

STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH
Office of Health Care Access

May 8, 2013

IN THE MATTER OF:

An Application for a Certificate of Need filed
Pursuant to Section 19a-638, C.G.S. by:

Middlesex Hospital & Advanced Colon Care,
Inc. d/b/a Shoreline Colonoscopy Suites, LLC

Notice of Final Decision
Office of Health Care Access
Docket Number: 12-31786-CON

Transfer of Ownership of Certain Assets of
Advanced Colon Care, Inc. d/b/a Shoreline
Colonoscopy Suites, LLC, to Middlesex Hospital


To:

Harry Evert
Sr. Vice President
Strategic Planning and Operations
Middlesex Hospital
28 Crescent Street
Middletown, CT 06457-3650

Maurizio D. Nichele, M.D.
President
Advanced Colon Care, Inc. d/b/a
Shoreline Colonoscopy Suites, LLC
929 Boston Post Road, Suite 1
Old Saybrook, CT 06475-2143

Dear Mr. Evert and Dr. Nichele:

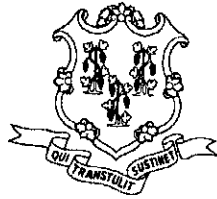
This letter will serve as notice of the Final Decision of the Office of Health Care Access in the above matter, as provided by Section 19a-638, C.G.S. On May 8, 2013, the Final Decision was rendered as the finding and order of the Office of Health Care Access. A copy of the Final Decision is attached hereto for your information.



Kimberly R. Martone
Director of Operations

Enclosure
KRM:jah

An Equal Opportunity Provider
(If you require aid/accommodation to participate fully and fairly, contact us either by phone, fax or email)
410 Capitol Ave., MS#13HCA, P.O.Box 340308, Hartford, CT 06134-0308
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**Department of Public Health
Office of Health Care Access
Certificate of Need Application**

Final Decision

Applicants: Middlesex Hospital
28 Crescent Street, Middletown, CT

Advanced Colon Care, Inc. d/b/a
Shoreline Colonoscopy Suites, LLC
929 Boston Post Road, Old Saybrook, CT

Docket Number: 12-31786-CON

Project Title: Transfer of Ownership of the Assets of
Advanced Colon Care, Inc., d/b/a
Shoreline Colonoscopy Suites, LLC,
to Middlesex Hospital

Project Description: Middlesex Hospital and Advanced Colon Care, Inc. d/b/a Shoreline Colonoscopy Suites, LLC ("Shoreline") (Middlesex Hospital and Shoreline are hereinafter collectively referred to as the "Applicants") are seeking Certificate of Need authorization for the transfer of ownership of the assets of Shoreline to Middlesex Hospital. The total capital expenditure associated with the proposed asset purchase is \$1,875,000.

Procedural History: The Applicants published notice of their intent to file the Certificate of Need application in the *New Haven Register* and the *Hartford Courant* on August 15, 16 and 17, 2012. On September 24, 2012, the Office of Health Care Access received the Certificate of Need application from the Applicants for the above-referenced project. On December 5, 2012, the Office of Health Care Access deemed the Certificate of Need application complete.

The Office of Health Care Access received no responses from the public concerning the Applicants' proposal and no hearing requests were received from the public pursuant to Connecticut General Statutes ("Conn. Gen. Stat.") § 19a-639a. Deputy Commissioner Lisa A. Davis read the entire record in this matter.

