

Greer, Leslie

From: Martone, Kim
Sent: Tuesday, August 12, 2014 1:30 PM
To: Hansted, Kevin
Cc: Greer, Leslie; Riggott, Kaila
Subject: FW: Fairfield Surgery Center
Attachments: CON Transmit Letter 8.12.14.pdf; FSC CON 7.28.14.pdf

From: Steve Fiore [<mailto:sfiore@osgpc.com>]
Sent: Tuesday, August 12, 2014 12:14 PM
To: Martone, Kim
Cc: Stephen Cowherd
Subject: Fairfield Surgery Center

Kimberly, on behalf of Fairfield Surgery Center, LLC, (FSC), please find a Transmittal Letter addressed to Lisa Davis and the CON Application for review from OCHA. Should you need any further information, please feel free to contact me or Mr. Cowherd (copied above), FSC's attorney. Thank you for your time and consideration.

Steve
Steve P. Fiore, MBA, FACMPE
Chief Executive Officer
Orthopaedic Specialty Group, PC
75 Kings Highway Cutoff
Fairfield, CT 06824
(203) 337-2600 x 1288



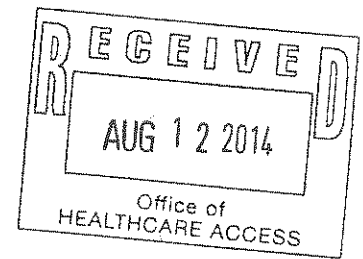
ORTHOPAEDIC SPECIALTY GROUP, P.C.

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Fairfield Surgery Center, LLC
75 Kings Highway Cutoff
Fairfield, CT 06824



August 12, 2014

VIA ELECTRONIC MAIL

Honorable Lisa A. Davis
Deputy Commissioner
Office of Health Care Access
Division of the Department of Public Health
410 Capitol Avenue
Hartford, CT 06134-0308

Re: Intercompany Transaction with NSH Connecticut, Inc.

Dear Commissioner Davis:

Enclosed please find a CON Determination Form submitted by Fairfield Surgery Center, LLC regarding the proposed transfer of an additional 11% ownership interest in Fairfield Surgery Center, LLC to NSH Connecticut, Inc.

Should you have any questions, please feel free to contact me at (203) 337-2660 or our attorney, Stephen Cowherd, at (203) 259-7900.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Dante Britis".

Dante Britis, M.D.
Director/Medical Director

Enclosures

cc: Kimberly Martone, Director of Operations, OHCA (w/ enc.)
Stephen Cowherd, Esq., Jeffers Cowherd P.C. (w/ enc.)



**State of Connecticut
Office of Health Care Access
CON Determination Form
Form 2020**

All persons who are requesting a determination from OHCA as to whether a CON is required for their proposed project must complete this Form 2020. The completed form should be submitted to the Director of the Office of Health Care Access, 410 Capitol Avenue, MS#13HCA, P.O. Box 340308, Hartford, Connecticut 06134-0308.

SECTION I. PETITIONER INFORMATION

If this proposal has more than two Petitioners, please attach a separate sheet, supplying the same information for each Petitioner in the format presented in the following table.

	Petitioner	Petitioner
Full Legal Name	Fairfield Surgery Center, LLC	
Doing Business As	Fairfield Surgery Center, LLC	
Name of Parent Corporation		
Petitioner's Mailing Address, if Post Office (PO) Box, include a street mailing address for Certified Mail	75 Kings Highway Cutoff Fairfield, CT 06824	
What is the Petitioner's Status: P for profit and NP for Nonprofit	P	
Contact Person at Facility, including Title/Position: This Individual at the facility will be the Petitioner's Designee to receive all correspondence in this matter.	Dante A. Brittis, M.D. Director/Medical Director	

Contact Person's Mailing Address, if PO Box, include a street mailing address for Certified Mail	75 Kings Highway Cutoff Fairfield, CT 06824	
Contact Person's Telephone Number	(203) 337-2660	
Contact Person's Fax Number	(203) 337-2665	
Contact Person's e-mail Address	dbrittis@osgpc.com	

SECTION II. GENERAL PROPOSAL INFORMATION

- a. Proposal/Project Title: Inter-company transaction with NSH Connecticut, Inc.
- b. Estimated Total Project Cost: No capital costs are associated with the project.
- c. Location of proposal, identifying Street Address, Town and Zip Code:
75 Kings Highway Cutoff, Fairfield, CT 06824
- d. List each town this project is intended to serve:
Bridgeport, Easton, Fairfield, Monroe, Milford, Shelton, Stratford, Trumbull, Norwalk, Newtown, Wilton, Westport, Weston
- e. Estimated starting date for the project: Upon OHCA Approval

SECTION IV. PROPOSAL DESCRIPTION

Please provide a description of the proposed project, highlighting each of its important aspects, on at least one, but not more than two separate 8.5" X 11" sheets of paper. At a minimum each of the following elements need to be addressed, if applicable:

1. If applicable, identify the types of services currently provided and provide a copy of each Department of Public Health license held by the Petitioner.
2. Identify the types of services that are being proposed and what DPH licensure categories will be sought, if applicable.
3. Identify the current population served and the target population to be served.

