

NEW YORK STATE DEPARTMENT OF HEALTH
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
ESTABLISHMENT AND PROJECT REVIEW COMMITTEE MEETING
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90 CHURCH STREET, 4TH FLOOR, CONFERENCE ROOMS 4A AND 4B, NYC
TRANSCRIPT

Mr. Robinson Good morning, everyone. Opening day today, the Yankees, the Mets and my Brooklyn Dodgers all played today. I am Peter Robinson. I'm Chair of the Establishment and Project Review Committee. I have the privilege to call to order the Establishment and Project Review Committee. I want to welcome members of the committee, other members of the council, participants, and certainly observers. I'd like to remind the council members, staff and the audience that the meeting is subject to the Open Meeting Law and is broadcast over the internet. The webcasts are accessed at the Department of Health's website NYHealthCare.Gov. The on-demand webcasts will be available no later than seven days after the meeting for a minimum of thirty days, and then a copy will be retained in the department for four months. A few ground rules. They call them suggestions, but it really would help. Because there is synchronize captioning, it is important that people do not talk over each other. Captioning cannot be done correctly with two people speaking at the same time. We ask that the first time you speak, you state your name and briefly identify yourself as a council member, member of the staff or as appropriate the applicant. This will be of assistance to the broadcasting company to record the meeting. I note the microphones are hot and they do pick up sounds, so not only avoid rustling of papers, but be careful about side conversations. They tend to be picked up as well. Also, as a reminder for members of the audience, there's a form that needs to be filled out before you enter the meeting room, which records your attendance at the meeting. It is required by the Joint Commission on Public Ethics in accordance with Executive Law Section 166. The form is also posted on the Department of Health's website NYHealthCare.Gov under Certificate of Need. In the future you can fill out the form prior to the council meetings. Thank you for your cooperation as we do what we're supposed to do in accordance with the law.

Mr. Robinson We are ready to go. Calling the first application 2 2 1 0 8 2 C, Jamaica Hospital Medical Center in Queens County. This is to construct an addition to accommodate an emergency department expansion and two new critical care units, convert four coronary care beds to intensive care beds and certify twenty-two additional ICU beds, a well needed project. The department is recommending approval with conditions and contingencies.

Mr. Robinson A motion, please.

Mr. Robinson Thank you, Dr. Kalkut.

Mr. Robinson Second, Dr. Berliner.

Ms. Glock Good morning. This is Shelly Glock with the Department. Jamaica Hospital Medical Center is a 416 bed not for profit tertiary care hospital located in Jamaica, Queens County. This application is seeking approval to construct an addition to expand and modernize the emergency department to add twenty-two critical care beds and add an interventional suite. The expansion and modernization of the emergency department will address current design and infrastructure deficiencies at Jamaica Hospital, improving

infection control, reducing emergency department wait times and improving patient care. The new total certified bed capacity, including all bed types, will be 438 beds. The expansion improvements will be achieved through the construction of a new three-story building, which is adjacent to the current hospital. The ground floor will be used for the new emergency department with the second and third floor providing space for the two new critical care units consisting of twenty-two new beds each. The basement ariel provides space for hospital functions being displaced by the expanded emergency department and beyond the new construction, approximately 36,000 square feet of renovations will also be performed in the existing emergency department and adjacent area. The current emergency department was built thirty years ago. It has a capacity for 60,000 visits. Jamaica Hospital is the only Level One trauma center in South Queens. Occupancy of the existing twenty-six critical care beds has consistently been in the high nineties. The applicant does expect the emergency department volume to exceed pre-pandemic levels by year three with approximately 125,000 visits by that year. The expected outcome of this project is modernization of the ED as discussed to address those design and infrastructure deficiencies to better address infection control. It will add appropriately sized space with sufficient trauma bays, isolation rooms and single occupancy treatment rooms. This will help streamline patient and staff flow and improve ventilation. In addition, reductions in waiting time improvements in staff efficiency and improvements in patient and staff safety and comfort. The \$155 Million project will be met with a statewide health care facility transformation program for grant of \$150 Million with the remaining \$5,270,341 from ongoing operations of Jamaica Hospital. The department on review of this application is recommending approval with conditions and contingencies.

Mr. Robinson Thank you very much.

Mr. Robinson I'm not sure if I heard you say this, but in addition to that, the project received a \$150 Million grant from the state. Did you say that?

Ms. Glock That is correct, yes.

Mr. Robinson Thank you.

Mr. Robinson Any questions from members of the committee on this project?

Mr. Kraut Well, first of all, let me just also acknowledge it is National Doctor's Day. I don't know if that's MD's or PhD's. I'll go with I think it's MD's. Just want to acknowledge that to everybody on the council, the audience and watching. Not specific to the application put to the last point that Peter just made. I know we're going to talk a little later. Well, not today necessarily, but about CON reform. I would identify this project as an example of CON reform candidates. I think that an application that is receiving a state transformation grant that goes through a competitive process that the state decides is needed and you awarded it, maybe this should be processed administratively or have a different process. It's like what we used to do with the related projects. I think we did them administratively, but I would just put that in the... I know you're prohibited now from doing that, right? You couldn't do that now anyway, right?

Ms. Glock According to regulations, would need to come.

Mr. Kraut As we revise the regulations and streamline CON, I would put this in the list of possibilities to discuss. That's all.

Mr. Robinson Thank you.

Mr. Robinson Questions, please.

Dr. Soffel Denise Soffel, council member. My question is when the decision was made to expand the emergency department, whether there was any thought to other ways to decant the use of the emergency department by expanding primary care or building up urgent care or other options that would mean less reliance on the emergency department and more appropriate uses of primary and preventive care.

Ms. Glock I don't know if the applicant's here, but I would probably defer. This is a case of just having an ED that is just not up to current standard as it's very old. The workflows, the infection control, ventilation upgrades were part of the project.

Dr. Soffel My concern is not on the modernization. I absolutely agree that a thirty-year-old emergency department needs some tender loving care. The question is expansion that would allow for more patients to be seen.

Mr. Robinson Maybe we can ask the applicant to come forward and identify yourselves, please.

Mr. Robinson Is the button on?

Mr. Flanz Okay.

Mr. Flanz Thank you.

