

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

UNIVERSITY COMMUNITY HOSPITAL, )  
INC., d/b/a UNIVERSITY )  
COMMUNITY HOSPITAL and )  
UNIVERSITY COMMUNITY HOSPITAL, )  
INC., d/b/a UNIVERSITY )  
COMMUNITY HOSPITAL AT )  
CARROLLWOOD, )

Petitioners, )

vs. )

Case No. 03-0337CON

AGENCY FOR HEALTH CARE )  
ADMINISTRATION and ST. JOSEPH'S )  
HOSPITAL, INC., d/b/a ST. )  
JOSEPH'S HOSPITAL, )

Respondents. )

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FLORIDA HEALTH SCIENCES CENTER, )  
INC., d/b/a TAMPA GENERAL )  
HOSPITAL, )

Petitioner, )

vs. )

Case No. 03-0338CON

AGENCY FOR HEALTH CARE )  
ADMINISTRATION and ST. JOSEPH'S )  
HOSPITAL, INC., d/b/a ST. )  
JOSEPH'S HOSPITAL, )

Respondents. )

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RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in the above-  
styled case on October 15 through 28, 2003, in Tallahassee,  
Florida, before William R. Pfeiffer, a duly-designated

Administrative Law Judge of the Division of Administrative Hearings (DOAH).

APPEARANCES

For University Community Hospital:

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STATEMENT OF THE ISSUE

Whether the Certificate of Need (CON) Application No. 9610, filed by St. Joseph's Hospital to establish a new 76-bed acute care satellite hospital in Hillsborough County, through the

transfer of 76 acute care beds from the existing St. Joseph's Hospital, should be approved.

PRELIMINARY STATEMENT

St. Joseph's Hospital, Inc. (SJH), filed with the Agency for Health Care Administration (AHCA or Agency), CON Application No. 9610, in the second CON batching cycle of 2002. SJH seeks to establish a primary acute care satellite hospital in the northwest sector of suburban Hillsborough County, through the relocation of 76 existing acute care beds from SJH's main hospital campus, located in the urban center of Tampa, Florida. SJH does not propose to add any acute care beds to the inventory of licensed acute care beds in the sub-district, therefore, the Agency's bed need methodologies, including the fixed need pool and the "not normal" need methodology, do not apply.

After reviewing the CON application of SJH and applying the relevant statutory and regulatory criteria, AHCA preliminarily approved the application.

On or about January 30, 2003, DOAH was advised that University Community Hospital, Inc., d/b/a University Community Hospital at Fletcher (UCH Fletcher); University Community Hospital Carrollwood (UCH Carrollwood); and Tampa General Hospital, Inc., d/b/a Tampa General Hospital (TGH), had requested an administrative hearing challenging the Agency's preliminary decision.

Following assignment and consolidation of the cases, the parties engaged in discovery and entered into and filed a Joint Pre-hearing Stipulation. Thereafter, a final hearing was held.

At the final hearing, SJH presented the testimony of the following witnesses: Isaac Mallah, CEO of SJH, an expert in health care administration; David Thomas Travis, Quality Management Chief of Hillsborough County Fire Rescue, an expert in emergency medical services, quality assurance, administration, and delivery; Anthony I. Pidala, Jr., M.D., an expert in emergency medicine; Lee Clark Kirkman, M.D., board-certified in pulmonary, critical care, and internal medicine; Mark D. Vaaler, M.D., SJH's vice president for medical affairs, and board-certified in pulmonary diseases and internal medicine, and an expert in critical care, quality assurance, and improvement; Bruce S. Houghton, AIA, an expert in healthcare architecture, design, and project management; Sanford R. Dolgin, M.D.; Diane Yates, R.N., Chief Nursing Officer of SJH, an expert in hospital nursing and nursing administration; Patricia Teeuwen, Director of Human Resources for St. Joseph's Baptist Health Care; Mark Monroe Richardson, an expert in health planning; Rick Knapp, an expert in healthcare finance; and Robert Pergolizzi, AICP, an expert in traffic engineering and land use planning.

SJH also presented the deposition testimony of Fleury Yelvington, Chief Operating Officer of SJH; George Wallace, CFO of SJH; Rodney L. Cadwell, hospital equipment expert; Paula McGuinness, Director of Ambulatory Care for SJH; Jeram Kankotia, M.D., internal medicine; Richard Dillon, M.D., obstetrics and gynecology; Chris Dausch, P.E., civil engineer; Rodney Randall, M.D., interventional cardiology, board-certified in internal medicine and cardiovascular disease; and Barbara Uzenoff, manager, Hillsborough County Trauma Agency. SJH Exhibits 1 through 25, and 27 through 53 were received into evidence.

AHCA presented the testimony of Jeffrey N. Gregg, Chief of AHCA's Division of Health Quality Assurance, and CON Bureau Chief, and an expert in health planning and CON program policy, administration, and management for the State of Florida. AHCA's Exhibit 1 was admitted into evidence.

