

Comments on Novant Health Monroe Outpatient Surgery, LLC

submitted by

Union Health Services, LLC

In accordance with N.C. GEN. STAT. § 131E-185(a1)(1), Union Health Services, LLC (UHS) submits the following comments related to competing applications to develop an additional operating room in Union County. UHS's comments include "*discussion and argument regarding whether, in light of the material contained in the application and other relevant factual material, the application complies with the relevant review criteria, plans and standards.*" See N.C. GEN. STAT. § 131E-185(a1)(1)(c). In order to facilitate the Agency's review of these comments, UHS has organized its discussion by issue, noting the general CON statutory review criteria and specific regulatory criteria and standards creating the non-conformity relative to each issue, for the following application:

F-11343-17 Novant Health Monroe Outpatient Surgery (NHMOS)

GENERAL COMMENTS

Novant Health was awarded a CON in 2006 to develop a one room ambulatory surgery center (ASC) in Union County (Project ID # F-7310-05). That facility, now referred to as NHMOS, opened in 2009. On January 31, 2013, NHMOS closed. For the last four and a half years, NHMOS has served no patients, provided no care of any level of quality, and offered no access to the underserved or to any resident of Union County. Moreover, NHMOS has reduced the value of healthcare by abandoning a facility for four and half years that had an approved capital cost of \$4.7 million. Over that same time period, UHS's ambulatory surgery center, Union West Surgery Center (UWSC), has performed approximately 10,000 operating room cases, been named a Top Performer for patient experience in outpatient surgery by Press Ganey, and provided patients with lower cost access to freestanding ambulatory surgery services. Both NHMOS and UHS seek to add an operating room pursuant to the need determination in the *2017 State Medical Facilities Plan (SMFP)*. UHS believes it has presented a compelling application to develop the operating room. By contrast, NHMOS's application is unprecedented in the history of the North Carolina Certificate of Need program. UHS is not aware of any other applicant that has sought to develop additional capacity despite having abandoned its existing capacity. In addition to NHMOS's unprecedented request, there are several factors which show that UHS is the more effective applicant for the operating room:

- UHS is the only applicant that is actively seeking physician investors. As noted in its application, UHS believes that physician ownership has numerous benefits for quality of care and patient satisfaction;
- UHS is the only applicant that proposes to develop additional capacity in the western part of the county, which is projected to experience higher growth than the county overall, only has two operating rooms, and represents 80 percent of the total county population; and,
- UHS is the only applicant that addresses the core need in the *2017 SMFP*: additional surgical capacity based on surgical volume growth and a deficit of operating rooms at UWSC and Carolinas HealthCare System Union. Of note, the *2017 SMFP* designated NHMOS as a "chronically underutilized facility."

UHS also believes that it is the only applicant that has demonstrated conformity with the statutory and regulatory review criteria and is, therefore, the only applicant that can be approved. The following sections provide the detailed comments on NHMOS's application.

APPLICATION-SPECIFIC COMMENTS

Despite its refusal to serve the residents of Union County over the last four and half years, NHMOS argues in its application that it needs to spend an additional \$8.5 million to develop an additional operating room and procedure room. NHMOS states that the *"project will meet the demand for expanded surgical services in Union County, and improve access to surgical services for a growing population by providing a lower cost freestanding surgical option in the market for Novant Health patients"* (page 24). NHMOS could have met this need at any time over the last four and half years had it not closed. Within the more than 1,000 pages of NHMOS's application, there is only one sentence that addresses why it has not met this need: *"NHMOS was experiencing difficulty attracting surgeons to a surgical facility with only one operating room and after several years of operation, Novant Health determined that a freestanding ambulatory surgical facility with only one operating room could not be financially viable"* (page 46). UHS warned of the likelihood of such an outcome in its comments during the 2005 review. Despite UHS's comments, Novant argued the contrary position in 2005 CON application and sworn statements by its representatives.

In its approved 2005 CON application to develop NHMOS, Novant Health stated that there was a need for a one room ASC and that it would be financially feasible. That application included a letter from Novant Health's Chief Financial Officer, Dean Swindle, stating that, *"[t]here are sufficient reserves to fund this project, including the associated start up costs for this project"* and that *"[t]he proposed project will effectively serve the growing ambulatory surgical needs of the population of Union County and is a timely and logical compliment to the array of health care services offered by the Novant Health Southern Piedmont Region"* (Exhibit 20). The financial statements included in that application indicated positive net income in each of the first three years of operation of the project for a total of over half a million dollars. Yet, in its currently proposed application, NHMOS states that a one operating room facility is unviable and Novant Health cannot support it financially.

Novant Health's 2005 CON application included letters of support from approximately 26 surgeons and proceduralists indicating their support for the proposed one room ASC and intention to use the facility for their cases. In response to Section V.3(a), Novant Health provided the following response in its 2005 application:

Describe the efforts made by the applicant to involve physicians and other medical personnel crucial to the viability of the proposal in the planning phase of the project?

Dr. Stephen Wallenhaupt, Executive Vice President of Medical Affairs for Novant Southern Piedmont Region has been involved in the planning of the proposed facility and has discussed the project with other physicians. In addition, representatives of Presbyterian Healthcare, and in particular, Presbyterian Hospital Matthews, discussed the project with physicians in Union County. Please see Physician Letters of Support found in Exhibit 16.

See 2005 Novant Health Application, page 42.

Yet, in its currently proposed application, NHMOS states that a one operating room ASC has difficulty attracting surgeons.

At the public hearing for the 2005 CON application, Novant Health's representative, Steven Wallenhaupt, Executive Vice President of Medical Affairs, Southern Piedmont Region, stated:

"Presbyterian SameDay Surgery Center at Monroe, LLC (SDSC Monroe) proposes to develop SDSC Monroe, a freestanding multi-specialty ambulatory surgery center with one ambulatory surgical operating room located at the corner of Windmere Drive and US Highway 74 in Monroe in Union County in response to the need identified in the 2005 State Medical Facilities Plan for one additional operating room. I have been involved in the planning of the proposed facility and have discussed the project with other physicians. In addition, representatives of Presbyterian Healthcare, and in particular, Presbyterian Hospital Matthews, discussed the project with physicians in Union County and they are in support of this project. I have been part of the planning process for SDSC at Monroe and believe it will enhance the delivery of surgical care for Union County residents"

Emphasis added. See Attachment 1.

Clearly, Novant Health, as well as its supporting physicians indicated that a one room ASC was needed and would succeed.

In sworn deposition testimony during the discovery phase of the contested case on the 2005 review, Novant Health's expert witness and the author of its 2005 CON application was asked about the projected utilization of the proposed one operating room ASC:

Question [Mr. Gary Qualls, Union Health Services Counsel]: *Okay. And also, likewise, though, that 20 percent market share and the utilization projections for Sameday Surgery, did -- did that factor in any assumption about how much Same Day Surgery Center Monroe would cut into the market share of Presby's other facilities or Novant's other facilities?*

Answer [Ms. Nancy Bres-Martin, Novant Health's expert witness and CON author]: *We did not assume that. We looked at -- we're putting a surgical center in a market where there's a defined need, where we have very strong physician support, where there is a population that is ready to use this. We assumed we would get an equal share based upon the percentage of the, you know, surgical capacity that we represented.*

Emphasis added. See Deposition Testimony for Nancy Bres-Martin, 159:4 to 159:15, included as Attachment 2.

As shown above, Novant Health asserted that its facility's projections were reasonable based on the need in the market and "strong" physician support. Of note, the Agency relied on Novant Health's assertions of physician support in approving the 2005 CON application. In its analysis of Criterion 3, the Agency stated:

SDSC Monroe is proposing to develop a new licensed ambulatory surgical facility with one operating room and locate it in Monroe. SDSC Monroe will be a wholly owned subsidiary of Presbyterian Healthcare Corporation, which also owns SameDay Surgery Center at Presbyterian in downtown Charlotte. On page 22 of the application, the applicant states that it anticipates 11 physicians will be credentialed to use SDSC Monroe including two gastroenterologists, one general surgeon, two ob/gyns, four ENTs, one orthopedic surgeon and one urologist . . .

The applicant projects to perform 8.6 procedures per ambulatory surgical operating room per day, which exceeds the threshold of 4.8 surgical cases per day. Further, Presbyterian does not own any other facility in Union County, which is the proposed service area as defined in the 2005 SMFP. To further support its projections, the applicant included letters from physicians indicating their intent to perform ambulatory surgical procedures at SDSC Monroe, in Exhibit 16.