Mr. Flanz I'm Bruce Flanz. I'm the President and CEO of Jamaica Hospital Medical Center. I've been there forty-eight years, so I have a pretty good perspective on this stuff. We have been probably more aggressive than most in terms of developing primary care in the community. Forty years ago, we started the first family medicine residency training program in Queens County. Half of the family physicians currently practicing in Queens are graduates of our program. We have a very extensive ambulatory care network that sees 750,000 visits a year. We have embraced the value-based payments may be more than just about anybody else in the industry taking full capitated risk on 180,000 individuals. For us, doing preventative care and primary care is absolutely built into everything we do in our organization. Despite our best efforts, and we actually peaked in terms of volume back in around 2009, 2010, when six of the fifteen hospitals in Queens County closed and we were left as the only remaining hospital South of Hillside Avenue to Jamaica Avenue with a primary service area of 750,000 individuals. We were the only hospital remaining. We tried to provide services close to where people live so they wouldn't use the emergency department because that year we peaked to 135,000 visits. We've now gotten many people into an ongoing process of care and that's why we average about 120,000 visits. With 750,000 people in our primary service area also being the backup hospital and Level One trauma center to JFK presents additional challenges for our emergency department. We fully embrace what your concerns are and have addressed them for at least the last twenty-five years. We were awarded a transformation cycle three grant to upgrade our ambulatory care facilities because after twenty-five years they need to be addressed as well. I appreciate your question. I guarantee you we have done everything we can to have patients in our community get care outside of the emergency department.

Mr. Flanz Thank you.

Mr. Robinson Is that responsive?

Mr. Robinson Good.

Mr. Robinson Other questions.

Mr. Robinson Dr. Kalkut.

Dr. Kalkut I appreciate what you had to say about the primary care, and it makes sense that we would want to add and try to divert people from the E.R. It often just doesn't work. Urgent care has tripled in the past five years. E.R. visits around the city are up. That's not exactly primary care, but for rapid access to a generalist, I think it's still worth trying. To date, we haven't seen the effect.

Mr. Robinson Thank you.

Mr. Robinson I don't think that requires an answer, but if you want to make an additional comment, you're welcome to do so.

Mr. Flanz Our chief medical officer would like to share.

Mr. Robinson Please do.

Dr. Raof Good morning. I'm Sabiha Raof from the Chief Medical Officer. I also want to add, like was just mentioned, post-COVID, not only are we getting patients, we are getting patients who are sicker. Many of those patients really belong in the critical care units. That's why we are adding our critical care capacity. We are also the only comprehensive stroke center in Queens. All those stroke interventions, those patients need to be in the hospital for longer periods of time for recovery. The trauma patients and in general, the patients who really postponed their care all these years during COVID are really getting very, very sick. We see that the critical care needs have really increased.

Mr. Robinson Thank you for those comments.

Mr. Robinson While you're up there, any other questions from members of the committee, other members of the council.

Mr. Robinson We thank you very much.

Mr. Robinson Any other issues that members of the committee want to raise on this application?

Mr. Robinson You guys are excused.

Mr. Robinson Thank you.

Mr. Robinson Anybody from the public wishing to speak on this application?

Mr. Robinson Hearing none, I'll call the question.

Mr. Robinson All in favor?

All Aye.

Mr. Robinson Any opposed?

Mr. Robinson Motion carries.

Mr. Robinson Thank you.

Mr. Robinson This is an amazingly important application. Congratulations on your transformation award and good luck getting the project done as soon as possible.

Mr. Robinson These are ambulatory surgery applications. The first one is 2 2 2 2 3 4 C, Atlantic Surgery Center in Suffolk County. This is to certify a second ambulatory surgery single specialty for pain management and install a CR machine. The department is recommending approval with conditions and contingencies.

Mr. Robinson A motion, please.

Mr. Robinson Dr. Berliner.

Mr. Robinson A second.

Mr. Robinson Dr. Kalkut.

Mr. Robinson Ms. Glock.

Ms. Glock Atlantic Surgery Center is currently certified as a single specialty Article 28 Freestanding Ambulatory Surgery Center specializing in Gastroenterology Services. This application requests approval to add a second single specialty for pain management and to install a CR machine. The facility has been operating in Suffolk County since April of 2022. Dr. Nitin Mariwalla is the owner operator of the Atlantic Surgery Center and serves as the Medical Director. Dr. Mariwalla is a surgeon with a practice in West Islip, and Dr. Raymond will be performing the pain management services at the facility. There is a transfer, an affiliation back up agreement with Good Samaritan Hospital. The applicant is projecting 1,098 pain management procedures in year one, with 1,331 in year three, with a 12% Medicaid and just under 2% charity care for the third year. The applicant anticipates that the projections from the original CON for gastroenterology procedures to remain at about 7,500 for year one and 10,000 per year three. The project cost will be funded with equity. The department is recommending approval with conditions and contingencies.

Mr. Robinson Thank you very much for that.

Mr. Robinson Questions from members of the committee or the council.

Mr. Robinson Yes.

Dr. Soffel I am interested in how the department assesses need for pain management services. I didn't see anything in the application that spoke to the community or the consumers who live in that community and whether there are any access issues related to receiving pain management services.

Ms. Glock Thank you for that question, Denise.

Ms. Glock I don't think this quite answers what you're asking, but you'll see in the exhibit that we do list out that there are a number of others within Suffolk County. Looking at meeting the needs of the community, we look at generally, is there going to be sufficient utilization for it to be financially feasible? We lean towards approval of ambulatory surgery centers, which will increase access to services, including under-served by looking at the hours of operation. There are admission policies which are detailed in the exhibit about their ability to serve regardless of ability to pay and also looking at the county data. New York is really near the bottom per capita compared to other states. We're forty-seventh. In terms of county data, Suffolk County, if you look at per capita, per people is certainly not near what we would consider oversaturated. The department has leaned towards approval to increase access convenience for those procedures. I know that doesn't directly address the demographics of the population, but that's kind of the policy.

Mr. Kraut There's no code requirement for need by specialty. It's only per capita. There's not even a need methodology there. It's just for the Center for access to ambulatory surgery. When the regulations were originally drafted, that was the intent is to move site of care out of hospital-based settings into community-based settings and take although I didn't necessarily agree with this, but take procedures performed in an office to a center or a facility so there's oversight and other compliance activities.

Ms. Glock I would also add that I think because this is just adding a single specialty, it's not establishment. I think typically when we're establishing new, you'll see in the exhibit a much more descriptive of the populations because they're just adding a specialty.

