



COMMONWEALTH of VIRGINIA

Karen Shelton, MD  
State Health Commissioner

Department of Health  
P O BOX 2448  
RICHMOND, VA 23218

TTY 7-1-1 OR  
1-800-828-1120

September 3, 2024

Erin S. Whaley  
Troutman Pepper Hamilton Sanders, LLP  
Troutman Pepper Building  
1001 Haxall Point  
Richmond, Virginia 23219

RE: **COPN No. VA-04902**  
**Virginia Eye Institute, Inc.**  
**Richmond, Virginia**  
**Add 1 OR**

Dear Ms. Whaley:

In accordance with Chapter 4, Article 1.1 of Title 32.1 of the Code of Virginia of 1950 (the Code), as amended, I reviewed the application and all supporting documents submitted by Virginia Eye Institute, Inc. to add one operating room at Virginia Eye Institute Surgery Pavilion.

As required by Section 32.1-102.3B of the Code, I have considered all factors that must be taken into account in a determination of public need, and I have concluded that **conditional approval** of the request is warranted based on the following findings:

1. The VEI project is consistent with the COPN law, is in harmony with the SMFP or public policies, interests, and purposes to which the SMFP and COPN law are dedicated;
2. VEI has demonstrated that the status quo is not a reasonable alternative to the addition of an operating room, because VEI has reached its functional capacity and cannot reasonably increase its utilization until a sixth operating room is opened;
3. There are no less costly or more efficient alternatives to the project. The project is feasible and the projected capital costs are reasonable;
4. There is no known opposition to the proposed project;
5. The proposed project is unlikely to impact existing providers significantly; and

Ms. Erin S. Whaley  
COPN No. VA-04902  
September 3, 2024  
Page 2

6. The proposed project should be contingent upon a charity care condition consistent with the Health Planning Region average.

This certificate is valid for the period September 3, 2024 through September 2, 2025. The total authorized capital cost of the project is \$2,906,021.06.

Please file two copies of the application for a certificate extension with the Department no later than 30 days before the expiration date of the certificate. Part VIII of the Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations identifies the filing requirements and review procedure for certificate extension requests.

Sincerely,



Karen Shelton, MD  
State Health Commissioner

Enclosure

cc: Allyson Tysinger, Senior Assistant Attorney General, Commonwealth of Virginia  
Erik Bodin, Director, Division of Certificate of Public Need  
Deborah K. Waite, Chief Operating Officer, Virginia Health Information  
Olugbenga Obasanjo, MD, MPH Acting District Director, Richmond City Health District

COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF HEALTH  
MEDICAL CARE FACILITIES CERTIFICATE OF PUBLIC NEED

THIS CERTIFIES THAT Virginia Eye Institute, Inc. is authorized to initiate the proposal as described below.

NAME OF FACILITY: Virginia Eye Institute Surgery Pavilion

LOCATION: 402 Westhampton Station, Richmond, Virginia 23226

OWNERSHIP AND CONTROL: Virginia Eye Institute, Inc.

SCOPE OF PROJECT: Add one operating room limited to ophthalmic procedures for a total of six operating rooms at Virginia Eye Institute Surgery Pavilion. Capital costs authorized for this project total \$2,906,021.06. The project is expected to be completed by February 28, 2026. This certificate is issued with the condition that appears on its reverse.



Pursuant to Chapter 4, Article 1.1 of Title 32.1, Sections 32.1-102.1 through 32.1-102.12 of the Code of Virginia (1950), as amended and the policies and procedures promulgated thereunder, this Medical Care Facilities Certificate of Public Need is issued contingent upon substantial and continuing progress towards implementation of the proposal within twelve (12) months from the date of issuance. A progress report shall be submitted to the State Health Commissioner within twelve (12) months from the date of issuance along with adequate assurance of completion within a reasonable time period. The Commissioner reserves the right not to renew this Certificate in the event the applicant fails to fulfill these conditions. This Certificate is non-transferable and is limited to the location, ownership, control and scope of the project shown herein.

