

**STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD**

In re: Application of Copley Hospital, Inc.)
Replacement of Mansfield Orthopaedics) GMCB-007-22con
Medical Office Building in Waterbury)
_____)

STATEMENT OF DECISION AND ORDER

Introduction

In this Decision and Order we review the application of Copley Hospital, Inc. (Copley or “the Applicant”) for a certificate of need (CON) to construct a new building to replace the Mansfield Orthopaedics medical office building located in Waterbury. The cost of the project is \$5,903,747. For the reasons set forth below, we approve the application and issue the applicant a certificate of need, subject to the conditions set forth therein.

Procedural Background

On June 17, 2022, Copley filed a CON application and requested expedited review. The Board granted expedited review on June 29, 2022. The Board requested additional information regarding the project on July 1, 2022, July 21, 2022, and July 28, 2022, which Copley provided on July 14, 2022, July 25, 2022, and July 29, 2022. The application was closed on August 1, 2022.

Jurisdiction

The Board has jurisdiction over this matter pursuant to 18 V.S.A. § 9375(b)(8) and 18 V.S.A. § 9434(b)(1).

Findings of Fact

1. Copley is a nonprofit community hospital located in Morrisville, VT. Copley’s orthopedic department operates as Mansfield Orthopaedics, which has two locations, one in Morrisville and one in Waterbury. The Waterbury location’s primary service area is Chittenden County, its secondary service area is Washington County, and its tertiary service area is Lamoille County. The current Waterbury location is a leased space in a 186-year-old shared building located at 6 North Main Street. The current space is 3,053 square feet, which includes a 208 square foot waiting room, four exam rooms, and one diagnostic imaging room with a floor mounted X-ray machine. Application (App.), 3-4, Response to Questions (Resp.), (July 14, 2022), 2.

2. Copley represents that there are many challenges with the current medical office building in Waterbury. The clinical space in the current building is not sufficient to accommodate combined visits that make it possible for patients to see more than one provider or access a needed service in one visit, which in turn, presents an obstacle to succession planning for existing surgeons. Co-location of providers and services can be extremely beneficial. For example, hand surgery and

therapy casting and splinting can be performed during a single office visit and the surgeon can work directly with the hand therapist. Currently space limitations have prevented the practice from adding a registered nurse. The new office location will allow an RN to assume functions that, due to space constraints, are left to advance practice providers (APPs) and physicians such as clinic triage, suture removal, patient education, coordinating durable medical equipment and coordinating care with other facilities and providers. With an RN on staff, efficiency and care coordination will be improved and allow other providers to work at the top of their licensure. App., 5-7.

3. Existing space limitations makes wheelchair movement challenging and the wheelchair ramp, located on the outside of the building, is not sheltered with an overhang. The office also lacks space for storage and workspace for staff to perform their job activities. For example, there is no private space for staff to complete dictation following a patient visit and no conference room or other space for staff to meet privately with their supervisor. The size of the existing office space limits the number of support staff who can work in the office at one time, requiring an elaborate manual scheduling process. The one imaging room has a floor mounted X-ray unit and the room's small size limits the number of patients that can be scanned, which ultimately disrupts patient flow and restricts patient access. The space is unable to accommodate a ceiling mounted imaging unit, which would allow for imaging views a floor mounted X-ray unit cannot achieve, such as certain lower leg views, cross-table views, axillary shoulders, and gravity stress ankles. Copley represents that there is no reasonable opportunity to renovate the leased space and comply with Facility Guidelines Institute (FGI) Guidelines for Outpatient Facilities. App. 4, 6-7.

