

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ST. JOSEPH'S HOSPITAL, INC.,)	
d/b/a ST. JOSEPH'S HOSPITAL,)	
)	
Petitioner,)	
)	
vs.)	Case No. 05-2754CON
)	
AGENCY FOR HEALTH CARE)	
ADMINISTRATION,)	
)	
Respondent,)	
)	
and)	
)	
FLORIDA HEALTH SCIENCES CENTER,)	
INC., d/b/a TAMPA GENERAL)	
HOSPITAL AND SUN CITY HOSPITAL)	
INC., d/b/a SOUTH BAY HOSPITAL)	
AND GALENCARE, INC., d/b/a)	
BRANDON REGIONAL HOSPITAL,)	
)	
Intervenors.)	
_____)	

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its designated Administrative Law Judge, J. D. Parrish, held a final hearing in the above-styled case on October 29-November 1, November 5-9, and November 13-15, 2007, in Tallahassee, Florida.

APPEARANCES

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STATEMENT OF THE ISSUE

The Petitioner, St. Joseph's Hospital, Inc., d/b/a St.
Joseph's Hospital (Petitioner, Applicant, or St. Joseph's) filed
Certificate of Need (CON) Application No. 9833 with the Agency

for Health Care Administration (Agency or AHCA). The application seeks authority to establish a 90-bed acute care satellite hospital in southeastern Hillsborough County, Florida. St. Joseph's intends to transfer 90 acute care beds from its existing location in Tampa to the new facility. The issue in this case is whether the Agency should approve the CON application.

PRELIMINARY STATEMENT

St. Joseph's filed CON application No. 9833 in the February 2005 batching cycle. The proposed site for the new satellite hospital is in an area of southeastern Hillsborough County and is referred to as "St. Joseph's Hospital Big Bend" to be located in Riverview, Florida 33573, an area of AHCA's District 6/Subdistrict 1. By letter dated June 17, 2005, the Agency notified the Petitioner of its intent to deny the application. The State Agency Action Report (SAAR) that outlined AHCA's reasons and explanations for the denial was issued concurrent with its letter and St. Joseph's timely contested the decision. The case was forwarded to the Division of Administrative Hearings (DOAH).

The parties filed a Joint Response to Initial Order and agreed, in part, to waive their right to hearing within 60 days of assignment of the Administrative Law Judge. In accordance with the dates proposed by counsel for the parties, the case was

scheduled for hearing for August 7 through 11 and 14 through 18, 2006.

On April 5, 2006, a Joint Motion for Continuance of Final Hearing was filed that sought a continuance in this matter. Moreover, the joint motion specified that the parties had agreed to a final hearing for July 9-13, 16-20, and 23-27, 2007.

The parties (on September 11, 2006) filed yet another request to reschedule the hearing. That motion for continuance was granted and the case was set for November 2007. All hearing dates were agreed upon by the parties.

Section 408.039, Florida Statutes (2007), details the review process by which this case is governed. The Florida Legislature has directed AHCA to, by rule, provide for CON applications to be submitted on a timetable or cycle basis. Applications should be reviewed timely and applications pertaining to similar types of services or facilities are to be comparatively considered in relation to each other. In this case, however, St. Joseph's is the sole competitor for the facility sought. The approval of the CON application is opposed by Florida Health Sciences Center, Inc., d/b/a Tampa General Hospital (Tampa General); Sun City Hospital Inc., d/b/a South Bay Hospital (South Bay); and Galencare, Inc., d/b/a Brandon Regional Hospital (Brandon). These parties are existing providers within the same AHCA subdistrict and timely filed

petitions to oppose the satellite hospital proposed by St. Joseph's.

Prior to the hearing, all parties were advised that evidence to be presented would be held to the planning horizon and methodology set forth in the application at issue. Extraneous and other information not encompassed within the planning horizon set forth in CON application No. 9833 was deemed irrelevant. Updates to data encompassed within the planning horizon, was considered and deemed material to the issue at hand. It is concluded that by inaction and agreement the parties have waived any interest to seek a timely resolution of this case. Accordingly, the case proceeded to hearing based upon the methodology and planning horizon applicable to the 2005 "batching cycle." Efforts to materially amend the planning horizon or to extend the applicable timeframe of the batching cycle were deemed impermissible.

The Agency, Tampa Bay, South Bay, and Brandon (the Opponents or Opponent providers if only the hospitals) filed a Prehearing Statement on October 27, 2007. That statement was later accepted by St. Joseph's. The Opponents maintain that CON application No. 9833 failed to meet the applicable criteria and requirements set by statute and rule. All Opponents argue that St. Joseph's CON application must be denied.

All parties acknowledge that the statutory criteria applicable to this proceeding are found in Section 408.035, Florida Statutes. Additionally, the Agency rules applicable to this proceeding are set forth in Florida Administrative Code Rules 59C-1.002, 59C-1.008, 59C-1.010, and 59C-1.030.

The parties have stipulated:

A timely and complete letter of intent was filed by St. Joseph's in February 2005, and St. Joseph's timely submitted its CON application and omissions response. St. Joseph's application was timely deemed complete and reviewed by the Agency, leading to a timely preliminary denial by the Agency, in compliance with technical requirements set forth in Section 408.039(2)(a), (c), and (d), Florida Statutes (2005); and Rules 59C-1.002, 59C-1.008, and 59C-1.010, Fla. Admin. Code. The St. Joseph application was complete in compliance with the technical requirements of Section 408.037, Florida Statutes, with the exception of Section 408.037(1)(b) 3, Florida Statutes (2005).

