and the proposal’s financial feasibility.

Saint Raphael Healthcare System Hamden Surgery Center, LLC, (“Applicant”) is a free-standing, multi-specialty ambulatory surgery center (“surgical center”), located at 2080 Whitney Avenue in Hamden. The Applicant proposes to terminate all ambulatory surgical services and close the facility. There is no capital expenditure associated with the proposal.

On May 19, 1999, the Office of Health Care Access (“OHCA”) in a Final Decision under Docket Number: 98-552 approved the CON request of the Saint Raphael Healthcare System, Inc. (“SRHS”) and DePaul Health Services Corporation (“DePaul”) to established the surgical center d/b/a Saint Raphael Healthcare System Hamden Surgery Center, LLC. The Applicant is a subsidiary of DePaul and has been operating since June 2000 as a licensed outpatient surgical facility. DePaul is a subsidiary of SRHS and is an affiliate of the Hospital of Saint Raphael (“HSR”). HSR is a licensed acute care hospital located at 1450 Chapel Street in New Haven. The CON authorization established the surgical center to alleviate the growing demand for surgery, especially inpatient surgical services at HSR. The authorization allowed greater flexibility in scheduling ambulatory surgical services, as well as inpatient surgical services within the Saint Raphael Healthcare System.

The Applicant asserts its decision to terminate surgical services and close the facility is a business decision based on the surgical center’s actual and projected losses. The Applicant cites the recent departure of physician users to other ambulatory surgical facilities and declining surgical caseload and subsequent net operating losses as the cause for the proposed service termination and facility closure. For current fiscal year to date 2009 (i.e. October 2008 through March 2009) the surgical center has experienced an operating loss of approximately \$500,000 with an operating loss projected to be \$1,261,000 for the entire fiscal year. The Applicant asserts the proposal will eliminate significant operating losses to SRHS, eliminate an underutilized healthcare facility and reduce duplication of surgical services in the service area.

While the Applicant has pointed to its declining physician participation and decreasing surgical case volume as factors leading to its inability to revive the financial viability of the surgical center, OHCA finds that management practices of the Applicant and SRHS may have also contributed to the poor financial condition of the surgical center. The Applicant’s Executive Director testified during the public hearing that following her 2007 arrival at the facility, a retrospective financial review was conducted, which revealed that \$590,000 in accounts receivable had gone uncollected from FYs 2000 through 2006. This oversight led to a \$590,000 bad debt reserve adjustment made to the facility’s operating results and subsequently contributed in a substantive way to the operating loss of \$599,000 experienced in FY 2007. Completing the accounts receivable review for subsequent fiscal years resulted in additional increases to the surgical center’s bad debt.

Lastly, with respect to the need for the continued operation of the Hamden Surgery Center or the current need for any ambulatory surgical center in Hamden, the Applicant asserts that HSR will be readily able to absorb the estimated 580 annual surgical cases without significant disruption to the Hospital; that the remaining patients previously receiving their ambulatory surgical services at the facility are receiving their procedures at other area surgical centers; and that the surgical center's case volume has decreased to 27 cases in January 2009 with no surgical cases performed in the months of February and March, 2009. OHCA concludes that there is no need for the continued operation of the Hamden Surgery Center and that a current need for an ambulatory surgical center in Hamden does not exist at this time.

Order

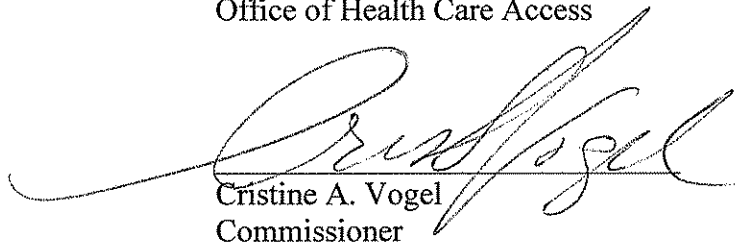
The proposal of Saint Raphael Healthcare System Hamden Surgery Center, LLC to terminate all surgical services at 2080 Whitney Avenue, Hamden, Connecticut, with no associated capital expenditure is hereby GRANTED.

Saint Raphael Healthcare System Hamden Surgery Center, LLC shall hereafter notify OHCA of any and all proposed termination of services prior to finalizing any decision to terminate any services or programs. Failure to notify OHCA in advance of any proposed termination of services may be considered as not filing required information and subject Saint Raphael Healthcare System Hamden Surgery Center, LLC to civil penalties pursuant to Section 19a-653, C.G.S.

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

5-1-09
Date


Cristine A. Vogel
Commissioner

CAV: pf