



STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

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August 24, 2009

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

IN THE MATTER OF)	CERTIFICATE OF NEED
)	APPLICATION
)	NO. 09-08
Pacific ASC, LLC)	
)	
Applicant)	DECISION ON THE MERITS

DECISION ON THE MERITS

The State Health Planning and Development Agency (hereinafter "Agency"), having taken into consideration all of the records pertaining to Certificate of Need Application No. 09-08 on file with the Agency, including the written and oral testimony and exhibits submitted by the applicant and other affected persons, the recommendations of the Oahuwide Certificate of Need Review Committee and the Statewide Health Coordinating Council, the Agency hereby makes its Decision on the Merits, including findings of fact, conclusions of law, order, and written notice on Certificate of Need Application No. 09-08.

I

BACKGROUND

1. This is an application for a Certificate of Need ("Cert") for the establishment of an ambulatory surgery center specializing in ophthalmologic procedures, at 735 Iwilei Road, Suite 225, Honolulu, Hawaii, at a capital cost of \$4,517,442.
2. The applicant, Pacific ASC, LLC, is a limited liability corporation.
3. The Agency administers the State of Hawaii's Certificate Program, pursuant to Chapter 323D, Hawaii Revised Statutes (HRS), and Title 11, Chapter 186, Hawaii Administrative Rules (HAR).

4. On June 2, 2009, the applicant filed with the Agency a Certificate of Need application for the establishment of an ambulatory surgery center specializing in ophthalmologic procedures, at 735 Iwilei Road, Suite 225, Honolulu, Hawaii, at a capital cost of \$4,517,442. (the "Proposal"). On June 18, 2009, the applicant submitted additional information. On July 1, 2009, the application was determined to be complete. For administrative purposes, the Agency designated the application as Cert. #09-08. On July 10, 2009 and July 13, 2009, the applicant submitted additional information.
5. The period for Agency review of the application commenced on July 6, 2009, the day notice was provided to the public pursuant to 11-186-39 HAR.
6. The application was reviewed by the Oahuwide Certificate of Need Review Committee at a public meeting on July 13, 2009. The Committee voted 5 to 0 in favor of recommending approval of the application.
7. The application was reviewed by the Statewide Health Coordinating Council at a public meeting on July 23, 2009. The Council voted 13 to 0 with one abstention in favor of recommending approval of the application.
8. The Certificate of Need Review Panel review of the application was waived pursuant to Section 323D-44.6 HRS.
9. This application was reviewed in accordance with Section 11-186-15, HAR.
10. Section 323D-43(b), HRS states:

" (b) No certificate of need shall be issued unless the state agency has determined that:

(1) There is a public need for the facility or service; and
(2) The cost of the facility or service will not be unreasonable in the light of the benefits it will provide and its impact on health care costs."
11. Burden of proof. Section 11-186-42, HAR, provides:

"The applicant for a certificate of need or for an exemption from certificate of need requirements shall have the burden of proof, including the burden of producing evidence and the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence."

II

FINDINGS OF FACT

A. REGARDING THE RELATION OF THE PROPOSAL TO THE STATE HEALTH SERVICES AND FACILITIES PLAN (HAWAII HEALTH PERFORMANCE PLAN) OR "H2P2"

12. The applicant states that "Pacific ASC will advance the goal of increasing the span of healthy life for Hawaii residents and the objectives of reducing the effects of chronic disease, prolonging health-related quality of life and reducing morbidity through timely and appropriate treatment by providing restorative and curative treatment for Hawaii residents suffering from vision disorders, thereby enabling them to resume active lifestyles."

13. With respect to the H2P2 desired characteristics of a health care delivery system, the applicant states "Pacific ASC will collaborate with primary care physicians throughout the Western Pacific rim as well as nationally recognized leaders in the field of ophthalmologic surgery to provide appropriate specialty care in a cost-effective, community-based outpatient setting. The center's quality control procedures will focus on clinical outcomes to evaluate the performance of its surgeons and plan for expansion and improvement of its patient care services."

14. The applicant states that the proposed ASC will promote the Statewide and Oahu priorities and values "by providing restorative treatment to victims of eye disease that will allow them to resume active lives, thereby helping them achieve wellness goals and reducing the social costs of disease... the proposed ASC will be particularly effective in improving the quality of life of senior citizens. The ASC will also provide culturally sensitive health care to patients from Hawaii and all parts of the Western Pacific rim."

