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STATE OF CONNECTICUT

OFFICE OF HEALTH STRATEGY

PUBLIC HEARING

In Re: CERTIFICATE OF NEED APPLICATION filed by Southwest Connecticut Surgery Center, LLC, and HHC Surgery Center Holdings, LLC, For a Change in Governance Control of the Licensed Ambulatory Surgery Center known as Southwest Connecticut Surgery Center; HARTFORD HEALTHCARE SURGERY CENTER HOLDINGS, LLC, and SOUTHWEST CONNECTICUT SURGERY CENTER, LLC

Doc. No.: 20-32411CON

HELD BEFORE: DANIEL CSUKA, ESQ., THE HEARING OFFICER

DATE: August 4, 2022

TIME: 9:01 A.M.

PLACE: (Held Via Teleconference)

Reporter: Robert G. Dixon, N.P., CVR-M #857

APPEARANCES (on record)

For THE APPLICANTS (SOUTHWEST CONNECTICUT SURGERY CENTER and HHC SURGERY HOLDINGS):

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For THE INTERVENOR (WILTON SURGERY CENTER, LLC):

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OHA Staff:

STEVEN LAZARUS
DR. ORMAND CLARKE
MAYDA CAPOZZI

(Begin: 9:01 a.m.)

THE HEARING OFFICER: Good morning, everyone. HHC Surgery Center Holdings, LLC, and Southwest Connecticut Surgery Center, LLC, the applicants in this matter seek a certificate of need for the transfer of a healthcare facility pursuant to Connecticut General Statutes Section 19a-638, sub a, sub 2.

Specifically, HHC surgery seeks to acquire a 51 percent equity interest in SCSC.

Throughout this proceeding, I'm going to be interchangeably referring to them as HHC Surgery and SCSC just for brevity purposes.

Today is August 4, 2022, my name is Dan Csuka. Kimberly Martone, the former Deputy Director and the Chief of Staff and the current Acting Executive Director of OHS designated me to serve as the Hearing Officer for this matter to rule on all motions and to recommend findings of fact and conclusions of law upon completion of the hearing.

Section 149 of Public Act Number 21-2, as amended by Public Act 22-3, authorizes an agency to hold a public hearing by means of electronic

equipment. In accordance with this legislation, any person who participates orally in an electronic meeting shall make a good-faith effort to state his her name and title at the outset of each occasion that such person participates orally during an uninterrupted dialogue or a series of questions and answers.

We ask that all members of the public mute their devices that they are using to access to the hearing, and silence any additional devices that are around them.

This public hearing is held pursuant to Connecticut General Statutes Section 19a-639a, Sub E. As such, this matter constitutes a contested case under the Uniform Administrative Procedure Act and will be conducted in accordance therewith.

The Office of Health Strategy has some staff that are here to assist me in gathering the facts related to this application, and they will the asking the applicant witnesses questions.

I'm going to ask that each staff person assisting me with questions today identify themselves with their name, the spelling of their last name and OHS title, starting first with Steve.

MR. LAZARUS: Good morning. Steven Lazarus. Last name is spelled L-a-z-a-r-u-s, and I'm the Certificate of Need Program Supervisor.

THE HEARING OFFICER: Thank you. And Ormand?

DR. CLARKE: My name is Ormand Clarke; O-r-m-a-n-d, C-l-a-r-k-e, I'm a healthcare analyst.

THE HEARING OFFICER: Thank you. Also present is Mayda Capozzi, a staff member for our agency. She's assisting with the hearing logistics and will gather the names for public comment later on.

The certificate of need process is a regulatory process, and as such the highest level of respect will be accorded to the Applicant, members of the public, the Intervener and our staff.

Our priority is the integrity and transparency of this process. Accordingly, decorum must be maintained by all present during these proceedings.

This hearing is being transcribed and recorded, and the video will also be made available on the OHS Website and its Youtube account. All documents related to this hearing that have been or will be submitted to the Office of Health Strategy are available for review

through our portal, which is accessible on the OHS CON website.

In making my decision, I will consider and make written findings in accordance with Section 19a-639 of the Connecticut General Statutes.

And lastly, as Zoom hopefully notified you in the course of entering this hearing, I did wish to point out that by appearing on camera you are consenting to being filmed. So if you wish to revoke your consent, please do so at this time.

The CON portal contains the prehearing table of record in this case. At the time that it was filed yesterday exhibits were identified in the table from A to U. There are some others that I will get to momentarily.

And the Applicant is also hereby noticed that I am taking administrative notice of the following documents; the statewide health care facilities and services plan, the facilities and services inventory, OHS acute care hospital discharge database, and all payer claims database claims data, some of which was uploaded about a half hour ago. I will touch base on that momentarily as well.

My understanding is that we won't be asking

specific questions about that, but I did want to make sure that everybody had access to it at the time of the hearing in the event they wanted to address it.

I may also take administrative notice of the hospital reporting system, financial and utilization data and also prior OHS decisions, agreed settlements and determinations that may be relevant.

So I'm going to start first with counsel for the applicants. Can you please identify yourself for the record?

MS. FUSCO: Yes. Thank you, Attorney Csuka. This is Jennifer Fusco, counsel for Southwest Connecticut Surgery Center and HHC Surgery Holdings.

THE HEARING OFFICER: Thank you. And your last name is spelled F-u-s-c-o. Correct?

MS. FUSCO: That's correct. Thank you.

THE HEARING OFFICER: And also counsel for the Intervener, Wilton Surgery Center, LLC, can you please identify yourself for the record as well?

MS. LEDDY: Good morning, Attorney Csuka. It's Lorey Leddy at Murtha Cullina on behalf of the Intervener.

And also on the line is Stephanie Sobkowiak,

S-o-b-k-o-w-i-a-k, also from my office.

THE HEARING OFFICER: Okay. Thank you.

Do you both have appearances in the file?

MS. LEDDY: I know I have an appearance. If we don't have one for Attorney Sobkowiak, we can take care of that.

THE HEARING OFFICER: Okay. I remember seeing yours. I don't recall seeing hers, but I could be wrong on that.

So we can double check that -- but so Attorney Fusco, are there any objections to the exhibits in the table of record, or the noticed documents that I mentioned?

MS. FUSCO: Yes, I do. I do actually have a number of objections and requests that I'd like to go through for you. And I'll, you know, I'll read each objection.

And I don't know if these things are things you'll rule on at the beginning of the hearing or reserve until later, but starting with -- the Applicants object to the inclusion of Exhibits F, G, H, and M in the record of this docket, and are asking that they be transferred to another docket.

Those are the documents pertaining to the inquiry initiated by OHS that Applicant has

responded to, and that remains unresolved; documents that -- the past practice at OHS has been to treat inquiries like this the same as CON determinations which typically bear their own docket number.

And the removal of these dockets from the record is particularly important given the fact that Wilton Surgery Center has been granted limited intervener status and a right to participate in all filings and correspondence in this docket that we're hearing today.

They are not a party to that inquiry. I don't think they should have a right to participate in that inquiry, and it's unclear based on your order whether they would if those documents remain in this docket.

So I think the easiest way to address it is to pull them out and open a separate docket number for the inquiry.

THE HEARING OFFICER: That is fine with me. I do want to consult with OHS staff on that before I agree to it, though, just because I'm -- at one point I was the one handling that, but I'm no longer the one handling that.

MS. FUSCO: Understood. And I know Attorney Manzione

is here. I can see her, and I do suspect that there will be some additional filings in relation to that inquiry. So I think separating it into a new docket that involves just the Applicants would be appropriate, if that works for both of you?

THE HEARING OFFICER: Yeah, that's fine. I did want to clarify, I haven't touched the inquiry itself. What I meant was I was sort of involved in the administrative aspects of starting files.

MS. FUSCO: Yes.

THE HEARING OFFICER: But I'm no longer doing that.

MS. FUSCO: Understood. Understood. No worries. So you can just let us know at some point.

And then I just wanted to -- next I wanted to renew sort of for the record the objection that the Applicants filed to Wilton Surgery Center's petition for intervener status and our motion to strike as follows.

So the Applicant objected to Wilton's participation in the proceeding, and in particular their right to raise issues related to what I call the 2019 CON determination.

So Docket Number nineteen three two -- three two three two five DCR, the inquiry that we were just talking about as well as any references to

the private civil litigation filed against Hartford HealthCare by St. Francis and certain individuals.

In your ruling I see you do say that they are not permitted to offer direct testimony about the 2019 determination or the inquiry absent a sufficient foundation of the exact manner in which the inquiry may assist OHS in its review of the CON criteria set forth in 19a-639a.

And I mean, the Applicant's position is that there is no basis upon which these unrelated proceedings should be the subject of questioning and direct testimony. They're not going to offer any evidence related to a transfer of ownership and governance control CON under 19a-638a2.

And I think the Applicants will be prejudiced if the Intervener is allowed to proceed with any questioning or direct evidence on those dockets. So we would renew our objections to them raising any questions.

Similarly, we would hope given the limited scope of that order that OHS doesn't -- also does not intend to ask any questions related to the inquiry or to the 2019 determination.

I mean, just as a practical matter, the 2019

determination involved individuals and counsel that aren't a party to this proceeding, that aren't here today, that wouldn't be able to answer those questions.

There are individuals and counsel here that were not, including myself that were not involved at all in that proceeding. So that would raise significant due-process concerns. And again, with respect to the inquiry our position is that should be considered separately, since OHS has two different attorneys working on it. And certainly, to the extent that Attorney Manzione has questions she needs answered, we could do it in the context of that proceeding.

I think for the same reason -- in looking at what you struck, and I think I understand what you struck and what you didn't strike from the record, but it looks like you denied the request to strike the -- from the petition, the relevant history and background section pages 3 through 5, which I believe pertains directly to that 2019 CON determination.

So since it's not the subject of questioning and since you struck everything related to the inquiry in the St. Francis litigation, we thought

it appropriate to strike the references to that determination history as well.

And then I'll keep going on this -- and again, you don't need to respond in kind. There's just a few more related to that document.

You did, as I just mentioned, you did strike all of the references to the civil litigation in the testimony, but the one thing you did not do is preclude the Interveners from questioning on that.

Right?

So you know, you struck the testimony. I'm assuming they cannot provide direct evidence on that civil litigation, but there's an open question as to whether they can cross-examine in any way on that civil litigation, or whether OHS can ask questions on that civil litigation.

And our position would be that that is, you know, entirely irrelevant to the CON proceeding and it would be highly irregular and prejudicial to the Applicants if those questions were to be asked.

THE HEARING OFFICER: So I'll just stop you there -- that I'm in agreement on that.

MS. FUSCO: Uh-huh. Okay.

THE HEARING OFFICER: So yeah, I'm not going to allow

questioning on those two litigation matters.

MS. FUSCO: Okay.

THE HEARING OFFICER: On everything else that you have raised I'll go back and I'll look at it again, but I think that my order makes sense -- but I'm going to have to look at it in context of what you're saying.

MS. FUSCO: Understood. No, absolutely understood.

And then just the last two things with respect to the objection are, you know, Applicants want to renew their motion to strike all of the testimony that Mr. Hale submitted regarding the public need for the center, duplication of services, unnecessary duplication of services, all things that have been framed, if you look at Mr. Hale's testimony and his counsel's position, as our arguments in opposition to the center as a new facility.

So you know, this is -- and this gets to my last point, too. Our understanding is that this is a CON for a transfer of ownership under 19a-638a2 of the general statutes.

If testimony is going to come in, or if the agency is going to change the scope of this proposal so that it's under 19a-683a1, I believe

it is -- that a new facility -- I could have that cite wrong.

But that entirely changes the scope of the proposal of the application and the evidence we submitted. We would not have submitted the appropriate forms. We wouldn't have the appropriate people here to adjudicate an entirely different CON.

So you know, Applicants would like that testimony stricken from the record. We don't understand how it can have any relevance. And we, you know, reserve our rights to object to any change in scope of these proceedings as they move forward.

THE HEARING OFFICER: I think that the information that is -- some of the information that is contained in that section of their submission --

MS. FUSCO: Uh-huh?

THE HEARING OFFICER: -- could be relevant to our review of the criteria, even though they may, that the information may have been misapplied.

MS. FUSCO: Okay.

THE HEARING OFFICER: So that's the reason I left it in for now.

MS. FUSCO: Uh-huh.

THE HEARING OFFICER: And you know I can determine how relevant it is. It's an administrative proceeding. I can determine how relevant it is, but certainly it's not our intent to change the scope of this proceeding or to reclassify it as sub one, or whatever that statutory reference is.

It is, in our mind, a transfer of ownership. You are correct. So we're going to proceed as if that were the case.

MS. FUSCO: Okay. Thank you. And then sort of my last objection to the record has to do with the submission by Norwalk Surgery Center at 3:30 yesterday afternoon. The Applicants are going to move to strike that submission.

Even a cursory review of the submission shows that that is substantive, technical and expert testimony. And that is -- that testimony can only be put on the record by a party or an intervener.

Or you know, it's -- the deadline for requesting intervener status was July 31, 2022. Norwalk Surgery Center chose not to make a written request to be an intervener, which they could have just like Wilton Surgery Center did.

But instead they chose to submit what amounts to intervenor testimony under the guise of public

comments. And they chose to make this submission, you know, an hour before OHS closed on the day before the hearing. They chose not to send that submission to me -- although I'm attorney of record and my contact information was clearly in the docket.

And by doing that they have deprived us of an opportunity to adequately respond to the testimony. I mean, we've reviewed it but we have had no chance to respond to it or get the appropriate people to prepare a response. We're not able to answer questions about it at the hearing today.

You know, although Mr. Shipley claims he's going to be present and here to provide additional information, Norwalk Surgery Center doesn't have any official status. Right? He doesn't -- he doesn't have any right to provide any testimony in this matter really for any reason, other than public comment, which is traditionally limited to members of the public coming in and giving their personal opinions on a certificate of need application.

So I mean, I have to say I've seen a lot in my years of doing this, but this is like an

egregious abuse of the CON hearing process. And I know that Norwalk Surgery Center, you know, they say they're affiliated with Norwalk Hospital. They're part of a large health system. They're represented by very able and experienced CON counsel; there's no reason for this to have come in, in the manner that it did.

So for those reasons I'm going to ask that you strike it from the record.

THE HEARING OFFICER: Thank you. I appreciate that. I'm going to reserve on that for right now. And certainly, if you want to file a response which includes a written motion to strike as well, here you're free to do that.

MS. FUSCO: Yeah. Yeah, and we will likely do that. And then you know, to the extent that it remains in the record in any form, you know, we'd like to reserve our right to file a substantive written response as well.

I mean, that there are so many baseless allegations and claims in that document that need to be rebutted. Right? And so in addition to moving to strike -- if you'd like me to do a written motion to strike, I'm happy to do one.

But we'd probably ask -- and I know you

typically keep the hearing open for a period of time for late files, but we would also like the opportunity to submit a response during that time.

THE HEARING OFFICER: So the reason why I'm a little concerned about striking at this point is because -- so you said that traditionally public comment has been limited to nontechnical expertise.

And I don't know if there's anything in the statutes that that says public comment can only be limited to nontechnical information.

MS. FUSCO: Understood, but I also will point you to your order here that was addressed to us as the only party at the time, but said that all technical, substantive and expert testimony need to be -- needed to be prefiled.

And I certainly don't think that, you know, e-mailing something to the agency and not copying the Applicant at 3:30 the afternoon before the hearing would meet anyone's definition of a prefiled, of a sufficient prefile.

But you know we're happy to respond after the fact, if that is easiest for you.

THE HEARING OFFICER: That would be. That would make it easier for me.

MS. FUSCO: And I do -- I'm almost done. I promise. I do -- I would ask, too, that given the late notice we received of that submission, that that submission not be the subject of any questioning at this hearing today. We have not had an adequate opportunity to review it, or to make sure we have the right people in the room to answer questions.

THE HEARING OFFICER: Yeah, that's fine.

We don't anticipate asking questions either.

MS. FUSCO: Okay.

THE HEARING OFFICER: Certainly if Mr. Shipley says something during his public comment that we want to ask questions about, we will address them at that time.

But my understanding is that Mr. Clarke and Mr. Lazarus didn't have any specific questions about that.

MS. FUSCO: Okay.

THE HEARING OFFICER: Is that correct, Ormand and Steve?

MR. LAZARUS: Yes, you're right.

DR. CLARKE: That is so.

THE HEARING OFFICER: Okay.

MS. FUSCO: And then my final request is I have a

request for OHS to take administrative notice of several certificate of need documents related to the scope of services provided in the ownership structure of Wilton Surgery Center.

That surgery center has been around since 2002 and has evolved through this, both through the CON process and outside of the CON process, but there are a number of documents that I think are relevant to issues that Wilton Surgery Center has raised with respect to SCSC's expansion and ownership structure, which is strikingly similar to Wilton's.

And I think an ability to present evidence regarding these dockets and cross-examine Wilton, kind of, on the duplicity of its positions is key to us having a fair hearing today. So I can give you those docket numbers for consideration.

THE HEARING OFFICER: Sure.

MS. FUSCO: So the first is Docket Number 02-554.

The second is Docket Number 04-30251CON.

The third is Docket 0730994CON.

And the last one is 14-31967DTR.

THE HEARING OFFICER: Can you can you read the second one again? I'm sorry. I missed that.

MS. FUSCO: No, that's fine. 04-30251CON.

THE HEARING OFFICER: Okay.

MS. FUSCO: And in the in the interest of full disclosure, some of my cross-examination questions are going to be on evidence and representations made in these dockets. So they are all accessible on the OHS website to Wilton's counsel, if they need to look them up -- I should say the decisions, not the dockets, not the full dockets.

THE HEARING OFFICER: Are you able to make copies available to them today?

Or to pull it up on the screen, or something?

MS. FUSCO: I could. I'm not sure -- with the way we're set up I could screen share -- but I could probably. I might be able to pull them up and e-mail them before that, and that's later in the day.

But we could try to pull those dockets up and e-mail them to Attorney Leddy, if that would help?

MS. LEDDY: That would be helpful. Thank you.

MS. FUSCO: And then I just -- my last thing, I promise. Depending upon what happens with that Norwalk Surgery Center submission, I do want to reserve my right to request administrative notice of any documents that -- or any dockets that might be related to Norwalk Surgery Center or its owners

that might be relevant to these proceedings.

I don't know what that would be at this point in time, but I just want to reserve that right.

THE HEARING OFFICER: Okay. That's fine.

MS. FUSCO: And that's all. Thank you.

THE HEARING OFFICER: No problem. So just give me a moment here.

So subject to the questions and the concerns that were just raised that I have reserved on, all identified and marked exhibits are entered as full exhibits.

MS. FUSCO: Yes. I'm sorry. I have no other objections to what's in the record.

The only addition you said was what Mr. Lazarus sent this morning. Right? And then the administrative notice?

THE HEARING OFFICER: The table of record goes up through "U," I believe.

MS. FUSCO: Yeah, I have that.

THE HEARING OFFICER: So then there's V, W, X, and Y.

MS. FUSCO: Let me just pull them up. I'm sorry. Let me just pull them up on the website.

Just bear with me. I'm sorry.

THE HEARING OFFICER: I can tell you what they are, if that's helpful?

MS. FUSCO: Yeah, if you want to -- as I'm looking.

THE HEARING OFFICER: So "V" is the public comment file, which may be updated depending on what comes into us.

But as of right now it's just the Norwalk Surgery Center.

MS. FUSCO: Yeah.

THE HEARING OFFICER: And you've made your objection known to that, and you've moved to strike that. So I will rule on that. I'm just not sure what I'm going to do with it at this point.

MS. FUSCO: Okay.

THE HEARING OFFICER: The next one is Exhibit W, which is my ruling that I uploaded yesterday on the petition for status and the request to strike.

Exhibit X is your rebuttal.

MS. FUSCO: The rebuttal.

THE HEARING OFFICER: And he did indicate that given the late hour and your interest in making sure you got it to OHS as quickly as possible, that you know there, there may be some things that have already been addressed in the context of my ruling. So I'll take that for what it is.

MS. FUSCO: That's correct. Yeah, I didn't have time to go back and search the document to make sure it

complied with the order -- but to the extent that anything in there is no longer relevant, you can take that.

And then I do see Exhibit Y. I believe it's just a duplicate of the rebuttal. So -- and then the database. So no, we have no objection other than what's already been raised to those remaining exhibits.

THE HEARING OFFICER: Okay.

MS. LEDDY: And if I could just have a confirmation, too, the X and Y -- are duplicates. They're not separate documents?

MS. FUSCO: That's correct. I think -- I believe Attorney Leddy and I e-mailed it to OHS. They uploaded it and then we uploaded it later.

MS. LEDDY: Okay.

MS. FUSCO: I think it's the exact same document.

MS. LEDDY: Thank you. I just wanted to make sure that there was not a separate document.

MS. FUSCO: No, no change. Sorry about that.

THE HEARING OFFICER: That's fair. And I meant to address that earlier, so I apologize.

So Attorney Fusco, do you have any other exhibits that you -- oh. Well, in terms other than the concerns you've raised and the objections

you've raised to "V" through, I guess, "Y," do you have any other, any other objections to those.

MS. FUSCO: No, other objections. Thank you.

THE HEARING OFFICER: Okay. So subject to your objections, I'm going to enter those all as full exhibits as well.

Attorney Leddy, do you have any additional exhibits -- or I'm sorry. Attorney Fusco, do you have any additional exhibits that you wish to enter at this time?

MS. FUSCO: No, I do not.

THE HEARING OFFICER: We will probably make -- let me think. So if you're able to somehow upload those, those other dockets that you asked that I take administrative notice of, we can make that another exhibit after the fact.

MS. FUSCO: Yeah. Well, I think someone's working on trying to find them now.

THE HEARING OFFICER: Okay. Attorney Leddy, do you have any additional exhibits?

MS. LEDDY: We have no additional exhibits.

The one question that I did want to -- for housekeeping purposes, is to determine whether and when you would like us to submit redacted versions of the petition as well as Mr. Hale's prefile so

that we can make sure that we are in compliance with your orders.

THE HEARING OFFICER: So typically we hold the record open for at least a week in order to allow for public comment to be entered. So I would just ask that you do it consistent with whatever the late-file order, if there are any other late files later today.

We can discuss that. I'm not sure whether it will be a week, two weeks, but I'll certainly issue a ruling on that as well.

MS. LEDDY: Thank you.

THE HEARING OFFICER: Let me just take note of that. I certainly don't want you to have to do it by the end of this, this hearing. It's today -- I mean.

MS. LEDDY: I'm fast, but I may not be that fast.

MS. FUSCO: And we're fine. I mean, we understand what was and wasn't stricken, so we're comfortable with however long it takes.

THE HEARING OFFICER: Okay. And Attorney Fusco, you've also raised some additional objections -- or you've renewed objections to it that I'm going to have to take into consideration. So that may affect the stricken portions as well.

MS. FUSCO: And that, that actually is a perfect

followup, because my question was going to be -- I assume it would be better for us to wait until we get the final resolution so that we aren't redacting twice to the extent that you ultimately decide to rule in favor of the Applicant on some of these additional objections?

THE HEARING OFFICER: Correct.

MS. FUSCO: That's fine. Understood.

THE HEARING OFFICER: Okay. So with all of that, we're going to proceed in the order established in the agenda for today's hearing. In terms of the questions that OHS may have, I do just want to ask -- or advise the Applicants that we may ask questions related to the application that you feel have already been addressed. We will do this for the purpose of ensuring that the public has knowledge about your proposal and for the purpose of clarification.

Public comment taken during the hearing will likely go in the order established by OHS during the registration process. I know that Mr. Shipley requested the ability to present public comment at either exactly three o'clock, or exactly 3:30. So we will do our best to accommodate that.

And I may allow public officials to the

extent that they appear to testify out of order.

With all that I think we could probably move on at this point. So starting with the Applicant, Attorney Fusco, do you have an opening statement you would like to make?

MS. FUSCO: I do. And as part of this I'll introduce the witnesses who are here with me who will testify today.

But good morning again, Attorney Csuka, Attorney Manzione, members of the OHS Staff. Thank you for this opportunity to make a brief opening remark on behalf of my clients, again Southwest Connecticut Surgery center and HHC Surgery Holdings, which as you know, is an affiliate of Hartford HealthCare.

Thank you for your patience this morning and for your work over the last few days in reviewing the application and all of these submissions, and ensuring that the focus of this hearing stays on the issue at hand, which is these Applicants request to change governance control of Southwest Connecticut Surgery Center.

The CON application before you is an extraordinary one inasmuch as it's a fairly routine application, yet it's been pending for

close to two years and it took nearly 18 months to schedule this public hearing. And I raise that not to cast aspersions on OHS, because we understand the difficulties the agencies had with workflow, but rather as a backdrop for a discussion around how this proposal evolved from what was originally brought before the agency in the CON in November of 2020.

The center, as you know, has relocated to Wilton in accordance with a determination issued by OHS In 2019. A CON application for transfer of ownership was filed with the OHS while SCSC was in the process of renovating the center at its new location.

And the Applicants really had every expectation that a decision would be issued by OHS by the time the center was ready to reopen for surgeries in the fall of 2021, but that wasn't the case. So the Applicants undertook the lawful transfer of a noncontrolling equity interest in SCSC to HHC surgery prior to the center's opening.

You've heard a lot about that equity transfer in the prehearing submissions, both from Wilton Surgery Center and in the public comments submitted last night, but I implore you not to

make that the focus of this hearing -- which is really the Applicants' final opportunity to demonstrate for OHS why the proposed change in governance control of the center is needed and why it will enhance access, quality care coordination, and the cost effectiveness of outpatient surgical services for all residents in the Wilton area, including Medicaid recipients and other vulnerable patient populations.

You're going to hear today -- and just because there's been a lot of talk about this bifurcation -- and what we're really here to argue about, I mean, you're going to hear from witnesses about the benefits of both the transfer of the equity interests that have already taken place and the change in governance control that's proposed. Right?

This was always intended to be a single transaction by which both ownership and governance control were transferred. However, with the delays in the CON process, the Applicants had to change those plans.

So witnesses will testify about the benefits to the center and its patients of HHC Surgery's buy-in, and how the subsequent transfer of

governance and control will ensure kind of a balanced approach to governance, the consideration of different management perspectives, and an ability to ensure to the greatest extent possible that the enhancements in access, quality care coordination, and the like that flow from an affiliation with a clinically integrated healthcare system like HHC do become a reality.

You're going to hear today from Bill Bitterli to my left, who is the Senior Vice President of Business Development for Constitution Surgery Alliance. He's going to talk a little bit about the history of the center as well as Constitution's longstanding relationship with HHC around ASC operations.

ASCs represent a lower cost alternative to hospital based care for patients in need of outpatient surgery. On this both the Applicants and the Intervener agree.

Constitution and HHC have worked together to provide access to this care option in Wilton so that the patients can avail themselves of high quality and lower cost coordinated care in conjunction with a clinically integrated health system, and that's a very important point that's

going to be talked about today. It's the relationship with HHC and HHC's status as a clinically integrated health system that makes this affiliation different.

You're also going to hear detailed testimony from Ms. Sassi who is -- Donna Sassi who's the Vice President of Partnership Integration for HHC about the many ways in which being a part of the HHC network improves quality and care coordination.

She'll talk about things like collaboration on policies and procedures, validating evidence-based practices and reducing variability and standardizing care for patients. She'll talk about, you know, things as simple as, you know, providing pre-admission screening and services to patients through HHC in advance of surgeries.

And she'll talk quite a bit about tracking and monitoring quality measures against national benchmarks to improve the care being provided at the center.

Despite what the Intervener might suggest, these things simply cannot be accomplished in an unaffiliated ASC to the same extent they can be accomplished with the health system partner like

HHC.

You know, while Constitution provides superior day-to-day management of the center, the ability to integrate the center into a clinical network and provide coordinated, rather than fragmented care across the entire spectrum of healthcare services will only come with the proposed affiliation with HHC.

You're also going to hear some testimony today about the cost effectiveness of care at the center and how this proposal will increase access to care for Medicaid recipients and other vulnerable populations.

As I mentioned, you know, both the Applicant and the Intervener seem to agree that ASCs are a more cost effective option for outpatient surgery than HOPDs. And with the resources of HHC behind the center, OHS can be assured that the surgical patients will have access to coordinated care and the most appropriate setting at a lower cost.

