

# STATE OF CONNECTICUT

## DEPARTMENT OF PUBLIC HEALTH

Raul Pino, M.D., M.P.H.  
Commissioner



Dannel P. Malloy  
Governor  
Nancy Wyman  
Lt. Governor

Office of Health Care Access

## Certificate of Need Final Decision

**Applicants:** **Western Connecticut Orthopedic Surgical Center, LLC**  
**226 White St.**  
**Danbury, CT 06810**

**SCA-Western Connecticut, LLC**  
**569 Brookwood Village**  
**Suite 901**  
**Birmingham, AL 35209**

**Docket Number:** 17-32176-CON

**Project Title:** **Transfer 11% ownership interest of Western Connecticut Orthopedic Surgical Center, LLC to SCA-Western Connecticut, LLC.**

**Project Description:** Western Connecticut Orthopedic Surgical Center, LLC and SCA-Western Connecticut, LLC, herein collectively referred to as the “Applicants,” seek authorization to transfer an 11% ownership interest in Western Connecticut Orthopedic Surgical Center, LLC to SCA-Western Connecticut, LLC, an affiliate of Surgical Care Affiliates, LLC and United Health Group Inc.

**Procedural History:** The Applicants published notice of their intent to file a Certificate of Need (“CON”) application in *The News Times* (Danbury) on June 1, 2 and 3, 2017. On June 29, 2017, the Office of Health Care Access (“OHCA”) received the CON application from the Applicants for the above-referenced project and deemed the application complete on August 24, 2017. OHCA received no responses from the public concerning the proposal and no hearing requests were received from the public per Connecticut General Statutes (“Conn. Gen. Stat.”) § 19a-639a(e). Deputy Commissioner Addo considered the entire record in this matter.



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## Findings of Fact and Conclusions of Law

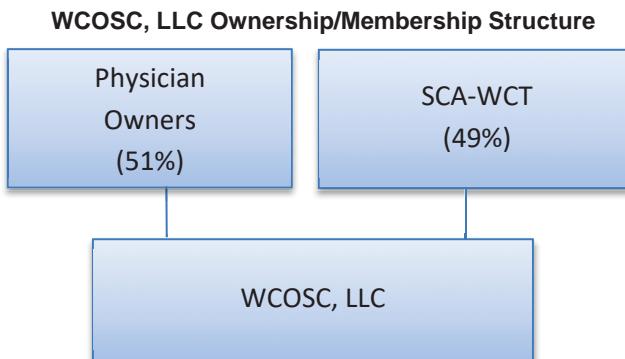
1. Western Connecticut Orthopedic Surgical Center, LLC (WCOSC) owns and operates Western Connecticut Orthopedic Surgical Center ("Surgery Center") located at 226 White Street in Danbury. Ex. A, p. 19
2. The Surgery Center is a single-specialty facility, with two operating rooms and one procedure room, which provides orthopedic ambulatory surgical services (includes spine and pain management spine cases). Ex. A, pp. 19, 22; Ex. C, p. 389
3. The Surgery Center's primary service area includes the towns of Danbury, New Milford, Newtown, Ridgefield, Brookfield, Bethel, Southbury and New Fairfield. Ex. A, p. 22
4. The Surgery Center initially operated as The Hand Center of Western Connecticut, LLC ("THC") and was physician-owned. Ex. A, p. 22
5. In June of 2012, OHCA determined (Docket No. 12-31754-DTR) that no CON was required to syndicate ownership of THC to an affiliate of Merritt Healthcare ("Merritt"). Until recently, a majority of WCOSC was owned by fourteen Connecticut-licensed physicians, with a minority stake held by Merritt, who managed the day-to-day operations of the Surgery Center. Ex. A, p. 22
6. In 2016, Merritt made a strategic decision to divest its interests and management role in certain outpatient surgery centers in Connecticut. Merritt and its physician partners believed that it was in the best interest of the Surgery Center to obtain a larger strategic partner, who could assist the facility through scale and resources, ultimately selecting SCA Western Connecticut, LLC (SCA-WCT) as the purchaser. Ex. A, p. 22
7. SCA-WCT is an affiliate of Surgical Care Affiliates ("SCA"), a subsidiary of United Health Group Incorporated's Optum business line. SCA operates more than 200 surgical facilities nationwide, including six in Connecticut.<sup>1</sup> Ex. A, p. 19-22
8. SCA and the Surgery Center's definitive agreement contemplated a two-phase transaction; the first phase included the minority acquisition by SCA-WCT and the initiation of SCA management services, while the second phase proposed the majority buy-up by SCA-WCT. Ex. A, p. 24
9. In May 2017, SCA-WCT acquired a 49% minority interest in the Surgery Center and assumed the day-to-day management of the facility. The remaining 51% of the Surgery Center is owned by fourteen physician owners. Ex. A, pp. 19, 22