Pages 3 and 8 of Agency Findings for 2005 Union County OR Review. See Attachment 3 for excerpts.

Of note, while Novant Health stated in its application that 11 physicians would be credentialed to use the facility, its License Renewal Applications (included in Exhibit 21 of NHMOS’s current application) consistently showed a medical staff of 33 to 46 physicians (excluding anesthesiologists) over its years of operation. Clearly, physicians were willing to join the medical staff at NHMOS.

In the 2005 review, the Agency was further persuaded by Novant Health’s historical provision of care to residents of Union County stating:

Presbyterian Hospital Matthews is a related entity of the applicant and is located in Mecklenburg County, near the Union County border. According to the 2005 Hospital License Renewal Application for Presbyterian Hospital Matthews, the hospital provided a total of 9,343 ambulatory surgical and endoscopy cases in its shared operating rooms. Of the 9,342 cases, 3,109 or 33% of the patients were from Union County. Therefore, it is reasonable to assume that Presbyterian's proposed facility, SDSC Monroe, would serve 2,241 patients in the third year of operation, since all 2,241 patients are expected to be from Union County.

Emphasis added. Page 7 of Agency Findings for 2005 Union County OR Review. See Attachment _ for excerpts.

Despite Novant Health’s statements, sworn testimony, historical provision of care to Union County residents, and medical staff, the facility failed to meet the utilization projections assumed in the 2005 application. As shown in the table below, Novant Health projected to perform more than 2,000 cases annually at the facility.

Operating Cases Projected for NHMOS in 2005 CON Application

	<i>Project Year 1</i>	<i>Project Year 2</i>	<i>Project Year 3</i>
Operating Room Cases	2,084	2,182	2,241

Source: Project ID # F-7310-05.

However, during the five years it was operational, NHMOS never performed more than 787 cases a year, which correlates to no more than 35 percent of its projected year three volume.

NHMOS Actual Operating Room Cases

	<i>FFY09</i>	<i>FFY10</i>	<i>FFY11</i>	<i>FFY12</i>	<i>FFY13</i>
Operating Room Cases	162	532	703	787	279

Source: Exhibit 21 of current NHMOS application.

Simply put, the actual experience of NHMOS was vastly different¹ from what was projected, sworn to, and publicly stated by Novant Health. Given this discrepancy, the Agency should closely consider the reasonableness and support for NHMOS’s current application. UHS believes that such a review will reveal that NHMOS’s current application, similar to its 2005 application, is unreasonable and unsupported for numerous reasons, as outlined below, and should not be approved.

In addition to the closure of NHMOS, Novant Health has also historically failed to develop approved ASCs. As noted above, NHMOS argues that it closed NHMOS because it “determined that a freestanding ambulatory surgical facility with only one operating room could not be financially viable” (page 46). However, Novant Health has also failed to-date to develop two other approved ASCs, Same Day Surgery Center New Hanover (SDSCNH) and Same Day Surgery Center Franklin (SDSCF), both of which were approved for two operating rooms.

As noted in the Agency Findings in the 2016 Brunswick County Operating Room Review,

SDSCNH was approved to develop a separately licensed ambulatory surgical facility with two operating rooms in New Hanover County, effective October 2007. Over four years later, having not developed the project, and pursuant to a July 2, 2012 declaratory ruling, New Hanover Regional Medical Center acquired 100% of NH’s interest in the proposed SDSCNH to develop the ORs in the hospital, not as a separately licensed ambulatory surgery center, as approved. Therefore, [Novant Health] did not develop the CON-approved ambulatory surgical facility in New Hanover County.

SDSCF was approved to develop a freestanding ambulatory surgery center in Franklin County, effective December 29, 2009. Approximately four years later, having not developed the project, [Novant Health] submitted a change of scope and cost overrun CON application, Project ID # K-10229-13, to relocate one OR from Novant Health Franklin Medical Center for a total of two ORs at the previously approved ASC in Franklin County. This project was approved effective December 3, 2014. In September 2016, per SDSCF’s progress report dated September 21, 2016, the development of the project had not begun and [Novant Health] was still in discussions with a possible joint venture partner. The Agency received prior written notice, dated November 22, 2016, stating Duke University Health System’s intent to acquire 100% of the membership interest in SDSCF, the [Novant Health] LLC which has CON approval to develop a two-OR

¹ By contrast, in its approved application to develop its facility (Project ID # F-8322-09), UWSC projected to perform 2,494 operating room cases in project year three and it exceeded that in its third and fourth full fiscal years of operation (Calendar Year 2015 and 2016). Please see page 39 of UWSC’s currently proposed application.

ambulatory surgery center in Franklin County. On March 30, 2017, the Agency received its most recent progress report on this project, which states a Letter of Intent (LOI) was executed and discussions with the joint venture partner continue. As of the date of this decision, the Agency has had no further word on this project development. Therefore, [Novant Health] has not developed the CON-approved ambulatory surgical center in Franklin County in a timely manner.

See Agency Findings for 2016 Brunswick County Operating Room, pages 58-59.

As noted in the Agency Findings, Novant Health’s failure to develop these approved ambulatory surgery centers has denied New Hanover and Franklin counties access to ambulatory surgery services. Similarly, NHMOS’s closure has denied Union County residents access to ambulatory surgery services. Both SDSCNH and SDSCF were approved to develop two operating rooms. As such, neither was limited to one OR like NHMOS, yet Novant Health failed to develop these ASCs.

Novant Health now proposes to develop a second OR at NHMOS arguing that its closure was the result of having only one OR. However, Novant Health has failed to develop two approved ASCs with two operating rooms. Clearly, the number of ORs is not the reason for Novant Health’s historical ASC project failures. Given this history, the Agency should not accept Novant Health’s statements and commitment that it will develop the currently proposed project.

Errors in NHMOS’s Methodology

NHMOS’s methodology contains several errors and overstates the conservativeness of its methodology. As shown on page 34 of its application, NHMOS projects that Novant Health Union County cases will grow in the future at 3.5 percent annually based on an average of four surgical growth rates:

Novant Health Union County Projected Outpatient Surgical Growth Rate

Population Growth 2016-2021	1.7%
Union County Outpatient Surgical Growth 2013-2016	4.1%
NH Union County Outpatient Surgical Growth 2013-2016	6.9%
Population Growth NHMOS Zip Code	1.1%
Average of Four Growth Rates	3.5%

Source: Exhibit 3, Tables 2,4,5,6

However, NHMOS has misstated the basis of these growth rates in an effort to make this assumption appear more reasonable. As detailed below, the two highest growth rates in the table and the only two related to actual surgical utilization are one year annual growth rates, not 2013 to 2016 rates as presented.

First, NHMOS states that the “Union County Outpatient Surgical Growth 2013-2016” is 4.1 percent. This is incorrect. As shown on page 26 of the NHMOS application and excerpted below, the Union County Outpatient Surgical Growth 2013-2016 as calculated by NHMOS is 1.3 percent (this growth rate calculation itself is also erroneous as discussed below). The 4.1 percent figure is the one-year growth rate.

**Outpatient Surgical Utilization – Union County Residents
All North Carolina Surgical Facilities
FFY 2013 – FFY 2016**

	2013	2014	2015	2016	CAGR 2013-2016	CAGR 2014-2016	AGR 2015-2016
Union Residents Outpatient Surgical Growth – All NC Surgical Facilities	13,285	13,099	13,259	13,798	1.3%	2.6%	4.1%
Annual Growth Rate		-1.4%	1.2%	4.1%			

Source: Exhibit 3, Table 4

As such, the statistic used by NHMOS in calculating its average is more than three times higher than the actual CAGR and represents a single year rather than a three year period.

Second, NHMOS states that the “NH Union County Outpatient Surgical Growth 2013-2016” is 6.9 percent. This is incorrect, as well. As shown on page 1000 of the NHMOS application and excerpted below, the Novant Health Union County Outpatient Surgical Growth 2013-2016 as calculated by NHMOS is 3.5 percent (this growth rate calculation itself is also incorrect as discussed below). The 6.9 percent figure is the one-year growth rate. As such, the statistic used by NHMOS in calculating its average is nearly two times higher than the actual CAGR and represents a single year rather than a three year period.

