

## STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

LINDA LINGLE  
GOVERNOR OF HAWAII

CHIYOME L. FUKINO, M.D.  
DIRECTOR OF HEALTH

RONALD E. TERRY  
ADMINISTRATOR

1177 Alakea St. #402, Honolulu, HI 96813 Phone: 587-0788 Fax: 587-0783 www.shpda.org

November 9, 2007

### CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Maria Kinsler  
CEO  
Care Hawaii, Inc.  
606 Coral Street, 2<sup>nd</sup> Floor  
Honolulu, HI 96813

Dear Ms. Kinsler:

The State Health Planning and Development Agency has evaluated Care Hawaii, Inc.'s Certificate of Need application #07-19A for the reduction of 6 Special Treatment Facility beds at TMK (1) 4-5-23:02 Kaneohe, Hawaii and for the relocation of 16 Special Treatment Facility beds from TMK (1) 4-5-23:02 Kaneohe, Hawaii to 110 Kaneohe Bay Drive, Kailua Hawaii, at a capital cost of \$126,495.

Pursuant to Title 11, Chapter 186 of the Hawaii Administrative Rules (HAR), the Agency has determined that: the proposal is eligible for administrative review as it meets the criterion in HAR 11-186-99.1(b)(6), i.e.: "any proposal which is determined by the agency not to have a significant impact on the health care system."

A public meeting was requested and held pursuant to Hawaii Revised Statutes (HRS) 323D-44.5, on September 4, 2007. In response to written and oral testimony provided to the Agency regarding the certificate of need criteria, the Agency requested additional information from Care Hawaii, Inc. (the "applicant") pursuant to HAR 11-186-54. Additional information was submitted to the Agency by the applicant on September 27, 2007 and October 4, 2007.

The applicant states that this is an application which "... involves transitioning our current licensed SRSP (Specialized Residential Special Population) facility to a new location, as well as converting the existing residential beds from 22 to 16 beds."

The applicant states that the primary service area for the proposal is the island of Oahu.

The applicant states that "Currently, the only SRSP beds available for the adult SMI (severely mentally ill) population in the State are CARE's 22 beds located in Windward Oahu. However, effective August 31, 2007 the STATE will be converting this site into a Secure Forensic Specialized Residential Treatment Program. It is imperative that CARE relocate to continue this highly needed SRSP service for the adult SMI population."

The applicant states that "Based on a recent AMHD (Adult Mental Health Division) Utilization Management (UM) review conducted in February and March 2007, it was determined that the SRSP treatment program's length of stay should not exceed six (6) months. Additionally, it was determined by AMHD that multiple residents no longer meet the criteria for this level of care. Due to the shorter lengths of stay and multiple residents no longer meeting the criteria for continued stay, it

was identified that fewer SRSP beds would be needed in the State. Per Adult Mental Health Division's request, CARE will be reducing the current bed count from twenty two (22) beds to sixteen (16) beds."

The applicant states that "CARE will continue to accept all referrals from AMHD regardless of income, race, ethnicity gender, disability, or age."

The applicant states that "This proposal of a new location of an existing service providing SRSP services will continue to fill the gap between psychiatric hospitalization and independent community living for the adult severely mentally ill population. The 24 hour specialized residential special population services provide housing and treatment for a maximum of 6 months. These services also provide options for those consumers who do not meet the criteria for hospitalization but would not be appropriate for unmonitored community housing. This would continue to increase the availability of service options for healthcare in the community."

The applicant states that "The project will reduce health care costs by providing less expensive alternatives to emergency room visits (\$1000 or more per visit), and acute hospitalizations (\$700-\$1000/day). Minimum cost savings per bed day is \$500-\$800/day for Specialized Residential Special Population services."

The applicant states that "CARE's current employees who work at the 22 bed STF in Kaneohe will be the same employees who will be providing RN (Registered Nurse) and MHT (Mental Health Technician) services at our new proposed location of an existing service."

