

SCA Surgical Care Affiliates

June 1, 2010

Received by the
CON Section

01 JUN REC'D 04 : 45

Mike McKillip, Project Analyst
Certificate of Need Section
Division of Health Service Regulation
North Carolina Department of Health and Human Services
701 Barbour Drive
Raleigh, North Carolina 27626-0530

RE: Comments on Surgery Center of Hoke, LLC CON application

Dear Mr. McKillip:

Enclosed please find comments prepared by Fayetteville Ambulatory Surgery Center regarding the CON application submitted by Surgery Center of Hoke, LLC to relocate two surgical operating rooms from Moore County and establish a new ambulatory surgery center in Hoke County. We trust that you will take these comments into consideration during your review of the applications.

Sincerely,



Rich Sharff
EVP & General Counsel
Surgical Care Affiliates

**COMMENTS & OPPOSITION REGARDING SURGERY CENTER OF HOKE, LLC
CON PROJECT ID# N-8494-10**

**Submitted by Fayetteville Ambulatory Surgery Center
June 1, 2010**

Fayetteville Ambulatory Surgery Center (FASC) represents a partnership of local surgical providers and Surgical Care Affiliates (SCA), an experienced provider of ambulatory surgical services. With its affiliated physicians and partners, SCA is one of the largest national providers of specialty surgical services, operating 124 ambulatory surgery centers and surgical hospitals across the country, with more than 2,000 physician partners.

FASC has provided high-quality ambulatory surgical services to residents of Cumberland and Moore counties for several years. FASC operates 11 operating rooms at its existing facility on Metromedical Drive in Fayetteville (Cumberland County). Currently, a total of 106 physicians perform surgery at FASC, representing a variety of specialties, including gynecology, neurology, ophthalmology, oral surgery, orthopedics, otolaryngology, plastic surgery and podiatry. During FY2009, FASC performed 14,210 surgical cases. Thus, FASC is knowledgeable regarding the local need for surgical services in the service area, and are well positioned to evaluate the CON proposal by Surgery Center of Hoke, LLC (SCOH) for a new ambulatory surgery center in adjacent Hoke County.

SCOH has applied to relocate two surgical operating rooms from Moore County and establish a new ambulatory surgery center in Hoke County. SCOH also proposes to serve Cumberland County patients. SCA is a current provider of surgical services in both Moore (Eye Surgery Center of the Carolinas) and Cumberland (Fayetteville Ambulatory Surgery Center). Because of our commitment to serving the best interests of citizens in this area, and in support of the State's Certificate of Need (health planning) objectives, we feel compelled to express our concerns about the SCOH application.

We recognize that your decision will be based upon the State's CON objectives. Particular focus is on the need to provide residents with access to quality care, without unnecessary and costly duplication of services. Any existing or new health service provider must accurately assess local needs and services, and should

develop a plan that represents the least costly or most effective alternative. SCOH's application does not achieve either objective.

Specifically:

- SCOH's proposed project does not satisfy CON Review Criterion 3 in that it does not demonstrate the need the identified population has for the proposed its proposed project.
- SCOH fails to satisfy Review Criterion 4 in that the applicant provides no justification that the proposed project represents the lowest cost or most effective alternative to serving the health service area.
- SCOH is non conforming with Review Criterion 6. Specifically, SCOH does not demonstrate that the proposed project will not result in unnecessary duplication of existing service capabilities and facilities.
- SCOH is non conforming with Review Criterion 7 with regard to availability of health manpower specific to surgical services.
- The application is non conforming with Review Criteria 5 and 12. Also, the proposed project unduly increases the costs of providing health services.
- SCOH's application is non conforming with Review Criterion 13 with regard to access to services by the medically underserved.
- SCOH is non conforming with Review Criterion 21(b). The application failed to conform to all applicable administrative rules.

Subsequent comments are based on the State's health-planning goals and review criteria that are relevant to the SCOH application.

Need Methodology/Utilization Projections

Surgical Utilization Rate

In Step 5 of their need methodology, SCOH determine a cumulative multi-county use rate (per 100 population) by combining the outpatient surgical case utilization rates of Cumberland, Robeson and Scotland counties. Using historical data, SCOH calculates a cumulative multi-county use rate of 4.90. However, SCOH neglects to include the outpatient surgical case utilization rate for Hoke County residents even though it is included in the service area. If the Hoke

County utilization rate of 3.09 is included in the calculation, the average county utilization rate decreases to 4.77. The table below displays the recalculated cumulative outpatient surgical case utilization rate with Hoke County included.

