



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

April 17, 2014

IN THE MATTER OF:

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

Notice of Agreed Settlement
Office of Health Care Access
Docket Number: 13-31852-CON

HHC Southington Surgery Center, LLC

**Establishment of an Orthopedic
Ambulatory Surgery Center at The
Hospital of Central Connecticut's
Bradley Memorial Campus in
Southington, Connecticut**

To:

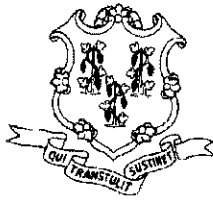
Barbara A. Durdy
Strategic Planning Director
Hartford HealthCare Corporation
181 Patricia Genova Drive
Newington, CT 06011

Dear Ms. Durdy:

This letter will serve as notice of the approved Certificate of Need Application in the above-referenced matter. On April 17, 2014, the Agreed Settlement, attached hereto, was adopted and issued as an Order by the Department of Public Health, Office of Health Care Access.

Kimberly R. Martone
Director of Operations

Enclosure
KRM:jah



**Department of Public Health
Office of Health Care Access
Certificate of Need Application**

Agreed Settlement

Applicant: HHC Southington Surgery Center, LLC
81 Meriden Avenue, Southington, CT 06489

Docket Number: 13-31852-CON

Project Title: Proposal to Establish HHC Southington Surgery Center, LLC,
an Ambulatory Surgical Center Dedicated to Orthopedic
Outpatient Surgical Services in Southington

Project Description: HHC Southington Surgery Center, LLC (“Applicant” or “HHC”) is seeking Certificate of Need authorization to establish an ambulatory surgical center dedicated to orthopedic outpatient surgical services to be located at the Bradley Memorial campus of The Hospital of Central Connecticut, 81 Meriden Avenue, Southington.

Procedural History: The Applicant published notice of its intent to file the Certificate of Need application in the *Hartford Courant* on April 15, 16, and 17, 2013. On July 15, 2013, the Office of Health Care Access (“OHCA”) received the Certificate of Need application from the Applicant for the above-referenced project. On December 12, 2013, OHCA deemed the Certificate of Need application complete.

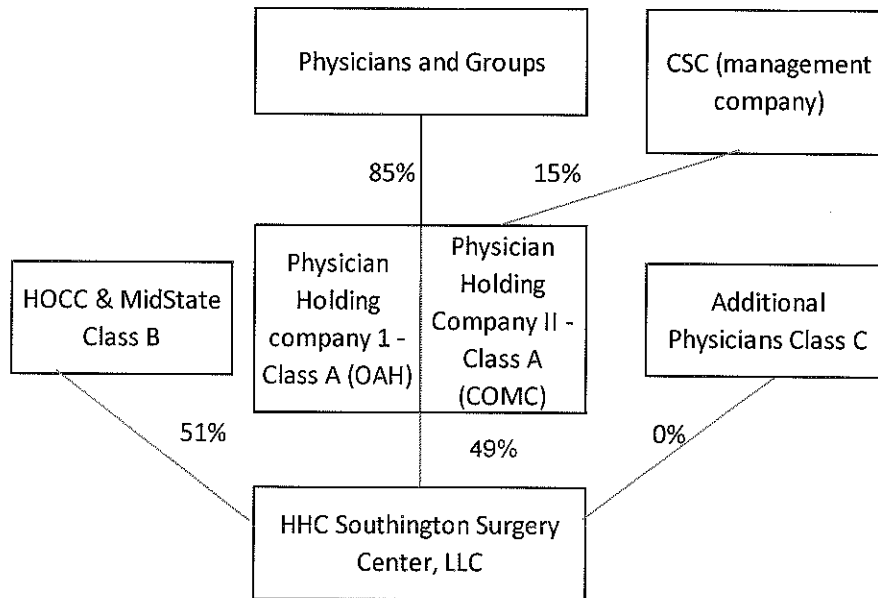
OHCA received no responses from the public concerning the Applicant’s proposal and no hearing requests were received from the public pursuant to Connecticut General Statutes (“Conn. Gen. Stat.”) § 19a-639a(e). In rendering this decision, Deputy Commissioner Davis considered the entire record in this matter.