HHC's affiliation with the center is also going to ensure that SCSC maintains its status as a Medicaid provider. Mr. Bitterli will testify -- and I'm sure you saw this in the rebuttal about how during the first nine months of operation with

HHC as a noncontrolling equity partner, medicaid represented 7.7 percent of the center's payer mix. This was more than was expected and is actually a higher percentage than Wilton Surgery is achieving in the same service area.

Mr. Bitterli can also testify about how HHC's financial assistance policy and practices will guide the center in its provision of charity care to patients in need.

The partnership will also, you know, undoubtedly help to ensure diversity of providers and give patients in the Wilton area another choice for their ASC care, a facility that's affiliated with a clinically integrated health system that provides the highest quality patient-centered care.

Having these sustainable lower cost options like the center with HHC as a partner is a benefit to everyone, to patients, to payers and to the health system as a whole.

Now the Intervener is going to attempt to distract OHS from all the good that this transaction brings with its off-base arguments and it's speculative evidence, and it's generally anticompetitive approach to this -- but again we

urge OHS to stay focused on the good, to see that that Wilton Surgery Center is operating under the exact same model being proposed by SCSC, a combination of physicians, a surgical management company and a health system working together to provide the best possible care for their patients.

You know, the center should be allowed the same opportunity to bring together these resources in order to provide patients with access to another high quality lower cost coordinated care option within their community.

So with that, I will stop talking and I will turn it over.

Thank you again for your time, and I will turn it over to Mr. Bitterli to begin our presentation -- if that is okay?

THE HEARING OFFICER: If they're both going to be presenting direct testimony I can just swear them both in at the same time -- if that works?

MS. FUSCO: Yes, it does. Thank you.

THE HEARING OFFICER: So Mr. Bitterli and Ms. Sassi, can you please raise your right hands?

W I L L I A M B I T T E R L Y,

D O N N A S A S S Y,

called as witnesses, being first duly sworn by THE HEARING OFFICER, were examined and testified under oath as follows:

THE HEARING OFFICER: Okay. Thank you. So Mr. Bitterli, you can start by providing your name, title, and spelling of your last name, please?

THE WITNESS (Bitterli): Sure. It's Bill Bitterli, B-i-t-t-e-r-l-i. I am Senior Vice President of Business Development for Constitution Surgery Alliance.

THE HEARING OFFICER: Thank you.

THE WITNESS (Bitterli): Good morning, Attorney Csuka, and members of the OHS Staff. I adopt my prefiled testimony.

Thank you for this opportunity to testify in support of the certificate of need application filed by Southwest Connecticut Surgery Center, LLC, and HHC Surgery Center Holdings, LLC, for a change in governance control of the licensed ambulatory surgery center known as Southwest Connecticut Surgery Center.

My focus today will be on the background of the center, its current operations, and the joint ventures that Constitution and HHC operates successfully statewide. I will also discuss the benefits of HHC Surgery's equity investment in an assumption of equal governance control of SCS -- of SCSC will have for the facility and our patients.

Lastly, I'll do my best to allay any concerns OHS may have that this proposal will impact other outpatient surgical providers in the service area.

As my colleague Donna Sassi will testify, this proposal will result in improvements to quality and enhance the accessibility of surgical care in the Wilton service area. It will also result in improved care coordination and will advance the important cause of health equity.

The center is a state-of-the-art multi-specialty ASC in focusing on orthopedics, neurosurgery and pain management. Since this CON application was filed nearly 20 months ago, the center has received its license from the Department of Public Health and reopened to the public for surgery in October of 2011.

Southwest Connecticut Surgery Center is 49

percent -- is owned 49 percent by Southwest Connecticut Surgery Center Holdings, LLC, which is jointly owned by physician investors with Constitution Surgery Alliance.

As I mentioned in my written testimony, HHC Surgery acquired a noncontrolling 51 percent interest in Southwest Connecticut Surgery Center in -- on September 24, 2021.

Constitution Surgery Alliance develops, operates, and manages outpatient surgical facilities and departments in Connecticut and other states on the East Coast. It is involved in a number of joint ventures with hospitals and health systems, including several partnerships with Hartford HealthCare around orthopedics and pain management, who are the primary specialties of the center.

Together, Hartford HealthCare and Constitution Surgery Alliance have significant experience in planning, implementing, and operating ASCs.

As previously noted, if the proposal is approved, HHC surgery will obtain an additional seat on the Southwest Connecticut Surgery Center Board and share equal governance control with SCSC

Holdings. Sharing governance control will provide a more balanced approach on decision making that will factor in different industry knowledge and perspectives to ensure that the best decisions for the center, and ultimately the quality of care for patients that it serves can be implemented.

With HHC Surgery having equal governance control with the center OHS can be better assured that the center is operated consistent with HHC's mission and vision and in the best interests of patient care, quality, access, affordability and equity.

HHC Surgery's assumption of equal governance control of Southwest Connecticut Surgery Center along with the prior noncontrolling equity buy-in will benefit the center and the public in many ways, including Hartford HealthCare has significant experience and a proven track record as a partner in joint venture outpatient surgical facilities, and will bring enhancements in quality patient management and reporting capabilities, care coordination, and access for Southwest Connecticut Surgery Center patients.

Hartford HealthCare will work with the center in measuring patient satisfaction and evaluating

and implementing best practices and quality improvement as well as benchmarking -- benchmarking against other Hartford HealthCare affiliated facilities.

Hartford HealthCare capital is available to finance the purchase of new equipment and state-of-the-art technology to help ensure the center remains a high quality cost effective alternative for outpatient surgical care in the region.

Importantly, unlike specialties like ophthalmology or GI, which had been almost fully outpatient for many years, orthopedics and neurosurgery are still migrating from higher cost inpatient sites of service.

CSA managed joint -- CSA managed HHC joint ventures have performed over 1100 total joint operations in the past 12 months. These operations are coming primarily out of hospitals and HHC is facilitating this.

Hartford HealthCare brings the resources and capabilities of an integrated health system which will allow the center to advance quality initiatives and drive cost effective care in a manner very difficult to achieve without this type

of partner.

The industry press is full of stories about the emergence of value-based care models where providers may share financial risk over time for a defined patient population.

As ASCs generally only see patients on the day of surgery, it takes the data resources of an integrated health system to credibly participate in such arrangements.

The continuing investment by Hartford HealthCare in Southwest Connecticut Surgery Center will help maintain the center as an alternative to hospital-based outpatient surgical services in the area. In 2017 more than 50 percent of the outpatient surgeries were performed at an ASC, versus 32 percent in 2005. This trend is expected to continue as more procedures migrate to the outpatient setting.

I would like to briefly touch on the positive impact that ASCs have on cost effectiveness of care. Services provided in a freestanding -- freestanding outpatient setting are typically reimbursed at a lower rate and tend to be less costly for patients than those same services provided in an outpatient hospital setting.

Studies show that as ASC volumes continue to increase in the coming years total out of pocket expenses -- out-of-pocket expenses for patients could decrease by as much as $5 billion nationally.

Additionally, ASCs are a more efficient care center generally. By lowering overhead, standardizing procedures, cutting out waste and maximizing efficiencies in the OR, ASCs can normally perform common procedures significantly faster and at a lower cost than hospital outpatient departments. The lower cost and high quality of care provided in an ASC are particularly attractive to individuals with high deductible health plans with additional coinsurance or copays for outpatient surgeries, because outpatient costs are reduced -- I'm sorry, out-of-pocket costs are reduced, passing savings along to consumers.

High deductible health plans force patients to focus more on the cost of care, and increased price transparency by payers allows patients to intelligently shop for the most cost effective services.

Lastly, I would like to address any concerns

that OHS may have about the impact of the proposal on existing ASC providers in the service area. I would ask OHS to consider that this CON application is for a change in governance control of Southwest Connecticut Surgery Center following a noncontrolling equity buy-in by HHC Surgery. This is not a CON application for the establishment of a new ASC, or for the additional -- or for the addition of OR capacity. The center already exists.

The proposal will not result in any changes to referral patterns as the surgeons who utilize the center are owners who invested in Southwest Connecticut Surgery Center before the HHC surgery center surgery equity buy-in.

These surgeons are obligated by federal law to perform a certain percentage of their procedures at the center annually by virtue of their status as investors in the ASC. So it is their own investment, not HHC's that drives where their procedures are performed.

In addition, to the best of our knowledge none of our physician investors have invested in or were performing surgeries at other ASCs located in Wilton. In fact, we understand that certain of

the surgeons approached Wilton Surgery Center about doing cases there, but were rebuffed due to the cost of equipment.

Thank you again for this opportunity to testify in support the CON application request to allow HHC Surgery to share governance control of Southwest Connecticut Surgery Center, and the center. This proposal will result in enhancements to quality, access, care coordination, and health equity, and help maintain and grow a cost effective care alternative, all to the benefit of surgical patients in the Wilton service area.

For these reasons we respectfully request that OHS approve our CON application.

I will now turn the presentation over to Ms. Sassi. Thank you again, and I'm available to answer any questions you may have.

THE HEARING OFFICER: Thank you, Mr. Bitterli.

Ms. Sassi, I'll ask you as well. Maybe we can pan the camera over. I'm not sure if that's possible.

MS. FUSCO: I think when she starts speaking -- there we go.

THE HEARING OFFICER: I'll ask you as well to just spell your name and identify yourself by title.

And let me know whether you adopt your, your prefiled testimony as well.

THE WITNESS (Sassi): Certainly. Good morning. My name is Donna Sassi, S-a-s-s-i. I'm the Vice President for Partnership Integration for Hartford HealthCare Corporation.

And I adapt my prefiled testimony.

THE HEARING OFFICER: Thank you.

THE WITNESS (Sassi): Good morning again, Attorney Csuka and members of the OHS Staff. I wanted to thank you for the opportunity to speak to you in support of the certificate of need application for a change in governance control of Southwest Connecticut Surgery Center. This is one of our joint ventures in ambulatory surgery with Constitution Surgery Alliance.

My focus today will be on HHC's affiliation with the center and how our relationship enhances the quality of outpatient surgical care available in the Wilton service area. I also will discuss the enhancements in care coordination, access to care, and health equity that result directly from the partnership and integration with Hartford HealthCare around the operation of an ASC.

Hartford HealthCare is a parent company to an

integrated health care system which includes acute care hospitals, an extensive ambulatory network, a behavioral health network, a multi-specialty medical group, home health and independent living as well as senior living communities.

In my role as Vice President of Partnership Integration for HHC, I ensure that we build sustainable and scalable integration throughout our regions and our institutes through standardization of practice, providing a consistently excellent patient experience and by focusing on health equity, quality and safety.

Through HHC's alliance with SCSC and other ASCs across the state, HHC is investing in updating our care processes in order to provide efficient high quality and equitable care delivery close to home in the communities where our patients live.

This paradigm of care the ASCs offer provides a value based option for the patients and the payers. HHC has had a positive impact on the quality and safety of the ASCs that it owns whether individually or as part of a joint venture.

ASCs gain many quality benefits by

affiliating with a clinically integrated healthcare system such as Hartford HealthCare, things they cannot accomplish without this type of integration.

I would like to share with you some proven benefits that HHC will bring to patients from Wilton -- from the Wilton service area who opt to have surgeries performed at that center. To begin with, we collaborate closely with our teams at the centers making sure that we offer our experts from HHC to help drive our processes. To develop our policies and procedures we make sure they're evidence based.

And then we also allow our leaders or staff at the centers to participate in our councils at the system level. That is where the experts sit at the table and drive best practices.

We also make available educational events and courses to the teams and the providers at the centers. To name a few -- we have two Hurry-Up fire safety programs and infection prevention programs, to name a few that they can participate in.

We also have been a major support to our centers through crisis management. Over the last

several years, as everyone knows we've had to deal with COVID and at -- during that time Hartford Health corps -- Care, because of its integrated healthcare system had the resources and the ability to support the centers, both the patients, providers and the staff through this time with immunizations, access to testing and as well as education on the standards of care that needed to be implemented during that time.

We also most recently, unfortunately have been sharing our resources around the active shooter incidences that are happening across the country. Hartford HealthCare has experts available and able to help these centers to update their education as well as to potentially do drills for these situations.

THE HEARING OFFICER: Ms. Sassi, I'm sorry to interrupt.

Mr. Dixon, I think your typing is interfering with the video a little bit -- okay. There you go. Sorry about that. You can continue.

THE WITNESS (Sassi): Okay. Hartford HealthCare's affiliation with the centers also improves patient care coordination. One example of this is that we share the cost with our centers for the

implementation of Epic.

Epic is a platform that's a comprehensive patient profile that the centers can use and access patients' care so that they can coordinate personalized care for the -- during that ambulatory visit.

For those centers who aren't able to go live with Epic, at that time we provide them with EpicCare Link which is an ability to review the patient's health record and be able to strategize on the best surgical plan for that patient.

We also allow those patients to access our preadmission centers where we have licensed independent practitioners who are able to help with doing anesthesia risk assessment on that patient, share that information, and provide the best plan for that patient.

During that time that the patients need any kind of specialty service, whether it be pre-surgery or after surgery, we are able to facilitate that access to that level of specialty care.

We are also helping to elevate our providers and our staffs' competencies. Hartford HealthCare has gone live with several quality initiatives,

one of them being the resuscitative quality improvement program that the American Heart Association has initiated across the country. All of Hartford HealthCare's acute care hospitals participate in this.

These, this is about high quality CPR. The new standards are quarterly training instead of every two years, and this is very important because as healthcare providers we were doing CPR, and only effective 27 percent of the time. And it is a preventive -- we can prevent this, and it was related to skill sets.

So Hartford HealthCare has adopted that elevation of practice and so has our centers with -- through Constitution's Surgery Alliance.

The utilization of reviewing, tracking and trending quality metrics -- we work with our centers. We have developed a trending flow sheet that actually allows us to synthesize the data and to be able to discuss it and look to improve practice, and to develop strategies in order to implement that.

We also as a system really encourage transparency in our quality and safety. We participate in Leapfrog Constitution Surgery

Alliance -- has adopted that level of quality. Leapfrog is, you know, a consumer watchdog. The data gets analyzed and benchmarked, and then it is public for anyone to go in, any patient to go in and to see how that institute is rated. And once again, Constitution Surgery Alliance is following suit and participating.

We also on a regular basis -- and most recently it's around supply chain -- have been able to, because of our scale, shift our own internal resources to support the resources need -- needed at our ASC. It could be medication. It could be supplies, but we are able to make sure that the patients scheduled get the appropriate care that they need, and that they're not delayed, their care isn't delayed and that they have the supplies available to them that they need.

It's important for Hartford HealthCare to obtain -- obtain equal governance control over SCSC to ensure that these types of enhancements and accomplishments -- excuse me, consistent with Hartford HealthCare's mission and vision to improve quality, care coordination, and local access at a lower cost.

When assessing this proposal and its favorable impact on SCSC OHS should also consider the quality benefits of ASCs generally and recognize the value of ensuring that facilities like the center remain high quality, low cost options for patients.

The proposal will provide appropriate access to high quality lower cost services to patients and communities that the centers serve, which is consistent with the goals of the statewide healthcare facilities and service plan and the Office of Healthcare Strategy's mission.

According to the Ambulatory Surgery Center Association, ASCs offer physicians an increased control over their surgical practice, professional autonomy over their work environment, and the quality of care that is not always available to them in the hospital settings.

Similarly, the patient experience is improved by more efficient care with greater personal attention given to patients by physicians' staff and shorter wait times to get the surgery done and fewer unforeseen delays that can occur in the hospital setting.

ASCs derive their advantages from being

really specialized facilities that exclusively perform a certain number of procedures. This specialization within the ASCs allows the teams to focus and deliver a higher level of patient safety and quality outcomes.

This is -- there is evidence to support this, specifically around the comparison of an HOPD ASC And an integrated healthcare system freestanding ASC -- that there's lower ER admits. There's lower visits to the ER. There's lower infection rates and these infections are a source of more than $3 billion dollars in avoidable -- avoidable health care.

ASCs also tend to be to -- have fewer acutely ill patients for others to come into contact with, which then lowers the risk of spreading any contagious diseases. Most importantly the quality and safety of care at the ASC is highly regulated by independent processes including licensure, certification and accreditation. SCSC is subject to a strict physical plan, clinical and administrative guidelines established by DPH in order to obtain a license to operate as an outpatient surgical facility.

The facility also needs to meet the

conditions established by the federal government for participation with Medicare -- with the Medicare program. With HHC's assistance SCSC has pursued voluntary accreditation of the center through the Accreditation Association for Ambulatory Healthcare, another rigorous set of standards aimed at enhancing patient safety and quality of care provided.

Lastly, HHC's partnership with SCSC will enhance access to care for all patient populations. The participation of a non-for-profit health system in the SCSC joint venture ensures that patients will be served in a nondiscriminatory manner and regardless of payer source or ability to pay.

SCSC participates with Medicaid and will continue to do so if HHC obtains equal governance control of the center. In addition, SCSC will provide charity care to those in need consistent with HHC's financial assistance Policy.

Thank you again for this opportunity to testify in support of the CON application that requests to allow HHC Surgery to share governance control of SCSC and the center. Our testimony and CON submission have demonstrated how HHC's

partnership will improve the quality, accessibility, equity, and cost effectiveness of care for SCSC patients.

For these reasons I respectfully request that you approve our CON request, and I'm available for any questions.

THE HEARING OFFICER: Thank you.

Attorney Fusco, did you have any questions that you wanted to ask them on direct? Or did you just want to jump into cross-examination?

MS. FUSCO: No direct. I'd like to reserve the right to redirect after cross, but no direct.

THE HEARING OFFICER: That's fine. Okay. Attorney Leddy, I'm going to turn it over to you then. And again try to limit the questioning to the 19a-639 criteria as best as possible.

MS. LEDDY: I will. Thank you very much. I'm going to start with Mr. Bitterli. I can see you. I think when you talk it will -- there we go.

Thank you Mr. Bitterli. My name is Lorey Leddy. I'm an attorney at Murtha Cullina, and I'm here representing the Intervener, Wilton Surgery Center.

And I appreciate this opportunity to ask you some questions about your prefiled testimony and

some of the statements that you made today on the record.

CROSS-EXAMINATION (of Bitterli)

BY MS. LEDDY:

Q. The first thing I want to start with actually is something that you mentioned today in your prepared statements that I did not previously see in your submitted testimony, and that is you mentioned that the ortho practice, or some of the ortho docs, doctors at SCSC had previously had discussions with Wilton -- and I'll refer to my client as Wilton. And that they were rebuffed by Wilton.

Is that what you said?

A. That was my understanding.

Q. And where did you get that understanding from?

A. From one of our physician partners?

Q. And would it surprise you to know that Wilton actually did have discussions with some of the ortho doctors at the facility, and they were fully prepared to build out an ortho practice for them, and that the doctors

declined that option?

A. I -- I did not. I did not hear that. What I heard was that the Wilton -- Wilton Surgery Center wanted the doctors to essentially buy their own equipment, or -- or guarantee their own equipment at the center, which is pretty unusual in my understanding -- but I may not have all of the facts there.

Q. Right. And it and it is unusual, because I guess it would surprise you then to find out that that's actually not accurate at all, that Wilton was prepared to purchase the equipment and to build out an entire facility for that.

I just want to make sure that the record is clear, you don't have any firsthand knowledge of those --

A. I do not.

Q. Now you mentioned in your prefiled testimony that you're here regarding the proposed transfer of equal governance control of SCSC to HHC. Is that right?

A. Yes.

Q. And you indicated also that there was a transaction in September of 2021 where HHC,

HHC already purchased an equity interest in SCSC. Correct?

A. Correct.

Q. And that was 51 percent equity ownership or membership in SCSC?

A. Yes.

Q. They don't have equal governance at this point, but they do own a majority of the membership interests. Is that correct?

A. That is correct.

Q. And The Department of Health did not issue the license for SCSC until August of 2021. Is that correct?

A. I think that -- that is correct.

Q. Okay. So that's about a month before the transaction where HHC bought into the equity interest of SCSC?

A. Yes.

Q. Okay. And your testimony here, you frequently emphasized this, that this was an existing licensed outpatient surgical facility. Correct?

A. Correct.

Q. The CON application that we're here for today, that was filed in November of 2020.

Does that sound correct?

A. Yes.

Q. So by at least as of November 2020 HHC had identified SCSC as one of the facilities that it was interested in, in acquiring or buying into. Is that fair to say?

A. Yes.

Q. But the first surgeries at the Wilton location where SCSC is currently located, those did not take place until October of 2021. Correct?

A. Yes. We were under renovation until that point.

Q. But when you say, you were under renovation, does that mean before October 2021 there were any surgeries conducted at that location, at the 60 Danbury Road?

A. Not at that location, no.

Q. And so the first surgeries were less than a year ago. Is that accurate?

A. Yes.

Q. And it was after the CON application in this case was filed. Is that right?

A. Yes.

Q. And you used the word "reopening" the

surgical facility, but in October of 2021, that was the first time you had any surgeons perform surgeries in that facility. Correct?

MS. FUSCO: Before he answers, I'm going to object to this line of questioning. I'm trying to give you some latitude, because I'm not sure where you're going. But it seems to me like you're trying to ask questions relative to the 2019 CON determination that you are prohibited from speaking about.

You're talking about things that occurred before the center opened, before HHC bought in. Like, this is a CON application for the change of ownership and governance control of HHC.

So where procedures were being performed prior to its opening are not relevant to this CON.

MS. LEDDY: And I assure you --

MS. FUSCO: It's a duly licensed CON.

MS. LEDDY: And I would like a little bit of latitude as well, because I assure you I don't plan on getting into any of that. What I'm trying to do is understand the timeframe.

And I didn't choose the word "reopen." That's a word that comes in, that's in your testimony -- or your witness's testimony. So I

just want to understand when he uses the word "reopened" what exactly that means.

Because in terms of the impact that the center has and the transfer of governance -- or the transfer of ownership, it really started in October 2021 when it -- in terms of the impact that it has on the service area. That's what I'm trying to understand.

So if you can give me a little bit of latitude, Attorney Csuka, that I would appreciate it. I don't plan on going into the 2019 CON app.

THE HEARING OFFICER: That's fine.

THE WITNESS (Bitterli): Can you repeat the question?

BY MS. LEDDY:

Q. So you're using the word "reopened" in your prefile testimony, but I just want to clarify for my own understanding. That facility had never been opened for surgeries before.

Is that correct?

A. Not at that location.

Q. Okay. And in fact the other location was in Westport. Is that right?

A. The previous location was in Westport, yes.

Q. And then this facility that SCSC is in now is a mile and -- 1.3 miles from the Wilton

facility. Is that correct?

A. I don't know that. I've -- I've seen that in your in your -- in your filings.

Q. Would you say, it's fair to say that it's on the same road, on Danbury road?

A. It is on the same road.

Q. And it's just up the way on Route 7. It's not -- it's about a mile up the road on Route 7.

A. If you say so.

Q. Have you seen any of the contracts between HHC and SCSC regarding the equity buy-in?

MS. FUSCO: Again, I'm going to object. I mean, the questions regarding the equity buy-in and the inquiry around the equity buy-in are not supposed to be raised by the Intervener.

MS. LEDDY: I don't think that's a hundred percent accurate. I think that especially if we're trying to ascertain the control of the number of board seats that are on there, that I would assume is spelled out in contract documents between SCSC and HHC.

So I think that's fair.

MS. FUSCO: But that's entirely what the inquiry relates to, whether or not your legal arguments --

not your client's testimony, your legal arguments that you've interjected into the inquiry about whether HHC has assumed control of the center.

And that, my understanding of Attorney Chuka's order was that that was not something that was supposed to be the subject of Intervener questioning. And in fact, I've asked for that to be moved to a separate docket for this very reason.

So I would object, and instruct my client not to answer.

MS. LEDDY: And again, I will wait for Attorney Csuka to rule on that. But I think it's a fair question because we're trying to determine precisely the number of seats that HHC has on the board of managers.

And I think that's a perfectly fair question. That's why we're here.

THE HEARING OFFICER: Can you try to tie that into how that relates to 19a-639, any of those criteria?

MS. LEDDY: In turn? Well, that's actually what exactly what we want to know. We're trying to understand how the transfer of a board seat -- well, first of all, we're trying to understand how many seats they currently have, because that's

entirely unclear from the submissions.

The second thing that we're trying to understand is, is why there needs to be a transition where another board seat is transferred to HHC so that we can evaluate all the criteria in 19a-639.

They're already up and running. He's already told you that. They already have a 51 percent owner in HHC, who owns a majority of the equity in the entity.

We're trying to understand with all that already in place for the functioning ASC, what's the big deal in having this additional seat? We're trying to understand what -- how they perceive it as something that's necessary. We're also trying to understand how that ultimately will lead to potentially a negative impact on patients in the area, and other ASCs like our own in the area.

So I think it's perfectly fair.

MS. FUSCO: We have testified that at this point in time this proposal is to obtain one board seat which would give HHC equal governance control with SCSC Holdings. So you are aware that that is what's going to happen.

You don't need to delve into the operating agreement. You don't need to ask specific questions about how many board seats they had. I mean, you represented in your petition that you know how to do math. It doesn't matter.

This is a proposal to add a board seat, which we are representing will give them equal governance control. So if you have questions about what that means practically speaking, it doesn't require you to delve into the past history.

I think this is just a fishing expedition trying to get the exact information you're not supposed to be talking about.

MS. LEDDY: Well, doesn't it relate? What if the operating agreement provides some sort of level of control by HHC over the affairs of SCSC already, and the board seat is unnecessary? You own 51 percent of the company.

So I think that's a fair question.

What's going to change? What's going to change with the addition of the seat? I think we are entitled to understand that.

MS. FUSCO: We have testified. We have tested -- you can ask any questions about what in their business

they expect will change with the addition of a seat. It does not require you to look back at historical agreements.

I mean, there is a draft operating agreement in the certificate of need application that's part of the public record.

MS. LEDDY: The highly redacted one where the word "board" doesn't even come up. Is that the one you're talking about, that I can't see?

MS. FUSCO: Well, with respect to the board -- I mean, you're talking about two different things. With respect to board governance we are representing that the intention, if the CON is approved, is to take one additional seat and have equal governance control. That's what we're requesting.

MS. LEDDY: Okay. And you want us to take your word for it, and my point is that I'm here to cross-examine the Witness. And I'm here to understand whether his testimony is credible and accurate and whether there's a basis for even going down this path and determining whether an additional seat is necessary.

We don't understand what the current structure is now. The only place that -- that it's not in a historical contract. It's in the

contract that's currently governing the relationship between HHC and SCSC without the additional board seat.

We're entitled to know what that structure looks like, what that relationship looks like so that we can better understand what the relationship will look like on the other side of the CON application if another board seat is granted.

How do I assess the changes and how does OHS determine the change? You talk about these benefits that are going to happen through the transfer of this one seat. I need to understand, and more importantly, OHS needs to understand how that transfer of one seat will change what exists now. And the only way to evaluate that is to understand what exists today.

I think it's a fair, fair question.

MS. FUSCO: And I think you can ask Mr. Bitterli his understanding of how the board operates and what -- if he is aware of how the board operates, and what that will be, but it doesn't mean you have to delve into the rest of the operating agreement.

This is an issue specific to the board.

MS. LEDDY: I would claim the question and indicate that I -- as an offer of proof, I don't plan on delving into the operating agreement. I am trying to understand the source of Mr. Bitterli's testimony.

He's already indicated he made statements on the record about conversations between Ortho docs from SCSC and my client that he had no firsthand knowledge about. I want to understand where his knowledge is coming from.

MS. FUSCO: So do you have a specific question for him?

MS. LEDDY: The question is whether he has seen the current operating agreement in place between HHC and SCSC.

THE HEARING OFFICER: I will allow that question, but yeah --

THE WITNESS (Bitterli): (Unintelligible.)

MS. FUSCO: Wait one second.

Go ahead, Dan. I'm sorry.

THE HEARING OFFICER: I am just going to -- is that feedback?

THE WITNESS (Bitterli): No, that's me. I'm sorry. I apologize.

THE HEARING OFFICER: I am going to allow that question, but I am also going to caution that we

shouldn't go too much further down this, this road.

It ties into some of the questions that I had and that's the only reason why I'm allowing it, but we may not get very far down this path, so.

MS. LEDDY: I assure you as my offer proof I don't plan on going down this path. I'm not interested in details about the document.