4. Copley states that the current facility limits the number of patients that can be seen at the existing Waterbury location and leads to lengthy wait times. Mansfield Orthopaedics typically schedules new patients with a board-certified advance practice provider (APP) for intake and evaluation. After intake, the patient may receive follow-up care from the APP or a non-surgical physician. If the patient is deemed an appropriate candidate for surgery, the patient will have a follow-up visit with an orthopedic surgeon. Copley states that at the Waterbury location, the average wait time for a new patient to see an APP is 126 days and the average wait time for a new patient to see an orthopedic surgeon is 59 days; the average wait time for a follow-up appointment with an APP is 44 days and the average wait time for a follow-up appointment with an orthopedic surgeon is 23.2 days. At the Morrisville location, the average wait time for a new patient to see an APP is 85 days and the average wait time for a new patient to see an orthopedic surgeon is 26 days. The Health Services Wait Time Report's secret shopper findings identified the average wait time in Vermont to make a new patient appointment with an orthopedic specialist for a non-emergent medical issue was 35 days and the median wait time was 32 days.¹ App., 4-5.

5. Copley states that an orthopedic practice should have 2.5 to 3 exam rooms per practitioner to optimize patient flow and staff utilization.² Copley determined 14 exam rooms were appropriate for the new medical office building in Waterbury: 6 rooms for two surgeons, 2 rooms for one podiatrist, 5 rooms for two APPs, and 1 overflow room for casting, RN education, and

¹ February 16, 2022 by the Agency of Human Services, Green Mountain Care Board, and Department of Financial Regulation. Pages 27-43. <https://dfr.vermont.gov/document/health-services-wait-times-report>.

² Copley cited SpaceMed Essentials February 20, 2022 article "Physician Offices and Outpatient Clinics: How Many Exam Rooms?" <https://blog.spacemed.com/outpatient-clinics-how-many-exam-rooms/>.

prehabilitation-services with a certified athletic trainer (AT-C). Copley states that the relocation of the medical office is intended to address regional demographic changes that are increasing the need for orthopedic, rehabilitation and podiatry services. Copley's demographic analysis for Waterbury and Waterbury Center projects that the population growth for the 65+ age bracket will increase by 19.4% over the next five years. App., 4, 9. Resp., (July 14, 2022), 1-2.

6. The Waterbury location is currently staffed by 1.6 FTE orthopedic surgeons, 1.1 FTE nurse practitioners (APP), 1.0 FTE athletic trainer, 1.0 FTE radiology technologist, and 3.9 FTE support staff. Some of the current staff work at the Morrisville location primarily and travel to the Waterbury location periodically. Copley will move 1.0 FTE podiatrist, 0.9 FTE orthopedic APP, and 3.5 FTE support staff from the Morrisville location to the new Waterbury location. Copley will hire one diagnostic imaging technician for the new location. App., 3. Resp., (July 14, 2022), 6.

7. The Waterbury office currently has 5,100 clinic visits per year and 1,752 diagnostic imaging tests per year. Copley represents that there will be no overall increase to clinic visits or surgeries due to the project. However, diagnostic imaging procedures are expected to increase by 3,504 in FY 2024 and 3,504 in FY 2025. Copley expects to move 6,460 annual clinic visits from the Morrisville location to the new Waterbury location, but not to increase the clinic visits for Copley as a whole. Copley represents that despite efforts to increase efficient use of its operating and procedure rooms at the hospital in Morrisville, its current surgical suite is at capacity and cannot accommodate additional surgeries. Resp., (July 14, 2022), 2-6, Revised Table 7.

8. The project includes the purchase of a 24-acre lot at 2439 Waterbury-Stowe Road in Waterbury, VT for \$540,000. Copley will retain 18.9 acres for the medical office building, a parking lot with 68 spaces, and a storm water management area, and will sell 5.1 acres to Waterbury Ambulance Service Inc. (WASI) for a new ambulance building. The proposed new medical office building will be 9,993 sq. ft. with fourteen exam rooms, two imaging rooms each equipped with a ceiling mounted X-ray device, a 656 sq. ft. waiting room, a conference room, a practice manager's office with space for private meetings, and a space for the staff to work and complete dictation away from patient accessible areas. Some exam rooms will include casting drains so that casts may be placed during the patient visit as opposed to limiting casting to a single room. Two exam rooms will be slightly larger to enable the care team to incorporate rehabilitative services into a patient visit. The co-location of orthopedic and rehabilitation services will enable the care team to provide comprehensive prehabilitation and post-surgical rehabilitation interventional care by physical therapists who can join a patient encounter as needed. The larger space will allow for the addition of podiatry services to the Waterbury location. App., 6-8, 15.