To the extent the findings of fact actually represent conclusions of law, they should be so considered, and vice versa. *SAS Inst., Inc., v. S & H Computer Systems, Inc.*, 605 F.Supp. 816 (Md. Tenn. 1985).

Findings of Fact and Conclusions of Law

1. The Hospital of Central Connecticut ("HOCC") and MidState Medical Center ("MidState") are affiliates of Hartford HealthCare. Exhibit A, pp. 6, 25.
2. HOCC has two campuses, one at 100 Grand Street, New Britain ("HOCC New Britain") and one at 81 Meriden Avenue, Southington ("HOCC Bradley"). MidState is located at 435 Lewis Avenue, Meriden. Exhibit A, p. 96.
3. HOCC Bradley currently has four inpatient/outpatient operating rooms that are underutilized. One of the operating rooms is shelled and another is not utilized at all. Exhibit A, pp. 6, 7, 12.
4. In 2012, HOCC engaged an independent consultant to assist in the development of a strategy for the future use of HOCC Bradley. One of the primary objectives of this engagement was to determine how to most effectively leverage the strengths of HOCC Bradley to better meet the needs of the community. As a result, the consultant recommended that HOCC Bradley be the focus of ambulatory services. More specifically, the consultant recommended that the Bradley campus develop an ambulatory services component and not duplicate the more complex and costly services provided on the New Britain campus of HOCC. Exhibit A, p. 10.
5. This proposal is for the establishment of an ambulatory surgery center, HHC, at HOCC Bradley to be dedicated to orthopedic surgical services. Three of the existing operating rooms at HOCC Bradley will be completely renovated and set aside for the exclusive use of HHC. Exhibit A, pp. 2, 7.
6. HOCC and MidState will jointly operate HHC with two groups of regional orthopedic physicians, Orthopedic Associates of Hartford, P.C. and Comprehensive Orthopaedic and Musculoskeletal Care, LLC. The two physician groups ("Physicians and Groups") have committed to becoming members of and utilizing HHC. All of the surgeons will be on the medical staff of either HOCC or MidState. Exhibit A, p. 6 and Exhibit C, pp. 427, 428.
7. The Surgeons and Constitution Surgery Centers, LLC, ("CSC"), a management company with expertise in the management of ASCs, will establish a holding company for the sole purpose of holding a 49% interest in HHC. The Physicians and Groups will have an 85% interest in the holding company and CSC will have a 15% interest. Exhibit C, p. 408.
8. HOCC and MidState will collectively own a 51% controlling membership interest in HHC. There are three classes of membership. As the Class B member and the majority interest holder, HOCC and MidState are the only members with the right to act for or bind HHC. The following diagram illustrates the proposed organization of HHC. Exhibit A, pp. 6, 28, 46 and Exhibit C, p. 430.

Proposed Organizational Structure of HHC



9. HHC will operate pursuant to the same Financial Assistance Policy as HOCC and MidState, which provides financial assistance for eligible persons that are uninsured, underinsured or medically indigent. Exhibit A, pp. 17, 388-393. Exhibit C, p.410.
10. The proposal to establish a freestanding ASC dedicated to orthopedic surgery is based upon the following factors:
 - a. Patients would benefit from access to a facility that offers higher quality, lower cost and more efficient outpatient orthopedic surgical services; and
 - b. Payers for health care are expecting providers to offer enhanced value at a lower cost.Exhibit A, pp. 6, 8.
11. Through its dedication to a single service line, orthopedic surgery, HHC can more easily facilitate the implementation of evidence-based surgical practices. Exhibit A, p. 8.
12. HHC will utilize specialized care protocols specific to orthopedics and consistent with best clinical practices to ensure high quality standards are met and sustained. Exhibit A, p. 15.
13. HHC will meet and maintain all national standards required to achieve accreditation by the Accreditation Association for Ambulatory Health Care Centers. Exhibit A, p.