The methods of energy provision as described in design narratives in St. Joseph Hospital's CON application are reasonable.

The petitions in this matter were timely filed.

At the final hearing, St. Joseph's presented the testimony of the following witnesses: Issac Mallah, an expert in healthcare administration; Lee Kirkman, M.D., an expert in internal medicine, pulmonary medicine, and critical care medicine; Frederick Taylor, D. O., an expert in family practice;

Mark D. Vaaler, M. D., an expert in critical care medicine and quality assurance and improvement; Robert Pergolizzi, an expert in traffic and transportation engineering; John LaRocca, an expert in land use planning; Rick Knapp, an expert in healthcare finance; Patricia Teeuwen, an expert in acute care resources management; David Travis, an expert in emergency pre-hospital medical services quality, education, delivery, and management; Joseph E. Smith; and Mark M. Richardson, an expert in healthcare planning. St. Joseph's also offered the deposition testimony of Christopher L. Dausch, P. E., land development program director for Bayside Engineering (SJH Ex. 31); Benjamin Marquez, M. D., a board certified family practice physician (SJH Ex. 32); Kimberly Guy, the Chief Operating Officer for St. Joseph's Women's Hospital (SJH Ex. 33); Christine Tina Long, B. S. N., director of patient care services for med/surg units and the oncology unit at St. Joseph's Hospital (SJH Ex. 34); Deborah F. Shultz, M. D., family practice physician (SJH Ex. 35); James Baron, M. D., obstetrician/gynecologist (SJH Ex. 36); Bruce S. Houghton, A. I. A., architect (SJH Ex. 37); Teri Lancaster, Ruskin, Florida resident (SJH Ex. 38); Rodney L. Cadwell, president of HELP International (SJH Ex. 39); Joseph Knight, resident of Riverview and employee of Cadwell Laboratories (SJH Ex. 40); Tommy Inzina, Executive Vice President and Chief Financial Officer of BayCare Health System, (SJH Ex. 41); Jeffrey N.

Gregg, Chief of the Bureau of Health Facility Regulation at AHCA (SJH Ex. 42); Robert M. Betzu, M. D., cardiologist (SJH Ex. 43); Cathy R. Yoder, C.P.A., Chief Financial Officer at St. Joseph's-Baptist Healthcare (SJH Ex. 44); and Lawrence Wu, Senior Vice President of National Economic Research Associates, Inc. (SJH Ex. 45). The Petitioner's exhibits, marked for identification as SJH Ex. 1 through 50, were admitted into evidence. Rulings on the objections to the deposition testimony are included in Appendix A to this order.

South Bay and Brandon presented testimony from the following witnesses: Steven Daugherty, an expert in hospital administration; Michael Fencel, an expert in hospital administration; Armand Balsano, an expert in healthcare planning and healthcare finance; and Darryl Weiner, an expert in healthcare finance and healthcare financial feasibility. South Bay and Brandon also presented the deposition testimony of Linda Karen Landfish, M. D., board certified neonatologist and board certified pediatrician (South Bay/Brandon Ex. 44); Barry C. Harris, Ph. D., an economist with Economists, Incorporated (South Bay/Brandon Ex. 45); and Susan Ann Zinkel, an expert in hospital human resources, staff compensation, recruitment, and retention (South Bay/Brandon Ex. 46). South Bay and Brandon Exhibits 1 through 49 were admitted into evidence.

Tampa General presented testimony from the following witnesses: Ronald A. Hytoff, an expert in hospital administration; Deana L. Nelson, an expert in patient care/administration; Ernest J. Peters, an expert in traffic engineering; Judith Ploszek, an expert in healthcare finance; and Daniel Sullivan, an expert in healthcare planning and finance. Tampa General presented the deposition testimony of Steven L. Durbin, SPHR, Vice President for Human Resources at Tampa General (Tampa General Ex. 33). Tampa General's Exhibits 1 through 33 were admitted into evidence.

The Agency presented the testimony of Jeffrey N. Gregg, an expert in healthcare planning and certificate of need review. The Agency's exhibit, marked for identification as AHCA Ex. 1, was received in evidence. No depositions were offered by AHCA.

The 15-volume Transcript of the final hearing was filed with DOAH on December 3, 2007. On December 6, 2007, the parties filed an Unopposed Motion for Extension of Time to file their proposed recommended orders. Thereafter, by stipulation and request of the parties, the time for filing proposed recommended orders was extended twice. Additionally, the parties' request to enlarge the page limitation for the proposed recommended orders was granted. All parties timely filed proposed recommended orders on March 7, 2007. The proposals have been fully considered in the preparation of this Recommended Order.

FINDINGS OF FACT

The Parties

1. AHCA is the state agency charged with the responsibility of administering the CON program for the state of Florida. The Agency serves as the state health planning entity. See § 408.034, Fla. Stat. (2007). As such, it was charged to review the CON application at issue in this proceeding. AHCA has preliminarily denied St. Joseph's CON application No. 9833.