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<sup>1</sup> Connecticut Surgery Center in Hartford, Danbury Surgical Center in Danbury, River Valley Ambulatory Surgery Center in Norwich, Surgery Center of Fairfield County in Trumbull, Surgical Center of Connecticut in Bridgeport and Western Connecticut Orthopedic Surgical Center in Danbury.

10. With phase one complete, SCA-WCT is now seeking approval to acquire an additional 11% ownership interest in the Surgery Center<sup>2</sup>, giving SCA-WCT a 60% controlling interest. Ex. A, p. 19

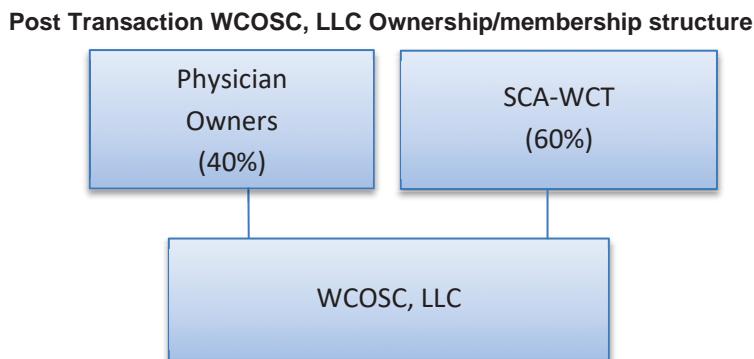
11. The current organization structure of WCOSC, LLC is reflected below:



Ex. A, p. 381

12. The Surgery Center is governed by a Board of Managers consisting of five members - four members of the Board were appointed by a majority of the Class A Members (i.e., physician owners) and one was appointed by SCA-WCT. Ex. A, p. 378

13. The post-transaction organization structure of WCOSC, LLC is reflected below:



Ex. A, p. 381

14. Post-closing, the Surgery Center will retain a five-member Board; however, SCA-WCT will appoint three members and the physician-owners will appoint two. Ex. A, p. 378

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<sup>2</sup> SCA recently obtained the majority controlling interest at two Connecticut ambulatory surgery centers: the Surgical Center of Connecticut (Docket 17-32145-CON) in Bridgeport and at River Valley Ambulatory Surgery Center (Docket 17-32146-CON) in Norwich.

15. SCA-WCT's decision to acquire the majority interest (60%) in the Surgery Center will allow the Surgery Center to:

- undertake joint managed care contracting for multiple facilities within a geographic area;
- provide opportunities to participate in group purchasing and potentially lower cost; and
- make additional equity available to attract future physician recruits.

Ex. A, p. 22; Ex. C, p 385

16. In coordination with the proposal, SCA plans to conduct clinical onboarding with the Surgery Center's clinical team. Focused instructional time will be dedicated to infection control, life safety regulations (i.e., set by the American Society for Healthcare Engineering) and medication management. Ex. A, p. 30

17. The proposal will help enhance the Surgery Center's ability to:

- track and improve quality measures through use of the clinical lead program;
- utilize data and analytic platforms;
- offer more competitive compensation packages;
- recruit highly skilled, sought after physicians;
- negotiate with payers for in-network contracts; and
- participate in group purchasing organization ("GPO") cost savings.

Ex. A, pp. 19, 23, 30

18. SCA's clinical lead program will provide the Surgery Center with an external resource to help target areas for quality improvement, prepare surveys and initiate clinical training on new quality rules and regulations. Ex. A, p. 30

19. Clinical leads have also introduced the SCA Quality Index to the Surgery Center, which benchmarks SCA's 200+ facilities against each other in the following areas:

- CMS Ambulatory Surgery Center quality measures;
- patient satisfaction;
- accreditation status; and
- CMS survey results.