14. HHC will have three fully equipped operating rooms. No ASC operating rooms will be built and shelled for future use. Exhibit A, p. 8.
15. HHC will be considered a freestanding ASC for reimbursement purposes, thereby resulting in lower payment rates for commercial payers and patients. Exhibit A, p. 8
16. According to the Ambulatory Surgery Center Association, the reduction in Medicare spending has been approximately \$2.6 billion a year as a result of shifting surgical cases from a hospital-based setting to an ambulatory setting. Exhibit A, p. 9.
17. Health care reform has made it more important for hospitals and physicians to collaborate in developing new health-care delivery models that offer higher quality care at a lower cost. Exhibit A, p. 7.
18. Medicare pays ASCs less than what is paid to hospitals for the same procedures and patients typically pay less co-insurance for procedures performed in an ASC than in a hospital-based outpatient surgery department. Exhibit A, pp. 106, 114.
19. This proposal will result in the shifting of outpatient orthopedic surgery volume from HOCC New Britain and MidState to HHC thereby allowing patients to receive high quality orthopedic surgery at a reduced charge when compared to a hospital-based facility. Exhibit A, p. 7.
20. The service area of the proposed ASC includes the following towns: Berlin, Newington, New Britain, Plainville, Southington, Meriden, Wallingford and Cheshire. Exhibit A, p. 9.
21. Patients within the proposed service area are currently receiving inpatient and outpatient orthopedic surgery at the following three hospital-based ASCs: HOCC New Britain; HOCC Bradley; and MidState in Meriden. There are also two additional single-specialty ASCs serving the proposed population: Hartford Hospital operates an eye surgery ASC in Newington; and Masonicare has a gastroenterology ASC in Wallingford. Statewide Health Care Facilities and Services Plan, October 2012, Connecticut Department of Public Health, Office of Health Care Access.
22. The total utilization of surgical facilities within the service area for this proposal is 95% of maximum capacity. Exhibit A, p. 12.

23. HOCC and MidState reported that their orthopedic Physicians performed the following number of outpatient surgical cases by physician, by service or procedural type in Fiscal Year (“FY”) 2012:

Table 1: FY 2012 Outpatient Orthopedic Volumes by Physician

FY 2012 Actual Outpatient Volumes by Physician					
	Hand/Wrist /Elbow	Foot / Ankle	Knee/ Shoulder	General	Total
Physician 1	39	5	109	1	154
Physician 2	22	1	198	2	223
Physician 3	29	3	148	10	190
Physician 4	226	1	0	50	277
Physician 5	26	11	351	6	394
Physician 6	73	12	138	12	235
Physician 7	52	13	172	2	239
Physician 8	51	3	37	8	99
Physician 9	91	11	129	5	236
Physician 10	56	11	79	11	157
Physician 11	67	11	67	4	149
Total	732	82	1428	111	2353

Exhibit A, p. 15.

24. The following table summarizes the number of operating rooms at the three hospital locations and the utilization of each in FY 2012. HOCC New Britain and MidState are both operating at capacity while HOCC Bradley is operating at 60%.

Table 2: Operating Rooms Utilization and Capacity in FY 2012

Location	Number of Operating Rooms		Total Cases FY 2012	Estimated	
	Available	Utilized		Maximum*	Utilization
HOCC New Britain	23	23	9,962	10,441	95%
HOCC Bradley	4	2	1,647	2,729	60%
MidState	9	9	8,162	7,744	105%

*Estimated maximum capacity is the number of surgical cases that may be performed in a single year at the location based on number of operating rooms utilized. A single year is based on cases being performed Monday through Friday, eight hours per day and 250 days per year.

Exhibit A, p. 12.

25. The number of surgical procedures performed at HOCC Bradley decreased by 31% from FY 2010 to FY 2013.

TABLE 3: Number of Surgical Procedures Performed at HOCC Bradley

Type of Procedure	Number of Procedures Performed by FY			
	2010	2011	2012	2013*
Inpatient	401	366	281	230
Outpatient	1,489	1,278	1,358	1,074
Total	1,890	1,644	1,639	1,304
Annual Decrease, %	-	13.0%	0.3%	-20.4%
Cumulative Decrease since 2010, %	-	-	-13%	-31%

* Volume annualized based on the number of procedures performed from October 1, 2012 to July 31, 2013.

Exhibit E, p. 413.