FINDINGS OF FACT

1. Middlesex Hospital, a wholly owned subsidiary of Middlesex Health System, Inc., is a not-for-profit, acute care hospital located at 28 Crescent Street in Middletown, Connecticut. Exhibit A, pp. 11, 19, 43 & 46.
2. Shoreline currently operates a licensed outpatient surgical center ("Shoreline Center") located at 929 Boston Post Road, Suite 1, in Old Saybrook, Connecticut. Exhibit A, p. 8.
3. Middlesex Hospital and Shoreline are health care facilities or institutions as defined by Conn. Gen. Stat. §19a-630.
4. The Shoreline Center is a freestanding, one operating room endoscopy center providing gastroenterology and colorectal services to residents of the shoreline area. Exhibit A, p. 8; Shoreline's Report in response to OHCA's Outpatient Surgery Questionnaire for Calendar Year 2010, information received by OHCA on July 20, 2011.
5. Shoreline is currently owned by Maurizio Nichele, M.D., who possesses a 51% ownership share, and Jay Zimmerman, M.D., who possesses a 49% ownership share. Both Shoreline physicians are affiliated with Middlesex Hospital. Exhibit A, pp. 8 & 10.
6. The Applicants are seeking Certificate of Need authorization for the transfer of ownership of the assets of Shoreline to Middlesex Hospital. Exhibit A, p. 8.
7. The proposed transfer of ownership would give Middlesex Hospital sole ownership of the assets of Shoreline after which the Shoreline Center will operate as an outpatient department of Middlesex Hospital. Exhibit A, p. 8.
8. The scope of services currently provided at the Shoreline Center will not change as a result of the proposed asset purchase. Exhibit A, p. 8.
9. Middlesex Hospital plans to enter into a co-management agreement with Dr. Nichele and Dr. Zimmerman to co-manage the Shoreline Center as well as have the doctors continue to provide professional services to the patients at the Shoreline Center. Exhibit A, pp. 8, 11 & 21.
10. Middlesex Hospital serves Middlesex County and the shoreline area of Connecticut through a network of community-based outpatient, primary care and emergency care facilities located throughout its service area. Exhibit A, p. 8.

11. The Shoreline Center is located within Middlesex Hospital's primary service area. Exhibit A, p. 9.
12. The Applicants assert that the proposed transfer of ownership will better enable the Shoreline physicians to focus on the professional services they provide to the Shoreline Center's patients, while at the same time allowing the Shoreline Center's patients to continue to receive endoscopy services locally under the auspices of Middlesex Hospital. Exhibit A, pp. 8 & 9.
13. The Applicants claim that the acquisition of Shoreline's assets will allow Middlesex Hospital to accomplish the following:
 - a. To integrate the Shoreline Center's community-based clinical services into Middlesex Health System's existing network of outpatient service sites to continue meeting the needs of area communities in the future;
 - b. To ensure effective and efficient care coordination for these patients receiving care within the Middlesex Health System; and
 - c. To provide long term sustainability of the outpatient services provided at the Shoreline Center.
Exhibit A, pp. 8 & 9; Exhibit E, p. 105.
14. The number of endoscopy procedures performed at the Shoreline Center for fiscal years ("FYs") 2007 through 2012 are as follows:

Table 1: Actual Shoreline Center Volume

Fiscal Year*	Number of Endoscopy Procedures
FY 2007	567
FY 2008	1,014
FY 2009	990
FY 2010	976
FY 2011	1,045
FY 2012	1,126**

Note: *The Shoreline Center's fiscal year operates on a calendar year basis.

**The annualized number of procedures for FY 2012 is based upon nine months of actual data, from January 1 to September 30, 2012.

Exhibit C, p. 49; Exhibit E, 111.

15. Middlesex Hospital projects the following number of endoscopy procedures annually without the proposal, incremental to the proposal and with the proposal.

Table 2: Projected Volume Without, Incremental to and With the Proposal

Fiscal Year	Without the Proposal	Incremental with the Proposal	With the Proposal
FY 2013	1,896	733	2,629
FY 2014	1,915	977	2,892
FY 2015	1,934	977	2,911

Exhibit A, pp. 15 and 99.

16. The Shoreline Center is accredited through the American Association for Accreditation of Ambulatory Surgery Facilities, Inc. Exhibit A, p. 8.
17. The capital expenditure for the proposal is \$1,875,000, representing the asset purchase price for the Shoreline Center. Exhibit A, p. 13.
18. Middlesex Hospital intends to use equity to fund the asset purchase. Exhibit A, p. 13.
19. Shoreline reported the following gains from operations for FYs 2007 through 2011:

Table 3: Actual Gains in Operations from Fiscal Years 2007 through 2011

	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Revenues from Operations	\$402,523	\$549,582	\$561,551	\$534,108	\$621,130
Total Operation Expense	\$362,678	\$538,479	\$530,112	\$528,860	\$601,842
Incremental Gain from Operations	\$39,845	\$11,352	\$31,439	\$5,248	\$19,288

Exhibit E, p. 111.