**Outpatient Surgical Case Utilization
 Per 100 population**

	Cumberland	Hoke	Robeson	Scotland	CUM-ROB- SCO-HOK County Use Rate
2009	4.49	3.09	5.57	5.94	4.77

Source: Con Application. Revised cumulative county use rate based on Cumberland, Hoke, Robeson, & Scotland counties.

In projecting outpatient surgical cases at SCOH, it is unreasonable that the average county utilization rate of 4.90 can be assumed as the cumulative utilization rate because the historical Hoke County utilization rate for Hoke County patients is intentionally left out of this calculation. SCOH believes Hoke County will assume a utilization rate that is 2.4% higher than its actual use rate solely due to the opening of a hospital in Hoke County as well as the proposed establishment of an ambulatory surgery center. There is no justification for this rationale; therefore, the projected number of outpatient surgical cases for SCOH are overstated and based on unrealistic assumptions.

Physician Letters of Support

Step 5 also projects that Pinehurst physicians will schedule 53.1% of their patients from the 4-county service area for SCOH, resulting in 471 committed SCOH cases as seen in the following table.

**Surgery Center of Hoke
 4-County Service Area
 Proposed Volume Split**

2009 Physician Cases	"Committed" SCOH Cases	Surgical Case Shift
887	471	53.1%

Source: Con Application pg. 92

However, in projecting the percentage of surgical cases shift that will shift to the proposed new ambulatory surgery center in Hoke County, SCOH fails to provide documentation of where these statistics are found. Using the actual committed number of cases to be performed at SCOH from SCOP physician referral letters provided in Exhibit 7, the total number of committed surgical cases is drastically lower than 887 at a mere 471 cases. The following table provides a summary of the physicians who provided letters of support for SCOH, including their actual committed referral estimates included in those letters (Exhibit 7).

Letters of Support & Surgical Case Commitment

Physician	Specialty	SCOP Physician	Committed Annual Surgical Cases to SCOH*
Griffin, Neil	Ophthalmology		
Oakly, Ward	Orthopedics	X	17.4
Brenner, Mark	Orthopedics	X	125
Grace, Colleen	Ophthalmology		
Caldwell, Phillip	Pediatric Dentist		
McAlister-Stokes, Yvette	Pediatric Dentist		
Szabo, Stephen	OB/Gyn	X	30
Fedder, David	Orthopedics	X	30
Terry, William	OB/Gyn	X	25
Conti, Neil	Orthopedics	X	20
Chu, Willy	General Surgery	X	20
Bartiss, Michael	Pediatrics Ophthalmology	X	20
Fasolak, Walter	OB/Gyn	X	15
Haro, Anthony	Podiatry	X	15
Casey, David	Orthopedics	X	
Buchele, Barry	OB/Gyn	X	10
Cox, Stanley	ENT	X	10
Berk, Carl	ENT	X	10
McGuirt, Wyman	ENT	X	8
Grantham, David	General Surgery	X	7
Kilpatrick, Jefferson	ENT	X	7
Subin, Glenn	Orthopedics	X	6
Guevara, Jason	Orthopedics	X	6

Fessenden, John	General Surgery	X	6
DiMichele, Andres	OB/Gyn	X	5
Washington, Raymond	General Surgery	X	5
Rice, James	Orthopedics	X	5
Zoellner, Steven	Plastics	X	4
Atkinson, Clinton	Vascular	X	1
Power, Christina	Dental	X	1
Dunlap, Glen	Podiatry	X	1
Williamson, Cile	OB/Gyn	X	1
Albrecht, Robert	Vascular	X	1
Thwaites, Brian		X	20
Winkley, James		X	20
ReVille, Jacland		X	10
Oldroyd, Robert		X	10
		Total	471.4

Source: CON Application.

*Revised to reflect letters of support with no specific commitment of annual surgical cases.

SCOH recorded physician Ward Oakly as committing 174 annual surgical cases. However, after reviewing the actual physician commitment letter it is clear physician Ward Oakly only committed 17.4 annual surgical cases. Even if he committed 174 annual surgical cases, he states to have only historically provided outpatient surgical services to 87 residents from the proposed service area. Thus, an assumption that 174 projected surgical cases will be performed in Hoke County is completely unreasonable.