Certificate Number: VA-04902

Date of Issuance: September 3, 2024

Expiration Date: September 2, 2025

Karen Shelton, MD, State Health Commissioner

Virginia Eye Institute, Inc. will provide surgical services to all persons in need of these services, regardless of their ability to pay, and will provide as charity care to all indigent persons free services or rate reductions in services and facilitate the development and operation of primary care services to medically underserved persons in an aggregate amount equal to at least 0.9% of Virginia Eye Institute, Inc.'s total patient services revenue derived from surgical services as valued under the provider reimbursement methodology utilized by the Centers for Medicare and Medicaid Services for reimbursement under Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq. Compliance with this condition will be documented to the Division of Certificate of Public Need annually by providing audited or otherwise appropriately certified financial statements documenting compliance with the preceding requirement. Virginia Eye Institute, Inc. will accept a revised percentage based on the regional average after such time regional charity care data valued under the provider reimbursement methodology utilized by the Centers for Medicare and Medicaid Services for reimbursement under Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq. is available from Virginia Health Information. The value of charity care provided to individuals pursuant to this condition shall be based on the provider reimbursement methodology utilized by the Centers for Medicare and Medicaid Services for reimbursement under Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq.

Virginia Eye Institute, Inc. will provide surgical services to individuals who are eligible for benefits under Title XVIII of the Social Security Act (42 U.S.C. § 1395 et seq.), Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.), and 10 U.S.C. § 1071 et seq. Additionally Virginia Eye Institute, Inc. will facilitate the development and operation of primary and specialty medical care services in designated medically underserved areas of the applicant's service area.

---

**Recommended Case Decision  
Certificate of Public Need (COPN)  
Request Number VA-8753  
Virginia Eye Institute, Inc.  
Richmond, Virginia  
Planning District (PD) 15  
Health Planning Region (HPR) IV  
Expand by adding one operating room**

---

**I. Introduction**

This document is a recommended case decision, submitted to the State Health Commissioner (hereinafter, “Commissioner”) for consideration. It follows full review of the administrative record pertaining to the above-captioned application, as well as the convening of an informal fact-finding conference (IFFC)<sup>1</sup> conducted in accordance with the Virginia Administrative Process Act<sup>2</sup> and Title 32.1 of the Code of Virginia.

**II. Authority**

Article 1.1 of Chapter 4 of Title 32.1 (§ 32.1-102.1 *et seq.*) of the Code of Virginia (the “COPN Law”) addresses medical care services and provides that “[n]o person shall undertake a project described in [this Article] or regulations of the [State] Board [of Health] at or on behalf of a medical care facility . . . without first obtaining a certificate [of public need] from the Commissioner.”<sup>3</sup> The endeavor described and proposed in this application falls within the statutory definition of “project” contained in the COPN law, and thereby, requires a Certificate to be issued before the project may be undertaken.<sup>4</sup>

**III. Statement of Facts**

The factual basis underlying this recommendation consists of evidence in the administrative record, including, but not limited to, the application giving rise to this review, the testimony of witnesses presented and written documents prepared by the applicant at and following the IFFC, and the documents prepared by the Division of Certificate of Public Need (“DCOPN”).

Specific findings of fact are as follows:

1. Virginia Eye Institute, Inc. (VEI) is a Virginia stock corporation. VEI does not have any subsidiaries. VEI is located in Richmond, Virginia.

---

<sup>1</sup> The IFFC was held on June 17, 2024. A certified reporter’s transcript (“Tr.”) of the IFFC is in the administrative record (“AR”).

<sup>2</sup> Va. Code § 2.2-4000 *et seq.*

<sup>3</sup> Va. Code § 32.1-102.1:2(A); (a “Certificate” or COPN).

<sup>4</sup> Va. Code §§ 32.1-102.1 and 32.1-102.3.