UCH called the following witnesses: Wallace Gregory Wilkerson, M.D., obstetrics and gynecology; Katherine Marie Spirk, R.N.; Marjorie Mueller Boyer, R.N., nursing obstetrics; Christopher Bell, AIA; Fred Ian Lipschutz, M.D., pediatric medicine; William Edward Oliver, an expert in traffic engineering and transportation studies; Deborah Martoccio, R.N., an expert in nursing & nursing administration; Judith L. Horowitz, financial analyst; Paul Reagain Winters, M.D., neurologist; Hershel Howard Franklin, M.D., an expert in

emergency medicine; and Patricia Greenberg, an expert in health care planning and health care finance. UCH Exhibits numbered 1 through 23, 25 through 28, and 32 through 63 were received into evidence.

TGH called the following two witness: Steven L. Durbin, an expert in human resources administration and Daniel J. Sullivan, an expert in healthcare planning and healthcare finance. TGH also presented the deposition testimony of Jan Gorrie. TGH Exhibits numbered 1 through 26 were received into evidence.

The 15-volume Transcript of the hearing was filed on December 16, 2003.

#### FINDINGS OF FACT

##### The Parties

##### Agency for Health Care Administration

1. AHCA is the single state agency responsible for administration of the CON program in Florida, pursuant to Section 408.034, Florida Statutes (2003). AHCA reviewed SJH's application to build a new, 76-bed, satellite hospital and preliminarily approved it.

##### St. Joseph's Hospital, Inc.

2. SJH is a Florida not-for-profit corporation, licensed to operate three existing hospitals on a single urban campus in District 6 including St. Joseph's Hospital, St. Joseph's Women's Hospital, and Tampa Children's Hospital. Although SJH has

unused bed capacity, it is licensed to operate 883 beds distributed among its three hospitals and is one of Florida's largest acute care, safety-net providers. SJH has approximately 1,200 physicians on its active or senior active medical staff.

3. The main adult SJH facility offers a full range of adult medical and surgical specialties and subspecialties, including adult open heart surgery, comprehensive oncology treatment and therapy, interventional radiology, inpatient psychiatric services, comprehensive neurological and orthopedic services, pulmonary rehabilitation, and hyper-baric services, including wound care. It is accredited by the Joint Commission of Health Care Organizations (JCAHO).

4. St. Joseph's Women's Hospital is the only free-standing women's hospital in Florida, and is comprised of 234 acute care beds. It offers a comprehensive array of women's acute care medical and surgical services, including obstetrics, and Level II and Level III Neonatal Intensive Care Unit (NICU) services. St. Joseph's Women's Hospital provides the highest number of births among all District 6 obstetrics providers, with over 6,000 births in 2001.

5. Tampa Children's Hospital is comprised of 111 medical/surgical pediatric rooms, and offers comprehensive pediatric and pediatric specialty services, including pediatric intensive care and pediatric open heart surgery. Tampa

Children's Hospital's medical staff includes over 80 pediatric specialists practicing in 20 specialties and sub-specialties.

6. SJH is a member of BayCare Health System which operates seven independent, affiliated hospitals in the Tampa Bay area. BayCare Health System coordinates quality standards among its member hospitals, promotes community access to health care, and facilitates joint operating efficiencies through combined purchasing, economies of scale, and consolidation of duplicative, non-patient-care services, such as administration, human resources, information management, and financial services.

7. SJH is affiliated with and jointly manages South Florida Baptist Hospital (SFBH), a 147-bed primary acute care hospital in Plant City, Florida, in eastern Hillsborough County. SFBH provides Level I obstetrics services. SJH and SFBH operate under a single chief medical officer and board of directors, and utilizes similar policies and procedures. SFBH is accredited by JCAHO with high standing, and is certified by the Medicare and Medicaid programs.

University Community Hospital, Inc.

8. University Community Hospital, Inc., is another hospital provider in District 6. It is a not-for-profit entity licensed to operate UCH Fletcher and UCH Carrollwood. UCH Fletcher is a 431-bed Class I general hospital that provides a full range of acute care hospital services, including open heart



surgery, obstetrics, and Level II and Level III NICU services. It is located in the southeastern portion of the SJH satellite proposed service area and has unused bed capacity.

9. UCH Carrollwood is a 120-bed primary acute care hospital located in North Tampa. It provides ICU and medical/surgical services, but not obstetrics. It too has unused bed capacity.

#### Tampa General Hospital

10. TGH is an 846-bed Class I general hospital located in South Tampa on Davis Island. It is a not-for-profit hospital that provides a comprehensive range of services, including general acute care, organ transplant, open heart surgery, and NICU care. It is a designated teaching hospital and a Level I trauma and burn treatment center. TGH is an important safety-net hospital and a large provider of Medicaid and indigent care.

#### SJH Proposal

11. SJH proposes to establish a 76-bed, acute care satellite hospital in North Hillsborough County on a site acquired twenty years ago. It seeks to transfer 76 acute care beds from the SJH Main urban campus to the new suburban hospital site. The proposed location is in an area of rapid population growth where SJH annually draws 8,000 admissions.