I am trying to set up an understanding for the benefit of OHS of what exists today so that I can better understand how the shift from two seats to three seats on the board is going to make such a dramatic difference that it's even necessary.

That's why we're here.

THE HEARING OFFICER: So Mr. Bitterli, you can answer that question.

THE WITNESS (Bitterli): I have seen the current operating agreement.

BY MS. LEDDY:

Q. And you indicate that the reason that you're here is because HHC wants to acquire an additional board seat on SCSC's board of managers bringing the total to, I assume, three for HHC?

A. Yes.

Q. And then there would be three other board seats. Who has those other board seats?

A. Representatives of the physician holding company.

Q. And does Constitution have any seat on the board?

A. Yes.

Q. So right now is the -- are there six seats on the board currently?

A. Six seats on the board.

Q. So is it --

A. I'm sorry. Five, five seats on the board. The CON is to put a sixth seat on the board.

Q. Okay. And which of the five seats does Constitution currently have?

A. Our -- our interests, we are one of the representatives from the physician holding company side of the ledger.

Q. Okay. So then collectively Constitution plus the physicians holding group, you currently hold three seats?

A. Correct.

Q. Okay. And I just want to make this clear, because it's not clear from the submission how many seats HHC currently has.

And before September of 2021 when the transaction occurred where HHC purchased 51 percent equity interest in the facility, did Hartford HealthCare hold any board seats on SCSC's board of managers?

MS. FUSCO: I'm going to object to the question again. What is the relevance of that to the going forward transaction?

You are delving into the issues that are a part of the inquiry that is separate from this CON proceeding.

MS. LEDDY: I claim the question. I think it's the transition, and to understand why this third seat is so critical we have to understand the transition. I think it's a fair question.

THE HEARING OFFICER: Okay. I'll let him answer that question as well.

THE WITNESS (Bitterli): Can you restate the question?

BY MS. LEDDY:

Q. Prior to the acquisition by HHC of the 51 percent equity interest in SCSC, how many board seats did HHC Have?

A. Zero.

Q. Thank you. Now you talked in your opening statement about the importance of being able

to share governance with -- between the two, the two groups; the three seats that you indicated are held by Constitution and the doctor's group, and then three seats with Hartford HealthCare, and you talked about balancing the relationship.

Are you trying to -- can I infer from that that right now there isn't a balance and there isn't a sharing of control over the entity?

A. The -- the physician side of the ledger has three seats. HHC has two seats. So three, three seats controls the -- the direction of the center.

Q. And in practice how many times, since the transaction in September, how many times have there been situations where a vote was taken and Hartford HealthCare used its two seats to vote for one thing, and the other three seats voted contrary to Hartford HealthCare, where it created an issue where that third seat was important?

A. If -- if Constitution does its job correctly, we're never going to get in a vote deadlock, where we'll try to manage those issues. I

don't think there were any -- there were any instances where it was a three-to-two vote on the board.

Q. Okay. So it would have been --

A. But that's not to say that doesn't happen in the future.

Q. Sure. But would it be fair to say that at least as of now -- and you've been working with HHC for a long time on the center, since at least November 2020.

Would it be fair to say that as of now it hasn't -- you have basically been sharing control of the company, of SCSC?

MS. FUSCO: I'm going to object to the question again. This entire line of questioning has nothing to do with the certificate of need application.

This is Wilton Surgery Center attempting to interject itself into the inquiry about whether control has changed. It is apparent in every single question Attorney Leddy is asking.

So I will object, and I will continue to object to the whole line of questioning.

MS. LEDDY: Well, you know what? I'll ask it this way because I don't think it is. I think it's actually directly on point.

BY MS. LEDDY:

Q. Mr. Bitterli, are you here to address the reasons why adding a third seat on HHC's side would be beneficial to SCSC, to patients in the area, and to payers?

Isn't that why you're here?

A. Yes.

Q. Okay. So then isn't an understanding of how SCSC is currently functioning important to understanding why that third seat would be so critical to HHC?

A. Sure.

Q. Okay. So -- and you've said that since you've been working together with HHC, at least since September of 2021, there haven't been any instances yet where the difference, the three seats to two seats has been -- has presented an issue. Is that correct?

A. Correct. I -- at the beginning of every relationship, I guess like a marriage, everyone is very, you know, cooperative and -- and collegial.

As the relationship develops and issues, complicated issues come up, those opinions can desert -- can diverge.

Q. Okay.

A. So I think it is a more balanced partnership if HHC has equal governance with the physicians.

Q. Let me ask you this question. If HHC does not get the third board seat, if this CON application is denied, do you have an understanding of whether HHC would maintain its 51 percent ownership in the facility?

A. I think at least in the short term it would certainly maintain its ownership in the facility. We would have to see where the partnership goes after that.

Q. Okay. And is it fair to say that the purchase price was 1.6 million. Correct?

A. Yes.

Q. Now of that 1.6 million was any of that, were any of those funds used to help with the renovation of the facility?

A. Well, I -- money is fungible, yes. It added to the company's financial picture. So I guess you could put a portion of it anywhere you want.

Q. Okay. So did HHC contribute or fund any additional renovations at the facility that

SCSC did not contribute to?

A. That SCSC did not contribute? Its -- it's hard to say. The -- the past two years, the -- with the pandemic and its impact on, you know, supply chain has made my business a much scarier one than it had been previously.

Q. Mine too. I hear you.

A. It is great to have a financial partner like an HHC under those circumstances, even more so than, you know, in prior years. So their investment of capital was very valuable to the center.

Q. Okay. And so my question, maybe I can simplify it. In addition to the 1.6 million that HHC paid for its equity interest in SCSC, would you -- would it be fair to say that HHC, they contributed financially to, also to the renovation in addition to that 1.6 million?

A. Umm --

Q. They've invested financially in the facility itself?

A. Yes.

Q. Okay.

A. They are 51 percent owner.

Q. But I'm saying, my point is that above the 1.6 million HHC has contributed more resources to the renovation and to setting up SCSC in the building, and to the building as a whole for that matter?

A. They --

MS. FUSCO: I'm going to object. It doesn't appear that Mr. Bitterli knows the answer to this question. So if you don't know the answer to the question, you don't know the answer to the question. Do not guess or speculate.

MS. LEDDY: Yeah, I don't want you to guess. I was wondering if you knew.

MS. FUSCO: If you don't know, don't answer the question.

THE HEARING OFFICER: If I may just? I think Ms. Sassi may have put something in her prefile related to what HHC's plans were in terms of capital investment.

MS. LEDDY: Okay. I'll save that.

THE HEARING OFFICER: So she may be -- she may be the better person to ask on this rather than asking the Witness to speculate.

BY MS. LEDDY:

Q. That's fine. Well, let me ask you some

questions about how HHC is integrated at this point with SCSC.

What EMR is SCSC currently using?

A. An AnKing variant. I -- I'm not quite sure. I -- they have, it's SIS product.

Q. And so they're not using -- at this point they're not using HHC's EMR system?

A. No, they are not.

Q. Is there a plan anytime in the future to transition SCSC over to HHC's EMR?

A. I -- I think broadly there is a plan. It's -- in whose mind? It's -- there's no written plan that says here's what we're going to do. I think HHC has made it clear they would like all of their ASCs to transition to an EMR, you know, an Epic EMR and we're at various stages in doing that.

And so I think it's certainly HHC's plan.

Q. Okay. But it hasn't happened yet. Correct?

A. Correct.

Q. And can you tell me what billing system SCSC currently uses?

A. It is -- is the AnKing billing system.

Q. So at this point you haven't migrated SCSC

over to HHC's billing system.

A. We have not.

Q. Is there a plan to do so in the future?

A. We -- there is no written plan to do. I think it's HHC's strong desire that that happen.

Now, you know, with -- with respect to the billing system under no circumstances that I can see would HHC be doing the billing for the surgery centers. The system is Epic, but -- but HHC is not doing the building.

So I just wanted to be clear on that.

Q. Right, understood. But we're trying to understand whether you're going to integrate into the system that HHC already has up and running for itself.

A. I'm sorry. Can you repeat that?

Q. We're trying to understand whether the goal at some point is for SCSC's billing system to be migrated into what HHC is already using? If you don't know the answer, that's fine. I can --

MS. FUSCO: If you don't know the answer, don't answer.

THE WITNESS (Bitterli): I don't know the answer.

BY MS. LEDDY:

Q. And who is currently negotiating SCSC's commercial contracts?

A. SCSC is a member of ICP. ICP is negotiating its commercial contracts.

Q. And ICP stands for -- what's the name of the entity?

A. I believe it's Integrated Care Partners.

Q. Is ICP an affiliate of Hartford HealthCare?

A. That's my understanding, yes.

Q. So are all of SCSC's contracts currently being handled through ICP? Its commercial contracts? Let me specify that?

A. Substantially all.

Q. Those that have not been switched over to ICP, who -- what entity is managing those, those commercial contacts?

A. Maybe not -- maybe substantially all is not the -- there are many insurance companies out there. ICP has negotiated contracts with the major ones. There are a number of little companies that we, you know, we don't have contracts with.

Q. If the CON application is denied and HHC does not get the third board seat, is there -- has

there been any discussion about whether HHC would allow SCSC to remain -- have had its contracts to remain with ICP?

A. I am not the right person to answer that question.

Q. Now you represent -- and you actually are an employee of Constitution. Is that right?

A. Correct.

Q. And one of the -- will Constitution stay involved with SCSC if this, the CON application is approved?

A. I -- I would think so, yes.

Q. Do you know whether there's any discussions or any agreements where HHC plans to purchase any interest owned by Constitution?

A. None that I'm aware of.

Q. So as far as you know, it's going to remain a joint venture, constitution and an HHC joint venture?

A. That is my understanding.

Q. And in your testimony you mentioned that Constitution is involved in a number of joint ventures with Hartford HealthCare.

Is that right?

A. Yes.

Q. But Constitution also has ownership interest in ASCs that are not affiliated with Hartford HealthCare. Is that correct?

A. Yes.

Q. And in those nonaffiliated -- I'll refer to them as the nonaffiliated in those nonaffiliated ASCs, what's Constitution's role? Do you have a management role in those facilities?

A. Yes.

Q. And what kind of joint purchasing arrangements do you have with those, those nonaffiliated centers?

MS. FUSCO: I'm going to object. I mean, I want to give you some latitude, but joint purchasing arrangements that Constitution has with any center other than the center we're talking about don't appear relevant to this proceeding.

MS. LEDDY: Well, if you give me a little bit of latitude, I can tie it up. I'm not going to far out of bounds.

THE HEARING OFFICER: In terms of my understanding of how the CON criteria are evaluated in connection with transfers of ownership, if we're trying to evaluate what will change with the addition of the

seat, I think this line of questioning is appropriate.

MS. LEDDY: Thank you.

BY MS. LEDDY:

Q. So my question is -- now I've forgotten my question. What CSA's roll within those nonaffiliated ASCs -- oh, I'm sorry. The purchasing, right.

What kind of joint purchasing arrangements do you have in these independent, in these nonaffiliated centers?

A. All of our nonaffiliated centers have some sort of group purchasing organization, but I -- I can't speak to the differences between those and the joint ventures.

I'm just not the right person.

Q. And who would be the right person?

A. It's one of our -- I'll say Ken. Just put him on the spot, Ken Rosenquest who's our chief operating officer.

Q. Does Constitution benchmark performance in these nonaffiliated centers?

A. To some degree, yes.

Q. And do you implement evidence-based practices in those nonaffiliated centers?

A. Yes.
Q. Do you provide staff education and development in these, in these nonaffiliated centers?
A. Yes.
Q. And are these, these services that Constitution provides, these nonaffiliated services, are you or have you already been providing those services to SCSC?
A. We -- we are involved in providing those services to SCSC.
Q. And if you know, do you have a sense of what your patient satisfaction scores are in those nonaffiliated centers?
A. They are good.
Q. Are they better, the same as, or worse than the centers that you run jointly with HHC?
A. I would be guessing.
Q. Who -- where can I get that information? Do you know where that information might be found?
A. Well, first of all, it's not public. So --
MS. FUSCO: I mean, again. I'm going to object. This is outside of the scope of this proceeding.
MS. LEDDY: I take exception to that. I believe it's

exactly right. We've got Constitution who's already managing many of these areas successfully at SCSC. We have Constitution that has an excellent history in managing other ASCs that are not affiliated with HHC.

We're talking about doing a transition that would allow HHC to take another board seat and presumably take over many of these roles. There their whole basis of the petition is that they plan on improving quality, and I'm trying to understand what needs to be improved.

THE HEARING OFFICER: Again, my understanding is that when we review the criteria we sort of look at historical experience with existing or similar facilities that HHC might have some affiliation with. You know it may not necessarily be in the same PSA, but --

MS. FUSCO: But what counsel is trying to prove here is that -- I'll just leave my objection where it is. I mean, it's not -- she's trying to prove that it's -- the status quo is fine. Right? That you know, it's fine to have, you know, Constitution level care and while Constitution is a superior manager, she's not focusing on all of the information that Donna has testified to that will

show enhancements in care.

What she's trying to prove to you is that the status quo is just fine. It may not be the best, but it's just fine. And that ignores the reality of what this CON is about.

BY MS. LEDDY:

Q. Then my next question is, what is Constitution doing that's subpar compared to what HHC can do? That's I think a perfectly fair question.

That's the whole point of your CON application, is that you can provide superior care and you can do superior quality, superior cost effectiveness. My question is, what's --

A. We certainly -- we don't think we're doing anything subpar in our nonaffiliated engagements. I think HHC brings a rigorous approach, a more rigorous approach to driving and measuring quality initiatives than -- than have existed at -- at some of our other centers.

And we can certainly go to school and bring best practices to those other centers. So we're -- we're being aided in our job I

think by HHC's approach to -- to quality.

Q. And so what I'm trying to do is compare apples to apples here. I'm trying to understand -- you're actually the perfect person to talk to, because Constitution has -- operates some facilities with HHC as a joint partner, and you operate somewhere HHC is not involved.

And so would you say overall that those nonaffiliated facilities that do not have an HHC facility partnership or affiliation, are those ASCs providing inferior care, inferior education, and inferior opportunities for the physicians, inferior access to care for patients? You're the person who can answer that question.

A. There's -- there's -- we are not doing a subpar job at our other facilities. In one -- when we talk about care coordination, this is -- this is really a future state kind of argument.

As I mentioned that, you know, the industry is full of discussions about what does value based care look like going forward?

And if you can't track the patient other than the day of service, there's no way to negotiate with the payers to say, we'll take risk over a 90 or 120-day period on that.

So I would say we're -- we're aiming at a future state and it -- and if it goes that way, you know, HHC joint ventures will be in a better position to participate.

Q. So in terms of participating in this future, this future care model that you're talking about, are you saying that by allowing HHC to have the additional seat at SCSC that the quality of care provided at SCSC will be better than it currently is under Constitution's Management?

A. I think that is certainly HHC's opinion and -- and you know, we like what we see, but that is -- that is a future state kind of question.

Q. Okay.

A. Is -- is all of the rigor that HHC requires of its, you know, joint venture or -- or "requires" might be the wrong word, but looks for in its joint venture partners, is that going to substantially enhance -- enhance

patient care?

It's quite possible, but we're -- we're on that journey.

Q. I'd like to talk a little bit about cost effectiveness, that the impact that this transition would have on cost effectiveness of care to payers and patients alike.

As it stands right now, Hartford HealthCare does own 51 percent of the SCSC business itself. Correct?

It already owns the majority?

A. Yes.

Q. And in your testimony and in Ms. Sassi's testimony you provide background information about the cost effectiveness of ASCs in general.

Is that -- would that be fair to say?

A. Yes.

Q. And when you're comparing costs -- in fact, I think there's a chart in your submission -- you're comparing costs between services or procedures that are done at an ASC as compared to an HOPD. Is that an accurate statement of what's in your testimony?

A. Yes.

Q. Now if you're comparing the ASCs in general to an HOPD, are you -- have you done the same kind of analysis between, between ASCs?

Have you done a cost effectiveness analysis so that, for instance, when you've had a HHC affiliation start at one of your other ASCs, have you done an evaluation about whether there really is cost effectiveness when HHC comes into the picture?

A. We don't have insight into the costs and reimbursements of other centers.

Q. What about other Constitution centers? Do you have access to that information?

MS. FUSCO: I'm going to object to that. I mean, there they are not -- I mean, specifically if you're getting into issues around rates, there is not a sharing of rates among centers. This is not -- it's not relevant. It's not.

First of all, it's not information he would have. And when you say, cost effectiveness, can you clarify what exactly is it that you're talking about?

MS. LEDDY: Well, that's exactly what I'm trying to do. I'm trying to compare apples to apples here. So I'm trying -- you tout and your client touts that

this is going to become much more cost effective, that care will be more cost effective by the addition of a seat of HHC on the board of managers for SCSC.

I'm trying to understand what HHC brings to the table that will improve cost effectiveness and what I see in the submissions or comparisons between the costs of an ASC and comparisons with a COPD.

We all know -- I'm here representing an ASC. We all know that the costs are -- it's much more cost effective than a hospital stay or procedures in an HOPD. My question is, between ASCs that provide the same services do you have a sense of what cost savings Hartford HealthCare would bring to the table as compared to other nonaffiliated ASCs?

MS. FUSCO: And I believe they talked, you know, you are correct to testify about the general comparison, but they've talked to the cost effectiveness, that you're trying to tie it directly to the board seat.

That having the board seat -- and both have testified, gives them that assurance, that guarantee that they can move forward with their

mission to bring more lower cost access points into the community, and so that patients in that community have access to an ambulatory surgery center, which we all agree is a lower cost site of care, within a clinically integrated health network like HHC.

That's the testimony that I believe they've been given.

MS. LEDDY: Okay. So --

MS. FUSCO: If you're looking for something beyond that, I think you need to ask more specific questions.

MS. LEDDY: Okay. So what I'm understanding from Attorney Fusco's testimony is that this a matter of Hartford HealthCare has the resources to bring more ASCs into the community so you allow more cost effective opportunities within the community.

My question is, is how does Hartford HealthCare's involvement with an ASC reduce costs of health care among other ASCs in the same service area? How does it bring cost effectiveness?

Or is the opposite likely to happen? I want to know when Hartford HealthCare has come into other ambulatory surgery centers and taken over

control, had the costs gone up as a result of that acquisition? That's a fair question.

MS. FUSCO: And I would like if I can just clarify. I would just like to know what you mean by cost (unintelligible) --

MS. LEDDY: Let's talk about rates. Let's talk about payer rates.

MS. FUSCO: Okay. Well, I'm going to instruct my client not to respond to any questions asking him to compare payer rates at different centers. He's not allowed to do that. That is not information that can be shared publicly, to the extent that he even knows it cannot and will not be shared.

MS. LEDDY: I'm not asking for specific rates. I understand --

MS. FUSCO: Not even relatively. It can't be done, and you understand why it can't be done.

I assume you understand.

MS. LEDDY: I understand why you don't want it to be done, but I don't understand how that doesn't -- that's a huge factor under 19a-639, which is the overall impact on cost effectiveness of access to medical care in this community.

We're all ASCs. That's not the issue. The issue is, is how is Hartford HealthCare going to

impact cost among ASCs in the service area? That's a fair question. If they're going to drive rates up, that's a fair question.

That is exactly why we're here.

MS. FUSCO: But I will say you're asking him to share information that, first of all, he may not know, but that in sharing it in the way you're asking could violate antitrust laws. Okay? They are in conflict with the CON statutes here.

So asking him to make a comparison of rates between different HHC joint ventures and nonaffiliated CSA centers creates tons of issues, and I will instruct him not to answer those questions.

MS. LEDDY: Attorney Csuka, we will turn it over to you.

THE HEARING OFFICER: So if we ask for a late file for some of the rates and the cost information for those other facilities that HHC has a joint venture in, would that be acceptable to you, Attorney Fusco?

MS. FUSCO: It's not -- the concern is not sharing it here today in real time. The concern is, depending upon what you're asking for, it's information that we may be precluded by federal

law from sharing. Okay?

And so you know, you can put together a late file and request things, but the response to that late file -- and look. I'm not an antitrust counsel, but the response to that late file may be that this is not information that we can share publicly.

And facilities don't share rates. That's what it's all about. I mean, there's not -- and there are CSA, independent CSA facilities. There are joint venture CSA facilities there are considerations that are amongst the facilities and their ability to share rates, and our ability to then publicly share those rates.

MS. LEDDY: I'm not asking for actual rates, Attorney Csuka. What I'm asking for is a metric that tells me whether the rates go up as a result of HHC's involvement. I think that's a fair question.

If they go up a dollar -- if she wants to indicate, if Attorney Fusco wants to indicate what the range is, that, I leave that to her.

But I think it's a fair question and it doesn't address antitrust issues if you say the costs go up. The rates go up. The rates went down. I would think you would tout it.

MS. FUSCO: Well, I think I would --

MS. LEDDY: (Unintelligible) -- full of it, full of evidence if the rates had gone down when HHC came in. I would think that you would be proud of that and you would put it in the front and center.

MS. FUSCO: But you're -- first of all, I mean, I would defer. And Attorney Csuka, you can make a request.

And I will have to defer to antitrust counsel to tell me what we can and cannot provide you, but you know, you're also trying to compare. You're trying to compare apples and oranges.

You're not talking about -- I mean, are you looking for rate information from when HHC does a buy-in? You're asking to compare different facilities. I mean, there's no focus in what you're looking for here. So we would need specific focus, and then I would reserve the right to object to providing it for the reasons I've mentioned.

MS. LEDDY: If this is a troublesome area to address on the record today, I would offer the that we could prepare a list of questions that would address these questions so that they are specific, to address Attorney Fusco's question about not being

specific.

My questions would be along the lines of, can we get data demonstrating the impact on rates before HHC comes into the center and after HHC has come into the center?

And then the next question would be, how do those rates of an HHC joint venture with Constitution or another, any other entity, how do those rates compare with non-HHC entities?

You may not have the data for that, for that question but you certainly would have the data for the first, which is the impact that an HHC acquisition has on rates at a particular center.

MS. FUSCO: And I would note for the record, too, that despite the fact that Attorney Leddy disagrees with what we did, the equity buy-in has already occurred here, lawfully occurred. You heard Mr. Bitterli testify that ICP rates are in place.

The change in governance control which we are here seeking permission for will not impact the rates. I can make that representation for the record, as can my client. There will be no change in rates with the change in governance control.

MS. LEDDY: Okay. So if you do not get the additional board seat -- and I direct this question to

Mr. Bitterli.

If HHC does not get the additional board seat, is it your understanding that Hartford HealthCare will pull out of the facility and either sell or transfer the 51 percent equity interest?

MS. FUSCO: I'm going to object. Mr. Bitterli can't speak on behalf of HHC about what they'll do.

He has no knowledge of that.

THE HEARING OFFICER: Let me just interject for one moment.

Based on my reading and my evaluation of the application and the prefiled testimony, I noted what Attorney Leddy is getting at here in terms of, first, stating that everybody knows that ASCs are better than HOPDs, like in terms of cost.

What I didn't see was what she is focused on here in terms of, how do we show that this particular affiliation and the gaining of this seat is going to improve upon that?

So the burden is on the Applicant to show that this proposal will be more cost effective than the alternative. And if it is -- I mean, talk it over, you know, figure out some way to address that.

But it's a deficiency in your application, and that if you don't respond to that, that will count against you.

MS. FUSCO: Can we propose -- can we put our heads together and propose a form of late file that might give you that information that you're requesting?

I need time to confer with other counsel and individuals within HHC to determine how we can best provide you with information that supports that position.

THE HEARING OFFICER: Given the nature of what we're asking for and the fact that you're not an antitrust attorney, I'm fine with that.

MS. FUSCO: And I mean, to the point of cost effectiveness -- I mean, there are many ways to measure it. Correct? I mean, and we've talked about, you know, I just reiterated -- I'm not testifying. I reiterated their testimony, but you also heard Mr. Bitterli testify about the transition of patients from HHC the hospitals into SCSC. Right? The migration of patients out of the more expensive setting to coming to, you know, an HHC affiliated center.

So there are many different ways to measure

cost effectiveness. It's not just rates, but you know, we can put our heads together to see if there's some summary we can provide you that would give you comfort there.

THE HEARING OFFICER: That would work for me.

Attorney Leddy, does that sort of address your concerns? Or --

MS. LEDDY: Well, I have to see what the data says first. I mean, the process I think is -- let's see. Let's see what we get. We'll have to see what the process looks like, because I'd like to be able to get an answer.

And if Attorney Fusco is framing the question, I may not get the answer to the question that I was asking. So we'll have to see how it plays out. But yes, I understand her concerns about trying to put something on the record now that might create problems for them. I don't want to do that, certainly.

And I dabble in enough antitrust to get in trouble, so I don't want to put that out there either.

But I do want to point out that on page 245 of Mr. Bitterli's testimony you indicate that the change in control to HHC will increase price

transparency by payers to allow patients to intelligently shop for the most cost effective services. That's a quote right out of your testimony. So I'm trying to gauge that transparency. I'm trying to understand exactly what you mean by that.

If you're not even willing to share whether the rates go up or down in this context, I'm trying to understand how you plan on coming up with transparency so that patients can more intelligently shop for cost effective services.

MS. FUSCO: Can you -- excuse me? Can you point me to exactly where that is? What page was that?

MS. LEDDY: Forty-five.

MS. FUSCO: And can you give me the quote again? I'm assuming it's not something Mr. Bitterli testified to specific to SCSC -- but this is quoting articles. Correct?

Can you give me the quote again?

BY MS. LEDDY:

Q. It says at the top, high deductible healthcare plans force patients to focus more on the cost of care, and the increased price transparency by payers allows patients to intelligently shop for the most cost

effective services.

So I'm trying to figure out how HHC fits into that statement. How does HHC's control of SCSC translate into that statement?

That's your statement.

A. I -- I think the transparency is on -- on the behalf of the payers, that the payers are providing the transparency with, you know, tools online and whatnot.

I -- I didn't mean to suggest that we would be providing transparency and running afoul of antitrust laws.

Q. Okay. So you're relying on insurance companies to provide that transparency because your HHC is not going to do that.

Correct?

MS. FUSCO: Objection. That's not what he said.

MS. LEDDY: That's what I heard.

MS. FUSCO: You're quoting -- you're taking a quote from an article that deals with the cost effectiveness of ASCs in general.

If you flip back to the page, these are all articles that speak generally to the cost effectiveness of ASCs, which we've all agreed on. So you probably don't need to ask questions about

this.

MS. LEDDY: I don't --

MS. FUSCO: That, that particular statement was not -- was a quotation from an article and nothing specific to the center itself. It was a general proposition about ASCs. It's very clear from the context of the testimony.

MS. LEDDY: Okay.

THE HEARING OFFICER: Are you withdrawing the question, Attorney Leddy?

MS. LEDDY: No, I'm not withdrawing the question.

THE HEARING OFFICER: Okay.

MS. LEDDY: I think that I want to know how HHC plans on changing whatever structure they see as a problem with hospital-based settings and HOPDs?

BY MS. LEDDY:

Q. How moving to the ASC model with HHC as the controlling member, how does that help with cost effectiveness, with transparency to allow patients to shop more intelligently?

We're not just saying that that happens with all ASCs. We know that, but how does this transition help in this particular setting with SCSC?

How is that going to help?

A. I don't -- I don't know how to answer your question on price transparency.

MS. FUSCO: I'm confused by the question, and I'm not sure if Mr. Bitterli is the right person to answer it. I mean, are you --

MS. LEDDY: No, that's fair enough. If he's not the right person to -- you know, I'm trying to understand what's going to happen to costs as a result of this transition.

You're telling me that because Hartford HealthCare has -- or ICP has already taken over most of the contracts belonging to SCSC, that those, that any increase, decrease, or no change is already built into the system.

I'm trying to understand why would you put something in there about transparency of pricing and about cost effectiveness if you're not willing to talk about it here today? That's what I'm trying to say. You're not willing to make a commitment that this, that this transition is going to somehow maintain or even reduce the cost of care at SCSC.

MS. FUSCO: Well, I'm going to object. There's evidence throughout the application and that you've heard today about the ways in which it will

maintain or enhance the cost effectiveness of care.

