

MINUTES
STATE HEALTH FACILITIES COUNCIL
JANUARY 15, 2008
ALTOONA PUBLIC LIBRARY
700 8TH STREET SW
ALTOONA, IA

I. 9:30 AM ROLL CALL,

MEMBERS PRESENT: Sid Scott, Chairperson, Chuck Follett, Karen Hope, Marc Elcock and Suki Cell.

STAFF PRESENT: Barb Nervig; Heather Adams, Counsel for the State.

II. PROJECT REVIEW

1. University of Iowa Hospitals & Clinics, Iowa City, Johnson County: Purchase Biplane Angiography System - \$3,700,000.

Staff report by Barb Nervig. The applicant was represented by Brandt Echternacht, Matt Howard, MD, Michelle Koller and Lisa Ferney. The applicant made a presentation and answered questions posed by the Council.

No affected parties appeared at the hearing.

A motion by Follett, seconded by Elcock, to Grant a Certificate of Need carried 5-0.

2. MR Associates, LLP, Cedar Rapids, Linn County: Purchase Two 3.0 Tesla Magnetic Resonance Imaging Units to be installed at St. Luke's and Mercy - \$7,200,000.

Staff report by Barb Nervig. The applicant was represented by Kathryn Epley of Radiology Consultants of Iowa (RCI); Dennis Winders, RT at St. Luke's Medical Center, Tim Charles, CEO at Mercy Medical Center and Brian Randall, MD with RCI. The applicant made a presentation and answered questions posed by the Council.

No affected parties appeared at the hearing.

A motion by Follett, seconded by Cell, to Grant a Certificate of Need carried 5-0.

3. Fox Eye Surgery, LLC, Cedar Rapids, Linn County: Establish an Ambulatory Surgery Center – No cost.

Staff report by Barb Nervig. Staff informed the Council that two letters, one from Representative Foege and one from Senator Hatch were received after the deadline for submittal of comments. The applicant advised that Representative Paulsen was present in the morning to present his comments, but was called back to the statehouse prior to the applicant being called to present. The applicant requested that Representative Paulsen's letter be accepted into the record. A motion by Hope, seconded by Follett to accept Representative Paulsen's letter carried on a voice vote. The Council chose not to accept the other two letters into the record.

The applicant was represented by Douglas Fulton of Brick Gentry P.C.; Lee Birchansky, M.D.; Franklin Dexter, M.D., Ph.D.; Stephen Sheppard, CPA; John B. Dooley, M.D.; Todd Becker, David Cook; Beverly Mork, patient; Deann Fitzgerald, O.D.; Larry Pipkin, O.D.; and Ron Moser, patient. The applicant made a presentation and answered questions posed by the Council.

Affected parties speaking in opposition of the proposal were Steven Jacobs, M.D.; Michael Patterson and Linda Williams of Surgery Center Cedar Rapids; Doug Gross of Brown, Winick, Graves on behalf of St. Luke's and John Sheehan, COO of St. Luke's Hospital; Tim Charles, CEO of Mercy Medical Center, Penny Gland, RN and Ed McIntosh of Dorsey & Whitney on behalf of Mercy.

A motion by Follett, seconded by Hope to accept the PowerPoint slides into the record carried on a voice vote. A motion by Follett, seconded by Elcock to accept a letter from the administrator of the Marengo Hospital into the record carried on a voice vote. A motion by Follett, seconded by Hope to accept an email correspondence from the CEO of the Marengo Hospital into the record carried on a voice vote.

A motion by Follett, seconded by Cell, to Grant a Certificate of Need failed 4-1. Follett voted yes. A motion by Hope, seconded by Elcock, to Deny a Certificate of Need carried 4-1. Follett voted no.

III. EXTENSION OF PREVIOUSLY APPROVED PROJECTS:

1. Wesley Retirement Services, West Des Moines, Dallas County: Build Two 20-Bed "Service Houses" for a total of 40 Nursing Facility Beds as Part of a Continuing Care Retirement Community - \$5,337,800. *Second Extension Request.*

Staff reviewed the progress on this project. A motion by Cell, seconded by Hope to Grant a one year extension carried 5-0.

2. Mercy Hospital, Iowa City, Johnson County: Develop Ambulatory Surgery Center as a Joint Venture with Physicians - \$9,382,037.

Staff reviewed the progress on this project. A motion by Hope, seconded by Follett to Grant a nine-month extension (until October 2008) carried 5-0.

IV. REQUESTS FOR DETERMINATIONS OF NON-REVIEWABILITY AND THE DEPARTMENT'S RESPONSES

1. University of Iowa Hospitals & Clinics, Iowa City, Johnson County: Replace cardiac angiography system - \$2,600,000.

Staff report by Barb Nervig. A motion by Follett, seconded by Cell to support the Department's determination carried 5-0.