2. VEI proposes to add one operating room dedicated to ophthalmologic surgery to complement its existing five operating rooms at the VEI Surgery Pavilion. The applicant explains that VEI was originally constructed to house six operating rooms. The sixth operating room space is currently divided into two procedure rooms, which house three lasers. One of the lasers will move to an off-site clinic location and the other two lasers will be relocated within the building. After the relocation of the lasers, VEI will remove the partition and restore the space to its originally intended use as an operating room.
3. The total capital costs of the proposed project are \$2,906,021.06 of which \$57,540 are financing costs.<sup>5</sup>
4. DCOPN is comprised of the Virginia Department of Health's professional health facilities planning staff. On May 20, 2024, DCOPN issued its staff report recommending denial of this project.<sup>6</sup>
5. The administrative record on the proposed project closed on July 19, 2024.<sup>7</sup>

**A. The Proposed Project in Relation to the Eight Statutory Considerations**

The eight statutory considerations provided by the COPN law appear in bold type below, with statements pertinent to the proposed project.

**1. The extent to which the proposed project will provide or increase access to health care services for people in the area to be served and the effects that the proposed project will have on access to health care services in areas having distinct and unique geographic, socioeconomic, cultural, transportation, and other barriers to access to health care.**

VEI proposes to add one operating room dedicated to ophthalmologic surgery to complement its existing five operating rooms at the VEI Surgery Pavilion.

PD 15's projected population growth rate is well above the state average. Notably, PD 15 is experiencing dramatic growth in the 65+ age cohort, which is the age group that utilizes ophthalmologic surgical services at a higher rate. In the 10-year period ending in 2030, the planning district is projected to add an estimated 108,303 people – an approximate 10% increase with an average increase of 10,830 people annually.<sup>8</sup> The 65+ age cohort population will increase at a rate of approximately 38% from 2010 to 2030 and approximately 27% from 2020 to 2030.<sup>9</sup> Demand for ophthalmologic services is projected to increase with both a growing and aging population.

VEI's services are available within 30 minutes driving time of 90% of the population of PD 15. VEI is readily accessible by developed highways and roadways. Geographically, the VEI

---

<sup>5</sup> *Id.*

<sup>6</sup> DCOPN Staff Report at 30 (AR Exhibit 13).

<sup>7</sup> Tr. at 80.

<sup>8</sup> DCOPN Staff report at 4 (AR Exhibit 13).

<sup>9</sup> *Id.*

Surgery Pavilion is located at 402 Westhampton Station, Richmond, Virginia. The facility is located off Huguenot Road, which is accessible from the Powhite Parkway and Chippenham Parkway.

DCOPN calculates the PD 15 general-purpose operating room utilization rate at 88.5%, suggesting that there is a surplus of general-purpose operating rooms with capacity to accommodate additional surgeries. DCOPN has calculated a surplus of 21 general-purpose operating rooms in PD 15 for the 2029 planning year. DCOPN argues that if this project were approved, it would add to the surplus. Furthermore, DCOPN suggests that opening the existing VEI operating rooms on Fridays is a reasonable alternative to an additional operating room.

VEI is seeking a specialized operating room, which is distinct from the general-purpose operating rooms and there are other considerations that make it unreasonable for VEI to use the general-purpose operating rooms within PD 15. It is cost-prohibitive for patients to use operating rooms in a hospital setting. VEI asserts that the cost at a hospital is about 60.3% higher than at its surgical center.<sup>10</sup> General-purpose operating rooms also lack the specialized equipment necessary to adequately perform the advanced ophthalmologic surgeries.<sup>11</sup> A specialized ophthalmologic center offers quality assurance and risk management concentrated exclusively on eye surgery; thereby, reducing the potential for medical errors and turnaround time as well as increasing efficiency.<sup>12</sup>

Keeping that distinction in mind, even though the general-purpose operating rooms are underutilized, the dedicated ophthalmologic operating rooms are highly utilized and not accessible.