26. This proposal is expected to increase utilization of HOCC Bradley by HHC patients as follows:

Table 4: Projected Orthopedic Outpatient Surgical Volume

Service or Procedure Type	Projected Volume (First 3 Full Operational FYs)*		
	FY 2014	FY 2015	FY 2016
Hand, Wrist, Elbow	752	775	800
Foot, Ankle	84	86	89
Knee, Shoulder	1,461	1,499	1,535
Other Orthopedic	117	118	120
Total	2,414	2,478	2,544

* The fiscal year for the proposed ASC is Oct 1 – Sep 30.

Exhibit A, p. 14.

27. The projected volumes are based on the actual case volumes of the physicians who will be shifting their outpatient orthopedic cases to HHC. Exhibit A, p. 14.
28. HHC will have little or no impact on existing providers since the orthopedic physicians that are performing their orthopedic surgical cases in the service area will be the same physicians who will be performing orthopedic outpatient surgery at HHC. Exhibit A, p. 13.
29. The use of the proposed ASC will not be limited to the physician owners. The proposed ASC will have an open medical staff, and additional non-investor physicians satisfying the credentialing requirements of the proposed ASC and of the Hospitals may provide services at the proposed ASC. This will provide for enhanced utilization of the proposed ASC, help to strengthen the ASC's financial performance and allow an opportunity for those physicians who either elect not to invest or who are not in a position to do so to utilize the proposed ASC. Exhibit C, p. 411.

30. The proposed capital expenditure for the establishment of HHC is as follows:

Table 5: Proposed Capital Expenditure

Description:	Cost
Medical Equipment Purchase	\$1,800,000
Construction/Renovation	\$2,200,000
Working Capital	\$1,300,000
Total Capital Expenditure	\$5,300,000

Exhibit A, p. 17.

31. The Applicant will lease at a fair market value from HOCC approximately 10,000 square feet of space, consisting of three operating rooms, preoperative/recovery space and sterile processing/supplies support space at HOCC Bradley for the operation of the proposed ASC. Exhibit A, p. 7.
32. The operations of HHC will be funded through capital contributions by the members, income from operations and lender financing at market rates. Exhibit A, p. 17.
33. The Applicant projects incremental gains from operations in each of the proposal's first three fiscal years.

Table 6: Projected SSC's Incremental Gain from Operations by Fiscal Year

Net Patient Revenue	FY 2014	FY 2015	FY 2016
Non-Government	\$8,982,769	\$9,368,810	\$9,772,661
Medicare	\$827,491	\$863,053	\$900,256
Medicaid & Other Medical Assistance	\$159,516	\$166,372	\$173,543
Other Government	\$0	\$0	\$0
Revenues from Operations	\$9,969,776	\$10,398,235	\$10,846,460
Total Operating Expense	\$5,164,891	\$5,381,592	\$5,618,221
Incremental Gains from Operations	\$4,804,885	\$5,016,643	\$5,228,249

Exhibit A, pp. 14, 19, 402.

Net patient revenue is based on Medicare and Medicaid fee schedules for ASCs and the projected volumes. Total operating expenses are based on CSC's experience in Connecticut.

34. The projected patient population mix is based on the current patient population mix for both HOCC and MidState, and is projected to remain unchanged.

Table 7: Current and Projected Patient Population Mix

	Current	Projected		
	FY 2012	FY 2014	FY 2015	FY 2016
Medicare*	18.3%	18.3%	18.3%	18.3%
Medicaid*	3.8%	3.8%	3.8%	3.8%
CHAMPUS & TriCare				
Total Government	22.6%	22.6%	22.6%	22.6%
Commercial Insurers*	66.0%	66.0%	66.0%	66.0%
Uninsured	0.3%	0.3%	0.3%	0.3%
Workers Compensation	11.1%	11.1%	11.1%	11.1%
Total Non-Government	77.4%	77.4%	77.4%	77.4%
Total Payer Mix	100%	100%	100%	100%

Note: * Includes managed care activity.
 Exhibit A, p. 18.

