

**MINUTES  
STATE HEALTH FACILITIES COUNCIL  
JANUARY 19, 2005  
LUCAS STATE OFFICE BUILDING  
321 EAST 12<sup>TH</sup> STREET  
6<sup>TH</sup> FLOOR CAFETERIA  
DES MOINES, IOWA**

**I. 9:00 AM ROLL CALL**

**MEMBERS PRESENT:** Ed Nichols, Chairperson, Gary Butz, Cynthia Beaman, and Sid Scott.

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

**II. PROJECT REVIEW**

1. [University of Iowa Hospitals & Clinics, Iowa City, Johnson County](#): Purchase CT/PET and 3.0 Tesla MRI Radiation Therapy Simulation Systems -- \$4,683,000.

Staff report by Barb Nervig. The applicant was represented by Brandt Echternacht, Dr. Geraldine Jacobson, Dr. John E. Bayouth and Laurie Smith. The applicant answered questions posed by the Council.

No affected parties appeared at the hearing.

A motion by Beaman, seconded by Butz, to Grant a Certificate of Need carried 4-0.

2. [Boone County Hospital, Boone, Boone County](#): Convert 14 Acute Care Beds to 14 Long-term Care Beds and Delete 10 Acute Care Beds – No Cost

Staff report by Barb Nervig. The applicant was represented by Joe Smith and Dave Mellett. The applicant made a presentation and answered questions posed by the Council.

Denny Bock, administrator of the Eastern Star Masonic Home in Boone, appeared as an affected party in support of the project.

A motion by Scott, seconded by Butz, to Grant a Certificate of Need carried 4-0.

3. [Advanced Surgery Center, Cedar Rapids, Linn County](#): Establish Ambulatory Surgery Center – \$81,000.

Staff report by Barb Nervig. The applicant was represented by Douglas Fulton, Lee Birchansky, M.D., Lisa Pritchard, Dave Koch, and Julie Sadler, M.D. The applicant made a presentation and answered questions posed by the Council.

Dr. David Kresnicka and Dr. Mark J. Goedken, both family physicians, appeared as affected parties in favor of the project.

Appearing as affected parties opposed to the project were Doug Gross, representing St. Luke's Hospital; John Sheehan, COO of St. Luke's Hospital; Peg Pickering, St. Luke's Hospital; Michael Patterson of Surgery Center of Cedar Rapids; Ed McIntosh representing Mercy Medical Center—Cedar Rapids; Carol Watson and Tim Charles, both with Mercy Cedar Rapids.

Marilyn Musser with Wellmark Blue Cross/Blue Shield appeared as an affected party to answer any Council questions. A letter had been previously submitted to the record from Wellmark.

A motion by Scott, seconded by Beaman, to DENY a Certificate of Need carried 3-1. Nichols voted no.

### **III. APPROVE MINUTES OF PREVIOUS MEETING (DECEMBER 9, 2004)**

A motion by Butz, seconded by Beaman to approve the minutes as written was passed by voice vote.

The next meeting of the Council will be Tuesday, April 12, 2005. Time and location to be determined.

The meeting was adjourned at 3:40 PM.

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

IN THE MATTER OF THE APPLICATION OF )  
 )  
UNIVERSITY OF IOWA HOSPITALS & CLINICS )  
 )  
IOWA CITY, IOWA )

**DECISION**

This matter came before the State Health Facilities Council for hearing on Wednesday, January 19, 2005.

The application proposes the purchase of a computed tomography/positron emission tomography system (CT/PET) and a 3.0 Tesla magnetic resonance imaging system (MRI) to be used for radiation therapy simulation at a cost of \$4,683,000.

The University of Iowa Hospitals and Clinics 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. Representing the applicant were Brandt Echternacht, John E. Bayouth, M.D., Laurie Smith and Geraldine Jacobson, M.D. Barb Nervig of the Iowa Department of Public Health summarized the project in relation to review criteria. 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 4-0 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) (2003) made the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. The applicant is proposing the purchase of a Siemens 3.0 Tesla MAGNETOM trio MRI system for \$2,311,000 and a Siemens Biograph CT/PET simulation system for \$2,372,000, for a total cost of \$4,683,000.
2. The proposed equipment will replace an 8-year-old radiographic treatment simulator and a 9-year-old CT simulator, both past their expected useful life in addition to being technologically obsolete for performing advance simulation studies as required by contemporary radiation therapy technology.