Ophthalmologic surgical services are only offered at three facilities in PD 15. One facility, Cataract and Refractive Surgery Center, is overutilized at 168% utilization.<sup>13</sup> Cataract and Refractive Surgery Center is owned by a different physician group than VEI and does not allow VEI surgeons to use their facility.<sup>14</sup> The other facility, MEDARVA Surgery Center, has not yet opened, but is projected to already be overutilized when it opens, estimating utilization at 350% of the SMFP of 1,600 hours annually per operating room.<sup>15</sup> MEDARVA Surgery Center also does not participate with one of VEI's largest payors, making it cost-prohibitive to many patients.<sup>16</sup> This just leaves VEI, and VEI's five operating rooms are already utilized at 94% of the SMFP.

The applicant is currently operating from Monday-Thursday 6:45 a.m. to 5:30 p.m. In 2023, VEI performed 9,148 cases, totaling 6,635 hours.<sup>17</sup> From January to May of 2024, VEI

---

<sup>10</sup> Riz Hatton, Cost of cataract surgery in ASC v hospital by state, Becker's ASC Review <<https://www.beckersasc.com/ophthalmology/cost-of-cataract-surgery-in-asc-vs-hospital-by-state.html>> (last accessed July 1, 2024).

<sup>11</sup> Tr. at 66.

<sup>12</sup> VEI closing argument at 21.

<sup>13</sup> Virginia Health Information, 2022 ALSA, Surgical Services.

<sup>14</sup> Tr. at 44.

<sup>15</sup> Tr. at 43-45; COPN Req. No. VA-8690, Application at 29.

<sup>16</sup> Tr. at 44-46.

<sup>17</sup> Application at 15.

performed 4,564 cases, totaling 3,140 hours of operation.<sup>18</sup> Annualized, this equates to 10,954 cases, totaling 7,536 hours or a utilization rate of 94% of the SMFP standard. The significant increase in the utilization rate of VEI, from 83% last year to 94% this year, can be attributed to the completion of a transitional phase for VEI in which several experienced surgeons retired, and new surgeons were hired to replace them.

VEI proposes to add a sixth operating room based on institutional need, contending that it operates above its functional capacity. VEI projects that by the end of this year, 2024, it will be at 94% of the SMFP standard, highlighting the significant institutional need for a sixth operating room and its position that this project is not premature.<sup>19</sup> According to the applicant, patients are waiting up to eight weeks before they are able to have needed surgeries. VEI is currently operating above its functional capacity and is experiencing difficulty accommodating emergencies. Patients who have already waited weeks for their scheduled surgeries often get bumped to accommodate these emergencies, resulting in additional delays of 6 to 8 weeks before another appointment is available. Delaying care can have a detrimental impact on the patients in need of services. By adding another operating room, VEI aims to provide timely and specialized care, reducing wait times and improving patient outcomes.

The standard of care for intraocular surgery mandates that post-operative patients be seen the next day.<sup>20</sup> The applicant explained that Friday operations are not a reasonable alternative in that, in addition to a significant increase in staffing, VEI would have to arrange for the post-operative care to be provided on Saturdays. VEI's previous attempts to maintain Saturday hours have been met with high patient no-show rates and staffing shortages, making it logistically unfeasible to ensure the necessary level of care.<sup>21</sup> VEI also asserts that it would be difficult to secure anesthesia services on Fridays; however, it is unclear whether this is due to a resource shortage or a need to amend existing contracts with anesthesia groups.

The proposed project enhances access to specialized ophthalmologic outpatient services in PD 15. A narrow reading of the SMFP's utilization rates should not stand in the way of meeting the broader goals of the SMFP while addressing specific institutional needs. VEI's utilization at just under the SMFP standard should not be viewed as dispositive of its institutional need nor prevent it from adding an operating room that is required to meet the needs of its patient population.

VEI established that it has exceeded its current functional capacity to treat its patient population and has an institutional need for another specialized operating room. The proposed project addresses the current capacity constraints, reduces delays in care, and ensures that patients can receive timely and effective treatment within their community.