35. 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 regulations adopted by OHCA. (Conn. Gen. Stat. § 19a-639(a)(1)).
36. The Applicant's proposal is consistent with the overall goals of the Statewide Health Care Facilities and Services Plan. (Conn. Gen. Stat. § 19a-639(a)(2)).
37. The Applicant has satisfactorily demonstrated that there is a clear public need for this proposal. (Conn. Gen. Stat. § 19a-639(a)(3)).
38. The Applicant has satisfactorily demonstrated that this proposal is financially feasible. (Conn. Gen. Stat. § 19a-639(a)(4)).
39. The Applicant has satisfactorily demonstrated that the proposal will improve access and improve the quality of health care delivery in the region and it has satisfactorily demonstrated an improvement in cost effectiveness. (Conn. Gen. Stat. § 19a-639(a)(5)).
40. The Applicant has shown that there would be no change to the provision of health care services to the relevant patient populations and payer mix. (Conn. Gen. Stat. § 19a-639(a)(6)).
41. The Applicant has satisfactorily identified the population to be served by the proposal, and has satisfactorily demonstrated that this population has a need as proposed. (Conn. Gen. Stat. § 19a-639(a)(7)).
42. The Applicant's historical provision of surgical procedures in the service area supports this proposal. (Conn. Gen. Stat. § 19a-639(a)(8)).

43. The Applicant has satisfactorily demonstrated that the proposal will not result in an unnecessary duplication of existing services in the area. (Conn. Gen. Stat. § 19a-639(a)(9)).

Discussion

CON 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, OHCA considers the factors set forth in Connecticut General Statutes § 19a-639(a). The Applicants bear the burden of proof in this matter by a preponderance of the evidence. *Jones v. Connecticut Medical Examining Board*, 309 Conn. 727 (2013).

HOCC and MidState are affiliates of Hartford HealthCare. *FF 1* HOCC has two campuses, one at 100 Grand Street, New Britain ("HOCC New Britain") and one at 81 Meriden Avenue, Southington ("HOCC Bradley"). MidState is located at 435 Lewis Avenue, Meriden. *FF2* HOCC Bradley currently has four inpatient/outpatient operating rooms that are underutilized. One of the operating rooms is shelled and another is not utilized at all. *FF3* In 2012, HOCC engaged an independent consultant to assist in the development of a strategy for the future use of HOCC Bradley. One of the primary objectives of this engagement was to determine how to most effectively leverage the strengths of HOCC Bradley to better meet the needs of the community. As a result, the consultant recommended that HOCC Bradley be the focus of ambulatory services. More specifically, the consultant recommended that the Bradley campus develop an ambulatory services component and not duplicate the more complex and costly services provided on the New Britain campus of HOCC. *FF4* The resulting proposal before OHCA is for the establishment of an ambulatory surgery center, HHC, at HOCC Bradley to be dedicated to orthopedic surgical services, with three of the existing operating rooms at HOCC Bradley to be set aside for the exclusive use of HHC. *FF5*

The service area of HHC includes Berlin, Newington, New Britain, Plainville, Southington, Meriden, Wallingford and Cheshire. Patients within the proposed service area are currently receiving inpatient and outpatient orthopedic surgery at the following three hospital-based ASCs: HOCC New Britain; HOCC Bradley; and MidState in Meriden. There are also two additional single-specialty ASCs serving the proposed population: Hartford Hospital operates an eye surgery ASC in Newington; and Masonicare has a gastroenterology ASC in Wallingford. *FF20&21* Since the proposed outpatient orthopedic population is already being served solely by HOCC New Britain; HOCC Bradley; and MidState, there are no other providers that could potentially be impacted by this proposal. *FF28*

HOCC and MidState will jointly operate HHC with two groups of regional orthopedic physicians, Orthopedic Associates of Hartford, P.C. and Comprehensive Orthopaedic and Musculoskeletal Care, LLC. The Physicians and Groups have committed to becoming members of and utilizing HHC. All of the surgeons will be on the medical staff of either HOCC or MidState. HOCC and MidState will collectively own a 51% controlling membership interest in HHC. *FF6-8* This will provide a valuable benefit to the proposed population since HHC will operate pursuant to the same Financial Assistance Policy as HOCC and MidState, which provides financial assistance for eligible persons that are uninsured, underinsured or medically indigent. *FF9* The ability to provide financial assistance to those self-pay patients who may not have otherwise had the financial means

to receive orthopedic surgery services demonstrates that the Applicant will improve access to services for the proposed population.