2. Osceola Community Hospital, Sibley, Osceola County: Modernization of existing facility with no additional beds or services - \$6,958,000.

Staff report by Barb Nervig. A motion by Follett, seconded by Cell to support the Department's determination carried 5-0.

3. Mercy Hospital, Iowa City, Johnson County: Replace Computed Tomography (CT) Scanner - \$1,859,525.

Staff report by Barb Nervig. A motion by Hope, seconded by Elcock to support the Department's determination carried 5-0.

V. APPROVE MINUTES OF PREVIOUS MEETINGS (OCTOBER 24-25, 2007)

A motion by Follett, seconded by Cell, to approve the minutes of the October 24-25, 2007 meeting as written passed by voice vote.

The meeting was adjourned at 6:45 PM.

rooms. There are no systems of this kind currently in place at the UIHC, or at any other hospital in Iowa.

4. According to Dr. Matt Howard, head of UIHC's Department of Neurosurgery, each of the following surrounding states has at least one system in place; Illinois, Wisconsin, Minnesota, Nebraska and Missouri. The applicant testified that the closest system for combined treatment is a three hour drive time for patients.
5. The biplane angiography system that is now used is functioning at its maximum operational capacity which has resulted in some patients having to leave the state to receive their care. The UIHC INR service is the only comprehensive endovascular program in the state and the demand for these services is placing a major strain on the limited INR resources.
6. The ability to support cerebrovascular research in the future is at risk because of the tenuous, overstretched condition of the UIHC's INR resources.
7. There is a national neurosurgery workforce shortage and Iowa is among the hardest hit states with half as many neurosurgeons per population in Iowa as compared to the rest of country. Five previous recruiting efforts have been unsuccessful. Without a strong INR program, and intraoperative INR capabilities, the ability to recruit the most talented medical students into these training programs will continue to be an issue.
8. The geographical service area for this project will include the general service area of the University of Iowa Hospitals and Clinics which encompasses the state of Iowa, west central Illinois and parts of other contiguous states. The applicant does not believe that the proposed equipment will result in a significant change of the geographic distribution of patients served.
9. UIHC is the only hospital in the state that provides free transportation services to and from the hospitals for those patients unable to pay for or obtain their own transportation. The transportation assistance offered by the applicant and the IowaCare Program assist UIHC in providing accessible services to Iowa's rural population and to those who are medically underserved.
10. The UIHC INR service is the only comprehensive endovascular program in the state. The applicant has performed around 400 inpatient interventional neuroradiology procedures each of the last three years and projects a similar number for the next two year "interim" period. Projections for the three years following installation of the proposed equipment are 462 procedures, 508 procedures and 560 procedures.
11. Numerous statewide programmatic patient care networks have been developed by the University Hospitals, its clinical staff and statewide professional colleagues. University Hospitals has transfer agreements with every hospital in the state that outline the responsibilities of the parties in referring patients to and from the tertiary care center.
12. The applicant selected the proposed equipment through a competitive process to achieve the lowest possible price. The interventional neuroradiology system will be purchased from Siemens Medical Systems, Inc. at a cost of \$2,200,000 and will have useful life of 5 years.

13. The hospital standard rate schedule will be used to determine patient charges. The current average total hospital charge for an interventional neuroradiology procedure is \$11,100.
14. For clinical research procedures performed using the new system, where the procedures may not be approved as a reimbursable service through the patient's insurance program, the hospital will receive reimbursement through the research grants that fund these studies.
15. The UIHC has a long-standing policy to first accept Iowans on the basis of their medical needs and thereafter to resolve funding of those needs. The amount of charity care provided in the most recently completed fiscal year amounted to \$218 million (about \$165M for hospital services and over \$53M for physician services).
16. To accommodate the installation of the proposed system, the project would require the renovation of an existing operating room and adjoining support space in UIHC's main operating room suite. This work is estimated to cost \$1,500,000 and take 8 months to complete.
17. The applicant states that funds for the capital and operating needs of this proposal are available from cash on hand.
18. Existing surgical, operating room and department of radiology staff will support the operation of the proposed equipment, no additional staff will be required.