2. The Petitioner is the applicant for the CON in this case. The Petitioner is a not-for-profit organization licensed to operate St. Joseph's Hospital, a general acute care facility located in the urban center of Tampa, Florida. It was originally founded by a religious order and has grown from approximately 40 beds to a licensed bed capacity of 883 beds. St. Joseph's provides quality care in a comprehensive range of services. Those services include tertiary and Level II trauma services. St. Joseph's provides services to all patients regardless of their ability to pay. To meet its perception of the growing healthcare needs of the greater Hillsborough County residents, St. Joseph's has proposed to construct a satellite hospital on a site it purchased in the mid-1980s. According to St. Joseph's, the satellite hospital, together with its main campus, would better address the growing community needs for acute care hospital services. To that end, St. Joseph's filed

CON application No. 9833 and seeks approval of its satellite facility. It proposes to transfer 90 of its acute care beds from its current hospital site to the new satellite facility. The main hospital will offer support services as may be necessary to the satellite facility.

3. Tampa General is an 877-bed acute care hospital located on Davis Island in urban Tampa, Florida. Prior to 1997, it was a public hospital operated by the Hillsborough County Hospital Authority but has since been operated and managed by a non-profit corporation, Florida Health Sciences, Inc. Tampa General provides quality care in a wide range of services that include tertiary and Level I trauma. Tampa General addresses the medical needs of its patients without consideration of their ability to pay. It is a "safety net" provider and is the largest provider of services to Medicaid and charity patients in the AHCA District 6/Subdistrict 1. Medicaid has designated Tampa General a "disproportionate share" provider.

4. Tampa General is also a teaching hospital affiliated with the University of South Florida's College of Medicine. Recently, Tampa General has undergone a major construction project that brings on line a new emergency trauma center as well as additional acute care beds, a women's center, a cardiovascular center and a digestive diagnostic and treatment center. Tampa General opposes the CON request at issue.

5. South Bay and Brandon also oppose St. Joseph's CON application. South Bay is a 112-bed community acute care hospital located in Sun City Center, Florida. South Bay has served the community for about 25 years and offers quality care but does not provide obstetrical services primarily because its closest population and patient base is a retirement community restricted to persons over 55 years of age.

6. In contrast, Brandon is an acute care hospital with 367 beds located to South Bay's north in Brandon, Florida. Brandon provides quality care with a full range of hospital services including obstetrics, angioplasty, and open-heart surgery. Brandon also has neonatal intensive care (NICU) beds to serve Level II and Level III needs. It is expected that Brandon could easily add beds to its facility as it has empty "shelled-in" floors that could readily be converted to add 80 more acute care beds.

7. Both Brandon and South Bay are owned or controlled by Hospital Corporation of America (HCA) and are part of its West Florida Division.

The Proposal

8. St. Joseph's has a wide variety of physicians on its medical staff. Those physicians currently offer an array of general acute care services as well as medical and surgical specialties. St. Joseph's provides Levels II and III NICU, open

heart surgery, interventional radiology, primary stroke services, oncology, orthopedic, gynecological oncology, and pediatric surgical. Based upon its size, reputation for quality care, and ability to offer this wide array of services, St. Joseph's has enjoyed a well-deserved respect in its community.

9. To expand its ties within AHCA's District 6/Subdistrict 1 healthcare community, St. Joseph's affiliated with South Florida Baptist Hospital a 147-bed community hospital located in Plant City, Florida. This location is east of the main St. Joseph Hospital site.

10. Further, recognizing that the growth of greater Hillsborough County, Florida, has significantly increased the population of areas previously limited to agricultural or mining ventures, St. Joseph's now seeks to construct a community satellite hospital located in the unincorporated area of southeastern Hillsborough County known as Riverview. The Petitioner owns approximately 50 acres of land at the intersection of Big Bend Road and Simmons Loop Road. This parcel is approximately one mile east of the I-75 corridor that runs north-south through the county.

11. In relation to the other parties, the proposed site is north and east of South Bay, south of Brandon, and east and south of Tampa General. South Florida Baptist Hospital, not a

party, is located to the north and farther east of the proposed site.

12. The size of the parcel is adequate to construct the proposed satellite as well as other ancillary structures that might compliment the hospital (such as medical offices).

13. If approved, the Petitioner's proposal will provide 66 medical-surgical beds, 14 beds within an intensive care unit, and 10 labor and delivery beds. All 90 beds will be "state-of-the-art" private rooms along with a full-service emergency department. The hospital will be fully digital, use an electronic medical record and picture archiving system, and specialists at the main St. Joseph's hospital will be able to access images and data at the satellite site in real time. A consultation would be, theoretically, as close as a computer.

14. In reaching its decision to seek the satellite hospital, St. Joseph's considered input from many sources; among them: HealthPoint Medical Group (HealthPoint) and BayCare Health System, Inc. (BayCare). HealthPoint is a physician group owned by an affiliate of St. Joseph's. HealthPoint has approximately 80 physicians who operate 21 offices throughout Hillsborough County. All of the HealthPoint physicians are board certified. At least five of the HealthPoint offices would have quicker access to the proposed satellite hospital than to the main St. Joseph's Hospital site. The HealthPoint physicians support the

proposal so that their patients will have access to, and the option of choosing, a St. Joseph facility in the southeastern part of the county.

