STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

GERALD BALSAM, HOWARD M. ISRAEL, LAWRENCE LEVINSON, HERBERT SCHWARTZ, and ARNOLD ZAGER,	)	
Petitioner,	)	
vs.	)	CASE NO. 83-3418
DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES,	)	
Respondent.	)	
and	)	
FLORIDA MEDICAL CENTER and CHARTER MEDICAL-FORT LAUDERDALE, INC.,	)	
Intervenors.	)	

RECOMMENDED ORDER

This cause was heard by R. L. Caleen, Jr., Hearing Officer with the Division of Administrative Hearings, on May 21-24, 1984, in Fort Lauderdale, Florida, and on May 30 and 31, and June 1, 1984, in Tallahassee, Florida.

APPEARANCES

For Petitioner:	Kenneth G. Oertel, Esquire 646 Lewis State Bank Building Tallahassee, Florida 32301
For Respondent:	James M. Barclay, Esquire 1317 Winewood Boulevard Building 2, Suite 256 Tallahassee, Florida 32301
For Intervenors: Florida Medical Center	Eric B. Tilton, Esquire 702 Lewis State Bank Building Tallahassee, Florida 32301
Charter Medical Center, Inc.	William E. Hoffman, Jr., Esquire Richard Shackelford, Esquire 2200 First Atlanta Tower Two Peachtree Street Northwest Atlanta, Georgia 30383
	Cynthia S. Tunnicliff, Esquire 410 Lewis State Bank Building Tallahassee, Florida 32301

STATEMENT OF THE ISSUE

Whether Petitioners' application for a certificate of need (CON), to construct a 100-bed free-standing psychiatric and substance-abuse hospital in Broward County, Florida, should be granted or denied.

BACKGROUND

Petitioners are a group of health care professionals residing in Broward County, Florida and engaged in a limited partnership known as Florida Psychiatric Centers (FPC). Pursuant to Section 381.494, Florida Statutes, and Chapter 10-5, Florida Administrative Code, they applied to Respondent, Department of Health and Rehabilitative Services (DHRS), for a CON to build a 100-bed free-standing psychiatric specialty hospital in western Broward County, Florida. Eighty of the proposed beds are short-term psychiatric; twenty are short-term substance abuse beds.

On September 29, 1983, DHRS denied the application. After Petitioners requested a Section 120.57(1) hearing, DHRS forwarded this case to the Division of Administrative Hearings for assignment of a hearing officer.

Intervenors, Florida Medical Center and Charter Medical-Fort Lauderdale, Inc. (Charter Medical) have existing or approved short-term psychiatric beds in Broward County. They were allowed to intervene based on alleged injury-in-fact they would suffer if Petitioner's application were granted. Both support DHRS's preliminary free-form denial of the application.

At hearing, Petitioners presented the following witnesses: Linda Susan Dykes, and FPC employee; Ronald Robert Fieve, M.D., Chief of Research and Psychiatry, Columbia University, New York, N.Y., a limited partnership in Florida Psychiatric Centers; John F. Davison, M.D., Director of Emergency Services for Broward General Hospital, Ft. Lauderdale, Florida, accepted as an expert in substance-abuse treatment; Howard Mark Israel, psychologist, Ft. Lauderdale, Florida, accepted as an expert in psychology, Charles Freemena Longino, Ph.D., Professor of Sociology, University of Miami, Miami, Florida, accepted as an expert in sociology, particularly with regard to aging, William J. Serow, Ph.D., Professor of Economics, Florida State University, Tallahassee, Florida, accepted as an expert in economics and demography, Arnold Stanley Zager, M.D., psychiatrist, Plantation, Florida, accepted as an expert in medicine and psychiatry; Rev. Martin Devereauz, Psy. D., psychologist, College of Boca Raton, Boca Raton, Florida; Marvin Ackerman, licensed clinical social worker, Hallendale, Florida; H. Bruce Jones, M.D., psychiatrist, Broward County, accepted as an expert in psychiatry and the practice of psychiatry in Broward County; Benjamin H. Underwood, Mental Health Administrator, Marietta, Georgia, accepted as an expert in mental health planning and hospital administration; Herbert Schawartz, owner, medical employment agency, North Miami Beach, Florida, accepted as an expert in hospital administration; Evelyn Glasser, Chairperson Elect, State Advisory Council on Aging and Adult Services, accepted as an expert in some aspects of aging; Jamie R. Groober, Supervisor of Discharge Planning, Sough Florida State Hospital; Ronald H. Kurlander, M.D., psychiatrist, Pompano, Florida, accepted as an expert in psychiatry and the practice of psychiatry in Broward County; Jeffrey Gross, registered architect, Hollywood, Florida, accepted as an expert in architecture; James C. Nicholas, Ph.D. Professor of Economics, Florida Atlantic University, Boca Raton, Florida, accepted as an expert in economics, land use management, market research, market studies and growth patterns in Broward County; Alan T. Dzija, management consultant, Coopers