CONCLUSIONS OF LAW

In determining whether to issue a certificate of need, the Council considers the eighteen criteria listed in Iowa Code § 135.64(1)(a)-(r). In addition, the legislature has provided that the Council may grant a certificate of need only if it finds the following four factors exist:

- a. Less costly, more efficient or more appropriate alternatives to the proposed institutional health service are not available and the development of such alternatives is not practicable;
 - b. Any existing facilities providing institutional health services similar to those proposed are being used in an appropriate and efficient manner;
 - c. In the case of new construction, alternatives including but not limited to modernization or sharing arrangements have been considered and have been implemented to the maximum extent practicable;
 - d. Patients will experience serious problems in obtaining care of the type which will be furnished by the proposed new institutional health service or changed institutional health service, in the absence of that proposed new service.
1. The Council concludes that less costly, more efficient or more appropriate alternatives to the proposed health service are not available and the development of such alternatives is not

practicable. The Council concludes that the current biplane angiography system is functioning at its maximum operational capacity. The Council further concludes that due to research and recruitment issues, the proposed system is the most efficient and appropriate alternative. Iowa Code Sections 135.64(1) and 135.64(2)a.

2. The Council concludes that existing facilities providing health services similar to those proposed will continue to be used in an appropriate and efficient manner and will not be impacted by this project. The Council concludes that the applicant's INR service is the only comprehensive endovascular program in the state and the demand for these services is placing a major strain on the limited INR resources. Iowa Code Sections 135.64(1) and 135.64(2)b.

3. The Council concludes that the proposed project involves renovation of an existing operating room and adjoining support space in UIHC's main operating room suite. This work is estimated to cost \$1,500,000 and take 8 months to complete. Iowa Code Sections 135.64(1) and 135.4(2)c.

4. The Council concludes that patients will experience problems in obtaining care of the type which will be furnished by the proposed changed health service, in the absence of that proposed service. The Council concludes that some patients have been leaving the state to receive their care due to the stretched capacity of the current system. The Council further concludes that the ability to support cerebrovascular research in the future is at risk because of the tenuous, overstretched condition of the UIHC's INR resources. Further, the Council concludes that without a strong INR program, and intraoperative INR capabilities, the ability to recruit the most talented medical students into these training programs is negatively impacted which also impacts patients access to care. Iowa Code Sections 135.64(1) and 135.64(2)d.

The facts, considered in light of the criteria contained in Iowa Code Section 135.64 (1 and 2) (2007), led the Council to find that a Certificate of Need should be awarded.

The decision of the Council may be appealed pursuant to Iowa Code Section 135.70 (2007).

It is required in accordance with Iowa Administrative Code 641- 202.12 that a progress report shall be submitted to the Iowa Department of Public Health six (6) months after approval. This report shall fully identify the project in descriptive terms. The report shall also reflect an amended project schedule if necessary.

The Certificate of Need is valid for a twelve (12) month period from the date of these findings. This is subject to the meeting of all requirements of the Iowa Department of Public Health. Requests for extension of a Certificate of Need must be filed in writing to the Iowa Department of Public Health from the applicant no later than forty-five (45) days prior to the expiration of the Certificate. These requests shall fully identify the project and indicate the current status of the project in descriptive terms.

No changes that vary from or alter the terms of the approved application including a change in the approved dollar cost shall be made unless requested

in writing to the department and approved. Failure to notify and receive permission of the department to change the project as originally approved may result in the imposition of sanctions provided in Iowa Code section 135.73 (Iowa Administrative Code [641]202.14).

Dated this _____ day of March 2008

Sidney W. Scott, Chairperson
State Health Facilities Council
Iowa Department of Public Health

cc: State Health Facilities Council
Iowa Department of Inspections and Appeals:
Health Facilities Division

**IOWA DEPARTMENT OF PUBLIC HEALTH
STATE HEALTH FACILITIES COUNCIL**

IN THE MATTER OF THE)
CERTIFICATE OF NEED EXTENSION FOR)
)
WESLEY RETIREMENT SERVICES)
)
WEST DES MOINES, IOWA)

DECISION

This matter came before the State Health Facilities Council for review on Tuesday, January 15, 2008.

The project, the construction of two 20-bed “services houses” for a total of 40 nursing facility beds, was originally approved on January 17, 2006 at an estimated cost of \$5,337,800. A one year extension was granted on January 16, 2007.

The Council, after reading the extension request and hearing comments by staff, voted 5-0 to Grant an Extension of Certificate of Need per Iowa Administrative Code 641—202.13. The decision is based upon the finding that adequate progress is being made.

The extension is valid for one year from the date of these findings.

Dated this ____ day of March 2008

Sidney W. Scott, Chairperson
State Health Facilities Council
Iowa Department of Public Health

cc: Health Facilities Council
Department of Inspections & Appeals, Health Facilities Division

**IOWA DEPARTMENT OF PUBLIC HEALTH
STATE HEALTH FACILITIES COUNCIL**

IN THE MATTER OF THE APPLICATION OF)
)
MR ASSOCIATES, LLP)
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CEDAR RAPIDS, IOWA)

DECISION

This matter came before the State Health Facilities Council for hearing on Tuesday, January 15, 2008.