9. The current X-ray machine was purchased eight years ago in December 2013 and has an estimated useful life of seven years according to the American Hospital Association Estimated Useful Lives of Depreciable Hospital Assets. With the project, Copley plans to purchase two ceiling-mounted Siemens Ysio Max X-rays for a total of \$676,040. App., 4, 21. Resp., (July 14, 2022), 7.

10. Copley has leased the Waterbury office since 2013 for \$5,833 per month and the lease expires on August 31, 2023. Copley has been unable to negotiate a lease renewal period that is less

than five years, and the lease has a rent escalation clause that increases the rent by up to 200 percent at the end of the lease term when the lease converts to a month-to-month holdover lease. Copley states that the project will save \$70,000 in annual lease expense. The Copley Board of Trustees decided the construction of a new office building was a prudent investment of capital based on the space limitations of the existing facility, infrastructure needs, consideration of overall costs, impact on recruitment and retention, community cohesion, and patient retention. Copley states that it evaluated other sites for purchase in Waterbury, which were either too small or cost prohibitive. App., 6, 8, 11, 22-23.

11. Copley has included the expense for a medical office building in its hospital budget submissions to the GMCB for FY 2021 and FY 2022. \$5,000,000 of the project will be debt financed through the U.S. Department of Agriculture Direct Loan Program and the anticipated interest rate is 2.5 percent. Working capital will be used to finance \$613,747. WASI will contribute \$240,000 for the land purchase and \$50,000 for the site work. In 2021, Copley Health Systems' long-term debt-to-capitalization ratio (D/C ratio) was 14% compared to the average for critical access hospitals of 29.73% and a national average of 30.83%.³ Copley calculated that following the completion of the project, the cost of the project and additional debt that Copley added in 2022, Copley Health Systems will have a long-term D/C ratio of 27%. The D/C ratio for Copley Hospital alone was 21% in FY 2021 and is estimated to be 26% in FY 2024. Copley's projected days cash-on-hand for FY 2023 is 68 days, for FY 2024 is 65 days, and for FY 2025 is 67 days. App., 8, 12. Resp. (July 14, 2022), 3-4. Resp., (July 25, 2022), 1, Revised Tables 1-2.

12. Copley states that the project will not result in increased charges or costs for patient care. Copley states its FY 2023 hospital budget rate increase request was not impacted by this project. Mansfield Orthopaedic's Waterbury location will maintain its billing practices for Medicare beneficiaries and as such will not charge facility fees. App., 22. Resp., (July 29, 2022), 1.

13. Copley is using a Construction Manager (CM) to execute the project. The CM will issue bid packages for every division of the project and request competitive pricing from qualified subcontractors and vendors. The project is enrolled with Efficiency Vermont to ensure participation in all available energy savings and sustainable design opportunities. The project's design complies with the requirements of the 2018 FGI Guidelines for the Design and Construction of Outpatient Facilities. Construction is anticipated to begin November 2022 and be completed by November 2023. App., 19-20, 39, 47-48.

14. Mansfield Orthopaedics utilizes the Force Therapeutics digital care platform to capture patient reported outcome measures (PROM) to monitor quality and outcomes for all knee, hip, shoulder, and ankle replacements. Mansfield Orthopaedics reports outcomes data to the American Joint Replacement Registry and uses the registry information to measure and improve value. Mansfield Orthopaedics has quarterly provider meetings and total joint meetings. The American Academy of Orthopaedic Surgeons (AAOS) publishes one source of the clinical practice guidelines that the surgeons at these meetings reference for evidence-based recommendations for

³ Flex Monitoring Team, Critical Access Hospital Financial Indicator Report: Summary of Indicator Medians by State, 2018 Median Indicator Values for Vermont and the United States. (Apr. 2020).

current orthopedic diagnostic, treatment, and postoperative procedures. App., 3, 17. Resp., (July 14, 2022), 3.