12. The SJH satellite will be integrated with and function as a satellite of SJH Main. It will incorporate state-of-the

art technology, including the Path Speed Picture Archive & Communications System (PACS) that is currently in use at SJH enabling physicians at the satellite facility to simultaneously review digital diagnostic images and medical records with physicians at SJH Main. The SJH satellite will be a primary acute care facility with obstetrics, and will not duplicate the tertiary or other specialized services provided at SJH Main.

13. Since acquiring the site for the proposed satellite, SJH has established several outpatient, primary care, and home health services in the satellite proposed service area. HealthPoint Medical Group, a physician group affiliated with and managed by SJH, and comprised of approximately 56 physicians, currently has three offices in the proposed service area and plans to expand. SJH also operates two outpatient imaging centers in the area.

14. The SJH proposal seeks to enhance access to acute care and emergency medical services for SJH's existing patients residing in the proposed service area and serve future population growth in the rapidly developing northwest Hillsborough County area. It seeks to alleviate some of the volume in the SJH Main ER, allow for conversion of semi-private rooms to private rooms, and mitigate parking congestion.

### Relevant Statutory Criteria

Section 408.035(1), Florida Statutes (2003). The need for SJH proposed satellite hospital project in relation to the applicable district health plan.

15. The review of SJH's proposal does not involve the traditional calculation and determination of need for the 76 beds proposed at the satellite since the applicant intends to transfer existing beds within the sub-district. The Agency's fixed need pool determination does not apply to SJH's proposal, nor is SJH required to demonstrate "not-normal" circumstances for approval.

16. However, need is reviewed in relation to the local district health plan. The District 6 Local Health Plan (LHP) identifies six factors applicable to proposed bed transfers. First, the plan considers whether a transfer will help indigent patients. Although the transfer may slightly enhance access to the poor, there is minimal access problems for indigent patients. Second, the plan considers whether a bed transfer is needed so an existing hospital can meet licensure standards. SJH is not seeking to meet any new licensure standards. The third factor is whether a bed transfer includes a proposed reduction in excess bed capacity. SJH is reducing excess bed capacity in the downtown area of Tampa and transferring beds to a growing area with increasing demand.

17. The fourth factor considered in the LHP is whether a bed transfer adversely impacts a disproportionate provider of Medicaid/indigent care by taking away paying patients. While the transfer may reduce, to some degree, paying patient volume at TGH, the transfer will increase the volume at SJH, another safety net provider. The fifth factor is whether the proposed bed transfer will improve the existing hospital's physical plant. SJH Main, and its patients will benefit from the ultimate renovation, increased space and single patient rooms. Finally, the plan considers whether the bed transfer is more cost-efficient than improving the existing hospital. The options are incomparable. SJH is seeking to construct a satellite hospital and expand its market area, not merely transfer beds to an existing facility. It is unknown and virtually incalculable whether the proposed satellite facility will be more cost-efficient than an improvement to the existing hospital.

Section 408.035(2), Florida Statutes. The availability, quality of care, accessibility and extent of utilization of existing facilities and health services in the service district.

18. Undoubtedly, health services exist and are available in the service district. In fact, nearly all of the residents of SJH's proposed service area live within 45 minutes of an existing hospital.

19. However, Northwest Hillsborough County is experiencing rapid growth. Many of its major roads and arteries are already congested and overcapacity. The expected growth in the proposed service area will inevitably aggravate the problem.

20. More importantly, despite the fact that virtually all of the residents in the proposed service area live within 45 minutes of an existing hospital, the population growth is affecting health care delivery. Hospital departments, including many of the emergency rooms, are experiencing similar congestion and acute care patients often wait several hours for treatment upon arrival.

21. UCH is experiencing capacity constraints. The demand for general acute care and emergency room services in the area is high and reasonably expected to increase throughout the foreseeable future. UCH Fletcher has experienced significant growth in utilization since 1999, and UCH Carrollwood has experienced consistent gains over the same time period.

22. During the first four months of 2003, UCH Fletcher operated near 75 percent capacity overall, and 85 percent capacity in its general medical/surgical beds. Moreover, the hospital ER was at or near capacity. UCH Fletcher's ER, which is comprised of 39 beds, experienced 65,000 patient visits in 2002 and exceeded 70,000 visits in 2003. During peak periods,

Fletcher ER patients have often been required to wait in the ER six to eight hours for an inpatient bed.

23. UCH's birth volume has also increased with the rapid population growth in the service area and is less affected by seasonal residents. In fact, UCH recently built a new women's center and expanded its obstetrics capacity to accommodate between 3,000 and 3,500 births annually and projects it will achieve 3,100 births by the end of 2004, and operate at 90 percent of capacity.

24. SJH also experiences capacity issues. SJH Main is completely comprised of semi-private rooms. It's composition makes it less attractive and competitive in the market and less able to maximize its utilization of existing acute care beds.

