



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

February 11, 2010

IN THE MATTER OF:

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

**Connecticut Orthopaedic
Specialists, P.C.**

Notice of Final Decision
Office of Health Care Access
Docket Number: 09-31440-CON

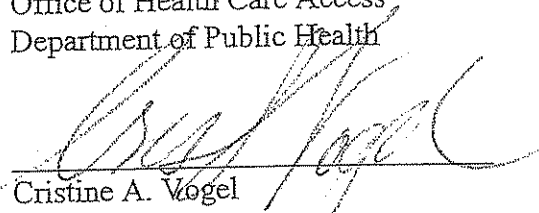
**Termination of Outpatient Surgical
Center in Hamden and Establishment of
New Outpatient Surgical Center in
Branford**

To: Glenn Elia
Chief Executive Officer
Connecticut Orthopaedic Specialists, P.C.
2408 Whitney Avenue
Hamden, CT 06518

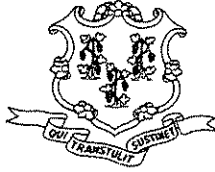
Dear Mr. Elia:

This letter will serve as notice of the Final Decision of the Office of Health Care Access in the above matter, as provided by Section 19a-638, C.G.S. On February 11, 2010 the Final Decision was rendered as the finding and order of the Office of Health Care Access. A copy of the Final Decision is attached hereto for your information.

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


Cristine A. Vogel
Deputy Commissioner

CAV: agf
Enclosure



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

Final Decision

Applicant: Connecticut Orthopaedic Specialists, P.C.

Docket Number: 09-31440-CON

Project Title: Termination of Outpatient Surgical Center in Hamden and Establishment of New Outpatient Surgical Center in Branford

Statutory Reference: Section 19a-638 of the Connecticut General Statutes

Filing Date: January 6, 2010

Decision Date: February 11, 2010

Default Date: April 6, 2010

Staff Assigned: Alexis G. Fedorjaczenko

Project Description: Connecticut Orthopaedic Specialists, P.C. (“COS” or “Applicant”) is proposing to terminate its outpatient surgical center in Hamden and to establish a new outpatient surgical center in Branford, at a total capital expenditure of \$1,075,000.

Nature of Proceedings: On January 6, 2010, the Office of Health Care Access (“OHCA”) received a Certificate of Need (“CON”) application from Connecticut Orthopaedic Specialists, P.C. (“COS” or “Applicant”), proposing to terminate its outpatient surgical center in Hamden and to establish a new outpatient surgical center in Branford, at a total capital expenditure of \$1,075,000. The Applicant is a health care facility or institution as defined by Section 19a-630 of the Connecticut General Statutes (“C.G.S.”).

Pursuant to Section 19a-638, C.G.S., a notice to the public concerning OHCA’s receipt of COS’ Letter of Intent was published in the *New Haven Register* on August 29, 2009. OHCA received no responses from the public concerning the proposal. Pursuant to Section 19a-638, C.G.S., three individuals or an individual representing an entity with five or more people had

until January 27, 2010, the twenty-first calendar day following the filing of COS' CON Application, to request that OHCA hold a public hearing on the proposal. OHCA received no hearing requests from the public.

OHCA's authority to review and approve, modify or deny the CON application is established by Section 19a-638, C.G.S. The provisions of this section as well as the principles and guidelines set forth in Section 19a-637, C.G.S., were fully considered by OHCA in its review.