15. BayCare is an organization governed by a cooperative agreement among nonprofit hospitals. Its purpose is to assist its member hospitals to centralize and coordinate hospital functions such as purchasing, staffing, managed care contracting, billing, and information technology. By cooperatively working together, its members are able to enjoy a cost efficiency that individually they did not enjoy. The "synergy" of their effort results in enhanced quality of care, efficient practices, and a financial savings to their operations. The proposed St. Joseph's satellite would also share in this economy of efforts. Understandably, BayCare supports the proposal.

Review Criteria

16. Every new hospital project in Florida must be reviewed pursuant to the statutory criteria set forth in Section 408.035, Florida Statutes (2007). Accordingly, the ten subparts of that provision must be weighed to determine whether or not a proposal meets the requisite criteria.

17. Section 408.035(1), Florida Statutes (2007) requires that the need for the health care facilities and health services being proposed be considered. In the context of this case,

"need" will not be addressed in terms of its historical meaning. The Agency no longer calculates "need" pursuant to a need methodology. Therefore, looking to Florida Administrative Code Rule 59C-1.008, requires consideration of the following pertinent provisions:

...If an agency need methodology does not exist for the proposed project:

1. The agency will provide to the applicant, if one exists, any policy upon which to determine need for the proposed beds or service. The applicant is not precluded from using other methodologies to compare and contrast with the agency policy.

2. If no agency policy exists, the applicant will be responsible for demonstrating need through a needs assessment methodology which must include, at a minimum, consideration of the following topics, except where they are inconsistent with the applicable statutory or rule criteria:

- a. Population demographics and dynamics;
- b. Availability, utilization and quality of like services in the district, subdistrict or both;
- c. Medical treatment trends; and,
- d. Market conditions.

3. The existence of unmet need will not be based solely on the absence of a health service, health care facility, or beds in the district, subdistrict, region or proposed service area.

18. According to St. Joseph's, "need" is evidenced by a large and growing population in the proposed service area (PSA), sustained population growth that exceeds the District and state

average, highly occupied and seasonally over capacity acute care beds at the existing providers, highly occupied and sustained increases in demand for hospital services, a scarcity of emergency medical service resources within the PSA compounded by budget cuts, increases in traffic congestion and travel times to the existing hospitals, the lack of a nonprofit community hospital near the proposed site, and the lack of local obstetrical services.

19. In this case the Petitioner has identified the PSA as a 10 zip code area with 7 being designated the "primary" area of service (PSA) and 3 zip codes to the north being identified as the "secondary" area of service (SSA). The population of this PSA is projected to reach 322,913 by the year 2011 (from its current 274,696).

20. All parties used Claritas data to estimate population, the PSA growth, and various projections. Claritas is a conservative estimator in the sense that it relies on the most recent U. S. census reports that may or may not track the most recent growth indicators such as building starts or new home sales. Nevertheless, if accurate, the estimated 17.5 percent population growth expected in the new satellite hospital's PSA exceeds the rate of growth estimated for AHCA District 6 as well as the projected State of Florida growth rate. From the 7 primary zip codes within the PSA alone the area immediately

adjacent to the subject site is estimated to grow by 14,900 residents between 2006 and 2011.

21. Over the last 20 years the PSA has developed from rural farming and mining expanses with scattered housing and trailer parks to an area characterized by modern shopping centers, apartment complexes, housing subdivisions, churches, libraries, and new schools. Physicians in the area now see as many as 60 patients per day and during the winter peak months may admit up to 20 patients per week to hospitals.

22. Travel times from the southern portion of the PSA to St. Joseph's Hospital, Tampa General, or Brandon, can easily exceed 30 minutes. Travel times to the same providers during "rush" or high traffic times can be longer.

23. All of the opponent providers have high occupancy rates and experience seasonal over capacity. During the winter months visitors from the north and seasonal residents add significant numbers to the population in Hillsborough County. These "snow birds" drive the utilization of all District 6/Subdistrict 1 hospitals up. Further, increased population tends to slow and congest traffic adding to travel times within AHCA District 6/Subdistrict 1.

24. Both Brandon and Tampa General have recently added beds to address the concerns of increased utilization. Additionally, Tampa General has expanded its emergency

department to provide more beds. South Bay has elected to not increase its bed size or emergency department. South Bay has experienced difficulty staffing its emergency department. When faced with capacity problems, South Bay "diverts" admissions to other hospitals.

25. When the emergency rooms of the Opponent providers are unable to accommodate additional patients, the county emergency transport is diverted to other facilities so that patients have access to emergency services. During the winter season and peak flu periods this diversion is more likely to occur. Another hospital in the southeastern portion of the county, within St. Joseph's satellite PSA, would alleviate some of the crowding.

26. More specifically, South Bay's annual occupancy rate in 2006 was 80.1 percent. For the first seven months of 2007, South Bay's average occupancy rate was 88.4 percent. These rates indicate that South Bay is operating at a high occupancy. Operating at or near capacity is not recommended for any hospital facility. Long term operation at or near occupancy proves to be detrimental to hospital efficiencies.

27. Similarly, Brandon operates at 70 percent of its bed capacity. Even though it has recently added beds it intends to add more beds to address continuing increases in admissions. Brandon's emergency room is also experiencing overcrowded conditions. When Brandon's emergency room diverts patients

their best option may be to leave District 6/Subdistrict 1 for care.