The application proposes the purchase of two 3.0 Tesla magnetic resonance imaging (MRI) units at an estimated cost of \$7,200,000. One MRI is to be installed at St. Luke’s Hospital and the other MRI is to be installed at Mercy Medical Center.

MR Associates, LLP applied through the Iowa Department of Public Health for a Certificate of Need.

The record includes the application prepared by the project sponsor and written analysis prepared by Iowa Department of Public Health staff and all the testimony and exhibits presented at the hearing. Barb Nervig of the Iowa Department of Public Health summarized the project in relation to review criteria. Kathryn Epley of Radiology Consultants of Iowa (RCI); Dennis Winders, RT at St. Luke’s Hospital, Tim Charles, CEO at Mercy Medical Center and Brian Randall, MD with RCI were present representing the applicant. The applicant made a presentation and answered questions.

No affected parties appeared at the hearing.

The Council, after hearing the above-mentioned testimony and after reading the record, voted 5-0 to grant a Certificate of Need. As a basis for their decision the Council, considering all the criteria set forth pursuant to Iowa Code Section 135.64 (1 and 2) (2007) made the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The applicant, MR Associates, LLP, is a limited liability partnership that was formed in 1986 as a cooperative venture between Cedar Rapids’ two community hospitals and the area’s only radiologists to provide MRI to the residents of Cedar Rapids and the surrounding communities. The three equal partners are as follows: 1) Beta Technology, Inc is a subsidiary of Radiology Consultants of Iowa, PLC, (RCI) which is a group of 28 radiologists, 2) St. Luke’s Hospital is a not-for-profit acute care community hospital, 3) Mercy Care management is a wholly owned, for-profit, subsidiary of the Mercy Care Service Corporation, which is also the parent organization of Mercy Medical Center.

2. MR Associates currently operates four MRI units. Three of these units are 1.5 Tesla fixed based closed units located one each at St. Luke's Hospital, Mercy Medical Center and RCI Imaging Center. The fourth unit, a 0.3T open unit, is located in leased space in the Physician's Clinic of Iowa building in Cedar Rapids.
3. The applicant proposes the purchase of two 3.0T fixed based MRI units at cost of \$5.2M with the first unit to be placed at St. Luke's Hospital and available by April 2, 2008 and the second unit to be placed at Mercy Medical Center and available by October 1, 2008. The 0.3T open field unit will be taken out of service. There will be a total complement of five MRI units operated by the applicant following this approval.
4. The applicant states that these units will address current capacity constraints and projected volume growth. The applicant states that the main advantage of a 3T unit compared to a 1.5T unit is the additional signal generated by the increase magnetic field which makes images sharper and more detailed.
5. The applicant states that although hours of operation have been expanded over the past five years, there still remains a backlog of 7-10 days to schedule non-emergent MR services at both hospitals. The applicant projects that the addition of the proposed units will reduce the waiting period to less than 2 days at both hospitals.
6. The applicant states that the addition of the proposed units will meet the anticipated MR needs of Cedar Rapids and surrounding communities for the next 8-10 years and therefore no provision is being made for additional units at this time.
7. The 1.5T magnet at Mercy was recently updated so an upgrade or replacement is not anticipated for 7 years. The existing magnet at St. Luke's will likely need to be addressed by the end of 2009. Two options for consideration would be an upgrade similar to the one at Mercy or a replacement with a high field open unit.
8. MR Associates' service area includes Linn, Benton, Jones, Delaware, Cedar, Buchanan, Iowa and Johnson counties. The proposed equipment would be located in a metropolitan area. There is easy access to each of the facilities from Interstate 380 via main roads.
9. The applicant considered and rejected the two less costly alternatives to 3T MR scanners; 1) not expanding MR services and 2) installing two 1.5T scanners. The first option would not address the demand for service and current capacity restraints. The second option, although providing a marginal cost reduction over the life of the units, would not provide the enhanced imaging and clinical functionality capabilities of the 3T units.
10. The applicant utilized lean processing, a popular operational technique used to streamline and improve business processes. With lean processes hospital administrators are finding savings of time, resources and money by streamlining activities in every department.
11. The applicant states that the current units reached capacity in 2004 at 16,943 procedures and the increases in volume since 2004 have been due to efficiency and scheduling gains, which have been exhausted. The volume for was 2007 is 17,688 procedures.