Mr. Robinson Dr. Berliner.

Dr. Berliner What's a CR machine?

Ms. Glock As a non-clinician in my Google search, I did find that it is type of imaging. It actually looks like a C.

Mr. Kraut Goes under the table.

Ms. Glock Works on X Ray technology.

Mr. Robinson Thank you for that educational moment.

Mr. Kraut Every moment here is educational.

Mr. Robinson Other questions from the committee or members of the council?

Mr. Robinson Applicant questions only.

Mr. Robinson Thank you.

Mr. Robinson Is there anyone else from the public that wishes to speak on this application?

Mr. Robinson Please come forward.

Mr. Brodsky Good morning. My name is Mark Brodsky. I'm an attorney and I represent Dr. Rajiv Saxena, one of the three founding members of a single specialty gastroenterology known as Island Endoscopy Center, LLC, which is situated approximately one block from the location of the facility recently constructed by the applicant. Since receiving CON approval in or about 2008, Island NDOH has served the needs of the community by providing approximately 10,000 ambulatory gastro interactive logical services in the facility per year. Dr. Saxena, who is sitting to my right, is also a founding 50% shareholder of an entity known as Island Gastroenterology Consultant Inc or Island Gastro, which we like to refer, which is also located in close proximity to Island Endo and the applicant Atlantic Surgery Center. The second founding member of Island and Dr. Noel Dsilva, a physician certified in gastroenterology and a former employee of Island Gastro. The third founding member of Island Endo is Dr. Raj Mariwalla, who is the other 50% stockholder of Island Gastro and certified in gastroenterology. Dr. Raj Mariwalla is also the Father of the applicant soul Principal Nitin Mariwalla, who is a neurosurgeon, believed to have no formal training or clinical experience in gastroenterology. In 2021, Dr. Saxena and Dr. Dsilva were shocked to discover that Dr. Nitin Mariwalla caused the filing of the CON application, seeking approval to establish a competitive single specialty one block from Island Endo, and to perform virtually identical gastroenterology ambulatory services as performed at Island Endo by the same island gastro physicians. Neither Dr. Saxena nor Dsilva had any prior knowledge as to the applicant's original CON application, and after reviewing numerous documents following our FOIL request, we concluded that the applicant's original CON application was replete with false misleading statements and material omissions. In an eleven-page letter dated January 20, 2022, co-authored by two separate counsel for Saxena and Dsilva, we notified the DOH as to what we believe to be the false, misleading and material omissions, and as to our belief that the CON application by the present applicant was a smokescreen to enable Dr. Mariwalla to wrongfully facilitate the closure and the bankruptcy of Island Endo. In particular, we were shocked to discover that there was an unsigned letter relied upon in the original application detailing seven doctors who intended to perform procedures. We discovered that the majority of those doctors never intended to perform the procedures, never had any interest in it. To the best of our knowledge, we had never received a response from DOH. We're here because we just learned about the current application. I submitted a letter detailing our objections to it, but unfortunately it was received during Monday afternoon. We were notified that it will be distributed to the council. We believe that the reasons contained in our letter for the need to establish the pain management are vague and misleading. That according to current board certifications available to date, neither Nitin Mariwalla nor Dr. Bell is the pain specialist.

Mr. Robinson Thank you for those comments. We appreciate them.

Mr. Brodsky We just urge that you investigate this matter given the severity of what had taken place originally, coupled with what's going on now.

Mr. Robinson Thank you for the comments.

Mr. Robinson Any questions?

Mr. Kraut You're basically saying we should deny this application because you're in a business dispute?

Mr. Brodsky No, no, I'm saying with respect to this particular application, the principal and the two doctors that are mentioned are neurosurgeons. They have not indicated whatsoever as to and I understand that the issue of the need, the need for these services, the fact that we believe an investigation should be performed to determine what the community needs with respect to this. I'm also saying that the way that this application was couched, where they indicate they're board certified, but not board certified in any specific area is similar to what we believe to be the material omissions and false statements contained in the original application.

Mr. Kraut I think we were made aware that there was opposition before, and I took it upon myself to go and understand exactly what you do in the Island Endoscopy. Your PFI is 90, 76 009076 is your facility identifier. Unfortunately, when I did that, I also learned that you have not filed a Sparks filing since 2020. We have no way of knowing what's going on in your facility. You're actually on the felon list for submissions. You come to us and you ask us to look at the data, look at the information your facility. You yourself have never provided the state for almost two years now. Actually in the third year of noncompliance. I'm not asking you to respond. Don't give me an answer. I'm saying you should fix that if you're coming into this room because we have a problem.

Mr. Brodsky I would like to respond just briefly if I can. There's litigation going on amongst all the parties. There's two, three or four separate actions. We just concluded a trial. Dr. Saxena has not been given access or having any ability to participate in anything that's going on on Island Endo for years. Dr. Dsilva, who is the second partner, is in litigation with Dr. Mariwalla.

Mr. Kraut Maybe we should suspend your license, because you're telling me... I mean, who's watching the shop? Who's doing compliance? If you don't have access to...I mean, I don't want to get into it because it's tangential. I'm making a point, that's all.

Mr. Brodsky But that's exactly our point too respectfully that they're letting Island Endo go for the purposes of setting up across the block.

Mr. Kraut I think somebody will pay attention to this, I suspect it based on the information you gave us.

Mr. Brodsky I would appreciate that.

Mr. Robinson Appreciate your detective work there.

Mr. Kraut Well, it's not my detective. I'm curious.

Mr. Robinson I think we're set with you.

Mr. Robinson Thank you very much.

Mr. Robinson Is there anybody else from the public that wishes to speak on this application?

Mr. Robinson Does the applicant want to say anything at this point?

Mr. Robinson Please introduce yourselves to make sure the mic is on.

Mr. Black Andrew Black, consultant to the applicant.

Mr. Black I just want to clarify that there was a statement made that there's various litigations going on. I'm not an attorney. Dr. Mariwalla's not a attorney, but what I could tell you, to the best of our knowledge Dr. Mariwalla nor Atlantic SE is named in any litigation of any capacity.

Dr. Mariwalla Just as a point of information to clarify, neurosurgeons perform pain procedures all the time. Typically, we work with pain management physicians. There's been a lot of interest in that, including from area pain specialists. We perform these procedures already as a part of an extension of my current practice.