3. MRI has become a new standard for radiation therapy treatment planning. Virtually all UIHC radiation oncology patients receive MR simulation if they have a brain tumor and are able to undergo the procedure. This is currently accomplished through collaboration with the MRI Center but creates significant patient inconvenience due to the geographic separation of the Radiation Oncology Center from the MRI Center as well as generating backlogs in the MRI Center.
4. Although a CT/PET scanner is now used diagnostically and for disease management in the PET Imaging Center at the UIHC, it is not practical to use this technology for these non-diagnostic, treatment-planning procedures due to time and capacity constraints. Also, because of specific requirements for patient positioning when undertaking simulation studies, the PET Imaging Center's diagnostic throughput would be compromised.
5. The applicant states that the proposed equipment is necessary for UIHC to maintain and enhance the radiation oncology services it now provides to patients from throughout the state and region, to enable it to continue to train health care students and professionals in the use of the new state-of-the-art simulation systems, and to conduct clinical research studies to identify other applications for their use in performing patient treatment simulations.
6. The applicant does not believe that the proposed equipment will result in a change of the geographic distribution of patients served as the new equipment replaces the function of existing outmoded equipment.
7. The applicant sees no feasible options except to replace this outmoded equipment. One alternative explored was to purchase a high resolution CT simulator to provide the necessary level of anatomic information. However this anatomic information alone, although important, is no longer considered to be sufficient to undertake accurate and comprehensive treatment planning without coupling it with functional imaging as provided by PET.
8. The proposed equipment will be installed in the new Center of Excellence in Image-Guided Therapy, which will become operational in May 2005. This new facility will replace UIHC's 40-year-old radiation oncology center facilities now located in the General Hospital. The design of the new facility includes the development of one patient treatment vault that will not initially be equipped. This vault will be available for the installation of future radiation treatment delivery devices of radiation oncology simulators as required based upon the need for additional equipment.
9. The applicant states that the Radiation Oncology Center at the UIHC is an essential component of the Holden Comprehensive Cancer Center, Iowa's only National Institute of Health(NIH)-designated comprehensive cancer center and one of only 61 NIH cancer centers in the nation.
10. The Department of Radiation Oncology at the UIHC serves as the only site in Iowa for training the state's future radiation oncologists and radiation therapy technologists. In

addition, a new program has recently been initiated in this department at the UIHC to train radiation physicists.

11. The applicant does not believe that the proposed equipment will result in a change of the geographic distribution of patients served as the new equipment replaces the function of existing outmoded equipment.
12. 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. Also, the UIHC has entered agreements with most managed care programs to assure that Iowans affiliated with these programs may be referred to the UIHC whenever necessary.
13. The transportation assistance offered by the applicant and the Indigent Patient Care Program assist UIHC in providing accessible services to Iowa's rural population and to those who are medically underserved.
14. The applicant provided approximately \$132 million in uncompensated care for hospital services in their last fiscal year. The UIHC, together with Broadlawns Polk County Hospital in Des Moines, provide over half of all uncompensated care furnished in Iowa hospitals.
15. The applicant states that the proposed equipment will be purchased from cash on hand.
16. Both units have a useful life of 5 years per the American Hospital Association's "Estimated Useful lives of Depreciable Hospital Assets." This is the same as the equipment being replaced which was utilized beyond the five years. The units that are to be replaced are in relatively good working order and will be offered for sale on the international health care equipment market.
17. The hospital standard rate schedule will be used to determine the patient charges. The rates are based on a fully-allocated/average cost accounting methodology and therefore, the costs relevant to the procedures are covered in the charges.
18. The applicant does not anticipate that additional staff will be required to support the initial use of the proposed treatment planning technology. Existing staff will be provided the necessary training to operate the new systems
19. As shown below, the number of radiation therapy simulation procedures performed at the UIHC has more than doubled in the last 3 years. The applicant projects that the number of procedures will increase by about 37% over the 3 year post installation period.

