

**STATE OF NEW YORK**  
**PUBLIC HEALTH AND HEALTH PLANNING COUNCIL**

**COMMITTEE DAY**

**AGENDA**

*January 26, 2023*  
*10:00 a.m.*

- *90 Church Street, Conference Rooms 4 A/B, NYC*
- *Empire State Plaza, Concourse Level, Meeting Room 6, Albany*

**I. SPECIAL COMMITTEE ON CODES, REGULATIONS, AND LEGISLATION**

\*\*\*TO BE DISTRIBUTED UNDER SEPARATE COVER\*\*\*

**II. COMMITTEE ON ESTABLISHMENT AND PROJECT REVIEW**

Peter Robinson, Chair

**A. Applications for Establishment and Construction of Health Care Facilities/Agencies**

**Midwifery Birthing Services - Establish/Construct**

**Exhibit # 1**

<u>Number</u>	<u>Applicant/Facility</u>
1. 202086 B	Coit House, LLC (Erie County)

**B. Applications for Construction of Health Care Facilities/Agencies**

**Acute Care Services - Construction**

**Exhibit # 2**

<u>Number</u>	<u>Applicant/Facility</u>
1. 222087 C	Mount Sinai Beth Israel (New York County)

**Cardiac Services - Construction**

**Exhibit # 3**

<u>Number</u>	<u>Applicant/Facility</u>
1. 182144 C	Nassau University Medical Center (Nassau County)

**Ambulatory Surgery Centers – Construction**

**Exhibit # 4**

<u>Number</u>	<u>Applicant/Facility</u>
1. 222012 C	The New York Eye Surgical Center (Saratoga County)

**Diagnostic and Treatment Centers -Construction**

**Exhibit # 6**

<u>Number</u>	<u>Applicant/Facility</u>
1. 221257 C	Open Door Family Medical Center, Inc. (Westchester County)

**C. Applications for Establishment and Construction of Health Care Facilities/Agencies**

**Ambulatory Surgery Centers - Establish and Construct**

**Exhibit # 5**

<u>Number</u>	<u>Applicant/Facility</u>
1. 221252 B	Upstate Endoscopy Associates, LLC d/b/a Upstate Endoscopy Center (Rensselaer County)
2. 221280 E	Specialists' One-Day Surgery Center, LLC (Onondaga County)
3. 222011 B	Flushing Endoscopy Center, LLC (New York County)
4. 222024 B	787 Ortho ASC LLC d/b/a Peakpoint Midtown West ASC (New York County)
5. 222036 B	Excelsior ASC LLC d/b/a Excelsior Ambulatory Surgery Center (Kings County)
6. 222089 B	Peakpoint Flatiron LLC d/b/a New York Eye and Ear of Mount Sinai Surgery Center (New York County)

**Diagnostic and Treatment Centers - Establish/Construct**

**Exhibit # 6**

	<u>Number</u>	<u>Applicant/Facility</u>
1.	221281 B	Integrity Care Services (Kings County)
2.	222032 B	Mount Valley Care LLC (Rockland County)

**Residential Health Care Facilities - Establish/Construct**

**Exhibit # 7**

	<u>Number</u>	<u>Applicant/Facility</u>
1.	192237 E	JAG Operating LLC d/b/a FoltsBrook Center for Nursing and Rehabilitation (Herkimer County)
2.	212117 E	Livingston Two Operations LLC d/b/a Livingston Hills Nursing and Rehabilitation Center (Columbia County)
3.	222123 E	The Knolls at Goshen, Inc. (Orange County)
4.	222124 E	Woodcrest Rehabilitation & Residential Health Care Center (Queens County)

**C. Certificates**

**Exhibit # 8**

**Certificate of Amendment of the Certificate of Incorporation**

Applicant

Beth Israel Medical Center

**Restated Certificate of Incorporation**

Applicant

Cayuga Health System, Inc.

# **Regulations**

**To be distributed under separate cover.**



**Project # 202086-B  
Coit House, LLC**

**Program: Midwifery Birth Center      County: Erie**  
**Purpose: Establishment and Construction      Acknowledged: October 2, 2020**

**Executive Summary**

**Description**

The Coit House LLC (Coit House), an existing limited liability company, requests approval for the establishment and construction of an Article 28 midwifery birth center at 414 Virginia Street, Buffalo, NY. The building is owned by Winkler Properties LLC, which will lease the space to Coit House. The proposed operator of Coit House will be Maura Winkler, a Certified Nurse-Midwife, who is the Director of Midwifery at Fika Midwifery, PLLC (Fika Midwifery), a private home birth practice currently operated at the proposed address. Fika Midwifery is the only independent, midwife-owned homebirth practice in Buffalo. Founded by Ms. Winkler in 2017, the practice currently employs three full-time midwives, ten birth assistants, and two administrative staff.

Coit House's preferred hospital for antepartum, intrapartum, or postpartum care is Mercy Hospital of Buffalo, 6 miles and 12 minutes from Coit House. A relationship with Mercy Hospital has been established for consultation, collaboration, and transfer of care. The preferred transfer hospital for neonatal transfer is Oishei Children's Hospital due to the presence of a Level III NICU.