You're asking specific questions about rates which we will not answer today. So please don't cast it as, we've put no evidence in as to the cost effective of care, because that's completely disingenuous.

MS. LEDDY: Well, let's ask --

MS. FUSCO: You're trying to get him to answer a question he's not going to answer today.

BY MS. LEDDY:

Q. Well, then you indicated -- well, Attorney Fusco actually indicated that ICP rates are already in place at SCSC. Is that correct, Mr. Bitterli?

MS. FUSCO: Asked and answered. He testified to that on the record.

MS. LEDDY: Well, actually he -- he didn't. You did.

MS. FUSCO: Yes, he did. No, he did. He testified to that on the record. I reiterated it after he did.

BY MS. LEDDY:

Q. And when you said that, what exactly did you mean by the ICP Rates? Is that enhanced rates for ASCs?

A. That, that is the rates for ASCs that ICP

negotiates with the players.

Q. Now you're familiar with the application. Correct? The CON application in this case?

A. I have a copy here.

Q. And you indicate -- you talk about the HHC's financial assistance policy on page 7. You talk about the financial assistance policy.

You, are you familiar with the HHC financial assistance policy?

A. Broadly, yes.

Q. And you would agree that one of the goals that you have in this transition is to allow SCSC to have greater access for outpatient surgical services for all patients, regardless of payer sources. That, would that be a fair statement of one of the goals?

A. Yes.

Q. And would you say it's a fair statement that one of the goals is also to provide care to Medicaid recipients and indigent persons?

A. Yes.

Q. Okay. Now in the application you projected that only 1 percent of Medicaid -- you projected a 1 percent Medicaid payer mix.

Do you recall that in the application?

A. I do.
Q. And then yesterday in the rebuttal testimony you indicate that SCSC now has a Medicaid payer mix of 7.7 percent. Is that correct?
A. Yes.
Q. And that's within the first nine months of operation as an open center. Correct?
A. Yes.
Q. Do you know why the projections were so low in your application?
A. Projections are hard.
Q. Well, what -- do you know what those projections were based on?
A. That they were based on data that we had for physicians that we thought might utilize the center.
Q. So in other words, you thought that you would have fewer Medicaid patients utilizing the center. Is that a fair statement?
A. Yes.
Q. And once you got this data for the last nine months that indicated that you were at 7.7 percent, did anyone consider amending the application to reflect that number?
MS. FUSCO: I can speak that that was just collected

within the last two days, and was therefore included in the rebuttal. No, we did not amend the application during the 18 months that were waiting for this hearing, but we submitted it in connection with our prehearing submissions.

BY MS. LEDDY:

Q. Mr. Bitterli, do you monitor the Medicaid payer mix for SCSC?

A. Periodically.

Q. When you say periodically, how often do you mean?

A. I don't have a regular schedule to look at our Medicaid payer mix. I have occasion to look at our payer mix -- on occasion.

Q. Okay. And do you receive monthly reports showing what the payer mix was for the prior month?

A. I have access to that data on a monthly basis, yes.

Q. Now is there -- when SCSC opened its doors in October of 2021, was there a ramp-up in terms of securing Medicaid, Medicare, and commercial insurance participation?

A. Was there a ramp-up?

Q. You didn't open the door with fully

participating payers. Correct?

A. Correct.

Q. Okay. And so can you tell me, give me a basic timeline of that, that process of bringing on payers for SCSC, from October when you opened the doors through the first -- it's only been nine months.

So how long did it take you to integrate those payers?

A. It took -- it took a different length of time for every payer. I don't -- I don't have a good way to characterize how long, but you are -- yes, there is -- there is a ramp-up where you can participate.

Q. Do you recall whether Medicaid was one of the earlier of the payers that SCSC was approved to accept?

A. That's likely.

Q. Okay. So when you look at the numbers for the first nine months, you're factoring there is a ramp-up period where you're not getting as much commercial payer patients as you might ordinarily expect over the course of, say, five years. Is that fair to say?

A. Probably.

Q. Okay. So would you agree that that when you're looking at the payer mix for this nine-month period, that the numbers are probably pretty skewed by the fact that Medicaid was one of the earlier payers that SCSC was approved for?

MS. FUSCO: I object to the characterization. I'll let Mr. Bitterli testify.

THE WITNESS (Bitterli): Yeah, I don't know what you mean by, pretty skewed.

BY MS. LEDDY:

Q. Well, let's use plain skewed, not pretty skewed. Would you say that -- that those numbers, when you say 7.7 percent, is it possible that that number is an aberration precisely because you had Medicaid approval early on in the process?

So the only patients you could see early on in the process were Medicaid patients?

A. It's -- it's possible that the Medicaid number is different now. I -- I can get back to you on what our up-to-the-minute Medicaid population is, but I don't --

Q. Okay. So then --

A. I don't think it will be materially skewed.

Q. Okay. So my question then -- I think you, you partially answered my question. You anticipate -- but let's back up.

Do you have all the payers on board now, the commercial payers that you have been working with, everybody that SCSC wants to be working with in network?

A. All of the major players I would say, yes.

Q. Okay. So if I looked at the numbers of the payer mix for July of 2022, would the payer mix still reflect 7.7 Medicaid?

A. I don't know that.

Q. And who would know that?

A. Given that we've barely closed July, I'm not sure anybody would, would know that.

Q. Fair. That's a fair question. How about June? Would we have a sense of what the payer mix is for June of 2022?

A. In -- in June the Medicaid payer mix was 6.1 percent.

Q. Okay. So it dropped from the 7.7.

Is that fair to say?

A. That seven --

MS. FUSCO: Objection -- go ahead.

THE WITNESS (Bitterli): 7.7 is a blended average over

time. It's going to go up and down every month.

BY MS. LEDDY:

Q. Okay. Well, right now -- do you know what the payer mix was for Medicaid in month one?

You have something in front of you that demonstrates what the payer mix was in the -- let's take October wasn't a full month. November 2021. What was the payer mix that month for Medicaid?

Can we get back on this? I wouldn't --

MS. FUSCO: If you don't have it there, if all you have is what you got in June, then you can't answer --

THE WITNESS (Bitterli): Well, if I'm going to put it onto the record, I want to make sure of what I'm -- I want to make sure of what I'm looking at.

MS. FUSCO: I'm going to object.

THE HEARING OFFICER: What are you --

MS. FUSCO: He's looking at, I think, internal notes and he wants to verify those before he puts them on the record. The 7.7 is a verified blended average number, but month by month I think he needs to verify.

MS. LEDDY: Okay. And so I'd ask that that be also something that can be done as a late filing, because we got the late filing yesterday of the

rebuttal testimony saying -- touting 7.7 percent Medicaid payer mix.

And we're trying to understand whether that's now going to be the average that they expect with the transition to HHC, or whether it's an aberration because it started at 22 percent back in November and has been dropping since then. So that when you take the average you get 7.7.

I'm trying to figure out -- I've got projections of 1 percent, actuals of an average over nine months of 7.7. I'm trying to figure out where HHC and Constitution expect this to land.

THE HEARING OFFICER: I understand, and I'm fine with doing that as a late file. So have Steve --

MS. FUSCO: And we can renew -- I'm sorry. We can renew those Medicaid projections going forward based upon what we've seen historically in an analysis of any of those trends Attorney Leddy is speaking with.

MS. LEDDY: Well, in terms of trends, what I -- I think the actuals to me are a lot more telling. I think that we want to know -- the center is new. It's been only up and running for nine months. So the data is very limited to that period of time.

I would much prefer to have the data related

to the specific facility for that period of time just so we can evaluate for ourselves whether that's an accurate number. And actually more importantly, so that you can evaluate whether that's an accurate number.

THE HEARING OFFICER: We can just do it month by month that they've been open.

MS. LEDDY: That's completely fine.

THE HEARING OFFICER: Then we can do whatever manipulation of the data that we want to.

MS. LEDDY: Okay. And actually while we're on -- if we're going to do that, we would also like to understand how many cases there were per month so that we understand that we're comparing, you know, if you've got ten cases one month and they're all Medicaid patients and that's all you had, then you're going to have a hundred percent that month.

So I would like to know how many cases that we're talking about as well.

THE HEARING OFFICER: I think that is a table that is in the application. So we can just ask for one of the tables to be updated. I'm not sure which one it is.

MS. FUSCO: No, I'm familiar. We can update it.

MS. LEDDY: That's fair. Thank you.

We appreciate that.

BY MS. LEDDY:

Q. Based on the data that you have for the first nine months is the percentage of pain management still at the projected 60, 65 percent, or two thirds?

A. No.

Q. What's the percentage of pain management at the facility?

A. It's -- and this based on -- this is through the end of June, but it's 115 cases out of 716.

Q. So can you get -- I'm sorry.

Can you give me the numbers again?

A. Sixteen percent.

Q. Sixteen percent? Okay. And do you know why the pain management utilization is at where it is?

A. We -- we are having more trouble than expected migrating pain procedures or -- or attracting the physician who's going to -- physicians who are going to do the pain procedures.

Q. Do you have a breakdown of utilization by specialty for all nine months at the

facility?

MS. FUSCO: I'm just going to object, and ask what the relevance of this line of questioning is to the changing governance control?

MS. LEDDY: We're trying to -- you actually --

MS. FUSCO: The change in governance control does not, nor did the change of ownership project any change in case volume directly related to the transfer of ownership.

Like, this is a line of questions that has to do with a de novo facility and whether everything that was in your client's testimony about whether they're able to meet their volume projections.

That has nothing to do with the transfer of ownership that was expressly stated would not impact payer projected volume.

MS. LEDDY: Well, to the extent that you have different specialties and some specialties are more utilized by Medicaid patients as opposed to commercial insurance, commercial payers, I think that's directly relevant.

I think that we can understand what the payer mix is going to be in the context of the utilization of the facility of the various specialties. I think that goes right to whether

or not there's cost effectiveness, whether there's access that's -- it all goes into the same mix.

MS. FUSCO: I disagree. Like, you're talking about whether the facility is cost effective, and whether the facility provides enough Medicaid based upon its specialties.

This is not a CON about the facility and the establishment of the facility. It's about the transfer of ownership and governance for an equal share to HHC, and how that might impact Medicaid.

It has nothing to do --

MS. LEDDY: So --

MS. FUSCO: This is not a de novo CON for this facility.

BY MS. LEDDY:

Q. Okay. Well -- and you're right. That's a separate question for a separate day. But then my question is, is how does the transition from two board seats to three board seats for HHC, how is that going to impact the number of Medicaid recipients that will be seen and treated at your facility?

A. HHCs -- I mean, the facility doesn't need to participate with Medicaid, so it could stop doing that.

HHC being -- having, you know, balanced governance ensures that it will stay that way. So I -- I guess the answer is, I don't think HHC buying in will increase the -- the number of Medicaid patients. Here you're seeing HHC's influence in the policy currently.

Q. Well, when you say we're seeing the influence, we don't know what the trend is at this point, though. Right?

You're projecting 1 percent, yet then you came in with 7.7. Now it's -- the last month that you have available is at 6.1. So you don't really know what the trend is, whether HHC is helping or not.

Is that accurate?

A. We will -- we'll have that data.

Q. Okay.

A. As I sit here I can't answer your question.

Q. Do you know roughly how many of your commercial contracts are in network right now?

A. I -- I think I said that we're in network with most of the major players.

Q. And are there any that are out of network at

this point?

A. Not -- not a material payer, no.

Q. So if I get this straight, you already have access to ICP and most of your contracts have been migrated over to ICP. You have HHC as a 51 percent owner in the equity.

You're in a building that was financed by HHC, but the addition of this board seat is going to change everything for the better.

Is that basically why we're here?

A. It's going to -- the addition of the board seat is going to keep the plan what it is. The plan will not deteriorate.

Q. Okay. So that suggests to me if the plan is to keep HHC in the mix because so it doesn't deteriorate, that suggests to me that if this CON app is denied, that HHC may very well pull out and leave (unintelligible) --

MS. FUSCO: Objection. You've asked that question before. I've objected to it before. Mr. Bitterli is not going to answer what HHC will do.

MS. LEDDY: If I could have five minutes -- or what time is it?

If I can have five minutes, if we could take a break, I will see if I can wrap this up for my

cross of Mr. Bitterli before I move on to Ms. Sassi, if that's okay with you?

THE HEARING OFFICER: Let's do ten, if that's okay with everyone? So we can come back at 12:33.

MS. LEDDY: That's fine.

(Pause: 12:23 p.m. to 12:37 p.m.)

THE HEARING OFFICER: Thank you. So Attorney Leddy, I believe you finished up your cross of this witness. Is that correct?

MS. LEDDY: I just have -- I have, like, two more questions and then I will be done. And I don't know if you would prefer to allow redirect then of Mr. Bitterli so he can be finished, and so it's all fresh in his mind, and then I can start with Ms. Sassi. That seems to me like that makes -- would make the most sense.

MS. FUSCO: Yeah, that makes sense to me. I don't have much redirect. So I'm fine with that approach.

THE HEARING OFFICER: Okay. That's fine.

MS. LEDDY: I just have a couple of very quick questions for you, Mr. Bitterli. I don't know if you had an opportunity to look at the document that was uploaded by OHS yesterday, the all payer

claims document?

THE HEARING OFFICER: That was this morning, just to clarify.

BY MS. LEDDY:

Q. This morning, I don't know if you had an opportunity to look at that?

A. No.

Q. Are you familiar with the all payer claims data that is maintained by OHS?

A. I understand the concept.

Q. Okay. But you haven't had a chance to look at the data that's in there about costs and prices for services in the area?

A. Correct. I -- I have not had a chance to look at that.

MS. LEDDY: And to be frank, I haven't had much of an opportunity to look at it also.

I think that, Attorney Csuka, this goes to the questions that we're asking before about the rates and about the cost issues.

And I'm wondering if you would indulge me in allowing me to submit a few questions about the data that's in the submission that was uploaded this morning, that we can direct to Mr. Bitterli, that would be in the same lines as what we had

discussed earlier about cost data and about the data that we -- for comparing the ASC data?

THE HEARING OFFICER: We can do it sort of question by question. And certainly, Mr. Bitterli, if you don't know the answer I'm not going to require that you provide one.

And if you want the opportunity to review the APCD data that was uploaded, we're not going to expect anything unreasonable of you right now.

THE WITNESS (Bitterli): Thank you.

MS. LEDDY: So I just have a couple questions, and if you don't know the answer, that's fine. And that's why I offered this other alternative which is to deal with any questions or analysis of the APC data in a late filing.

BY MS. LEDDY:

Q. Do you know whether the ACP data that was uploaded includes data regarding the costs, or the prices of care at any HHC affiliated ASC?

A. I do not know that.

Q. And do you know where -- on the data that's presented, do you know where on the scale of most expensive to least expensive any HHC affiliated ASC falls on that data?

A. I do not know that.

Q. Do you know whether any data on HHC affiliated ASCs is maintained in the APC data that OHS has? For any, any facility, not just the ones in the service area?

A. I do not know that.

MS. FUSCO: And I'll just -- I'll let Mr. Bitterli answer, but just to note for the record, Mr. Bitterli does not work for HHC. He's not a representative of HHC, so.

MS. LEDDY: Understood. I understand.

MS. FUSCO: So for any questions about HHC affiliated centers, they wouldn't necessarily all involve Constitution, so.

BY MS. LEDDY:

Q. Okay. In terms of Constitution's ASCs, are you familiar with the data that's maintained in the APC for Constitution owned or operated ASCs?

A. No.

MS. LEDDY: Okay. I will ask similar questions of Ms. Sassi and depending on how that works maybe then we can discuss possibly asking a few questions about the data as compared to the data that we're going to be talking about whether they

can provide to us or not.

Maybe as part of a late filing we might be able to do something like that, but other than that I am done cross-examining Mr. Bitterli.

THE HEARING OFFICER: Okay. Thank you.

Attorney Fusco, you said you had a little redirect for him?

MS. FUSCO: A few, a few redirect questions.

REDIRECT EXAMINATION (of Bitterli)

BY MS. FUSCO:

Q. So Mr. Bitterli, you were asked questions about, you know, what it means to assume that additional seat on the board and board control. And one of the questions Attorney Leddy was asking was about whether you'd seen any instances in which there was a dispute that couldn't be resolved on the board.

Just to put a finer point on it, if the SCSC board isn't controlled equally by HHC surgery and SCSC holdings can HHC Surgery be guaranteed to work collaboratively with the physician holding company?

A. No, not necessarily.

Q. And although you have not seen any instances during this, we'll call it a honeymoon phase when the facility has first opened, it's entirely possible that there could come a time where interests conflict and the need for shared governance exists?

A. Absolutely.

Q. I think Attorney Leddy also asked you about several times on the record whether if the CON is denied HHC will stay in the partnership or divest its interests.

Can you answer that question on behalf of HHC?

A. I cannot speak to what HHC will do.

MS. FUSCO: Okay. I think that's all the questions. I mean, assuming we're reserving our ability to present that Medicaid data and respond to it in writing in the late file, I think that is all the questions -- I'll just doublecheck it, but that's all the questions I have on -- wait one minute to look at my list. That's it.

THE HEARING OFFICER: Just to clarify, what -- Medicaid data, or Medicare?

THE WITNESS (Bitterli): Our payer mix. SCSC's payer mix.

MS. FUSCO: Yeah, we're talking about updating that table with the Medicaid percentages.

THE HEARING OFFICER: Okay.

MS. FUSCO: And we can clarify anything in there at the time we submit it.

THE HEARING OFFICER: Okay.

MS. FUSCO: Okay. That's all I have. Thank you.

THE HEARING OFFICER: Okay.

MS. LEDDY: I have no further cross.

THE HEARING OFFICER: For him, or for anyone?

MS. LEDDY: No, no. I'm ready to go with Ms. Sassi, if she's ready.

THE HEARING OFFICER: Ms. Sassi, are you ready to proceed with your cross-examination?

THE WITNESS (Sassi): Yeah -- excuse me, yes.

THE HEARING OFFICER: Okay.

MS. LEDDY: Do you want to get some water or anything?

THE WITNESS (Sassi): No, I have it -- but thank you. I swallowed wrong, but I'm okay now.

MS. LEDDY: Okay. Hi, Ms. Sassi. As you may have heard, my name is Lorey Leddy and I'm an attorney representing Wilton Surgery Center, and I'm going to be asking you some questions today just as I did with Mr. Bitterli.

CROSS-EXAMINATION (of Sassi)

BY MS. LEDDY:

Q. My first question, it relates to the line of questioning that Ms. Fusco did on her redirect with Mr. Bitterli.

She asked whether there was any guarantee that the current board makeup, two seats to HHC, three seats to SCSC, whether there was any guarantee that the two sides would work collaboratively going forward.

Is it your understanding that there's no guarantee right now that those, that the two sides would work collaboratively?

A. Could you restate your question again, please? I'm sorry. I --

Q. Sure. Part of the reason -- let me rephrase the whole thing.

The CON app here is to transfer an additional seat, or to give an additional seat to HHC. Is that correct?

A. Correct.

Q. So that they would have equal seats. So right now there are five, three and two. They'll add a sixth seat which will go to

Hartford HealthCare and they will be equal.

Is that correct?

A. Yes.

Q. And the selling point of doing that is to allow HHC and the other members of SCSC To have equal control over the business and operations of SCSC.

Is that your understanding?

A. Yes.

Q. And is there any concern from the HHC's side -- that has two seats now. Is there any concern of Hartford HealthCare that they will ever be in a position where the other three seats are going to overrule them on some sort of decision where conflict would arise?

A. Well, it's always possible.

Q. It's always possible. Now -- but Hartford HealthCare does own 51 percent of the entity.

Is that correct?

A. Correct.

Q. And that's a majority ownership interest in the facility?

A. Correct.

Q. And Hartford HealthCare paid for the building that everybody is housed in. Correct?

A. I don't have firsthand knowledge on that.
Q. Okay. Do you know whether Hartford HealthCare financed the renovations to the building where SCSC is located?
A. Once again, I do not have direct knowledge of that.
Q. Okay. I asked Mr. Bitterli some of those questions before and he indicated that you would know the answers.

The cost for HHC to buy-in was 1.6 million for the 51 percent interest.

Is that correct?
A. I cannot validate that. I was not part of that, no. I -- I do not have firsthand knowledge on that.
Q. Okay. So you don't have any idea of whether HHC has made any additional financial commitment to the facility other than the 1.6 million?
A. I do not have any firsthand knowledge of that.
Q. Okay. And you don't even know whether that 1.6 million is an accurate figure?
A. Correct.
Q. Do you know whether HHC would ever withdraw

from the facility after having put this amount of money and resources in it?

A. That's something that I would not know.

Q. Who would know that?

A. I would have to defer to finding out for you. I do not have the person's name at this point.

Q. So --

A. There is someone, I could.

Q. Okay. So you've got a CON app before OHS seeking to have this additional board seat given to HHC. And my question I asked Mr. Bitterli several times -- and he said he didn't know. My question is, what happens if the CON app is denied?

Do you have a sense of what HHC's plan would be for the facility if the CON app is denied and it does not get the additional seat?

A. No, I don't at this time.

Q. Okay. And so you don't know whether there's any financial leverage that HHC has over the other three board seats to make decisions in operating and running the facility?

MS. FUSCO: Again I'm going to object. I feel like

we're going back down the road of whether they have control of the facility, which is the subject of the inquiry.

And you know what? And I will also note for the record that they may not have a plan or understand exactly what they would do if the CON is denied. We are moving forward with the CON proceeding on an assumption that it will be approved because we've met the statutory decision criteria.

So -- I mean, you can look at Ms. Sassi's resume. She's a quality person. She works in partnership integration. She's not -- she would not be one who was involved in making those decisions, nor would anyone at this table.

MS. LEDDY: Okay. Well, I'm not disparaging Ms. Sassi in any way, and I think that the decision of whether or not HHC has met the qualifications, it is not HHC's decision. That's Attorney Chuka's decision, so.

MS. FUSCO: Obviously.

BY MS. LEDDY:

Q. We're here to test that and to determine whether you have, in fact, met the standards of the criteria.

So I'm trying to understand that if there is a possibility that the CON app would be denied, my understanding is, is what would that mean for this facility? And I -- and what I understand, and if you don't know the answer Mr. Sassi, that's totally fine.

I'm just asking what I think is a fair question, and if you don't know the answer, that's fine?

A. Correct, I do not know the answer to that question.

Q. And if I heard Mr. Bitterli correct, SCSC has already been migrated. Its contracting has already been migrated over to ICP.

Is that accurate?

A. I'm not involved with that contracting service.

Q. Okay. You work with a partnership between Hartford HealthCare and other ASCs.

Is that right?

A. Correct.

Q. And is part of that partnership figuring out what services they will share and what services won't be shared?

A. I don't understand the question.

Q. Well, one of the things that you indicate in your testimony is that there will be a sharing of resources. HHC has these resources and has access to resources that they would be sharing with SCSC as a result of the additional board seat.

Do you recall that?

A. Yes, I do. We would share resources at any time as we did through COVID. So if we can help our partners in the communities, that's what we do. So it's -- it's part of our responsibility.

Q. Okay?

A. To improve, you know, patient care.

Q. And you would do that. As a 51 percent owner in SCSC, Hartford HealthCare would do that. Whether they had the extra board seat or not.

Isn't that accurate?

A. I can't speak to anything in the future. I, you know, I don't know the situation. So I really can't speak to that.

Q. So you can't say. Can you imagine a situation where Hartford HealthCare would actually say, we're not going to worry about the quality of care at this facility that we

own 51 percent of?

MS. FUSCO: Object -- and you can answer.

THE WITNESS (Sassi): Yeah, that is our role. Whether we have, you know, two seats or three seats. But it's -- it's more about having the voice for that patient and being able to be there when decisions are made and have that perspective on that decision and -- and that.

BY MS. LEDDY:

Q. And your understanding is that the board seat is necessary to accomplish that because the financial commitment that HHC has made to the facility is not sufficient to guarantee that voice?

A. I can't speak to the financial situation, but I can speak to the goal is to improve the health of our patients within the communities of which they live, and that's our -- our mission.

And you know, we sit at that board to represent that. And we can't influence it, you know with two seats as well as we can with equal board representation.

Q. Does HHC have any concerns or issues with the way Constitution has been managing the

facility up to this point?

A. Not to my knowledge.

Q. Does HHC have any concerns about the quality of care that the facility has been providing under management by Constitution?

A. Quality is a journey depending on what is the situation and, you know, current practices, changes in practices, our community needs.

So quality is a journey. So you know, it is not stagnant.

Q. Okay. So HHC, you think it is better equipped to handle that journey than Constitution is?

A. HHC has more resources and experts within many of the specialties of which patients need access to. We talked about it being an integrated healthcare system made up of all of those pieces, acute care, behavioral health.

So the depth of our resources are much deeper than a free -- you know, freestanding ambulatory surgery center.

Q. Because HHC already owns a 51 percent interest in the facility, wouldn't SCSC already have access to all of that, to all

those resources?

A. I (unintelligible) --

Q. Let me ask a different way. Let me ask a different way.

A. It's not about the resources as much as the decision making. We have the depth of resources and experts to be agile to respond to the needs of the centers, whether it be supplies or, you know, clinical experts.

Q. Okay. So what I'm hearing is, is that you have concerns that the three current seats that comprise the majority for SCSC are somehow going to make decisions that would undermine HHC's goal of providing this quality of care?

A. Yes.

Q. And so in doing that, you're suggesting that the physician group and Constitution collectively would make decisions that would undermine the quality of care that HHC otherwise expects at this facility?

A. It is possible.

Q. Do you know of any instance where something like that has happened with another HHC affiliated ASC where decision making -- where

the ASC was willing to compromise quality because they disagreed with HHC?

A. I'm not -- I'm not sure I should be speaking about another facility when we're here to talk about the CON.

MS. FUSCO: If you have no knowledge, you don't --

MS. LEDDY: Okay. If you don't know i don't want you to speculate. Okay.

BY MS. LEDDY:

Q. Are you familiar with CMS?

A. Yes.

Q. Okay.

A. Minimally.

Q. Okay. Well, let me ask you this question. Does CMS require price transparency for an ASC?

A. I don't know. I don't have firsthand knowledge of that.

Q. Okay. Do you know who would know that?

A. I could find out for you.

Q. Okay. And so I asked Mr. Bitterli these questions earlier, but you don't know -- or maybe you do know. Do you know how pricing of an HHC affiliated ASC differs before you acquired -- an HHC acquired the interest and

after HHC acquired the interest in the ASC?

A. No.

Q. So you don't know whether prices --

A. Not to my knowledge, no.

Q. Okay. Do you know how many classes of membership there are at SCSC?

A. No.

Q. Do you know whether there are different classes of membership at SCSC?

A. I know that there's different classes of membership, yes.

Q. Okay. And do you know whether there is a difference in voting rights for each different class?

A. Yes, I -- I -- yes, to the best of my knowledge.

Q. Okay. Do you know what type of class HHC owns in its -- in SCSC?

A. No, I do not.

Q. And do you know what class membership the remaining parties, Constitution and SCSC have in SCSC?

A. No, I do not.

Q. So you don't know whether the differences -- you indicate that there are differences

between the classes. Correct?

MS. FUSCO: I'm going to object. I mean, this is sort of a line of legal questioning. I mean, this is not a person who is a lawyer or who has seen these agreements and can interpret them.

I mean, she doesn't have knowledge as to how it works. I don't know where you're going with this.

MS. LEDDY: Well, I think it's, you know, you've presented her as the HHC representative who's going to be able to explain to us how this additional board seat is going to make a difference, and I'm trying to understand as the HHC representative, what knowledge she has of the current existing arrangement so that if a 51 percent majority holder of membership has voting rights that already outweigh the voting rights of other members of a different class, I'm entitled to know that. And so is Attorney Csuka.

We're entitled to know whether that seat really makes a difference, or whether the voting rights of each membership class allow for that, the equality of control that HHC has presented.

MS. FUSCO: I mean, that's -- I'm telling you that this witness doesn't know the answer to that question.

If it's a question Attorney Csuka wants answered, we can figure out who can answer it for him and how to get that information. But she is not the person who can answer it.

MS. LEDDY: Okay. And I asked -- I was trying to get some information from Mr. Bitterli also about -- that's why I was asking about the contracts, because we're trying to understand what the relationship currently is.

