

**STATE OF CONNECTICUT  
OFFICE OF HEALTH STRATEGY**

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IN RE: ACQUISITION OF 51% OF	)	DOCKET NO. 20-32411-CON
SOUTHWEST CONNECTICUT	)	
SURGERY CENTER, LLC	)	
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	)	
	)	AUGUST 3, 2022

**REBUTTAL TO PREFILED TESTIMONY OF ALAN HALE AND  
RESPONSE TO “EVIDENCE” CONTAINED IN WSC’S  
PETITION FOR INTERVENOR STATUS AND REPLY MEMORANDUM**

Southwest Connecticut Surgery Center, LLC (“SCSC”) and HHC Surgery Center Holdings, LLC (“HHC Surgery”) (collectively the “Applicants”), Applicants in the above-referenced Certificate of Need (“CON”) proceeding under Docket No. 20-32411-CON (the “CON Proceeding”), hereby submit the following Rebuttal to the July 29, 2022 Prefiled Testimony of Alan Hale (“Hale Testimony”) on behalf of the Wilton Surgery Center, LLC (“WSC”). This Rebuttal also addresses certain information raised by WSC’s counsel in the Petition for Intervenor Status (the “Petition”) and Reply Memorandum (“Reply Memorandum”) in support thereof, dated July 29, 2022 and August 1, 2022, respectively, which constitute unsworn evidence that should not be considered by the Office of Health Strategy (“OHS”) in its deliberations.

Representatives of the Applicants will adopt this Rebuttal at the public hearing on this matter, to the extent required, and will be available to answer questions from OHS staff or, as

allowed by the Hearing Officer, the Intervenor. For ease of review, this Rebuttal is presented in bullet-point format with the Hale Testimony, Petition and Reply Memorandum cited, as appropriate.

- Mr. Hale testifies that WSC is a “stand-alone” surgery center (Hale Testimony, p. 2).

While WSC is a freestanding ambulatory surgery center (“ASC”), it is not “stand-alone” inasmuch as that suggests an independent, unaffiliated ASC. Applicants’ understanding is that 50% of the membership interests in WSC are held by a joint venture entity that is owned in equal parts by AMSURG Corp. (“AMSURG”) and Stamford Health Systems, Inc. (“Stamford Health”).

AMSURG describes itself as a “healthcare powerhouse that offers a strong national presence.”<sup>1</sup> AMSURG states that “[a]s a leader in the ambulatory surgery center quality movement, AMSURG provides a unique approach to combining technology, data analytics, patient engagement and quality reporting that results in optimal outcomes for patients. As a result, [they] provide healthcare value, improve patient experience and save lives.”<sup>2</sup> AMSURG partners in more than 250 surgery centers across 34 states and is a part owner of five ASCs located in Connecticut.<sup>3</sup> AMSURG is a subsidiary of Envision Healthcare, a leading national medical group 25,000 clinicians backed by 5,000 clinical support teammates providing care across the United States.<sup>4</sup>

Stamford Health is a healthcare system that includes an acute care general hospital, an ambulatory health network comprised of advanced imaging, outpatient rehabilitation,

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<sup>1</sup> <https://www.amsurg.com/about-amsurg>

<sup>2</sup> <https://www.amsurg.com/about-amsurg>

<sup>3</sup> <https://www.amsurg.com/about-amsurg/locations>

<sup>4</sup> <https://www.envisionhealth.com/about/who-we-are>

physical therapy, ambulatory surgery, and other clinical services, as well as the “region’s largest” physician-led medical group offering primary and specialty care.<sup>5</sup> Stamford Health also advertises partnerships with “renowned institutions” including Dana-Farber Cancer Institute, Hospital for Special Surgery, and Columbia University.<sup>6</sup>

Considering its ownership structure, WSC is well aware of the benefits that accrue to an ASC and its patients when the resources and expertise of a health system partner and a surgical management company are combined. As important, based on this ownership structure, OHS should question the credibility and sincerity of WSC’s claims that it “faces a real and substantial threat” that HHC might “recruit and lure away physicians from Wilton Surgery with promises of higher compensation packages and potential syndication participation in HHC’s expanding network of ASCs” (Reply Memorandum, p. 4); that Applicants will “have access to HHC’s substantial marketing capabilities and resources” and that SCSC will have an “ability to outspend Wilton Surgery in attracting new patients ... [having] a direct impact on Wilton Surgery” (Reply Memorandum, p. 5); and that this proposal will be “impacting a smaller ASC like Wilton Surgery” (Reply Memorandum, p. 5). With the backing of a “healthcare powerhouse” like AMSURG and one of the region’s largest health systems in Stamford Health, WSC can adequately compete with any ASC in its service area.