28. Tampa General is a large complex and its emergency department has been expanded to attempt to address an obvious need for more services. It is unknown whether the new emergency department will adequately cure the high rates of diversion Tampa General experienced in 2007. New beds were added and an improved emergency department was designed and constructed with the expectation that Tampa General's patients would be better served.

29. Based upon Tampa General's expansion and its projected growth, Tampa General could experience an occupancy rate over 75 percent by 2011. If so, Tampa General could easily return to the utilization problems previously experienced.

30. There are no obstetrical services offered south of Brandon in AHCA District 6/Subdistrict 1. The proposed St. Joseph's satellite hospital would offer obstetrics and has designated a 10-bed unit to accommodate those patients.

31. There are no nonprofit hospitals south of Brandon in AHCA District 6/Subdistrict 1. The proposed St. Joseph's satellite hospital would offer patients in the PSA with the option of using such a hospital.

32. Section 408.035(2), Florida Statutes (2007), requires the consideration of the availability, quality of care,

accessibility, and extent of utilization of existing health care facilities and health services in the service district of the applicant.

33. As previously stated, all of the parties provide quality care to their patients. Although delays in emergency departments may inconvenience patients, the quality of the medical care they receive is excellent.

34. Similarly, hospital services are available and can be accessed in AHCA District 6/Subdistrict 1. The parties provide a full range of healthcare service options that address the medical and surgical needs of the residents of AHCA District 6 Subdistrict 1. An additional hospital would afford patients with another choice of provider in the southeastern portion of the county. The St. Joseph satellite hospital would afford such patients with a hospital option within 30 minutes of the areas within the PSA. This access would promote shorter wait times and less crowded facilities.

35. Section 408.035(3), Florida Statutes (2007), mandates review of CON applications in light of the ability of the applicant to provide quality of care and the applicant's record of providing quality of care.

36. As previously stated St. Joseph's has a well-deserved reputation for providing quality care within a wide range of hospital services to its patients. It is reasonable to expect

the satellite hospital would continue in the provision of such care. The management team and affiliations established by St. Joseph's will continue to pursue quality care to all its patients regardless of their ability to pay.

37. Section 408.035(4), Florida Statutes (2007), considers the availability of resources for project accomplishment and operation. Resources that must be considered include healthcare personnel, management personnel, and funds for capital and operating expenditures.

38. St. Joseph's has the resources to accomplish and operate the satellite hospital proposed. St. Joseph's has a successful history of recruiting and retaining healthcare personnel and management personnel. The estimates set forth in its CON application for these persons were reasonable and conservative. Salaries and benefits for healthcare personnel and management personnel should be within the estimated provisions set forth in the application.

39. Although there is a nationwide shortage of nursing personnel and physicians in certain specialties, St. Joseph's has demonstrated it has a track record of staffing its facility to meet appropriate standards and provide quality care. There is no reason to presume it will not be similarly successful at the satellite facility.

40. St. Joseph's has also demonstrated it has the financial ability to construct and operate the proposed satellite hospital. The occupancy rates projected for the new hospital will produce a revenue adequate to make the hospital financially feasible. Further, if patients who reside closer to the satellite facility use it instead of the main St. Joseph Hospital, a lower census at the main hospital will not adversely impact the financial strength of the organization. There will be adequate growth in the healthcare market for this PSA to support the new facility as well as the existing providers.

41. It must be noted, however, that construction costs for the satellite hospital will exceed the amounts disclosed by the CON application. Some of the increases in cost are significant. For example, the estimate for the earthwork necessary for site preparation has risen from \$417,440 to \$1,159,296. Additionally, most of the unit prices for construction have gone up dramatically in the past couple of years. Hurricanes and the resulting increased standards for building codes have also driven construction costs higher. More stringent storm water provisions have resulted in higher construction costs. For this project it is estimated the storm water expense will be \$500,000 instead of the original \$287,000 proposed by the CON application. In total these increases are remarkable. They may also signal why development in AHCA's District 6/Subdistrict 1

has slowed since the CON application was filed. Regardless, St. Joseph's should have the financial strength to construct and operate the project.

42. Section 408.035(5), Florida Statutes (2007), specifies that the Agency must evaluate the extent to which the proposed services will enhance access to health care for residents of the service district. In the findings reached in this regard, the criteria set forth in Administrative Code Rule 59C-1.030(2) have been fully considered. Those provisions are:

- (2) Health Care Access Criteria.
 - (a) The need that the population served or to be served has for the health or hospice services proposed to be offered or changed, and the extent to which all residents of the district, and in particular low income persons, racial and ethnic minorities, women, handicapped persons, other underserved groups and the elderly, are likely to have access to those services.
 - (b) The extent to which that need will be met adequately under a proposed reduction, elimination or relocation of a service, under a proposed substantial change in admissions policies or practices, or by alternative arrangements, and the effect of the proposed change on the ability of members of medically underserved groups which have traditionally experienced difficulties in obtaining equal access to health services to obtain needed health care.
 - (c) The contribution of the proposed service in meeting the health needs of members of such medically underserved groups, particularly those needs identified in the applicable local health plan and State health plan as deserving of priority.
 - (d) In determining the extent to which a

proposed service will be accessible, the following will be considered:

1. The extent to which medically underserved individuals currently use the applicant's services, as a proportion of the medically underserved population in the applicant's proposed service area(s), and the extent to which medically underserved individuals are expected to use the proposed services, if approved;

2. The performance of the applicant in meeting any applicable Federal regulations requiring uncompensated care, community service, or access by minorities and handicapped persons to programs receiving Federal financial assistance, including the existence of any civil rights access complaints against the applicant;

3. The extent to which Medicare, Medicaid and medically indigent patients are served by the applicant; and

4. The extent to which the applicant offers a range of means by which a person will have access to its services.

(e) In any case where it is determined that an approved project does not satisfy the criteria specified in paragraphs (a) through (d), the agency may, if it approves the application, impose the condition that the applicant must take affirmative steps to meet those criteria.

