

Olejarz, Barbara

From: Martone, Kim
Sent: Wednesday, May 24, 2017 3:00 PM
To: Hansted, Kevin
Cc: Olejarz, Barbara
Subject: FW: CON Determination Request: Fairfield Surgery Center
Attachments: FSC CON DETERMINATION.PDF

Kimberly R. Martone

Director of Operations, Office of Health Care Access
Connecticut Department of Public Health
410 Capitol Avenue, MS #13 CMN, Hartford, Connecticut 06134
Phone: 860-418-7029 Fax: 860-418-7053
Email: Kimberly.Martone@ct.gov Website: www.ct.gov/ohca



From: Anderson, Russell F. [mailto:RAnderson@pullcom.com]
Sent: Wednesday, May 24, 2017 2:49 PM
To: Martone, Kim
Cc: Cowherd, Stephen M.
Subject: CON Determination Request: Fairfield Surgery Center

Dear Ms. Martone:

Please find attached a CON Determination Request concerning the merger of National Surgical Healthcare with Surgery Partners. An originally-executed affidavit will follow.

In the meantime, if you should have any questions, please contact me. Thank you in advance for your attention to this request.

Best,
Russ

Russell F. Anderson
Attorney

PULLMAN
& COMLEY LLC
ATTORNEYS

850 Main Street P.O. Box 7006
Bridgeport, CT 06601-7006
p 203 330 2271 f 203 576 8888
randerson@pullcom.com • www.pullcom.com

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**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 |
|--|---|
| Full Legal Name | Fairfield Surgery Center, LLC |
| Doing Business As | N/A |
| Name of Parent Corporation | N/A |
| Petitioner's Mailing Address, if Post Office (PO) Box, include a street mailing address for Certified Mail | 305 Black Rock Turnpike, Fairfield, Connecticut 06825 |
| 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. | Bryan Fisher Director |

| | |
|--|--|
| Contact Person's Mailing Address, if PO Box, include a street mailing address for Certified Mail | 250 South Wacker Drive, Suite 500 Chicago, Illinois 60606 |
| Contact Person's Telephone Number | (312) 627-8400 |
| Contact Person's Fax Number | (312) 474-1950 |
| Contact Person's e-mail Address | bfisher@nshinc.com |

SECTION II. GENERAL PROPOSAL INFORMATION

- a. Proposal/Project Title: Transaction Involving National Surgical Healthcare
- b. Estimated Total Project Cost: N/A
- c. Location of proposal, identifying Street Address, Town and Zip Code: 305 Black Rock Turnpike, Fairfield, Connecticut 06825
- 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: Third Quarter 2017

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.

SECTION V. AFFIDAVIT

(Each Petitioner must submit a completed Affidavit.)

Petitioner: Fairfield Surgery Center, LLC

Project Title: Transaction Involving National Surgical Healthcare

I, Bryan Fisher , Director
(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 S. Fisher
Signature

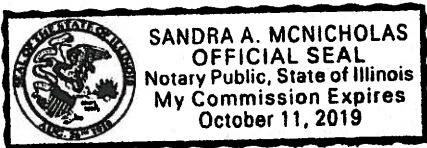
May 23, 2017
Date

Subscribed and sworn to before me on May 23, 2017

Sandra A. McNicholas

Notary Public/Commissioner of Superior Court

My commission expires: October 11, 2019



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., John Awad, M.D., Patrick Kwok, M.D., Lawrence Kirschenbaum, M.D. and Ross Richer, M.D. NSH CT is a wholly owned subsidiary of National Surgical Healthcare, 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 49% membership interest in the Center, while NSH CT holds a 51% interest.