Growth Rates									CAGR	CAGR	AGR
	2013	2014	AGR 2013-2014	2015	AGR 2014-2015	2016	AGR 2015-2016	2013-2016	2014-2016	2015-2016	
Union Residents Surgical Growth	13,285	13,099	-1.4%	13,259	1.2%	13,798	4.1%	1.3%	2.6%	4.1%	
NH Matthews Surgical Providers Growth	1,873	2,068	10.4%	2,220	7.4%	2,385	7.4%	8.4%	7.4%	7.4%	
NH Surgical Providers Volume	5,303	5,048	-4.8%	5,506	9.1%	5,887	6.9%	3.5%	8.0%	6.9%	

Source: LRA Ambulatory Surgery Patient Origin Tables

As noted above, in addition to misstating the bases for these growth rates, NHMOS’s growth rate calculations are incorrect because NHMOS understates the number of Union County operating room cases in FFY 2013 and overstates the number of FFY 2016, which in turn overstates both the one-year and three-year growth rates.

As shown in Exhibit 3, Table 4 (excerpted below), NHMOS failed to include the Union County cases that its own facility performed in FFY 2013 prior to closing. NHMOS is not listed in the table (nor is it included in the All Others category) and its volume is not included in the calculated of total Union County operating room cases based on the 2014 License Renewal Database developed by the Healthcare Planning and Certificate of Need Section.

Table 4. Union County Outpatient Surgical Providers - Market Share Analysis LRA

Surgical Provider	2013		2014		2015		2016			
	Volume	Mkt Share	Volume	Mkt Share	Volume	Mkt Share	Volume	Mkt Share		
CMC Union	2,914	21.9%	3,009	23.0%	3,116	23.5%	3122	22.6%		
CMC Main & Mercy	1,286	9.7%	1,644	12.6%	1,728	13.0%	1720	12.5%		
NH MMC	1,483	11.2%	1,372	10.5%	1,471	11.1%	1594	11.6%		
NH PMC	1,380	10.4%	1,590	12.1%	1,937	14.6%	2049	14.9%		
SouthPark Surgery Center	1,417	10.7%	1,109	8.5%	1,153	8.7%	1251	9.1%		
Union West Surgery Center	1,160	8.7%	1,344	10.3%	1,215	9.2%	1311	9.5%		
Charlotte Surgery Center	1,089	8.2%	1,048	8.0%	658	5.0%	640	4.6%		
NH COH (Included with PMC)	432	3.3%	0	0.0%	0	0.0%	0	0.0%		
Matthews Surgery Center	390	2.9%	696	5.3%	749	5.6%	791	5.7%		
CMC Mercy (included with CMC Main)	490	3.7%	0	0.0%	0	0.0%	0	0.0%		
CMC Pineville	485	3.7%	418	3.2%	433	3.3%	495	3.6%		
Presbyterian SameDay Surgery Center at Ballantyne	172	1.3%	254	1.9%	166	1.3%	166	1.2%		
Carolina Center for Specialty Surgery	92	0.7%	122	0.9%	116	0.9%	105	0.8%		
CMC University	195	1.5%	204	1.6%	173	1.3%	179	1.3%		
Mallard Creek Surgery Center	0	0.0%	5	0.0%	64	0.5%	68	0.5%		
NH HMC	19	0.1%	19	0.1%	21	0.2%	26	0.2%		
NH Huntersville Surgery Center	10	0.1%	8	0.1%	9	0.1%	10	0.1%		
All Others	233	2.0%	257	2.0%	250	1.9%	250	2.0%		
Total	13,285	100%	13,099	100%	13,259	100%	13,798	100%		
NH Surgical Providers Volume		39.9%				41.5%		42.7%		
NH Matthews Surgical Providers Volume Mkt Share		14.1%		15.8%		16.7%		17.3%		
Growth Rates										
	2013	2014	AGR 2013-2014	2015	AGR 2014-2015	2016	AGR 2015-2016	CAGR 2013-2016	CAGR 2014-2016	AGR 2015-2016
Union Residents Surgical Growth	13,285	13,099	-1.4%	13,259	1.2%	13,798	4.1%	1.3%	2.6%	4.1%
NH Matthews Surgical Providers Growth	1,873	2,068	10.4%	2,220	7.4%	2,385	7.4%	8.4%	7.4%	7.4%
NH Surgical Providers Volume	5,303	5,048	-4.8%	5,506	9.1%	5,887	6.9%	3.5%	8.0%	6.9%

Source: LRA Ambulatory Surgery Patient Origin Tables

As shown on page 999 of its application, NHMOS’s 2014 License Renewal Application states that the facility performed 197 Union County cases in FFY 2013. As a result, NHMOS has understated both the total number of Union County operating room cases performed in FFY 2013 as well as the number performed by Novant Health facilities by 197 cases.

Further, NHMOS states in Exhibit 3, Table 4 that Matthews Surgery Center performed 791 cases for Union County residents in FFY 2016 based on License Renewal Applications. However, Matthews Surgery Center’s 2017 License Renewal Application states that it only performed 761 Union County cases in FFY 2016 (see excerpt in Attachment _). As a result, NHMOS has overstated both the total number of Union County operating room cases performed as well as the number performed by Novant Health Matthews facilities and by all Novant Health facilities by 30 cases for FFY 2016.

When corrected data is used, the three-year growth rate for total Union County cases is 0.7 percent as shown below and the growth rate for total Novant Health cases for Union County is 2.1 percent.

	2013 (Understated by 197 Cases)	2016 (Overstated by 30 Cases)	CAGR 2013-2016
Union County Residents Surgical Growth	13,482	13,768	0.7%
NH Matthews Surgical Providers Growth	1,873	2,355	7.9%
NHMOS	197	0	NA
NH Surgical Providers Volume	5,500	5,857	2.1%

When the correct statistics are used in NHMOS’s methodology, the projected growth rate for Novant Health Union County cases is 1.4 percent, not 3.5 percent as assumed.

	Growth Rate as Stated in the Application	Actual Growth Rate Based on Basis Stated in the Application
Population Growth 2016-2021	1.7%	1.7%
Union County Outpatient Surgical Growth 2013-2016	4.1%	0.7%
NH Union County Outpatient Surgical Growth 2013-2016	6.9%	2.1%
Population Growth NHMOS Zip Code	1.1%	1.1%
Average of Four Growth Rates	3.5%	1.4%

As a result of these incorrect calculations and misstatements, NHMOS has overstated its projected growth rate and, therefore, its projected utilization is overstated and unsupported. As such, NHMOS has failed to demonstrate the need for the proposed project.

In its application, NHMOS applied this projected growth rate to total Novant Health outpatient surgical volume from Union County. On page 35, Novant Health states that its total outpatient surgical volume from Union County is 6,307 cases in CY 2016. This figure is based on Novant Health internal data and there is no publicly available data at this time to validate it. However, in FFY 2016, a time period of only three months difference, Novant Health reported on License Renewal Applications total outpatient surgical volume from Union County of 5,857 cases (as noted above). To achieve 6,307 cases in CY 2016 would require that Novant Health’s total Union County cases grew 7.7 percent over a three month time period. While such growth may be possible under unique circumstances, given the numerous errors and miscalculations in NHMOS’s application, this statistic is suspect as well.

Based on the issues described above, UHS believes that the NHMOS application is non-conforming with Criteria 3, 4, 5, 6, and the related CON rules.

Unsupported Shift of Volume

On page 35 of its application, NHMOS states that it *“estimated that 30% to 40% of the projected Novant Health potential outpatient pool in Step 2 will shift to the renovated and expanded ambulatory surgery center, NHMOS, when open in April 2019. This assumption is based on an analysis of outpatient surgical volume at Novant facilities; input from physician and surgical leadership in the Greater Charlotte Market, and the level of support from surgeons reflected in the letters in Exhibit 4” (emphasis added).*

In its utilization projections, NHMOS assumes that 30 percent of projected Novant Health total Union County outpatient surgery cases will shift to its facility. In the project years, this 30 percent shift equates to more than 2,000 cases annually. As noted above, in its analysis of NHMOS’s 2005 application, the Agency considered Novant Health’s historical provision of care to residents of Union County, stating:

Presbyterian Hospital Matthews is a related entity of the applicant and is located in Mecklenburg County, near the Union County border. According to the 2005 Hospital License Renewal Application for Presbyterian Hospital Matthews, the hospital provided a

total of 9,343 ambulatory surgical and endoscopy cases in its shared operating rooms. Of the 9,342 cases, 3,109 or 33% of the patients were from Union County. Therefore, it is reasonable to assume that Presbyterian's proposed facility, SDSC Monroe, would serve 2,241 patients in the third year of operation, since all 2,241 patients are expected to be from Union County.

Emphasis added. Page 7 of Agency Findings for 2005 Union County OR Review. See Attachment _ for excerpts.