(f) In evaluating the accessibility of a proposed project, the accessibility of the current facility as a whole must be taken into consideration. If the proposed project is disapproved because it fails to meet the need and access criteria specified herein, the Department will so state in its written findings.

43. AHCA does not require a CON applicant to demonstrate that the existing acute care providers within the PSA are failing in order to approve a satellite hospital. Also, AHCA does not have a travel time standard with respect to the

provision of acute care hospital services. In other words, there is no set geographical distance or travel time that dictates when a satellite hospital would be appropriate or inappropriate. In fact, AHCA has approved satellite hospitals when residents of the PSA live within 20 minutes of an existing hospital. As a practical matter this means that travel time or distance do not dictate whether a satellite should be approved based upon access. With regard to access to emergency services, however, AHCA does consider patient convenience.

44. In this case the proposed satellite hospital will provide a convenience to residents of southeastern Hillsborough County in terms of access to an additional emergency department. Further, physicians serving the growing population will have the convenience of admitting patients closer to their residences. Medical and surgical opportunities at closer locations is also a convenience to the families of patients because they do not have to travel farther distances to visit the patient. Patients and the families of patients seeking obstetrical services will also have the convenience of the satellite hospital.

45. Patients who would not benefit from the convenience of the proposed satellite hospital would be those requiring tertiary health services. Florida Administrative Code Rule 59C-1.002(41) defines such services as:

(41) Tertiary health service means a health service which, due to its high level of intensity, complexity, specialized or limited applicability, and cost, should be limited to, and concentrated in, a limited number of hospitals to ensure the quality, availability, and cost effectiveness of such service. Examples of such service include, but are not limited to, organ transplantation, specialty burn units, neonatal intensive care units, comprehensive rehabilitation, and medical or surgical services which are experimental or developmental in nature to the extent that the provision of such services is not yet contemplated within the commonly accepted course of diagnosis or treatment for the condition addressed by a given service.

46. In terms of tertiary health services, residents of AHCA District 6/Subdistrict 1 will continue to use the existing providers who offer those services. The approval of the St. Joseph satellite will not adversely affect the tertiary providers in AHCA District 6/Subdistrict 1 in terms of their ability to continue to provide those services. The new satellite will not compete for those services.

47. Tampa General has a unique opportunity to provide tertiary services and will continue to be a strong candidate for any patient in the PSA requiring such services. As a teaching hospital and major NICU and trauma center, Tampa General offers specialties that will not be available at the satellite hospital. If non-tertiary patients elect to use the satellite hospital, Tampa General should not be adversely affected. Tampa

General has performed well financially of late and its revenues have exceeded its past projections. With the added conveniences of its expanded and improved facilities it will continue to play a significant roll in the delivery of quality health care to the residents of the greater Tampa area.

48. Section 408.035(6), Florida Statutes (2007) provides that the financial feasibility of the proposal both in the immediate and long-term be assessed in order to approve a CON application.

49. In this case, as previously indicated, the utilizations expected for the new satellite hospital should adequately assure the financial feasibility of the project both in the immediate and long-term time frames. Population growth, a growing older population, and technologies that improve the delivery of healthcare will contribute to make the project successful.

50. The satellite hospital will afford PSA residents a meaningful option in choosing healthcare and will not give any one provider an unreasonable or dominant position in the market.

51. Section 408.035(7), Florida Statutes (2007) specifies that the extent to which the proposal will foster competition that promotes quality and cost-effectiveness must be addressed.

52. AHCA's District 6/Subdistrict 1 enjoys a varied range of healthcare providers. From the teaching hospital at Tampa

General to the community hospital at South Bay, all demonstrate strong financial stability and utilization. A new satellite hospital will promote continued quality and cost-effectiveness. As a member of the BayCare group the satellite will benefit from the economies of its group and provide the residents of its PSA with quality care. Physicians will have another option for admissions and convenience.

53. Section 408.035(8), Florida Statutes (2007), notes that 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 should be reviewed.

54. The methodology used to compute the construction costs associated with this project were reasonable and accurate at the time prepared. The costs, however, are not accurate in that most have gone up appreciably since the filing of the CON application. No more effective method of construction has been proposed but the financial soundness of the proposal should cover the increased costs associated with the construction of the project. The delays in resolving this case have worked to disadvantage the Applicant in this regard. Unforeseeable acts of nature, limitations of building supplies, and increases inherent with the passage of time will make this project more costly than St. Joseph's envisioned when it filed the CON

application. Further, it would be imprudent to disregard the common knowledge that oil prices have escalated while interest rates have dropped. These factors may also impact the project's cost.

55. Section 408.035(9), Florida Statutes (2007), provides that the applicant's past and proposed provision of health care services to Medicaid patients and the medically indigent should be weighed in consideration of the proposal.