In addition, some of the letters included in Exhibit 7 do not commit a specific number of surgical cases to SCOH. Yet SCOH allocated 100% of the physicians' historical cases to SCOH even though the letters did not commit to 100%. Therefore, the estimated SCOH surgical cases and surgical case shift are not documented and cannot be supported. Without proper documentation of the actual number of committed surgical cases from the physicians' referral letters, SCOH projects a highly overstated number of committed SCOH cases. The resulting projected surgical case utilization for SCOH cannot be supported.

On page 98, SCOH projects the additional number of outpatient surgical cases that would be performed at SCOH based on the "**clear desire**" of local, non-SCOP physicians. However, the letters of support from these non-SCOP physicians do not support this assumption. Non-SCOP physicians Neil Griffin,

MD and Colleen Grace, MD only state that “many of these cases mentioned above will be performed as outpatient surgical cases”. Additionally, non-Surgery Center of Pinehurst (SCOP) physicians Phillip Caldwell, MD and Yvette McAlister-Stokes, MD make no mention of any commitment to performing cases at SCOH. These vague commitment statements or lack thereof cannot be considered “clear desire”. Without commitment to a specific number of outpatient surgical cases to be performed, the additional number of cases that would be performed by non-SCOP cannot be determined. Therefore, the total of all non-SCOP physician committed volumes projected as 809 is unreasonable. Please refer to the following table.

Non-SCOP Physician Committed Volumes

Physician	Specialty	SCOH Assumed Surgical Cases	SCOH Assumed Total Cases	Actual Committed Surgical Cases	Actual Committed Total Cases
Griffin, Neil	Ophthalmology	494	809	0	0
Grace, Colleen	Ophthalmology	120		0	
McAlister-Stokes, Yvette	Oral Surgery	120		0	
Caldwell, Phillip	Oral Surgery	120		0	

Source: CON Application. Revised using actual number of committed surgical cases from non-SCOP physicians

Given that none of the non-SCOP physicians listed by SCOH stated any clear committed volume, it is erroneous to conclude that these letters of support could quickly increase SCOH’s market share growth through the privileging of only a few physicians. Furthermore, any projections resulting from the market share growth due to local non-SCOP physicians are unsupported and unreliable.

Market Share

SCOH provides an unwarranted claim that the development of the FirstHealth Hoke Community Hospital, medical office buildings, and the planned addition of physicians at the two largest medical practices in Moore County will increase their annual market share in Cumberland and Hoke counties by 2.5% and 5.0%, respectively. However, SCOH does not include Moore County in the service area and no patients are projected to come from this area. Therefore, it is unreasonable to assume any increases in annual market share for Cumberland

and Hoke counties based on the planned addition of physicians at the two largest medical practices in Moore County. Furthermore, it is also counterintuitive for SCOH to propose market share increases for the four-county service area based on the presence of FirstHealth Hoke Community Hospital. FirstHealth Hoke Community Hospital will also offer outpatient surgical services proposed by SCOH and will likely serve the same service area as SCOH.

In addition, SCOH failed to discuss the development of a new 41-bed hospital with two shared operating rooms in Cumberland County (Cape Fear Valley-West Hospital¹), which is part of the applicants proposed service area. The impact of this hospital would more likely have a negative effect on SCOH's ability to gain additional market share. In conclusion, SCOH did not adequately demonstrate its ability to gain additional market share based on recently approved hospital facilities in the proposed service area.

Volume Projections

SCOH projects that it will perform 1,190 cases during its first year of operation and their case volume will increase to 2,457 cases by the third year of operation. However, the recently approved First Health Community Hospital projected only 550 outpatient cases being performed in their one operating room and the recently approved Cape Fear Valley West hospital projected only 1,012 outpatient cases during the third year of operation. With high differences in case volume projections, it would appear that the utilization projections for SCOH in the third year are significantly overstated since the two already approved hospitals project a total of only 1,562 outpatient surgical cases, while the SCOH proposal projects 2,457 surgical cases in the third year of operation. SCOH's projections are in addition to those proposed by the two previously approved hospitals. SCOH's projected case volume is unrealistic for an ASC in a county where no surgeons are located. Furthermore, surgeons would have to travel 27 miles from Pinehurst and 15 miles from Fayetteville in order to perform procedures at the proposed ASC.

In addition, SCOH's estimated case volume per OR is significantly higher than SCOP's projected case volume during 2013 to 2015. SCOP projects a 1.3% increase in volume during this period while SCOH projects a 207% increase during this period as seen in the following table.

