

STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

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February 27, 2006

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

IN THE MATTER OF)	CERTIFICATE OF NEED
)	APPLICATION
)	NO. 05-27
Honolulu Spine Center, 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. 05-27 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, the Certificate of Need Review Panel 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. 05-27.

I

BACKGROUND

1. This is an application for a Certificate of Need ("Cert.") for the establishment of an Ambulatory Spinal Surgery Center at 500 Ala Moana Boulevard, Building 1, Suite 303, Honolulu, Hawaii at a capital cost of \$7,472,697.

2. The applicant, Honolulu Spine Center, LLC, is a for-profit 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 September 23, 2005, the applicant filed with the Agency a Certificate of Need application for the establishment of an Ambulatory Spinal Surgery Center at 500 Ala Moana Boulevard, Building 1, Suite 303, Honolulu, Hawaii, at a capital cost of \$6,540,000 (revised to \$7,472,697 on January 6, 2006) (the "Proposal"). On October 13, 2005, November 15, 2005 and November 21, 2005, the applicant submitted additional information. On November 21, 2005 the application was determined to be complete. For administrative purposes, the Agency designated the application as Cert. #05-27. Additional information was submitted by the applicant on December 2, 2005, January 6, 2006, January 26, 2006 and February 1, 2006.
5. The period for Agency review of the application commenced on December 6, 2005, the day notice was provided to the public pursuant to 11-186-39 HAR.
6. The application was initially reviewed by the Oahuwide Certificate of Need Review Committee at a public meeting on December 13, 2005. Due to a committee member participating in the review with a conflict of interest (which was discovered after the meeting by consulting with the Hawaii State Ethics Commission), the Oahuwide Certificate of Need Review Committee meeting was rescheduled for January 19, 2006 with new committee members. Accordingly, there was no recommendation from the said December 13, 2005 meeting.
7. The application was reviewed by the Oahuwide Certificate of Need Review Committee at a public meeting on January 19, 2006. The Committee voted 4 to 1 in favor of recommending approval of this application. During member discussion of the application, the Committee had the following general comments/concerns regarding the application:
 - Members indicated that, obtaining measurable goals and reports would give substance to the applicant's proposals for improving on-call coverage for trauma care at Queen's Medical Center, and providing an acceptable level of charity care to the community.
 - Members discussed that the applicant should initiate discussions with Hawaii's Department of Human Services to become a participating Medicaid (Med Quest) provider for ACS spinal surgery care, and that it should clarify that its proposal is limited to spinal-

related care only. Any additional procedures would require a new CON.

8. The application was reviewed by the Certificate of Need Review Panel at a public meeting on January 20, 2006. The Panel recommended conditional approval of the application by a vote of 5 to 1. The conditions were:

- Relating to need and accessibility:
That more data be provided regarding the source(s) for the approximately 300 spine procedures that the applicant is proposing to perform in the first year of operations. Specifically, which hospitals are currently performing these procedures and how many at each hospital?
- Relating to quality of care:
That more information be provided regarding the quality of care provided at the existing Neospine facilities, including JCAHO, Medicare and state licensing certifications/reports.
- Relating to the application's relationship to the existing healthcare system
That a more specific plan or an agreement be implemented to ensure the continuance of on-call trauma coverage at Queen's Medical Center in the event that the spine surgery proposal is implemented.

9. The application was reviewed by the Statewide Health Coordinating Council at a public meeting on January 26, 2006. The Council recommended conditional approval of the application by a vote of 5 to 3 with one abstention. The conditions were:

- Relating to need and accessibility:
That more data be provided regarding the source(s) for the approximately 300 spine procedures that the applicant is proposing to perform in the first year of operations. Specifically, which hospitals are currently performing these procedures and how many at each hospital?
- Relating to quality of care:
That more information be provided regarding the quality of care provided at the existing Neospine facilities, including JCAHO, Medicare and state licensing certifications/reports.