56. St. Joseph's has a track record of providing health care services to Medicaid patients and the medically indigent without consideration of any patient's ability to pay. The satellite hospital would be expected to continue this tradition. Moreover, as a provision of its CON application, St. Joseph's has represented it will provide 12.5 percent of its patient days to Medicaid/Medicaid HMO/Charity/Indigent patients.

57 Section 408.035(10), Florida Statutes, relates to nursing home beds and is not at issue in this proceeding.

The Opposition

58. The SAAR set forth the Agency's rationale for the proposed denial of the CON application. The SAAR acknowledged that the proposal had received 633 letters of support (80 from physicians, 365 from St. Joseph employees, and 191 from members of the community); that funding for the project would be available; that the short-term position, long-term position,

capital requirements, and staffing for the proposal were adequate; that the project was financially feasible if the Applicant meets its projected occupancy levels; that the project would have a marginally positive effect on competition to promote quality and cost-effectiveness; and that the construction schedule "seems to be reasonable" for the project.

59. Notably in opposition to the CON application, the SAAR represented that:

It is not clear that projected population growth for this area will outpace the ability of subdistrict facilities to add beds to accommodate population growth. The subdistrict's most recent average utilization rate was 63.40 percent, and an additional facility has already been approved for this applicant in this county for the purpose of handling forecasted growth. Growth projected for females aged 15-44 is not significantly higher for the county than for the district or state, and it is not demonstrated that need exists for obstetric services in the subdistrict.

60. The foregoing analysis did not credit the projected population growth for the PSA applicable to this proposal heavily. The population growth expected for the PSA will support the utilization necessary for the proposed project. Applying the Agency's assessment, all existing hospital providers could add beds to meet "need" for a Subdistrict and thereby eliminate the approval of any satellite community

facility that would address local concerns. Also, South Bay has conceded it will not add beds at its location.

61. Additionally, the SAAR stated:

While both South Bay Hospital and Brandon Regional Hospital have occupancy rates such that the introduction of a competing facility would not likely inhibit their abilities to maintain operations, the same cannot be stated for Tampa General Hospital, the only designated Disproportionate Share Hospital in this subdistrict. Any impact on Tampa General Hospital as a result of the proposed project would likely be negative, limiting Tampa General's ability to offset its Medicaid and charity care services.

The applicant facility does not currently have a significant presence in the proposed market, and would have to gain market share in this PSA in order to meet its projected occupancy levels. Much of the market share gained by the applicant with the proposed facility would likely be at the expense of existing facilities in this area, most notably Tampa General due to its lower occupancy level and higher Medicaid and charity care provisions.

62. In reaching its decision, the Agency has elected to protect Tampa General from any negative impact that the proposed satellite hospital might inflict.

63. Tampa General has invested \$300 million in improvements. It is a stand-alone, single venue hospital that has not joined any group or integrated system. It relies on its utilization levels, management skill and economies of practice to remain solvent. Tampa General considers itself a unique

provider that should be protected from the financial risks inherent in increased competition. It is the largest provider of services to indigent patients in AHCA District 6/Subdistrict.

64. Brandon opposes the proposed satellite hospital in part because it, too, has expanded its facility and does not believe additional beds are needed in AHCA District 6/Subdistrict 1. Nevertheless when a related facility sought to establish a satellite near the St. Joseph's site, Brandon supported the project. Brandon provides excellent quality of care and has a strong physician supported system. It will not be adversely affected in the long run by the addition of a satellite hospital in St. Joseph's PSA.

65. Similarly, South Bay opposes the project. South Bay will not expand and does not provide obstetric services. It has had difficulty staffing its facility and believes the addition of another competitor will exacerbate the problem. Nevertheless, South Bay has a strong utilization level, a track record of financial strength, and will not likely be adversely impacted by the St. Joseph satellite.

66. The opponents maintain that enhanced access for residents of the PSA does not justify the establishment of a new satellite hospital since the residents there already have good access to acute care services.

CONCLUSIONS OF LAW

67. 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. (2007).

68. St. Joseph's has the burden to prove by a preponderance of the evidence that its CON application should be approved. See, e.g., Boca Raton Artificial Kidney Center, Inc. v. Dept. of Health and Rehabilitative Servs., 475 So. 2d 260, 263 (Fla. 1st DCA 1985); § 120.57(1)(j), Fla. Stat. (2007).

69. The Agency's preliminary decision on CON Application No. 9833 and its findings in the SAAR are not entitled to a presumption of correctness in this de novo proceeding. See generally Dept. of Transportation v. J.W.C. Co., Inc., 396 So. 2d 778, 787 (Fla. 1st DCA 1981). The Agency's construction and interpretation of its rules and the statutes that it is charged to implement, however, are entitled to deference. See, e.g., State Contracting & Engineering Corp., v. Dept. of Transportation, 709 So. 2d 607, 610 (Fla. 1st DCA 1998); § 120.57(1)(l), Fla. Stat. (2007).

70. The decision of whether to approve a CON application must be based on a balanced consideration of all statutory and rule criteria. Department of Health and Rehabilitative Services v. Johnson & Johnson Home Healthcare, Inc., 477 So. 2d 261 (Fla. 1st DCA 1984); Balsam v. Department of Health and Rehabilitative

Services, 486 So. 2d 1341 (Fla. 1st DCA 1988). The weight to be given to each criterion is not fixed, but depends on the facts and circumstances of each case. Collier Medical Center, Inc. v. Department of Health and Rehabilitative Services, 462 So. 2d 83 (Fla. 1st DCA 1985).