Because it is an unusual situation where you've got a minority of seats held by a majority owner. And so I'm trying to understand, does the contract, as it exists today -- which we have never seen -- already provide HHC with the type of control or voice that they're looking for through this board seat. I think that's a fair question.

MS. FUSCO: And Ms. Sassi said she cannot answer that question for you.

MS. LEDDY: Okay. Can Mr. Bitterli answer that question, since you would not allow him to discuss the contracts before?

MS. FUSCO: Let me see if he knows the answer.

Give me a moment.

He can answer it.

THE WITNESS (Bitterli): There's no difference in

voting rights between the classes. The three can outvote the two.

RECROSS-EXAMINATION (of Bitterli)

BY MS. LEDDY:

Q. Okay. So that, that just by virtue of being a majority owner there is no difference in HHC's voting rights. They don't have a 51 percent voting option --

A. Correct.

MS. LEDDY: Okay. So back to Ms. Sassi -- if we can get the camera to swing back over.

(Cont'd) CROSS-EXAMINATION (of Sassi)

BY MS. FUSCO:

Q. And Ms. Sassi, you indicated that you're not particularly familiar with the migration of SCSC's contracts over to ICP as of today. Is that correct?

A. That is correct.

Q. Now -- but you did testify in your prefile and at the opening of the session, you talked about the improvements that HHC anticipated

making at the facility. Do you recall that, that kind of testimony?

A. Yes.

Q. And you talked about how the relationship between HHC and SCSC enhances the quality of outpatient surgery at that facility.

Is that right?

A. That is right.

Q. And my question to you, isn't that already happening today?

A. Once again, if we look at it as just without the healthcare system support and management of that patient's care continuum. If we look at a patient who's to go to have surgery, it's been noted to be, you know, that's our fragmented care.

There's a lack of communication with the communities of which the surgery is being done as well as the providers. We elevate the practice of -- I mean, the care of our patients through our integrated healthcare system, offering them many options along the continuum of their lifespan.

This not just about improving the care of that one episode.

Q. Okay.
A. This is about caring for the patient in total.
Q. Does SCSC have access to that resource now, though? But don't they already have access to that?
You're talking about fragmented. Don't they function as an integrated part of HHC already?
A. Right now to some level, yes.
Q. Okay. What's going to change? Why is that board seat necessary to take it to a different level?
MS. FUSCO: I'm going to object as it's been asked and answered.
MS. LEDDY: I'm asking because I haven't gotten an answer yet.
MS. FUSCO: She answered it twice already.
THE HEARING OFFICER: If you can answer it --
THE WITNESS (Sassi): It's about being --
THE HEARING OFFICER: Yeah.
MS. FUSCO: Go ahead.
THE WITNESS (Sassi): It's about having a voice where the decisions are being made.

BY MS. LEDDY:

Q. Okay. And you indicated that as far as you know there's no complaints currently about the quality of management services that Constitution is providing the facility.

Is that right?

A. Correct.

Q. Do you know what the plan is for Constitution's role If the CON app is granted and HHC picks up the sixth seat?

A. Can you clarify that question?

Q. In the event that the CON app is granted and HHC has the extra seat, the third seat, do you have an understanding of what Constitution's role will be in managing SCSC going forward?

A. They will continue to manage SCSC, as they do today, the day-to-day operations.

Q. Okay. And are there any benefits that HHC plans on providing for that management that would be a direct result of this additional seat on the board?

A. I -- during my opening I did share with you about Epic and sharing the cost of Epic, the platform that, you know, puts the patient --

it's a comprehensive electronic medical record for the patients. And so we would share that. That is a benefit for sharing the cost for that.

And we also have, once again a large amount of resources, experts in the field. We have institutes, they could participate in our councils. So there's a lot of, you know, support that we can give them as well as expertise which will allow them to be more agile instead of having to do the research themselves, having to seek out experts by themselves.

And that patient will be served better, You know, as far as time-wise.

Q. Is that not happening now? Are you saying that, that right now the doctors, the physicians at SCSC don't have access to those resources?

A. You know, they do, but it's more of, you know, when, you know, it could be situational and we want this to be part of their everyday, you know, we want to collaborate and create a sustainable model.

And we can't sustain a model that, you

know, that one doctor wants to do it today, maybe not tomorrow -- and that we could represent the patient and make sure that that level of care is provided to all patients.

Q. So the day-to-day care of patients is done at the facility with Constitution and the physicians. Is that accurate?

A. Correct.

Q. And the board is not making decisions on patient care. Is that correct?

MS. FUSCO: I would object. I mean, are you saying are they making actual clinical decisions? Or are they making decisions that drive patient care? Those are two different questions.

BY MS. LEDDY:

Q. Let's do both. Let's take each one at a time.

A. Okay. Which one are you asking first?

Q. Is the board involved in clinical operations or clinical decision making for patients?

MS. FUSCO: If you know.

THE WITNESS (Sassi): I don't believe so.

BY MS. LEDDY:

Q. Okay. So the addition of a board seat for HHC is not going to affect the day-to-day

clinical decision making on behalf of patients. Correct?

A. Well, we do review policies and procedures there at the -- at board meetings. That's part of the process that they use. So we do impact patient care.

Prior to those meetings they could resource our policies at HHC and make sure that we standardize that practice. So it is important for the quality of care that we provide, and for standardization and reducing variability from our patient walking into an ASC as opposed to an acute care hospital, and making sure the level of care is at the same quality.

Would you describe the situation at SCSC now as fragmented, even though it's already 51 percent owned by HHC? I wouldn't use that word. I --

Q. Okay. One of the word -- that's one of the words that you were using.

A. When you say fragmented, yes. There, you know, ownership does not allow us to impact the care continuum. So yes, I would say yes.

Q. Do you consider that Hartford HealthCare has

a partnership already with SCSC?

A. Yes.

Q. Do you know if SCSC has its own lease for the space in the building?

A. I did not have firsthand knowledge of that.

Q. Who would know that?

Would Mr. Bitterli know that?

MS. FUSCO: Yeah. Yes. Mr. Bitterli can answer that question.

THE WITNESS (Bitterli): SCSC subleases that space.

(Cont'd) RECROSS-EXAMINATION (of Bitterli)

BY MS. LEDDY:

Q. From whom?

A. Hartford HealthCare who master leased the building.

Q. Okay. Does SCSC pay rent to Hartford HealthCare?

A. Yes.

Q. If the board seat is not transferred to HHC, is there any risk that you would lose your lease at this facility?

A. No --

MS. FUSCO: Um --

THE WITNESS (Bitterli): Sorry.

MS. FUSCO: Objection. You can answer.

THE WITNESS (Bitterli): No. I -- I don't believe there is, anyways.

MS. LEDDY: Okay. I'm going to ask you to indulge me, Attorney Csuka, if we can go on our lunch break now? That will give me some time to regroup.

I don't believe I have any additional questions for Ms. Sassi, but I would like to just, you know, collect my thoughts and make sure that I'm finished.

And then we can come back and I can let you know. If I do have any questions it would be five to ten minutes, but I just want to make sure that I've covered everything from my client.

THE HEARING OFFICER: That works for me.

Attorney Fusco, are you okay with that?

MS. FUSCO: Yes, absolutely. That works for me.

No problem.

THE HEARING OFFICER: And would the 45 minutes -- would coming back at two o'clock work for everyone?

MS. FUSCO: I think so, yes.

THE HEARING OFFICER: Okay. I know the last hearing people just wanted to cram through and get it done as quickly as possible, so.

MS. FUSCO: No, understood.

THE HEARING OFFICER: Okay. So let's say two o'clock, then.

MS. LEDDY: Great.

THE HEARING OFFICER: Thank you.

MS. LEDDY: Thank you.

(Pause: 1:13 p.m. to 2:03 p.m.)

THE HEARING OFFICER: Thank you for starting the recording. So I believe we left off with Attorney Leddy wanting to confirm that she was done with her questions.

So Attorney Leddy, have you had an opportunity to do that?

MS. LEDDY: Yes, I have. And I am done with my cross-examination, and I wanted to thank Ms. Sassi for her testimony.

THE HEARING OFFICER: Thank you. So now we're going to move on to --

MS. FUSCO: Can I ask just a few redirect questions?

THE HEARING OFFICER: Oh yeah, I'm sorry.

MS. FUSCO: I'm sorry. I thought I was muted.

THE HEARING OFFICER: That's what happens when you take a break. Everything -- I lose all track of

everything.

MS. FUSCO: Sorry. I just want to ask a few redirect questions of Ms. Sassi.

REDIRECT-EXAMINATION (of Sassi)

BY MS. FUSCO:

Q. Ms. Sassi, you were talking a little bit during cross-examination about, you know, obtaining that third board seat and what it means.

Are you aware, like, has OHS approved this, this type of model for other HHC CSA joint ventures, one where you have 51 percent ownership and governance control?

A. Yes.

Q. Is that basically how all of those JVs operate --

A. Yes.

Q. -- from an ownership and governance perspective.

And so as far as in all of these integration and standardization you've been talking about, the things that Attorney Leddy was trying to get you to distinguish between

what you do when you own, and what you do when you govern. Like, is it fair to say that you were engaging in that level of integration and standardization because you believed consistent with, you know, OHS's approval of all of these joint ventures, that that would be the end result of the CON and that you were moving toward full integration and governance control?

A. Yes.

Q. And could you tell us -- and I mean, this question may have been asked of you, but you know, could you tell us some of the things that might happen from your perspective there if you didn't get that third board seat? If HHC wasn't allowed to assuming equal governance control?

A. Yes, any decisions whether they're clinical or financial brought to the board could be voted down. For example, the electronic medical record, Epic implementation could definitely be voted down because of cost.

And that would impact, you know, how -- how we could influence the care and the coordination of those patients.

And that's it.

MS. FUSCO: Okay. That's I don't have any further questions for Ms. Sassi.

MS. LEDDY: I don't have any further questions.

THE HEARING OFFICER: Okay. So now we are going to move on to the Intervener's case.

Attorney Leddy, you have an opening statement you'd like to make?

MS. LEDDY: I just would like to make a few opening comments and introduce our witness, Mr. Alan Hale. And thank you for this opportunity to allow us to intervene and to present our side of the story and our evidence as to why this CON app should be denied.

Hartford HealthCare has attempted to try and narrow the scope to the issue of the change of control, and while I understand that that has meaning here, that change of control may very well have significant implications that are not all positive.

And the OHS is obligated under the statute to look at all of the factors, so including things like the payer mix, cost, utilization; all of those factors need to be considered. We can't just focus on, you know, whether or not I can get

my electronic records from a hospital delivered quickly to a surgical center. All these have to be considered including cost.

Cost is a big factor here for ASCs precisely because as we've all said and we've all conceded we're all on the same page. ASCs do provide a cost effective alternative to HOPDs and inpatient care. The whole point is to keep that structure and that model in play.

And our concern, as you'll hear from the testimony and from the questioning that's going on here, is that the involvement of HHC in this location and in other locations, for that matter, is going to ultimately drive up those costs which defeats the whole purpose of the ASC model.

So without further ado, I'm going to turn it over to Mr. Alan Hale, who is here on behalf of Wilton Surgery Center.

THE HEARING OFFICER: Thank you.

Mr. Hale, your last name is spelled H-a-l-e.

Correct?

ALAN HALE: Correct.

THE HEARING OFFICER: Attorney Leddy, while we're sort of introducing people, can I just ask who else is in the room with you? I'm not sure we --

MS. LEDDY: Yes. Mary Heffernan is here.
THE HEARING OFFICER: Okay. Is she an attorney in your office? Or --
MS. LEDDY: No, she's a consultant. She's a consultant hired by Wilton Surgery Center.
THE HEARING OFFICER: Okay. Thank you. Is she available to answer questions today? Or is she just sort of in the room?
MS. LEDDY: She's just in the room.
She's not here as a witness, no.
THE HEARING OFFICER: Okay. So Mr. Hale. I'm just going to swear you in. So if you can raise your right hand, please?
A L A N H A L E,
called as a witness, being first duly sworn by THE HEARING OFFICER, was examined and testified under oath as follows:

THE HEARING OFFICER: Okay. Thank you. And do you adopt your prefiled testimony?
THE WITNESS (Hale): Yes. Yes.
THE HEARING OFFICER: Okay. Thank you. So you can now proceed with your testimony, keeping in mind my ruling on the request to strike that was filed.
THE WITNESS (Hale): Okay. Thank you. Good afternoon,

Hearing Officer Csuka and staff of the Office of Health strategy. My name is Alan Hale and I'm the Vice President of Operations for AmSurg Corp, a national owner and operator of ambulatory surgery centers. AmSurg is an indirect owner of Wilton Surgery Center, LLC, and AmSurg provides robust management support to Wilton Surgery.

My role as Vice President of Operations include serving as the Chairman of the Wilton Surgery Advisory Board overseeing Wilton's surgeries administrator position and her responsibilities, helping facilitate AmSurg corporate resources and support departments when Wilton Surgery teams need assistance, reviewing monthly financial performance for Wilton Surgery to understand key variances to budget and prior year financials, and handling partnership maintenance objectives and transactions.

I previously provided a copy of my CV for your review. I am presenting a summary of key information from my prefiled testimony on behalf of Wilton Surgery as Intervener in this certificate of need CON application, and I wish to thank OHS for the opportunity to assist in the agency's review.

As set forth in this application and subsequent materials HHC Surgery Center Holdings, LLC, has already acquired a majority interest in Southwest Connecticut Surgery Center, which I will refer today as SCSC; and Hartford HealthCare's desire to acquire additional control of Southwest Connecticut Surgery Center, which is located at 60 Danbury Road in Wilton Connecticut, only 1.3 miles from Wilton Surgery.

My testimony will include evidence regarding several factors. Number one, a lack of clear public need for the Applicant's proposal.

Number two, a lack of increased quality, accessibility and cost effectiveness associated with the Applicant's proposal.

Three, utilization of Wilton Surgery and trends in the provision of care in SCSC's largest planned specialty, pain management services.

Number four, the duplication of existing healthcare facilities in the service area.

Number five, the negative impact the proposal will have on existing surgery center providers and patient choice in the service area.

And six, concerns about the consolidation of healthcare providers and the effects of such

consolidation on cost and accessibility to care.

So with regard to factor number one, the proposal fails to show clear public need. Wilton Surgery is a standalone surgery center with two operating rooms and two procedure rooms located 1.3 miles from the new SCSC location.

The surgeons currently credentialed at Wilton Surgery specialize in interventional pain management, ophthalmology and ocular plastics and gastroenterology.

As explained in Wilton Surgery's petition for intervener status, Wilton Surgery provides high quality care with very high patient satisfaction scores. Even with its high quality of patient -- even with its high quality of care and patient service, Wilton Surgery has significant capacity to support additional case volume. We've reviewed our available capacity and confirmed the following utilization statistics.

Back in 2019, Wilton Surgery operated at a utilization rate of 59.25 percent. In 2021 through the first normal year after COVID, it operated at a utilization level of 53.75 percent. So far in fiscal year 2022 it is currently on track for a utilization rate of 52 percent.

The Applicants indicate that 65 percent of SCSC's volume will be pain, pain management cases, a speciality that Wilton Surgery provides. Looking solely at Wilton Surgery's pain management procedure room, such room operated at lower utilization rates than the overall facility as mentioned above.

Wilton Surgery's pain management procedure room experienced a utilization rate of only 44 percent in 2019, a utilization rate of 33 percent in 2021, and is currently on track for utilization rate of 33 percent again in 2022.

In addition, aside from Wilton Surgery, SCSC -- I'm sorry. In addition and aside, aside from Wilton Surgery and SCSC, there are ten additional licensed outpatient surgery centers in SCSC's service area and contiguous towns that provide orthopedic, spine and/or pain services.

We provided a map titled, ASCs by specialty. SCSC is surrounded by numerous centers already providing orthopedic pain management and spine services. Notably, Wilton Surgery believes that a number of physicians listed in SCSC's license application are also affiliated with multiple centers marked on this map.

Despite having some knowledge of the operation of these other centers, the Applicants have provided no evidence that outpatient surgery capacity in these specialties is needed in Wilton, or anywhere else in its service area.

They have not provided any evidence that surgeons cannot get block time at other outpatient surgery centers in the proposed service area, nor have they provided any evidence that patients are being delayed in having their procedures due to capacity issues. For these reasons the proposal fails to show clear public need.

Factor number two, lack of increased quality, accessibility and cost effectiveness. The Applicants claim that Hartford HealthCare's ownership in SCSC will increase quality by allowing physicians to participate on clinical quality councils, share data outcomes and best practices, incorporate infection control policies, collaborate on information security protocols, and evaluate new technologies among other things.

However, SCSC is already partly owned by and is already managed by Constitution Surgery Alliance, LLC. Per Constitution's website, Constitution managed sites perform more than a

hundred thousand cases per year, and Constitution has developed 21 surgery centers with more than a hundred operating rooms while partnering with more than 500 physicians.

Surely Constitution would continue to operate SCSC with strong clinical quality initiatives, the sharing of data outcomes and best practices, robust infection control and information security policies, all while evaluating new technology. The Applicants have failed to demonstrate that Hartford HealthCare's ownership or control is necessary in order for SCSC to provide high quality services.

The Applicants also claim that Hartford HealthCare's participation in SCSC will ensure that there is access to outpatient surgical services for all patients regarding a payer source, and that as a nonprofit health system Hartford HealthCare is committed to caring for Medicaid recipients and indigent persons.

Moreover, the Applicants claim that these policies will extend to SCSC by virtue of Hartford HealthCare's ownership of the center, and that Hartford HealthCare's financial assistance policy will be enacted at the center where previously

charity care was not available.

However, this assertion lacks -- this assertion lack support. The Applicants' own current and projected payer mix table indicates zero uninsured cases, and 0.2 percent self-pay cases, which the Applicants themselves round to zero percent. The applicants further indicate that 1 percent of SCSC's cases will be for Medicaid beneficiaries.

By way of comparison over the last eight years, Wilton Surgery, which is admittedly not a nonprofit organization, has provided an average of 6.8 percent of its cases for Medicaid beneficiaries. While Wilton Surgery does not separately track its self-pay and charity care cases, we maintain a charity care policy working with each uninsured patient referred following federal guidelines for healthcare discounts based on income. We also work with patients on payment plans and other means of coverage to ensure patients can get the services they need.

Further, Hartford HealthCare is not particularly known for its commitment to community benefit. However, by way of illustration Yale New Haven Health Services community benefit in 2020

weighted by number of licensed beds was $387.1 million, while Hartford HealthCare's was $94.3 million.

Similarly, Yale New Haven Health Services community benefit in 2020 weighted by net income was $377.5 million, while Hartford HealthCare's was $84.7 million.

None of this data validates that Hartford HealthCare's investment in SCSC will increase access to care for those who are most vulnerable in the service area.

With regard to cost effectiveness, the Applicants go to great lengths to inform OHS that cases performed in a freestanding outpatient surgery center setting cost less than cases performed in a hospital setting. This is commonly known in the healthcare industry.

However, the Applicants do not provide any evidence regarding how Hartford HealthCare's purchase of a majority interest in SCSC will enhance cost effectiveness of services provided at SCSC. In fact, Wilton Surgery has concern that Hartford HealthCare's investment will have the opposite effect when SCSC becomes contracted with commercial payers through the health systems

commercial payer agreements, which likely contains significantly higher ambulatory surgery center reimbursement rates, meaning that patients' out-of-pocket financial responsibilities increase dramatically.

Factor number three, utilization of Wilton Surgery and trends in SCSC's busiest specialty, pain management. As I mentioned previously in my testimony, Wilton Surgery provides interventional pain management services. This same service line especially accounts for two thirds of the projected volume in the application.

As I disclosed earlier, Wilton Surgery operated at the utilization rate of only 59.25 percent in 2019, 53.75 percent in 2021, and is currently on track for a utilization rate of 52 percent this year.

While Wilton Surgery questions the Applicants' volume projections, Wilton Surgery's utilization statistics established that it has capacity to accommodate all interventional pain management cases that Applicants project.

In addition, Wilton Surgery suspects that most if not all of the other ten additional licensed outpatient surgery centers in SCSC's

service area and contiguous towns have capacity to take on cases in the same specialties that SCSC Provides.

The cases to be performed at SCSC following a closing of the proposal would represent nothing more than a shift of cases from existing centers.

With regard to projected utilizations, the Applicants included the following OHS tables four and five in the application. These tables clearly illustrate the significant transformation and expansion of the applicant center from a plastics only center in Westport to a multi-specialty center in Wilton.

Looking at volume, the plastic surgery volume at the previous center between fiscal years 2016, there was an average case volume as low as 13 patients per year to as high as 22 patients per year as a plastics only one-operating-room surgery center.

Now in the first year of operation SCSC in its new location was projecting 3,447 patient cases to be treated, growing to 3,656 cases in 2020. The majority of those cases being in interventional pain management services.

Table five indicates that two thirds of

SCSC's volume is expected to come from pain management procedures. This projection is contrary to a very strong industry trend -- industry trend to shift pain management procedures back into the office setting from ambulatory surgery sites.

As depicted in Exhibit E, Wilton Surgery has experienced an 80 percent decrease in pain management procedure volume since 2009. No evidence has been presented to suggest that a center located a mere 1.3 miles away will be able to grow its pain management volume year over year, contrary to these clear trends.

The Applicants' projection is also contrary to OHS's own data showing an overall decrease in outpatient surgery encounters in the state. In addition, in December 2021 the Centers for Medicare and Medicaid Services, CMS released local coverage determination L38994 titled, epidural steroid injections for pain management, the LCD.

The LCD states that use of moderate or deep sedation, general anesthesia and monitored anesthesia care is usually unnecessarily or rarely indicated for these procedures, and therefore not considered medically reasonable and necessary.

Even in patients with a needle-phobia and anxiety, typically oral anxiolytics should suffice.

In exceptional and unique cases documentation must -- must clearly establish the need for such sedation in the specific patient. The practical implication of the LCD is that Medicare is unlikely to cover anesthesia for pain management, further reducing the likelihood of physicians performing pain procedures in a licensed outpatient surgical facility.

For the above reasons, Wilton Surgery does not believe that the Applicants have any ability to meet their stated volume projections.

Factor number four, duplication of services. The Applicants state that the current patient population which will not change with this proposal is being served by the surgeons that will comprise the medical staff of SCSC when it reopens after renovation. For the time being, these patients are having their procedures performed by their surgeons at other surgical facilities and hospitals within and outside of the service area.

This statement makes it clear that the Applicants' volume is largely dependent on the shift in cases from other facilities, and Wilton

Surgery believes that those physicians listed in SCSC's license application as serving on the medical staff of SCSC have recently been performing their cases at other facilities in SCSC's proposed service area, including surgery centers in Bridgeport and Trumbull, and prior to that at a surgery center in Norwalk.

Factor number five, negative impact on existing surgery center providers and patient care. Wilton Surgery has calculated and shared its utilization rates and available capacity, and we have provided information showing our ability to accommodate pain management volume proposed by the applicants.

Furthermore, we suspect that most if not all of the other ten additional licensed outpatient surgery centers already providing orthopedic spine and/or pain services in SCSC's service area and continuous towns have sufficient capacity to take on the cases SCSC proposes to treat.

The majority of SCSC's projected volume represents nothing more than a shift of volume from other existing service center facilities in the service area.

Hartford HealthCare and its affiliates have a

very extensive presence across the state. This proposal merely adds another location to their already rapidly expanding footprint. Wilton Surgery is very concerned that Hartford HealthCare's consolidation through rapid expansion will lead to increased costs and decreased patient choice in the service area.

Finally, factor number six, consolidation and effects on cost and accessibility. In the application the Applicants state that this proposal is not expected to adversely affect patient healthcare costs in any way, and further states that it is not anticipated that patient costs will increase following the proposed change in ownership.

There will be no change in the schedule or pricing that will result from the transfer of ownership, they say. However, as a majority owner in SCSC, Hartford HealthCare will likely seek to extend its commercially contracted rates to SCSC if it hasn't done so already, thereby increasing costs for carriers and patients.

As mentioned earlier, Hartford HealthCare and its affiliates already have a large scale presence across the state. This very substantial network

shows significant market power and likely puts Hartford HealthCare into a strong negotiating position with commercial payers.

As a majority owner of SCSC, Hartford HealthCare will likely have the ability to utilize -- to utilize its commercial payer agreements and increased reimbursement rates for SCSC, thereby increasing costs for third party payers and patients, this internal increased cost without providing any meaningful increase in access to care, particularly for the most vulnerable patients in the service area.

This is not a model that will enhance cost effectiveness or access for the residents of the service area. Consolidation of healthcare providers and the effects of such consolidation on cost and accessibility to care is a significant concern that should be considered by OHS.

In conclusion, for the reasons I have outlined here today and for other reasons set forth in Wilton Surgery's petition for intervener status, I respectfully request that OHS deny the application. Thank you for your time and allowing me to present my testimony today.

THE HEARING OFFICER: Thank you, Mr. Hale.

Attorney Leddy, did you have any direct questions for your witness?

MS. LEDDY: No.

THE HEARING OFFICER: Okay. Attorney Fusco, I'm going to turn it over to you then for cross examination.

MS. FUSCO: Okay. Thank you, Attorney Csuka.

CROSS-EXAMINATION (of Hale)

BY MS. FUSCO:

Q. Hello, Mr. Hale. How are you?

A. I'm doing okay. Thank you. How are you?

Q. Good. Good. I just want to go through a little bit of background first before I start asking some of my questions.

I mean to set the stage -- and I'm sure you've heard all the legal arguments at the beginning of this proceeding. You do understand that this a certificate of need application for a transfer of ownership for governance control, and not a certificate of need for the establishment of a new center, or the addition of capacity. Correct?

A. Correct.

Q. Okay. You, in your testimony you state you

are a vice president of operations for AmSurg. Is that correct?

A. Yes.

Q. And have you been in that same role -- you were in that same role with AmSurg's predecessor, National Surgical Care. Correct? For how many years? For how many years total have you been with NSC and AmSurg?

A. Since 2007.

Q. Okay. And have you had responsibility for Wilton Surgery Center that entire time?

A. No, not the entire time.

Q. Okay. When did you first take responsibility for Wilton Surgery Center?

A. I initially became involved in Wilton Surgery back in 2007, 2008 timeframe, around the time of the acquisition of the interest from the AmSurg Stamford joint venture entity, and then got back involved in roughly 2011 when AmSurg acquired National Surgical Care, and was then more involved in an operational role instead of like a merger and acquisition type role.

Q. Okay. So you've had an operational role at

the center, with the center since about 2011?

A. Correct.

Q. And you know, in your testimony that -- you're the Chairman of the Wilton Surgery Advisory Board. What is that board?

A. It is the advisory board for the Wilton Surgery Center, LLC. And it's basically the governing board of our -- of our entity.

Q. Okay. It's the governing board of your entity. Who else has membership on that board? What is the structure of that board?

A. That is a seven-member board with three physicians serving on that board, and four members of the joint venture entity. The joint venture entity between AmSurg and Stamford Health.

So from that entity we have two AmSurg affiliated or two AmSurg employed resources, and two Stamford Health executives.

Q. Okay. What percent interest is that joint venture owned in Wilton Surgery Center at present? Do you know?

A. Yeah, currently we're a little over 51 percent.

Q. Okay.

A. A little south of 52 percent, somewhere between 51 and 52.

Q. Okay. So this is not consistent. So on the Wilton Surgery Center website there's a section that says it's for physicians, and it describes why physicians might want to either do procedures at your facility or invest in your facility.

And I believe it speaks to something called -- is it a consensus management model where there's equal governance between the physicians and representatives of AmSurg or of the health system?

This board is not operated that way. Correct?

A. I would disagree. You know, we -- we move -- we don't make significant decisions with how -- without having the consensus from those seven members.

Q. Okay. But you -- I guess I'll make it an even similar question. There are not equal seats on the board as between the physicians and AmSurg in Stamford. You have one more seat on the board than they do?

A. Our joint venture entity has one more seat

than the physicians do.

Q. Correct. Could you be assured of an ability to accomplish your objectives and Stamford Hospital's objectives with respect to the center if it was flipped, if the physicians had four seats on the governing board and you had three?

A. If our -- if our governing document had certain provisions in it providing protection, that decisions couldn't be made, you know, certain -- certain significant decisions couldn't be made.