& Lybrand, Atlanta, Georgia, accepted as an expert in feasibility studies for health care facilities; Homera J. Corteguera, M.D., psychiatrist, Broward County, accepted as an expert in psychiatry in Broward County; Winifred J. Schmeling, Executive Vice President for Operations, MGT of America, Tallahassee, Florida, accepted as an expert in health planning; Gerald James Balsam, M.D., psychiatrist, Plantation, Florida, affiliate principal in Florida Psychiatric Centers, accepted as an expert in psychiatry and the practice of psychiatry in Broward County; Woodrin Grossman, CPA, partner in Price-Waterhouse, Tampa office, accepted as an expert in financial analyses and accounting, financial projections, financial feasibility of health care institutions; Richard E. Gordon, M.D., teaching psychiatrist, Department of Psychiatry, University of Florida College of Medicine, Gainesville, Florida, accepted as an expert in psychiatry, teaching of psychiatry in medical schools, evaluation of the quality and nature of psychiatric treatment.

Petitioner's Exhibit nos. 1-7, 9-12, 16-18, 18-A, 18-B, 18-C, 18-F, 18-J, 19-H, 20, 21, 21-A, 22, 24-27, 27-H, 28-A, 28-B, 28-C, 28-D, 28-E, 28-F, 28-G, 28-I, 33, 37-A, 37-B, 37-C, 39-41, 56, 57, and 69-71, were received in evidence.

DHRS presented the testimony of Thomas F. Porter and moved Respondent's Exhibit nos. 1-7 into evidence.

Charter Medical presented the following witnesses: Susan Nathan Ganzburger, psychiatric social worker, Commissioner, City of Hollywood, President, Broward County Mental Health Board; Barbara Joann Myrick, Executive Director, the Chord, Inc., Broward County, Chairperson, District Human Rights Advocacy Committee; Lawrence Levison, partner in Florida Psychiatric Centers; Peter Joseph Bibb, Executive Director of Hospital Financial Operations, Charter Medical Corporation, Macon, Georgia, accepted as an expert in hospital financial operations and hospital finances; Earnest J. Peters, registered professional engineer, Peters & Associates, Little Rock, Arkansas, accepted as an expert in transportation engineering; Ronald T. Luke, Ph.D., president, Research & Planning Consultants, Austin, Texas, accepted as an expert in health planning and psychiatric bed need assessments, demography, survey research and community regional planning; Cynthia Alice Rector, Director of Nursing, Charter-Glade Hospital, Fort Myers, Florida, accepted as an expert in psychiatric nursing; Brian David Beatty, Administrator, Charter-Glade Hospital, Fort Myers, Florida, accepted as an expert in psychiatric hospital administration; by deposition Robert Beiseigel, Ph.D., psychiatrist, consultant to FPC.

Intervenors' Exhibit nos. 1-25 were received into evidence.

Intervenor Florida Medical Center presented the testimony of David Radtke, Director, Fort Lauderdale Hospital, Fort Lauderdale, Florida; and Thomas J. Conrad, consulting firm president, Tallahassee, Florida, accepted as an expert in health planning.