Mr. Robinson I appreciate your making that comment, but I think most members of the council are aware of that.

Mr. Robinson Thank you very much.

Mr. Robinson Any questions from the committee or the counsel for the applicant?

Mr. Robinson You're all set.

Mr. Robinson I think we are going to call the question.

Mr. Robinson All in favor?

All Aye.

Mr. Robinson Anybody opposed?

Mr. Robinson Motion carries.

Mr. Robinson Thank you.

Mr. Robinson One abstention.

Mr. Robinson Application 2 1 2 2 6 0 B, SurgiCore Suffolk LLC in Suffolk County. This is to establish and construct a multi-specialty ambulatory surgery center at 105 Old Nicholls Road. The department is recommending approval with conditions and contingencies with an expiration of the operating certificate five years from the date of issuance.

Mr. Robinson A motion, please.

Mr. Robinson Thank you, Dr. Berliner.

Mr. Robinson Second, Dr. Kalkut.

Ms. Glock SurgiCore Suffolk LLC is seeking approval to establish and construct an article 28 multi-specialty ambulatory surgery center in pain management, orthopedics and podiatry services. SurgiCore Suffolk LLC is a collaboration between SurgiCore, Eastern, Long Island LLC and Community Medical Wellness, which is an existing private pain management practice. Community Medical Wellness is comprised of three partners who currently operate pain management practice in Suffolk County. SurgiCore Eastern Long

Island LLC, an affiliate of SurgiCore Surgical centers, is an affiliate of SurgiCore Surgical Centers, which is comprised of eleven independent SC centers in the tri state area. The exhibit shows the membership of the proposed operating entity and according to the applicant, this long standing medical practice needs an additional location to handle the volume of patients. The proposed site will allow the practice to better serve its existing patient base as a substantial portion falls within the catchment area. The applicant is projecting 3738 procedures year one, 4650 in year three with Medicaid at 4% and charity care at 2%. The applicant does state that all of these procedures are moving to the center. They are currently being performed in others. I do want to note that the department did receive letters of opposition that opened in 2021 in Suffolk County, the Center for Advanced Spine and Joint Surgery and Precision Care Surgery. Both centers expressed concern that the proposed will create an oversaturation of the market for Ambulatory Surgery center. Suffolk County currently has a ratio of 84,773 patients per, which is a relatively high number that does not indicate oversaturation. Precision is based about nine miles away providing orthopedic services. They opened in 2021. An advanced spine and joint surgery was the second letter that we received. Based upon our review, the department has recommended approval with contingent conditions and contingencies with an expiration of the operating certificate five years from the date of its issuance.

Mr. Robinson Thank you.

Mr. Robinson Questions from the committee or the members of the council.

Mr. Robinson Yes.

Dr. Soffel I'm just curious, how often do we get letters of opposition like this? Is this a common practice? This is the first time I can remember since I've joined the council that we've actually gotten letters objecting to a site.

Mr. Robinson We do.

Ms. Glock We actually solicit. We send letters out to the hospitals, often saying we have an application. In this particular applicant, we sent to three hospitals, I believe at least one of these, if not the second, are affiliated with the Catholic Health System on the island. Normally if we see a letter of opposition, we do get them occasionally with the ambulatory surgery.

Mr. Kraut Because I think it's an important question in that to give you the historical context. When they were first approved, you know, everything was done in a hospital based setting. What occurred is and we saw this, I think, more Upstate in rural single hospital communities, the concern was this cornerstone of their business surgical, which essentially had some higher CMI and reimbursement, you would be moving essentially money from struggling hospitals into private for profit physician owned practices at the time. The concern was that this would have a destabilizing impact on the bigger picture of access to care. As a consequence of that, we required notification of everybody to be notified that this because a lot of times nobody would read the register and say, we didn't know about this. We wanted an affirmative action to have documentation that actually this would be harmful economically. As a consequence of that, I cannot remember. There may have been one, but you can correct me because my memory won't serve. There had never been one that turned out to be true in our history here. There was something that I'm remembering with Glen Falls, but they used to complain about everything. If you're in Glenn Falls, don't write a letter. They had struggled. Everything was problematic to be

honest. That's it. The interesting dynamic has expanded that we have now the for profit physician owned are complaining against economic harm although that was not the claim here it was there was unmet need, it was not a need based issue. That's just the historic context of how we and that's why we get this, because we actively go out and notify people that there's a CON here.

Mr. Robinson Jeff, do you think maybe at the end of the meeting we could actually have you do a standup routine.

Mr. Robinson I know, I know.

Mr. Robinson Anyway, I didn't want to lead on the audience here.

Mr. Robinson It is a good question. I think actually it's just having history here. Over time you will become the expert and will share the history with others. I appreciate that you're asking the questions. It's very important.

Mr. Robinson Other questions from the committee.

Mr. Robinson Applicant questions only.

Mr. Robinson Thank you.

Mr. Robinson Anybody from the public wishing to speak on this application?

Mr. Robinson I'm going to call the question.

Mr. Robinson All in favor?

All Aye.

Mr. Robinson Any opposed?

Mr. Robinson That motion carries.

Mr. Robinson Thank you.

Mr. Robinson I will note, and I skipped it over that application 2 2 2 2 7 0 C, Precision Care Surgery Center in Suffolk County. That application has been deferred at the applicant's request. That may come back to us. For the time being, that's the reason it's not being discussed at this meeting.

Mr. Robinson Moving on.

Mr. Robinson Application 2 2 2 1 8 1 B, Bronx Vascular Surgical Center, LLC in Bronx County. Establish and construct a new single Specialty Ambulatory Surgery Center Diagnostic and Treatment Center for Vascular Surgery at 1733 Eastchester Road in the Bronx. Department recommending approval with conditions and contingencies with an expiration of the operating certificate five years from the date of the issuance is the recommendation.

Mr. Robinson A motion, please?

Mr. Robinson Dr. Berliner.

Mr. Robinson Second, Dr. Kalkut.

Mr. Robinson Ms. Glock.