15. The applicant states that "Chapter VI of the H2P2 acknowledges that diabetes is the leading cause of blindness in persons ages 20-74. The ASC will improve the functional capacity and quality of life of diabetics by providing treatment for vision problems arising secondary to diabetes."

16. The Agency finds that this criterion has been met.

B. REGARDING NEED AND ACCESSIBILITY CRITERIA

17. The applicant states that "The target population includes individuals suffering from limited vision caused by caused by corneal and retinal conditions and glaucoma who reside in any part of Hawaii or the Western Pacific Rim, where surgical treatment for these conditions is not now available."

18. The applicant states that "The anticipated increase in the age of Hawaii's population will exacerbate the need for ophthalmologic surgery procedures in coming years. The Centers for Disease Control ("CDC") has indicated that adults aged 40 and over are at greatest risk for eye disease. More than 3.4 million (3%) of American (sic) 40 years of age and older are either blind or visually impaired and millions more are at risk for developing vision impairment and blindness."

19. The applicant states that "Over the next decade, the CDC predicts that prevention of vision impairment from eye disease will become an increasingly important concern as the prevalence of adult vision impairment and age-related eye disease in America is expected to double, due to the rapidly aging U.S. Population and the increasing epidemic of diabetes and other chronic conditions."

20. The applicant states that "...Pacific ASC expects that a substantial portion of the procedures to be performed at the facility will be corneal transplants that cannot currently be done because of limited access to donor corneas."

21. The applicant states that "Pacific ASC has obtained a commitment from Vision Share to provide 5,000 corneas for transplant at the ASC annually."

22. The applicant states that "...because Pacific ASC has secured access to a consistent supply of corneas for transplant, Pacific ASC believes that it will meet unsatisfied demand for corneal transplant services that are not otherwise available from existing sources in Hawaii..."

23. The applicant states that "Current demand for corneal transplants is far outstripped by the availability of donor corneas that are suitable for transplantation. Accordingly, Pacific ASC is confident that there is demand for all the corneal transplant services that it can make available."

24. The applicant states that "Pacific ASC is dedicated to making sight-saving technology available to all, without regard for age, race, sex, creed, national origin or ability to pay. The facility's financial projections include a charity care allowance of approximately 3% of its gross revenues."

25. The Agency finds that the need and accessibility criteria have been met.

C. REGARDING QUALITY AND LICENSURE CRITERIA

26. The applicant states that "The Proposed ASC will be accredited by Accreditation Association of Ambulatory Health Care, Medicare certified and licensed by the State of Hawaii. It will have in place a quality assessment and performance improvement plan that meets or exceeds the standards established by the Medicare program."

27. The applicant states that "Physicians will be credentialed in accordance the Medical Staff Bylaws, Rules, and Regulations that will be created by the ASC's governing body... Only members of the Medical Staff with admitting privileges will be permitted to admit patients to the facility, and such members shall practice only within the scope of the privileges granted by the Governing Body... In all cases, the results of quality assessment and improvement activities, which will examine components of care rendered by any privileged member, shall be considered before a re-appointment decision or any other decision affecting privileges is made."

28. The applicant states that "... the Proposed ASC will conduct ongoing quality review on a regular basis, as well as performance reviews of employees at least annually."

29. The applicant states that "All Registered Nurses employed by Pacific ASC will be ACLS certified."

30. The Agency finds that the quality and licensure criteria have been met.

D. REGARDING THE COST AND FINANCIAL CRITERIA

31. The applicant states that "The Proposed ASC will help keep healthcare costs down by providing a facility dedicated to ophthalmologic surgery procedures where more experienced and specially trained staff will allow procedures to be performed more efficiently and with greater patient safety..."

32. The applicant states that the net revenue for the first year of operation is estimated at \$3,700,067 and that operating expenses for the first year are projected at \$3,086,222. The applicant states that the net revenue for the third year of operation is estimated at \$4,132,744 and that operating expenses for the third year are projected at \$3,268,855.

33. The applicant states that the total project cost, excluding the fair market value of the leased space, is \$3,221,442 and that \$840,000 will be provided by the Pacific ASC members and \$2,400,000 will be obtained through a commercial loan.

34. The Agency finds that the cost and financial criteria have been met.

E. REGARDING THE RELATIONSHIP OF THE PROPOSAL TO THE EXISTING HEALTH CARE SYSTEM OF THE AREA

35. The applicant states that "Pacific ASC will provide an efficient means of providing ophthalmologic surgery that will allow Hawaii to meet the growing need for such procedures as it (sic) population ages."