The transcript of hearing was filed on June 29, 1984. The parties filed extensive Proposed Findings of Fact and Conclusions of Law, with memorandum, by August 6, 1984. Their Proposed Findings of Fact, insofar as they are incorporated herein, are adopted; otherwise, they are rejected as unsupported by the greater weight of the evidence, or as irrelevant or unnecessary to resolution of the issue presented.

Based on the evidence adduced at hearing, the following facts are determined:

FINDINGS OF FACT

I.

The Proposed Psychiatric Hospital

1. Florida Psychiatric Centers (FPC), the applicant, is a partnership comprised of six general partners; Larry Levinson, Howard Israel, Ph.D.; Arnold Zager, M.D.; Bruce Jones, M.D.; Gerald Balsam, M.D., and Herbert Schwartz. Ronald Fieve, M.D., is a limited partner.

2. FPC proposes to construct a 100-bed, free-standing psychiatric facility on a 10-acre site in the Plantation area of western Broward County.

3. The total project cost, as stated in the application, is $12,039,299 or approximately $12 million. This figure is based on estimated construction costs of $80 per square foot. Since Mr. Levinson (a contractor), will build the facility at cost, and Dr. Jones, another partner, already owns a suitable site, the project costs should be considerably less. Also, the residential-type design of the facility means it will cost less to construct than a conventional hospital. There will be no heavy x-ray equipment, labs, operating rooms, or CAT Scanners. With industrial revenue bond financing, the project should be able to be built for under $10 million, reflecting a cost of $60-66 per square foot.

4. The FPC facility is financially feasible. Based on the expected demand for psychiatric and substance abuse beds in Broward County, coupled with the unique design and treatment offered by the new facility, FPC can reasonable expect an occupancy rate of 64 percent and a $160,000 profit during the first year with an occupancy rate of only 45 percent. It can be financed either through the issuance of industrial bonds or conventional financing (available at a rate of 13.75 percent for a 30-year period). The FPC partners are financially capable of contributing, or raising, any additional equity funds or operating capital which may be required to build and begin operation of the hospital.

5. Additional factors will contribute to the financial variability of the FPC hospital. Mr. Levinson, through his other related businesses, will provide equipment and supplies to the hospital on a discount basis. Dr. Fieve, a limited partner, can be expected to fill up to 10 beds with research patients, whose costs would be underwritten by pharmaceutical companies. The four partners who are local psychiatrists, Drs. Balsam, Israel, Zager, and Jones, have sizeable local practices; their patients, previously placed in other local hospitals, can be expected to fill many of the available beds at the new facility.

6. FPC proposes 20 substance-abuse beds, 40 geriatric psychiatric beds, 25 adult psychiatric beds, and 15 adolescent psychiatric beds, all of which are short-term.

7. DHRS, in preliminary free-form action, denied the FPC application for alleged failure to satisfy the standardized bed-need methodology for short-term psychiatric and substance abuse beds. DHRS did not explicitly evaluate the quality of psychiatric care being provided by existing facilities or the quality of care to be offered by the proposed facility.

8. Most patients at the proposed FPC facility will be referred by the several psychiatrists who are principals, as will as other psychiatrists in the community. But due to the unique physical design of the facility and its

innovative philosophy and treatment plan, it is expected that many patients from outlying counties will be referred by their psychiatrists. Moreover, Dr. Fieve, who practices psychiatry in New York, will refer patients to the proposed facility.

9. Most patients will be private-pay or Medicare, not indigent or Baker Act (involuntary) patients. 5.75 percent of gross patient revenues will be allotted for indigent care. Since this will apply only to 60 beds (40 beds will be allotted for Medicare patients), the actual percentage expended on indigent patients rises to 9.5 percent.

10. Only those patients meeting specific criteria will be admitted to the facility. The primary criteria are that the patients must be voluntary and be able to function within the hospital's unique open milieu. Patients who are homocidal or overtly dangerous to others will not be admitted. A patient who, once admitted, becomes violent or dangerous to others, will be transferred to a facility with a more controlled and restricted environment. Patients requiring acute detoxification services will not be admitted.