Findings of Fact

Clear Public Need

Impact of the Proposal on the Applicant's Current Utilization Statistics Proposal's Contribution to the Quality of Health Care Delivery in the Region Contribution to the Accessibility of Health Care Delivery in the Region

1. It is found that Connecticut Orthopaedic Specialists, P.C. ("COS" or "Applicant") is a for-profit single-specialty orthopedic group practice that currently operates a licensed surgical center at 2200 Whitney Avenue in Hamden, Connecticut. *(November 24, 2009, Initial CON Application, pages 2 and 12)*
2. The Applicant contends that COS is owned 100% by fourteen (14) physicians who have offices in Branford, Guilford, Hamden, New Haven, Orange, and Wallingford. *(November 24, 2009, Initial CON Application, pages 2 and 12)*
3. The Applicant contends that the proposed facility, at 84 North Main Street in Branford, is owned by the COS physicians and is also the site of one of the COS physician's offices. *(November 24, 2009, Initial CON Application, page 2)*
4. The Applicant contends that the existing facility is a single specialty orthopaedic surgical facility and that the proposed facility in Branford will serve the same purpose. *(November 24, 2009, Initial CON Application, page 7)*
5. The Applicant contends that the current center in Hamden has two (2) operating rooms ("ORs"), and that the proposed center in Branford will also have two (2) ORs, along with one (1) room shelled for future use as a procedure room/OR, which will initially be used for extra storage. *(November 24, 2009, Initial CON Application, page 3)*
6. It is found that on May 14, 2008, OHCA approved the proposal of COS to terminate its outpatient surgical center in Hamden and establish its outpatient surgical center in North Haven, at a total capital expenditure of \$2,188,093. *(May 14, 2008, Final Decision Docket Number 07-31069)*
7. It is found that in a letter dated March 30, 2009, COS notified OHCA that they were unable to move forward with the authorized move to North Haven, and that they would remain at the current space until another location was found. *(April 2, 2009, Letter regarding CON Docket Number 07-31069)*

8. The Applicant contends that the patient population served by the Branford facility is expected to be the same as the patient population served in Hamden, because the volume at the ambulatory surgery center is patient/physician-driven, not location-driven. *(November 24, 2009, Initial CON Application, pages 4-5)*
9. The Applicant contends that the service area was determined by calculating the thirteen (13) towns that comprised 75% of the patient volume at the center in 2006, 2007, 2008, and 2009-to-date.

Table 1: Service area Volume

	Number of Patients				Percent of Total			
	2006	2007	2008	2009*	2006	2007	2008	2009*
Hamden	175	190	174	144	11%	11%	10%	10%
New Haven	172	175	187	194	11%	10%	11%	13%
West Haven	122	138	136	109	8%	8%	8%	8%
Branford	97	101	123	85	6%	6%	7%	6%
Guilford	97	112	99	85	6%	7%	6%	6%
Wallingford	86	95	105	100	5%	6%	6%	7%
North Haven	93	83	86	75	6%	5%	5%	5%
Milford	95	89	93	65	6%	5%	5%	4%
East Haven	81	89	79	87	5%	5%	5%	6%
Cheshire	77	61	62	51	5%	4%	4%	4%
Madison	57	58	56	53	4%	3%	3%	4%
Orange	47	52	46	30	3%	3%	3%	2%
Meriden	38	41	39	38	2%	2%	2%	3%
Other	384	410	429	337	24%	24%	25%	23%
Total	1,621	1,694	1,714	1,453	100%	100%	100%	100%

Note: COS has a fiscal year of January 1 through December 31.

* Jan 1, 2009 through September 30, 2009

(November 24, 2009, Initial CON Application, page 4)

10. The Applicant contends that the proposed new facility is critical to providing a safe and efficient space to perform surgery for its patients. *(November 24, 2009, Initial CON Application, page 2)*
11. It is found that COS is licensed by the state of Connecticut Department of Public Health (“DPH”) as an outpatient surgical facility, and that several waivers have been granted by DPH for the following reasons:
 - 19-13-D56 (b)(D)(5): Due to space limitations, all patient treatments must be conducted in the OR, rather than a separate treatment room for minor surgical and cast procedures;
 - 19-13-D56 (b)(E)(4): A single station scrub sink is provided outside each OR, rather than two scrub sinks, as the building is at capacity with regards to plumbing and waste water;
 - 19-13-D56 (b)(E)(6): There is inadequate room to install a hand-wash sink in the clean workroom, as required, and instead an alcohol rub dispenser is located in the room for hand sanitation;
 - 19-13-D56 (b)(E)(8): An anesthesia storage room is used in lieu of an anesthesia workroom, due to space limitations;