**2. The extent to which the proposed project will meet the needs of the people in the area to be served, as demonstrated by each of the following:**

---

<sup>18</sup> Tr. at 47.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 34-39.

<sup>21</sup> *Id.*



**(i) The level of community support for the proposed project demonstrated by people, businesses, and governmental leaders representing the area to be served;**

VEI submitted several letters of community support with their Application. Collectively, the letters expressed VEI's important role in the community, including how the project would reduce backlogs and improve access to high-quality, financially accessible ophthalmologic surgical care.

The proposal has support from the community and there is no known opposition to the proposed project.

**(ii) The availability of reasonable alternatives to the proposed project that would meet the needs of the people in the area to be served in a less costly, more efficient, or more effective manner;**

VEI has demonstrated that the hospital based general-purpose operating rooms in PD 15 are not a reasonable alternative as the average cost of obtaining ophthalmologic surgeries in a hospital setting is, on average, nearly 60.3% more than in an outpatient setting. Furthermore, there is a benefit and clinical appropriateness of single purpose operating rooms based on medical literature indicating that surgeon specialization and concentration of practices has promising effects on outcomes, and significantly reducing complications.

VEI has demonstrated that the other two ophthalmologic operating rooms in PD 15 are not a reasonable alternative to VEI's addition of an operating room, due to their overutilization, the fact that VEI surgeons cannot perform necessary surgeries there, and that at one of the other operating rooms, a large portion of VEI's patient population would be forced to pay out of pocket, making the procedures cost prohibitive.

The applicant also asserts that the additional operating room proposed will improve quality by adding block time for morning surgeries for diabetic and aging patients, and potentially lower the cost of eye surgery for the area by expanding the option of outpatient eye surgery. These advantages come at a lesser cost to the patient than surgical services received in a hospital's outpatient surgical department.

VEI has demonstrated that extending hours or opening the facility on additional days is not a reasonable, feasible, efficient, or cost-effective alternative. This additional operating room would enable more flexible scheduling, reduce patient wait times, and bring more ophthalmologic surgeons to PD 15 without adversely impacting existing providers. VEI has reached its functional capacity and cannot reasonably increase its utilization until a sixth operating room is opened.

Institutional need for an additional operating room at VEI exists.

DCOPN suggests that the project is premature and VEI should wait until it has met the SMFP threshold. I do not believe additional delay is necessary to recognize the unique institutional need.

**(iii) Any recommendation or report of the regional health planning agency regarding an application for a certificate that is required to be submitted to the Commissioner pursuant to subsection B of § 32.1-102.6;**

Not applicable, without prejudice to the applicant. No regional health planning agency exists for the purpose of reviewing projects proposed in HPR IV.

**(iv) Any costs and benefits of the proposed project;**

The total capital costs of the proposed project are \$2,906,021. Per DCOPN, the projected costs of \$2,906,021 are reasonable when compared to previously authorized projects similar in scope.

The landlord, VEI Surgery Building, LLC will fund the construction costs associated with the renovations, which will be passed through to VEI in the form of rent, which will be paid as an operational expense. VEI will also incur financing costs directly associated with purchasing the equipment to operate the operating room.

The benefits to the project are more timely, convenient, and affordable access to specialized services.

**(v) The financial accessibility of the proposed project to people in the area to be served, including indigent people; and**

VEI asserts it will continue to follow its charity care policies and its commitment to providing services to all patients, regardless of their ability to pay. The pro forma income statement provided by VEI includes the provision of charity care in the amount of 1%, consistent with the HPR average. Should the proposed project be approved by the Commissioner, I recommend a charity care condition requirement consistent with the HPR average.

**(vi) At the discretion of the Commissioner, any other factors as may be relevant to the determination of public need for a proposed project.**

No additional factors relating to the review of this project are remarkable or appear to call for the exercise of the Commissioner's discretion in identifying or evaluating them in relation to the proposed project.