Q. So you have to have that written into your governing document. I'm talking about straight voting. If it's as we described SCSC, which is one member, one vote; if Stamford and AmSurg combined had three votes and the physicians had four, would you feel comfortable that you could accomplish your objectives, that you wouldn't ever potentially be out voted by the docs under any circumstances?

A. I would have a comfort level because we've been in partnership with these doctors for so long and we've operated in, again a

physician-centric model that, you know, we could continue along those lines.

I mean, you know, the objective in putting together these deals is you -- you work together on a surgery center joint venture and then hopefully you never have to pull out the governing documents or the operating agreement because things are running smoothly, so.

Q. Understood. Understood. That's the expectation. But if things did go wrong -- I mean, this is the same line of questioning that was asked of my client.

If things did go wrong and you had a board where you had one less seat than the physicians, and it was one member, one vote, they could outvote you and block you.

Correct?

MS. LEDDY: Objection, asked and answered.

MS. FUSCO: I don't think he answered that question. He said it likely would never happen.

I'm asking, can it happen on a board? One member, one vote, the physicians have four seats, AmSurg Stamford has three seats. Could the physicians outvote you?

THE HEARING OFFICER: I'll allow that.
THE WITNESS (Hale): Yes. I mean, they could have -- if they had four and we had three, yes, they could outvote us.
MS. FUSCO: Thank you.
BY MS. FUSCO:
Q. Mr. Hale, do you live in Connecticut? Or are you from out of state?
A. I'm from out of state.
Q. I thought I detected an accent. Where are you from?
A. You probably did. I'm from the Carolinas. I live in South Carolina now.
Q. Okay. How often -- so you've had this, this AmSurg operational oversight for Wilton Surgery Center for, you know, ten, eleven years now. How often are you actually on premises at Wilton Surgery Center? How frequently are you here?
A. I would say, you know, prior to the pandemic, I was consistently here every quarter. We have a set board meeting schedule. We've had that in place ever since our joint venture invested in the center. So we know in advance when our board meeting dates are, and

I would -- I would book a trip up for each of those quarterly board meetings.

And then -- and then other, other visits as well if we had a partnership opportunity with -- with a prospective surgeon partner that, you know, who we're meeting with about, you know, coming into the center or what have you. At a minimum, quarterly.

Q. Okay. But you were not at Wilton Surgery Center day to day. Right?

You're not there on a daily basis.

A. Correct.

Q. That would be firm administrator who runs the facility day to day. And what is her name? Is it Amanda?

A. It is, Amanda Gumpo, uh-huh.

Q. Is she with you today and available to answer questions?

MS. LEDDY: I'm going to answer that. She is -- she is present, in and out, but she is not available for questions.

MS. FUSCO: Okay.

BY MS. FUSCO:

Q. I think you said before, you confirmed one of the questions I had which is Stamford Health

is still an indirect owner of Wilton Surgery Center. Correct? It owns 50 percent of the entity that owns around 51 percent of the center?

A. Correct.

Q. Is anyone from Stamford Health with you today to answer questions I have about their participation in the center?

A. No.

Q. Is Stamford Health as a partner in Wilton Surgery Center aware that the company is opposing a CON Request by another health system to partner in an ASC?

A. Absolutely.

Q. And they approved the opposition?

A. Yes.

Q. And did they review and approve the substance of your filings and testimony?

A. I don't know.

Q. Okay. So just kind of setting the stage. So you're from out of state. You're at Wilton Surgery Center about quarterly and you are the only witness that's available to answer questions today. Correct?

A. Correct.

Q. Okay. I do want to ask you some operational questions about the surgery center.

How many operating rooms does Wilton Surgery Center have?

A. We have two operating rooms and two procedure rooms.

Q. So I looked on your website and it says it advertises again in that for-physician section that you have six operating rooms.

So are you operating six ORs? Or is that a misrepresentation on the website to potential physician utilizers and investors?

MS. LEDDY: Objection to the characterization in the question. Object to form.

I don't think that's a fair question.

THE HEARING OFFICER: Can you rephrase it, Attorney Fusco.

BY MS. FUSCO:

Q. So you're saying you operate two. I think we have put evidence in the record in our rebuttal that it says on your website you operate six.

Are you operating six ORs at Wilton Surgery Center?

A. No.

Q. Okay. So the information Wilton's website in the section for physicians that advertises you as a facility to potential investors and utilizers as a facility with six ORs is incorrect?

MS. LEDDY: Object to form.

THE HEARING OFFICER: I think it's a fair question.

THE WITNESS (Hale): The website unfortunately had a mistake.

BY MS. FUSCO:

Q. Okay. And are you familiar with the, you know, in your role as VP of Operations for AmSurg, for this center, are you familiar with the certificate of need requirements around the addition of OR capacity?

A. I have, you know, limited -- limited knowledge about that because I also oversee centers in other states.

Q. Okay. But in Connecticut in particular, do you -- you understand how many operating rooms you're authorized to operate and what you would need to do if you were to add additional operating rooms --

A. Yes.

Q. -- within the CON process?

A. Correct.

Q. Now looking, looking at your testimony you state on page 2 toward the bottom. I think you say the surgeons credentialed at Wilton Surgery Center specialize in interventional pain management, ophthalmology, ocular plastics and retina, and GI.

Is that correct?

A. Correct.

Q. Do you also have urologists on your medical staff?

A. We have had urologists credentialed from time to time. I believe we -- I don't know for certain whether those physicians still have active medical staff privileges. I don't believe they do.

So I -- again, I don't know that level of detail. I can certainly get back to you on that answer. But I don't believe we have any urologists actively credentialed right now on the medical staff.

Q. Okay. So there could be someone listed on the website as a part of your medical staff and when you click on their bio, it says they're a urologist -- but they're not on

your active medical staff.

A. If that was the case, it would be another mistake by accident on the website, because we have to -- we try to keep that updated as -- as often as we can, as that's an outsourced service that we have to notify them of changes.

Q. Okay. And the same question about plastic surgery. Do you know if you have any plastic surgeons on your active medical staff, because there is one listed on the website?

A. You mean, as opposed to ocular plastics?

Q. Yeah, it's not ocular. It says plastic surgery, not ocular plastics. Are you aware?

A. Do you have the name, the doctor's name.

Q. I might. Hold on a minute.

A. I don't know whether she's still credentialed here --

Q. Here, I just have to look in my file. Sorry. We can come back on that. I might even try to find it -- but my question for you, let's just start with urology.

So you have obviously at some point in time had urologists on your medical staff if there's pictures on your website. So

presumably you could perform urology procedures any time a need arises. If that physician has -- if that physician is on your active medical staff, even though you don't list urology as a specialty, provided the center is adequately equipped, you could add that specialty. Correct?

That urologist came back to you and said, I want to do procedures, you could expand the specialty scope of your center.

Correct?

A. I don't -- I don't know all the details but I -- but I feel like that there's some notification that we -- that we provide OHS if we are expanding into another specially. There's a notification.

But I don't -- I don't -- that there's no trigger for a CON application.

Q. That was going to be my question.

So you wouldn't need a certificate of need to do that. Correct?

A. Correct.

Q. Okay. Do you know what surgical subspecialties SCSC offers?

A. I don't know firsthand. I just know by what

is in the application. I know orthopedics and pain management, and spine surgery is what is in the application.

Q. And so the only overlap in surgical subspecialties with what Wilton Surgery Center provides is pain management. Correct?

A. At this time.

Q. Do you have any orthopedic surgeons on your medical staff?

A. Not at this time, no.

Q. Do you have any neurosurgeons on your medical staff?

A. No, not at this time.

Q. Okay. And you did hear Mr. Bitterli testify -- and we're talking a lot, or you spoke a lot in your testimony about the impact of Wilton's pain practice on your pain practice.

You did hear him testify that in the first year they've done 115 pain cases.

Correct?

A. I -- I heard that.

Q. Okay. On page 6 of your testimony, you -- let me see. It's in the first paragraph toward the end. You seem to be suggesting

that the only way SCSC could meet its pain volume projections is at the expense of Wilton Surgery's patient volume.

Do you see that.

MS. LEDDY: Can you be more specific? You said the first paragraph that starts --

MS. FUSCO: It's page 6, under -- the first paragraph under the table, the third or fourth sentence from the bottom. Sorry.

MS. LEDDY: Accepted -- right in the middle of paragraph, where it says, accepted at the expense of Wilton Surgery's --

MS. FUSCO: I can read it.

BY MS. FUSCO:

Q. It says, no evidence has been presented to suggest that another center located a mere 1.3 miles away will be able to grow its pain management volume year over year, contrary to these clear trends except at the expense of Wilton Surgery Center's patient volume.

A. I see that.

Q. Okay. So Wilton Surgery's pain management patient volume comes from Wilton Surgery Center's physicians who perform pain cases at the center. Correct?

A. Correct.

Q. How many of the physicians, how many of the pain physicians on Wilton Surgery Center's medical staff have privileges at SCSC?

A. I don't -- I don't know. I don't -- I don't know whether any of them have privileges at SCSC. I don't -- I mean, I don't know who's credentialed at SCSC.

MS. FUSCO: Okay. Well, when your lawyer put in a letter initiating an inquiry in this matter, she snapped a picture of all of the physician owners and medical staff members of SCSC.

So --

MS. LEDDY: I'm going to object, because that letter is supposed to have been stricken.

MS. FUSCO: It is. It is.

I will -- okay. I will say can your lawyer direct you to that chart so you can review it and confirm, or to the SCSC website?

MS. LEDDY: It's not in that, and if you're asking him to perform something that -- to look up to answer your questions, he's here to provide testimony based on what he's already submitted, not to do research while he's in the middle of his examination.

MS. FUSCO: Okay. So I understand. But he's the only witness you're offering here today. You're offering someone from out of state who comes up to Wilton quarterly.

You haven't brought the facility administrator. You haven't brought anyone from Stamford Hospital, even though we can see on Zoom you're sitting in Stamford.

And he's advanced testimony about the impact that this facility is going to have on your pain practice. Right? We're talking about surgery centers with docs and medical staffs that take their patients to their own centers -- and he can't tell me if any of his physicians have credentials at my center.

I don't know who else to ask.

MS. LEDDY: That is not what he said. What he said is he does not know who the doctors are that are credentialed at your center. And that's not --

MS. FUSCO: Are there any doctors? Are there -- the question is, are any of the Wilton Surgery Center doctors credential at SCSC?

I believe he said he didn't know.

MS. LEDDY: His answer is because he doesn't don't know who the credentialed doctors are at your center.

That's not why he's here to testify, to tell you which doctors are credentialed at your center.

You just asked him to look at the website and see --

MS. FUSCO: I know which doctors are credentialed at my center. I'm asking if any of his doctors are credential at my center.

As the representative of the managing member of his center he should know where else his docs have privileges.

BY MS. FUSCO:

Q. Do you know?

MS. LEDDY: I object to the question.

I think it's irrelevant.

MS. FUSCO: It's absolutely not irrelevant. His entire testimony, which is off base because it's geared toward a new center, is about physician recruitment and patients going to different places. It's absolutely relevant.

The only way that Wilton Surgery Center physicians could perform procedures at SCSC is if they have privileges at SCSC. So if you're going to say it's going to happen, you should know your docs are having privileges there.

MS. LEDDY: Well you know, I'm going to object to the

way this is being characterized, because in the first instance we listened to extensive objections to any testimony relating or evidence relating to a new facility -- because this is not a new facility.

And now what we have is the attorney for Hartford HealthCare who told us that's all off limits. That's what she's going to focus on, by trying to make him understand whether doctors are credential or not.

Is there any -- if there's a doctor that you have in mind that's a particular doctor that you want to ask him about, feel free to ask that, but he's not here as a witness as to which doctors have credentials at your facility.

That's not his testimony.

He could rattle off every doctor in his facility, but I don't think he's obligated to tell you which doctors are at your facility.

MS. FUSCO: First of all, I don't -- I didn't ask for the names of the doctor. Second of all, the testimony that he just read into the record, and that it's in the written record -- was not stricken, despite me asking for it to be stricken twice. So I have every right to cross examine on

it.

And the primary focus of this testimony is on your pain management practice and how SCSC Is going to take away your pain cases. And I'm trying to explore how that is possible.

I think we all understand how ASCs work, that you can only care for your patients in an ASC if you have privileges. So I'm trying to get at how my client is going to take his cases, and I'm asking him if any of his docs also practice at my center. It's a perfectly legitimate question.

MS. LEDDY: Can I read the testimony from Mr. Bitterli's prefile which states --

MS. FUSCO: I'm going to object to this. Why are we reading my clients prefile? I have an objection on the record. If you have an argument you can make it.

You are reading my client's testimony into the record.

MS. LEDDY: I am, because he couldn't state either. He says to the best of his knowledge none of his surgeons are performing surgeries at Wilton Surgery or at any other, to the best of he --

MS. FUSCO: Can Mr. Hale make that same -- he just told me he didn't know. If he can tell me that to the

best of his knowledge none of them are, that's a perfectly acceptable answer, versus saying, I don't know.

MS. LEDDY: Then why don't you ask the question again and we'll see how he answers it.

BY MS. FUSCO:

Q. To the best of your knowledge are any of the Wilton Surgery Center physicians credentials at performing procedures at SCSC?

A. To the best of my knowledge, no.

Q. Do you know -- if you know if any of the physicians on the SCSC medical staff performed procedures at your facility?

A. To the best of my knowledge, no.

Q. So to the best of your knowledge there's no overlap in physicians between the two medical staffs. Correct?

A. Not at this point in time.

Q. You make several records as in your testimony -- and we can stay right here on page 6, because it's one of them -- to the geographic proximity of the two centers, and that they're 1.3 miles apart from each other. Is that correct?

A. Correct.

Q. Would you agree that outpatient surgery is not a walk-in service? Right? This not like an urgent care center where you walk in off the street and say, I need surgery? Can you do it for me?

That surgeons bring their patients, refer their patients to a particular surgery center or hospital for surgery?

A. I would agree with that, yes.

Q. So patients can't simply choose to go to SCSC unless their physician has privileges there. Correct?

MS. LEDDY: Object to form and relevance.

MS. FUSCO: Again his testimony focuses on how Wilton Surgery Center is going to lose patients. Okay? Your patients couldn't get their surgeries done at SCSC unless their physician was credentialed at SCSC. Correct?

MS. LEDDY: You're assuming that someone doesn't pick up the phone and call the general number at SCSC and say, do you do ortho surgery at your facility? I'd like to come and see a doctor there.

MS. FUSCO: That's not how that's -- with all due respect, that's not at all how it works. You know, it's not like scheduling an MRI -- an

appointment. Okay?

MS. LEDDY: You're asking me to speculate about how --

MS. FUSCO: No, he's been in surgery center operations for over a decade.

He should understand how this works.

THE HEARING OFFICER: Is there a question pending?

BY MS. FUSCO:

Q. The question pending was, can a patient -- does a patient need to be referred to the surgery center by their surgeon?

A. Yes.

Q. Okay. Correct. And to the best of your knowledge, none of the Wilton Surgery Center surgeons are on the SCSC Staff. Correct?

A. To the best of my knowledge, not at this time.

Q. Right. And if they're not on the SCSC staff, they cannot refer their patients and perform procedures at SCSC. Correct?

A. Correct.

MS. FUSCO: I wanted to ask you a few questions about the CON history of the center, and I sent along the information this morning to your counsel.

Attorney Leddy, did you receive it?

MS. LEDDY: I did, but I'm going to put -- I was not

allowed to object to the admission of this evidence at the beginning of the proceeding based on Attorney Chuka's ruling yesterday.

But number one, I don't understand the relevance of it. Number two --

MS. FUSCO: I'm going to -- before you do that, I'm going to ask Attorney Csuka to clarify. You do not have a right to object to the evidence. So before putting your evidence on the record I would like to ask Attorney Csuka if he's going to make a ruling on it.

Because based on that written order you do not have an opportunity to object to the evidence.

MS. LEDDY: But I do have an opportunity to object to my client talking about something that was put on the record without our knowledge at 10:30 this morning.

Could I have spent the lunch hour having him review the CON --

MS. FUSCO: I'm going to ask him some very discreet questions and point him to very specific findings of fact. It's not something that's going to require him to fully understand the nuances of these dockets -- it's a very brief line of cross.

MS. LEDDY: We can start the cross, but Attorney Csuka,

I reserve the right to shut it down because this is not fair to him to try to put something in front of him at the last minute and tell him, you know, give us an answer on what this means.

THE HEARING OFFICER: I'm sorry. I missed it. What is the document that is at issue here?

I guess it was uploaded at 10:30.

MS. FUSCO: No, this -- I asked you this morning, Attorney Csuka, if you would take administrative notice of the dockets around Wilton Surgery Center.

THE HEARING OFFICER: Okay.

MS. FUSCO: And I think it's absolutely relevant because a large portion of Attorney Leddy's arguments and the testimony has to do with the scope of services at SCSC, how that has evolved, whether there's been CON approval, the changes of ownership.

And ultimately more importantly than that, because I'm not talking about the historic, the current ownership structure. Okay?

One of the dockets that we've noticed is the docket allowing Stamford and AmSurg, or NSC at the time, to buy into Wilton Surgery Center.

So why can't I ask -- that they're here

saying, there's no need for Hartford HealthCare to buy into this surgery center with Constitution. Why can't I look at the filings in which they asked to do the exact same thing, and to go over those with them?

MS. LEDDY: Precisely because we actually are not -- we were restricted and not permitted to look at the prior applications and to address the history of the transition of this facility from a single-room operating room in Westport to where it is now. That was stricken at Attorneys Fusco's request.

So the idea that we can come back and we can look at the historical evolution of Wilton, it's not relevant for the same reasons that you Attorney Csuka decided that it should be stricken from our record as well.

It's not relevant. It's, you know --

MS. FUSCO: Well, first of all, you raised the 2019 determination because you're contesting the 2019 determination. I'm not contesting this CON.

All I'm doing is asking questions about the rationale at the CON, which I will say is the identical rationale that HHC is advancing here. And if you took the time to look at the document -- and all I'm going to do is point your

client to a couple of findings of fact, I can ask the questions a different way without reference to the docket -- but they're the same questions and they're perfectly relevant questions.

MS. LEDDY: It's the same thing as if we're in a criminal trial and, you know, somebody says, well, why did you shoot the guy?

And then whatever reason he gives, is that relevant to another case where they say, well, why did you shoot the guy? It's not relevant.

So -- and he's not a lawyer.

MS. FUSCO: You don't know the line of questioning I'm going to ask, and your example is so far off base.

MS. LEDDY: Well, I'm reserving --

MS. FUSCO: I'll move on.

BY MS. FUSCO:

Q. Are you familiar with -- you said you're familiar with the time period when you were working for NSC, when NSC and Stamford came together in a joint venture to acquire -- I think at the time it was 62.5 percent of Wilton Surgery center. Correct?

A. What was your question again?

Q. Were you involved with -- I think you said you were involved with NSC at the time of the

change of ownership when they bought into Wilton Surgery Center with Stamford Health. Correct?

A. I was involved with NSC at that time, yes.

Q. And do you know whether in obtaining approval for that transaction Stamford Health's ability to do things like improved clinical integration, continuity of care, providing access to, you know, pre and post-admission screening, you know, claiming you had a relationship with a major tertiary hospital, offering up training, continuing education; all of the things that we have offered here were raised by you and Stamford as a benefit to that change of ownership.

Are you familiar with that?

MS. LEDDY: If you are familiar?

If you're not, don't speculate.

THE WITNESS (Hale): I -- I am not familiar with what that CON application indicated at that time back in whatever timeframe it was, 2007 or 2008.

BY MS. FUSCO:

Q. Okay. But at that time you advanced an argument to the Office of Health Strategy that it would be beneficial presumably to

Wilton Surgery Center to be in a three-way partnership with physicians, a surgery management company and a health system. Correct? Those are the three --

MS. LEDDY: Can I just ask the question? Are you referring to a transaction that was not completed until after CON approval was granted?

MS. FUSCO: I'm going to object to your question.

MS. LEDDY: But that's (unintelligible) --

MS. FUSCO: But the --

MS. LEDDY: -- trying to say. They're apples and oranges again.

MS. FUSCO: I'm talking about -- I'm not talking about the process or the technicalities of it. We're sitting here with a surgery center that has an ownership structure that is identical to the one we are proposing.

MS. LEDDY: Right. And they followed the process --

MS. FUSCO: Please let me finish. This gentleman from AmSurg is sitting here in a room in Stamford, Connecticut -- and no one from Stamford Health is there, because presumably they would then need to talk about the benefits of having a health system partner in an ASC. Okay?

You guys have taken on the exact same

ownership structure that we are proposing and I have an absolute right to ask your client about the benefits of that structure, because (unintelligible) --

MS. LEDDY: Then ask him that question.

MS. FUSCO: -- because they support my CON and they show that your arguments are completely duplicitous.

So what are the benefits, Mr. Hale, of having a health system partner, having a three-way partnership with physicians, a surgery center management company and a health system partner?

MS. LEDDY: I am objecting to the question. I ask that you strike this "duplicitous," that we've heard this word now several times. And I've remained quiet and calm about it and I've given Attorney Fusco some leeway, but it's not appropriate to do.

We're supposed to all be respectful here. And by characterizing something like that, it's highly inappropriate and smacks of defensiveness that I find offensive as well.

If you want to ask him -- if you'd like to ask him how it improved care at the facility, that's a fair question. But to call it duplicitous and to ask him specific questions

about what was said in the CON application from 2009 is not appropriate.

Ask him what changes they thought would be appropriate by the merger, by the transaction?

MS. FUSCO: Would you like to conduct the cross-examination Attorney Leddy?

MS. LEDDY: You know, if you -- in many ways, yes.

THE HEARING OFFICER: Okay. Okay. So we're going to have to take a break. So let me think about this, but we do need to take a break to allow for public comment now -- assuming Mr. Shipley is available.

It's three o'clock, and we're -- I'm sorry to do this. I'm sorry to interrupt your cross-examination, Attorney Fusco, but that's just the way this sort of works.

So I will rule on that.

And I'm going to allow your questioning. I'm hoping you're able -- is there some way to pull up the documents?

MS. FUSCO: I sent the decisions to Attorney Leddy this morning, as I was asked to do. So she has them, and I would just like an answer -- to ask a few questions about those documents.

THE HEARING OFFICER: And you're going to be pointing to specific parts of it so he can read it and --

MS. FUSCO: Specific paragraphs, yeah.

MS. LEDDY: If you can give me the paragraphs, I will -- during the break I'll have Mr. Hale take a look at specific provisions that you're looking at.

And if he can answer your questions or if he's familiar with the documents, then we can proceed that way.

THE HEARING OFFICER: Okay.

MS. FUSCO: I mean -- hey. Oh, sorry. And I know you have to break. I mean, it's -- I'm not going to quote you the paragraphs right now.

But it's the findings of fact in Docket Number 0730994CON, which is short and which could easily be reviewed during the break.

MS. LEDDY: But you're not going to be asking about the other three. Is that accurate?

MS. FUSCO: I might be asking basic questions about those.

Again, he might not have knowledge of '02 or '04 given when he worked there, but the determination from 2014, I may have -- I may have a question about.

THE HEARING OFFICER: So Mayda, do we have Mr. Shipley available right now?

MS. CAPOZZI: I'm not quite sure.

THE HEARING OFFICER: I don't see him --

MS. CAPOZZI: I don't see him either. Exactly.

DAVID SHIPLEY: This is Dave Shipley I'm here.

MS. CAPOZZI: Okay. So sorry.

DAVID SHIPLEY: That's okay. I don't have my video on yet -- there I am.

MS. CAPOZZI: Okay. Thank you.

DAVID SHIPLEY: Can you hear me okay?

THE HEARING OFFICER: Yeah. So Mr. Shipley, do you have a moment for me to just go through sort of the introduction of the public portion of today's proceedings? I know you said you were limited on time, so.

DAVID SHIPLEY: Yes, I'm fine. Thank you.

THE HEARING OFFICER: Okay. And Mayda, do we have anyone else who has signed up between two and three for public comment?

MS. CAPOZZI: Not at this time.

THE HEARING OFFICER: Okay. So we're just going to proceed with Mr. Shipley's public comment.

And again, Attorney Fusco I'm sorry for interrupting the flow of your cross-examination.

It's just I wanted to --

MS. FUSCO: That's okay.

THE HEARING OFFICER: He indicated in his e-mail that it was very important that he testify -- or not testify, provide comment at either 3 or 3:30 and I wanted to make sure that we took care of that.

So let me see here. Speaking time is typically limited to three minutes, but since you're the only one registered I am going to allow you to speak a little bit longer if necessary. I'm not going to allow you to reread everything that you've put in the extensive submission that came in yesterday, but certainly feel free to give any additional comment that you think might be relevant.

We strongly encourage you and anyone else listening to submit any further written comments to OHS by e-mail or mail no later than one week, seven days from today. Our contact information is on the website and on the public information sheet which you were provided at the beginning of this hearing.

Thank you for taking the time to be here.

So Mr. Shipley, can you just spell your last name for us?

DAVID SHIPLEY: Yes, sir. S-h-i-p-l-e-y.

THE HEARING OFFICER: Okay. Thank you. Now you can

proceed.

DAVID SHIPLEY: Thank you, Officer Csuka, and the staff of OHS. My name is David Shipley and I am here on behalf of Norwalk Surgery Center to speak in opposition of CON Docket 20-32411.

Norwalk Surgery Center is an ambulatory surgery center. We were founded in 2011 as a tri-party joint venture between Physicians Norwalk Hospital Association and a management company.

We've been in business since 2011 where we've provided surgical specialties across all specialties inclusive of ophthalmology, podiatry, GI, orthopedics, pain management.

We echo the concerns of the Intervener of this hearing and basically we have concerns around three main items. One is the increased cost of care should HHC gain both financial and operational governance control of SCSC.

We have concerns around the detrimental effects that SCSC will have on the facilities within the region, specifically Wilton and Norwalk Surgery Center who are less than five miles apart from this new surgery center.

And we are also concerned with HHC's CON application at this point in time and the way that

it's been handled up to date.

The detrimental effects that we see here have already occurred. So we had an orthopedic group, a major orthopedic group who are now owners of SCSC. Those owners were seven in aggregate, and from 2011 through the middle of 2019 they performed 11,000 surgical procedures here at Norwalk Surgery Center.

In July of 2019 they abruptly resigned and left to take their surgical cases to another ambulatory surgery center in Bridgeport, Connecticut. Now that's important because with their defection, they took over 1,000 orthopedic cases and approximately 500 pain management cases that were performed in the calendar year of 2018.

The reason this is important is because throughout the course of the documentation we hear about ASCs being a lower cost alternative to hospital-based care, and that's true and nobody denies that.

In this specific case that is not a true comparison, as these cases, these orthopedic cases -- and I believe they are claiming that it will be 1,000 orthopedic cases to go to SCSC, are actually coming out of a lower cost environment

and ambulatory surgery center. So the comparison between HOPD and ASC cost savings is not relevant here.

What's relevant here is the actual cost differential between SCSC if HHC gains governance control versus the cost structure at the Surgery Center of Connecticut that was in Bridgeport, Connecticut. Those are the two comparisons here.

We submitted documentation yesterday. I'm not going to read it, as you stated. I don't really want to read from documents, but within the body of that, of that work you can see the huge differential that we have seen when we compared the payers and their reimbursements to orthopedic centers across the state. And it ranged anywhere from a 58 percent increase down to about 14 percent increase for reimbursements to HHC as a fiscal and operational control.

That is -- that is a concern that really will hurt the -- the public in this market. These, these price increases specifically affect and are damaging to the patients who have higher deductibles, they are damaging to employers and they're damaging to the payers themselves.

The detrimental piece that we consider --

that we're concerned about is obviously the fact that since 2019 we have had -- we have gone from 3600 cases I think at our full capacity down to probably 1,000 cases.

So with that defection of those surgical -- of these orthopedic surgical cases and the -- and the pain management cases, we definitely have plenty of capacity here at Norwalk Center, Norwalk Surgery Center to fill that need, versus having a new surgery center come in stating that they are providing care for -- for cases that have -- need to have a place to go to.

As far as the CON process, I'm not an expert in that area. What I can say is myself and some colleagues in this market reached out to OHS when the original CON was asking for transfer of ownership and relocation of the facility, because we had concerns that the entirety of the information was not given to OHS to make an informed decision.