Despite this historical utilization of Novant Health facilities by Union County residents, NHMOS failed to achieve its historical utilization projections and the facility was abandoned. As such, the current utilization of Novant Health by Union County residents is not supportive of NHMOS's currently proposed project. Simply put, NHMOS has historically failed to serve these patients and there is no evidence in the current application to suggest that the proposed project will change that. Specifically, the proposed shift of more than 2,000 cases annually is not supported by Novant Health's letters of support from physicians. According to the Truven Health Analytics data for CY 2015, the surgeons who provided letters of support to NHMOS performed only 455 outpatient surgical cases at Novant Health facilities on Union County residents, as shown below. Several surgeons performed zero Union County cases at Novant Health facilities.

**Union County Cases Performed in Novant Health Facilities
by NHMOS Supporting Physicians**

<i>Physician Name</i>	<i>CY15 Cases</i>
Sharrol Barnes	5
J. Andrew Bohn	121
Steven Goldman	3
Chason Hayes	5
Dennis Kukenes	0
Ivan Mac	0
Steve Martin	0
Kelly Meek	4
James Meek	9
Jennifer Mock	0
Sarah Morris	10
John Morrison	13
Ravi Patel	0
Rina Roginsky	9
Douglas Rosen	19
J. Robert Silver	92
Philip Solomon	12
Ross Udoff	0
Eric Wallace	153
Total	455

Source: 2016 Truven ambulatory surgery data.

Of note, many of these physicians also perform surgical cases for Union County residents at CHS facilities in either Mecklenburg or Union County. However, NHMOS is very clear in its application that all of the cases to be performed at its facility will be Union County cases shifted from Novant Health facilities.

As shown, NHMOS's supporting physicians performed only 455 potential surgical cases in 2015, or less than 22 percent of the annual surgical volume projected for NHMOS. This level of physician support does not support NHMOS utilization projections, particularly its assumed shift of more than 2,000 Union County operating room cases from Novant Health facilities. As such, NHMOS's utilization projections are unreasonable.

Further, the 455 cases performed by NHMOS's supporting physicians could be served in NHMOS's existing facility. No additional operating room capacity is needed. As such, the physician support included in NHMOS indicates that the proposed project is unnecessary.

Based on the issues described above, UHS believes that the NHMOS application is non-conforming with Criteria 3, 4, 5, 6, and the related CON rules.

Failure to Provide Access to the Medically Underserved/Failure to Provide Quality Care

As NHMOS has been closed for the past four and half years, it has provided no access to ambulatory surgery services to the medically underserved nor has it provided quality care. NHMOS cannot demonstrate that it currently provides access to medically underserved populations. Similarly, NHMOS cannot demonstrate that quality care has been provided in the past.

Based on the issues described above, UHS believes that the NHMOS application is non-conforming with Criteria 13A and 20.

COMPARATIVE COMMENTS

Given that both NHMOS and UWSC propose to meet the need for the additional operating room, only one of the applications can be approved as proposed. In reviewing comparative factors that are applicable to this review, UHS compared the applications on the following factors:

- History of Project Development
- Utilization of Existing Capacity
- Documentation of Support
- Access by Underserved Groups
- Patient Revenue
- Operating Expenses

History of Project Development

NHMOS is a limited liability company wholly owned by Novant Health. As noted above, Novant Health developed NHMOS and then closed it in January 2013. Novant Health has also failed to-date to develop two other approved ambulatory surgery centers: SDSCNH and SDSCF.

As noted in the Agency Findings, Novant Health's failure to develop these approved ambulatory surgery centers has denied New Hanover and Franklin counties access to ambulatory surgery services. Similarly, NHMOS's closure has denied Union County residents access to ambulatory surgery services.

UHS is a limited liability company wholly owned by The Charlotte-Mecklenburg Hospital Authority (CMHA) d/b/a Carolinas HealthCare System (CHS). CHS operates several freestanding ASCs, including UWSC, Cleveland Ambulatory Surgery Services in Shelby, Carolina Center for Specialty Surgery in Charlotte, Gateway Ambulatory Surgery Center in Concord, and Iredell Surgical Center in Statesville. Pursuant to Project ID # F-11106-15, CHS also has been approved to develop Randolph Surgery Center in Charlotte, which is part of a larger partnership with Charlotte Surgery Center. Randolph Surgery Center is expected to be operational in January 2018. CHS does not have any closed or undeveloped ambulatory surgery services.

Thus, Novant Health's history of closed² or undeveloped, CON-approved ambulatory surgery centers make its project a less effective alternative with regard to history of project development.

Utilization of Existing Capacity

UHS owns and operates two operating rooms at UWSC while NHMOS owns (and does not operate) one operating room; the remaining operating rooms in the county are owned and operated by CHS Union, which is affiliated with UHS. As noted in its application, UWSC and CHS Union currently demonstrate a deficit of operating rooms whereas NHMOS does not utilize its operating room and has a surplus of one room.

Union County Operating Room Need

	<i>NHMOS</i>	<i>UWSC</i>	<i>CHS Union</i>
2015 Total Estimated Hours	0	3,593	11,379
Growth Factor	8.37%	8.37%	8.37%
2019 Total Estimated Hours	0	3,893	12,331
Standard Hours per Operating Room	1,872	1,872	1,872
Projected Operating Rooms Needed in 2019	0	2.08	6.59
# of Existing and Approved Operating Rooms Excluding C-Section	1	2	6
Deficit/(Surplus)	(1.0)	0.08	0.59

Source: 2017 SMFP.

² In fact, NHMOS is fortunate to still even have a CON and license for the Union County ASC. Recently, the CON Section has been issuing Notices of Intent to Consider Withdrawal of CON letters for projects that have been dormant for less time than the NHMOS facility has been dormant (four and a half years and counting). Moreover, historically, the Licensure and Certification Section has not re-issued licenses to facilities that have been non-operational year after year and have no plan on file with that agency to operationalize the facility within a reasonable time frame.

Therefore, with regard to access to the utilization of existing capacity, UWSC is a more effective alternative than NHMOS.

Documentation of Support

Physician support for the project is important given the proposed increase of the operating room capacity in the county. While each of the applications includes letters of support from physicians, the amount of support from physicians that can drive the success of the project is different among applications, as shown in the following table:

<i>Applicant</i>	<i>Physician Support Letters</i>
NHMOS	19
UWSC	49

Source: NHMOS, Exhibit 4; UWSC, Exhibit 16.

Based on the letters of physician support included in the application, UWSC’s application is a more effective alternative with regard to documentation of physician support than NHMOS. Moreover, as noted previously, NHMOS’s historical physician support has not translated into utilization of the facility, nor do the support letter in the NHMOS application correlate with surgeons who perform cases on Union County residents. In contrast, UWSC’s historical physician support has translated into strong utilization of its facility.

Similarly, while each of the applications includes letters of support from the community, the amount of community support is different among the applications, as shown in the following table:

<i>Applicant</i>	<i>Community Support Letters</i>
NHMOS	29
UWSC	46

Source: NHMOS, Exhibit 17; UWSC, Exhibit 21.

Based on the letters of support from the community included in the application, UWSC’s application is a more effective alternative with regard to documentation of support from the community than NHMOS. Further, it should be noted that several elected officials or community leaders provided letters of support to UWSC including:

- Michael Alvarez, Mayor of Indian Trail, NC
- Lynn Kroeger, CFO of Union Academy
- Eddie Cathey, Sheriff of Union County
- Kathy Bragg, Executive Director of Union County Community Shelter
- Gustavo Arevalo, Latino Outreach Coordinator of UCPS
- Rhett Brown, President of Wingate University
- Barbara Faulk, Executive Director of Union County Community Arts Council
- Don Fisher, President of Waxhaw/Weddington Rotary Club

Access by Underserved Groups

The following tables show NHMOS’s and UWSC’s projected percent of operating room cases and procedure room procedures to be provided to Medicare and Medicaid recipients in the third project year following completion of the project, based on the information provided in the applicants’ pro forma financial statements (Forms D and E).

Medicare and Medicaid Surgical Cases and Procedures – Project Year 3

<i>Applicant</i>	<i>Medicare % of Total</i>	<i>Medicaid % of Total</i>
NHMOS	36.3%	17.9%
UWSC	45.7%	11.8%

Source: NHMOS Financials Form D; UWSC Financials Form D

UWSC projects to perform a higher percentage of Medicare cases in the third project year while NHMOS projects to serve higher percentage of Medicaid cases in the third project year. Combined, UWSC projects to perform a higher percentage. It should be noted that UWSC based its projected payor mix based on its actual historical experience, whereas NHMOS’s payor mix is projected based on the payor mix of other facilities outside of Union County which will not necessarily reflect NHMOS’s experience. Further, its projections should be viewed with skepticism given NHMOS’s historical record of failing to achieve its assumptions and projections. Therefore, with regard to access to the underserved, UWSC is a more effective alternative than NHMOS

Patient Revenue

The following tables show the projected gross revenue per operating room case and per procedure in the third year of operation based on the information provided in NHMOS and UWSC’s pro forma financial statements (Form E).