10. On January 26, 2006 and February 1, 2006, the applicant submitted additional information and data regarding: the spine procedures proposed to be performed in the first year of operation, and the quality of care provided at the existing Neospine facilities, including JCAHO, Medicare and state licensing certifications/reports.
11. This application was reviewed in accordance with Section 11-186-15, HAR.
12. Pursuant to Section 323D-43(b), HRS:

“(b) No Certificate shall be issued unless the 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.”
13. 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”

Vision and Guiding Principles (Chapter II)

14. The applicant states that "The Proposed ASC is consistent with H2P2's goal to 'increase the span of healthy life for Hawaii's residents', because it enables relatively healthy adults with spinal conditions to receive curative treatment in an efficient and safe environment, thereby allowing them to return to their active lifestyles as quickly as possible." Page 7 of 10
15. The applicant states that "The H2P2's goal of 'reducing the effects of chronic disease and prolonging health related quality life' will be achieved

because the treatment offered at the Proposed ASC will enable those afflicted with Diseases of the Spine to function at their optimal level and experience greater enjoyment of life because of improved mobility."

16. The applicant states that the "...Proposed ASC will 'reduc[e] morbidity and pain [associated with the Diseases] through timely and appropriate treatment."

17. The applicant states that "...the ASC will aid in the development of a regionalized health care delivery system that fosters improved access to quality health care services. A major challenge facing the health care delivery system on Oahu is the current lack of availability of neurosurgeons and orthopedic surgeons to provide emergency on-call services to the island's hospitals. The Proposed ASC provides a solution to this impediment to access to quality health care services. It will facilitate timely and appropriate treatment for trauma victims by allowing spine surgeons to manage their practices more efficiently, thereby allowing them to better respond to the community's need for emergency on-call services. Elective procedures are the primary source of income for most surgeons, and therefore must be given priority over on-call service for which doctors receive minimal compensation. Currently, scheduling elective surgeries at hospitals is difficult... The surgeon must be available and ready to perform the scheduled surgery at the appointed time, even though elective procedures are frequently "bumped" in order to permit more urgent surgeries to proceed. In contrast, because of the greater efficiencies available at a facility dedicated solely to the performance of outpatient spine surgery, surgeons will be able to perform two or more procedures daily at the Proposed ASC on a reliable schedule. Accordingly, the total number of days needed to complete a physician's weekly schedule of elective surgeries can be reduced from three or four to only two. Pacific Spine Institute's surgeons believe that utilization of the proposed ASC's greater efficiency in completing elective surgeries will allow each doctor to have one additional day per week available for on-call service."

18. The applicant states that "For a new freestanding ASC, [H2P2 requires that] all other comparable operating rooms in the service area must average a minimum of at least 1,600 hours per room utilization per year. However, there are no comparable free standing ambulatory surgery center operating rooms in the service area. ...Of the six ambulatory surgery centers now on Oahu, three are dedicated to ophthalmic surgery and one is an endoscopy center. The fifth is operated by Kaiser Permanente and is available only to members of Kaiser Health Plans. HealthSouth Surgicare of Hawaii offers a wide variety of outpatient procedures, but does not specialize in spinal surgery."

Statewide and Regional Priorities (Chapter III)

19. With respect to the H2P2 Statewide Priorities, the applicant states "By offering a more efficient and less costly alternative to spine surgery, several stakeholders benefit. Patients will experience less out-of pocket expense for their medical treatment, particularly benefiting patients not covered by insurance and third party payors. Insured patients will see a reduction in their co-payments. Payors will see reduced cost of claims and the elimination of hospital charges for inpatient stays. The limited physician pool can be more efficient in providing services to their patients and the acute care hospital can focus on the acute services that need to be performed in an inpatient setting."

Diseases and Conditions (Chapters IV-XI)

20. The applicant states that "By providing early and effective treatment for spine disease, the Proposed ASC will help reduce the incidence and impact of a Chronic Disabling Condition, as targeted in Chapter VI of the H2P2... By providing early, convenient and cost-effective treatment of these diseases, the Proposed ASC will reduce costs associated with lost productivity as well and the socio-psychological costs associated with disability that can result from spine disease."