HHC's focus on orthopedic surgery will allow it to more easily facilitate the implementation of evidence-based surgical practices to accommodate the projected growth in orthopedic surgery. HHC will utilize specialized care protocols specific to orthopedics and consistent with best clinical practices to ensure high quality standards are met and sustained. HHC will meet and maintain all national standards required to achieve accreditation by the Accreditation Association for Ambulatory Health Care Centers.

FF11-13 It is clear that the Applicant has demonstrated clear public need and an improvement in the quality of care for its proposed population given the high standards that will be met and maintained at HHC.

As an added benefit, HHC will be considered a freestanding ASC for reimbursement purposes, thereby resulting in lower payment rates for government payers, commercial payers and patients. According to the Ambulatory Surgery Center Association, the reduction in Medicare spending has been approximately \$2.6 billion a year as a result of shifting surgical cases from a hospital-based setting to an ambulatory setting. Health care reform has made it more important for hospitals and physicians to collaborate in developing new health-care delivery models that offer higher quality care at a lower cost. By offering a lower cost health-care delivery model for the provision of outpatient orthopedic surgical services, HHC will be more responsive to the demands of payers and patients. Medicare pays ASCs less than what is paid to hospitals for the same procedures and patients typically pay less co-insurance for procedures performed in an ASC than in a hospital-based outpatient surgery department. Since this proposal will result in the shifting of outpatient orthopedic surgery volume from HOCC New Britain and MidState to HHC, the result will be patients receiving high quality orthopedic surgery at a reduced charge when compared to a hospital-based facility. *FF15-19* Therefore, the Applicant has demonstrated that its proposal will not have an impact on the Medicaid population and, in fact, will provide a lower-cost option for all of its proposed population and payer mix. Cost effectiveness further supports clear public need for the proposal.

The Applicant's proposal has a capital expenditure of \$5.3 million with projected incremental gains from operations of \$4.8 million, \$5.0 million and \$5.2 million in FY 2014 through FY 2016, respectively. *FF30-33* As a result, the Applicant has demonstrated that the proposal is financially feasible.

The Applicant has sufficiently demonstrated that this proposal meets a clear public need for high quality care at a reduced cost, which is in keeping with the overall goals of the Statewide Health Care Facilities and Services Plan. As an added benefit, the Applicant has demonstrated that it can accomplish these goals in a financially feasible manner without impacting other providers.

In the interest of full disclosure by HHC to its patients, OHCA requires that HHC meet certain conditions as described in the Order attached hereto and incorporated into this decision.


ORDER

NOW, THEREFORE, the Department of Public Health, Office of Health Care Access (“OHCA”), and HHC Southington Surgery Center, LLC (“HHC”) hereby stipulate and agree to the terms of settlement with respect to the establishment of an ambulatory surgical center dedicated to orthopedic outpatient surgical services to be located at the Bradley Memorial campus of The Hospital of Central Connecticut, 81 Meriden Avenue, Southington, as follows:

1. In accordance with 42 CFR 416.50(b), HHC must disclose in accordance with Part 420 of this subchapter, and provide a list of physicians who have a financial or ownership interest in the HHC facility to the patient. Disclosure of such information must be in writing.
2. HHC shall provide OHCA with a copy of the disclosure referenced in Paragraph 1 within ten (10) business days of execution of this Agreed Settlement by HHC. The disclosure shall be reviewed and approved by OHCA prior to the start of operations at HHC.
3. This Agreed Settlement is an order of OHCA with all the rights and obligations attendant thereto, and OHCA may enforce this Agreed Settlement under the provisions of Conn. Gen. Stat. §§ 19a-642 and 19a-653 with all fees and costs of such enforcement being the responsibility of HHC.
3. OHCA and HHC agree that this Agreed Settlement represents a final agreement between OHCA and HHC with respect to this Application. The signing of this Agreed Settlement resolves all objections, claims, and disputes that may have been raised by HHC with regard to Docket Number: 13-31852-CON.
4. This Agreed Settlement shall be binding upon HHC and its successors and assigns.


Signed by Lucille Janatka, HHC Sr. Vice President & Central Region President
(Print name) (Title)

4/16/14
Date


Duly Authorized Agent for
HHC Southington Surgery Center, LLC

The above Agreed Settlement is hereby accepted and so ordered by the Department of Public Health Office of Health Care Access on April 17, 2014.

4/17/14
Date:


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