University of Iowa Hospitals and Clinics  
Department of Radiation Oncology  
Radiation Therapy Simulation Procedures

FY 2002-FY 2008

	<u>Historical</u>			<u>Interim</u>	<u>Post-Installation</u>		
	2002	2003	2004	2005*	2006*	2007*	2008*
Simulation Procedures	956	1278	2102	2236	2796	2856	3070

\* Projections

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. Although the applicant currently has a CT/PET and a 3.0 Tesla MRI, they are located in other parts of the hospital and the demand on these systems is already high. The Council concludes that to add the simulation function to the existing equipment is not practicable. 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 replacement of obsolete simulation equipment with state of the art technology to perform simulations will not impact other facilities within the geographic area from which the UIHC receives patients. The proposed equipment is currently in use as radiation simulation systems at only six facilities nationwide. 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 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 the current simulation systems at the UIHC are obsolete and the CT/PET and 3.0 T MRI currently in place at the UIHC are nearly fully utilized for diagnosis and are not conveniently available for radiation simulation without compromising their intended use for diagnoses. Iowa Code Sections 135.64(1) and 135.64(2)d.

5. In addition, as required by Iowa Code section 135.64(3), the Council has given due consideration to issues related to statewide tertiary health care, health care education, and clinical research in determining to grant this CON.

The facts, considered in light of the criteria contained in Iowa Code Section 135.64 (1 and 2) (2003), 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 (2003).

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 February 2005

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Edward C. Nichols, Chairperson  
State Health Facilities Council  
Iowa Department of Public Health

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



3. The proposal would reduce the number of operational acute beds at the hospital by 24, from 49 to 25. The reduction to 25 acute hospital beds is a requirement of the CAH program. The need for 14 skilled beds was arrived at through an analysis of their historical trends in skilled census.
4. Last year, the hospital had an average daily acute care census of 16.4 and an average daily skilled care (swing beds) census of 8.4. There are many days that the hospital's acute census ranges into low to mid twenties so in order to have the flexibility to care for as many as 25 acute patients and continue to provide skilled care, a distinct part skilled unit is necessary. The applicant does not anticipate any significant changes in average daily skilled census (8.4) or length of stay (14.8).
5. The applicant does not intend to expand its services beyond those services that are currently being provided and does not anticipate that their patient population will change in size or composition as a result of this proposal.
6. The applicant works cooperatively with all area nursing facilities and conducts a quarterly meeting with the Directors of Nursing of all area homes to discuss cooperation and to better coordinate patient care. The area nursing facilities utilize Boone County Hospital for physical, occupational and speech therapy. The hospital frequently transfers their skilled and acute care patients to these facilities.
7. The applicant's skilled care patients have an average length of stay of 14.8 days and are typically patients recovering from hip or knee replacement, hip fracture, stroke, or patients in need of skilled care to regain activities of daily living or are patients following an acute illness of surgery who still require the care of a registered nurse or therapist. It is not the applicant's intention to provide care to patients beyond the scope of their current services.
8. The applicant discussed the possibility of providing for the care of their skilled patients outside of the hospital with the two largest nursing facilities in the county and both organizations indicated that they were either not capable of that level of care or were not interested in pursuing that option at this time. Also, the hospital's Board of Trustees and Medical Staff have rejected this alternative because of the level of intensive nursing care needed by the skilled patients the hospital serves.
9. The applicant believes that their skilled care services provides an essential level of care that they feel is not available anywhere else in the county.
10. Mary Greeley Medical Center in Ames submitted a letter of support for this proposal and the administrator of the Eastern Star Masonic Home appeared at the hearing in support of the project. There were no letters of opposition.
11. The applicant is currently doing minor renovations to the area where the skilled unit would be located. These renovations were necessary and would have been done regardless of the outcome of this proposal. The applicant states that no additional staff will be necessary, as they do not anticipate an increase in skilled census over current levels.

12. In FY 2002, the most recent year for which data is available, the applicant had a negative Medicare margin of 31.5%. The cost of care to Medicare patients that year was \$8, 875,778 compared to reimbursement of \$6,748,047. The applicant states that 52.5% of their patient revenue was from Medicare in FY04.
13. The applicant projects an increase in Medicare reimbursement of over \$1.9 million as a participant in the CAH program.
14. The hospital currently receives a tax request from the county of \$750,000 and projects that the request from the county may go down to \$350,000 if CAH status is achieved.
15. The applicant anticipates no increase in their charges or in the cost of care to the community.