11. Because the FPC facility will be a free-standing psychiatric hospital, it will be ineligible for Medicaid reimbursement. This distinction (for Medicaid reimbursement purposes) between attached and free-standing hospitals, is a curious, even confounding, one. The basis for it was not explained at hearing.

12. The FPC facility will charge rates which are competitive, if not lower than, those charged by other psychiatric hospitals in Broward County.

13. The FPC facility will have an admission policy unique among psychiatric hospitals in Broward County. Indeed, this policy - less restrictive than those in force at other hospitals is one of the motivating reasons behind the new hospital. 1/ Under the FPC admission policy, patients (otherwise appropriate for admission) will be admitted on evenings and weekends, regardless of whether the patients' ability to pay can be immediately verified.

14. The FPC facility will serve as a research and training center for students, interns, and resident psychiatrists. Training affiliations will be actively sought with medical and osteopathic schools. Because of the facility's unique design, philosophy, and treatment program, it is reasonable to expect that it will become recognized as a place of innovative treatment for patients suffering from psychiatric illness or substance abuse.

15. The State Health Plan has no application since it does not address the need for psychiatric beds in Broward County and the information in the plan is obsolete. FPC's proposed facility is generally consistent with the District 10 (Broward County) Local Health Plan, although that plan indicates that priorities should be given applicants proposing to convert under-utilized acute care beds to psychiatric beds. 2/

16. The physical design, philosophy, and treatment approach of the FPC facility will provide a needed alternative to the existing and approved psychiatric facilities in Broward County. The physical design is patterned after the well known Menninger Clinic, in Minnesota, and is designed to be conducive to and complement effective psychiatric care. Each of the four patient groups (geriatric, adolescent, adult, and substance abuse) will be housed in separate free-standing or home-like "villas". These villas will be located on a spacious, attractively landscaped 10-acre wooded site, which will

look more like a college campus than a psychiatric hospital. There will be no locked wards or security guards to restrain patients, who will be voluntary and free to leave when they please. They will sleep in their villa rooms. All therapeutic activities will take place on the grounds or in the activity pavilion. There will also be medical and administrative pavilions and a dining pavilion, all of which will be connected to the villas by a network of covered walkways. Patients will freely participate in a spectrum of leisure and recreational activities which - in themselves - have therapeutic benefits. The facility will have a jogging track, swimming pool, tennis court, basketball court, gymnasium, exercise rooms, picnic areas, and a fresh water lake. Patients will be given maximum freedom of movement in an atmosphere designed to be aesthetically pleasing and affect patients in a positive way. It will be the least restrictive environment available in Broward County for providing in-patient psychiatric care.

17. The philosophy and treatment approach of the FPC facility will be new and innovative - significantly different from that provided by existing psychiatric facilities in the county. Diagnosis and treatment activities will be conducted by integrated, interdisciplinary teams of psychiatrists and health care professionals. The various patient groupings will receive specialized psychiatric treatment. The FPC facility will have the only in-patient specialized psychiatric unit for geriatric patients in the county.

18. This will be the first psychiatric hospital in Broward County designed and built, from the outset, solely to serve and treat psychiatric patients. Because of the facility's design and treatment philosophy, patients will be treated with deference, respect, and trust; it will be a place where patients' depleted self-confidence and self-esteem can be gently nurtured. The facility's environment will be hopeful, humane, and - insofar as possible - deinstitutionalized. Patients will not be warehoused, locked in wards, or isolated in smoke-filled day rooms with nothing to do but watch television. Instead, they will be free to engage in a variety of enjoyable and challenging activities. This is described as the holistic approach to psychiatric treatment. It provides patients with milieu environmental therapy - which requires ample space, a variety of engaging activities for patients, and a positive atmosphere which is neither frightening nor intimidating. Unlike patients in acute care hospitals, most psychiatric in-patients, who suffer from acute anxiety or depression, are physically strong and able to actively engage in leisure and recreational activities. When they are able to do so, they receive therapeutic benefits; they experience a sense of accomplishment and self-worth. With positive feelings about themselves, they are more able to face and cope with their problems. These are critical factors to their recovery and return to the community. The basic concepts embraced by the FPC facility have proven successful elsewhere, such as at the Menninger Clinic, Anclote Manor in Tarpon Springs, Florida, and the Florida Mental Health Institute. But there is nothing like it in Broward County.