Gross Revenue per Operating Room Case - Project Year 3

<i>Applicant</i>	<i>NHMOS</i>	<i>UWSC</i>
Gross Revenue	\$20,289,272	\$23,406,382
Cases	2,263	3,894
Gross Revenue per Case	\$8,966	\$6,011

Source: NHMOS Financials Form D; UWSC Financials Form D

Gross Revenue per Procedure – Project Year 3

<i>Applicant</i>	<i>NHMOS</i>	<i>UWSC</i>
Gross Revenue	\$1,400,218	\$1,879,998
Procedures	662	367
Gross Revenue per Case	\$2,115	\$5,126

Source: NHMOS Financials Form D; UWSC Financials Form D

Gross Revenue per Case/Procedure – Project Year 3

<i>Applicant</i>	<i>NHMOS</i>	<i>UWSC</i>
Gross Revenue	\$21,689,490	\$25,286,380
Cases/Procedures	2,925	4,260
Gross Revenue per Case	\$7,415	\$5,935

Source: NHMOS Financials Form D; UWSC Financials Form D

As shown above, UWSC projects the lower average gross revenue per operating case and the lower average gross revenue per total cases/procedures in the third project year, while NHMOS projects lower gross revenue per procedure.

The following table shows the projected net revenue per operating room case and per procedure in the third year of operation for based on the information provided in NHMOS and UWSC’s pro forma financial statements (Form B).

Net Revenue per Operating Room Case – Project Year 3

<i>Applicant</i>	<i>NHMOS</i>	<i>UWSC</i>
Net Revenue	\$8,034,731	\$8,030,536
Cases	2,263	3,894
Net Revenue per Case	\$3,550	\$2,062

Source: NHMOS Financials Form E; UWSC Financials Form E

Net Revenue per Procedure – Project Year 3

<i>Applicant</i>	<i>NHMOS</i>	<i>UWSC</i>
Net Revenue	\$490,771	\$251,880
Procedures	662	367
Net Revenue per Case	\$741	\$687

Source: NHMOS Financials Form E; UWSC Financials Form E

Net Revenue per Case/Procedure – Project Year 3

<i>Applicant</i>	<i>NHMOS</i>	<i>UWSC</i>
Net Revenue	\$8,525,502	\$8,282,416
Cases/Procedures	2,925	4,260
Net Revenue per Case	\$2,915	\$1,944

Source: NHMOS Financials Form E; UWSC Financials Form E

As shown in the tables above, UWSC projects the lower average net revenue per operating room case, per procedure, and per total cases/procedures in the third project year.

Therefore, with regard to patient revenue, UWSC is the more effective alternative.

Operating Expense

The following table shows the projected average operating expense per case/procedure in the third year of operating for each of the applicants, based on the information provided in applicants' pro forma financial statements (Form B).

Operating Expenses per Case/Procedure – Project Year 3

<i>Applicant</i>	<i>NHMOS</i>	<i>UWSC</i>
Total Operating Expenses	\$6,564,999	\$7,400,920
Cases/Procedures	2,925	4,260
Operating Expense per Case/Procedure	\$2,244	\$1,737

Source: NHMOS Financials Form B & C; UWSC Financials Form B & C

As shown in the table above, UWSC projects the lower average operating expense per case/procedure in the third project year. Therefore, with regard to operating expenses, UWSC is the more effective alternative.

SUMMARY

As noted previously, the NHMOS application is the most unprecedented application in the history of the North Carolina CON program. NHMOS does not utilize its existing operating room capacity at all and has not done so for four and half years. Nonetheless, NHMOS proposes to develop additional operating room capacity. Moreover, NHMOS's application fails to demonstrate conformity with the statutory and regulatory review criteria. As such, UHS maintains that it has submitted the only approvable application based on its comments. Finally, based on its comparative analysis, UHS believes that its application represents the more effective alternative for meeting the need identified in the 2017 SMFP for one additional operating room in Union County. As such, the CON Section can and should approve UHS's application.

Attachment 1

CON Public Hearing
September 14, 2005, 1:00 pm
Charlotte, North Carolina

Rec @.
pub. hearing
#1

CON Public Hearing Remarks of Paula Vincent
Administrator of Presbyterian Hospital Matthews
Project I.D. #F-7310
Same Day Surgery Center at Monroe, LLC

1 of 2

Introduction

Good afternoon. My name is Paula Vincent and I am the Vice President/Administrator of Presbyterian Hospital Matthews and SouthPark Surgery Center which is a member of Novant Health Southern Piedmont Region. Presbyterian Hospital Matthews is a 102 bed community hospital located in Matthews, NC and SouthPark Surgery Center is an Ambulatory Surgery Center. Thank you for the opportunity to be here today to speak in support of the Same Day Surgery Center at Monroe certificate of need application and to provide clarifying information in response to matters raised by Union Health Services, LLC

Comments

Presbyterian Healthcare has reviewed the comments received from Union Health Services, LLC and offers the following responses to their comments:

Facility Size:

In its comments UPMC has stated that a one room ASC is not effective. It is important to note that Presbyterian Same Day Surgery Center at Monroe (SDSCM) is conforming to the SMFP need for one OR. Our facility has been designed in a way to accommodate future growth so if in the future the SMFP calls for an additional OR SDSC at Monroe could accommodate this. In addition, in 2003 the State specifically changed their position to allow for single operating rooms. We have experience in operating ASC's going back to 1985 and in our discussions with physicians they are supportive and

confident in our plan. We are committed to the residents of Union County to provide their health care.

Capital Costs:

In its comments URMC is comparing the capital costs of both applications. SDSC at Monroe projected its capital costs based on reasonable assumptions for setting up freestanding ASC of this type. We are confident that we included all of the capital costs in this project.

Location

In its comments URMC states that UHS proposes to locate its ASC in the center of the population proposed to be served. Our location is based on all of Union County's population and not just one specific area. SDSC at Monroe proposes to locate it's facility in the most populous area of the County and to create competition and choice for this service area. Please refer to our written comments on this issue.

Charges/Net Revenue/Operating Costs:

URMC has commented that SDSC at Monroe has overstated their volume projections based on the fact that the facility will only contain one operating room. The 122% capacity figure used by URMC in their written comments is based on an 8 hour day using the average surgical time per case at TPH, a major teaching hospital. In our application we stated we intended to operate 12 hours per day, in addition, if you use the average surgical time per case experienced at Presbyterian SDSC we are actually at 80.1% capacity therefore we could take more cases given this scenario. We have relied on our 20 years of experience with freestanding licensed ambulatory surgical facilities to arrive at our figures and are confident that our project is a financially viable project. This will also allow SDSCM the ability to flex our hours to meet the needs of the Union County residents.

Charges:

URMC states that SDSC at Monroe's charges per procedure do not appear to include charges for operating room time and ancillary charges. Our charges are based on existing charges of SDSC Downtown which has been in existence since 1985, and its actual experience. Our charges are total average charges and do include all time and ancillary charges.

Operating Costs:

URMC has indicated that SDSC at Monroe's total expenses seem to be understated. SDSC at Monroe believes that its total expenses are in line for ASCs of this size. SDSC at Monroe in fact did not include CRNAs for endoscopy procedures. We do not use CRNAs in the staffing for endoscopy which represents over 40% of our cases. This is why our operating costs are lower.

Application Specific Comments:

(3)1. b. URMC states that SDSC at Monroe assumes to capture 20 percent of the ambulatory surgery procedures in its service area. SDSC at Monroe believes 20% was a conservative assumption for ASC of this size and the population of the proposed service area.

2. URMC states that SDSC at Monroe fails to demonstrate need for the cases it projects at the proposed facility and that the lists of projected cases does not appear to include procedures in each of the specialties listed by the applicant. Unfortunately we did inadvertently leave Ophthalmology out of the typed list of MD services in Section II; we did however include them in the projected procedures, the projected charges, and in our letters of support, and we believe these are the most important places to include them. In addition, we have a number of physicians who have expressed an interest in and a desire to practice at the proposed SDSC at Monroe who felt they couldn't come right out and say this for fear of repercussions from URMC since they do cases there also.