**3. The extent to which the proposed project is consistent with the State Health Services Plan.**

The COPN law requires that any decision to issue a Certificate must be consistent with the eight statutory factors enumerated in Virginia Code § 32.1-102.3(B) and consistency with the State Health Services Plan.<sup>22</sup> Virginia Code § 32.1-102.2:1 calls for the State Health Services Plan Task Force to develop recommendations for a comprehensive State Health Services Plan. Because the State Health Services Plan is still in development, I am considering consistency of the proposed project with the current regulatory language provided in the State Medical Facilities Plan (SMFP). The SMFP, found at 12 VAC 5-230-10 *et seq.*, is the planning document adopted

---

<sup>22</sup> Va. Code § 32.1-102.3.

by the Board of Health, which includes methodologies for projecting need for medical facilities and services, as well as procedures, criteria, and standards of review of applications for projects for medical care facilities and services.

The SMFP's computational methodologies provide a prima facie indication of whether a public need for a proposed project exists. Further analysis is necessary to determine whether an authentic public need for the proposed project exists, i.e. whether specific facts demonstrate that it would meaningfully increase access to needed services, as deduced by the Commissioner in exercising her specialized competence.

COPN regulations allow the Commissioner to grant approval of the expansion of a service when the applicant can demonstrate that it has an institutional need for such expansion.

With regard to the proposed project at hand, I recommend the Commissioner consider the specific facts that may justify approval despite the existence of prima facie surplus of general-purpose operating rooms in PD 15.

VEI asserts that there is a community need for ophthalmologic operating rooms. As explained above, existing ophthalmologic operating rooms appear to be overutilized and general-purpose operating rooms are not an appropriate alternative to meet the need.

VEI's services are available within 30 minutes driving time of 90% of the population of PD 15. Surgical services would be under a qualified physician.

VEI has demonstrated an institutional need for an additional ophthalmologic operating room. The VEI project is compatible with sound planning practice and the public interest. VEI's proposed project addresses institutional eye surgery needs, including ophthalmological coverage for emergency and trauma cases at VEI.

Sufficient and detailed information in the administrative record supports the conclusion that VEI's project would serve the intents and purposes of this statutory consideration. The project is consistent with the SMFP, is in harmony with the SMFP or with the public policies, interests, and purposes to which the SMFP and COPN law are dedicated.

**4. The extent to which the proposed project fosters institutional competition that benefits the area to be served while improving access to essential health care services for all people in the area to be served.**

As VEI is an existing provider of services, the proposed project will not enhance institutional competition in PD 15. It will, however, improve access to ophthalmologic surgical services for residents of PD 15. Additionally, the increased capacity of a sixth operating room will significantly enhance the availability of surgical services, thereby ensuring that patients have more options and greater flexibility in scheduling their procedures, ultimately improving patient choice, care, and satisfaction.

**5. The relationship of the proposed project to the existing health care system of the area to be served, including the utilization and efficiency of existing services or facilities.**

The proposed project does not entail a substantial change in the regional health care delivery system. The addition of the proposed operating room is not likely to negatively affect demand or caseloads at other service providers.

Despite the accessibility of general-purpose operating rooms, access to specialized operating rooms for eye surgeons and their patients is inadequate.

VEI has demonstrated that the other two ophthalmologic operating rooms in PD 15 are not a reasonable alternative to VEI's addition of an operating room, due to their overutilization, the fact that VEI surgeons cannot perform necessary surgeries there, and that at one of the other operating rooms, a large portion of VEI's patient population would be forced to pay out of pocket.

VEI has demonstrated that the hospital based general-purpose operating rooms in PD 15 are not a reasonable alternative as the average cost of obtaining certain ophthalmologic surgeries in a hospital setting is, on average, nearly 60.3% more than in an outpatient setting. Insurance carriers are beginning to shift reimbursement for some eye procedures away from the hospital setting and only reimbursing procedures performed in non-hospital-based sites. The proposed project carries the advantage of qualifying for more insurance coverage.