15. At Mansfield Orthopaedics, if a patient indicates they are utilizing mental health services during their telephone intake, steps are taken to accommodate requests for support. This process involves obtaining the pertinent information about their support person or organization to obtain the proper releases. If a patient is asking for support, the call center staff has the patient speak with one of the RNs to better understand their needs and the RN then works with community partners to ensure that the support the patient needs is in place when they arrive for their clinic visit. Mansfield Orthopaedics is also currently considering the utilization of a specific mental health screening tool. Resp., (July 14, 2022), 3.

16. Copley has a quality, infection prevention, and safety program to control infectious disease. Copley voluntarily imposes the same infection prevention standards in its off-campus facilities that the hospital is required to comply with as part of the Medicare Conditions of Participation for Hospitals. The Copley Safety Committee will survey the Waterbury facility and oversee infection prevention practices at the location. The new medical office building will have a designated clean utility room and a designated soiled utility room, for the safe handling of instruments, supplies, and linens as required by the 2018 FGI Guidelines for new outpatient facilities. App., 18-19.

17. The proposed site location of the new medical office building is accessible by Rural Community Transport (RTC) and Green Mountain Transit. App., 23.

Standard of Review

Vermont's CON process is governed by 18 V.S.A. §§ 9431-9446 and Green Mountain Care Board Rule 4.000 (Certificate of Need). An applicant bears the burden of demonstrating that each of the criteria set forth in 18 V.S.A. § 9437 is met. Rule 4.000, § 4.302(3).

Conclusions of Law

I.

Under the first statutory criterion, an applicant must show that the proposed project aligns with statewide health care reform goals and principles because the project takes into consideration health care payment and delivery system reform initiatives; addresses current and future community needs in a manner that balances statewide needs; and is consistent with appropriate allocation of health care resources, including appropriate utilization of services, as identified in the Health Resource Allocation Plan (HRAP). 18 V.S.A. § 9437(1).

The Health Resources Allocation Plan (HRAP) identifies needs in Vermont's health care system, resources to address those needs, and priorities for addressing them on a statewide basis.⁴

⁴ The Vermont legislature in Act 167 (2018) made several changes to the State's CON law. As amended by Act 167, 18 V.S.A. § 9437(1)(C) continues to reference the HRAP, which is in the process of being updated. In the interim, we consider the current HRAP standards. The Health Resource Allocation Plan is posted to the Board's website at <https://gmcbboard.vermont.gov/sites/gmcb/files/documents/Vermont%20Health%20Resource%20Allocation%20Plan%202009%207.1.09.pdf>.

We note that HRAP CON Standards 1.3 (collaborative approach to delivering service has been taken or is not feasible or appropriate), 1.4 (applicant will be able to maintain appropriate volume for the service and will not erode volume at another Vermont facility), 1.6 (collect and monitor data relating to health care quality and outcomes), 1.7 (project is consistent with evidence-based practices), 1.8 (comprehensive evidence-based system for infectious disease), 1.9 (costs and methods for construction/renovation/fit-up are necessary and reasonable), 1.10 (project is energy efficient), 1.11 (new construction is a more appropriate alternative when compared to renovation), 1.12 (project complies with FGI Guidelines), 3.4 (project was included in hospital budget submissions), and 3.7 (existing equipment is fully depreciated when replacing diagnostic or therapeutic equipment) apply to this project. In light of the factual findings, we conclude that the project is consistent with the HRAP.

II.