21. The applicant states that "By eliminating hospital stays, and thereby reducing exposure to anti-biotic resistant bacteria that thrive in the hospital environment, the Proposed ASC will also reduce risks associated with infectious diseases, a goal of Chapter IV of the H2P2."

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

B. REGARDING NEED AND ACCESSIBILITY CRITERIA

23. The applicant states that "There are now only six licensed ASC's on Oahu. Of those six facilities, three are laser eye clinics; one is an endoscopy center; and one is at the Kaiser Permanente Honolulu Clinic. Only one ASC, HealthSouth's Surgicare of Hawaii ("Surgicare"), currently provides general surgical services to patients who are not members of Kaiser Permanente. Surgicare does not currently list neurosurgical procedures of the type that will be performed at HSC among the procedures that are performed at its facility. Accordingly, there is no source of supply for a substantial number of the procedures that will be performed at HSC."

24. The applicant states that "There is no publicly available data from which HSC can accurately determine current area wide demand. Accordingly, HSC has projected current demand from utilization data compiled at St. Thomas Outpatient Neurosurgery Center in Nashville, Tennessee. The largest neurosurgery group in the city of Nashville is comprised of 12 neurosurgeons and is, therefore, comparable in size to ten physician-member Pacific Spine Institute... Comparable to what HSC's position will be in the Hawaii market, the Nashville group's ASC is the **only** facility devoted to outpatient spine procedures in the Nashville market. Because it is the only provider exclusively supplying outpatient spine surgery, the Nashville ASC should accurately reflect total demand within the Nashville service area. Comparing the total number of spine procedures performed by the Nashville group to the total population of the Nashville SMA, it can be calculated that approximately 1.7 people /1000 population suffer from spinal conditions requiring surgery that is appropriate for the outpatient setting each year."

25. The applicant projects that "...based on the estimate of 1.7 people /1000 who suffer from spinal conditions amenable to outpatient surgery, it is estimated that about 1254 people in Hawaii are affected by such conditions each year."

26. The applicant states that "...because no other ASC on Oahu now offers the spinal procedures that will be made available at HSC, demand for those services is now completely unmet. These services are currently being performed at several inpatient hospitals in Oahu, where they are at a disadvantage. Because hospitals must focus on acute and emergency care, elective procedures, such as those that will be performed at the Proposed ASC, are frequently bumped from surgery schedules in order to accommodate needs for unexpected and urgent surgery. In addition...such scheduling changes impose serious hardships on physicians attempting to meet the needs of their patients, while at the same time satisfying other personal and community needs, such as providing emergency on-call service. Not infrequently, surgeons find themselves performing operations late into the night because elective procedures initially scheduled for early in the day have been delayed by emergency procedures. Such delays in completing their surgeries make service of on-call duties impossible. By allowing these surgeons to reliably schedule their patients' elective surgeries, the Proposed ASC will alleviate last-minute schedule changes that impair the physicians' ability to effectively manage their time and will facilitate their participation in on-call rotation."

27. The applicant states that "By eliminating hospital stays, and thereby reducing exposure to anti-biotic resistant bacteria that thrive in the hospital environment, the Proposed ASC will also reduce risks associated with infectious diseases..."

28. The applicant states that "As a community provider, HSC ensures health care availability to all members of the community, regardless of the individual's age, race, sex, creed, national origin and ability to pay."

29. The applicant states that "...HSC has established a Charity Care and Financial Discount policy in order to assist uninsured and underinsured patients and provide financial relief to those who qualify based on a comparison of their financial resources with Federal Poverty Guidelines as published annually in the *Federal Register* by the U.S. Department of Health and Human Services."

30. The applicant states that "The Proposed ASC will seek Medicare and Medicaid provider status; although Medicare has not yet approved all of the procedures to be done on an outpatient basis."

31. In its written testimony dated January 20, 2006, The Queen's Medical Center states that "On accessibility, the applicant speaks of being accessible to all residents of the community, but the tables on Types of Patients and Sources of Funds (Attachment 1) tell a different story. Here the applicant indicates that 76% of its patients will have Commercial Insurance and that it will have no Medicare or Medicaid patients. On Oahu where over 50% of patients are covered by Medicare or Medicaid, this clearly does not meet the accessibility criteria."