25. However, SJH Main experiences a huge demand for emergency services at its urban campus. The emergency department is one of the busiest in Florida and increasing each year. In 2002, SJH treated 104,000 ER patients, approximately 300 each day, and nearly 18,000 of those treated originated from the satellite hospital's proposed service area.

26. SJH's emergency department is a large, urban ER with 58 beds. It is organized into separate patient treatment areas, including a 23-bed adult treatment area, an eight-bed pediatric treatment area with a separate ER entrance, a four-bed adult

psychiatric emergency treatment area, a 13-bed First Care unit, and a ten-bed Clinical Decision Unit.

27. While SJH historically has provided excellent quality of care in its ER, its increasing volumes often result in patients receiving or waiting for treatment in corridors while more critical patients occupy the ER treatment rooms. In peak season, hallways are temporarily used for patient care.

28. SJH has actively sought to improve the delivery of emergency care. It invested substantial capital towards improvements and expansion of its existing ER. It established a unique service known as "First Care," that provides quick emergency care to less critical ER patients, such as patients with sore throats, sprains, and simple lacerations. It created a ten-bed Clinical Decision Unit to supplement the existing ER by converting hospital space adjacent to the ER into a permanent nursing unit. In addition, it increased ER staffing and physician coverage, and implemented protocols to improve the ER receiving and treatment processes.

29. Despite its efforts, the SJH ER continues to experience difficulties with extremely high patient volume.

30. In addition to the capacity constraints at UCH and in SJH's ER, ER bypass in Hillsborough County presents additional problems for emergency personnel, providers, and patients. Hospital bypass or diversion occurs when a hospital requests

that emergency medical transport teams bypass the hospital's ER because the hospital lacks capacity to treat additional patients or categories of emergency patients.

31. In response to the increasing problems associated with hospital ER bypass, the Hillsborough County Trauma Agency established a committee to analyze the situation, establish protocols, and recommend solutions. In addition, Hillsborough County implemented an Internet-based system whereby hospitals electronically place themselves on and off bypass without a dispatcher.

32. Hospital ER bypass adversely impacts the availability and accessibility of acute care services, particularly emergency services in Northwest Hillsborough County. The credible evidence demonstrates that hospitals in Hillsborough County go on bypass as often as every day during peak season, and frequently several hospitals are concurrently on bypass. Of the hospitals in Northwest Hillsborough County, UCH Fletcher and UCH Carrollwood together had the highest incidence of hospital bypass in the first six months of 2003.

33. In an effort to minimize the problems associated with transport, Hillsborough County Fire Rescue (HCFR) tracks all of its calls. It provides all Advanced Life Support emergency transport services in the county and responds to approximately 55,000 emergency calls annually, or about 4,300 calls each



month. Approximately half, or 27,000 calls annually, originate in HCFR's Northwest Hillsborough County area and nearly 10,000 of those calls result in transport of a patient to an acute care facility.

34. HCFR currently has 12 stations in Northwest Hillsborough County and is scheduled to open four additional stations in the northwest area in the near future. Hospital ER bypass is an obstacle for HCFR that causes delays in transport, emergency care, and return to service.

35. The applicant's proposed satellite facility will improve access to patients in need of emergency services in Northwest Hillsborough County and alleviate some of the capacity problems at UCH and SJH, as well as problems caused by frequent or extended periods of hospital ER bypass.

Section 408.035(3), Florida Statutes. The ability of SJH to provide quality of care and its record of quality of care.

36. Pursuant to the parties' stipulation, SJH's record of providing quality of care at its existing hospital is applicable, but not in dispute. SJH's ability to provide quality of care at the proposed new satellite hospital is in dispute.

37. In general, SJH has consistently provided excellent quality of care in the provision of a sophisticated range of services. It is accredited by JCAHO and certified by the

Medicare and Medicaid programs. It has received consistent recognition for its provision of high quality of care and has been awarded the Consumer Choice Award in health care in Tampa for eight consecutive years.

38. SJH's proposed satellite hospital will be able to provide excellent quality of care and serve the vast majority of patients seeking acute care and emergency services.

39. SJH's proposed satellite hospital will enhance access and quality of care for residents of the Northwest Hillsborough County area. Although it will not provide tertiary services, emergency patients will receive immediate, high-quality care at the facility. In addition, the smaller subset of emergency patients requiring immediate tertiary-level services will continue to have access to the tertiary hospital providers. In fact, HCFR has developed sophisticated transport protocols designed to ensure that all patients are safely delivered to the appropriate facility as efficiently as possible, and HCFR paramedics are highly skilled and trained to assess the condition of each patient.

40. In addition, the evidence indicates that SJH will provide high-quality Level I obstetrics services at its satellite facility. While the opponents assert that the proposed program will not match the quality or scope of obstetric services provided at SJH and UCH, the evidence

indicates that the SJH obstetrical program will not be sub-par or beneath the standard of care in the area. While an on-site NICU program is clearly preferable, the need for quality Level I obstetric providers is not obviated. SJH will provide quality obstetrical care.