12. The applicant states that as clinical applications for MR continue to evolve, it is projected that usage will continue to grow significantly. The applicant cites a prediction from Sg2, a healthcare intelligence firm, that MR volumes will increase by 44% over the next ten years.
13. The applicant states that radiology technologists are currently hired and employed by the hospitals and contracted to MR Associates (currently 16.2 FTEs). This practice will continue for the two proposed units. In addition to current staff, two diagnostic assistants and one reception staff will be required to staff the proposed units. No additional physicians will be required.
14. The two MR units will be purchased through a combination of cash on hand (\$720,000) and bank loans (\$6,480,000). Both units will have a useful life of 5-7 years.
15. MR Associates leases space from both hospitals to house the MR units and these lease agreements are being renegotiated based on the additional space required to house the new units.
16. St. Luke's Hospital will locate its new unit in a renovated existing space within the confines of the hospital. Mercy Medical Center will locate its new unit in a newly constructed space for the unit. Costs for renovation/construction are estimated at \$2 million.
17. The applicant states that charges will be comparable to current rates and relevant costs will be covered with increased procedures and efficiencies gained by operating multiple units at the same sites.

CONCLUSIONS OF LAW

In determining whether to issue a certificate of need, the Council considers the eighteen criteria listed in Iowa Code § 135.64(1)(a)-(r). In addition, the legislature has provided that the Council may grant a certificate of need only if it finds the following four factors exist:

- a. Less costly, more efficient or more appropriate alternatives to the proposed institutional health service are not available and the development of such alternatives is not practicable;
- b. Any existing facilities providing institutional health services similar to those proposed are being used in an appropriate and efficient manner;
- c. In the case of new construction, alternatives including but not limited to modernization or sharing arrangements have been considered and have been implemented to the maximum extent practicable;
- d. Patients will experience serious problems in obtaining care of the type which will be furnished by the proposed new institutional health service or changed institutional health service, in the absence of that proposed new service.

1. The Council concludes that less costly, more efficient or more appropriate alternatives to the proposed health service are not available and the development of such alternatives is not practicable. The Council concludes that the applicant utilized lean processing initiatives for gains in efficiency of the existing units to the extent possible. The Council concludes that the University of Iowa Hospitals and Clinics is the only current site in Eastern Iowa with a 3.0 T MRI scanner and its capacity to serve as an alternative to the proposed project is reduced due to its use for research and the travel distance. Iowa Code Sections 135.64(1) and 135.64(2)a.
2. The Council concludes that existing facilities providing health services similar to those proposed will continue to be used in an appropriate and efficient manner and will not be impacted by this project. The Council concludes that the applicant is the existing provider of MRI services in the area and has proposed the addition of two units to address current capacity constraints and projected volume growth. Iowa Code Sections 135.64(1) and 135.64(2)b.
3. The Council concludes that the proposed project involves renovation of existing space within the confines of St. Luke's Hospital and newly constructed space at Mercy Medical Center for an estimated total cost of \$2 million. Iowa Code Sections 135.64(1) and 135.4(2)c.
4. The Council concludes that patients will experience problems in obtaining care of the type which will be furnished by the proposed changed health service, in the absence of that proposed service. The Council concludes in spite of efficiencies gained through the lean process and the extension of hours there still remains a backlog of 7-10 days to schedule non-emergent MR services at both hospitals. The Council concludes that the addition of the proposed units will reduce the waiting period at both hospitals. Iowa Code Sections 135.64(1) and 135.64(2)d.

The facts, considered in light of the criteria contained in Iowa Code Section 135.64 (1 and 2) (2007), led the Council to find that a Certificate of Need should be awarded.

The decision of the Council may be appealed pursuant to Iowa Code Section 135.70 (2007).

It is required in accordance with Iowa Administrative Code 641- 202.12 that a progress report shall be submitted to the Iowa Department of Public Health six (6) months after approval. This report shall fully identify the project in descriptive terms. The report shall also reflect an amended project schedule if necessary.

The Certificate of Need is valid for a twelve (12) month period from the date of these findings. This is subject to the meeting of all requirements of the Iowa Department of Public Health. Requests for extension of a Certificate of Need must be filed in writing to the Iowa Department of Public Health from the applicant no later than forty-five (45) days prior to the expiration of the Certificate. These requests shall fully identify the project and indicate the current status of the project in descriptive terms.

No changes that vary from or alter the terms of the approved application including a change in the approved dollar cost shall be made unless requested in writing to the department and approved. Failure to notify and receive permission of the department to change the project as originally approved may result in the imposition of sanctions provided in Iowa Code section 135.73 (Iowa Administrative Code [641]202.14).

Dated this _____ day of March 2008

Sidney W. Scott, Chairperson
State Health Facilities Council
Iowa Department of Public Health

cc: State Health Facilities Council
Iowa Department of Inspections and Appeals:
Health Facilities Division

**IOWA DEPARTMENT OF PUBLIC HEALTH
STATE HEALTH FACILITIES COUNCIL**

IN THE MATTER OF THE)
CERTIFICATE OF NEED EXTENSION FOR)

MERCY HOSPITAL)

IOWA CITY, IOWA)

DECISION

This matter came before the State Health Facilities Council for review on Tuesday, January 15, 2008.