Ms. Glock Bronx Vascular Surgical Center, LLC in existing LLC request approval to establish and construct a single specialty. Article 28 to be located in Bronx County. Two operating rooms. They're going to provide end stage renal disease related vascular access services. The purpose of the surgery center is to improve access to service patients with ESRD and peripheral vascular disease necessary to achieve maximum efficient care. The project is a partnership between an existing non-Article 28 physician group, Advanced Access Medical Care and specific individuals affiliated with RMS Lifeline Inc, doing business as Lifeline Vascular Care, which will combine to create Bronx Vascular Surgical Center under one. The private practice, the Advance Access Medical Care will dissolve, and the two physicians will move their procedures to the newly established Bronx Vascular Surgical Center. You can see in the exhibit who the proposed members are as stated that this is a partnership and Lifeline is a management administrative services company, which helps manage vascular access centers and provides clinical and operational expertise. The goal of the project is to convert the non-Article 28 office based vascular access practice into a single specialty bringing those procedures into the regulatory Article 28 environment. The applicant is projecting about 2,800 procedures in year three with Medicaid at 18 and a half percent and charity care at 2. Based upon our review of the project, we feel that this project will provide increased access to vascular access surgery services for the residents. We are recommending approval with conditions and contingencies with an expiration of the operating certificate five years from the date of its issuance.

Mr. Robinson Thank you.

Mr. Robinson Questions from the committee, the counsel.

Mr. Robinson Applicant questions only.

Mr. Robinson Thank you.

Mr. Robinson Anybody from the public wishing to speak on this application hearing?

Mr. Robinson All in favor?

All Aye.

Mr. Robinson Any opposed?

Mr. Robinson Motion carries.

Mr. Robinson Thank you.

Mr. Robinson Calling application 2 2 2 2 1 3 B, Staten Island, GSC LLC doing business as Ambulatory Surgery Center of Staten Island in Richmond County. Noting an interest and abstention, which means he can remain in the room by Mr. Kraut. This is to establish

and construct a single specialty ambulatory surgery, diagnostic and treatment center for gastroenterology to be constructed at 2043 Richmond Avenue in Staten Island. The department is recommending approval with conditions and contingencies with an expiration of the operating certificate five years from the date of its issuance.

Mr. Robinson Motion, please.

Mr. Robinson Dr. Berliner.

Mr. Robinson Dr. Kalkut seconds.

Mr. Robinson Ms. Glock.

Ms. Glock This application, Staten Island GSC LLC is requesting approval to establish and construct a single specialty who single specialty will be Gastroenterology Services. They'll be located on the ground floor of an existing building. You can see an exhibit. The members are two physicians in Staten Island GSE LLC. The applicant is projecting 7,500 procedures year one, 12,700 year three. Medicaid at 24%, charity care at 2. The applicant has stated that all of these procedures moving to the proposed center are currently being performed in an office-based setting. Based upon our review, the department is recommending approval with conditions and contingencies with an expiration of the operating certificate five years from the date of its issuance.

Mr. Robinson Thank you.

Mr. Robinson Questions, please.

Mr. Robinson Applicant questions only.

Mr. Robinson Thank you.

Mr. Robinson Anybody else from the public wishing to speak on this application hearing?

Mr. Robinson All in favor?

All Aye.

Mr. Robinson Any opposed?

Mr. Robinson Abstentions?

Mr. Robinson One abstention.

Mr. Robinson Thank you.

Mr. Robinson Motion carries.

Mr. Robinson Our final ambulatory surgery application is 2 2 2 2 2 7 B, Southern Tier Surgery Center LLC in Broome County. Establish and construct a dual single specialty ambulatory surgery diagnostic and treatment center for orthopedics and pain management at 601 Henry L Drive in Johnson City. The department recommends approval with

conditions and contingencies with an expiration of the operating certificate five years from the date of issuance.

Mr. Robinson A motion, please.

Mr. Robinson Thank you, Dr. Berliner.

Mr. Robinson Thank you, Dr. Kalkut, for the second.

Mr. Robinson Ms. Glock.

Ms. Glock As Mr. Robinson stated, this application is seeking approval to establish and construct an article 28 Diagnostic Treatment Center to be certified as a dual single specialty freestanding ambulatory surgery center specializing in orthopedics and pain management. You can see in the exhibit, and I believe also in the attachments is an organizational chart. You can see the members of Southern Tier, Class-A physician members, Class-B members. New York Holdco LLC, which is comprised of Jeffrey Andrews and Binghamton Health Corp. Our Lady of Lourdes Memorial Hospital is the sole passive member of Binghamton Health Corp. Dr. Muhammad Ali Siad, who's currently a physician at Our Lady of Lourdes, will be practicing physician and serve as Medical Director. Each of his twelve additional physicians have provided letters estimating the number of procedures that they will be performing. The applicant is projecting enough utilization to reach financial feasibility with Medicaid projected to be almost 13% and charity care at about 2%. This application really is a collaboration by Our Lady of Lourdes Memorial Hospital and local physicians to enhance access to outpatient surgical services, which will lessen the need for patients and physicians to travel to the hospital for those services. Based on our review, the department is recommending approval with conditions and contingencies with an expiration of the operating certificate five years from the date of its issuance.

Mr. Robinson Thank you.

Mr. Robinson Questions.

Mr. Robinson Members of the public who wish to speak on this application.

Mr. Robinson All in favor?

All Aye.

Mr. Robinson Any opposed?

Mr. Robinson Any abstentions?

Mr. Robinson That motion carries.

Mr. Robinson Thank you.

Mr. Robinson Moving on to diagnostic and treatment centers. Application 2 2 2 1 1 2 3 E, Community Inclusion Inc doing business as TRC Community Health Center of Western New York. This is in Chautauqua County. Note an interest by Mr. Holt. Establish Community Liaison Inc as the operator of an extension clinic currently operated by

NYSARC Inc at 890 East Street in Jamestown and certify a new extension clinic at 186 Lakeshore Drive, West Dunkirk Dash Safety Net. The department is recommending approval with conditions and contingencies.

Mr. Robinson A motion, please.

Mr. Robinson Dr. Kalkut.

Mr. Robinson Second Dr. Berliner.

Mr. Robinson Ms. Glock.