41. Moreover, SJH's existing quality management policies, protocols, and processes will be instituted at the satellite hospital. It will be operated under the same quality management personnel team currently responsible for quality at SJH Main.

Section 408.035(4), Florida Statutes. The need in the service district for special health care services reasonably and economically accessible in adjoining areas.

42. AHCA and SJH demonstrated that that the proposed satellite does not intend to offer nor impact special health care services that may be reasonably and economically accessible in adjoining areas. The criterion is not applicable.

Section 408.035(5), Florida Statutes. The needs of research and educational facilities, including, but not limited to, facilities with institutional training programs and community training programs of health care practitioners and for doctors of osteopathic medicine and medicine at the student, internship, and residency training levels.

43. This criterion is not applicable.

Section 408.035(6), Florida Statutes. The availability of resources, including health personnel, management personnel, and funds for capital and operating expenditures for project accomplishment and operation.

44. The evidence demonstrates that SJH has the necessary resources and experience to provide quality health and management personnel to the satellite hospital. While there is some shortage of available nurses in Florida, including the Tampa area, the vacancy rate at SJH, including RNs and staff positions, is consistently below the state average. SJH has a well-developed nurse recruitment and retention program and has achieved steady increases in the retention rate of its RNs. Management has developed a flexible pool of employed nurses enabling it to maintain appropriate and cost-effective staffing based on patient day levels.

45. In addition, SJH has successfully recruited and retained an enormous number of recent nurse graduates as well as experienced nurses without resorting to the use of agency or contract nurses. It is also working closely with several local colleges to increase nursing enrollment. SJH will develop, recruit, and retain necessary staff to implement its proposal.

46. While SJH competes with other hospitals for nursing personnel, the proposed satellite will have little impact on competing hospitals. UCH and TGH have consistently been able to obtain sufficient nursing staff to provide high-quality care at

their facilities. UCH and TGH have impressive R.N. retention rates and are well below the state and national averages.

47. Finally, SJH has sufficient funds for capital and operating expenditures to complete and operate the proposed satellite hospital. SJH will provide half of the \$75 million project cost and finance the balance through the BayCare system.

Section 408.035(7), Florida Statutes. The extent to which the proposed services will enhance access to health care for residents of the service district.

48. In many ways, the SJH satellite hospital will enhance access to acute care and emergency services for the vast majority of patients residing in its proposed service area. First, commuting time will significantly decrease. Annually, the satellite's proposed service area supplies SJH Main with over 8,000 admissions from residents who endure significant traffic congestion and lengthy delays. Commuting time from the residential neighborhoods in the proposed service area to SJH Main has nearly doubled over the past ten years and is currently 45 minutes to an hour. The reliable travel time evidence demonstrates that the SJH satellite will significantly reduce travel times to acute care services for residents in Northwest Hillsborough County, including those in the Cheval, Northdale, Ehrlich Road, Lutz, and Lake Magdelane residential areas.

49. Second, SJH's satellite hospital will significantly enhance patient access to emergency care and relieve pressure on

the UCH Fletcher and SJH Main ERs. The SJH Main ER annually treats nearly 18,000 patients who originate from the satellite's proposed service area. It is reasonable to expect many of those patients to be redirected to the SJH satellite.

50. Third, the SJH satellite proposal will provide another point of delivery access to HCFR and facilitate faster service to ER patients and improve "back-in-service" times for HCFR.

51. Fourth, the availability of another ER in Northwest Hillsborough County will minimize the adverse effects of hospital bypass, and likely reduce the frequency of bypass by diverting volume from existing ERs.

52. Fifth, the relocation of 76 acute care beds from SJH Main to the satellite will enable SJH to convert many of its underutilized, semi-private rooms into more usable, attractive, private rooms.

53. Finally, redirection of volume from the urban SJH Main campus to a satellite campus in a high-growth, suburban area will reduce traffic congestion, minimize parking problems, save time, and save lives.

Section 408.035(8), Florida Statutes. The immediate and long-term financial feasibility of the proposal.

54. With respect to the project's short-term financial feasibility, SJH demonstrated that it can immediately finance the construction and implementation of the proposed satellite

hospital project and meet its existing capital obligations. The satellite proposal is immediately financially feasible.

55. With respect to the satellite's long-term financial feasibility, while the opponents argue that SJH's projected volumes, revenues, and expenses are inaccurate and unreasonable, SJH, on balance, sufficiently proved that the proposed satellite is financially feasible.

56. Specifically, SJH's utilization projections are reasonable. As its basis for the projections, SJH relied on the expected population growth in the proposed service area and its historic levels of similar service in that area. Without doubt, the satellite's proposed service area, located in the northwest sector of Hillsborough County, is a region of rapid population growth and development. The population in the proposed service area has increased by 35 percent over the past ten years and is projected to grow much faster over the next three years. The area is being invaded by young adults, and the demand for obstetric services is dramatically increasing.