NSH Holdco, Inc. ("NSH Holdco"), the parent company of NSH, has entered into a merger agreement under which Surgery Partners, Inc. ("Surgery Partners"), which also owns and develops surgical facilities across the U.S., will acquire NSH Holdco. Pursuant to the plan of merger, Surgery Partners will pay cash for the stock of NSH Holdco and a new wholly-owned subsidiary of Surgery Partners will merge with and into NSH Holdco (the "Merger"). NSH Holdco will be the surviving entity, will retain its name, and will be wholly-owned by Surgery Partners. Following the Merger, NSH Holdco will continue to own its interests in 20 surgical facilities across 12 states, including the Center.

Petitioner respectfully requests that OHCA determine that the Merger, which involves corporations three levels removed from the Center does not constitute a transfer of ownership in the Center for the reasons set forth below. To assist OHCA in its review of this matter an organizational chart showing the relationship between the entities that are planning to merge and the Center is attached as Exhibit A.

Connecticut law requires a Certificate of Need ("CON") prior to the transfer of ownership of a health care facility. Conn. Gen. Stat. § 19a-638(a)(2). The term "health care facility" includes outpatient surgical facilities. *See* Conn. Gen. Stat. § 19a-630(11). A transfer of ownership is defined as "a transfer that impacts or changes the governance or controlling body of a health care facility, institution or large group practice, including, but not limited to, all affiliations, mergers or any sale or transfer of net assets of a health care facility." Conn. Gen. Stat. § 19a-630(16).

The Merger 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. Rather, the Merger will only result in a change in the ownership several entities up from the Center. The governance of the Center is controlled by the company's Operating Agreement which is not being amended or changed in any way as a result of the Merger. Specifically, the Center will continue to be overseen by a four-person governing board, two of whom are appointed by FSC Physician Holdings and two by NSH CT. No change to the authority of the Governing 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 the proposal. In addition, the Center will continue to operate in its current space and there will be no change in service area or population served as a result of the Merger.