Ms. Glock Community Inclusion Inc, which will do business as TRC Community Health Center of Western New York, is a not-for-profit corporation. They're seeking approval to become the operator of two extension clinics and a school-based extension clinic currently operated by the Chautauqua County chapter of New York State ARC, which serves the developmentally disabled community. The Extension Clinics, one will be located in Jamestown and another one in Dunkirk. The school-based clinic is located at Jamestown High School. The Community Inclusion Inc was originally incorporated in 1999 as a community housing development organization, and the certificate of incorporation will be amended to change the purpose for that that the CDHO so that their purpose will be consistent with the operation of a federally qualified health care center look alike a designation they'll pursue once operational. TRC Community Health Center was originally established to meet the unique needs of the individuals with intellectual and developmental disabilities who have been underserved by existing providers. Both the extension clinics are in a health professional shortage area for primary care as well for dental care and a medically underserved area. Approval of the project will allow TRC Health Center of Western New York to provide services to those individuals. The number of projected visits shows financial feasibility with Medicaid utilization projected at 54.75%. DOH is recommending approval with conditions and contingencies on the project.

Mr. Robinson Thank you very much.

Mr. Robinson Questions?

Mr. Robinson Comments?

Mr. Kraut I just have a comment here. I'm personally involved with the disabled community. This particular population because of its living, we've improved the health care delivery to it and they're living a lot longer. Their life expectancy has increased. It's these types of programs that are actually critical. This is a real subspecialty within primary care of treating this population and the special challenges to get them to seek care and to experience care. I mean, this type of program and ones that we operate around the state. I would just, again, encourage anybody who's seeking to develop this, I think you'll find the Department of Health that's very welcoming for these types of applications. The fact they're going to be look alike is really the right way to go. It's a just a great project as far as I'm concerned.

Mr. Robinson Great comments.

Mr. Robinson Thank you.

Mr. Robinson Neither the applicant nor anybody from the public has been asked to speak.

Mr. Robinson is there anybody that wishes to?

Mr. Robinson I just want to add my support and agreement with Mr. Kraut's comments.

Mr. Robinson Actually, kudos to the Jamestown community for pulling this together.

Mr. Robinson With that, I'm going to call the question.

Mr. Robinson All in favor?

All Aye.

Mr. Robinson Any opposed?

Mr. Robinson Any abstentions?

Mr. Robinson Motion carries happily.

Mr. Robinson Application 2 2 1 1 8 5 E, this is City Wide Health Facility Inc in Kings County. That application has been deferred at the department's request.

Mr. Robinson We are moving on.

Mr. Robinson 2 2 2 1 5 3 B, CarefulMD Beacon Inc in Dutchess County. Establish and construct a new diagnostic and treatment center located at 268 Main Street in Beacon. Department recommends approval with conditions and contingencies.

Mr. Robinson A motion, please.

Mr. Robinson Dr. Berliner.

Mr. Robinson Second, Dr. Kalkut.

Ms. Glock CarefulMD Beacon Inc is requesting approval for establishment and construction of this Article 28 diagnostic and treatment center to be located in Beacon. Upon approval, they will provide primary care, X-ray imaging services and infusion therapy for residents of Beacon in the surrounding community. The proposed location is in a medically underserved area. Projecting about almost 15,000 visits by year three with 41% Medicaid, 4% charity care. The department is recommending approval with conditions and contingencies.

Mr. Robinson Thank you.

Mr. Robinson I do not see anybody.

Mr. Robinson Is the applicant here?

Mr. Robinson Is anybody representing the applicant here?

Mr. Robinson Could you please come forward?

Mr. Robinson We would ask that you sign in beforehand, but we will ask you to sign in afterwards.

Mr. Robinson Thank you very much.

Mr. Robinson Could you please make sure the light is on and then introduce yourselves, please?

Dr. Kalkut What sort of infusions are you planning to do at the center here?

Mr. Kraut Just pull the mic a little closer to you, please.

Applicant These are outpatient infusion. Without dialysis, just strictly regular medical.

Dr. Kalkut I'm a physician. What sort of medication? What are you infusing? What are you treating?

Applicant I apologize. These are for patients that need to come in just for the day to treat.

Mr. Kraut You're not a clinician.

Dr. Kalkut Why don't you say, I don't know.

Applicant I don't know.

Mr. Kraut Okay.

Applicant What I do know is that it's for outpatient.

Mr. Kraut We're trying to understand what type of infusions.

Applicant Like regular IV infusion if somebody is like drunk or dehydrated or that kind of...

Mr. Kraut Rapid detox?

Applicant No.

Mr. Kraut It's hydrating.

Applicant My name is Ariel Rodriguez. It'd be vitamin infusions.

Mr. Kraut Vitamins.

Applicant Yeah.

Mr. Kraut Why would you want to set up a diagnostic and treatment center to do vitamin infusions, which is essentially administered in a physician's office?

Applicant It'd be an ancillary service for the facility.

Mr. Kraut What would be the indication for the vitamin infusions?

Applicant This is an elective.

Mr. Kraut What symptoms would a patient present to have a physician clinically determine they need a vitamin infusion?

Applicant I should say, I'm not a clinician myself. I would defer to who is not here right now to make that recommendation.

Mr. Kraut You have primary care in the center. I would assume the primary care physicians would order the vitamin. I think the question that Jeff asked was an important one. What are the indications? Who doesn't get vitamins?

Applicant I would leave that to the clinician to make that assessment.

Mr. Robinson I think and given the fact that there are four infusion rooms in the application, which is a significant size. I think we really do need to hear from your clinicians. I'm going to ask the people who made the motion, would they be willing to withdraw their motions?

Mr. Robinson I think I'm going to entertain a motion to defer this application, so that we can have before the committee. This means the next cycle, the clinician representatives here so we can have a conversation about the clinical services that are being proposed here so that we can feel comfortable that these are appropriate.

Mr. Kraut I'd make that motion.

Mr. Robinson Thank you.

Mr. Robinson Second.

Mr. Robinson Further discussion among the members of the committee?

Mr. Robinson All in favor?

Mr. Robinson That motion carries.

Mr. Robinson I think you should work with the department between now and the next meeting to be sure that you're prepared. We're going to be looking for actually you to come up and present very explicitly what the nature of the clinical services are that are going to be in here and what the indications are for those procedures.

Mr. Kraut We're going to try to understand how the population of where you located in particular in Beacon has the density to support four infusion rooms and I'll give you the benefit of the doubt. Could be things other than vitamins. You said that. It's just we can't process the clinical need for that activity level that you're putting in there. It really is a bit of a clinical understanding. If you bring a clinician is going to do this, we'll get a better sense of it. That's all.

Mr. Robinson Thank you very much.

Applicant Thank you.