The second criterion requires an applicant to demonstrate that the cost of the project is reasonable. The applicant must show that it can sustain any financial burden likely to result from the project; that the project will not result in an undue increase in the cost of care or an undue impact on the affordability of medical care for consumers; that less expensive alternatives do not exist, would be unsatisfactory, or are not feasible or appropriate; and that appropriate energy efficiency measures have been incorporated into the project. 18 V.S.A. § 9437(2).

Based on our review of the record, we are sufficiently comfortable that the Applicant can sustain the financial burden likely to result from the project. The project will cost approximately \$5,903,747 and will be mostly debt financed through the U.S. Department of Agriculture Direct Loan Program with an anticipated interest rate of 2.5 percent. Working capital will be used to finance \$613,747 and WASI will contribute \$240,000 for the land purchase and \$50,000 for the site work. Copley Hospital has sufficient debt capacity to finance the project. Findings, ¶ 11.

We also conclude that less expensive alternatives are not available, would be unsatisfactory, or are not feasible or appropriate, and that appropriate energy efficiency measures have been incorporated into the project. The current leased Waterbury office is insufficient for the current and growing needs of Mansfield Orthopaedics and there is no reasonable opportunity to renovate the leased space and comply with FGI Guidelines. Buying land and building a new medical office creates the opportunity to make a prudent capital investment in a building it will own and save approximately \$70,000 in lease expense. Copley evaluated other available sites in Waterbury for purchase, which were too small or cost prohibitive. The project is enrolled with Efficiency Vermont to ensure participation in all available energy savings and sustainable design opportunities. Findings, ¶¶ 3, 10, 13.

Next, we analyze whether the applicant has demonstrated that the project will not result in an undue increase in the cost of care or an undue impact on the affordability of medical care for consumers. In our analysis, we must consider and weigh relevant factors, including the financial implications of the project on hospitals and other clinical settings, including the impact on their services, expenditures, and charges, and whether these impacts, if any, are outweighed by the benefit of the project to the public. 18 V.S.A. § 9437(2)(B).

The Applicant has stated that the project will not result in increased charges or costs for patient care. Mansfield Orthopaedic's Waterbury location will maintain its billing practices for Medicare beneficiaries and as such will not charge facility fees. The benefit of the project is greater access to orthopedic services, including podiatry and rehabilitation services. Findings, ¶¶ 8, 12.

We conclude that the Applicant has satisfied the second criterion.

III.

The third criterion requires that the applicant demonstrate that there is an "identifiable, existing, or reasonably anticipated need for the proposed project which is appropriate for the applicant to provide." 18 V.S.A. § 9437(3). Due to the aging population in Mansfield Orthopaedic's service area and the statewide wait times for orthopedic specialists, there is a need for efficient orthopedic services. The square footage, layout of space and current number of exam rooms at the current office space in Waterbury utilized by Mansfield Orthopaedics is insufficient to provide orthopedic, podiatry, physical therapy, casting and imaging services, allowing patients to schedule time with more than one provider or service with one appointment, and therefore the applicant requires more exam rooms and associated support spaces. Findings, ¶¶ 2-5.

Based on the above, we conclude that the project meets the third criterion.

IV.

To satisfy the fourth criterion, the applicant must demonstrate that the project improves the quality of health care or provides greater access for Vermonters, or both. 18 V.S.A. § 9437(4).

The project will improve the quality of Mansfield Orthopaedic's services with the co-location of orthopedic and rehabilitation services, which will enable the care team to provide comprehensive prehabilitation and post-surgical rehabilitation interventional care by physical therapists who can join a patient encounter as needed. The improved office space will enhance patient experience and the quality of services. The project also includes two diagnostic imaging rooms, each with a ceiling mounted X-ray machine as opposed to the current one diagnostic imaging room with a floor mounted X-ray machine. Ceiling mounted imaging allows for certain imaging views such as lower leg views for individuals with shorter legs, cross-table views, axillary shoulders, and gravity stress ankles. The project provides greater access to orthopedic services and decreases wait times by improving the office's efficiency, facilitating a collaborative approach to care, and increasing the availability and quality of diagnostic imaging services. Podiatry services will also be added to the Waterbury location, so patients in Chittenden County and Washington County will no longer have to travel to Morrisville. Findings, ¶¶ 1-4, 8-9.