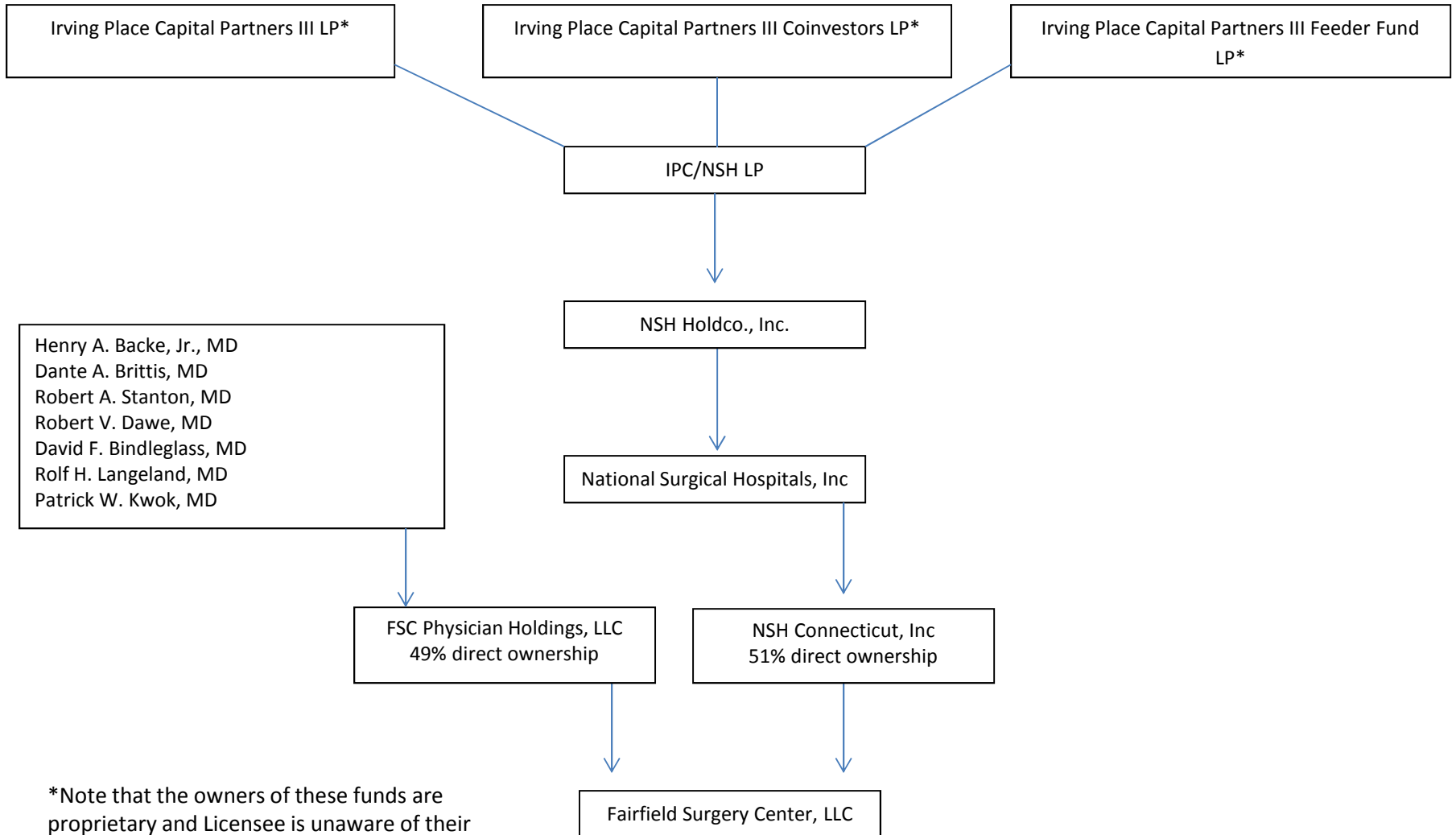
Petitioner also wishes to note that the Merger will not in any way impact the care provided to patients at the Center as all medical affairs of the Center will continue to be controlled by the physician members of FSC Physician Holdings and a separate medical executive committee. The medical executive 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 numerous recent instances, OHCA has determined that CON approval was not required for similar transactions because there was no change in the governance or control of the health care facility at issue. See. e.g., *Wilton Surgery Center, LLC – Merger of National Surgical Care, Inc. into AmSurg Corporation* (Report No. 11-31700-DTR); *North Haven Surgery Center, LLC – Merger of Titan Health Corporation, Inc. into United Surgical Partners International, Inc.* (Report No: 11-31707-DTR); and *United HealthGroup/OptumCare/Surgical Care Affiliates* (Report No. 17-32152-DTR).