The project, the development of an ambulatory surgery center as a joint venture with physicians, was originally approved on January 16, 2007 at an estimated cost of \$9,382,037.

The Council, after reading the extension request and hearing comments by staff, voted 5-0 to Grant an Extension of Certificate of Need per Iowa Administrative Code 641—202.13. The decision is based upon the finding that adequate progress is being made.

The extension is valid for nine months, until October 2008.

Dated this ____ day of March 2008

Sidney W. Scott, Chairperson
State Health Facilities Council
Iowa Department of Public Health

cc: Health Facilities Council
Department of Inspections & Appeals, Health Facilities Division

**IOWA DEPARTMENT OF PUBLIC HEALTH
STATE HEALTH FACILITIES COUNCIL**

IN THE MATTER OF THE APPLICATION OF)
)
FOX EYE SURGERY, L.L.C.)
)
CEDAR RAPIDS, IOWA)

DECISION

This matter came before the State Health Facilities Council for hearing on Tuesday, January 15, 2008.

The application proposes the establishment of an ambulatory surgery center at no cost.

The Fox Eye Surgery, LLC applied through the Iowa Department of Public Health for a Certificate of Need.

The record includes the application prepared by the project sponsor and written analysis prepared by Iowa Department of Public Health staff and all the testimony and exhibits presented at the hearing. Barb Nervig of the Iowa Department of Public Health summarized the project in relation to review criteria. Douglas Fulton of Brick Gentry P.C.; Lee Birchansky, M.D.; Franklin Dexter, M.D., Ph.D.; Stephen Sheppard, CPA; John B. Dooley, M.D.; Todd Becker, David Cook; Beverly Mork, patient; Deann Fitzgerald, O.D.; Larry Pipkin, O.D.; and Ron Moser, patient were present representing the applicant. The applicant made a presentation and answered questions.

Affected parties speaking in opposition of the proposal were Steven Jacobs, M.D.; Michael Patterson and Linda Williams of Surgery Center Cedar Rapids; Doug Gross of Brown, Winick, Graves on behalf of St. Luke’s and John Sheehan, COO of St. Luke’s Hospital; Tim Charles, CEO of Mercy Medical Center, Penny Gland, RN and Ed McIntosh of Dorsey & Whitney on behalf of Mercy.

The Council, after hearing the above-mentioned testimony and after reading the record, voted 4-1 to DENY a Certificate of Need. As a basis for their decision the Council, considering all the criteria set forth pursuant to Iowa Code Section 135.64 (1 and 2) (2007) made the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Fox Eye was denied a CON in May 1996 to construct an ASC at a cost of \$1,173,000. Dr. Birchansky, through his limited liability company, Birchansky Real Estate L.C., constructed the surgery center in 1998 and leased it to St. Luke’s Hospital.
2. From 1998 until December 7, 2004, there were two operating suites in use at the proposed location. The outpatient surgery services provided at this location were provided and billed through the hospital license of St. Luke’s Hospital.

3. Fox Eye Laser Vision & Cosmetic Institute, P.C. (Fox Eye) accounted for approximately 80% of the surgeries at this site over that time period. Fox Eye is an ophthalmology group which employs Dr. Birchansky and Dr. Richard Stangler, two Cedar Rapids ophthalmologists whose medical office building is adjacent to the surgical suites previously leased by the hospital. Two podiatrists, Dr. Nassif and Dr. Maikon accounted for approximately 12.5% of the surgeries previously performed at this location.
4. The applicant was denied a CON in January 2005 to establish an outpatient surgery center at the same site to provide these same services. This denial was appealed and ultimately upheld by the Supreme Court on August 10, 2007. The Court held the Council acted reasonably when it denied Fox Eye's CON application due its conclusion that sufficient operating room capacity existed in the Cedar Rapids area.
5. The current proposal calls for a single specialty surgery center, although there is no regulatory restriction to the addition of other specialty procedures at this site.
6. The applicant provides several articles in support of his position that an ASC is the most cost effective and appropriate location for cataract surgery.
7. The applicant feels strongly that a single specialty surgery center specifically designed for ophthalmologic procedures would meet what he sees as an existing unmet need in the community. The applicant argues that the desired medical service is cataract surgery in the morning, during the same visit and at the same location as the examination, and on a date chosen by the patient. The applicant also indicates that the proposed facility would allow for the post surgical exam to occur the same day as surgery.
8. The applicant stressed the reduced number of trips required by the patient and family members by having the surgery and follow-up exam on the same day and at the same location as the examination to determine the need for cataract surgery. This is made possible with the operating rooms and physician's office in the same building.
9. The proposed ASC would be equipped with emergency equipment necessary for intubations, cardiac care and any other emergency that should arise. The ASC would establish policies for emergency situations to stabilize the patient and call emergency medical services, if necessary, to transport the patients to nearby emergency rooms. A transfer agreement has been signed with Area Ambulance Service, Inc. to respond and provide services in the event of an emergency
10. The majority of the surgical patients previously accessing services at this location were from Linn County, a metropolitan area. The facility also attracted some patients from the western portions of Jones County and the eastern portions of Benton County.
11. The proposed facility will serve a large percentage of elderly individuals on Medicare who come to Fox Eye for eye surgeries.
12. There are currently three providers of outpatient surgery in Linn County, Mercy Hospital, St. Luke's Hospital and the Surgery Center of Cedar Rapids (SCCR), a joint venture between physicians and St. Luke's Hospital. There are 17 ophthalmologists in Cedar Rapids; four group practices and one solo practitioner.