57. SJH's historic levels of similar service in the area are persuasive. According to the un-refuted evidence, nearly 8,000 patient admissions, or 20 percent of SJH's existing inpatient volume, originated from the SJH satellite proposed service area, and 18,000 ER patient visits, or 17 percent of the

entire SJH Main ER volume, derived from the proposed service area in 2002.

58. In addition, SJH's strong presence in the proposed service area has enabled it to capture 32 percent of the patient days originating in the proposed service area. Given the existing patient days and expected population growth in the area, after culling out the tertiary and dissimilar services that the satellite will not provide, it is reasonable to expect that there will be over 121,000 available patient days in the proposed service area in 2007.

59. The evidence also demonstrates that it is reasonable to expect the new satellite hospital to capture 40 percent of the patient days otherwise served at SJH Main. Moreover, given its market position, it is not unreasonable to expect the satellite to capture 15 percent of the available pool of non-tertiary patient days in the proposed service area by the second year of operation.

60. In addition, SJH can expect 7.5 percent of the satellite patient days to originate from outside the service area thereby providing it with a reasonable projected utilization of nearly 20,000 patient days.

61. Although the opponents argue otherwise, the evidence demonstrates that SJH's projected revenues are also reasonable. Again, SJH based the satellite's projected revenues, with some



minor errors, on historic revenues for non-tertiary, non-specialty patients at SJH Main and conservatively assumed that it will achieve 90 percent of the 19,688 patient day utilization projections, or 17,800 patient days.

62. After multiplying the financial-class-specific patient revenue per patient day by the financial-class-specific incremental patient days at the satellite facility, and applying a three percent annual inflation factor, the satellite reasonably expects approximately \$1,604 in net revenue per adjusted patient day. The figure is consistent with the projected net revenue per adjusted patient day of \$1,832 at SJH Main, \$1,672 at UCH Fletcher, \$1,432 at UCH Carrollwood and \$1,408 at SFBH.

63. SJH's projected expenses for its satellite hospital are also reasonable. SJH modeled its projections on similar historical expenses and determined that it will incur fewer maintenance expenses at the new hospital facility. Its pro forma allowances for plant operations and non-labor expenses per adjusted patient day are reasonable and consistent with the actual experience of UCH, UCH Carrollwood, Helen Ellis, Suncoast, SFBH, and Tampa General hospitals.

64. SJH's staffing projection for new FTEs is also reasonable. The redirection of patient volume from SJH Main to the satellite will enable SJH to transfer some of its

experienced FTEs to the satellite. New FTEs will be hired at the 2001 area market average salary rate for new registered nurses annually inflated by three percent.

65. With respect to the reasonableness and appropriateness of SJH's pro forma, the opponents also argue that SJH fatally failed to include financial projections for the satellite on a stand-alone basis and, thereby, made it impossible to determine its long-term financial feasibility.

66. The opponents assertions, while interesting, are not persuasive. AHCA's CON application forms require applicants to demonstrate the financial impact of the proposed project on the CON applicant. Within Schedules 7a and 8a of its application, SJH reasonably demonstrated the satellite's effect on SJH.

67. Specifically, the first presented set of Schedules 7a and 8a entitled "Main" demonstrates SJH without the satellite hospital and provides a clear current baseline financial position for SJH. The second presented set of Schedules 7a and 8a, entitled "Satellite Hospital," demonstrates the projected financial benefit to SJH and the incremental increase in patient days when the satellite hospital is operational. SJH appropriately demonstrated the incremental financial benefit of the proposed project to the applicant, SJH.

68. Furthermore, SJH's pro forma illustrate that even with an immediate loss in revenues to SJH arising from the transfer

of patient days from SJH Main to the satellite, the project will generate revenues in excess of expenses in the long term.

Logically, and obviously understood in the application pro forma, had SJH included a third pro forma showing the positive financial gain to the satellite relating to the additional revenues from the cannibalized patient days, the overall project would have shown even greater profitability. SJH's pro forma include and account for all revenues and expenses associated with implementation and operation of the satellite hospital.

69. Moreover, AHCA supports SJH's method of presentation of the financial pro forma information in its CON application, and argues that it meets the Agency's requirements and is consistent with the method employed by other approved CON applicants.

70. In light of the evidence, SJH's proposed satellite hospital project will achieve long-term financial feasibility.

Section 408.035(9), Florida Statutes. The extent to which the project will foster competition that promotes quality and cost effectiveness.

71. SJH's proposed satellite hospital will foster competition that promotes quality and cost effectiveness without significantly adversely affecting existing providers. The evidence demonstrates that the opponents will remain strongly competitive.

72. Specifically, TGH is financially secure and will not be placed at material risk by the satellite hospital. While TGH is a safety-net provider and relies, in-part, on government funding, it achieved a net profit of \$10.8 million in 2001, \$56.2 million in 2002, and \$25.7 million through May 2003, annualized to approximately \$40 million. It also increased its admissions 10 percent from 2000 to 2002 and expects further gains.