II.

Existing Facilities: Quality

19. Because of insufficient space and physical facilities, no existing or approved psychiatric hospital in Broward County - whether attached to a general hospital or free-standing - provides or is capable of providing milieu environmental therapy. All existing psychiatric hospitals are converted nursing homes, motels, or hospital wings. Although most admissions are voluntary, all of the psychiatric wards are locked, except for Ft. Lauderdale Hospital, which

has one unlocked unit. Patients have little freedom of movement. Their access to the outdoors is limited and there are virtually no outdoor recreational activities available - although patients are sometimes bussed to nearby beaches and parks. Because the existing free-standing psychiatric hospitals are "locked in" by urban development, they cannot easily expand their facilities to provide outdoor leisure and recreational activities. Even existing parking space is limited. Patients, for the most part, resign themselves to lying in hospital beds (despite their physical vigor) or sitting in smoke-filled day rooms where they do little but watch television. Therapy consists of occasional visits by their psychiatrists and the administration of psychotropic drugs. This institutional environment, which can be harsh, unfriendly, and intimidating to patients, is not conducive to providing the most effective psychiatric care to patients.

20. Prospective patients are often repelled by these conditions and the drab, uninviting atmosphere. As a consequence they refuse to admit themselves to these facilities and their psychiatrists are forced to refer them to facilities outside of Broward County.

21. Psychiatric patients in existing facilities are not segregated and treated in accordance with their age or illness groupings. As a result, adolescents are often mixed with geriatrics - which is not conducive to providing therapy to either group. Specialized treatment programs are not systematically developed and provided patient groupings. Although Broward County has a large and expanding population of people 65 years or older, there is no specialized treatment program for geriatric patients.

22. No existing or approved psychiatric facility in Broward County serves as a research or training center for the treatment of psychiatric patients. There is no evidence that any facility has expended resources for that purpose.

III.

Existing Facilities: Availability and Accessibility

23. The existing psychiatric hospitals in Broward County are regularly crowded and frequently unavailable for new admissions. These include Hollywood Pavilion, Broward General Medical Center, Florida Medical Center, and Imperial Point Hospital. Existing substance abuse facilities, including Humana Hospital, Starting Place, the See, and the Care Programs at Memorial Hospital and Ft. Lauderdale Hospital are generally full and have patient waiting lists.

24. Broward General Hospital serves as a central receiving hospital for acutely disturbed psychiatric patients. As stated by Dr. John Davison, Director of Emergency Services at Broward General - whose testimony is accepted as unbiased, credible, and persuasive - there is an urgent need for more psychiatric beds in Broward County. At Broward General, it typically takes three days to find a bed for a patient - and there are waiting lists at area hospitals for private/pay patients. Often patients must be strapped to emergency room beds and placed in emergency room hallways - where they sometimes languish for days - because of lack of space at Broward General and other area hospitals. Such treatment of acute psychiatric patients may actually worsen their condition and certainly does little to assist in their recovery.

25. Existing psychiatric hospitals which have beds available are often, in actuality, inaccessible because of financially restrictive admission policies. They refuse to accept patients until insurance and financial ability to pay can

be verified. In practice, this policy renders their beds unavailable to most patients (who cannot post immediate cash deposits) during evenings and weekends.

IV.

Need For The FPC Psychiatric Hospital

26. DHRS normally, absent exceptional circumstances, will not issue a CON unless a need for additional beds is shown by the bed-need formula contained in Rule 10-5.11(25)(d)(3), Florida Administrative Code. This formula computes numerical short-term bed-need by calculating the projected population (the latest mid-range population projected five years into the future by the Bureau of Economic and Business Research of the University of Florida) and allotting 35 beds per 100,000 persons. (Projected 1988 population for Broward County, one of the fastest growing counties in Florida, is 1,252,660.) The number of existing and approved short-term beds is then deducted from the numerical bed need, yielding the number of any new beds needed.