- 19-13-D56 (b)(E)(11): The staff locker rooms do not have one-way traffic, due to spatial limitations of the locker room area including a building structural support system;
- 19-13-D56 (b)(F)(1): COS does not have a janitor's closet, as required, although a janitor's closet is located on the same floor of the building outside of the surgical center and COS has a contract with an outside cleaning company; and
- 19-13-D56 (b)(G)(i): Due to limitations related to mechanical, electrical, and structural systems, the ceiling height in OR #2 is 8'-4" rather than 9'-6" as required.
(November 24, 2009, Initial CON Application, page 11, Exhibit D, pages 131-133, and Exhibit J, page 602)

12. The Applicant contends that the proposed new facility will eliminate any waivers from the Department of Public Health because everything will be built according to Public Health Code specifications in the new location. *(November 24, 2009, Initial CON Application, page 11)*
13. OHCA finds that the Applicant has demonstrated that the proposed replacement facility will eliminate any DPH waivers and will be built according to Public Health Code specifications, thus improving the Applicant's ability to provide high-quality surgical services for its patients.
14. The Applicant contends that the historical, current, and projected surgical volume (cases and procedures) are as follows:

Table 2: Historical, Current, and Projected Outpatient Surgical Volume

	2006	2007	2008	2009*	2010	2011	2012	2013
Cases	1,621	1,694	1,714	1,937	2,015	2,160	2,376	2,495
Procedures	2,382	2,458	2,548	2,906	2,931	3,048	3,170	3,297
Average Procedures/Case	1.47	1.45	1.49	1.50	1.45	1.41	1.33	1.32

Note: COS has a fiscal year of January 1 through December 31.

* In FY 2009, COS has handled 1,453 cases between January 1, 2009, and September 30, 2009. With nine (9) months completed and reported, COS projects the annualized volume to be approximately 1,937 cases.

15. The Applicant contends that in general, its case volume increases by approximately 4-5% per year, although the volume for 2009 is anticipated to increase by approximately 14% because of the addition of one surgeon and the maturation of a 4th year surgeon whose practice has enjoyed significant growth. *(November 24, 2009, Initial CON Application, page 8)*
16. The Applicant contends that while they anticipate that volumes will flatten out at about 4-5% annual growth by 2013, they also anticipate higher growth of 7-10% in the next few years due to an increase in new outpatient spine procedures. *(November 24, 2009, Initial CON Application, page 8)*
17. OHCA finds that the Applicant's projected volumes are consistent with the Applicant's historical experience and are reasonable and achievable.

18. The Applicant contends that the following providers are located within COS' service area and in nearby towns:
- North Haven Pain Management Center; North Haven, CT (1 OR);
 - Connecticut Foot Surgery Center; Milford, CT (2 ORs);
 - Shoreline Surgery Center, LLC; Guilford, CT (3 ORs); and
 - Temple Surgical Center; New Haven, CT (5 ORs).
- (November 24, 2009, Initial CON Application, page 6)*
19. The Applicant contends that they anticipate no effect on existing providers as a result of this proposal, because no new physicians are being added to the practice, and because the physicians and patients will be the same at the Branford location as they are currently in Hamden. *(November 24, 2009, Initial CON Application, page 6)*
20. The Applicant contends that COS is accredited by the Accreditation Association for Ambulatory Health Care, Inc. ("AAAHC"), and that the facility will continue to meet AAAHC standards of excellence and will maintain the policies and procedures in its Quality Assurance Plan. *(November 24, 2009, Initial CON Application, page 11, Exhibit E, pages 134-136, and Exhibit F, pages 137-501)*
21. The Applicant contends that the hospitals closest to the proposed location in Branford are Yale-New Haven Hospital and The Hospital of St. Raphael, that these are also the closest hospitals to the existing location in Hamden, and that all of the COS physicians have privileges at these hospitals. *(November 24, 2009, Initial CON Application, page 11, and Exhibit G, page 503)*