- WSC’s claim that its survival is vulnerable to the “real and substantial threat” that HHC will recruit WSC’s physicians to Southwest Connecticut Surgery Center (the “Center”) rings untrue (Reply Memorandum, p. 4). As Mr. Hale, who manages WSC surely knows,

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<sup>5</sup> <https://www.stamfordhealth.org/about/>

<sup>6</sup> <https://www.stamfordhealth.org/about/>

neither HHC nor the Center employs or compensates any of the Medical Staff of the Center for their work at the Center – to do so would violate the STARK law. The Medical Staff of the Center bill for their own professional services (*see Inquiry Response*). In addition, there are two HHC-affiliated physicians currently on the Medical Staff of WSC, neither of whom has performed procedures at the Center since it opened or sought to invest in SCSC, despite HHC Surgery’s equity interest. Also, the physicians to which Mr. Hale refers, including the HHC-affiliated physicians, are the owners of WSC who presumably authorized this opposition to the Applicants’ CON request. It is nonsensical and more than a bit disingenuous for those same physicians to now argue that they might be persuaded to leave WSC and join SCSC if this proposal is approved.

- It is equally disingenuous for WSC to cast itself as a “smaller ASC” as compared with SCSC (Reply Memorandum, p. 5) when it advertises six (6) operating rooms compared to SCSC’s two (2) operating rooms;<sup>7</sup> when WSC has thirty (30) physicians on its Medical Staff compared to sixteen (16) physicians on the SCSC Medical Staff;<sup>8</sup> and when WSC offers services in multiple surgical subspecialties including pain management, oculoplastics and ophthalmology, and gastroenterology, and potentially others<sup>9</sup>, while SCSC is primarily focused on musculoskeletal services.<sup>10</sup>
- Mr. Hale testifies that WSC has two (2) operating rooms (“ORs”) and two (2) procedure rooms (Hale Testimony, p. 2). However, on WSC’s website the facility advertises having *six (6) operating rooms*.<sup>11</sup> Although WSC’s arguments regarding capacity and utilization

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<sup>7</sup> <https://wiltonsurgerycenter.com/for-physicians/>

<sup>8</sup> <https://wiltonsurgerycenter.com/physicians/>; <https://swctsurgery.com/medical-staff/>

<sup>9</sup> WSC has several urologists and a plastic surgeon on its Medical Staff. <https://wiltonsurgerycenter.com/physicians/>

<sup>10</sup> <https://wiltonsurgerycenter.com/specialties/>

<sup>11</sup> <https://wiltonsurgerycenter.com/for-physicians/>

of its ORs are irrelevant to the CON Proceeding as set forth in Applicants' Objection to WSC's Petition for Intervenor Status (the "Objection"), WSC's alleged low utilization may be a result of the facility operating more ORs than it currently reports to OHS.

- Ms. Hale testifies that WSC's pain management procedure room utilization has declined since 2019. Although WSC's arguments regarding utilization by specialty are irrelevant to the CON Proceeding as set forth in the Objection, any decline in pain management volume at WSC is directly attributable to the pain management physicians on WSC's Medical Staff bringing fewer cases to that facility, and not to the presence of SCSC. None of WSC's pain management physicians is on the Medical Staff at SCSC and none of these physicians has performed pain management procedures at SCSC since it opened in October of 2021. It would not be inappropriate for OHS to take note of the world-wide pandemic that has negatively impacted elective procedure volumes nationwide for the past two years.
- The ability of other ASCs in the service area to accommodate the patients of physicians on the SCSC Medical Staff (Hale Testimony, pp. 3 & 5) is irrelevant to the CON Proceeding, as it does not involve a request to establish or add OR capacity to an ASC. The fact that Applicants have not provided evidence that surgeons cannot get block time at these facilities, or that patients need to wait for procedures due to capacity issues, is entirely irrelevant to a CON Application for change in governance control of a legally-authorized, duly-licensed existing ASC.
- Having options for outpatient surgical care in and around the service area promotes patient choice, competition, and diversity of providers. Although Mr. Hale states that he will testify to the negative impact that Applicants' proposal will have on patient choice,

he offers no such testimony (Hale Testimony, p. 2). In fact, this proposal *increases* the diversity of providers and patient choice in the service area, bringing an HHC presence to the local ASC community as an alternative to those ASCs affiliated with other health systems and surgical management companies. It also helps to maintain the Center as a lower-cost alternative for outpatient surgical care in the Wilton community, a fact that Mr. Hale acknowledges in his testimony (Hale Testimony, pp. 4-5 “... Applicants go to great lengths to inform OHS that cases performed in a freestanding outpatient surgery center setting cost less than cases performed in a hospital setting ... This is commonly known in the healthcare industry.”).