Mr. Robinson I'm going to bring this topic up on the record right now. We've been seeing a steady stream of applications for profit diagnostic and treatment centers. I'm not challenging the validity of their applications or they're being able to fit within the regulations that currently exist. I don't think either from the standpoint of state policy and from the standpoint of where we want to go strategically as a state and as a council that we've really thought through how and why we should be managing these applications. I'd like to make a suggestion and I guess this goes to you, Mr. Kraut, as the Chair of the Council, that perhaps this is a topic either for an ad hoc committee or for the planning committee of the council to consider in conjunction with the department.

Mr. Kraut Let's talk to the Department about it offline, because Dr. Rugge is not here, but he has created a very complex set of a comprehensive set of agenda. I'm not sure if I could throw one more there.

Mr. Robinson I just want us to address this strategically.

Mr. Robinson Thank you for that.

Mr. Robinson Application 2 2 2 0 8 6 E, Amer Home Care Corp in Rensselaer County. This is an application for a home health agency licensure establishing a new licensed home care services agency at 5 Springfield Avenue in East Greenbush. Approval is recommended by the Department.

Mr. Robinson Motion, please.

Mr. Robinson Dr. Kalkut.

Mr. Robinson Second, Dr. Berliner.

Mr. Robinson Mr. Furnish.

Mr. Furnish For the record, my name is Mark Furnish. I'm with the department with the Office of Aging and Long-Term Care. Before I start with this application, I wanted to give a background and preview of things to come, because we haven't seen a licensed home care state agency here in a while. I want to talk about the reasons why, what's changed and what you'll be seeing going forward. In the 2018/2019 state budget, the state enacted a two-year moratorium on the processing and approval of applications. LHCSAs stands for licensed home care service agencies. This moratorium became effective on April 1st, 2018 and continued until April 1st of 2020. However, the law did provide for some limited exceptions for the processing and approval of certain applications during the moratorium period, such as an application seeking LHCSAs that is submitted with an application for an assisted living program and help an application seeking approval for the transfer or discharge of ownership of an existing LHCSA that has been licensed and operating for a minimum of five years for the purpose of consolidating the license of two years or more, and an application seeking licensure of a LHCSA where the applicant demonstrates to the satisfaction of the Commissioner that it would be appropriate on the grounds that the application addresses a serious concern, such as a lack of access to home care services in a geographic area, or lack of appropriate care, language and cultural competence or special needs services. For those that were on the council during that time, we brought this before you, talked about the need and methodologies and brought it for you for your approval. The new regulations went into effect on April 1st of 2020. The department

amended its regulations, and the public need methodology applies. We change the need methodology, which states includes a rebuttable presumption of no need for additional LHCSAs in counties if there are five or more LHCSAs actively serving patients within the county as of April 1st, 2020. If you have that, we're going to assume there's no need. However, LHCSA applicant can overcome that presumption of no need based on local factors related to the applicant service or planning area, including but not limited to demographics and health status of the patients in the planning area or the state is applicable, documented evidence of unduplicated number of patients on waiting lists who are appropriate for and desire admission to LHCSA, but who experience a long waiting time for placement. The number and capacity of currently operating LHCSAs, the quality of services provided by existing agencies, the availability and accessibility of workforce personnel and resources dedicated to adding and training additional members of the workforce, including committed resources of an organized training program. We can look at the cultural competency of existing agencies and subpopulations requiring specialty services. If an applicant comes in and they don't meet the initial need requirement in a county where there's presumed no need, they can come in. The department will look at a rebuttable presumption just based on these factors. You don't have those two today. These two today do not have that. Applications for license are based on a change of ownership for LHCSAs actively serving, at least twenty-five patients will not be subject to public need review and should be evaluated only on financial feasibility and the character and competence of the proposed operator. Unless the proposed operator seeks to serve patients outside of the agency's approved counties. On the department's website, we have a list of counties that have presumed need and those that don't. You will see one of those today. Are exempt from this public need methodology if the agency exclusively serves patients within those programs. The agency will be subject to need methodology if they apply to serve patients outside of those specific programs. The exemption will be noted on the agency license. Financial Feasibility. The standards for financial feasibility review will remain at a minimum, and this is what we look at for the financial feasibility. An examination of the sources available of working capital that the proposed LHCSA have with a minimum required of equal to at least two months of estimated operating expenses of the agency that the application passed as a reasonable test with respect to financial capability of the agency or sources to startup funding and an examination of financial feasibility of an agency or projections indicating that the agency revenues, including but not limited to operating revenue, will be equal or greater than projected expenditures over time. Now, due to the COVID pandemic and other factors, we did not accept new regulations until August 17th, 2022, of last year. Due to review times and things of that nature, we're bringing the first two up today. We also issued a Dear Administrator letter on August 17th, 2022. That's the background and basis. We have about fifty-four LHCSA applications now pending in front of the department. We have two for you today.

Mr. Furnish The first one as you brought up was project number 2 2 2 0 8 6 E, which is Homecare Corp., which is serving Rensselaer County, Green, Schenectady, Columbia and Washington. All those counties are on the presumed need list. They meet the need. The financial feasibility meets the requirements. The character and competence after review was found to be acceptable. With that, the department recommends approval.

Mr. Robinson Thank you very much.

Mr. Robinson I also appreciate the preamble that kind of reset things for us. That's very helpful.

Mr. Robinson Actually, questions of Mr. Furnish both for the general policy as well as for this application.

Mr. La Rue Good morning. Scott LaRue, member the council. For this particular application, there were not five or the department determined that the five weren't meeting the need.

Mr. Furnish It was on the list of counties that are presumed to have need. Meaning that the presumed need is there. I don't know if I'm articulating that right. These are counties that need LHCSAs under our regulations and methodology.

Mr. La Rue I'm just trying to understand. Is it because there weren't five or there are five, but there is still a need?

Mr. Furnish There weren't five.

Mr. La Rue Thank you.

Mr. Furnish Those counties are listed. We update that quarterly. That's the reason why.

Mr. Robinson Thank you for that clarification.

Mr. Robinson Other questions?

Mr. Robinson Let me open it up to the applicant.

Mr. Robinson Question for the applicant.

Mr. Robinson Is the applicant here?

Mr. Robinson We do not see the applicant.