Financial Feasibility and Cost Effectiveness of the Proposal and its Impact on the Applicant's Rates and Financial Condition
Impact of the Proposal on the Interests of Consumers of Health Care Services and the Payers for Such Services
Consideration of Other Section 19a-637, C.G.S. Principles and Guidelines

22. The Applicant contends that the total capital expenditure for this project is as follows:

Table 3: Total Proposed Capital Expenditure

Medical Equipment Purchase	\$50,000
Non-Medical Equipment Purchase	\$25,000
Construction/Renovation	\$1,000,000
Total Capital Expenditure	\$1,075,000

(November 24, 2009, Initial CON Application, page 12)

23. The Applicant contends the total capital expenditure for this project will be financed with a loan from New Alliance Bank, and the Applicant provided a copy of a letter of interest from the bank. According to the Applicant's financial assumptions, the loan will have an interest rate of 6% for a term of 20 years. *(November 24, 2009, Initial CON Application, Exhibit M, page 615, and Exhibit Q, page 630)*

24. The Applicant contends that the project will result in incremental losses from operations related to the proposal of (\$85,968) each year for FYs 2011, 2012, and 2013. According to the Applicant, the annual expense of \$85,968 is the interest expense for the loan on the construction of the surgical facility and is the only expense that is different from the expenses that would occur if the facility remained in Hamden. *(November 24, 2009, Initial CON Application, page 622 and January 6, 2010, Completeness Responses, pages 633 and 636)*
25. The Applicant contends that with the CON proposal, the Applicant projects overall gains from operations of \$2,468,666 in FY 2011, \$2,893,667 in FY 2012, and \$2,701,580 in FY 2013. *(January 6, 2010, Completeness Responses, page 636)*
26. The Applicant contends that the gain is larger from FY 2011 to FY 2012 than it is from FY 2012 to FY 2013 due to an adjustment that has been factored in for changes in Medicare reimbursement rates. *(January 6, 2010, Completeness Responses, page 634)*
27. The Applicant contends that the minimum number of cases required to show a gain from operations with the proposal is 1,168 in 2011, 1,230 in 2012, and 1,365 in 2013. *(November 24, 2009, Initial CON Application, page 15)*
28. The Applicant contends that the average rate per case will be \$11,660. *(November 24, 2009, Initial CON Application, Exhibit O, pages 619-621 and Exhibit R, page 632)*
29. The Applicant contends that the proposal is cost-effective because instead of paying rent, COS will be leasing the facility from Branford Properties, LLC, also owned by the physicians. The Applicant contends that rent can be controlled to keep costs lower and that through the use of bids for work, repairs and maintenance can be controlled by the physicians. *(November 24, 2009, Initial CON Application, page 16)*
30. OHCA finds that the CON proposal is financially feasible.
31. The Applicant provided a copy of COS' charity care policy, which states that it is the policy of COS "to provide services to all patients regardless of their ability to pay" and that "physicians are allowed to use whatever flexibility is necessary so that patients can be treated in accordance with their ability to pay" including providing physician's professional services at reduced rates and offering payment schedules over time. *(November 24, 2009, Initial CON Application, Exhibit N, page 617)*
32. The Applicant contends that having a new facility that will not have the problems associated with the current facility is a big step in the direction of their long-range goal to provide outstanding orthopaedic surgery for the physicians/owners' patients in the New Haven area. *(November 24, 2009, Initial CON Application, page 17)*
33. The Applicant contends that the proposal will not result in any change to COS' teaching and research responsibilities. *(November 24, 2009, Initial CON Application, page 17)*

34. The Applicant contends that COS' patient population mix is changing, with growth in Medicare due to an aging population, growth in self- or uninsured patients due to an increasing number of patients that are self-insured or have high deductibles, and a decline in worker's compensation cases due to a declining trend in work-related injuries.