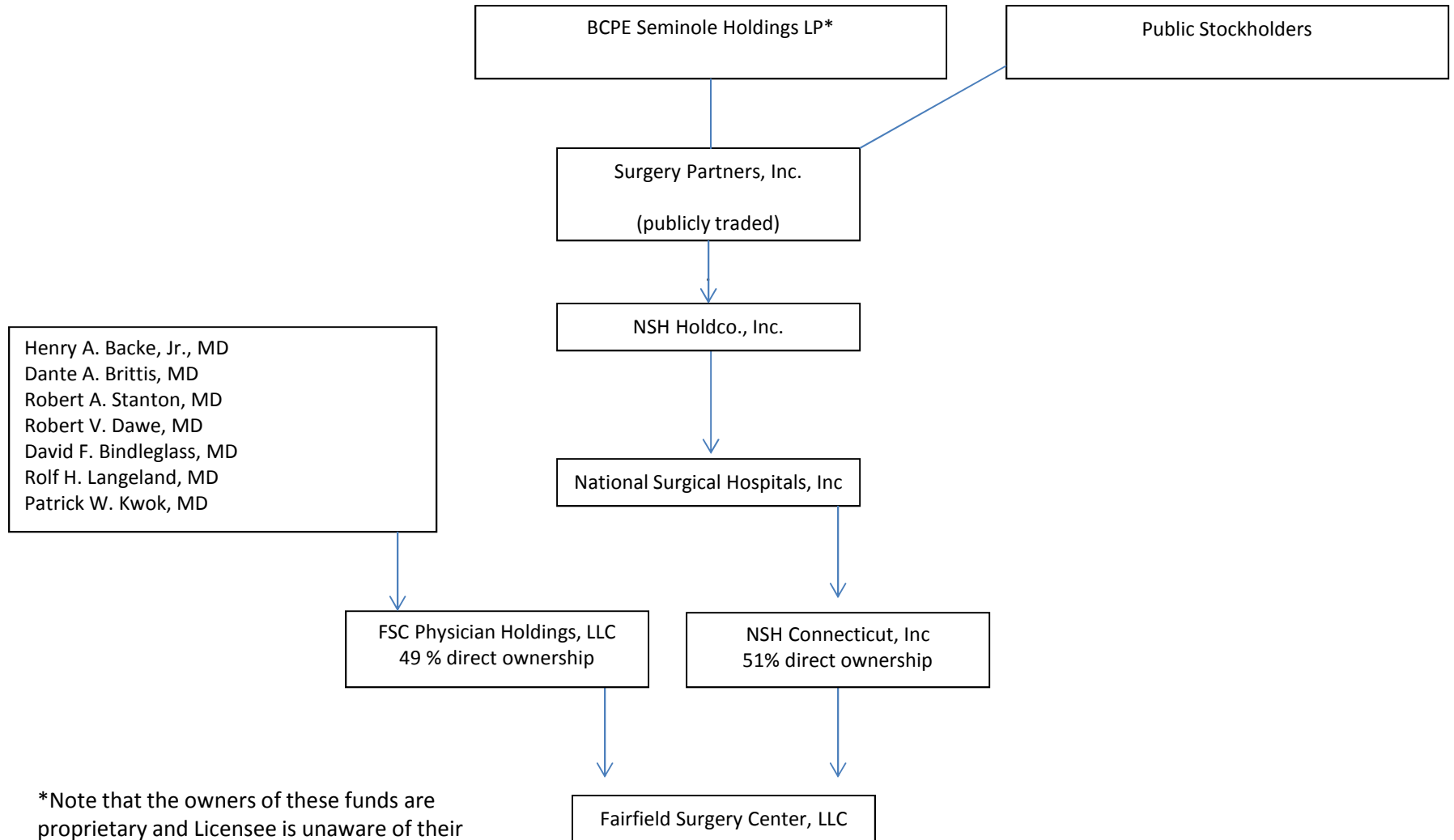
In sum, the Merger will not impact or change the current governance or controlling body of the Center or otherwise affect or alter any patient care aspects of the Center's operations. For all the reasons above, the acquisition of NSH Holdco several levels of ownership up from the Center does not constitute a "transfer of ownership of a health care facility" under C.G.S. § 19a-638(a)(2). Accordingly, Petitioner respectfully requests that OHCA determine that no CON approval is required for the parties to effectuate the proposed Merger, which is scheduled to close the third quarter of 2017.

EXHIBIT A

Fairfield Surgery Center, LLC Pre-Transaction Ownership Structure



Fairfield Surgery Center, LLC Post-Transaction Ownership Structure



Olejarz, Barbara

From: Olejarz, Barbara
Sent: Thursday, June 01, 2017 11:17 AM
To: 'bfisher@nshinc.com'
Subject: Determination
Attachments: 32169-DTR.pdf

| Tracking: | Recipient | Delivery |
|------------------|-------------------------|------------------------------|
| | 'bfisher@nshinc.com' | |
| | Hansted, Kevin | Delivered: 6/1/2017 11:18 AM |
| | Martone, Kim | |
| | Riggott, Kaila | Delivered: 6/1/2017 11:18 AM |
| | McLellan, Rose | Delivered: 6/1/2017 11:18 AM |
| | Kimberly.Martone@ct.gov | Delivered: 6/1/2017 11:18 AM |

6/1/17

Bryan Fisher,

Please see attached determination for the merger of NSH Holdco, Inc. into Surgery Partners, Inc. under Report Number: 17-32169-DTR.