20. Middlesex Hospital projects the following incremental gains from operations with the proposed project:

Table 4: Projected Incremental Revenues and Expenditures with the Project

Net Patient Revenue	FY 2013*	FY 2014	FY 2015
Non-Government	\$1,985,376	\$2,673,639	\$2,700,376
Medicare	\$141,230	\$190,189	\$192,091
Medicaid & Other Medical Assistance	\$0	\$0	\$0
Other Government	\$0	\$0	\$0
Revenues from Operations	\$2,126,606	\$2,863,828	\$2,892,467
Total Operation Expense	\$763,072	\$791,777	\$801,709
Incremental Gain from Operations**	\$1,363,534	\$2,072,051	\$2,090,758

Note:*FY 2013 reflects commencement of the Center's service at the beginning of the Hospital's second quarter (i.e. 9-months of operation in year 1) and FYs 2014 and 2015 each reflects a full year or 12-month projected impact.

**Increasing revenue for the Shoreline Center in each of the future fiscal years, FYs 2013 through 2015, is attributable to increasing utilization volume when the operation becomes a Hospital outpatient center. Exhibit C, p. 99.

21. The actual payer mix for the Shoreline Center consists exclusively of Medicare and commercial insurers as is illustrated in the following table.

Table 5: Actual Payer Mix for the Shoreline Center

	Actual FY 2009	Actual FY 2010	Actual FY 2011	Actual FY 2012
Medicare*	22.1%	17.8%	21.3%	21.3%
Medicaid*	-	-	-	-
CHAMPUS & TriCare	-	-	-	-
Total Government	22.1%	17.8%	21.3%	21.3%
Commercial Insurers*	77.9%	82.2%	78.7%	78.7%
Uninsured	-	-	-	-
Workers Compensation	-	-	-	-
Total Non-Government	77.9%	82.2%	78.7%	78.7%
Total Payer Mix	100.0%	100.0%	100.0%	100.0%

Note: * Includes managed care activity.
 Exhibit C, p. 48.

22. Middlesex Hospital's overall projected payer mix with the inclusion of the Shoreline operations is as follows:

**Table 6: Projected Payer Mix for Middlesex Hospital with the
 Inclusion of the Shoreline Center Asset Purchase**

	Projected FY 2013	Projected FY 2014	Projected FY 2015
Medicare*	46.23%	46.23%	46.23%
Medicaid*	13.79%	13.78%	13.78%
CHAMPUS & TriCare	0.36%	0.36%	0.36%
Total Government	60.38%	60.38%	60.38%
Commercial Insurers*	36.68%	36.68%	36.68%
Uninsured	1.69%	1.69%	1.69%
Workers Compensation	1.24%	1.24%	1.24%
Total Non-Government	39.62%	39.62%	39.62%
Total Payer Mix	100.0%	100.0%	100.0%

Note: * Includes managed care activity.
 Exhibit A, p. 14.

23. Based upon the projected incremental gains reported by Middlesex Hospital, the Shoreline Center will continue its history of not serving the Medicaid population if this proposal were to be approved. Exhibit C, p. 99.
24. OHCA is currently in the process of establishing its policies and standards as regulations. Therefore, OHCA has not made any findings as to this proposal's relationship to any policies and standards not yet adopted as regulations by OHCA. (Conn. Gen. Stat. § 19a-639(a)(1)).
25. OHCA recently published a statewide facilities and services plan. Since the plan was not in circulation more than ninety days at the time the CON application was

deemed complete, OHCA has not made any findings as to this proposal's relationship to the plan. (Conn. Gen. Stat. § 19a-639(a)(2)).

26. The Applicants have not established that there is a clear public need for this proposal. (Conn. Gen. Stat. § 19a-639(a)(3)).
27. The Applicants have satisfactorily demonstrated that this proposal is financially feasible. (Conn. Gen. Stat. § 19a-639(a)(4)).
28. The Applicants have failed to satisfactorily demonstrate that their proposal would improve the accessibility, quality and cost effectiveness of health care delivery in the region. (Conn. Gen. Stat. § 19a-639(a)(5)).
29. The Applicants have shown that there would not be a change to the provision of health care services to the relevant populations and payer mix. (Conn. Gen. Stat. § 19a-639(a)(6)).
30. The Applicants have satisfactorily identified the population to be served by their proposal, but have failed to satisfactorily demonstrate that this population currently has a need as proposed. (Conn. Gen. Stat. § 19a-639(a)(7)).
31. The historical utilization in the service area does not support this proposal. (Conn. Gen. Stat. § 19a-639(a)(8)).
32. The Applicants have failed to satisfactorily demonstrate that their proposal would not result in an unnecessary duplication of existing services in the area. (Conn. Gen. Stat. § 19a-639(a)(9)).