Accordingly, the Agency finds that there continues to be a need for this service and that the need will be adequately met by the proposed relocation herein. The Agency also finds that the proposal herein will have no effect on the ability of all underserved groups to obtain needed healthcare. The Agency finds that the provision of the service fills a gap in the healthcare continuum and therefore has a positive impact on the existing healthcare system. The Agency finds that the proposal meets the cost and finances and availability of resources criteria and finds that the proposed relocation will have no effect on the healthcare service's relationship to the state health services and facilities plan as: there will be no change in type of service provided, and the proposed relocation will be within the same primary service area as the existing service, which is the island of Oahu.

With respect to the application's relationship to the quality of care criteria:

In written testimony dated August 31, 2007, Denise Tanner states "The two buildings on site are currently 1206 sq. ft. and 1188 sq. ft., each 3 bedrooms and two baths. This is too small for 16 residents and 4 staff members."

In written testimony dated August 30, 2007, Stephen J. Wallach, M.D. states "The house on Kaneohe Bay Drive for this proposed facility consists of a house and an Ohana house behind it. These houses are approximately 2000 square feet each on 5000 square feet of property. I do not think this is an adequate and safe space for 16 seriously mentally ill patients and the staff and overcrowding is a potential problem and a possible danger to fragile patients."

The applicant states that "In choosing and developing this facility, Care Hawaii is committed to compliance with the space requirements mandated by the Office of Healthcare Assurance (OHCA). The homes meet these requirements by providing a minimum of 120 square feet of space for shared bedrooms, 1 bathroom for every 4 residents and a common livingroom, dining room and kitchen for each home. Additionally, the homes meet the standards of AMHD (Adult Mental Health Division) per our contract for these services, as well as the standards of CARF, the nationally-based accreditation agency through which Care Hawaii is accredited."

In his written testimony dated August 30, 2007, Stephen J. Wallach, M.D. states "Kaneohe Bay Drive is a dangerous street and I fear the safety of the residents who may try to cross the street."

The applicant states that "Policies and Procedures of CARE Hawaii for the proposed facility provide direction for ensuring resident safety...and include policies and procedures for escorting and accompanying residents in the community, 24 hour monitoring of residents, safety policies and procedures, response to a resident's unauthorized absence from the home, kitchen safety and medication administration."

The applicant further states "Patient safety is ensured through meeting the following requirements:

- Licensing through OHCA mandates a 1:8 staff to resident ratio. CARE's proposal doubles this ratio for a 1:4 staff to resident ratio
- Contractual, Certification, and Accreditation Standards require CARE to have all staff trained and certified in crisis management techniques and strategies by the Crisis Prevention Institute, as well as, CPR and First Aid. The staff of the proposed facilities have all met these requirements and continue to meet required periodic retraining requirements in these areas.
- Admission Criteria requires that residents considered for community living must clinically and legally clear to live in the community..."

In his written testimony dated August 30, 2007, Stephen J. Wallach, M.D. states "The staffing patterns concern me. There will be nurses during the day and on call at night. The night in house staff will (sic) mental health techs with high school education. If major problems develop, is the skill level sufficient to handle crises."

The applicant states that "The staffing ratio for the proposed homes is as follows:

- 1 RN for every eight residents 24 hours /day, 7 days/week
- 1 Mental Health Technician for every eight residents 24 hours/day, 7 days/week. Mental health Technician staff must meet the requirement of one of the following conditions: 12 semester credit hours in social science studies from an accredited college or one year of supervised experience working with this population.
- 1 Qualified Mental Health Professional (QMHP) 40 hours/week for 16 residents. The QMHP is defined as a licensed psychiatrist, APRN, social worker, LMFT (licensed marriage and family therapist) or psychologist.
- 1 post-doctoral psychology resident 1 hour/week for 16 residents
- 1 psychiatrist on-call with weekly review of treatment progress for 16 residents
- 1 certified peer specialist 40 hours/week for 16 residents.

All staff members are required to have current CPR and First Aid certification as well as CPI certification. CPI certification indicates that the staff member has been trained and is proficient in techniques and strategic interventions for de-escalation and crisis intervention as developed by the Crisis Prevention Institute. The proposal more than complies with required staff mandated by OHCA (OHCA requires a 1:8 ratio of staff to residents, this proposal provides a minimum of a 1:4 ratio of staff to residents), as well as meets the contractual, certification and accreditation staffing requirements."