- Mr. Hale testifies that SCSC’s relationship with Constitution Surgery Alliance, LLC (“CSA”) is sufficient to ensure high-quality services for the Center’s patients (Hale Testimony, pp. 3-4). This is a curious statement coming from the representative of a “healthcare powerhouse” ASC management company that, despite its “national presence” and status as a “leader in the ambulatory surgery center quality movement,” chose to partner with a Stamford Health in operating WSC.<sup>12</sup> As Mr. Hale is likely aware, the affiliation of an ASC with a clinically integrated health system results in a level of care coordination, increased patient access and enhanced quality of care that cannot be achieved through affiliation with a surgical management company alone. This may be why AMSURG has developed a health system partnership strategy and operates 57 centers with health system partners.<sup>13</sup> Obtaining equal governance control of SCSC will ensure that HHC is able to fully integrate the Center into its network and implement those

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<sup>12</sup> <https://www.amsurg.com/about-amsurg>; <https://www.stamfordhealth.org/locations/locations-profile/wilton-surgery-center/>

<sup>13</sup> <https://www.amsurg.com/resources/news/april-2022/amsurg-celebrates-its-30th-anniversary>

measures necessary to promote access to high-quality, lower-cost care in the community for the benefit of patients. AMSURG appears to take a similar approach to sharing governance control in its partnerships.<sup>14</sup>

- Mr. Hale testifies that HHC Surgery’s assumption of equal governance control will not favorably impact Medicaid recipients and indigent persons because of the projected payer mix at the Center (Hale Testimony, p. 4). Mr. Hale is incorrect, as during its first 9 months of operation the Center achieved a ***Medicaid payer mix of 7.7%***, higher than the 6.8% reported by WSC (Hale Testimony, p. 4). The payer mix of an ASC is largely driven by the physicians who bring cases to the Center, their surgical subspecialties, and the payer mix of their individual practices. However, the presence of a non-profit health system such as HHC guarantees that the Center will continue to participate in the Medicaid program. Moreover, WSC cannot compare its Medicaid percentages to SCSC’s given the minimal overlap in surgical subspecialties between the facilities and the complete lack of overlap in physicians on the Medical Staffs of each facility. SCSC will also conform the Center’s financial assistance policy to HHC’s financial assistance policy. In addition, SCSC educates the Center’s Medical Staff physicians and their offices on the availability of financial resources for their patients considering surgery at the Center.
- Mr. Hale testifies about HHC’s community benefit as compared with Yale New Haven Health Services, which is not a party to this CON Application or in any way affiliated with either WSC or SCSC (Hale Testimony, p. 4). The purpose of this comparison is

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<sup>14</sup><https://wiltonsurgerycenter.com/for-physicians/> (“Our typical surgery center partnership is operated under a **consensus management model**, with the center’s Operating Board comprised of equal representation by the physician partners and AMSURG.”)

unclear. The information attached to Mr. Hale’s testimony shows that in 2020, during the COVID-19 pandemic, HHC provided \$94.3 million in community benefit weighted by licensed beds, \$89.6 million in community benefit weighted by total expense, and \$84.7 million in community benefit weighted by net income, making it the second highest health system in the state on all three measures (Hale Testimony, Exhibit D). WSC’s partner Stamford Health, on the other hand, is presumably included within the category of Independent Hospitals that *collectively* provided between \$48.5 million and \$61.9 million in community benefits, depending on how it is measured (Hale Testimony, Exhibit D). Moreover, the amount of community benefits that one health system provides relative to another health system is in no way tied to its ability to increase access to care for vulnerable patient populations, as Mr. Hale suggests. This is evidenced by the fact that SCSC’s Medicaid payor mix has reached 7.7% even before HHC Surgery has obtained governance control, which as previously noted will allow it to ensure that access continues to increase in this manner.

- WSC claims, without any justification or supporting evidence, that HHC has a “practice of serving a majority of patients with commercial payor insurance with higher fees” and “targeting patients who are likely to result in higher revenues” (Reply Memorandum, p. 4). These claims are entirely unsubstantiated and should not be considered by OHS.
- Despite suggesting that he would, Mr. Hale provides no substantive evidence regarding the lack of cost-effectiveness of the proposal before OHS. As previously noted, Mr. Hale acknowledges the general cost savings associated with ASCs (Hale Testimony, pp. 4-5). Undeniably, HHC will help to ensure that SCSC remains a lower-cost option for outpatient surgical care in the Wilton area. Mr. Hale further states that “Wilton Surgery



has concerns that HHCSCH's investment will have the opposite effect [with respect to costs], as described in Wilton Surgery's Petition for Status" (Hale Testimony, p. 5).