Barbara K. Olejarz
Administrative Assistant to Kimberly Martone
Office of Health Care Access
Department of Public Health
Phone: (860) 418-7005
Email: Barbara.Olejarz@ct.gov



STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH



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

Dannel P. Malloy
Governor
Nancy Wyman
Lt. Governor

Office of Health Care Access

June 1, 2017

VIA EMAIL ONLY

Bryan Fisher
Director
Fairfield Surgery Center, LLC
305 Black Rock Turnpike
Fairfield, CT 06825

Re: Certificate of Need Determination; Report Number: 17-32169-DTR
Merger of NSH Holdco, Inc. into Surgery Partners, Inc.

Dear Mr. Fisher:

On May 24, 2017, the Office of Health Care Access ("OHCA") received your determination request on behalf of Fairfield Surgery Center, LLC ("FSC") with respect to whether a certificate of need ("CON") is required for NSH Holdco, Inc. ("NSH") to merge into Surgery Partners, Inc. ("SPI").

FSC is a licensed outpatient surgical facility consisting of two (2) member entities: FSC Physician Holdings, LLC ("FSCPH"), which is wholly owned by seven physician members; and NSH Connecticut, Inc. ("NSH CT"), a wholly owned subsidiary of National Surgical Healthcare, Inc. ("NSH"). Currently, FSCPH owns 49% of the membership units of FSC, and NSH CT owns the remaining 51% of the membership units.

Under the proposed merger, the parent company of NSH, NSH Holdco, Inc. ("NSH Holdco") will merge with and into Surgery Partners, Inc. ("Surgery Partners"). Surgery Partners owns and develops surgical facilities across the United States. NSH Holdco will be the surviving entity in the merger and will be wholly-owned by Surgery Partners. The only change in ownership will occur at FSC's parent level.



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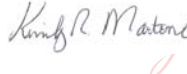


The governance of FSC is controlled by the company's Operating Agreement, which is not being amended or changed in any way as a result of the proposed merger between NSH Holdco and Surgery Partners. The merger will not result in any change or amendments to FSC's Operating Agreement and thus there will be no impact or change to FSC's governance resulting from the merger. Specifically, FSC will continue to be overseen by a four-person governing board, two of whom are appointed by FSCPH and two by NSH CT.

Pursuant to Connecticut General Statutes §§ 19a-638(a)(2), CON authorization from OHCA is required for "[a] transfer of ownership of a health care facility;". Connecticut General Statutes §§ 19a-638(16) defines a transfer of ownership as follows: "a transfer that impacts or changes the governance or controlling body of a health care facility, institution or large group practice, including, but not limited to, all affiliations, mergers or any sale or transfer of net assets of a health care facility."

Based upon the information provided, the proposed transfer will not impact or change the governance or controlling body of FSC, which is the health care facility at issue. Instead, the only changes made will be at the parent level. Therefore, a **CON is not required**.

Sincerely,

 Digitally signed by
Kimberly Martone
Date: 2017.06.01
11:00:18 -04'00'

Kimberly R. Martone
Director of Operations

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

Olejarz, Barbara

From: Bryan Fisher <bfisher@nshinc.com>
Sent: Thursday, June 01, 2017 11:25 AM
To: Olejarz, Barbara
Subject: RE: Determination

Barbara

Received.

Bryan S. Fisher
President and Chief Operating Officer

From: Olejarz, Barbara [mailto:Barbara.Olejarz@ct.gov]
Sent: Thursday, June 1, 2017 10:18 AM
To: Bryan Fisher
Subject: Determination

6/1/17

Bryan Fisher,

Please see attached determination for the merger of NSH Holdco, Inc. into Surgery Partners, Inc. under Report Number: 17-32169-DTR.

Barbara K. Olejarz
Administrative Assistant to Kimberly Martone
Office of Health Care Access
Department of Public Health
Phone: (860) 418-7005
Email: Barbara.Olejarz@ct.gov



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