In written testimony dated September 3, 2007, Vivian Saito-Kehrer states "While I will not question the professionalism with which CARE Hawaii, Inc. delivers services to its clients, I simply point out that the location chosen, 110 Kaneohe Bay Drive, is in close proximity to the Aikahi Wastewater Treatment Plant, and that proximity itself creates degradation care...For many years, the Aikahi Wastewater Treatment plant has chronically violated emission levels for hydrogen sulfide and been subject to state fines and penalties. Hydrogen sulfide is a toxic gas that is known to cause low blood pressure, headaches, nausea, loss of appetite, ataxia, eye membrane inflammation, fatigue, memory loss, dizziness, sleep difficulties and chronic coughing. All of these symptoms manifest with a low level exposure to hydrogen sulfide, as low as 7 to 10 parts per billion. The permit level for the Aikahi Wastewater Treatment plant is 25 parts per billion. While hydrogen sulfide is commonly associated with the 'rotten egg' odor, what is not widely known is that, paradoxically, at higher concentrations, the odor disappears. This health care risk in the area can result in degradation in care of these patients."

Numerous additional written testimonies regarding the potential health risks to patients associated with relocating the special treatment facility in close proximity to the Aikahi Wastewater Treatment plant were provided by other community members.

### CONCLUSIONS

The Agency finds that the proposal meets the following certificate of need criteria categories: need and accessibility, relationship to the state health services and facilities plan, cost and finances, relationship to the existing healthcare system and availability of resources.

With respect to the quality of care criterion, however, the Agency finds that the applicant has not proven by a preponderance of the evidence that its proposal meets this criterion. As noted above, the Agency has received substantial written testimony from community members expressing concern that potential health risks associated with the Aikahi Wastewater Treatment plant "can result in degradation in care" for the proposed relocated patients. The applicant has failed to show that its patients' healthcare would not be negatively affected by these potential health risks.

Pursuant to HRS 323D-46 and HAR 11-186-77, the Agency finds that the said proposal, if modified in accordance with the condition below, would, however, meet this criterion.

Accordingly, the State Health Planning and Development Agency hereby APPROVES and ISSUES a CONDITIONAL Certificate of Need to Care Hawaii, Inc. for the proposal described in Certificate of Need application #07-19A. The condition is that:

The applicant shall investigate the potential health risks to its patients associated with relocating its facility within close proximity of the Aikahi Wastewater Treatment Plant.

In order to successfully meet the quality of care criterion for the issuance of a certificate of need for the proposal herein, the applicant shall provide its written report, acceptable to the Agency, indicating that the proximity of the proposed relocated special treatment facility to the said plant is not likely to have an adverse affect on its patients' health. This report must be forwarded to the Agency on or before December 31, 2007. In the event that the applicant is unable to provide such a report, this application shall be deemed to be DENIED for failure to meet meet the criterion in HAR 11-186-15(7).

The Agency establishes Noon, November 21, 2007 as the date by which the applicant must certify, in writing, that it accepts this condition otherwise this application shall be deemed to be DENIED.

The said modification is required for the application to successfully meet the criterion in HAR 11-186-15 (7).

The Agency has determined that the applicant has proven by a preponderance of evidence that its proposal, if modified as specified above, meets the Certificate of Need criteria in HAR 11-186-15.

There is no compelling public interest which will be served by requiring the application to go through the standard review process.

As required under HRS 323D-43(b), the Agency finds that, if modified as specified above:

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

The maximum capital expenditure allowed under this conditional approval is \$126,496.

#### ADDENDUM

In written testimony submitted to the Agency, the Agency was asked to consider whether locating the subject special treatment facility in a residential area is appropriate for the community. Pursuant to HAR 11-186-15, the consideration of this issue is outside of the statutory purview of the State Health Planning and Development Agency and cannot be considered by the Agency in making its decision. Community land use is the purview of the City and County of Honolulu and its applicable land use ordinances.

Notice

Please be advised that pursuant to HRS 323D-47 and HAR 11-186-82, any person may, for good cause shown, request in writing a public hearing for reconsideration of the Agency's decision within ten working days from the date of this decision. Accordingly, if no person makes such a timely request for reconsideration, this decision shall become final immediately after the deadline for making such a request has expired.