73. Furthermore, TGH marginally serves the rapidly developing area where the satellite will draw most of its patients. In fact, TGH receives less than one percent of its non-tertiary admissions in six of the nine ZIP codes which comprise SJH's proposed service area.

74. TGH's projected adverse impact by the satellite hospital is overstated and unreliable. It is based on a contribution margin of \$5,997 per adjusted admission and is completely inconsistent with SJH's margin for 2001 of \$2,664, UCH Fletcher's contribution margin of \$2,367, and UCH Carrollwood's contribution margin of \$2,622.

75. Similarly, UCH will experience only minor adverse effect from the satellite. UCH is financially strong and has limited capacity to absorb the anticipated growth in demand for acute care services. Although UCH's net profit numbers have fluctuated from 2001 through the second quarter of 2002, UCH is

expecting a net profit greater than \$5 million in 2003 and a net profit of \$7.3 million in 2004. In addition, its inpatient admissions increased seven percent from 2000 to 2002.

76. UCH's loss projections are patently overstated. It erroneously used a 4.2 average length of stay and exaggerated its projected lost admissions by nearly 20 percent. It admitted that the satellite would have its lowest admissions in the service area in the ZIP codes proximate to UCH, yet argued the satellite would draw admissions equally from all zip codes in the proposed service area including those immediately adjacent to UCH. It admitted that its obstetrical program will remain near capacity when the satellite is actually constructed, but argued that the satellite will substantially drain obstetric patients away.

77. Although the satellite will inevitably draw some admissions away from UCH and TGH, the projected growth in patient days in the service area will offset any potential material adverse impact. The satellite will foster healthy competition, promote cost effectiveness, and provide faster quality health care in the area.

Section 408.035(10), Florida Statutes. 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.

78. On balance, the proposed costs and methods of construction are reasonable. The construction of the proposed satellite facility is projected to cost \$49,560,000, or \$652,105 per bed, which includes a 15 percent construction contingency. The satellite is expected to cost \$175 per gross square foot and is reasonable, given the existing range in the area.

79. While the total per bed "project cost" is nearly \$1 million, as shown in Schedule 9, Line S, the figure is misleading. It includes nearly \$20 million in equipment and other expensive, non-construction cost items.

80. SJH also plans to construct a medical office building and imaging center prior to construction of the hospital. Upon completion of the hospital, a portion of the square footage of the imaging center will be integrated with the hospital, at minimal cost, and serve as the inpatient radiology department. SJH has committed to construct the building and has obtained the necessary permits. Although it is not CON reviewable, the construction cost for the facility, approximately \$155 per square foot, is reasonable.

81. Finally, the proposed architectural design for the satellite hospital is reasonable and satisfies applicable

building codes. It consists of three medical-surgical pods of 16 beds each, one 14-bed intensive care pod, one 14-bed obstetrics pod, and one 16-bed observation pod. While the non-integrated, designed facility is rather large given its bed capacity, approximately 211,000 gross square feet, the satellite will consist of all private rooms and allow for future addition of licensed beds without major expansion or new construction. The design provides easy access and convenient parking.

82. Notwithstanding the reasonableness of the construction costs and design, the opponents argue that there are less costly alternatives. First, the project could be rejected and the community could resort to the status quo. Given the evidence, including emergency data, denial is unreasonable.

83. Second, the applicant could build a freestanding ER and/or an additional non-urgent care facility and minimize some of the existing problems. Given the evidence, including population trends and existing providers, the limited approach is unreasonable.

84. Third, the applicant could be approved to build a scaled down version of its proposal. Although the facility is appropriate and reasonable as proposed in the application, a scaled down facility is clearly a less costly method of construction. However, there is insufficient evidence to determine whether a smaller version is a reasonable alternative.

Section 408.035(11), Florida Statutes. The applicant's past and proposed provision of health care services to Medicaid patients and the medically indigent.

85. SJH has an impressive record of service to Medicaid patients and the medically indigent. It has long been recognized as a "safety net" provider of acute care services. In 2002, nearly 19 percent of SJH's total patient days were rendered to Medicaid-eligible patients.

86. SJH also provides \$40 million each year in uncompensated services to the community. It is a voluntary participant in the Hillsborough County Health Plan that provides funding for medically indigent or uninsured patients who do not qualify for Medicaid benefits. Consistent with its commitment to the community, SJH has conditioned approval of its CON on providing at least 15.6 percent of the satellite patient days to Medicaid and charity patients.

Section 408.035(12), Florida Statutes. The applicant's designation as a Gold Seal Program nursing facility pursuant to s. 400.235, when the applicant is requesting additional nursing home beds at that facility.

87. This criterion is not applicable.

#### CONCLUSIONS OF LAW

88. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of these proceedings. §§ 120.569 and 120.57(1), Fla. Stat. (2003).



89. SJH has the burden of proving that its application should be approved. Boca Raton Artificial Kidney Center v. HRS, 475 So. 2d 260 (Fla. 1st DCA 1985).