27. DHRS, in preliminarily applying its bed-need formula, deducted an incorrect number of "existing and approved" short-term beds. (DHRS relied on numbers derived largely from figures reported by local hospitals; no independent verification of the figures was made by DHRS.) Instead, the number of existing short-term beds established at hearing as reliable is as follows: Florida Medical Center-58; Hollywood Pavilion-35; and Ft. Lauderdale Hospital-80 (including psychiatric and substance-abuse). Coral Ridge Hospital was incorrectly assigned 74 short-term psychiatric beds and 12 substance-abuse beds. In actuality, Coral Ridge has no short-term beds. It offers a unique long-term care known as "ortho-molecular" treatment to patients, who are drawn from across the nation and abroad. This treatment, given under the guidance of its medical director, Dr. Moke Williams, typically continues for a year or more and is given patients who have not responded to conventional treatment. Few patients at Coral Ride come from Broward County. Short-term patients who seek admission are referred to Imperial Point Hospital or other local facilities. Although Coral Ridge's psychiatric beds are shown on DHRS books as 74 short-term and 12 substance-abuse, the beds are (and have been for sometime) used solely for long-term treatment. There is no evidence DHRS has taken, or will take, any action to force Coral Ridge to use its beds for short-term, as opposed to long-term treatment.

28. DHRS, in initially applying the formula, determined that only 15 additional short-term beds were needed. When the formula is recomputed using the more correct figures (113 fewer short-term psychiatric beds and 12 fewer substance-abuse) a 1988 need in excess of 80 short-term psychiatric and 20 short-term substance abuse beds is shown.

29. Apart from the projected need shown by a rigid mathematical formula, a balanced consideration of the other pertinent criteria of Section 381.494, Florida Statutes (1983), and Chapter 5-10, Florida Administrative Code, including accessibility, adequacy, availability, and quality of care of like existing facilities, indicates that the proposed FPC facility is needed. The statute and rule being implemented should not be used to prevent construction of new health care facilities which will provide innovative treatment which is an alternative to, and of higher quality than, that provided by existing facilities. This is particularly so when existing facilities, in actuality, are shown to be regularly filled, have patient waiting lists, and impose restrictive admission criteria which inflict an unreasonable hardship on those in need of care. Should construction of the FPC facility be allowed, it is likely that,

through competitive forces, existing facilities will be spurred to improve the quality of their services. Finally, it has not been shown that, with the increased 1988 population projection, the financial viability of the existing facilities will be significantly affected by the construction of the FPC hospital.

CONCLUSIONS OF LAW

30. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding. 120.57(1), Florida Statutes (1983).

31. Applications for certificates of need are based on a balanced consideration of Chapter 10-5, Florida Administrative Code, and the statutory criteria of Section 381.494(6)(c), Florida Statutes (1983). These criteria include:

> 1. The need for the health care facilities and services and hospices being proposed in relation to the applicable district plan and state health adopted pursuant to Title XV of the Public Health Service Act, except in emergency circumstances which pose a threat to the public health.
> 2. The availability, quality of care, efficiency, appropriateness, accessibility, extent of utilization, and adequacy of like and existing health care services and hospices in the service district of the applicant.
> 3. The ability of the applicant to provide quality of care.
> 4. The availability and adequacy of other health care facilities and services and hospices in the service district of the applicant, such as outpatient care and ambulatory or home care services, which may serve as alternatives for the health care facilities and services to be provided by the applicant.
> 5. Probable economies and improvements in service that may be derived from operation of joint, cooperative, or shared health care resources.
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> 7. The need for research and educational facilities, including, but not limited to, institutional training programs and community training programs for health care practitioners and for doctors of osteopathy and medicine at the student, internship, and residency training levels.
> 8. The availability of resources, including health manpower, management personnel, and funds for capital and operating expenditures, for project accomplishment and operation; the effects the project will have on clinical needs of health professional training programs in the service district; the extent to which the services will be accessible to schools for health professions in the service district for train-

ing purposes if such services are available in a limited number of facilities; the availability of alternative uses of such resources for the provision of other health services; and the extent to which the proposed services will be accessible to all residents of the service district.