  
Ronald E. Terry  
Administrator

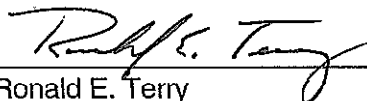
C: OHCA

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the attached Administrative Review Decision 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 November 9, 2007.

Maria Kinsler  
CEO  
Care Hawaii, Inc.  
606 Coral Street, 2<sup>nd</sup> Floor  
Honolulu, HI 96813

HAWAII STATE HEALTH PLANNING  
AND DEVELOPMENT AGENCY

  
\_\_\_\_\_  
Ronald E. Terry  
Administrator





Pursuant to HAR 11-186-82, a request for a public hearing shall be deemed by the committee to have shown good cause, if:

- 1) It presents significant, relevant information not previously considered by the agency which, with reasonable diligence, could not have been presented before the agency made its decision;
- 2) It demonstrates that there have been significant changes in factors or circumstances relied upon by the agency in reaching its decision;
- 3) It demonstrates that the agency has materially failed to follow the agency's rules in reaching its decision;
- 4) It provides any other basis for a public hearing which the agency determines constitutes good cause; or
- 5) The decision of the administrator differs from the recommendation of the statewide council.

Having taken into consideration all of the records pertaining to the request for a reconsideration hearing of the Agency's decision on Certificate of Need Application No. 07-19A, including, without limitation, the written request for reconsideration, written testimony, exhibits, attachments and supplementary material submitted by the person who made the request and other affected persons, and the oral testimony presented at the good cause meeting, the Reconsideration Committee finds by a vote of five to zero that the request for a public hearing for reconsideration of the Agency's decision on Certificate of Need Application No. 07-19A, fails to establish good cause under HAR 11-186-82 and 323D-47 HRS.

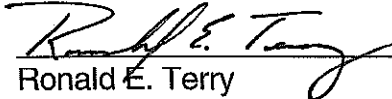
Specifically, the written request for reconsideration, fails to: *present significant, relevant information not previously considered by the agency which, with reasonable diligence, could not have been presented before the agency made its decision; demonstrate that there have been significant changes in factors or circumstances relied upon by the agency in reaching its decision; demonstrate that the state agency has materially failed to follow the agency's rules in reaching its decision; provide any other basis for a public hearing which the agency determines constitutes good cause.*

As there was no statewide council review, the decision of the administrator did not differ from the recommendation of the statewide council.

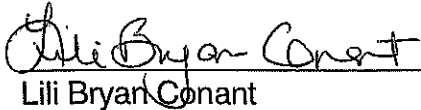
Therefore, the request for a public hearing for reconsideration is denied.

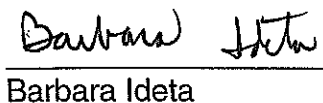
WRITTEN NOTICE

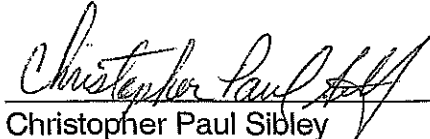
- (1) The denial is the agency's final action on the reconsideration; and
- (2) The decision which was sought to be reconsidered is the final decision of the agency.

  
Ronald E. Terry 18 JAN 2008  
Date

  
James Walsh 2/4/08  
Date

  
Lili Bryan Conant 2/6/08  
Date

  
Barbara Ideta 2/20/08  
Date

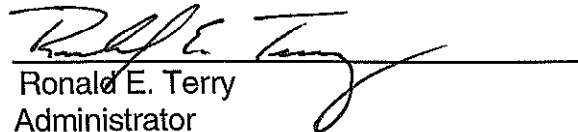
  
Christopher Paul Sibley 2/4/08  
Date

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the attached Written Explanation for Denial of Reconsideration Hearing including 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 March 4, 2008.

The Honorable Cynthia Thielen  
Assistant Minority Floor Leader  
50<sup>th</sup> District (Kailua – Kaneohe)  
State of Hawaii  
State Capital  
Honolulu, Hawaii 96813

HAWAII STATE HEALTH PLANNING  
AND DEVELOPMENT AGENCY

  
Ronald E. Terry  
Administrator