36. The applicant states that "The Proposed Project will have a significant positive impact on health care in the State, because it will provide enhanced access to corneal transplant procedures, draw patients to Hawaii for ophthalmologic surgery that are not widely available in other areas in proximity to the Western Pacific Rim and develop Hawaii's role as a center for medical research and innovation."

37. The Agency finds that these criteria have been met.

F. REGARDING THE AVAILABILITY OF RESOURCES

38. The applicant states that it will require 1.0 FTE RN/Director, 5.0 FTE Clinical RNs, 2.5 FTE OR Technicians, 1.0 FTE Nursing Assistant and that the following strategies will be used to recruit staffing: newspaper and journal advertisements (locally, state-wide, and nationally), internet advertising, national recruitment programs through professional recruiters and referral from existing staff.

39. The applicant states that "Pacific ASC is also prepared to recruit staff from the mainland as necessary and has entered into nonbinding letters of intent with two recruiting firms, Ulrich Associates and Kama'aina Careers, who will assist with that effort."

40. The applicant states that the total project cost, excluding the fair market value of the leased space, is \$3,221,442 and that \$840,000 will be provided by the Pacific ASC members and \$2,400,000 will be obtained through a commercial loan.

41. The applicant states that it has received a non-binding financing commitment letter from American Savings Bank totaling \$3,146,250 to establish the project.

42. The Agency finds that the applicant has met this criterion.

III

CONCLUSIONS OF LAW

Having taken into consideration all of the records pertaining to Certificate of Need Application No. 09-08 on file with the Agency, including the written and oral testimony and exhibits submitted by the applicant and other affected persons, the recommendations of the Oahuwide Certificate of Need Review Committee and the Statewide Health Coordinating Council and based upon the findings of fact contained herein, the Agency concludes as follows:

The applicant has met the requisite burden of proof and has shown by a preponderance of the evidence that the Proposal meets the criteria established in Section 11-186-15, HAR.

Accordingly, the Agency hereby determines that, pursuant to Chapter 323D-43(b):

- (1) There is a public need for this proposal; and
- (2) The cost of the proposal will not be unreasonable in light of the benefits it will provide and its impact on health care costs.

ORDER

Pursuant to the findings of fact and conclusions of law contained herein, IT IS HEREBY DECIDED AND ORDERED THAT:

The State Health Planning and Development Agency hereby APPROVES and ISSUES a Certificate of Need to Pacific ASC, LLC for the proposal described in Certificate of Need application No. 09-08. The maximum capital expenditure allowed under this approval is \$4,517,442.

WRITTEN NOTICE

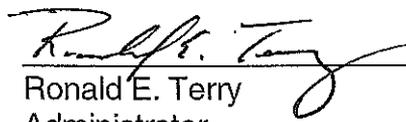
Please read carefully the written notice below. It contains material that may affect the Decision on the Merits. The written notice is required by Section 11-186-70 of the Agency's Certificate of Need Program rules.

The decision on the merits is not a final decision of the Agency when it is filed. Any person may request a public hearing for reconsideration of the decision pursuant to Section 11-186-82 HAR. The decision shall become final if no person makes a timely request for a public hearing for reconsideration of the decision. If there is a timely request for a public hearing for reconsideration of the decision and after the Agency's final action on the reconsideration, the decision shall become final.

(Note, pursuant to Chapter 323D-47, Hawaii Revised Statutes, a request for reconsideration shall be received by the Agency within ten working days of the state agency decision.)

DATED: August 24, 2009
Honolulu, Hawaii

HAWAII STATE HEALTH PLANNING
AND DEVELOPMENT AGENCY



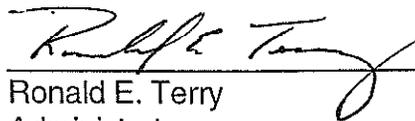
Ronald E. Terry
Administrator

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the attached Decision on the Merits, including findings of fact, conclusions of law, order, and written notice, was duly served upon the applicant by sending it by certified mail, return receipt requested, in the United States Postal Service addressed as follows on August 24, 2009.

Hank C.K. Wuh, M.D.
Chief Executive Officer
Pacific ASC, LLC
1946 Young Street, Suite 480
Honolulu, HI 96826

HAWAII STATE HEALTH PLANNING
AND DEVELOPMENT AGENCY



Ronald E. Terry
Administrator