¹ Note – Cumberland County Hospital System submitted a CON application on April 15th to relocate the approved Cape Fear Valley West hospital to Hoke County. The relocated facility will be called Hoke Healthcare, LLC (Project ID# N-8499-10).

SCOP and SCOH Projected Outpatient Surgery Cases

	Yr 2013 Outpatient Surgery Cases	Yr 2015 Outpatient Surgery Cases	% Increase
Surgery Center of Pinehurst	4,367	4,427	1.4%
Surgery Center of Hoke	1,190	2,457	206.5%

Source: 2010 CON Application

Without added documentation to support an increase that results in over twice as many outpatient cases at SCOH, the projected number of outpatient surgery cases are unreasonable and unsupported.

Physician Utilization

Although more than 30 surgeons and dentists provided letters of support, it is unreasonable to assume significant utilization of the proposed SCOH by these physicians. In Section III.1, SCOH specifically states that surgery block time will not be needed. However, it is very unlikely that a physician will travel for one to one and a half hours round trip to the proposed SCOH facility in order to perform one or two cases. Especially when the efficiency is significantly greater for procedures performed at SCOP which has adequate capacity to handle these cases in a block schedule fashion. Similarly, in Fayetteville, physicians demand block time so that they can schedule several procedures on the same day and use their day more productively. Therefore, it is unreasonable to assume SCOH's proposed utilization with the elimination of surgery block time.

SCOH specifically notes that Dr. Griffin and Dr. Grace may bring as many as 614 cases to the facility. However, both of these physicians are currently practicing with Carolina Eye Associates and heavily utilize the Eye Surgery Center of the Carolinas. This practice and facility is so efficient that a patient may be seen in their office in the morning and actually have the eye procedure performed later that same day. In addition, these surgeons are given two operating rooms in which to perform their procedures so they can move from one room to the other most efficiently in order to best utilize their time. Furthermore, as described previously, Drs Griffin and Grace did commit any specific surgical case commitment to SCOH in their letters of support. Therefore, it is unreasonable to assume these physicians will choose to shift their cases from an existing facility where they can be very efficient and travel to an outlying facility where they are not guaranteed two rooms

in which they can do their procedures.

Comparison to 2009 Disapproved CON application

The need methodology for the 2010 SCOH CON (Project ID# N-8494-10) has few revisions from the 2009 SCOH application and has ignored comments made in the Agency Findings for Project ID # N-8393-09. Both the 2010 CON and 2009 CON applications fail to properly document SCOP physician case commitment to SCOH. The 2010 CON application further adds to this by failing to properly document commitment by non-SCOP physicians. Therefore, the 2010 CON application projects a highly overstated commitment to cases at SCOH and has led to the inflation of projected outpatient surgical cases.

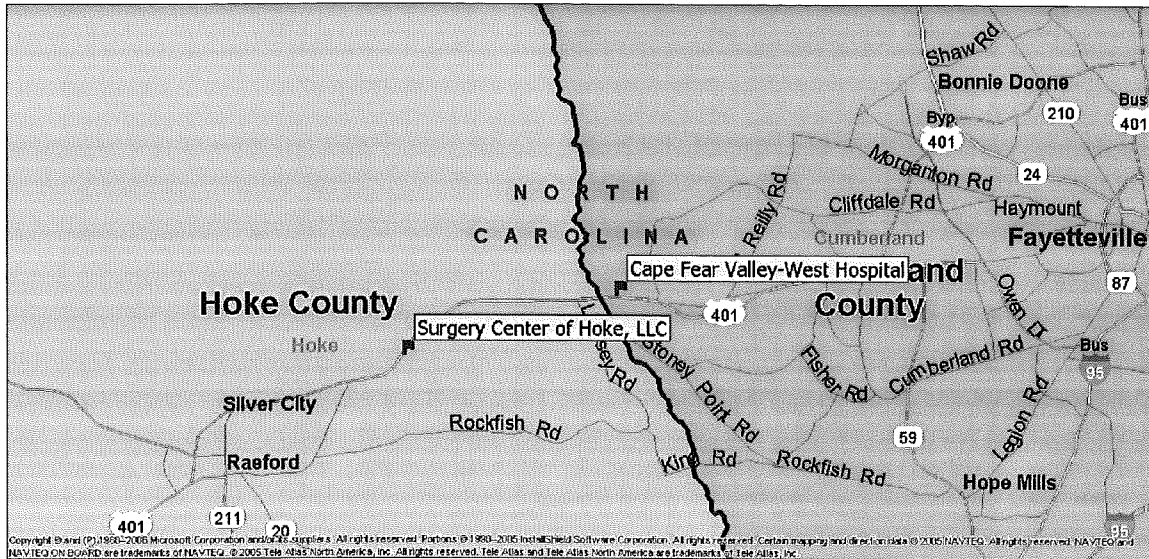
As in the previous application, SCOH continues to fail to address other previously approved CONs in the service area. The proposed FirstHealth community hospital in Hoke County and approved Cape Fear Valley-West Hospital in Cumberland County² will both offer the same outpatient surgical services in the same service area. The 2010 application does not address the effect of these hospitals on the projected outpatient surgical cases or the projected market share and furthermore does not demonstrate the necessity of SCOH in a service area where these CONs have already been approved.