PROPOSAL DESCRIPTION

Fairfield Surgery Center, LLC (the "Center" or "Petitioner") is a licensed outpatient surgical facility located at 75 Kings Highway Cutoff, Fairfield, Connecticut 06824 that has been in continuous operation since 1999. The Center provides ambulatory surgical procedures in the areas of orthopaedics and pain medicine and is comprised of two member entities – FSC Physician Holdings, LLC ("FSC Physician Holdings") and NSH Connecticut, Inc. ("NSH CT"). FSC Physician Holdings is wholly owned by seven physician members who are all shareholders of Orthopaedic Specialty Group, P.C., namely, Henry Backe, Jr., M.D., David Bindelglass, M.D., Dante Brittis, M.D., Robert Dawe, M.D., Patrick Kwok, M.D., Rolf Langeland, M.D. and Robert Stanton, M.D. NSH CT is a wholly owned subsidiary of National Surgical Hospitals, Inc. ("NSH"), a nationwide owner, operator and developer of specialty surgical hospitals and freestanding ambulatory surgery centers in partnership with physicians. Currently, FSC Physician Holdings currently holds a 60% membership interest in the Center, while NSH CT holds a 40% interest.

Petitioner is submitting this CON Determination Letter to request that the Office of Health Care Access ("OHCA") find that the inter-company transfer of an additional 11% membership interest in the Center from FSC Physician Holdings to NSH CT does not constitute a "transfer of ownership," as defined in Conn. Gen. Stat. § 19a-630(14). As described in more detail below, NSH CT's increased membership interest will not impact or change the controlling body or governance of the Center, nor will it result in any change in the facility's licensure, services or payor mix. In addition, the Center will also continue to operate in its current space and there will be no change in service area or populations served as a result of this proposal.

Specifically, the Center will continue to be overseen by a four-person Governing Board consisting of the four present directors, two of whom are appointed by FSC Physician Holdings and two by NSH CT. No change to the composition of the Governing Board, the authority of the Board, which has delegated day-to-day operational responsibilities to NSH CT, which acts as the manager of the Center, or the manner by which directors are elected to the Governing Board will change as a result of this proposal.

With respect to governance, the Center's Operating Agreement will also remain unchanged except to reflect the change whereby FSC Physician Holdings will own a 49% membership interest in the Center and NSH CT a 51% membership interest. Among other things, the Operating Agreement sets forth scope of the manager's responsibilities, which will not change and continue to be limited by the various consent and approval rights of the Governing Board that will also remain in place.

In addition, the Operating Agreement currently sets forth a governance process whereby a majority vote of the directors is necessary for the Governing Board to act except in certain events of a 2-2 deadlock where the vote of the directors appointed by NSH CT control the decision. None of these Governing Board actions, deadlock-breaking procedures nor their voting requirements are impacted or changed by the proposed inter-company transaction. Finally, beyond the consent and approval rights of the Governing Board, major decisions affecting the Center's operations will continue to require approval of both of the member

entities. The voting requirements and processes by which these major decisions (e.g., sale, dissolution, admissions of new members and any amendment or modification to the Center's Operating Agreement or Articles of Organization) also remain unchanged and are not impacted by this proposal.

Petitioner also wishes to note that the proposed inter-company transaction will not in any way impact the care provided to patients at the Center as all medical affairs of the Center will continue to be controlled by the physician members of FSC Physician Holdings and a separate medical executive committee. The medical executive committee is responsible for establishing and enforcing the Center's medical standards, clinical policy and credentialing and developing bylaws and other similar policies regarding the medical staff and clinical care provided at the Center.

In sum, the proposed inter-company transaction will not impact or change the current governance or controlling body of the Center or otherwise affect or alter any patient care aspects of the Center's operations. Instead, the transfer of the additional 11% membership interest to NSH CT will allow its parent organization, NSH, to include the Center in contracts for equipment, supplies and other services to create cost efficiencies for the Center. Further, pursuant to the Federal Sherman Antitrust Act and Conn. Gen. Stat. § 35-24 et seq., there are limitations that exist on the actions NSH may take on behalf of the Center unless NSH holds a controlling interest in the Center. Under both Federal and Connecticut statutes, entities not under common control cannot coordinate their negotiation of prices or payment terms with third-party payers and other purchasers of their services.

Finally, the proposed membership interest transfer will allow the Center to streamline corporate administration functions at the Center, promote integration of various information and support systems with NSH's national operations and improve consolidated financial reporting of the Center along with NSH's other affiliated ambulatory surgery centers and specialty surgical hospitals.] The purchase price for the additional 11% interest will be \$3,912,292.68.