71. All parties in this cause have the requisite standing to participate in this proceeding pursuant to Section 408.039(5)(c), Florida Statutes (2007).

72. In this case the Applicant has presented a need methodology that argues the satellite facility should be approved. The opponents disagree (for the most part) based upon their perception that the area growth has slowed, that the utilizations projected are not reasonable, and that the existing providers will be adversely affected by the new satellite hospital.

73. As to the Applicant's methodology, St. Joseph's has demonstrated a new satellite hospital at the Big Bend location will enhance emergency department access. Further, the new satellite will provide patients with a meaningful option for hospital services in the southeastern portion of Hillsborough County. The satellite will offer enhanced access to obstetrical services to residents of the PSA. And finally, it will offer reduced travel times for patients and their families using the facility. These conveniences of access have been established.

74. As to the Agency's concern that the satellite will siphon patients from Tampa General, a fragile Disproportionate Share provider that must be protected, the projected growth in population in the PSA as well as the county as a whole should adequately generate sufficient patient days to alleviate such fears. Moreover, since St. Joseph's intends to transfer beds from its main site, the overall number of beds in AHCA District 6/Subdistrict 1 will remain unchanged. If freezing the number of hospital beds were an option, the Legislature could do so. It has not. St. Joseph can easily resolve the issue by agreeing to not add the beds back to its main campus for a designated period of time. Such a stipulation would allow the new satellite facility to realize the utilization levels projected. If St. Joseph's is correct in its assessment, all of the providers in AHCA District 6/Subdistrict 1 will continue to grow their admissions and/or patient days based upon population growth and increased utilization.

75. Improving access to acute care hospital services including emergency services in non-urban areas experiencing growth (similar to the PSA herein) is the trend in medical treatment. The addition of the subject satellite will provide such services to a growing area of southeastern Hillsborough County.

76. Patients requiring tertiary services will not be benefited by the new satellite but those who require emergency services will have a second option that will lessen emergency department wait time. On balance St. Joseph's has established need for its proposed satellite hospital based upon its methodology, Florida Administrative Code Rule 59C-1.008(2)(e), as well as the criteria found in Section 408.035, Florida Statutes (2007). To the extent that the Agency remains concerned that the project will unduly adversely affect competition, such concern should be cured by condition. Otherwise, St. Joseph's CON application generally meets the CON statutory and rule criteria. With conditions for the provision of Medicaid/Indigent care at 12.5 percent and a time limit before beds are added back to the main St. Joseph's facility, the Applicant's request for a satellite facility should be approved.

RECOMMENDATION

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

RECOMMENDED that a Final Order be entered by the Agency for Health Care Administration that approves CON Application No. 9833 with the conditions noted.

DONE AND ENTERED this 13th day of May, 2008, in
Tallahassee, Leon County, Florida.



J. D. PARRISH
Administrative Law Judge
Division of Administrative Hearings
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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.

APPENDIX A

Rulings on the objections raised by Tampa General:

1. Objection to Christopher Dausch, SJH Ex. #31: Overruled.

2. Objection to Christine Long, SJH Ex. #34:

Motion to Strike Ex. 4 to the Deposition: Granted.

Motion to Strike Ex. 3 to the Deposition: Granted.

Motion to Strike Deponent's Opinions: Denied. Tampa General's objection has been duly considered in the weight that should reasonably be given the opinions expressed by the Deponent.

3. Objection to Rodney Cadwell, SJH Ex. #39: Overruled.

4. Objection to Robert Betzu, M.D., SJH Ex. #43: Overruled.

5. Rulings on other objections raised by Tampa General (in joining those raised by South Bay and Brandon) are addressed below.

Rulings on the Objections to Depositions raised by South Bay and Brandon:

1. Objection to Rodney Cadwell, SJH Ex. #39: Overruled.

2. Objection to Christopher Dausch, SJH Ex. 31: Overruled.

3. Objection to Bruce Houghton, SJH Ex. #37: Overruled.

4. Objection to Christine Long, SJH Ex. #34: Overruled. See note above.

5. Objection to Kimberly Guy, SJH Ex. #33: Overruled.

6. Objection to Teri Lancaster, SJH Ex. #38: Overruled.

7. Objection to Joseph Knight, SJH Ex. #39: Overruled.

8. Objections to Jeffrey Gregg, SJH Ex. #42: Overruled.

9. Objection to Benjamin Marquez, M. D., SJH Ex. #32:
Overruled.

10. Objections to Robert Betzu, M. D., SJH Ex. #43: Overruled.

11. Objection to Tommy Inzina, SJH Ex. #41: Overruled.

12. Objections to Deborah Shultz, M. D., SJH Ex. #35:
Overruled.

At hearing the parties stipulated that depositions would be offered in lieu of live testimony. Objections that could have been readily raised at deposition, have been deemed waived and if submitted, overruled. Secondly, hearsay not supported by direct evidence in the proceeding has not been relied upon to reach a finding of fact in this cause. Additionally, data beyond the planning horizon has not been accepted.

Neither St. Joseph's nor the Agency filed objections to the depositions offered in this cause.