32. With respect to this issue, the Oahuwide Certificate of Need Review Committee, in its memorandum dated January 19, 2006, recommending approval of the application, states the following:

During member discussion of the application, the Committee also had general comments/concerns regarding the application. Members discussed that the applicant should: initiate discussions with Hawaii's Department of Human Services to become a participating Medicaid (Med Quest) provider for ACS spinal surgery care ... members indicated that, obtaining measurable goals and reports would give substance to the applicant's proposals for:

... 2. Providing an acceptable level of charity care to the community.

33. The Agency finds that the proposal, if modified in accordance with condition #2 on page 14 of this Decision on the Merits, meets the need and accessibility criteria.

C. REGARDING QUALITY AND LICENSURE CRITERIA

34. The applicant states that "The Proposed ASC will be accredited by Joint Commission on Accreditation of healthcare Organization 'JCAHO,' Medicare certified and licensed by the Hawaii Department of Health. The center will comply

with State and Federal regulations for delivery of care, maintenance of service equipment, and maintenance of clinical environment."

35. The applicant states that "...all HSC surgeons are now on the staff of one or more Honolulu hospitals, as well as being associated with such professional organizations as American Association of Neurological Surgeons, Congress of Neurological Surgeons, North American Spine Society, American College of Surgeons,..."

36. The applicant states that "By eliminating hospital stays, and thereby reducing exposure to anti-biotic resistant bacteria that thrive in the hospital environment, the Proposed ASC will also reduce risks associated with infectious diseases..."

37. The applicant states that "All anesthesiologists practicing at the Proposed ASC will be Board Certified or Board Eligible in anesthesiology. Admission to the facility will be scheduled only through surgeons who are credentialed members of the medical staff."

38. The applicant states that "Patient care at the Proposed ASC will be provided by RNs and LPNs with advanced specialty training and through well-defined and well-documented protocols for caregivers. All licensed nursing personnel will be BLS certified and all PACU recovery nurses will be ACLS certified."

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

D. REGARDING THE COST AND FINANCIAL CRITERIA

40. The applicant states that "The Proposed ASC will help keep healthcare costs down by providing an outpatient alternative to many inpatient neurosurgical and orthopedic procedures through utilization of recent advances in fusion technology."

41. The applicant states that "By providing early, convenient and cost-effective treatment of these diseases, the Proposed ASC will reduce costs associated with lost productivity as well and the socio-psychological costs associated with disability that can result from spine disease."

42. The applicant states that "By offering a more efficient and less costly alternative to spine surgery, several stakeholders benefit. Patients will experience less out-of pocket expense for their medical treatment, particularly benefiting patients not covered by insurance and third party payors. Insured

patients will see a reduction in their co-payments. Payors will see reduced cost of claims and elimination of hospital charges for inpatient stays."

43. The applicant projects that for Year 1 of the Proposal, anticipated net revenue will be \$3,058,898 and operating expenses will be \$2,608,658. The applicant projects that for Year 3 of the Proposal, anticipated net revenue will be \$3,747,150 and operating expenses will be \$2,862,587.

44. The applicant states that "There are no acceptable lower cost alternatives. One other option would be to continue with the situation as it exists today and continue to perform outpatient spine procedures in an inpatient setting. This option would not produce any cost savings and, therefore is not a lower cost alternative. Moreover, it does nothing to address the pressing need to improve spinal surgeons' ability to provide on-call services necessary to insure adequate trauma care."

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

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

46. The applicant states that "The Proposed project will have a significant positive impact on health care in the State. By moving some procedures that were formerly performed only in an inpatient setting to an outpatient setting, the Proposed ASC will free hospital operating rooms for various other inpatient procedures including trauma and more acute care needs. Additionally, by allowing the member spine surgeons to manage their practices more efficiently, The Proposed ASC will increase their availability for on call service and their ability to respond to emergency trauma patients when needed."