**6. The feasibility of the proposed project, including the financial benefits of the proposed project to the applicant, the cost of construction, the availability of financial and human resources, and the cost of capital.**

The project would be financially beneficial to the applicant and the costs are reasonable. Review of VEI's pro forma financial statement indicates that the proposed project is financially feasible.

The landlord will fund the construction costs associated with the renovations, which will be passed through to VEI in the form of rent, which will be paid as an operational expense. VEI will also incur financing costs directly associated with purchasing the equipment to operate the operating room. The pro forma income statement provided by the applicant projects a net income of \$4,200,558 from in the first year of operation, and a net income of \$4,126,969 in the second year of operation.

With regard to staffing, the applicant states that 6 additional full time equivalent employees are required to staff the proposed project. DCOPN does not anticipate that the applicant will have difficulty staffing the proposed project or that doing so will have a significant negative impact on other PD 15 providers.

**7. The extent to which the proposed project provides improvements or innovations in the financing and delivery of health services, as demonstrated by: (i) The introduction of new technology that promotes quality, cost effectiveness, or both in the delivery of health care services; (ii) The potential for provision of**

**health care services on an outpatient basis; (iii) Any cooperative efforts to meet regional health care needs; and (iv) At the discretion of the Commissioner, any other factors as may be appropriate.**

The proposed project will provide VEI with additional capacity for outpatient surgical procedures. VEI has better equipment and supplies for specialized ophthalmologic procedures than a general-purpose operating room.

Early morning and afternoon block time is important for the older eye care patients and to avoid surgeon fatigue. Surgeon fatigue could potentially increase the risk of surgical complications.<sup>23</sup> The proposed project will allow for more morning and afternoon surgeries and a better experience for patients.

No additional factors relating to the review of this project are clearly remarkable or appear to call for the exercise of the Commissioner's discretion in identifying or evaluating them in relation to the proposed projects as gauged under this item under the seventh statutory consideration.

**8. In the case of a project proposed by or affecting a teaching hospital associated with a public institution of higher education or a medical school in the area to be served (i) the unique research, training, and clinical mission of the teaching hospital or medical school, and (ii) any contribution the teaching hospital or medical school may provide in the delivery, innovation, and improvement of health care services for citizens of the Commonwealth, including indigent or underserved populations.**

VEI is not a teaching hospital. VEI does, however, provide observational clinical rotations for refractive surgery for Virginia Commonwealth University. VEI averages around 12 students per year.

#### **B. Conclusion**

Based on the administrative record and in light of the discussion above, I conclude that VEI has demonstrated an institutional need for the proposed project.

#### **IV. Recommendation**

Based on review of the evidence contained in the administrative record as a whole, the proposed project merits approval under the COPN law. VEI should receive a Certificate authorizing the project, issued with recognition of a charity care condition.

The VEI project would meet a public need.

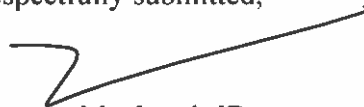
In addition to the conclusions drawn throughout this document, specific reasons for my recommendation include:

---

<sup>23</sup> Tr. at 42-43.

- (1) The VEI project is consistent with the COPN law, is in harmony with the SMFP or public policies, interests, and purposes to which the SMFP and COPN law are dedicated;
- (2) VEI has demonstrated that the status quo is not a reasonable alternative to the addition of an operating room, because VEI has reached its functional capacity and cannot reasonably increase its utilization until a sixth operating room is opened;
- (3) There are no less costly or more efficient alternatives to the project. The project is feasible and the projected capital costs are reasonable;
- (4) There is no known opposition to the proposed project;
- (5) The proposed project is unlikely to impact existing providers significantly; and
- (6) The proposed project should be contingent upon a charity care condition consistent with the Health Planning Region average.

Respectfully submitted,



Vanessa MacLeod, JD  
Adjudication Officer

*August 21, 2024*