Patient Origin

In Section III.6, SCOH projects nearly 50% of their patient origin to come from Cumberland County in the second year of operation. However, the recently approved CON for Cape Fear Valley-West Hospital, which will offer similar outpatient surgical services, plans to locate the facility off the U.S. 401 corridor near the Cumberland-Hoke border. Therefore, the approved Cape Fear Valley-West Hospital will be located closer to Cumberland County patients as seen on the following map.

² Note – Cumberland County Hospital System submitted a CON application on April 15th to relocate the approved Cape Fear Valley West hospital from Cumberland to Hoke County. The relocated facility will be called Hoke Healthcare, LLC (Project ID# N-8499-10).

Proposed Location of SCOH and Approved Cape Fear Valley-West Hospital



Note – Cumberland County Hospital System submitted a CON application on April 15th to relocate the approved Cape Fear Valley West hospital to Hoke County. The relocated facility will be called Hoke Healthcare, LLC (Project ID# N-8499-10). The proposed relocated facility will also be located closer to Cumberland County patients compared to SCOH.

SCOH failed to provide any documentation of why Cumberland patients would travel to SCOH as opposed to receiving treatment at a facility that is closer to Cumberland County. In failing to address the approved Cape Fear Valley-West Hospital's effect on Cumberland patients traveling to SCOH, the assumptions of patient origin are unsupported.

In addition, SCOH provides no documentation of SCOP patients in Cumberland County stating their support for a surgery center in Hoke County. Therefore, the rationale that patients from Cumberland County will indefinitely choose to have their procedure performed at SCOH is unsupported.

Medically Underserved

SCOH does not demonstrate the expansion of access to medically underserved patient groups through their services. Specifically, in Section VI.8, SCOH projects 0% charity care to be provided in the each of the first two years of operation. However, in response to Section IV.14, SCOH projects 0.5% of patients will be self-pay/charity care. Because this data is inconsistent, SCOH's payor mix assumptions are unreasonable. At any rate, both projections provide less charity care to underserved patients than SCOP in the last full operating year. SCOH also proposes to serve fewer Medicaid patients at SCOH compared to SCOP as seen in the table below.

Current SCOP and Projected Year 2 SCOH Payer Mix

	SCOP Current Payer Mix	SCOH Proj Yr 2 Payer Mix	% Decrease
SP/Charity Care	2.00%	0.50%	-1.50%
Medicaid	17.00%	13.60%	-3.40%

Source: 2010 CON Application

In Section VI.6, SCOH confirms that 25% of those persons living in Hoke County at the present time have no insurance and 14.5% of individuals have income below the poverty line. Despite these numbers, in Section VI.14 SCOH only projects 0.5% of patients will be self-pay/charity care. This equates to only 6 self-pay/charity patients during the first year of operation, 9 patients during the second year, and 12 patients during the third year. Therefore, SCOH is proposing that a total of only 27 self pay/indigent/charity cases will be performed during the first 3 years of operation. The current Hoke County population is 44,625 and a total of 11,156 individuals fall into the uninsured category at this time. Based on this data alone, it is unreasonable to assume only 27 self-pay/charity care patients at SCOH meet the needs of the medically underserved described in Criterion 13. For information purposes, SCOH also projects less self-pay/charity care patients than in their 2009 CON application. This represents a further reduction of access for the medically underserved.