Table 4: Current and Projected Patient Population Mix

	Current	Year 1 FY 2011	Year 2 FY 2012	Year 3 FY 2013
Medicare/Medicaid	8%	10%	12%	14%
Total Government	8%	10%	12%	14%
Commercial Insurers	76%	75%	70%	68%
Self or Uninsured	0%	3%	6%	8%
Workers Compensation	16%	12%	12%	10%
Total Non-Government	92%	90%	88%	86%
Total Payer Mix	100%	100%	100%	100%

(November 24, 2009, Initial CON Application, page 14)

35. The Applicant provided resumes of key staff demonstrating sufficient technical, managerial, and clinical competence and expertise to provide efficient and adequate service to the public.
(November 24, 2009, Initial CON Application, Exhibit C, pages 34-129)

Rationale

The Office of Health Care Access (“OHCA”) approaches community and regional need for Certificate of Need (“CON”) proposals on a case-by-case basis. CON applications do not lend themselves to general applicability due to a variety of factors, which may affect any given proposal; e.g., the characteristics of the population to be served, the nature of the existing services, the specific types of services proposed to be offered, the current utilization of services and the financial feasibility of the proposal.

Connecticut Orthopaedic Specialists, P.C. (“COS” or “Applicant”) is a for-profit single-specialty orthopedic group practice that currently operates a licensed surgical center at 2200 Whitney Avenue in Hamden. The Applicant provided evidence that several waivers have been granted from the Department of Public Health (“DPH”) for the Hamden facility, and the Applicant contends that a new facility is critical to providing a safe and efficient space to perform surgery for its patients. The Applicant proposes to terminate its services at the Hamden location and to establish a new outpatient surgical center at 84 North Main Street in Branford. OHCA finds that the Applicant has demonstrated that the proposed replacement facility will eliminate any DPH waivers and will be built according to Public Health Code specifications, thus improving the Applicant’s ability to provide high-quality surgical services for its patients.

The Applicant contends that the proposed facility in Branford will be a single specialty orthopedic surgical center serving the same purpose as the existing facility in Hamden, and that the proposed facility will serve the same patient population as the existing facility because volume at the center is patient/physician-driven, not location-driven. OHCA finds that the Applicant’s projected volumes are consistent with the Applicant’s historical experience and are reasonable and achievable. Based on the above, OHCA finds that the proposed termination of services in Hamden and establishment of services in Branford will preserve access to and improve the quality of orthopedic surgical services for COS’ current patient population.

The project’s total capital expenditure of \$1,075,000 will be financed with a bank loan. With the proposal, the Applicant projects that all expenses will remain the same in Branford as they would have been in Hamden, with the exception of an annual expense of \$85,968 for interest on the bank loan. For the total facility overall, the Applicant projects continued gains from operations with the project in FYs 2011-2013. Based on the above, OHCA concludes that the CON proposal is financially feasible.

Order

Based on the foregoing Findings and Rationale, the Certificate of Need application of the Connecticut Orthopaedic Specialists, P.C. ("COS" or "Applicant") for their proposal to terminate its outpatient surgical center in Hamden and establish a new outpatient surgical center in Branford, at a total capital expenditure of \$1,075,000, is hereby GRANTED, subject to the following conditions:

1. Should the Applicant propose any change in the array of health care services offered, the Applicant shall file with OHCA appropriate documentation regarding its change, including either a Certificate of Need Determination Request or a Certificate of Need Letter of Intent.

Should the Applicant fail to comply with any of the aforementioned conditions, OHCA reserves the right to take additional action as authorized by law.

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

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

2-11-10
Date


Cristine A. Vogel
Deputy Commissioner

CAV:agf