Ex. A, p. 30

20. In addition to meeting the Accreditation Association for Ambulatory Health Care ("AAAHC") requirements and achieving historically strong results in the state survey, the Surgery Center has targeted specific areas for improvement through focused quality initiatives. For example, the facility is currently conducting a QI study centered on improving Hand Hygiene. Ex. A, pp. 30, 343-347

21. SCA plans to implement a data analytics platform called Insight. This Tableau Software-based, proprietary toolset provides support for decision making at the physician, facility and market level and is based on clinical metrics, case profitability, physician recruitment and operational efficiencies (labor and cost). Ex. C, p. 385

22. In addition, SCA plans to transition the Surgery Center from a manual tracking and reporting system to Quantros, an electronic system measuring quality performance. The system allows anonymous entries and systematic tracking of incident reporting, along with subsequent corrective actions. Ex. A, p. 30
23. As a result of the enhanced recruitment ability, the Surgery Center has credentialed two new physicians in FY 2017; one, an orthopedic specialist and the other a pain management specialist. Further, five additional physician recruits are currently in the credentialing process, including two pain management specialists, two spine specialists and one orthopedic surgeon. Ex. C, p. 388
24. The Surgery Center recently expanded its in-network insurers by adding Cigna and Aetna and now participates with all major commercial payers, helping to reduce out-of-network charges for patients. Ex. A, p. 27; Ex. C, p. 386
25. No changes to the surgical services offered at the Surgery Center are planned by the Applicants. Ex. A, p. 28
26. The Applicants do not expect any change in the service area or the patient population served as a result of the proposal. Ex. A, p. 28
27. Historical utilization volumes are shown in the table below:

**TABLE 1**  
**HISTORICAL UTILIZATION BY SERVICE**

| <b>Service</b>  | <b>Actual Volume<br/>(surgical cases)</b> |                |                | <b>FY 2017<br/>Jan-Jun</b> |
|-----------------|---|----------------|----------------|----------------------------|
|                 | <b>FY 2014</b>                            | <b>FY 2015</b> | <b>FY 2016</b> |                            |
| Orthopedics     | 938                                       | 2,156          | 2,561          | 1,488                      |
| Pain Management | 30  | 171            | 124            | 68                         |
| Spine           | 6   | 57             | 120            | 63                         |
| <b>Total</b>    | <b>974</b>                                | <b>2,384</b>   | <b>2,805</b>   | <b>1,619</b>               |

Ex. A, p. 43; Ex. C, p. 388

28. The projected increase in FY 2017 volume is primarily the result of new physician recruitment and the continued ramp-up in volume from WCOSC's transition to an in-network provider for Cigna and Aetna. Volumes are projected to grow 1.5% in subsequent years, based on SCA's experience at other facilities in Connecticut and nationally. Ex. A, p. 35

**TABLE 2**  
**PROJECTED UTILIZATION BY SERVICE**

| Service         | Projected Volume<br>(surgical cases) |              |              |              |
|-----------------|--------------------------------------|--------------|--------------|--------------|
|                 | FY 2017                              | FY 2018      | FY 2019      | FY 2020      |
| Orthopedics     | 3,066                                | 3,111        | 3,158        | 3,205        |
| Pain Management | 139                                  | 142          | 144          | 146          |
| Spine           | 130                                  | 132          | 134          | 136          |
| <b>Total</b>    | <b>3,335</b>                         | <b>3,385</b> | <b>3,436</b> | <b>3,487</b> |

Ex. A, p. 43

29. Currently, less than one percent of the Surgery Center's patient population is comprised of Medicaid patients. The proportion of commercial payers is expected to increase as a result of becoming a Cigna and Aetna in-network provider. Ex. A pp. 37, 44