(5) UPMC states that SDSC at Monroe does not indicate how it arrived at the projections for payor mix and contractual adjustment percentages. SDSC at Monroe built the payor mix for the community in the market we will be serving. In addition, UPMC commented on the reasonableness of SDSC at Monroe's construction costs. We are confident that the cost we supplied for square footage is accurate including the shared waiting room.

(7) UPMC states that SDSC at Monroe fails to demonstrate sufficient staffing for the proposed ASC again pointing out the total number of anesthesia personnel and other administrative and support personnel which we explained in our CON would be contracted with other Novant providers. SDSC at Monroe has included these costs under general administrative and other overhead. SDSC at Monroe will be relying on centralized services from TPH for duties such as coding etc. Additional discussion on this is included in our written comments.

10A NCAC 14C.2102(a):


UPMC has stated that SDSC at Monroe does not project any gynecology, urology, or general surgery procedures. However, SDSC at Monroe has included these procedures in our category for other procedures.

10A NCAC 14C.2102(b)(3):

UPMC has commented that SDSC at Monroe did not provide ICD-9 codes for over one quarter of its projected volume. However, SDSC at Monroe did include ICD-9 codes for our most frequent procedures. The remaining procedures were described in the application and reflect cases expected to be less frequently performed at SSMC.

10A NCAC 14C.2106(a):

UPMC has questioned the validity of co-locating the ambulatory surgical facility with an urgent care center. SDSC at Monroe and the Urgent Care Center are two separate operational and legal entities. In addition, the proposed urgent care




center will be just that, an urgent care center, operating like a physician office just with extended hours...It will not be a diagnostic center. Please refer to our application for complete comments.

10A NCAC 14C.2106(b):

URMC has commented that SDSC at Monroe has failed to conform to the accreditation requirements for ambulatory surgery centers. Every entity within Presbyterian Healthcare is JCAHO accredited. SDSC at Monroe assures the State that it will be accredited within two years of opening as required. We are confident that this can be achieved.

Summary

Thank you for the opportunity today to speak with you in support of SDSC at Monroe. We are confident that this proposal is the best approach to address the need identified in the State Medical Facilities Plan for this service area.



Presbyterian already provides quality healthcare to the citizens of Union County through Presbyterian Hospital Matthews and several physician practices.

Presbyterian has over 20 years of experience with ASC's and will provide effective, efficient, quality surgical care in Union County to the residents of Union County. SDSC at Monroe will offer the residents the choice they deserve when making decisions regarding their health care.

Thank you again for the opportunity to speak.

*Kee @
pub hearing*

CON Public Hearing
September 14, 2005, 1:00 pm
Charlotte, North Carolina

2 of 2

**CON Public Hearing Remarks of Stephen Wallenhaupt, Executive Vice President
of Medical Affairs for Novant Health Southern Piedmont Region
Project I.D. #F-7310
Same Day Surgery Center at Monroe, LLC**

Introduction

I am the Executive Vice President of Medical Affairs for Novant Health's Southern Piedmont Region. Thank you for the opportunity to be here today to speak in support of Same Day Surgery Center at Monroe, LLC and the physician commitment to this project.

Comments

Presbyterian SameDay Surgery Center at Monroe, LLC (SDSC Monroe) proposes to develop SDSC Monroe, a freestanding multi-specialty ambulatory surgery center with one ambulatory surgical operating room located at the corner of Windmere Drive and US Highway 74 in Monroe in Union County in response to the need identified in the 2005 State Medical Facilities Plan for one additional operating room.

I have been involved in the planning of the proposed facility and have discussed the project with other physicians. In addition, representatives of Presbyterian Healthcare, and in particular, Presbyterian Hospital Matthews, discussed the project with physicians in Union County and they are in support of this project. I have been part of the planning process for SDSC at Monroe and believe it will enhance the delivery of surgical care for Union County residents.

The approval of this project will enhance our ability to continue to provide quality healthcare as well as continue our role as a leading referral center for the region.

Summary

Thank you for the opportunity today to speak with you about physician commitment for SDSC at Monroe. We are confident that this proposal is the best approach to address the need identified in the State Medical Facilities Plan for this service area. I am happy to answer any questions.

Attachment 2

UNION HELATH SERVICES, LLC, et al.

v.

NCDHHS, ET AL.

Deposition of
Nancy Bres-Martin

August 4, 2006

Garrett Reporting Service, Inc.
Phone: (919) 676-1502
Fax: (919) 676-2277
Email: garrettreport@aol.com

STATE OF NORTH CAROLINA IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
COUNTY OF UNION 06 DHR 0150

UNION HEALTH SERVICES, LLC and
UNION MEMORIAL REGIONAL MEDICAL
CENTER, INC.,

Petitioners,

vs.

NORTH CAROLINA DEPARTMENT OF
HEALTH AND HUMAN SERVICES,
DIVISION OF FACILITY SERVICES,
CERTIFICATE OF NEED SECTION,

Respondent,

and

PRESBYTERIAN SAMEDAY SURGERY
CENTER AT MONROE, LLC,

Respondent-Intervenor.

DEPOSITION OF NANCY BRES-MARTIN
VOLUME I

FRIDAY, AUGUST 4, 2006

10:08 A.M.

NELSON, MULLINS, RILEY & SCARBOROUGH, LLP
GLEN LAKE ONE, SUITE 200
4140 PARKLAKE AVENUE
RALEIGH, NORTH CAROLINA
Garrett Reporting Service
Professional Stenomask For The Record
Post Office Box 98475
Raleigh, North Carolina 27624-8475
(919) 676-1502 - Facsimile 676-2277

1 APPEARANCES

2 ON BEHALF OF THE PETITIONERS:

3 GARY S. QUALLS

4 Kennedy Covington Lobdell & Hickman, LLC

5 Post Office Box 14210

6 Research Triangle Park, North Carolina 27709

7 (919) 466-1182

8 ON BEHALF OF THE RESPONDENT-INTERVENOR:

9 DENISE M. GUNTER

10 Nelson, Mullins, Riley & Scarborough, LLP

11 The Knollwoods, Suite 350

12 380 Knollwood Street

13 Winston-Salem, North Carolina 27103

14 (336) 781-4000

1 TABLE OF CONTENTS

2 WITNESS DIRECT CROSS

3 NANCY BRES-MARTIN

4 BY MR. QUALLS 5

5 EXHIBITS

6 [COURT REPORTER'S NOTE: By agreement of the parties, all
7 original exhibits were retained by counsel for Respondent-
8 Intervenor and not attached to the transcript.]

9 EXHIBIT DESCRIPTION MARKED

10 43 AVERAGE HOUSEHOLD INCOME (2002) 6

11 BY ZIP CODE

12 44 POP GROWTH MAP RANKED REAL GROWTH 6

13 45 MEMO TO ASSOCIATE REGIONAL 129

14 ADMINISTRATORS, DMSO STATE SURVEY

15 AGENCY DIRECTORS FROM CENTER FOR

16 MEDICAID AND STATE OPERATIONS

17 (2/1/2002)

18 46 SECTION 416.44, 42 CFR CHAPTER IV 129

19 (10/1/2005 EDITION)

20 REPORTER'S CERTIFICATE 168

1 STIPULATIONS

2 PRIOR TO THE EXAMINATION OF THE WITNESS, COUNSEL
3 FOR THE PARTIES STIPULATED AND AGREED AS FOLLOWS:
4 1. SAID DEPOSITION SHALL BE TAKEN FOR THE PURPOSE
5 OF DISCOVERY OR FOR USE AS EVIDENCE IN THE ABOVE-ENTITLED
6 ACTION OR FOR BOTH PURPOSES, AS PERMITTED BY THE APPLICABLE
7 RULES OF CIVIL PROCEDURE;
8 2. ANY OBJECTIONS OF ANY PARTY HERETO AS TO NOTICE
9 OF THE TAKING OF SAID DEPOSITION OR AS TO THE TIME AND PLACE
10 THEREOF OR AS TO THE COMPETENCY OF THE PERSON BEFORE WHOM THE
11 SAME SHALL BE TAKEN ARE HEREBY WAIVED;

