



STATE OF CONNECTICUT
OFFICE OF HEALTH CARE ACCESS

M. JODI RELL
GOVERNOR

CRISTINE A. VOGEL
COMMISSIONER

March 6, 2008

Leif O. Nordberg, M.D., LLC
Cosmetic, Plastic & Reconstructive Surgery
166 West Broad Street, Suite 401
Stamford, CT 06902

Re: CON Determination Request; Report Number: 08-31098-DTR
Acquisition and licensure of an office-based surgery facility in Stamford Connecticut
Leif O. Nordberg, M.D., LLC d/b/a Cosmetic, Plastic & Reconstructive Surgery

Dear Dr. Nordberg:

On February 25, 2008, the Office of Health Care Access (“OHCA”) received your letter in response to OHCA’s inquiry conducted under Certificate of Need (“CON”) Determination Report Number 08-31098 regarding your practice’s recent licensure by the Department of Public Health as an Outpatient Surgical Facility. OHCA has reviewed this matter and makes the following findings:

1. Leif O. Nordberg, M.D is a board-certified Plastic Surgeon currently practicing at 166 West Broad Street in Stamford within the legal entity, Leif O. Nordberg, M.D., LLC. Dr. Nordberg wholly owns this LLC.
2. Dr. Nordberg is the only surgeon within this surgical practice and he is performing only plastic surgery procedures. Dr. Nordberg uses deep sedation or general anesthesia for numerous procedures. The procedures are performed in one dedicated in-office surgical suite. The LLC doesn’t bill third party payers for facility fees.
3. This practice received licensure from the Department of Public Health as an outpatient surgical facility effective November 9, 2007. Dr. Nordberg began the DPH licensure process in August 2006 when he filed a licensure application with DPH.
4. Dr. Nordberg purchased this surgical practice from Jeffrey L. Benjamin, M.D., P.C. on August 26, 2004. Pursuant to the Asset Purchase Agreement between Dr. Benjamin and Dr. Nordberg, the acquisition was for *“all of the assets of the Seller’s medical practice together with the goodwill associated therewith.”* The assets included equipment, instruments, furniture, patient records, x-ray files, medicines, supplies, inventory and leases.

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5. Pursuant to the agreed upon post-closing arrangements, “*Between the Closing Date and July 1, 2005 (the “Transition Period”)*”, Dr. Nordberg shall assist Dr. Benjamin “*in his practice and observe his methods of operation*” and Dr. Benjamin shall introduce Dr. Nordberg “*to all patients who visit the Seller’s office during this period and recommend*” Dr. Nordberg as his successor. Also, after the closing date, “*the parties shall jointly send a mutually acceptable letter to all of JLB’s patients, advising them of the sale of the practice and encouraging them to remain as LON’s patients.*”
6. The Seller, Dr. Benjamin, had received a CON determination from OHCA on April 4, 2000¹. In Report Number 00-R1, OHCA determined that Jeffrey L. Benjamin M.D. d/b/a Aesthetic Plastic Surgery did not need to file a Certificate of Need for his plastic surgery practice at 16 West Broad Street in Stamford. Dr. Benjamin had been practicing at that location (exclusively plastic surgery) for 16 years.
7. Pursuant to Public Act 04-249, the wording of Section 19a-493b of the Connecticut General Statutes (the office-based surgery law) at the time of the practice acquisition in August 2004, included the following:

Subsection (b): No entity, individual, firm, partnership, corporation, limited liability company or association, other than a hospital, shall individually or jointly establish or operate an outpatient surgical facility ... unless such entity (1) Provides to the Office of Health Care Access satisfactory evidence that it was in operation on or before July 1, 2003 and (2) obtained, on or before July 1, 2003, from the Office of Health Care Access, a determination that a certificate of need is not required. ... An entity, individual, firm, partnership, corporation, limited liability company or association ... may operate an outpatient surgical facility without a license through March 30, 2007, and shall have until March 30, 2007, to obtain a license from the Department of Public Health.

8. The legal entity Jeffrey L. Benjamin, M.D., P.C. did provide surgical services at this location prior to July 1, 2003 and had obtained a CON determination from OHCA regarding these services.
9. Subsection (c) of Section 19a-493b was worded as follows at the time of the practice acquisition in August 2004 (within Public Act 04-249):

“ ... permission to undertake a transfer or change of ownership or control shall not be required pursuant to subsection (a) of section 19a-638, as amended, if the Office of Health Care Access determines that the following conditions are satisfied: (1) Prior to any such transfer or change of ownership or control, the outpatient surgical facility shall be owned and controlled exclusively by persons licensed pursuant to section 20-13, either directly or through a limited liability company, formed pursuant to chapter 613, a corporation, formed pursuant to chapters 601 and 602, or a limited liability partnership, formed pursuant to

¹ Report Number 00-R1 was issued by OHCA prior to the existence of the office-based surgery law under Section 19a-493b of the Connecticut General Statutes.

chapter 614, that is exclusively owned by persons licensed pursuant to section 20-13, or is under the interim control of an estate executor or conservator pending transfer of an ownership interest or control to a person licensed under section 20-13, and (2) after any such transfer or change of ownership or control, persons licensed pursuant to section 20-13, a limited liability company, formed pursuant to chapter 613, a corporation, formed pursuant to chapters 601 and 602, or a limited liability partnership, formed pursuant to chapter 614, that is exclusively owned by persons licensed pursuant to section 20-13², shall own and control no less than a sixty per cent interest in the outpatient surgical facility.

OHCA finds that prior to the transfer of ownership, the surgical practice was wholly owned and controlled by Jeffrey L. Benjamin, M.D., a licensed physician practicing within it and that after the transfer of ownership, the surgical practice is wholly owned by Leif O. Nordberg, M.D., a licensed physician practicing within it.

OHCA concludes that at the time of the transfer of ownership from Dr. Benjamin to Dr. Nordberg in August 2004, the surgical practice was in compliance with the requirements of Subsection (b) of Section 19a-493b of the Connecticut General Statutes. OHCA further concludes that the transfer of ownership does not require a Certificate of Need as the transfer satisfies the conditions of Subsection (c) of Section 19a-493b of the Connecticut General Statutes, as referenced above.

However, any change in scope or services from those presented may require that the Applicant file a Certificate of Need Determination from OHCA and OHCA should be notified in a timely manner regarding any such change. Thank you for your cooperation in this OHCA inquiry. If you have any questions regarding this letter, please contact Karen Roberts, Compliance Officer at OHCA at (860) 418-7041.

Sincerely,

Signed by Commissioner Vogel on March 6, 2008

Cristine A. Vogel
Commissioner

CAV:kr

C: Rose McLellan, Licensing Examination Assistant, DHSR, DPH

² Section 20-13 of the Connecticut General Statutes states that “Any person who has complied with the provisions of section 20-10 or section 20-12, and who files the proof thereof with the Department of Public Health, shall receive from the department a license, which shall include a statement that the person named therein is qualified to practice medicine and surgery.”