9. The immediate and long-term financial feasibility of the proposal.

10. The special needs and circumstances of health maintenance organizations.

* * *

12. The probable impact of the proposed project on the costs of providing health services proposed by the applicant, upon consideration of factors including, but not limited to, the effects of competition on the supply of health services being proposed and the improvements or innovations in the financing and delivery of health services which foster competition and service to promote quality assurance and cost-effectiveness.

13. The costs and methods of the proposed construction, including the costs and methods of energy provision and the availability of alternative, less costly, or more effective methods of construction.

* * *

(d)1. That less costly, more efficient, or more appropriate alternatives to such in-patient services are not available and the development of such alternatives has been studied and found not practicable.

* * *

3. In the case of new construction, that alternatives to new construction, for example, modernization or sharing arrangements, have been considered and have been implemented to the maximum extent practicable.

4. That patients will experience serious problems in obtaining inpatient care of the type proposed, in the absence of the proposed new service.

See Johnson and Johnson, Department of Health and Rehabilitative Services v. Johnson and Johnson Home Health Care, Inc., __So. 2d __ (Fla. 1st DCA, Opinion filed March 8, 1984, Case No. AV-441) 6 FALR 2225. When measured by these criteria, the evidence of record demonstrates that the application at issue should be granted. The DHRS bed-need formula is satisfied. 3/ Even if the formula did not show a need for the proposed project, consideration of the statutory factors including the availability, quality of care, accessibility, and extent of utilization of like and existing facilities would require the granting of this application. Moreover, the FPC hospital will serve as a research and training center, a function not served by existing facilities; will provide an innovative and improved quality of psychiatric care to in-patients; will be more accessible and have less restrictive admission criteria than

existing facilities; and, in all likelihood, will spur existing facilities to improve the quality of their care.

RECOMMENDATION

Accordingly, it is RECOMMENDED that:

1. Petitioner's application to construct a 100-bed free-standing psychiatric facility (80 short-term psychiatric beds and 20 short-term substance abuse beds) in western Broward County be granted; and

2. That the certificate of need be expressly conditioned upon fulfillment of all representations made in the application, as later amended and clarified at hearing. In particular, the proposed facility must be built on a wooded and attractively landscaped site of at least 10 acres and, from the outset, contain the full spectrum of leisure and recreational facilities described. As promised, the admissions policy must expressly provide that if a physician determines an emergency patient should be admitted, the patient will be admitted without delay, regardless of ability to pay and regardless of the time or day. If, after being admitted, it is determined that a patient lacks ability to pay, the patient will continue to receive treatment until he or she can be transferred to an appropriate facility.

DONE and RECOMMENDED this 27th day of September, 1984, at Tallahassee, Florida.

DONE and ORDERED this 27th day of September, 1984, in Tallahassee, Leon County, Florida.

R. L. CALEEN, JR., Hearing Officer
Division of Administrative Hearings
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(904) 488-9675

Filed with the Clerk of the Division of Administrative Hearings this 27th day of September, 1984.

ENDNOTES

1/ The FPC partners, who are local psychiatrists, were continually frustrated and dismayed by the obstacles they faced when attempting to admit patients to area psychiatric hospitals on weekends or during evening hours. Because the hospitals could not immediately verify the patient's ability to pay, they would not be admitted.

2/ Before filing their applications, petitioners asked area hospitals to convert existing under-utilized acute care beds to psychiatric beds to relieve over-crowding. The hospitals rejected their request.

3/ Except for the required adjustment to the number of existing and approved beds, petitioners have not shown, by convincing evidence, that either the formula or its components are inappropriate for application here.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions to this Recommended Order. All agencies allow each party at least 10 days in which to submit written exceptions. Some agencies allow a larger period within which to submit written exceptions. You should contact the agency that will issue the final order in this case concerning agency rules on the deadline for filing exceptions to this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.