90. Despite the opponents arguments regarding phantom beds, SJH is not adding beds to the District and is not required to demonstrate "need" for the proposed project. See Fla. Admin. Code R. 59C-1.038(4)(a). Moreover, in Central Florida Regional Hospital v. Daytona Beach General Hospital, 475 So. 2d 974, 975 (Fla. 1st DCA 1985), the court specifically negated intra-district proof of need and reasoned:

The futility of applying bed need methodology by rule when transferring beds within a sub-district is apparent. If there are 100 licensed beds in a sub-district which are moved to another sub-district, the total number of beds remains the same; there are no "new or additional beds."

See also Memorial Healthcare Group, Inc., d/b/a Memorial Hospital Jacksonville v. AHCA, 25 FALR 2808, 2870-2871 (AHCA April 8, 2003).

91. The CON award must be based on a balanced consideration of all applicable statutory and rule criteria. Humana, Inc. v. Dept. of Health and Rehabilitative Services, 469 So. 2d 889 (Fla. 1st DCA 1985); Dept. of Health and Rehabilitative Services v. Johnson & Johnson, 447 So. 2d 361, 363 (Fla. 1st DCA 1984). No single criterion is determinative of the outcome, and the weight to be given to each is not fixed,

but depends on the facts and circumstances of each case.

Collier Medical Center, Inc. v. Dept. of Health and Rehabilitative Services, 462 So. 2d 83 (Fla. 1st DCA 1985); Holmes Regional Medical Center, et al., v. AHCA, 23 FALR 1280, 1283 (AHCA November 21, 2000).

92. On balance, SJH's proposal satisfies and is not inconsistent with the applicable local health plan criteria. § 408.035(1), Fla. Stat. (2003).

93. SJH's proposal will enhance the availability, quality of care, and geographical access to acute care, including ER services, for current and future residents of the proposed service area. Notwithstanding the availability of a few reasonably accessible hospitals in the existing and adjacent service district, the area is rapidly growing and the proposal will enhance access in the service area. SJH's proposal, on balance, is reasonable and satisfies Subsections 408.035(2) and (7), Florida Statutes (2003), as well as Florida Administrative Code Rule 59C-1.030(2)(f). See HCA Health Services of Florida v. Agency for Health Care Administration, 25 FALR 1089, 1101 (AHCA, February 21, 2003).

94. SJH established its historical record of providing quality health care and demonstrated its ability to provide quality of care at the satellite facility. § 408.035(3), Fla. Stat. (2003).

95. Subsections 408.035(4) and (5), Florida Statutes (2003), are not applicable.

96. SJH has the necessary resources to implement and operate its proposed satellite hospital. § 408.035(6), Fla. Stat. (2003).

97. SJH demonstrated, on balance, that its proposal is financially feasible in the short and long-term. § 408.035(8), Fla. Stat. (2003).

98. SJH demonstrated that the satellite will foster competition that promotes quality and cost-effectiveness. The satellite facility will not have a material adverse impact on any of its competitors, including UCH or TGH. The projected growth in the service area will offset any reasonably expected degree of adverse impact. § 408.039(9), Fla. Stat. (2003).

99. SJH demonstrated that the project costs and methods of construction are reasonable. There is insufficient evidence to determine whether any reasonable less costly, or more effective methods of construction exist. § 408.035(10), Fla. Stat. (2003).

100. SJH demonstrated its commitment to the provision of care to Medicaid and medically indigent patients through its historic service record and its commitment to condition approval of its application on a high level of service to these populations. § 408.035(11), Fla. Stat. (2003).

101. SJH's correction of a clerical error on Schedule 9 is not an impermissible amendment to the application. HCA Health Services, 25 FALR at 1102. Similarly, SJH's explanation of its staffing plan at the final hearing, using the information presented within the four corners of the application, does not constitute an amendment. HCA Health Services, supra.

102. SJH's inadvertent omission of \$200,000 from its Schedule 2 is not a material error and does not affect the fairness of the proceeding or the correctness of the Agency's preliminary decision. § 408.039(5)(d), Fla. Stat. (2003).

103. SJH presented its financial pro forma in a manner acceptable to the Agency and consistent with Agency CON application forms. UCH contends however, that SJH's financial pro forma were inadequate based on Wuesthoff v. Agency for Health Care Administration, 22 FALR 956 (AHCA, January 13, 2000) (Recommended Order at 20 FALR 1267). In that case, the CON applicant sought approval to construct a patient bed tower that, when complete, would convert a separately-approved outpatient diagnostic and treatment center into an acute care hospital. The applicant in Wuesthoff 2000 omitted substantial staffing and supply costs, including all hospital ancillary personnel from its pro forma, as well as bad debt and substantial interest expense. Wuesthoff 2000, 20 FALR at 1277.

104. In the case at hand, SJH included in its pro forma all expenses and revenues associated with implementation of the satellite. It presented the necessary information to assess financial feasibility and on balance, its application satisfies the applicable CON statutory and rule criteria.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a final order be issued to approve the application.

DONE AND ENTERED this 20th day of July, 2004, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the  
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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.