WSC's Petition for Intervenor Status is not evidence, but rather legal argument, and anything contained therein cannot and should not be considered by OHS as evidence in this matter.

- Mr. Hale testifies at length about the decline in interventional pain management procedures and how this supposedly impacts SCSC's ability to meet its volume projections (Hale Testimony, pp. 3 & 5-7). Although WSC's arguments regarding pain management utilization and the achievability of Applicants' volume projections are irrelevant to the CON Proceeding as set forth in the Objection, any inability to meet volume projections is a business consideration for SCSC. It is irrelevant to this CON Application for a change in governance control of the Center following an equity buy-in, neither of which is expected to have any impact on case volume.
- Applicants also find it peculiar that Mr. Hale believes this proposal might result in a shift in volume from WSC, an argument entirely unsupported by the evidence (Hale Testimony, p. 7; Reply Memorandum, pp. 4-5). As previously noted, there is no overlap in physicians between WSC and SCSC. In order for SCSC to shift volume from WSC, that volume would need to come from physicians currently practicing at WSC. Again, none of those physicians are on the SCSC Medical Staff and they are the very physicians who authorized the opposition to this CON request by HHC.
- In addition, Mr. Hale's claim that WSC can accommodate all of SCSC's pain management procedures is irrelevant to the CON Proceeding as set forth in the Objection, as this is not a CON for a *de novo* ASC or the addition of capacity. Nevertheless, Mr.

Hale fails to appreciate the fact that (i) this would require SCSC physicians to join the WSC Medical Staff, which he cannot compel them to do; and (ii) the Center provides more than just pain management procedures.

- Mr. Hale testifies that the Center has undergone a “significant transformation and expansion” with the addition of surgical subspecialties (Hale Testimony, pp. 5-6). As noted in the Objection, the syndication of physicians and addition of surgical subspecialties is allowed by law without a CON. Here, the syndication was approved in the CON Determination under Docket No. 19-32325-DTR. Mr. Hale understands the ability to expand an ASC in this manner, as his facility added gastroenterology physicians and services without CON authorization and contemplated doing the same with ENT services (*see* Objection). Although WSC refers to SCSC as a “new facility” for purposes of this CON Proceeding, it is no more a “new facility” than WSC is each time it adds a surgical subspecialty or physician investors (Reply Memorandum, p. 3).<sup>15</sup>
- Mr. Hale suggests that HHC has a “very extensive presence across the state” and that this “shows significant market power and likely puts Hartford HealthCare into a strong negotiating position with commercial payers as is alleged in the lawsuits cited in Wilton Surgery’s Petition for Intervenor Status” (Hale Testimony, p. 7). First, these statements are pure conjecture, unsupported by any evidence offered by Mr. Hale. Second, as noted in the Objection, any reference to the aforementioned lawsuit in the CON Proceeding is both irrelevant and entirely inappropriate. Filing a lawsuit requires nothing but bare, unproven, and unchallenged allegations. The complaints referenced in the Petition are at best irrelevant to the proceeding before OHS, and inflammatory. HHC believes that the

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<sup>15</sup> Applicants reserve all rights with respect to the scope of the CON Application before OHS and their ability to contest any change in scope of the CON and/or submit additional evidence to OHS in this regard.

recent lawsuit filed by St. Francis and the class-action lawsuit based on similar claims are both meritless, denies any allegations of wrongdoing contained in the complaints and will vigorously defend against them. HHC's Motion to Dismiss the St. Francis Amended Complaint is pending before the court. It would be improper and unfair for OHS to allow an intervenor to raise these lawsuits, or for OHS to consider these lawsuits in any way in connection with the CON Proceeding, or for the allegations contained in the complaints to have any bearing on OHS's evaluation of the CON Application. In addition, there are no fewer than ten other ASCs offering orthopedic services in Fairfield County in competition with the Center.

Thank you for your consideration of this Rebuttal testimony. The Applicants' witnesses will be available to answer any questions regarding this submission.

Respectfully Submitted,

SOUTHWEST CONNECTICUT SURGERY  
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## **CERTIFICATION**

This is to certify that a copy of the foregoing was sent via electronic mail this 3<sup>rd</sup> day of August, 2022 to the following parties:

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