**TABLE 3**  
**APPLICANT'S CURRENT & PROJECTED PAYER MIX**

| Payer                       | FY 2016      |             | Projected    |             |              |             |              |             |              |             |
|-----------------------------|--------------|-------------|--------------|-------------|--------------|-------------|--------------|-------------|--------------|-------------|
|                             |              |             | Surg. Proc.  | %           |
|                             | Surg. Proc.  | %           |
| Medicare*                   | 619          | 22%         | 628          | 19%         | 638          | 19%         | 647          | 19%         | 657          | 19%         |
| Medicaid*                   | 8            | <1%         | 8            | <1%         | 8            | <1%         | 9            | <1%         | 9            | <1%         |
| CHAMPUS & TriCare           | 0            | 0%          | 0            | 0%          | 0            | 0%          | 0            | 0%          | 0            | 0%          |
| <b>Total Government</b>     | <b>627</b>   | <b>22%</b>  | <b>636</b>   | <b>19%</b>  | <b>646</b>   | <b>19%</b>  | <b>656</b>   | <b>19%</b>  | <b>666</b>   | <b>19%</b>  |
| Commercial Insurers         | 1,921        | 69%         | 2,438        | 74%         | 2,475        | 74%         | 2,512        | 74%         | 2,549        | 74%         |
| Uninsured                   | 13           | 0%          | 13           | 0%          | 13           | 0%          | 14           | 0%          | 14           | 0%          |
| Self Pay                    | 0            | 0%          | 0            | 0%          | 0            | 0%          | 0            | 0%          | 0            | 0%          |
| Workers Compensation        | 244          | 9%          | 248          | 7%          | 251          | 7%          | 254          | 7%          | 258          | 7%          |
| <b>Total Non-Government</b> | <b>2,178</b> | <b>78%</b>  | <b>2,699</b> | <b>81%</b>  | <b>2,739</b> | <b>81%</b>  | <b>2,780</b> | <b>81%</b>  | <b>2,821</b> | <b>81%</b>  |
| <b>Total Payer Mix</b>      | <b>2,805</b> | <b>100%</b> | <b>3,335</b> | <b>100%</b> | <b>3,385</b> | <b>100%</b> | <b>3,436</b> | <b>100%</b> | <b>3,487</b> | <b>100%</b> |

\*Includes managed care activity

Ex. A, p. 44

30. Despite low historical Medicaid volumes, the Surgery Center is a Medicaid participant and accepts all patients, regardless of payer source. Further, physician partners at all SCA facilities have a contractual duty to treat Medicaid beneficiaries in a non-discriminatory manner. Ex. C, p. 389
31. SCA's policy regarding financial hardships-charity discounts is currently being implemented at the Surgery Center. If the patient is not able to meet their financial obligation up front, a tailored plan is developed for their specific circumstances (e.g., payment ability, requested time period, financial hardships). Every effort is made to provide full transparency of patient cost prior to service. Ex. A, p. 32
32. SCA-WCT will finance its equity purchase (11% ownership interest) of \$4,926,743 with available cash from operations. Ex. A, p. 34
33. WCOSC, LLC had income from operations of approximately \$4.6 million in FY 2016. The Applicants project continued gains through FY 2020.

**TABLE 4**  
**WCOSC, LLC HISTORICAL/PROJECTED REVENUES AND EXPENSES**

|                                       | <b>FY 2016</b>     | <b>FY 2017</b>     | <b>FY 2018</b>     | <b>FY 2019</b>     | <b>FY 2020</b>     |
|---------------------------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| Revenue from Operations               | \$11,655,771       | \$12,599,749       | \$12,788,745       | 12,980,576         | 13,175,285         |
| Total Operating Expenses <sup>1</sup> | \$7,075,766        | \$8,668,998        | \$8,799,033        | \$8,931,019        | \$8,064,984        |
| <b>Income/Loss from Operations</b>    | <b>\$4,580,005</b> | <b>\$3,930,751</b> | <b>\$3,989,712</b> | <b>\$4,049,557</b> | <b>\$4,110,301</b> |

<sup>1</sup>Operating expenses include salaries and fringe benefits, depreciation/amortization, supplies and drugs, lease expense and other operating expenses required to operate the surgery center and support the forecasted volumes.