### 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 proposed bed conversion allows the applicant to continue to serve the same population while qualifying for Critical Access Hospital status which will greatly improve the reimbursement and financial viability of the hospital. 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 nature of the patients currently served by the hospital and long term care facilities in the area will not be impacted by this project. The

Council takes notice that no opposition to the proposal was received and the nearest hospital as well as one of the local nursing facilities openly supported the proposal. 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 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 due to the high average daily census of the hospital's acute care beds, using the proposed 25 acute care beds as swing beds for skilled care is not practicable. The Council concludes that if the hospital were to convert to CAH without a distinct part skilled unit, the patients currently receiving skilled nursing care in the hospital's swing beds would experience problems in obtaining care of that type locally. 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) (2003), 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 (2003).

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 February 2005

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Edward C. Nichols, Chairperson  
State Health Facilities Council  
Iowa Department of Public Health

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



1. The project proposes the establishment of an outpatient surgery center at the same site in Cedar Rapids where outpatient surgery had been provided in two operating suites from 1998 to December of 2004. The outpatient surgery services provided at this location were provided and billed through the hospital license of St. Luke's Methodist Hospital. The hospital leased the space from Birchansky Real Estate L.C. Dr. Lee Birchansky is the owner and manager of Birchansky Real Estate L.C.
2. Fox Eye Laser Vision & Cosmetic Institute, P.C. (Fox Eye) has accounted for approximately 80% of the surgeries at this site over the last five years. Fox Eye is an ophthalmology group that 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 performed at this location. Approximately 1,500 surgical procedures a year have been performed at this location and the same number was projected to be performed at this location under the proposal.
3. In 2003, the 5-year initial term lease between St. Luke's and Birchansky Real Estate was due to expire. St. Luke's chose not to exercise an additional 5-year option and the lease arrangement went to a month-to-month basis. The applicant states that this prompted him to file a letter of intent in January 2004 and an application in August 2004 to gain sole ownership and establish an outpatient surgery center. On November 16, 2004, the Department determined the project to be non-reviewable as it constituted a change in the designation of the type of institutional health service and a change in licensure under Iowa Code section 135.63(2)"o". However on December 7, 2004, St. Luke's requested removal of the location from its hospital license and all equipment and hospital personnel were removed from the site. This change in circumstances resulted in the Department determining the project would require a Certificate of Need as it would constitute the establishment of a new institutional health facility and would not meet any of the statutory exemptions contained in chapter 135.
4. The applicant indicated that the same physicians would continue to use the facilities at this location, the number of operating rooms would remain the same and the same services would be performed. The ownership and structure of the service would be changed from hospital based to free-standing.
5. At the hearing, two family practice physicians from the area expressed a desire to utilize the Fox Eye location to perform colonoscopies. They currently perform these procedures at the hospital in Vinton as the hospitals in Cedar Rapids will not grant them privileges for this procedure.
6. The majority of the surgical patients 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.

7. The applicant provided two alternative pro formas; one reflecting budget at previous usage (Fox Eye and podiatric services) and one reflecting use only by Fox Eye. Both scenarios indicate the proposal to be financially feasible.
8. The applicant states that as an ASC the charges will be lower than charges ~~as~~ at a hospital-based unit and the facility's costs will also be less than a hospital based unit. The applicant stated that the actual payment for a cataract removal performed through a hospital is \$1,254.57 as compared to the actual payment for the same procedure performed at a surgery center, \$956.45. The difference is \$298.12. The applicant states that patients will benefit in that their co-pays will be based on the lower Medicare and insurance fee schedules.
9. Mercy representatives stated that the Centers for Medicare and Medicaid Services(CMS) fee schedules are moving hospitals and ambulatory surgery centers closer on reimbursement.
10. The financial projections for the facility allow for 5% of revenues to be set aside for charity care.
11. Dr. Birchansky and Dr. Stangler have staff privileges at both St. Luke's Hospital and Mercy Medical Center.
12. Dr. Birchansky was utilizing both operating rooms at Fox Eye every Tuesday morning where he performed 5-6 cataract surgeries every hour. Dr. Stengler was utilizing the operating rooms on Thursdays; he performed approximately 400 procedures last year as an ophthalmologic plastic surgeon. The applicant states that there has been excess operating room capacity for the past 3 years and estimated that operating rooms in the community are at 50% or less capacity.
13. There are three other providers of outpatient surgery in Linn County: Mercy Hospital, St. Luke's Hospital, and the Surgery Center of Cedar Rapids (SCCR), a multi-specialty surgery center operating as a joint venture between physicians and St. Luke's Hospital.
14. There are four operating rooms at SCCR and according to the executive director of SCCR, they are operating at 40% capacity. In 2004, SCCR projects it will conduct approximately 4,000 surgical and non-surgical procedures. Dr. Birchansky has performed eye surgery at this location on at least one occasion since St. Luke's withdrew their services at the Fox Eye location.
15. Utilization data submitted by St. Luke's Hospital in a letter dated January 4, 2005 provided data for both the hospital campus and the Fox Eye location. St. Luke's took two operating rooms at the hospital offline when SCCR opened.