47. In its written testimony dated January 20, 2006, The Queen's Medical Center states that "A delicate balance between profitable and unprofitable services and programs must be achieved in order for Oahu's not-for profit full service hospitals to continue to meet the wide ranging needs of our community. The applicant's project will cherry-pick low-risk profitable surgical procedures. By the applicant's own estimates, Oahu's not-for profit full service hospitals will lose up to \$2.8 million in net patient revenue in Year 1 and up to \$3.4 million by Year 3. Queen's estimates we will suffer up to 75% of those losses."

48. The Agency finds the proposed increase in the availability of on-call coverage would clearly improve the existing healthcare system; however, the stated loss of patient revenue at Oahu's not-for profit full service hospitals, including The Queen's Medical Center, would have a negative impact on the existing healthcare

system. The degree of impact for the hospitals is unclear as the estimated loss of profit was not stated by The Queen's Medical Center in its testimony.

49. The issue of physician on-call coverage was addressed in Legislative Reference Bureau Report No. 2, 2006, entitled "On-Call Crisis in Trauma Care: Government Responses (the "LRB Report"). The report states (at page iv) that "For many years, many trauma centers across the nation have been facing a crisis securing physician specialists for emergency call. The on-call specialist shortage is particularly acute for The Queen's Medical Center since it is the lead and only trauma facility in the State of Hawaii... With trauma injuries, seconds count; the chances of survival significantly decrease and the side effects of injury significantly increase if appropriate care is not given in the first hour immediately following the injury. A shortage of physician specialists can jeopardize a trauma team's ability to provide care. It also increases the risk of delay in patient treatment which in turn increases patients' risk of harm."

50. The costs associated with the issue of trauma care were addressed on page 8 of the LRB report, "Trauma care reduces the burden of injury by saving lives and returning those individuals who are seriously injured to productivity. The Oklahoma State Department of Health notes that trauma is the leading cause of death for persons aged 1 to 44 years and the fifth leading cause of death overall in Oklahoma. It costs the state more years of productive life than all other diseases combined... The Texas State Department of Health notes:

- Since trauma is the leading cause of death in persons aged 1 to 44 years, the years of potential life lost are staggering: 290,000 in 1993. Using a per capita income of \$19,189, this represents a phenomenal \$5.6 billion in lifetime income lost and a loss to the state in lifetime tax revenue of \$518 million for that one year of trauma mortality alone.
- Mortality is not the only side of this issue; for every trauma victim who dies, at least six are seriously injured. Total years of productive life lost to disability are not currently known but would add greatly to the figures above. In addition, many persons with severe disabilities resulting from injuries may be dependent to some degree on federal, state and local assistance."

51. The Agency is of the opinion that the proposed benefits associated with the applicant's proposal to improve on-call trauma coverage outweigh the potential negative impact that the applicant's proposal may have on the existing Oahu hospitals.

52. With respect to the issue of on-call trauma coverage, the Certificate of Need Review Panel, in its memorandum dated January 25, 2006, recommending conditional approval of the application, states:

3. Relating to the application's relationship to the existing healthcare system

That a more specific plan or an agreement be implemented to ensure the continuance of on-call trauma coverage at Queen's Medical Center in the event that the spine surgery proposal is implemented.

53. The Agency finds that the proposal, if modified in accordance with condition #1 on pages 13 and 14 of this Decision on the Merits, meets the relationship to the existing health care system criteria.

F. REGARDING THE AVAILABILITY OF RESOURCES

54. The applicant states that "The total cost of the Proposed Project is estimated at \$7,472,697, provided by private funds. Sources of funds include \$767,184 to be provided by the HSC members and \$3,361,500 to be obtained through non-recourse financing. A copy of the loan commitment letter from MarCap Corporation is included in Exhibit F-1. The site will be acquired by commercial lease valued at \$2,880,000. The tenant improvement allowance of \$464,013 will be used to partially offset construction costs."

55. The applicant states that the Proposed ASC will employ 11 FTEs: 6 RNs/LPNs, one OR technician, one business office manager, one receptionist /scheduler, one back office support person, and one Medical Records Clerk."