In conclusion, decreases in access to medically underserved populations do not promote the reduction of barriers to access. The SCOH proposal is not consistent with the Basic Principles of the 2010 SMFP, reduces access to surgical services for

the medically underserved and is, thus, non conforming with Review Criterion 13.

Unnecessary Duplication of Services

In Section III.3, SCOH does not adequately demonstrate that the population it proposes to serve needs two additional ORs. In both the 2009 and 2010 CON applications, SCOH proposes to relocate two operating rooms in Hoke County because Hoke County does not have any operating rooms at the present time. However, SCOH still neglects to address the fact that although there are no existing operating rooms in Hoke County, the CON Section approved FirstHealth of the Carolinas to develop a new 8-bed hospital in Hoke County with one shared operating room. Furthermore, in a previous review, the CON Section approved the development of Cape Fear Valley West, a new 41-bed hospital with two shared operating rooms in Cumberland County which is a part of the applicants proposed primary service area (and proposed to be relocated to Hoke County). In addition, the population of Hoke County is less than 50,000 citizens and no surgeons are located within the county's borders. Without describing why two operating rooms are needed in addition to previously approved CONs for similar services or addressing the county's population demographics, SCOH's assumptions for the necessity to relocate two operating rooms are unsupported. In conclusion, SCOH is non-conforming to Criterion 4 in that it does not demonstrate that the least costly or most effective alternative has been proposed.

Staffing

In reviewing Section VII.2 for the proposed SCOH staffing, during the third year of operation only 1.5 OR R.N.s are projected to staff the surgical operating rooms. Similarly, only 1.5 certified surgical technicians are also available and these individuals also appear to have responsibility in the central supply area as well. From this staffing model alone, SCOH does not demonstrate that the two OR's can be fully operational given the proposed staffing. Consequently, SCOH failed to demonstrate the availability of adequate health manpower for the proposed ambulatory surgical facility. Therefore, the application is not conforming to Criterion 7.

Training Programs

SCOH failed to provide proper documentation of any training program agreements and thus, is in conflict with CON Review Criterion 14. According to Criterion 14, the applicant shall demonstrate that the proposed health services accommodate the clinical needs of health professional training programs in the area. However, the applicants only include one training program agreement specifically between SCOP and Sandhills Community College. There is no mention of the SCOH anywhere in the signed affiliation agreement between SCOP and Sandhills Community College. Therefore, without proper documentation of a training program agreement specifically relating to SCOH, SCOH does not demonstrate that the proposed health services accommodate the clinical needs of health professional training programs in the area, and thus is non-conforming to Review Criterion 14.

Financial Feasibility

FASC has identified various deficiencies in SHC's financial projections, which result in the application being non-conforming with Review Criteria 4, 5, and 12. Specifically:

- Because SCOH's utilization projections are unreasonable, SCOH's financial operating projections (that are based those utilization projections) are also unreasonable.
- The proposed project is unreasonably costly, and does not represent the least costly or most effective alternative, and unduly increases the cost of healthcare.

SCOH proposes to spend more than \$4 million on the construction of the proposed ASC and for the necessary equipment to operate the facility. Based upon SCOH's own projections, less than five cases daily will be performed in year one and fewer than ten cases are projected to be performed in year three. With high development costs and a low number of cases to be performed daily, it is unreasonable to assume SCOH is the least costly alternative and is non-conforming to Criterion 4.

Physician Equity

SCOH states that surgeons will be offered an opportunity to purchase an equity position in the proposed facility. However, with the exception of the two pediatric dentists who provided letters of support, the physicians supporting the project appear to have investment interests in either the SCOP or the Eye Surgery Center of the Carolinas. The financial statements included in the application confirm that SCOP net income is projected to be \$1.57 million in 2013, \$1.59 million in 2014, and \$1.61 million in 2015. The profitability of the Eye Surgery Center of the Carolinas is significantly greater than SCOP because of its efficiency and case volume in only three operating rooms. Conversely, the projected financial statements for SCOP confirm a \$201,000 loss in year two when 1,118 cases are projected to be performed. A positive net income of \$288,000 is projected in year three when 2,457 cases are performed. It would be very unusual for any physician to choose to invest in and significantly utilize a facility to which he must travel a significant distance, be less efficient in the performance of his procedures because of the scheduling policy of the proposed facility, and when his return on investment is less than the return on the investment where he has a current financial interest.

CONCLUSION

For all of the foregoing reasons, the CON Section should find that SCOH's application does not conform to the statutory review criteria, and SCOH's application should be disapproved.