### Historical Surgical Utilization

<u>Year</u>	<u>In Patient</u>	<u>Outpatient on Hosp. Campus</u>	<u>Outpatient at Fox Eye</u>	<u>Total Surgeries</u>
2002	3,358	6,617	1,284	11,259
2003	3,518	6,346	1,491	11,355
2004(ann.)	3, 169	5,985	1,487	10,641

Projected Surgical Utilization

<u>Year</u>	<u>In Patient</u>	<u>Outpatient on Hosp. Campus</u>	<u>Outpatient at Fox Eye</u>	<u>Total Surgeries</u>
2005	3,201	6,045	1,502	10,747
2006	3,233	6,105	1,517	10,855
2007	3,265	6,166	1,523	10,963

16. In 1995 Mercy Hospital spent over \$600,000 to build two operating suites on the main floor near an entrance to the hospital to be used exclusively for eye surgeries. Prior to 1997 Dr. Birchansky performed eye surgery exclusively at Mercy. As a result, Dr. Birchansky was actively involved in the design of these suites and changes were made to accommodate Dr. Birchansky's requests regarding the design and operation of these suites. There are currently 15 eye physicians using these suites, 11 general surgeons and 4 retinal surgeons. In December of 2004, Mercy was able, upon 24 hours notice, to accommodate all of Dr. Birchansky's patients in these two operating suites.
17. St. Luke's stated that market share was a factor in their original decision to extend their outpatient surgery to the Fox Eye location.
18. Mercy stated that prior to December 6, 2004, the two outpatient operating rooms dedicated to eyes were in use 44% of the time. Since that time, Dr. Birchansky has averaged 24 patients every Tuesday raising that percentage to 52%. Mercy has changed the waiting room space to accommodate Dr. Birchansky's routine of speaking with family members.
19. Mercy provided a chart of the Eye OR utilization that indicates both rooms are available Tuesday afternoon, every other Thursday morning and all day on Friday.
20. The applicant proposes to purchase the equipment needed to outfit the ASC either from St. Luke's or from a medical equipment supplier.
21. The applicant will need to fill 6.0 FTEs, including one nurse manager, four RNs and one secretary/medical billing clerk. The applicant plans to fill these positions from contacts in the nursing community, advertising in the media for open positions and coordination with nursing schools at Mount Mercy College and the University of Iowa. St. Luke's states that they had 13-14 people at the Fox Eye site to support the surgery performed there under their license.

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. The Council concludes that the operating room capacity at the two hospitals along with the four operating rooms at SCCR can accommodate the procedures that have been performed at the Fox Eye location the past six years. Specifically, the operating rooms at SCCR are operating at only 40 % of capacity and the operating rooms at the hospitals are operating at approximately 30 – 50 % capacity, indicating significant excess capacity in Cedar Rapids for these surgeries and that adequate alternatives to the establishment of a new surgery center exist. 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 not being used in an appropriate and efficient manner and will be impacted by this project. The Council concludes that the operating rooms at the two hospitals, along with the four operating rooms at SCCR, are operating at 40-52% capacity. The Council also heard testimony regarding other types of procedures projected to be performed at the proposed facility and concluded that the potentially unlimited and largely unregulated expansion of outpatient surgeries which could be performed at this facility could negatively impact the two existing hospitals by continuing to siphon off revenue needed to subsidize other important hospital services. 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 on less than 24 hours notice, Mercy Hospital was able to accommodate 27 of Dr. Birchansky's patients in outpatient surgery rooms designed and

built exclusively for eye surgery. The Council also finds that these same operating rooms at Mercy Hospital have regular times open that could continue to 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) (2003), 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 (2003).

Dated this \_\_\_\_\_ day of February 2005

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Edward C. Nichols, Chairperson  
State Health Facilities Council  
Iowa Department of Public Health

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