And so from that we are here today where we have a major health system coming into the market seeking to acquire 51 percent majority ownership of an ambulatory surgery center with the risk of having increased rates back to the public, a

significant increase in rates back to the public as well as a detrimental effect on two surgery centers that have been longstanding in this community.

Thank you for the time to speak. Appreciate it.

THE HEARING OFFICER: Thank you, Mr. Shipley.

I haven't seen whatever communications were sent in. Do you happen to know who those were sent to?

DAVID SHIPLEY: With regards to our conversation?

THE HEARING OFFICER: It sounded like you had submitted some sort of comment after the application was filed. And out of fairness to the Applicant and transparency, I wanted to make sure that those were accounted for.

DAVID SHIPLEY: It was phone calls.

THE HEARING OFFICER: Okay.

DAVID SHIPLEY: We had telephone conversations with some, some OHS Team members. Yes, sir.

THE HEARING OFFICER: Okay. Thank you.

DAVID SHIPLEY: Thank you.

MS. FUSCO: Attorney Csuka, if I can just ask?

And I'm not following this entirely, but is Mr. Shipley saying that he had phonecalls with OHS

staff members about the current CON application while it was pending?

DAVID SHIPLEY: No, ma'am.

MS. FUSCO: When where those phonecalls?

DAVID SHIPLEY: March/April of 2020.

MS. FUSCO: Okay. Thank you.

THE HEARING OFFICER: Thank you for asking that, Attorney Fusco. I apparently was also misunderstanding, so I appreciate that.

So Steve, Ormand, do you have any questions for Mr. Shipley while he's here?

MR. LAZARUS: I do not.

THE HEARING OFFICER: Okay. Ormand?

DR. CLARKE: I don't, no.

THE HEARING OFFICER: So maybe I think we should probably just take a five-minute break and sort of regroup.

I did indicate that I'm going to allow the line of questioning that Attorney Fusco was moving towards in terms of the prior decisions that were taken notice of at the start of the hearing.

So with that we'll just come back at 3:17 and pick up from there, if that's all right with everyone?

MS. FUSCO: Yes. But before we do, just quickly, I

mean, I just want to renew for the record obviously my objection to the Norwalk testimony.

I wasn't following what he said as far as it tracked his letter, but certainly we want to reserve our right to respond in any way we see appropriate to both if you don't strike it from the record.

THE HEARING OFFICER: Certainly.

MS. FUSCO: Thanks.

THE HEARING OFFICER: Thank you.

So we'll come back at 3:18.

(Pause: 3:13 p.m. to 3:18 p.m.)

THE HEARING OFFICER: All right. I believe we're ready.

MS. FUSCO: So am I just free to resume my cross?

THE HEARING OFFICER: Yeah. Mayda, you need to start.

And also I did want to ask, Mayda, we didn't have anyone else sign up from the public. Right?

MS. CAPOZZI: No, not at this time. No.

THE HEARING OFFICER: Okay. Thank you.

MS. CAPOZZI: You're welcome.

THE HEARING OFFICER: Attorney Fusco, you can commence -- or restart your cross-examination of

the Witness. Thank you.

MS. FUSCO: So Mr. Hale, looking at these documents that I sent to your to your attorney -- just briefly. I'm not going to ask any specific questions about the older two, but you are aware that Wilton Surgery Center started off as just a pain management center. Correct? Around 2002.

MS. LEDDY: If you know.

THE WITNESS (Hale): I don't know for certain, but that, that sounds like it's pretty accurate with the history.

(Cont'd) CROSS-EXAMINATION (of Hale)

BY MS. FUSCO:

Q. Okay. And then the 2004 decision expanded that scope of services to include ophthalmology. Correct?

MS. LEDDY: Again, we didn't look at the 2002 or the 2004 because --

MS. FUSCO: If he knows?

MS. LEDDY: If he knows.

BY MS. FUSCO:

Q. If he knows?

A. I don't know the exact date of that and

exactly what that, you know, how it expanded the center.

Q. Okay. But looking at -- and I just have a simple question about the 2007 CON decision.

So if you direct your attention to findings of fact starting around Finding of Fact 25? It's on page 5.

So are you familiar with how CON applications work in that in a decision these findings of fact are based on evidence in the record, and that evidence in the record is cited at the bottom?

Okay. So for example in Finding of Fact 25 there's findings, and in parentheses at the bottom it says, initial CON application.

Do you see that?

A. I see that, yes.

Q. So that would have been information proffered by the Applicants in their CON application, and then accepted as a finding of fact by the agency. Correct?

Well, I'm not saying correct. I'm sorry. I'm telling you that's what that is.

So based upon this, like, if you look at Finding of Fact 25 it says, this proposal

will offer the following benefits, clinical integration and improved continuity of care.

Is that what it says? Correct?

A. That is exactly what it says.

Q. And it cites the CON application at pages 4 to 6?

A. Correct.

Q. So that was an argument advanced by the Applicants in their certificate of need application for the change of ownership?

A. I mean, I don't --

Q. Finding of fact --

THE HEARING OFFICER: Again, if you know.

THE WITNESS (Hale): I don't know exactly that.

BY MS. FUSCO:

Q. So Finding of Fact 26 says SHS -- and I assume that's Stamford Health Systems' investment in WSC will allow for improved clinical integration between the services offered by WSC and TSH for the purpose of improving continuity of care and providing TSH patients with greater access to pain management and ophthalmic surgical services.

Physicians performing procedures at WSC will be able to utilize the resources of a

major tertiary hospital in the area for the purpose of obtaining consults and coordinating pre and postoperative care.

Further affiliation with TSH will facilitate cross training, continuing education programs and open up other staffing opportunities between the two organizations.

And then that cites the CON application at page 5. Is that correct?

A. That's how this reads, section 26. Yes.

Q. Okay. So those, based upon -- and again, I know you're not an expert in this, and I know OHS staff knows this, but based upon how I explained it to you, those are findings of fact that you see are cited to the CON application.

And the CON application would have been filed by Wilton Surgery Center. Correct?

MS. LEDDY: Objection. If he knows.

BY MS. LEDDY:

Q. If you know?

A. Yeah, I don't. I don't know exactly there.

Q. So based on what you just heard -- and let's assume that these are arguments that were advanced by Wilton Surgery Center in its case

to bring Stamford Health in as a partner.

Those are pretty much the same arguments that are being advanced here by Hartford HealthCare, the benefits of the health system partner. Correct?

A. I think it was -- it was perhaps the intention of the parties that -- that these services and benefits be provided by this health system, but those have not materialized as we know.

Q. That not my question, and that's your --

A. I'm just --

Q. I understood and that's your circumstance with Stamford Health, but in obtaining a CON, in meeting the statutory decision criteria for approval of a CON, Wilton Surgery Center advanced these benefits that a health system brings, and the Office of HealthCare Access at the time approved the certificate of need application based in part on those findings.

Correct?

A. I think that a number of these benefits were to be provided by NSC at the time, which is now AmSurg.

Q. Well, I understand, but I --

A. So that -- so that's what has happened.
Q. But I specifically read your paragraph 20 -- 26 which refers to SHS. Is that Stamford Health System, or is AmSurg?
A. Actually, I don't know what that acronym stands for in this document.
Can you tell me?
MS. FUSCO: If you go back to --
MS. LEDDY: SH is -- that's Stamford Hospital.
BY MS. FUSCO:
Q. If you go back to page 2?
A. Okay.
Q. Stamford Health Systems, Inc, finding of fact two, Stamford Health Systems, Inc, SHS.
So in Finding of Fact 26 they're talking about the benefits that Stamford Health System can bring to the joint venture.
Correct?
A. That's what it says.
Q. And then jumping ahead to page 13 -- one, two three, the fourth paragraph down.
A. Okay.
MS. LEDDY: Do you have a paragraph number?
MS. FUSCO: This one has no number. It's in the rationale. So it's page 13 of 15.

THE WITNESS (Hale): Okay. Hold on.

MS. LEDDY: We're at eleven. Hang on.

THE WITNESS (Hale): Okay?

BY MS. FUSCO:

Q. If you look at that fourth paragraph down, having SHS as a partner, it cites the same things we read, we just read from paragraph -- from Finding of Fact 26 and uses them as part of the rationale to support the approval of the CON. Correct?

MS. LEDDY: Can you give him a minute to read the whole thing, because he's --

MS. FUSCO: Yeah. It's just the beginning of the paragraph.

MS. LEDDY: But the rest of the paragraph I think is relevant as well.

So I'd like him to read the whole thing.

THE HEARING OFFICER: Take your time, Mr. Hale.

THE WITNESS (Hale): Okay. Can you repeat the question again please?

BY MS. FUSCO:

Q. I'm asking you if -- and I'm speaking specifically to the parts of the paragraph about Stamford Health System which came from the findings of fact that we just looked at

before.

I'm asking you if OHS -- you can see at the top of the page, it says, rationale. OHS Is using these factors. Okay? Improve care coordination, clinical integration as part of its rationale for approving this CON.

If you flip to the next page it shows it's approved. Is that correct?

A. That is how this document reads, yes.

Q. Thank you.

And just briefly, on the 2014 determination you reported -- so looking back historically we just talked about the fact that the center was pain management and ophthalmology, but in this, in this 2014 determination you indicate that services provided at Wilton Surgery Center include gastroenterology procedures.

Do you know when those were added, and if a CON was required to add those?

MS. LEDDY: Can you direct us to a specific page?

MS. FUSCO: Yeah. It is -- I mean, you can look at page 3 of the packet. It's your client's proposal description and it says, licensed outpatient surgery center currently providing ophthalmology

pain and gastroenterology services.

MS. LEDDY: Oh, here. Okay. Page 4.

BY MS. FUSCO:

Q. Sorry. Is it four?

A. I believe we added gastroenterology around the 2011 timeframe.

Q. Okay. And was the CON required to do that?

A. Or maybe two thousand -- maybe 2012.

Q. Okay. Did you obtain a certificate of need? Was one required?

A. I do not think one was required. No, there was, you know, there was not a requirement for that.

Q. Okay. In this determination from 2014 you were talking about syndicating interest to ENT docs and adding ENT services.

Did you ever do that?

A. We -- we did not add ENT services.

Q. But you could have added those services and syndicated interest to physicians without a CON based on this determination. Correct?

A. Yeah. We -- we could have, and in both of those situations those cases were all being performed in a hospital setting in an HOPD, and they would have shifted out of that more

expensive environment into Wilton Surgery center. But in GI, that happened in GI and it happened in ENT.

Of course, we didn't get the ENT program. Those doctors went to another surgery center. That one was obviously approved by the department.

Q. Correct, but as we talked about there is a cost benefit to shifting cases out of an HOPD to an ASC. Correct?

And you saw that with ENT Services?

A. Well, we didn't see it with ENT --

Q. Right. You wanted to see that with ENT services. Correct?

A. We were hoping to see that with ENT.

Q. So just two more questions along this line. So in your testimony at -- I think it's page 5 -- yeah.

You talk about, and you know, I'm asking about this because it hasn't been stricken from the record -- but you talk about how Wilton Surgery Center underwent a significant transformation and expansion by going from a plastics only center to one that also provided orthopedics.

MS. LEDDY: I think you mean -- not Wilton.
I think you mean SCSC.
BY MS. FUSCO:
Q. No -- oh, yes. Yes, I'm sorry. Yes. So you say that SCSC went through a significant transformation. What I'm asking you is based on the CON History we just looked at, and the fact that based on this information in the record, Wilton Surgery Center started as a pain management only center and now provides pain, ophthalmology, ocular plastics, GI, potentially could have provided ENT. That's also a significant transformation.
Is it not?
MS. LEDDY: Over 15 years?
THE WITNESS (Hale): I know that we have maintained the facility with two operating rooms and two procedure rooms the entire time.
BY MS. FUSCO:
Q. But it's a significant transformation as far as you define significant transformation to mean different surgical subspecialties in different positions?
A. I define transformation as one operating room facility doing plastic surgery into a

multiroom facility in a different location performing orthopedics, pain and spine.

Q. Okay. But you transformed from a pain only facility to a multi-specialty surgery facility with 30 physicians on your medical staff. Correct?

It's yes or no.

A. My organization was not involved when the center was a pain management only center. So I can't speak to that, to that history.

Q. Okay. But now Wilton Surgery Center is a multi-specialty surgery center with 30 physicians on the medical staff, correct?

About?

A. I don't know exactly.

Q. That's what on the website?

A. Yeah, I don't know exactly how many doctors are on the website -- or are on the medical staff.

Q. So can I ask you just one general question before I move on to another topic of discussion?

You filed your evidence here in sort of copious legal arguments, petitions, replies, prefiled testimony. Why didn't you ever

mention in any of those that Stamford Health is an owner of Wilton Surgery Center?

A. They are a minority owner. They're an equal partner with AmSurg. They don't have a controlling interest, a 51 percent membership interest like Hartford HealthCare has in SCSC.

Q. No, no, no. But I'm asking about Wilton. I mean, you're a minority owner. You're a noncontrolling owner and you disclosed AmSurg's ownership and you're sitting here today at this hearing. Why?

How do you disclose your ownership and not mention Stamford once in all of your CON filings, especially since this is a CON related to whether there, you know, whether a hospital or health system should be allowed to partner with the surgery center.

I mean, is it not the elephant in the room? They're not mentioned once, and no one from Stamford is at this hearing and I just am wondering why?

A. AmSurg is the managing member of Wilton Surgery Center, LLC. We're also the managing member of the joint venture entity we have

with Stamford.

Q. Okay.

A. And I -- I mean, I assumed that with all the information that's out there and available that, you know, OHS would know the ownership of Wilton.

Q. Understood. Moving on. You say in your testimony at page 4 that Wilton Surgery Center has a charity care policy.

Is that correct?

A. Yes.

Q. Is that a written charity care policy?

A. Yes.

Q. Okay. My question is, why is that policy not posted on your website? I went to your website and what I do see is something called a patient financial responsibility policy, which tells patients how much they're going to have to pay you, but nothing on the public facing website that shows those patients, that they may be able to obtain assistance in paying for their surgeries if they need to.

A. Yeah, I -- like, I don't decide what information gets posted on the websites for our centers. So I'm not -- I really can't

answer as to why that's not out there.

But we certainly handle those conversations when -- when patients are scheduled at our center if they -- if they need assistance.

Q. Okay. And you also say in your written testimony at page 2 that you plan to testify.

This, up in the section where you list the five or six things you're going to testify to. You say you're going to testify the negative impact the proposal will have on patient choice in the service area.

Can you point me to where that evidence is in your submission, in your submission showing a negative impact on patient choice with the HHC affiliation?

A. I would say that -- that my testimony on that subject has to do with how large Hartford HealthCare has become in the state as a healthcare system, and the -- the risk of controlling a larger patient population, having -- having leverage with -- with insurance carriers and really be able -- really being able to drive patients to narrow networks of providers, surgeons that are in

those narrow networks as a relationship, as a result of their relationship with Hartford HealthCare things along those lines where patients are sort of told where they need to go.

Q. Okay. But you have no evidence and you've presented no evidence that that's occurring here. Have you? It's a yes/no question.

Is there --

A. It happened in a number of other markets.

Q. Okay. Is there -- it doesn't matter. I'm asking, have you put evidence in the record to establish that that is happening here specifically with respect to SCSC?

Have you put that -- is that evidence in the record?

A. It is not in my -- it is not in my testimony.

Q. Okay. Then that's it. Then you've answered my question.

Just a few more questions. How many Hartford HealthCare affiliated physicians are on your medical staff?

A. I know there is -- well, what do you mean by Hartford HealthCare affiliated?

Q. They have some affiliation with Hartford

HealthCare. They have -- they belong to a physician practice that partners with Hartford HealthCare, or some other affiliation; a member of the medical staff at one of the Hartford HealthCare facilities.

A. So that's one of the things I was mentioning earlier. I don't know exactly where all of the facilities -- where our doctors are credentialed.

Q. Okay?

A. So that is -- that is something that I can follow up with you on that. That is in our credential files. We know exactly where our medical staff members are credentialed.

I just don't know a person.

Q. How many cases have -- so SCSC has been open for nine months. How many cases has Wilton Surgery Center lost to SCSC in the nine months that SCSC has been open?

A. I have no idea.

Q. Okay. And how many physicians have divested their interests in SCSC over the last year, and invested -- or I'm sorry, divested their interest in Wilton Surgery Center over the last year and invested in SCSC?

A. I don't -- I don't know which physicians may have invested in SCSC.

Q. Are you aware of any Wilton Center, Surgery Center physicians who have -- well, what you should know is, have any of your physicians divested their interest in the last year?

A. I do know of a doctor who has divested his ownership.

Q. And are you aware, has he invested in SCSC?

A. Not that I'm aware of, but it's just to my knowledge.

Q. And I know you said you weren't sure, but are you aware of any WSC, Wilton Surgery Center physicians who have joined the SCSC medical staff since October of 2021?

A. To the best of my knowledge, no.

MS. FUSCO: I think that may be it.

I just need to regroup for a second.

THE HEARING OFFICER: Do you want to take five minutes to review your notes?

MS. FUSCO: No, I think I'm okay. I think I've gotten -- just double checking my notes here.

No, I think I'm all set.

THE HEARING OFFICER: Okay.

MS. FUSCO: Thank you, Mr. Hale.

MS. LEDDY: I have just very brief redirect, if I may?

THE HEARING OFFICER: Okay. That's fine. And then we'll take a break. All right. I'm going to let the OHS staff after this sort of figure out whether there are any remaining questions that they have.

So Attorney Leddy, you can proceed with redirect at this point.

MS. LEDDY: Sure.

REDIRECT EXAMINATION (of Hale)

BY MS. LEDDY:

Q. Mr. Hale, you had a lot of questions about the transaction where National Surgery and Stamford Health joined together and became part owners of Wilton.

Do you remember having those discussions?

A. Absolutely.

Q. And when you were asked questions, do you recall Attorney Fusco suggesting that the CON applications you were looking at proposed the exact same structure as what exists in the HHC proposal?

A. I -- I do recall her saying that, yes.
Q. Okay. Can you tell Attorney Csuka and the other OHS Staff members if that's an accurate statement?
A. No, it is not an accurate statement.

Because in the Wilton Surgery Center facility, as I mentioned earlier, AmSurg and Stamford have a 50 percent/50 membership interest, shared membership interest in our joint venture. AmSurg is actually, the managing member of that joint venture entity, which is called Stamford/NSC Management, LLC.

So we basically have the control, if you will, of that joint venture entity, not Stamford Health System. And then in that joint venture, it obviously owns the 51 or 52 percent that I -- that I mentioned in my testimony.

But there is no controlling interest, no controlling equity interest, or controlling board structure that allows Stamford to have any controlling interest.

Q. And so you said that as of now the two entities, AmSurg and Stamford Hospital own collectively 52 percent of the center. Is

that correct?

A. Approximately, yes.

Q. And they each own 50 percent of that 52 percent?

A. Correct.

Q. So Stamford Health owns 26 percent of the center and AmSurg owns 26 percent of the center?

A. Correct.

Q. And in this case what is your understanding of the percentage that HHC owns of SCSC?

A. It's my understanding that Hartford HealthCare or its affiliate owns 51 percent of SCSC.

Q. So financially, Hartford HealthCare's structure is very different than the financial structure that you have with AmSurg and Stamford Healthcare?

A. Correct.

Q. And in terms of the control in the management, you indicated that there are a number of board seats. Does Stamford hold the majority of those seats?

A. They do not. They only hold two of those seven seats.

Q. Okay. And does AmSurg own -- hold the majority of those seven seats?

A. No, we have two of those seven seats.

Q. Okay. And you indicated also that you, that AmSurg is the managing member of the entity that is the 50/50 split with Stamford Health.

A. Correct.

Q. Okay. So the hospital entity, the Stamford Health Network, are they involved in the day-to-day activities of the center?

A. No, not at all.

Q. Do you share resources with Stamford Hospital? Do you share billing?

A. No, we do not share any billing services.

Q. Do you share any EMR?

A. No, not at all.

Q. Okay. Are there any -- what about the contracting with your corporate payers?

A. The contracting is done through AmSurg, an employee of AmSurg on behalf of Wilton Surgery Center, LLC.

Q. Okay?

A. That has its own direct third-party commercial payer agreements with each payer as a surgery center provider.

Q. Okay?

A. Not using Stamford Health's contracts, its hospital contracts with ASC rates or anything along those lines.

Q. So Stamford, Stamford Health rates don't affect the rates that are negotiated on behalf of the center?

A. None whatsoever.

Q. You indicated -- well, you weren't sure about HHC affiliations of some of your members. Do you have a GI group at the center that is affiliated that you know of to be affiliated with Hartford HealthCare?

A. I -- I am aware of our GI doctors who practice with Soundview Medical Associates. And it's my understanding that Soundview has a management services arrangement or a professional services arrangement with Hartford HealthCare, and that that practice is being overseen by Hartford HealthCare.

Q. Okay. And Attorney Fusco asked you about the growth of the Wilton center by adding different specialties in addition to pain management.

Is it your understanding that SCSC could

also expand and add subspecialties without CON approval going forward?

A. They could do it very easily, and that is a concern that we have, that they will indeed do that.

Q. And they could, for instance, they could acquire your GI practice that's affiliated already with Hartford HealthCare?

A. Absolutely.

MS. LEDDY: I have no further questions.

THE HEARING OFFICER: Okay. Attorney Fusco, it looked like you were going to say something. I saw you were reaching for a microphone?

MS. FUSCO: I was just going to say, I don't have any recross. All set.

THE HEARING OFFICER: Okay. Thank you. So I think we're going to take, let's say, a 20-minute break.

I'm going to let Steve and Ormand look through their notes and figure out which questions remain unanswered.

And so we'll come back at 4:06.

MS. LEDDY: Thank you.

THE HEARING OFFICER: Thank you.

(Pause: 3:46 p.m. to 4:17 p.m.)

THE HEARING OFFICER: All right. So a lot of our questions were answered. We are going to run through the ones that remain. We did our best to sort of winnow them down, but I do apologize if some of them seem repetitive.

So Ormand, with that you can start your questions. I think you're going to start with the Applicant. Right?

DR. CLARKE: Yes.

THE HEARING OFFICER: Okay.

DR. CLARKE: (Inaudible) -- plan that placed --

THE HEARING OFFICER: Ormand, you froze. So you're going to have to start from the beginning.

I'm sorry.

DR. CLARKE: Hmm.

THE HEARING OFFICER: You're fine now, but.

DR. CLARKE: Okay. Okay please provide a five-year plan that lays out the provision of healthcare services in the proposed service area including any plans to reduce, eliminate or expand services, and we'll accept this as a late fire.

MS. FUSCO: So that's a five year? I'm sorry, Ormand.

Just to clarify, that's a five-year plan for healthcare services in the service area with an indication of whether you're going to increase,

reduce, eliminate, services?

Is that what you said?

DR. CLARKE: Reduce, eliminate or expand services.

MS. FUSCO: Okay. And submit as a late file?

DR. CLARKE: Yes, please.

THE HEARING OFFICER: And we will go over the late files towards the end.

DR. CLARKE: And the other is, are there plans to sharing or shifting patient volumes to other HSC facilities in Southwest Connecticut?

MS. FUSCO: Can you can you repeat that, please? To what?

DR. CLARKE: Are there plans for sharing or shifting patient volumes to other HHC facilities in Southwest Connecticut?

THE HEARING OFFICER: I think you meant, share. Right? Are there plans to share or shift patient volumes?

DR. CLARKE: Yes.

THE HEARING OFFICER: If HHC were to have this proposal approved?

MS. FUSCO: I think we understand the question.

I'll let Bill answer.

THE WITNESS (Bitterli): I think to the degree that we continue to expect orthopedics to migrate from hospital inpatient and outpatient, you know, to

centers like SCSC the answer would be yes.

But we have -- I -- I believe that's as far as I could say in terms of plans.

THE HEARING OFFICER: And that can certainly be included in the five-year plan, I suppose, as well. So if there's anything else that comes to mind, feel free to address that at the time.

DR. CLARKE: How many physicians including their specialties are on the board at this time?

THE WITNESS (Bitterli): That's a little hard to answer. Connecticut Orthopedics is on board as a practice. So theoretically all, you know, 50 of their providers could come there. Not all of them are credentialed on the medical staff. I -- I'm going to say 12 or 15 at this point.

Donna, do you know what the current staff roster looks like? I think it's on the website.

MS. FUSCO: There's 16 on the website.

THE WITNESS (Bitterli): Sixteen on the website, and I believe the website is current.

THE HEARING OFFICER: And does that also reflect their specialties? Or are there profiles? I haven't looked at the website, so.

MS. FUSCO: I believe it does.

I think I'd have to confirm, but I believe it

does if you click on them.

THE HEARING OFFICER: Okay.

MS. FUSCO: But we could certainly submit a list of those physicians on the med staff by specialty, if that would help.

DR. CLARKE: The main application, which is quite aged, listed --

THE HEARING OFFICER: Wait. Wait. Wait. Yeah, that that would be helpful, Attorney Fusco. So we'll include that as a late file also.

Okay. Ormand, you can -- well, actually. Let me just -- Steve, did you get that as the late file?

MR. LAZARUS: Yes, I'm making note of that.

THE HEARING OFFICER: Okay. Sorry. I just wanted to make sure weren't moving too quickly here.

Okay. Ormand, you can continue.

DR. CLARKE: If this proposal is approved, can you confirm that there will be no facility fees for a patient visit?

THE WITNESS (Bitterli): No, we -- we can't confirm that. I can confirm the -- the opposite. Southwest -- an ASC has to charge a facility fee. That is, you know, that is the revenue that we get paid to run the center, to hire the staff, to buy

the equipment, to buy the supplies.

If what you're asking about is an additional facility fee on top of somebody's professional fee, the answer to that is, no.

But south -- ASCs run on facility fees.

THE HEARING OFFICER: And Attorney Fusco is familiar with why we're asking this question.

MS. FUSCO: No, and it's -- I mean, it may just be the verbiage. Right? I mean ASCs charge, I guess, what would barely be a technical fee for what the facility provides.

The surgeons bill the professional charge, but there's no kind of add-on facility fee like which I believe is what OHS is always concerned about. Dan -- I know, Hearing Officer Csuka, I know you and I talked about this. It is the typical ASC structure.

THE HEARING OFFICER: That's correct.

MR. LAZARUS: Perhaps it would be helpful if we can just have maybe as a late file just a written definition of what you're talking about, as what you're describing as a facility fee.

I think that would be helpful to have.

MS. FUSCO: Yeah, it's the distinction between, like, the facility charge and like a provider based HOPD

facility fee. It's a different thing.

We can explain the distinction.

MR. LAZARUS: Yes, please. Thank you.

THE HEARING OFFICER: And Steve, do you have that marked as a late file?

MR. LAZARUS: I do.

THE HEARING OFFICER: Okay.

DR. CLARKE: The application had spoke of cost savings to the facility as well as the patient.

How will these cost savings be utilized?

MS. FUSCO: I'm not sure I understand the question. So the cost savings to the patient of using an ASC?

DR. CLARKE: Yes, there, there are mentions of cost savings. How will they be utilized, and how will the cost savings benefit the patients?

MS. FUSCO: Hang on one second.

Can I just clarify, Ormand? I mean, you're talking about the cost savings to patients?

DR. CLARKE: Right.

Will there be cost savings to patients?

THE WITNESS (Bitterli): If there are cost savings to the patient it -- it would be in the form of, you know, their insurance either premiums or -- or copays, and they will just not have spent that money. They get to keep it.

So what they do with that I -- I suppose is -- is up to them.

I'm -- I'm sorry if I didn't answer what you were asking.

DR. CLARKE: Yes. And to Wilton -- thank you so much and to Wilton's --

MR. LAZARUS: Excuse me, Ormand. Can I just add one additional question in there? I know there was a financial worksheet that the Applicant has submitted as part of the application.

Because I know we haven't had any updates to that probably in 20 months, can we get that as a late file?

MS. FUSCO: Yes.

MR. LAZARUS: And that will include the most recently completed year plus three projections starting from now. Thank you.

DR. CLARKE: Okay. And to Wilton, what are Wilton Surgery Center's volume projections for the following three fiscal years, and the method or methods used for calculations or projections?

And that can be submitted as a late file as well.

THE HEARING OFFICER: So Attorney Leddy, that is directed towards your client.

MS. LEDDY: Thank you.