For the foregoing reasons, the Petitioner hereby requests that OHCA make a determination that certificate of need approval is not required for FSC Physician Holdings to transfer an additional 11% membership interest in the Center to NSH CT as set forth herein.

SECTION V. AFFIDAVIT

(Each Petitioner must submit a completed Affidavit.)

Petitioner: Fairfield Surgery Center, LLC

Project Title: Inter-company transaction with NSH Connecticut

I, Bryan Fisher, President of NSH Connecticut, Inc., the Manager
(Name) (Position – CEO or CFO)

of Fairfield Surgery Center, LLC being duly sworn, depose and state that the
(Organization Name)

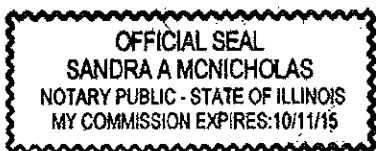
information provided in this CON Determination form is true and accurate to the best of my
knowledge.

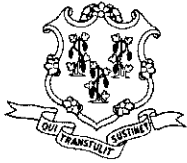
Bryan Fisher Signature Date 7/28/14

Subscribed and sworn to before me on July 28, 2014

Sandra A McNicholas
Notary Public/Commissioner of Superior Court

My commission expires: 10/11/15





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

August 26, 2014

VIA FACSIMILE ONLY

Dante A. Brittis, M.D.
Director/Medical Director
Fairfield Surgery Center, LLC
75 Kings Highway Cutoff
Fairfield, CT 06824

RE: Certificate of Need Determination Report Number 14-31934-DTR
Transfer of Ownership Interest in Outpatient Surgical Facility

Dear Dr. Brittis:

On August 12, 2014, the Office of Health Care Access ("OHCA") received your Certificate of Need ("CON") Determination Form on behalf of Fairfield Surgery Center, LLC ("Petitioner" or "Fairfield Surgery Center") with respect to the transfer of certain ownership interests to NSH Connecticut, Inc. ("NSH-CT").

The Petitioner is a licensed outpatient surgical facility located at 75 Kings Highway Cutoff, Fairfield, Connecticut. The Petitioner is comprised of two member entities – FSC Physician Holdings, LLC ("FSC") and NSH-CT. FSC is wholly owned by seven physician members. NSH-CT is a wholly owned subsidiary of National Surgical Hospitals, Inc. ("NSH"), a nationwide owner, operator and developer of specialty surgical hospitals and freestanding ambulatory surgery centers in partnership with physicians. Currently, FSC holds a 60% membership interest in Fairfield Surgery Center and NSH-CT holds a 40% membership interest. Fairfield Surgery Center is currently overseen by a four-person Governing Board consisting of two Board members appointed by FSC and two by NSH-CT. The Petitioner seeks to transfer an additional 11% membership interest in Fairfield Surgery Center from FSC to NSH-CT. Subsequent to the transfer, Fairfield Surgery Center will continue to be governed and controlled by the same four-person Governing Board. The transfer will not impact or change the controlling body or governance of Fairfield Surgery Center.

Connecticut General Statutes §19a-638(a)(2) requires CON authorization for the "transfer of ownership of a health care facility". Connecticut General Statutes §19a-630(14) defines a "transfer of ownership" as "a transfer that impacts or changes the governance or controlling body of a health care facility..." Since the transfer of membership interest proposed by the Petitioner will not impact or change the controlling body or governance of Fairfield Surgery Center, OHCA hereby determines that a **CON is not required** for the Petitioner's proposal.

Sincerely,

Kimberly R. Martone
Director of Operations

C: Rose McLellan, License and Applications Supervisor, DPH, DHSR.

An Equal Opportunity Provider

(If you require aid/accommodation to participate fully and fairly, contact us either by phone, fax or email)
410 Capitol Ave., MS#13HCA, P.O.Box 340308, Hartford, CT 06134-0308
Telephone: (860) 418-7001 Fax: (860) 418-7053 Email: OHCA@ct.gov

* * * COMMUNICATION RESULT REPORT (AUG. 26. 2014 2:32PM) * * *

FAX HEADER:

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REASON FOR ERROR
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 E-3) NO ANSWER

E-2) BUSY
 E-4) NO FACSIMILE CONNECTION



**STATE OF CONNECTICUT
 DEPARTMENT OF PUBLIC HEALTH
 OFFICE OF HEALTH CARE ACCESS**

FAX SHEET

TO: DANTE BRITTIS

FAX: 203 337-2665

AGENCY: MNI

FROM: OHCA

DATE: 8/26/14 **Time:** _____

NUMBER OF PAGES: 2
(including transmittal sheet)

Comments:
 Determination is attached.

PLEASE PHONE Barbara K. Olejarsz IF THERE ARE ANY TRANSMISSION PROBLEMS.

Phone: (860) 418-7001

Fax: (860) 418-7053

**410 Capitol Ave., MS#13HCA
 P.O. Box 340308
 Hartford, CT 06134**