12 3. OBJECTIONS TO THE QUESTIONS AND MOTIONS TO STRIKE
13 ANSWERS NEED NOT BE MADE DURING THE TAKING OF THIS
14 DEPOSITION, BUT MAY BE MADE FOR THE FIRST TIME DURING THE
15 PROGRESS OF THE TRIAL OF THIS CASE OR ANY PRE-TRIAL HEARING
16 HELD BEFORE THE JUDGE FOR THE PURPOSE OF RULING THEREON OR AT
17 ANY OTHER HEARING OF SAID CASE AT WHICH SAID DEPOSITION MIGHT
18 BE USED, EXCEPT AN OBJECTION AS TO THE FORM OF A QUESTION
19 MUST BE MADE AT THE TIME SUCH QUESTION IS ASKED OR OBJECTION
20 IS WAIVED AS TO THE FORM OF THE QUESTION;

21 4. THAT ALL FORMALITIES AND REQUIREMENTS OF THE
22 STATUTE WITH RESPECT TO ANY FORMALITIES NOT HEREIN EXPRESSLY
23 WAIVED ARE HEREBY WAIVED, ESPECIALLY INCLUDING THE RIGHT TO
24 MOVE FOR THE REJECTION OF THIS DEPOSITION BEFORE TRIAL FOR
25 ANY IRREGULARITIES IN THE TAKING OF THE SAME, EITHER IN WHOLE
26 OR IN PART OR FOR ANY OTHER CAUSE;

27 5. THAT THE UNDERSIGNED NOTARY-REPORTER SHALL
28 PERSONALLY DELIVER OR MAIL BY FIRST CLASS MAIL THE TRANSCRIPT
29 OF THIS DEPOSITION TO THE PARTY TAKING THE DEPOSITION OR HIS
30 ATTORNEY, WHO SHALL PRESERVE IT AS THE COURT'S COPY; AND,

31 6. THE WITNESS DOES RESERVE THE RIGHT TO READ AND SIGN
32 THE TRANSCRIPT OF THIS DEPOSITION PRIOR TO FILING.

33 Page 2

34 Nancy Bres-Martin 8/4/2006

35 GARRETT REPORTING SERVICE

(919) 676-1502

36 Post Office Box 98475

37 Raleigh, North Carolina 27624-8475

1 PROCEEDINGS

2 (WHEREUPON,

3 NANCY BRES-MARTIN

4 was called as a witness, duly sworn, and

5 testified as follows:)

6 DIRECT EXAMINATION

7 BY MR. QUALLS: 10:08 A.M.

8 Q Good morning.

9 A Good morning.

10 Q Could you please state your full name for the
11 record?

12 A Nancy Bres-Martin.

13 Q Okay. And as you know, my name is Gary Qualls,
14 and I represent Union Health Services and Union Regional
15 Medical Center in this contested case.

16 And just to define, you know, what we're
17 looking at today here, it may be easiest if you take a look at
18 the Agency file, which should be one of the notebooks in front
19 of you. I just wanted you to turn to the findings, if you
20 could, which is behind Tab 10.

21 And you understand, don't you, that this
22 deposition is being taken in the context of a contested case
23 arising out of the findings and the decision by the Certificate
24 of Need Section, which is -- the findings of which start on
25 page 292 of the Agency file?

1 licensure applications to determine the total number of
 2 patients from Union County who went anywhere in the state
 3 divided by the Union County population, we got an annual 2004
 4 use rate.
 5 We applied that use rate to the population and
 6 came up with a projected total number of ambulatory surgery
 7 cases and -- plus endoscopy cases for the population of those
 8 three ZIP codes. That volume reflected a need for five
 9 operating -- outpatient operating rooms, ambulatory surgery.
 10 Because we were applying for one, we assumed
 11 that we would get 20 percent of the volume, just as -- as a
 12 place to -- to look at, you know, how -- what we're going to
 13 get of the market. Because we'd be the only surgical center in
 14 the market, we thought that the 20 percent was a reasonable
 15 percent.
 16 So it didn't deal with taking market share from
 17 anywhere. In fact, I don't know if it would or wouldn't,
 18 because I have not done that analysis. The growth in the
 19 population may be such that it doesn't take from anywhere, that
 20 that's all new growth. It may not be. I have not done that
 21 analysis.
 22 Q So the -- the 20 percent market share that was
 23 assumed for the Sameday Surgery Center application was not
 24 predicated upon an assumption that Sameday Surgery Center would
 25 be pulling any market share -- would or wouldn't be pulling any

1 market share from Union Regional.
 2 A Right. We did not do that analysis. It may or
 3 it may not.
 4 Q Okay. And also, likewise, though, that 20
 5 percent market share and the utilization projections for
 6 Sameday Surgery, did -- did that factor in any assumption about
 7 how much Same Day Surgery Center Monroe would cut into the
 8 market share of Presby's other facilities or Novant's other
 9 facilities?
 10 A We did not assume that. We looked at -- we're
 11 putting a surgical center in a market where there's a defined
 12 need, where we have very strong physician support, where there
 13 is a population that is ready to use this. We assumed we would
 14 get an equal share based upon the percentage of the, you know,
 15 surgical capacity that we represented.
 16 Q Has -- are there any other reasons why -- are
 17 there any other reasons why -- other than what you've
 18 articulated, as to why you think that the Union Health Services
 19 growth rates were unreasonable?
 20 A Other than those that I've articulated, I
 21 believe I've spoken to them.
 22 Q And -- and let me get it straight. Your main
 23 concern about Union's projected growth rates was that they
 24 didn't parse out inpatient, outpatient and endo from one
 25 another, correct?

1 A That was my -- my primary concern, yes. And
 2 then -- then when they did their secondary growth rates, they
 3 increased all the growth rates -- said they were increasing
 4 growth rates that were already overinflated, in my opinion, or
 5 it appeared that way.
 6 Again, I have not gone -- when -- when I first
 7 reviewed this application, I went through and tried to follow
 8 all the assumptions, and if I remember correctly, I managed to
 9 follow all their assumptions. But that's why I wrote the
 10 comments that, you know, they're -- they're overstating what
 11 they're doing.
 12 They're actually decreasing volume and they're not
 13 addressing that at all. They're not addressing the -- the
 14 utilization. Their growing rate -- they're growing at a
 15 combined rate that is -- that is not representative of what is
 16 happening in surgical services. And this was at a time when
 17 there was a lot of discussion about taking endoscopy completely
 18 out of the -- the -- the picture.
 19 And so it's not like no one was thinking
 20 endoscopy and surgery were two different -- were the same
 21 thing. Everyone at this point in time -- when we were
 22 submitting this application, there was an endoscopy work --
 23 task force in play talking about these are two different things
 24 and you need to look at them separately.
 25 Q And if you look at -- let's see. Now, let's go

1 back to your comment you just made. Why were they -- why were
 2 they -- you said they were increasing already inflated numbers.
 3 What were the already inflated numbers? What do you mean by
 4 that?
 5 A Their 7.4 percent growth rate.
 6 Q And why was that already inflated?
 7 A Because that included -- that included all of
 8 the endoscopy growth rate, which endoscopy growth rate was --
 9 was significantly higher than that. The inpatient and
 10 outpatient growth rates were negative.
 11 Q And -- let's see. Presbyterian projected how
 12 many procedures to be done in Year 1?
 13 A Two thousand eighty-four.
 14 Q Two thousand eighty-four?
 15 A Uh-huh (yes).
 16 Q And how many in Year 3?
 17 A Twenty-two hundred forty-one; two thousand two
 18 forty-one..
 19 Q All right. Was Union Health Services
 20 projecting -- was -- was part of Union Health Services'
 21 projections about its growth rates and the robust growth
 22 rates -- was part of that predicated upon the fact that some
 23 certain numbers of surgeries would be pulled over from Union
 24 Regional or do you know?
 25 A Well, no. Because I'm looking at just the

Attachment 3

ATTACHMENT - REQUIRED STATE AGENCY FINDINGS

FINDINGS

C = Conforming

CA = Conditional

NC = Nonconforming

NA = Not Applicable

DECISION DATE: December 28, 2005
PROJECT ANALYST: Mary Edwards
CHIEF: Lee B. Hoffman

PROJECT I.D. NUMBER: F-7310-05/Presbyterian SameDay Surgery Center at Monroe, LLC/Develop a new ambulatory surgical facility with one new operating room/Union County

F-7312-05/ Union Health Services, LLC and Union Regional Medical Center/ Develop a new ambulatory surgical facility by relocating one existing shared operating room from Union Regional Medical Center and adding one new operating room for a total of two ambulatory surgical operating rooms/ Union County

REVIEW CRITERIA FOR NEW INSTITUTIONAL HEALTH SERVICES

G.S. 131E-183(a) The Department shall review all applications utilizing the criteria outlined in this subsection and shall determine that an application is either consistent with or not in conflict with these criteria before a certificate of need for the proposed project shall be issued.