Mr. Furnish I will state that while we did invite the applicant here and we gave them every opportunity to come. Traditionally, LHCSAs applicants have not come just historically. I'm not saying that one way or another.

Mr. Robinson I think we probably and for future applications, if you would encourage applicants to attend just so that they have an opportunity to be questioned by the committee.

Mr. Robinson Thank you.

Dr. Berliner I do.

Dr. Berliner Howard Berliner, member of the council.

Dr. Berliner The real question is, I mean, obviously there's a great need in many places for more home care services. At the same time, we've also been told it's basically not possible to get home care workers. My question for the applicant would be, how do you plan to get workers without essentially robbing Peter to pay Paul, if you will?

Mr. Furnish Correct.

Mr. Furnish I'll convey that message to the applicant.

Mr. Furnish For the record, we did invite them to come here today.

Mr. Robinson That's fine. Maybe they can answer the questions in writing. I don't think we would defer this necessarily.

Mr. Robinson Mark, I think, and that preamble is important. There are people that are on the council that are not here today, that this has been, for lack of a better term, a very interested kind of hot topic button. The question I have is when we stopped processing them, I forget. You may know the answer If you don't when we meet in two weeks, it's fine. How many have we approved? One of the questions that constantly have come up is how does the department exercise oversight? Because I thought it was like, was it over a thousand or under a thousand? It was a big number. It was a couple of hundred. The question was, what's the need? How many more would we getting? I think in light of the comment that Howard said is for everyone that we approve, are we in fact, it's the workforce issue. I think in communities where you believe there is need, probably they're not necessarily going to be taking it away. In rural counties and other things where they're also competing with nursing homes, the whole health care infrastructure, we always were fearful of unintended consequences. You said there are fifty-two or so in the pipeline?

Mr. Furnish Yes.

Mr. Robinson Okay.

Mr. Robinson I think those questions are going to come up. I think the question that Howard asked is something we're going to ask every applicant. Maybe when the department processes it and you send them a letter asking them to give us some sort of thing, it'll just move the process along.

Mr. Furnish Now that you've said that we can definitely allow that because we're only the department can only look at need financial and character and competence. You have that other prong that you can ask.

Mr. Robinson I couldn't agree more. I think actually this workforce issue is going to be one that's going to be relevant to almost every application that we see nowadays. I think especially in home care and long-term care, where I think we really are worried about the workforce issues and would like to have the applicant comment on their strategy for building their workforce if they're going to be establishing it.

Mr. Kraut I'll give you the flip side of that, that the worker is empowered to find the best employer to work for. There is two sides to that. We're not trying to control. Competition in that way is also good for care. It's good for workers who get the most money and the best benefits and the best environment for the employer who treats them well. I think given the fragility of some of the issues, it's going to come up in a question.

Mr. Furnish I'll make sure that you have the answer.

Mr. Kraut Thank you very much.

Mr. Furnish Thanks.

Mr. Robinson We're going to vote on this topic now.

Mr. Robinson I'm going to call the question.

Mr. Robinson All in favor?

All Aye.

Mr. Robinson Any opposed?

Mr. Robinson Any abstentions?

Mr. Robinson The motion carries.

Mr. Robinson The second of the two is 2 2 2 1 5 6 E, Right at Home, Nassau in North Shore in Nassau County to establish EQ Health Inc as the new operator of Right at Home Nassau at North Shore, a licensed home care services agency. The department is recommending approval.

Mr. Robinson A motion, please.

Mr. Robinson Dr. Kalkut.

Mr. Robinson Dr. Berliner seconds.

Mr. Robinson Again, Mr. Furnish.

Mr. Furnish This one takes place in Nassau County. That is a county where the opposite of the last one, where there is no need. Unless they can come up with a rebuttal presumption, there is no need. However, this is a transfer of ownership of an existing. That is, under our regulations, allowable. It's just a transfer of ownership. Change of ownership, which is what this is. Based on those factors, financial feasibility and the character and competence review that we did on the applicant, we recommend approval.

Mr. Robinson Thank you.

Mr. Robinson Questions on this application.

Mr. Kraut I think we adjudicate the issue that Northwell and North Shore University Hospital does not own the term North Shore. I could tell you the letter exchange I have with hospitals in Chicago will bear that out.

Mr. Robinson Other questions.

Mr. Robinson Anybody from the public wishing to speak on this application.

Mr. Robinson I'm going to call the question.

Mr. Robinson All in favor?

Mr. Robinson Any opposed?

Mr. Robinson That motion carries.

Mr. Robinson Thank you.

Mr. Robinson We're now going to certificates.

Mr. Robinson If there are questions, please ask.

Mr. Kraut This is where it was probably in my head. I read it and then I said Glens Falls. It was probably one of those subtle things.

Mr. Robinson Is that okay to go now?

Mr. Kraut Now I know where I came up with Glenn Falls.

Mr. Robinson Glens Falls Hospital Foundation Inc. This is a certificate of amendment of the restated certificate of incorporation. The amendment corrects a error in Section 4B of the foundation restated Certificate of Incorporation. An approval is recommended by the department.

Mr. Robinson A motion, please.

Mr. Robinson Thank you, Dr. Berliner.

Mr. Robinson A second, somebody.

Mr. Robinson Mr. La Rue.

Mr. Robinson Nothing to add unless people have questions.

Mr. Robinson All in favor?

All Aye.

Mr. Robinson Any opposed?

Mr. Robinson Motion carries.

Mr. Robinson This is a certificate of dissolution. Saint Teresa's Nursing Home Inc requests consent for filing to dissolve St Teresa's Nursing Home Inc. Note here a conflict and recusal by Mr. La Rue.

Mr. Robinson Give you a chance to depart.

Mr. Robinson May I have a motion, please?

Mr. Robinson Thank you, Dr. Berliner.

Mr. Robinson Second, Dr. Kalkut.

Mr. Robinson Questions for our distinguished counsel.

Mr. Robinson All in favor?

All Aye.

Mr. Robinson Any opposed?

Mr. Robinson Note, Mr. La Rue's recusal.

Mr. Robinson The motion carries.

Mr. Robinson Ladies and gentlemen of the jury, we are adjourned.

Mr. Robinson As a committee, I turn it back over to you. Mr. Kraut.

Mr. Kraut Do you want to take a break?

Mr. Kraut Just because we're going to go to the Codes Committee, can we take a five minute break, please, and then we'll resume with the rest of the agenda.