13. Affected parties testified that the operating room capacity at the two hospitals along with the five operating rooms at Surgery Center Cedar Rapids (SCCR), an ambulatory surgery center in operation for about four and half years, can accommodate the procedures that are proposed to be performed at the Fox Eye location. Dr. Birchansky has admitting and active staff privileges at both St. Luke's Hospital and Mercy Medical Center.
14. The applicant states that the surgery time he desires, Tuesday mornings, is not available at the two hospitals or SCCR. Currently, Dr. Birchansky performs on average ten surgeries per month at SCCR, located just over one mile from the proposed ASC.
15. Mercy Hospital presented data that the two operating rooms designed for eye surgery are in use less than 25% of the time. Also, both of these rooms are currently unscheduled from 10:00 AM to 5:00 PM on Tuesday, Wednesday and Thursday and are also available all day on Friday.
16. There are six operating rooms at SCCR, five are in use and, according to the executive director of SCCR, are at 50% capacity.
17. The vast majority of Fox Eye's cataract patients are currently having outpatient surgery at Marengo Memorial Hospital, approximately 38 miles from Cedar Rapids. Marengo Memorial Hospital is a Critical Access Hospital and as such receives a higher reimbursement from Medicare, which in turn means a higher copay for the patient.
18. The applicant indicated that he currently does perform some surgery at Mercy Medical Center and SCCR because some insurance requires that for coverage. Mercy presented data that Dr. Birchansky performed 37 cases at Mercy in 2007 as compared to 727 cases in 1997.
19. The applicant provided the following historical and expected utilization data for the two room ASC.

Historical Surgical Utilization

<u>Year</u>	<u>Cataract/ Lens Implant</u>	<u>Ophthalmic/ Plastic Surgeries</u>	<u>Total Surgeries</u>
04/01/01-03/31/02	784	200	984
04/01/02-03/31/03	932	208	1140
04/01/03-03/31/04	1008	268	1276

Projected Surgical Utilization

<u>Year</u>	<u>Cataract</u>	<u>Corneal Transplants</u>	<u>Emergencies</u>	<u>Total Surgeries</u>
2008	752	5	12	769
2009	790	5	13	808
2010	830	5	14	849

20. According to the Department of Inspections & Appeals, outpatient surgery began at the location of the SCCR as an extension of the outpatient surgery services of the hospital in July 2003. On October 1, 2003 this location was converted from a hospital-based service to an

ambulatory surgery center. No CON was required for either the extension of the hospital services or the conversion to an ASC.

21. St. Luke's provided information stating that they have 14 operating rooms available for inpatient and outpatient surgery on its main campus and maintains expertise in inter-ocular surgery. Currently, St. Luke's is not utilized for outpatient eye surgery.
22. St. Luke's performed 16,725 surgical procedures in its operating rooms in 2005; 15,672 in 2006; and 14,996 (annualized) in 2007. St. Luke's has conducted a study and determined their operating rooms are currently at 42% capacity.
23. Mercy Medical Center provided information stating that all of their 16 operating rooms are being utilized less than 50% of the available time. Mercy has two rooms that are specialty ophthalmology surgical suites. These suites are utilized less than 25% of the available time.
24. The applicant specifies that 5.0 FTEs, including one nurse manager, three RNs and one secretary/medical billing clerk will be needed to staff the ASC. The applicant states they already have employment commitments from six qualified licensed registered nurses and that it will not be necessary to hire nurses already employed at local facilities. Dr. Birchansky will serve as the medical director. Dr. John Dooley, of Davenport, is listed as director of anesthesia.
25. The applicant states there are no capital costs since the facility is in existence and is fully equipped. The building cost was paid by Birchansky Real Estate L.C. and the equipment costs were paid by Dr. Birchansky's shareholder contribution of beginning capital.
26. The applicant provided a pro forma which indicates the proposal to be financially feasible. The pro forma assumes 757 surgeries the first year of operation growing to 835 by year three. Net profit before taxes the first year is \$44,676 growing to \$68,952 by year three.
27. The applicant states that as an ASC the charges will be lower than charges as a hospital-based unit and the facility's costs will also be less than a hospital based unit. Patients will benefit in that their co-pays will be based on the lower Medicare and insurance fee schedules.
28. The applicant states that the facility charge for cataract with lens implant surgery shall be \$1,500.00. The facility charge does not include anesthesiologist and surgeon fees, or preoperative and postoperative medications. The applicant states that this \$1,500 rate shall remain for five years.
29. The applicant states that if revenue does not meet expectations as shown in projected revenues and expenses, the medical director fees (listed as \$18,000 per year) can be cut.
30. The financial projections for the facility allow for 10% of revenues to be set aside for charity care. The applicant further states that Fox Eye Surgery along with Fox Eye will offer free cataract surgery to all underserved patients referred by the local free community health clinic and Lions Club, not to exceed two indigent cataract surgeries per week.