56. The applicant states that "The staffing model, while effective, only requires 11 FTE's to operate the center based on the proposed volume. A portion of the staff will be licensed clinical staff. The non-licensed clinical staff, such as business office staff and support staff, does not appear to be in a shortage situation. The following strategies will be used to recruit staffing:

- a. Newspaper and journal advertisements (locally, state-wide, and nationally)
- b. Internet advertising
- c. Neospine, LLC website
- d. National recruitment programs through Neospine's national recruitment network
- e. Referral from existing staff and our senior leadership team"

57. 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. 05-27 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, Certificate of Need Review Panel and Statewide Health Coordinating Council, and based upon the findings of fact contained herein, the Agency concludes as follows:

1. The applicant has failed to show by a preponderance of the evidence that its proposal, as it is currently written, meets the certificate of need criterion in Sections 11-186-15(a) (1) and (10), HAR.
2. The applicant's proposal, if it were modified as specified in the Order below, would meet the criteria.

Conditional Certification

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 CONDITIONAL certificate of need to Honolulu Spine Center, LLC for the proposal described in Certificate Application No. 05-27. The conditions are that:

1. The applicant shall develop and implement a written plan to improve and enhance on-call trauma coverage at The Queen's Medical Center ("Queen's") by neurosurgeons practicing at the applicant facility. The plan shall be developed collaboratively with Queen's through a facilitator who shall be jointly appointed by the applicant, Queen's and the Agency. To ensure that the plan can be properly integrated into the Queen's trauma care delivery system, the plan must be acceptable to Queen's. However, acceptance of the said plan by Queen's shall not be required in the event that:

- Queen's is unwilling to participate in the collaborative planning process, or
- It is determined by the Agency that Queen's' acceptance has been unreasonably withheld or delayed or that Queen's has not acted in good faith during the said process.

The costs associated with such facilitation shall be borne by the applicant. The plan shall be submitted to Agency on or before May 1, 2006.

2. The applicant shall:
 - A. Document and provide assurances of implementation of policies to provide access to individuals unable to pay consistent with charity care levels provided by neighboring hospitals commencing in Year 3 of its Proposal and continuing yearly thereafter. The amount of the applicant's annual revenue utilized to finance charity care shall be at least equal to or greater than the average percentage of total patient revenue, other than Medicare and Medicaid, that the neighboring hospitals utilized to provide charity care in the last available reporting year. For the purpose of this paragraph, the neighboring hospitals are Queen's, Kuakini, Straub and St. Francis-Liliha.
 - B. Obtain Medicare and Medicaid certification as soon as is practicable and thereafter document and provide assurances of the provision of services to Medicare and Medicaid patients at its facility.

These modifications are required for the application to successfully meet the criteria in Section 11-186-15 HAR.

As provided under Section 323D-46, HRS and Section 11-186-77 HAR, the Agency establishes Noon, March 15, 2006 as the date by which the applicant must certify, in writing, that it accepts these conditions and that its application is thereby modified accordingly, otherwise this application shall be deemed to be DENIED as provided under Section 11-186-77 HAR.

The maximum capital expenditure allowed under this conditional approval is \$7,472,697.

WRITTEN NOTICE

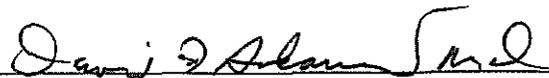
Please read carefully the written notice below. It contains material that may affect the Decision on the Merits. The written notice is required by Section 11-186-70 of the Agency's Certificate of Need Program rules.

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: February 27, 2006
Honolulu, Hawaii

HAWAII STATE HEALTH PLANNING
AND DEVELOPMENT AGENCY



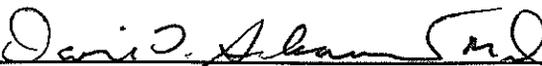
David T. Sakamoto, M.D.
Administrator

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 February 27, 2006.

Gary Kurth
Administrator
Honolulu Spine Center, LLC
c/o 3525 Del Mar Heights Road, #131
San Diego, California 92130

HAWAII STATE HEALTH PLANNING
AND DEVELOPMENT AGENCY


David T. Sakamoto, M.D.
Administrator