Ex. A, p. 351

34. No incremental financial changes are expected as a result of the proposal; the projected increase in volume and patient revenue are the result of the initial SCA minority-interest purchase of the Surgery Center. Ex. A, p. 36
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 not yet adopted by OHCA. (Conn. Gen. Stat. § 19a-639(a)(1))
36. This CON application is consistent with the Statewide Health Care Facilities and Service Plan. (Conn. Gen. Stat. § 19a-639(a)(2)) (Ex. A, p. 27)
37. The Applicants have established that there is a clear public need for the proposal. (Conn. Gen. Stat. § 19a-639(a)(3)) (Ex. A, pp. 27-28)
38. The Applicants have demonstrated that the proposal is financially feasible. (Conn. Gen. Stat. § 19a-639(a)(4)) (Ex. A, p. 351)
39. The Applicants have satisfactorily demonstrated that the proposal will improve quality, accessibility and the cost effectiveness of health care delivery in the region. (Conn. Gen. Stat. § 19a-639(a)(5)) (Ex. A, pp.27, 30, 32, 343-347; Ex. C, pp 386, 388)

40. The Applicants have shown that there would be no significant change in the provision of health care services to the relevant populations and payer mix, including access to services by Medicaid recipients. (Conn. Gen. Stat. § 19a-639(a)(6)) (Ex. A, p. 44)
41. The Applicants have satisfactorily identified the population to be affected by this proposal. (Conn. Gen. Stat. § 19a-639(a)(7)) (Ex. A, pp. 22, 44)
42. The Applicants' historical provision of services in the service area supports this proposal. (Conn. Gen. Stat. § 19a-639(a)(8)) (Ex. A, p. 43)
43. The Applicants have satisfactorily demonstrated that this proposal would not result in an unnecessary duplication of existing services in the area. (Conn. Gen. Stat. § 19a-639(a)(9)) (Ex. A, pp. 19, 22)
44. The Applicants have demonstrated that there will be no reduction in access to services by Medicaid recipients or indigent persons. (Conn. Gen. Stat. § 19a-639(a)(10)) (Ex. A, pp. 32, 44; Ex. C, p. 389)
45. The Applicants have demonstrated that the proposal will not negatively impact the diversity of health care providers and patient choice in the region. (Conn. Gen. Stat. § 19a-639(a)(11)) (Ex. A, pp. 19, 22)
46. The Applicants have satisfactorily demonstrated that the proposal will not result in any consolidation that would affect health care costs or access to care. (Conn. Gen. Stat. § 19a-639(a)(12)) (Ex. A, pp. 22-23)

## 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 § 19a-639(a) of the Statutes. 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).

Western Connecticut Orthopedic Surgical Center (“Surgery Center”) is a single-specialty outpatient surgical facility located in Danbury, Connecticut. The Surgery Center has two operating rooms and one procedure room, offering orthopedic surgery services (including spine and pain management). The Surgery Center is currently owned by SCA-Western, LLC (SCA-WCT), a subsidiary of SCA and fourteen physician-owners. The proposal requests authorization for SCA-WCT to acquire an additional 11% ownership interest in the Surgery Center to obtain a majority (60%) controlling interest. *FF1-FF2; FF9-FF10*

Among the benefits of the proposed acquisition is SCA’s clinical lead program and the implementation of the Insight platform and Quantros, which will support quality of care initiatives. Further, the proposal will enhance access to care for patients, as the Surgery Center will participate as an “in-network” provider with all major commercial payers in Connecticut. No significant changes in the day-to-day operations or to the service area of the Surgery Center will occur as a result of this proposal. The Surgery Center will continue to serve both the Medicare and Medicaid patient populations. *FF16-FF22; FF24-FF26; FF30-FF31*

Additionally, the proposal will help lower patient costs by helping to remove financial barriers for patients who would otherwise incur out-of-network coverage to obtain surgical services. Further, the proposal will help sustain an existing outpatient surgical facility, where reimbursement rates are typically lower than hospital-based services. The Surgery Center will also benefit from financial synergies gained through its affiliation with other SCA surgical facilities, including their use of GPO and its improved ability to negotiate managed care contracts. Following the SCA-WCT majority interest acquisition, the Surgical Center will continue to generate operational gains and be in a better position to recruit physicians and potentially increase the size and scope of the facility. *FF24, FF15, FF17; FF33*

Notably, the Applicants have satisfactorily demonstrated that the proposed transaction was the result of a voluntary offer for sale. As a result, there is a presumption in favor of approving this application pursuant to Conn. Gen. Stat. § 19a-639(b).

## Order

Based upon the foregoing Findings and Discussion, the Certificate of Need application requesting authorization to transfer an 11% ownership interest in WCOSC to SCA-WCT is hereby APPROVED.

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

By Order of the  
Department of Public Health  
Office of Health Care Access



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9/19/2017

Date

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Yvonne T. Addo, MBA  
Deputy Commissioner