- (1) The proposed project shall be consistent with applicable policies and need determinations in the State Medical Facilities Plan, the need determination of which constitutes a determinative limitation on the provision of any health service, health service facility, health service facility beds, dialysis stations, operating rooms, or home health offices that may be approved.

C

SDSC Monroe

Union Health Services, LLC

The 2005 State Medical Facilities Plan (SMFP) provides a methodology for determining the need for additional operating rooms in North Carolina. The 2005 SMFP establishes a need for

SDSC Monroe is proposing to develop a new licensed ambulatory surgical facility with one operating room and locate it in Monroe. SDSC Monroe will be a wholly owned subsidiary of Presbyterian Healthcare Corporation, which also owns SameDay Surgery Center at Presbyterian in downtown Charlotte. On page 22 of the application, the applicant states that it anticipates 11 physicians will be credentialed to use SDSC Monroe including two gastroenterologists, one general surgeon, two ob/gyns, four ENTs, one orthopedic surgeon and one urologist.

The following table illustrates projected patient origin for SDSC Monroe, during Year Two, as reported by the applicant on page 35.

COUNTY	PROJECTED PATIENT ORIGIN YEAR TWO
Union	100%

The applicant states on page 30 that the population of a three zip code area in Union County “could support a total of 5.0 ambulatory surgical operating rooms based on historical use rates if 100% of all outpatient surgery and endoscopy procedures remained in the area.” The applicant adequately identified the population to be served.

Need Analysis

The applicant discussed the need for an additional operating room in Union County by stating on page 26 that it

“examined several elements that contribute to the need for, and utilization of, an operating room. Those factors include: historic utilization of surgical services; new surgical technology; population and population growth; market share statistics; and current and future demand for surgical services.”

Regarding the location of the facility, the applicant states on page 27 that,

“SDSC Monroe proposes to locate SDSC Monroe in central Union County, which has one of the fastest growing population bases in North Carolina. The following table provides projected population for the three Union County

To determine the number of ambulatory surgical and endoscopy cases to be performed at SDSC Monroe, the applicant states on page 31 that

“a new freestanding ambulatory surgical center with one operating room located in the proposed service area could expect to capture 20% of the projected total ambulatory surgical market share of the three zip code service area. Endoscopy volume for the proposed facility is projected to be 45% of the total cases performed in the proposed one ambulatory surgical operating room at SDSC Monroe.”

SDSC Monroe Surgical Services Utilization July 2004 - July 2009

Zip Code	Jun04 - Jul05	Jun05 - Jul06	Jun06 - Jul 07	PY 1 Jun07 – Jul08	PY2 Jun08 – Jul09	PY3 Jun09 – Jul10
28079	455	484	515	548	583	600
28104	424	443	462	483	504	517
28110	937	975	1,013	1,053	1,095	1,123
Amb. Surg. Cases	999	1,046	1,095	1,146	1,200	1,232
Endo Cases (45%)	818	856	896	938	982	1,008
Total Cases	1,817	1,902	1,991	2,084	2,182	2,241
Amb. Surgical Cases per Day per OR (#/260)	7.0	7.3	7.7	8.0	8.4	8.6

Presbyterian Hospital Matthews is a related entity of the applicant and is located in Mecklenburg County, near the Union County border. According to the 2005 Hospital License Renewal Application for Presbyterian Hospital Matthews, the hospital provided a total of 9,343 ambulatory surgical and endoscopy cases in its shared operating rooms. Of the 9,342 cases, 3,109 or 33% of the patients were from Union County. Therefore, it is reasonable to assume that Presbyterian’s proposed facility, SDSC Monroe, would serve 2,241 patients in the third year of operation, since all 2,241 patients are expected to be from Union County. In addition, of the 9,342 procedures performed at Presbyterian Hospital Matthews, 49% were endoscopy cases. Therefore, it is also reasonable to assume that 45% of the cases at SDSC Monroe would be endoscopy cases, based on historical utilization at Presbyterian Hospital Matthews.

The applicant projects to provide 2,241 procedures in the third year of operation, which is an average of 8.6 procedures per day per

operating room $[2,241/260 = 8.6]$. The Criteria and Standards for Surgical Services and Operating Rooms promulgated in 10A NCAC 14C .2100, specifically .2103(b), states that

“A proposal to establish a new ambulatory surgical facility, . . . shall not be approved unless the applicant documents that the average number of surgical cases per operating room to be performed in each facility owned by the applicant in the proposed service area, is reasonably projected to be at least 2.4 surgical cases per day for each inpatient operating room, 4.8 surgical cases per day for each outpatient or ambulatory surgical operating room, 7.2 cases per day for each endoscopy procedure room, and 3.2 surgical cases per day for each shared operating room during the third year of operation following completion of the project.”

The applicant projects to perform 8.6 procedures per ambulatory surgical operating room per day, which exceeds the threshold of 4.8 surgical cases per day. Further, Presbyterian does not own any other facility in Union County, which is the proposed service area as defined in the 2005 SMFP. To further support its projections, the applicant included letters from physicians indicating their intent to perform ambulatory surgical procedures at SDSC Monroe, in Exhibit 16.

In summary, the applicant adequately identified the population to be served and demonstrated the need for a new ambulatory surgical facility with one ambulatory surgical operating room. Therefore, the application is conforming with this criterion.

Union Health Services, LLC and Union Regional Medical Center [UHS] are proposing to develop a new multi-specialty ambulatory surgical facility by relocating one existing shared operating room from Union Regional Medical Center and adding one new operating room for a total of two ambulatory surgical operating rooms to be located in Indian Trail in Union County. Union Health Services, LLC is wholly owned by Union Regional Medical Center, which is leased to Carolinas Healthcare System. Through the lease agreement, Carolinas Healthcare System manages and operates Union Regional Medical Center.

UHS proposes to perform surgical procedures at the facility in the following specialty areas, including: ENT surgery, eye surgery,

Attachment 4

All responses should pertain to October 1, 2015 *thru* September 30, 2016.

Patient Origin -Ambulatory Surgical Services

Facility County: Mecklenburg

In an effort to document patterns of utilization of ambulatory surgical services in North Carolina's licensed freestanding ambulatory surgical facilities, you are asked to provide the county of residence for each patient (*as reported on page 8*) who had **Ambulatory Surgery** in your facility during the reporting period.

Total number of patients must match the total number of surgical cases from the "Surgical Cases by Specialty Area" table on page 8.

County	No. of Patients	County	No. of Patients	County	No. of Patients
1. Alamance		37. Gates		73. Person	
2. Alexander		38. Graham		74. Pitt	1
3. Alleghany		39. Granville		75. Polk	1
4. Anson	58	40. Greene		76. Randolph	
5. Ashe		41. Guilford	1	77. Richmond	6
6. Avery	1	42. Halifax		78. Robeson	3
7. Beaufort		43. Harnett		79. Rockingham	
8. Bertie		44. Haywood		80. Rowan	2
9. Bladen		45. Henderson		81. Rutherford	
10. Brunswick	1	46. Hertford		82. Sampson	
11. Buncombe	1	47. Hoke		83. Scotland	3
12. Burke		48. Hyde		84. Stanly	12
13. Cabarrus	20	49. Iredell	5	85. Stokes	
14. Caldwell		50. Jackson		86. Surry	
15. Camden		51. Johnston		87. Swain	
16. Carteret		52. Jones		88. Transylvania	
17. Caswell		53. Lee		89. Tyrrell	
18. Catawba	6	54. Lenoir		90. Union	761
19. Chatham		55. Lincoln	5	91. Vance	
20. Cherokee		56. Macon		92. Wake	2
21. Chowan		57. Madison		93. Warren	
22. Clay		58. Martin		94. Washington	
23. Cleveland	4	59. McDowell		95. Watauga	
24. Columbus		60. Mecklenburg	742	96. Wayne	
25. Craven		61. Mitchell	1	97. Wilkes	
26. Cumberland		62. Montgomery	3	98. Wilson	
27. Currituck		63. Moore		99. Yadkin	
28. Dare		64. Nash		100. Yancey	
29. Davidson		65. New Hanover	1		
30. Davie		66. Northampton		101. Georgia	2
31. Duplin		67. Onslow		102. South Carolina	345
32. Durham		68. Orange		103. Tennessee	
33. Edgecombe		69. Pamlico		104. Virginia	3
34. Forsyth	1	70. Pasquotank		105. Other States	12
35. Franklin		71. Pender		106. Other/Unknown	
36. Gaston	13	72. Perquimans		Total No. of Patients	2,016