31. Iowa Eye Center in Cedar Rapids has been seeing referrals from the Free Clinic for years and Dr. Muller from Iowa Eye Center is donating equipment for eye examination lanes in the Free Clinic.
32. The applicant submitted several hundred support letters, the majority in a form letter format signed by patients and family members. Five letters of opposition to the proposal were received, three of these from the current providers of outpatient surgery in Cedar Rapids and the other two from local physicians.

CONCLUSIONS OF LAW

In determining whether to issue a certificate of need, the Council considers the eighteen criteria listed in Iowa Code § 135.64(1)(a)-(r). In addition, the legislature has provided that the Council may grant a certificate of need only if it finds the following four factors exist:

- a. Less costly, more efficient or more appropriate alternatives to the proposed institutional health service are not available and the development of such alternatives is not practicable;
- b. Any existing facilities providing institutional health services similar to those proposed are being used in an appropriate and efficient manner;
- c. In the case of new construction, alternatives including but not limited to modernization or sharing arrangements have been considered and have been implemented to the maximum extent practicable;
- d. Patients will experience serious problems in obtaining care of the type which will be furnished by the proposed new institutional health service or changed institutional health service, in the absence of that proposed new service.

1. The Council concludes that less costly, more efficient or more appropriate alternatives to the proposed health service are available and the development of such alternatives is practicable. The Council concludes that Cedar Rapids has underutilized capacity for cataract surgery with two operating rooms devoted exclusively to eye surgery at Mercy Medical Center and two fully equipped eye operating rooms available every day at SCCR. Specifically, the operating rooms at SCCR are operating at 50 % of capacity and the operating rooms at Mercy are operating at approximately 30 – 40 % capacity (the two rooms devoted to eye procedures at 24%), indicating significant excess capacity in Cedar Rapids for the surgeries performed by the applicant and that adequate alternatives to the establishment of a new surgery center exist. The Council concludes that the proposed addition of two operating rooms to be utilized for approximately three hours of surgery per week is not the most efficient or appropriate use of resources. Iowa Code Sections 135.64(1) and 135.64(2)a.

2. The Council concludes that existing facilities providing health services similar to those proposed are currently underutilized and could easily accommodate the number of cataract surgeries projected to be performed at the proposed facility. The Council questions the efficiency of operating two surgery suites for approximately three hours per week. The Council concludes that there have been no changes in utilization rates since the 2005 CON denial which was affirmed by the Supreme Court. Iowa Code Sections 135.64(1) and 135.64(2)b.

3. The Council concludes that the proposed project does not involve new construction. Iowa Code Sections 135.64(1) and 135.4(2)c.

4. The Council concludes that patients will not experience problems in obtaining care of the type which will be furnished by the proposed changed health service, in the absence of that proposed service. The Council concludes that outpatient surgery rooms designed and built exclusively for eye surgery at Mercy Hospital have regular times open that could accommodate Dr. Birchansky's patients on a weekly basis. If Dr. Birchansky's patients wish to obtain surgical services from an outpatient surgery center they could also be easily accommodated at SCCR. Given the significant existing operating room capacity in Cedar Rapids the Council cannot conclude that patients will experience any problems in obtaining this type of care in this metro area in the absence of this proposal. Iowa Code Sections 135.64(1) and 135.64(2)d.

The facts, considered in light of the criteria contained in Iowa Code Section 135.64 (1 and 2) (2007), led the Council to find that a Certificate of Need should be denied.

The decision of the Council may be appealed pursuant to Iowa Code Section 135.70 (2007).

Dated this _____ day of March 2008

Sidney W. Scott, Chairperson
State Health Facilities Council
Iowa Department of Public Health

cc: State Health Facilities Council
Iowa Department of Inspections and Appeals:
Health Facilities Division