DISCUSSION

Certificate of Need applications are decided on a case by case basis and do not lend themselves to general applicability due to the uniqueness of the facts in each case. In rendering its decision, the Office of Health Care Access considers the factors set forth in Conn. Gen. Stat. § 19a-639(a). The Applicants bear the burden of proof in this matter by a preponderance of the evidence. *Goldstar Medical Services, Inc., et al. v. Department of Social Services*, 288 Conn. 790 (2008).

The Applicants are seeking Certificate of Need authorization for the transfer of ownership of the assets of Shoreline to Middlesex Hospital with the continued operation of the endoscopy center as an outpatient department of Middlesex Hospital at its current Old Saybrook location. *FF 1, 2, 6, 7*. The scope of services currently provided at the Shoreline Center's single operating room will not change as a result of the proposed transfer of ownership. *FF 4, 8*. Shoreline is currently owned by Maurizio Nichele, M.D., who possesses a 51% ownership share, and Jay Zimmerman, M.D., who possesses a 49% ownership share. *FF 5*. Middlesex Hospital plans to enter into a co-management agreement with Drs. Nichele and Zimmerman to co-manage the Shoreline Center. Additionally, Drs. Nichele and Zimmerman will continue to provide professional services to the patients receiving endoscopy services at the Shoreline Center. *FF 9*.

The Applicants assert that the proposed transfer of ownership will better enable the Shoreline physicians to focus on the professional services they provide to the Shoreline Center's patients, while at the same time allowing the Shoreline Center's patients to continue to receive endoscopy services locally under the auspices of Middlesex Hospital. *FF 12*. The Applicants emphasize that their proposal will allow the Shoreline physicians to concentrate their efforts on serving the Shoreline Center's patient population; ensure effective and efficient care coordination for the patients receiving care within the Middlesex Health System; and provide sustainability of the outpatient services provided at the Shoreline Center. *FF 13*. However, since the Shoreline physicians would be co-managing the Shoreline Center with Middlesex Hospital, the Applicants have failed to demonstrate that there exists a need for a change in management or that this proposal would satisfy any such need. Moreover, while the endoscopy services to be offered at the Shoreline Center will maintain access for those patients enrolled in the Medicare program, as well as for those patients who are commercially insured, the proposal will not allow for inclusion of Medicaid and Other Medical Assistance patients. *FF 20-23*. Consequently, OHCA finds that the Applicants have failed to satisfactorily demonstrate that their proposal would improve the accessibility of health care delivery in the region.

Based upon the foregoing, OHCA concludes that, although the proposal may be beneficial to the Applicants, they have not demonstrated a clear public need for the proposed transfer of ownership of Advanced Colon Care, Inc. d/b/a Shoreline Colonoscopy Suites, LLC, to Middlesex Hospital. *FF 26*.

Order


Based upon the foregoing Findings and Discussion, the Certificate of Need application of Middlesex Hospital and Advanced Colon Care, Inc. d/b/a Shoreline Colonoscopy Suites, LLC, for the transfer of the assets of Advanced Colon Care, Inc. d/b/a Shoreline Colonoscopy Suites, LLC, to Middlesex Hospital, is hereby **DENIED**.

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

Respectfully submitted,

Date

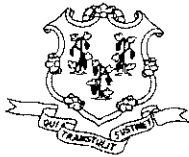
5/8/2013


Lisa A. Davis, MBA, BSN, RN
Deputy Commissioner

*** TX REPORT ***

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STATE OF CONNECTICUT
DEPARTMENT OF HEALTH SERVICES
OFFICE OF HEALTH CARE ACCESS

FAX SHEET

TO: ✓ HARRY EVERT MAURIZIO D. NICHELE, M.D.

FAX: (860) 346-5485 N/A C/O (860) 346-5485

AGENCY: MIDDLESEX HOSPITAL SHORELINE COLONOSCOPY

FROM: JACK HUBER

DATE: 5/9/2013 Time: 3:25 pm

NUMBER OF PAGES: 10
(including transmittal sheet)

Comments: Transmitted:
Final Decision Regarding the Transfer the Ownership of the Assets of
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Middlesex Hospital.
Docket Number: 12-31786-CON

**PLEASE PHONE Jack A. Huber at (860) 418-7069
IF THERE ARE ANY TRANSMISSION PROBLEMS.**

*** TX REPORT ***

TRANSMISSION OK

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