Based on the above, we conclude that the project meets the fourth criterion.

V.

The fifth criterion requires an applicant to show that the project "will not have an undue adverse impact on any other existing services provided by the applicant." 18 V.S.A. § 9437(5).

The Applicant has represented that the project will improve physical therapy services by moving them to the new location to be integrated with orthopedic services and allowing them to benefit from the efficient and optimal space. Findings, ¶ 8. We conclude that it is satisfied.

VI.

What was previously the sixth criterion is now an overarching consideration, namely that the project serves the public good. See Act 167 (2018), § 6 (repealing 18 V.S.A. § 9437(6) and moving the “public good” language to the lead-in sentence). Our administrative rule identifies factors that we may consider in determining whether a project will serve the public good. GMCB Rule 4.000, § 4.402(3). The following factors are relevant to this project, and we therefore address them here: Rule 4.000, § 4.402(3)(c) (impact on healthcare system and effective integration and coordination of health care services) and § 4.402(3)(f) (impact on existing facilities to provide medically necessary services to all in need, regardless of ability to pay or location of residence).

The project will serve the public good by integrating orthopedic and physical therapy services at Mansfield Orthopaedics and by increasing capacity for these services. Findings, ¶¶ 4-5, 8.

The project will not have a negative effect on existing facilities. It will increase the coordination of services at Mansfield Orthopaedics and is expected to increase diagnostic imaging services, but not clinical visits or surgeries. Findings, ¶¶ 7-8.

As such, the project will serve the public good. Findings, ¶¶ 4-5, 8.

VII.

The seventh criterion requires that the applicant adequately consider the availability of affordable, accessible patient transportation services to the facility. 18 V.S.A. § 9437(7). We find this condition has been satisfied. The proposed site location of the new medical office building is accessible by Rural Community Transport (RTC) and Green Mountain Transit. Findings, ¶ 17.

VIII.

The eighth statutory criterion states that if the application is for the purchase or lease of new Health Care Information Technology, it must conform to the Health Information Technology Plan. 18 V.S.A. § 9437(8).

As the project does not involve the lease or purchase of a new Health Care Information Technology, this criterion is not applicable.

IX.

The ninth and final criterion requires the applicant to demonstrate that the project supports equal access to appropriate mental health care that meets standards of quality, access, and affordability equivalent to other components of health care as part of an integrated, holistic system of care, as appropriate. 18 V.S.A. § 9437(9). At Mansfield Orthopaedics, if a patient indicates they

are utilizing mental health services during their telephone intake, steps are taken to accommodate requests for support. This process involves obtaining the pertinent information about their support person or organization to obtain the proper releases. If a patient is asking for support, the call center staff has the patient speak with one of the RNs to better understand their needs and the RN then works with community partners to ensure that the support the patient needs is in place when they arrive for their clinic visit. Mansfield Orthopaedics is also currently considering the utilization of a specific mental health screening tool. Findings, ¶ 15. We find this criterion satisfied.

Conclusion

Based on the above, we conclude that the applicant has demonstrated that it has met each of the required statutory criterion under 18 V.S.A. § 9437. We therefore approve the application and issue a certificate of need, subject to the conditions outlined therein.

SO ORDERED.

Dated: August 17, 2022 at Montpelier, Vermont.

<u>s/ Jessica Holmes, Interim Chair</u>)	GREEN MOUNTAIN CARE BOARD OF VERMONT
<u>s/ Robin Lunge</u>)	
<u>s/ Tom Pelham</u>)	
<u>s/ Thom Walsh</u>)	

Filed: August 17, 2022

Attest: s/ Jean Stetter, Administrative Services Director
Green Mountain Care Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Board (by email, telephone, or in writing) of any apparent errors, so that any necessary corrections may be made. (email address: abigail.connolly@vermont.gov).