THE HEARING OFFICER: And we can read. Do you need that to be read again, or should we just address it --

MS. LEDDY: No, I can do that.

THE HEARING OFFICER: Okay.

Steve, you're all set with that?

MR. LAZARUS: Yeah, just clarifying it's, you want to know the most current completed year as well as three fiscal -- the following fiscal years.

DR. CLARKE: The projections for the following three years, fiscal years.

MS. LEDDY: Going forward, yes.

DR. CLARKE: Going forward.

MR. LAZARUS: Yes. Okay.

DR. CLARKE: And on what basis do you make those assumptions or projections?

MS. LEDDY: We can do that.

DR. CLARKE: Or trends, what trends did you observe -- or submit?

Also, how will the proposal adversely affect healthcare costs in the region?

THE WITNESS (Bitterli): We don't -- we don't think it will. Is that for Wilton?

DR. CLARKE: And this is for Wilton.

THE WITNESS (Bitterli): Oh, sorry.

THE WITNESS (Hale): I'm sorry.

Can you ask that question again?

DR. CLARKE: How will the proposal adversely -- if, say for instance, this were granted, how will this adversely affect healthcare costs in the region?

THE WITNESS (Hale): So if the additional board seat at SCSC is needed in order for SCSC to -- to tap into or to utilize Hartford HealthCare's commercial payer agreements that it has negotiated and be included as an affiliate, if you will, under that, health systems payer agreements -- if the board seat is needed for that and it's granted, then the surgery center could fall underneath the health systems contracts; begin increasing its fee schedule, could begin receiving higher reimbursement rates, contracted rates with payers.

And those allowables under those plans are -- are what is used to calculate what the patient's responsibilities are depending on the patient's plan. The percentage of that allowable is a coinsurance that the patient has to come out of pocket.

So if that's the contingency here, that's going to tap into those higher -- we call them

enhanced ASC rates because there's really sort of three types of reimbursement levels for ASCs.

You've got HOPD, which clearly the Applicant is not an HOPD -- but that's sort of the highest reimbursement, if you will, from payers for outpatient surgical services.

You've got freestanding ASCs, which is like with Wilton Surgery Center. We utilize the relationships that we have with payers to negotiate contracted rates and that's sort of -- that's the most cost effective, but there's also a third level in between that is a health system that has, you know, a lot of clout and a lot of leverage with payers.

And they negotiate higher ASC rates as a freestanding surgery center that puts that reimbursement higher than what it costs and, you know, for what a patient would have to pay out of pocket if they come to a center like Wilton.

MS. FUSCO: I'm just -- if I can just note for the record an objection? I know that question was asked to Wilton.

But you know, I'd just like to note for the record that that was all sort of a theoretical explanation of how rates work. I don't expect

that Mr. Hale was putting in any evidence that that's how it will work at SCSC, or specific to this proposal, because he has no knowledge of that.

THE WITNESS (Hale): I just know how it works in a number of other health system relationships with surgery centers. So I know. I mean, I have, you know, firsthand evidence of that arrangement.

MS. FUSCO: Understood, but you do not have firsthand evidence of this center and its arrangements with Hartford HealthCare. So I would just like that objection noted to the record.

THE HEARING OFFICER: Thank you.

DR. CLARKE: And so in that same vein, how the proposal would adversely affect or adversely impact existing providers -- or how the proposal would adversely affect healthcare costs for patients.

A VOICE: (Unintelligible.)

THE WITNESS (Hale): I'm sorry. Go ahead.

MS. LEDDY: Is that directed to Wilton?

DR. CLARKE: Wilton. Wilton.

THE WITNESS (Hale): Yes. So I would just -- I would -- I would piggyback on what I just indicated.

So if SCSC has an advantage with higher

reimbursement rates through enhanced ICP negotiated contracts with commercial payers, those higher reimbursement rates that are negotiated, those higher allowables are going to generate a higher out-of-pocket expense for patients based on how plans -- in how patients' plans are calculated, and what out-of-pocket financial responsibilities, how those are calculated for patients being seen at SCSC.

MS. FUSCO: And again, I'm going to note the same objection to the record, as Mr. Hale knows nothing about the reimbursement at SCSC.

I'm confused as to why these questions are being directed to Wilton. There's no evidence to put on the record. This is all just Mr. Hale's opinion about how it might work.

DR. CLARKE: Okay. And finally, how the proposal will adversely impact existing providers in terms of referral patterns. And again, to Wilton.

MS. LEDDY: Referral patterns, how it will adversely affect.

DR. CLARKE: Would you like me to repeat? Okay --

MS. LEDDY: No, I think we understand. You're asking how it will adversely affect providers --

DR. CLARKE: Existing providers in terms of referral

patterns.

MS. LEDDY: Referral patterns? Okay.

DR. CLARKE: Yes.

THE WITNESS (Hale): So I -- the main concern for what, like, Wilton Surgery is that with Hartford HealthCare's expansion in Fairfield County and its relationships with other doctors, a few of which are on staff, as I mentioned earlier in one of my testimonies, or one of my discussions about even the GI, the gastroenterologists who are affiliated with Hartford HealthCare; through their employment arrangements or their management services arrangements that they have with Hartford HealthCare, they -- they may be directed to refer patients to a Hartford HealthCare affiliated surgery center in the future, rather than an unaffiliated surgery center that is not affiliated with Hartford HealthCare.

This is another situation that I've seen in many other markets around the country. So that is -- that is a very strong possibility.

DR. CLARKE: And how will the proposal impact existing providers in terms of volume and the staffing?

MS. LEDDY: Volume and --

THE WITNESS (Hale): Volume and (unintelligible) --

MS. LEDDY: What was it, volume?

DR. CLARKE: Volumes.

MS. LEDDY: Okay. Patient volumes.

THE WITNESS (Hale): So again if -- if Wilton Surgery has medical staff members, current referring doctors who -- who are -- are impacted by a Hartford HealthCare relationship and being told to refer cases to another facility, that is going to decrease the volume of patients that we are seeing at Wilton Surgery, and possibly driving those patients to a higher cost environment, certainly --

MS. FUSCO: And just to -- I'm sorry.

THE WITNESS (Hale): Having a declining reimburse -- having an unfavorable impact on -- on patient volumes at Wilton Surgery, an existing provider in the market.

MS. FUSCO: Again, just note my objection to the record, actually to the last two questions as they relate. This is all speculative, and there is no evidence that any of this is actually occurring, or going to occur at SCSC.

THE HEARING OFFICER: That's understood, and we'll give it whatever weight it's due, if any.

But I just wanted to make mention of one

thing. I may need to hop off for about five minutes, in about ten minutes. If that does happen, it will be no more than five minutes.

I just have to get my son off the camp van that will be delivering him here, but hopefully that doesn't happen and that doesn't get in the way of what we're doing here.

So Ormand, you can continue.

DR. CLARKE: That concludes my questions.

THE HEARING OFFICER: Okay.

DR. CLARKE: I now turn it over to Steve.

MR. LAZARUS: Thank you, Ormand.

So I'm just going to direct these questions towards the Applicants, and you can sort of respond as you see fit.

Has Hartford HealthCare Surgery invested any money into SCSC or purchased any equipment or anything in the facility beyond the $1.6 million that was brought up? And if so, what type of equipment or upgrades have been done in the facility that has been paid?

And if so, how much? Generally how much was the cost for those?

MS. FUSCO: You can answer.

THE WITNESS (Bitterli): Well, I'd have to get back on

that.

MS. FUSCO: If you don't know the exact, that's fine.

THE WITNESS (Bitterli): There was I believe an additional member loan made to the surgery center based on sort of a slow startup in -- in terms of contracting with the payers. And that was, you know, a pro rata 51/49.

I'd have to get back to you on, you know, the -- the exact pieces of that, but it wasn't directed at a particular piece of equipment. It was directed at meeting the work -- working capital needs of, you know, startup of the surgery center.

MR. LAZARUS: Okay. And generally, in general what was the amount, if you remember?

THE WITNESS (Bitterli): I'd be guessing.

MS. FUSCO: Yeah. So I think we can get it for you, Steve. I don't think he knows. So we can get that for you after, if you want.

MR. LAZARUS: Sure. We can make that a late file, then.

All right. So we've been talking a little bit about the cost effectiveness, and we were still trying to get to some sort of a quantitative figure. And as you know, OHS has the APCD data

and we actually uploaded it this morning. It does not include SCSC, because SCSC began its operations at this location last year. So I think it's only been in there for, like, nine months.

So in order to sort of, you know, try and get to the -- see, try to get the quantity, get to some sort of a quantitative data number of cost savings for Hartford HealthCare improving the SCSC's bottom line, we'd like to see if you can provide examples of Hartford HealthCare or Hartford Surgery holding any acquisitions over the past say five to ten years?

I don't know how many there would have been in the -- I think five-year period would be fine. If they're not enough, I mean, we have -- we can go back as far as ten years, any acquisition of any other outpatient surgical facilities.

And if we can get some sort of a cost, you know, figures that were before the acquisition and the three years prior, because I think that will help us, sort of, give us evidence on the record that will show some of the, you know, information that was put in this record -- but we can't quantify yet, because it's too new.

So basing this off of Hartford HealthCare's

surgery or Hartford HealthCare system's past experience.

MS. FUSCO: Yeah. Okay. Absolutely. We can do that.

MR. LAZARUS: Okay. Would you happen to know over the past five years how many acquisitions that would be?

I don't want, you know, I didn't -- we don't need to go back 10 years if there were 15 or 20 in the past five years. We're just looking for a reasonable amount of examples.

MS. FUSCO: Okay. We'll figure it out. We'll look into it.

And Steve, I may need to reconnect with you on the best format to do this. I'm not sure what I'm going to find or how we'll be able to present it, but let's see -- if I could be back in touch, kind of, on form?

MR. LAZARUS: Sure. And you know, with that we would also need -- and we can talk more detail on what we're looking for, but we would require the CPT code so we can get it verified through our CPCD data.

In that vein, for -- as a followup, we uploaded the data, APC data for the primary service area for the current proposal, but we

don't have the facility in there.

Now that you've been operating for the past nine months would you be able to take that table that we uploaded and put, based on the experience of the past nine months, a cost for SCSC?

MS. FUSCO: We may be able to. I think Mr. Bitterli would have to look at what that format is. We haven't had a chance to review it in any detail, but I can let you know.

MR. LAZARUS: Okay. I'll just make a note of this.

MS. FUSCO: And Steve do we have -- and this is to your point. I mean, do we have any information that would sort of -- if we are going to try to replicate something for purposes of the all payer claims database, like, is there something that defines the scope of what's in there?

Because I know everything isn't in there. Right? So I want to make sure we're doing an apples-to-apples comparison.

MR. LAZARUS: I can get you some guidelines from our data team.

MS. FUSCO: Okay.

MR. LAZARUS: And you can also, you know, I think again it's FOI-able at a certain -- there's a process in place. You can also FOI that data from our APC

data.

MS. FUSCO: Okay. I just want to make sure that if we're giving you data in that format, that we are including what everyone else included, and excluding what everyone else excluded if ours is going to be compared to other people's, and that has to be precise.

MR. LAZARUS: Exactly. And we can provide you with the CPT codes that we used for our data.

MS. FUSCO: Okay. Yeah, if you could help give us a way as if were reporting?

MR. LAZARUS: Yeah, absolutely. Thank you.

And actually that was the last question. Attorney Csuka, I think I'm all set.

THE HEARING OFFICER: You didn't want to ask about volumes, payer mix, number of physicians? I thought you had mentioned that.

MR. LAZARUS: Oh, yeah. Just going back in my notes here. I think one of the -- was that a second late file that were going to follow up on?

MS. FUSCO: I've lost a little track of the late files, so we're going to have to go over them at some point.

The projections I thought that you asked for were for Wilton Surgery Center.

MR. LAZARUS: Then we were going to ask for the cases. We were going to ask for the volumes for --

MS. FUSCO: Payer mix.

MR. LAZARUS: We asked for the payer mix, yes.

But I would like also a late file on the -- and if this wasn't clear, I probably should have made it clear -- for SCSC since it started, began operation.

MS. FUSCO: Okay.

MR. LAZARUS: And then, you know, those cases, they can be broken down by specialty.

MS. FUSCO: Yeah, the cases you did in the first year by specialty. And then you want us to update the payer mix table as well?

MR. LAZARUS: Yes, the payer mix table. And what I can do is, I will read what I have down as in the late file and then we will probably put it in writing and send it as a followup so both parties will have them.

MS. FUSCO: Okay. Thank you.

MR. LAZARUS: I want to make sure.

And I will clarify, but I think also for when you provide the three years' data for those, the one we're talking about, the late files getting -- for those five to ten years that we're going back

on those ones?

MS. FUSCO: Uh-huh, yes.

MR. LAZARUS: We talked about the costs, but also would like the volumes for those years. If we can, you know.

And including the number of physicians per -- we'll include that in the late file when I write out the details, but also the number of physicians per location per OSF.

And that any evidence that, you know, any explanation and evidence that you can provide that shows that the access to need for services would -- that it showed that it would have been improved, as well as any patient demographics and anything that may show that, you know, there were any reduced patient times, wait times, that kind of things.

And I will put this in writing, because I know it's -- there's multiple pieces to those. But that, that's the one we talked about, the going back five to ten years starting with the cost. So it will be the cost, volumes, payer mix, number of physicians, evidence of improved access to need.

THE HEARING OFFICER: Okay. So I guess let's move on

to late files then, since we're sort of -- actually, I'm sorry.

I should have -- since we're done with the questions, I should offer an opportunity to the Applicant to do some redirect regarding the questions that OHS asked, if there are any.

MS. FUSCO: I don't think I have any redirect. I mean, I think a lot of what you're asking is going to be in late files. So certainly we can address any of it in our written submission.

THE HEARING OFFICER: Okay. And the same thing for the Applicant. Do you have any redirect based on -- or not the Applicant. I apologize.

The Intervener, do you have -- groundhogs day. Do you have any questions on redirect for the Intervener, Attorney Leddy?

MS. LEDDY: No. I just want to get you to that bus.

THE HEARING OFFICER: All right. So we can go through the late files now then.

So let's start from the beginning.

MR. LAZARUS: The first one I have is for the applicants to update their payer mix -- that was included in the application -- based on the nine months that they have actual, and projecting, projecting forward.

THE HEARING OFFICER: I think you said three years forward. Right? Whatever the table requires.

MR. LAZARUS: Yeah. And then the second late file is the number of cases for the nine-month period that the -- since, or the ten-month, whatever it might be. I think it opened back in October of 2021. So we wanted to get those volumes by specialty.

The next late file I have is for a request from OHS for a five-year plan for healthcare services. That for these primaries, for the primary service area and we'll detail in writing a bit more as far as what type of things should be covered in there.

MS. FUSCO: I was going to say, Steve, is it -- can you give us a scope on that? I mean, are we talking about surgical services?

Or sort of an overall services plan?

MR. LAZARUS: Let's see. Let me just take a look at my notes.

This was the -- I think it was asked. This was what Mr. Clarke had asked earlier about the five-year plan that lays out the provision of healthcare services in this proposed service area, including any plans to reduce, eliminate or expand services from what the center is currently

offering.

MS. FUSCO: Okay. So we're specific to the center?

MR. LAZARUS: Ormand, was that the intention?

MS. FUSCO: Oh, I think you're on mute, Ormand.

THE HEARING OFFICER: That's -- I believe that that was the intention.

DR. CLARKE: That is so, yes.

THE HEARING OFFICER: To get an idea of what the business plan is, so to speak.

MS. FUSCO: That, too.

THE HEARING OFFICER: And included within that would be, whether you plan to open up to other specialties or anything along those lines.

MS. FUSCO: Gotcha.

MR. LAZARUS: I think this will be also talked about, expanding it to make sure that that question that he asked about, you know, as far as the -- I think somebody has responded about sharing patients possibly between the southwestern health, Hartford Health facility. So that can be all encapsulated into one part of that plan.

The fourth late file I have is to provide the actual number of physicians by specialty for SCSC.

The Fifth late file I have is just having -- for the Applicants to provide a clear definition

of what is the facility fee that they're looking to charge, and how that differs from what OHS is looking for, any additional charge above and beyond.

The sixth one I have is for the Applicants to update the OHS financial worksheet that was part of the original filing, and that would be using the most current completed fiscal year and moving forward three years.

DR. CLARKE: There are actually two there. Right?

MR. LAZARUS: I'm sorry, Ormand. What?

DR. CLARKE: There's another one that says, please provide explanation for increases and decreases and cost --

MR. LAZARUS: Yes.

DR. CLARKE: That's the other one.

MR. LAZARUS: Yes. So the final worksheet, and then include any assumptions that go along with it, including if you can explain any increases and decreases.

And the next late file I have --

THE HEARING OFFICER: I'm actually going to have to pause for a moment. I will be right back. I apologize.

MS. FUSCO: No problem. This will only take a minute

or two.

(Pause: 4:52 p.m. to 4:54 p.m.)

THE HEARING OFFICER: All right. We can continue now. It looks like Attorney Fusco is back.

MS. FUSCO: I'm sorry about that.

THE HEARING OFFICER: No problem.

MR. LAZARUS: So Late-File 7, that is for Wilton Surgery Center and that was for them to provide their volume projector for the next three years.

The current -- I believe it's the current year, and then plus three projected fiscal years.

Late-File 8, I have is the -- actually the Applicants to provide the amount of the loan that was referred to as part of Hartford HealthCare spending at the SCSC beyond the 1.6 million over the last year.

THE HEARING OFFICER: I think Mr. Bitterli described that as a member loan.

MR. LAZARUS: Oh, a member loan. Okay. So the amount of the member loan. Thank you.

And Late-Five Number 9 is for the Applicants to provide, and we will work out details on this one, is five to ten years worth of examples of

facilities that Hartford HealthCare has acquired, outpatient surgical facilities, and then provide some examples of the costs prior to the acquisition, and then three years afterwards.

And including providing the CPT data used for in those tables, that we can then match up with our APCD data. And the last one --

THE HEARING OFFICER: Before we move on, Attorney Fusco, I think that's the one that you raised some antitrust concerns with earlier.

MS. FUSCO: Yes. I mean, I -- we're going to need to revisit. Like, we'll take these down as you guys are suggesting them, but I think our first line of communication is going to be with our antitrust counsel to make sure that we can provide this in the format that's requested.

If we can't, I would ask permission to come back to you, kind of, with an alternate proposal for how we could give you some information that would get you, you know, where you need to be for purposes of comparison.

THE HEARING OFFICER: That's perfectly fine with me.

So thank you for the flexibility.

MS. FUSCO: And thank you for the reminder.

No, I want to make sure we get that vetted.

MR. LAZARUS: And the last late file I have is Late-File Number 10, and that's the Applicant to utilize the APCD, the exhibit at OHS -- I don't remember the exhibit number, but we will put that in writing, that we uploaded this morning using the APCD data for the primary service area.

That does not include SCSC -- but if they can add their information in there utilizing the same CPT codes that we will provide them for comparison purposes?

DR. CLARKE: That will be labeled as Exhibit Z.

MR. LAZARUS: That was Exhibit Z? Okay.

DR. CLARKE: It will be labeled Exhibit Z.

MR. LAZARUS: And those are the 10 late files we have.

THE HEARING OFFICER: Okay. Attorney Fusco, any additional questions on those at this time?

MS. FUSCO: No. I think, you know, we may have questions once we see them and have those conversations -- but as explained I'm comfortable with them.

THE HEARING OFFICER: Okay. And Attorney Leddy, I mean, to the extent that this is going to require a late file from your client as well, if you have any questions or concerns feel free to raise those as well.

MS. LEDDY: No, we're fine. The only question is timing. We just need to make sure we get that, get it into you on time.

THE HEARING OFFICER: Yes. So in terms of timing Attorney Fusco, how long do you think you'll need to pull all of these together?

MS. FUSCO: I think maybe -- I mean, we can try for two weeks if that works. I mean, if we need longer, I can let you know -- but I think at least two weeks if that works for Attorney Leddy as well, and if it works for OHS.

MS. LEDDY: That's fine. Actually, the timing is right because we're working on budgets anyway.

MS. FUSCO: Okay. Perfect.

MS. LEDDY: So it's more than enough time.

THE HEARING OFFICER: Okay. So the same would apply to the redacted form of Attorney Leddy's client's prefile testimony as well.

MS. FUSCO: And can we actually -- you just reminded me. Can we submit -- attempt to submit our response to that Norwalk submission, the renewed motion to strike and any substantive response within probably that same two-week time period? Does that work?

THE HEARING OFFICER: Yeah, if you think you can do

that.

I know you have a lot going on right now, so.

MS. FUSCO: I do. Yeah. I mean, if we need additional time, I would gladly take additional time. As long as you don't mind keeping the record open.

If we could do 30 days, that would probably be better.

THE HEARING OFFICER: That's fine.

MS. LEDDY: 30 days is what we're talking about now?

THE HEARING OFFICER: Do you want to say 30 days for all of the late files, plus the brief.

MS. FUSCO: That's fine. And I do know, sort of, within -- in responding to that Norwalk submission, I don't know if I'm going to need to see the hearing transcript.

I know we sort of spoke off the cuff, and I don't know how quickly this hearing transcript is going to come in, but you know, let me see what I could do within that 30 days, if it comes in.

And if I feel like I need it, I'll reach out for additional time.

THE HEARING OFFICER: Okay. That's reasonable.

So we will memorialize that in a letter.

MS. LEDDY: Can I ask one other question, one other housekeeping question? Would you like us to

submit an appearance for Attorney Sobkowiak?

MR. LAZARUS: She didn't participate in today's proceedings. I mean, certainly if she's planning to going forward for whatever reason, sure.

But it doesn't seem like it's necessary.

MS. LEDDY: Thank you.

THE HEARING OFFICER: So the late files will be due 30 days from today, assuming we get the transcript back in a reasonable period of time. We're still waiting on the last one, and that was about two weeks ago. So we'll see what happens.

So with that I just want to move onto closing arguments or closing statements. Would either of you like a break before we do that? It would just be five or ten minutes just to sort of regroup and reorient your mind?

MS. FUSCO: I don't need one, and mine will be very brief. So I don't know if Attorney Leddy needs a break, but we've been here a long time.

So I'm all for moving forward.

MS. LEDDY: No, that's fine. I have very little to say also. So --

MS. FUSCO: Same.

MS. LEDDY: I'm fine moving forward, just --

MS. FUSCO: Absolutely.

THE HEARING OFFICER: Okay. So we are going to start with Attorney Leddy then, who's representing the Intervener. You can proceed with your closing statements.

MS. LEDDY: Thank you, Attorney Csuka. We wanted to thank you for the opportunity to intervene and to participate in the hearing today.

We don't have a whole lot to say other than we believe that the evidence you've heard today coupled with what will be submitted to you in the course of the late filings will demonstrate that the Applicant has failed to demonstrate that a change in control with the additional board seat, which is the limited question that's apparently before you will have any positive impact that isn't already built in to the existing ASC as it's currently being owned and operated.

So that the additional seat is not going to change anything that -- that we haven't already seen. They've made that pretty clear.

To the extent that there is a change, we think the cost data is going to reflect that the change is probably not a positive change for patients and for payers. So we would leave it at that.

We are looking forward to seeing the late filings to see what the data bears out.

Thank you for this opportunity.

THE HEARING OFFICER: Thank you.

And Attorney Fusco?

MS. FUSCO: Yeah. Thanks again, and thank you for your time today. I know it's been a long day, so I will also keep it brief.

You know, I disagree with Attorney Leddy on, you know, what that data is going to show -- and that data will show what it shows.

But I think that the Applicants have, between their submissions and their testimony here, shown that this proposal -- and remember we're talking about a transfer of ownership, how a transfer of governance control meets the statutory decision criteria for the issuance of the CON.

I said in my opening remarks that I think it was really important to refocus on the positives here. You know, part of adjudicating a CON application, or prosecuting a CON application is to convince this agency of the benefits, the benefits to patients of what you're proposing to do.

And I think in particular if you listen to

what Ms. Sassi said, it's pretty clear that, you know, having HHC as a fully integrated partner with governance control, the model that OHS and its predecessor OHCA have approved for years and years, will enhance the quality of care for patients, and the surgical care for patients in the area.

Their focus on standardization, high quality coordinated care for patients is just something that that center cannot accomplish with Constitution alone. Constitution is excellent at what they do, but you need that affiliation with a clinically integrated healthcare system to really be able to accomplish those objectives.

And so that kind of gets us to the clear public need for the proposal. I know there's been discussion about whether that's criterial was relevant, but it's really this idea of needing to give HHC that equal -- that equal board seat so that they can have a voice on behalf of their patients, like Ms. Sassi said a number of times.

I think everyone's in agreement that ASCs are a lower cost option, the lower cost alternative for care. And that you know, anything HHC can do to strengthen the center and to ensure that it

remains a viable option for patients will increase the cost effectiveness of outpatient surgical care in the area.

The numbers are going to show based on what we've already shown that they're going to be providing enhanced access for Medicaid patients. The center is now guaranteed to serve medicaid patients, just something it would not be required to do without a health system partner.

They have a charity care policy. You've seen their charity care policy. They educate, you know, physicians in their offices on the availability of charity care so that patients understand before they get to a surgery center that they might be able to get financial assistance.

And we talked a little bit during the testimony about diversity of providers and patient choice, and it's really important. I mean, I said in my opening statement that a lot of what Wilton is advancing here is just generally anticompetitive, and that the CON decision criteria include diversity of providers and patient choice for a reason.

Because patients should be able to choose

among different care providers. And right now in Wilton, Wilton Surgery Center is the only game in town, and it's AmSurg and it's Stamford Health. And so undoubtedly bringing an HHC affiliate into the market, or bringing HHC into the facility advances, you know, diversity of providers and patient choice.

You could also go through any number of the guiding principles in the state health plan -- and it's everything we've discussed about maintaining access to quality healthcare, promoting equitable access, encouraging collaboration among healthcare providers and developing networks, promoting planning that helps contain the cost of delivering healthcare services, all of these guiding principles of the state health plan, you know, are met with this proposal.

And you know, I would I would go so far as to say that that, you know, HHC and SCA sort of designed their partnerships to align with those very goals of the state health plan.

I think, you know, based on the foregoing. I mean, I think -- contrary to what Attorney Leddy said, we have met our burden of proof, that the change in governance control meets the statutory

requirements.

And so I urge OHS to view the Interveners' evidence and arguments in this matter kind of for what they are, which is an attempt to curtail the legitimate competition of SCSC, and to weigh that evidence accordingly.

And again, to sort of refocus on the good and the many, many ways in which this relationship when fully integrated will help benefit patients, and in doing so we would ask that you approve the CON application.

So thank you for your time today.

THE HEARING OFFICER: Thank you. I believe that's everything. I do want to thank everyone for attending today, the witnesses, their attorneys, the members of the public who participated and everyone else who is here to witness the public hearing.

So thank you again, and we will be issuing that letter regarding late files -- and that's it.

Thank you.

MS. FUSCO: Thank you.

MS. LEDDY: Thank you.

MS. FUSCO: Good night.

MS. LEDDY: Good night.

(End: 5:09 p.m.)

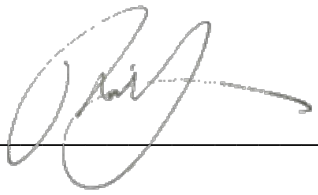
STATE OF CONNECTICUT

I, ROBERT G. DIXON, a Certified Verbatim Reporter within and for the State of Connecticut, do hereby certify that I took the above 277 pages of proceedings in Re: STATE OF CONNECTICUT OFFICE OF HEALTH STRATEGY, PUBLIC HEARING; CERTIFICATE OF NEED APPLICATION; HARTFORD HEALTHCARE SURGERY CENTER HOLDINGS, LLC, and Southwest Connecticut Surgery Center, LLC; Doc. No.: 20-32411CON; HELD BEFORE: DANIEL CSUKA, ESQ., THE HEARING OFFICER; on August 4, 2022, (via teleconference).

I further certify that the within testimony was taken by me stenographically and reduced to typewritten form under my direction by means of computer assisted transcription; and I further certify that said deposition is a true record of the testimony given in these proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was taken; and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

WITNESS my hand and seal the 22nd day of August, 2022.



Robert G. Dixon, N.P., CVR-M No. 857

My Commission Expires 6/30/2025

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