**OPCHSM Recommendation**

Disapproval is recommended.

**Need Summary**

The Coit House LLC Midwifery Birth Center proposes to provide Birthing Service O/P. The applicant projects 876 visits and 133 births in the first year and 1,250 visits and 199 births in the third, with 27.61% Medicaid and 1.33% Charity Care.

**Program Summary**

The individual background review indicates the proposed member has not met the standard for approval as set forth in Public Health Law §2801-a (3)(b).

**Financial Summary**

The total project cost of \$2,022 will be met via equity from Maura Winkler, the proposed operator of The Coit House, LLC.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Disapproval is recommended.

Council Action Date

February 9, 2023

## Need and Program Analysis

### Project Proposal

The Coit House, LLC, seeks approval to establish and certify an Article 28 Midwifery Birthing Center to be located at 414 Virginia Street in Buffalo (Erie County). Upon licensure as a midwifery birth center, The Coit House proposes to provide Birthing Center O/P in the same location where Maura Winkler, CNM, operates Fika Midwifery, an independent, midwife-owned home birth practice.

Proposed Operator	The Coit House, LLC
Doing Business As	The Coit House
Site Address	414 Virginia Street Buffalo, New York 14201
Shift/Hours/Schedule	24 hours/7 days per week
Services	Birthing Center O/P
Staffing (1 <sup>st</sup> Year / 3 <sup>rd</sup> Year)	8.5 FTEs / 10.5 FTEs
Medical Director(s)	Maura Winkler, CNM
Emergency, In-Patient, and Backup Support Services Agreement and Distance and Time	Mercy Hospital of Buffalo 6.2 miles / 12 minutes away  Oishei Children's Hospital 1 mile/4 minutes

### Background and Analysis

The primary service area is Erie County. Approximately 85% of current and past clients live in Erie County. The population of females of reproductive age in Erie County is estimated at 208,962 by the U.S. Census. The Cornell Program on Applied Demographics projects this same population to decrease slightly to 206,380 by 2025.

The facility is located in a Health Professional Shortage Area for primary care, dental health, and mental health and is designated within a Medically Underserved Population.

According to Data USA, in 2020, 96.97% of the population in Erie County had health coverage as follows:

Employer Plans	51.20%
Medicaid	19.80%
Medicare	13.70%
Non-Group Plans	11.30%
Military or VA	0.97%

<b>Applicant Projected Payor Mix</b>		
<b>Payor</b>	<b>Year One</b>	<b>Year Three</b>
Commercial	57.67%	60.00%
Medicaid	34.60%	32.00%
Private Pay/Other	5.76%	6.00%
Charity Care	1.97%	2.00%

Based on their private practice experience, the applicant projects 867 visits and 133 births in Year One and 1,250 visits and 199 births in Year Three.

Fika Midwifery reports having a comprehensive and established consultation, collaboration, and referral system for patients requiring emergency and non-emergency transfers. This includes Mercy Hospital of Buffalo, 6 miles/12 minutes away for transfers with continued midwifery care, and Oishei Children's Hospital, 1 mile/4 minutes from the Coit House, which has a Level III NICU.

## Character and Competence

The sole membership of The Coit House, LLC is:

Name	Ownership Interest
Maura Winkler	100.00 %

Maura Winkler is a Certified Nurse Midwife and Owner of Fika Midwifery. She has owned Fika Midwifery for approximately five (5) years, where she currently provides prenatal care, home birth, well-woman care, and directs practice activities. Ms. Winkler has been a Registered Nurse since June 21, 2017, and also previously worked as a Doula.

Staff from the Division of Certification & Surveillance reviewed Ms. Winkler's disclosures regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, legal actions, and ownership interests in other healthcare facilities. Staff also canvassed the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases, as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database for any references to Ms. Winkler.

At the prompting of the Department, Ms. Winkler disclosed that she was being investigated by the State Education Department's Office of Professional Discipline since August 9, 2019. Ms. Winkler had not disclosed on her initial Schedule 2A application submitted on August 13, 2020 that she was being investigated, and after requests for additional information, Ms. Winkler and her counsel failed to provide the Department with details of the investigation.

Additionally, after the Department's inquiry about the State Education Department Office of Professional Discipline investigation, Ms. Winkler disclosed being named in two malpractice suits. The first suit was filed on February 11, 2022, in Erie County Supreme Court by the patient. The patient alleges that negligent care and treatment was a contributing cause of the delivery of a stillborn infant. The patient was initially treated by Ms. Winkler on March 18, 2019, and it was found that she was 14 weeks pregnant by in vitro fertilization. The patient requested not to have an ultrasound but was informed that an ultrasound was necessary if she wanted to give birth outside of the hospital. An ultrasound was performed on April 8, 2019, and the results were significant for bilateral small (3-5mm) choroid plexus cysts (buildup of fluid on the baby's brain). The patient had her last appointment with Ms. Winkler on June 3, 2019; Group Beta Streptococcus (GBS) was discussed, and the patient stated she wanted a screening for it because she had tested positive in a prior pregnancy. The patient later tested positive for GBS on August 5, 2019, and it is documented by another midwife, Carolyn Protter, CNM (CNM Protter), that she wanted standard IV medication treatment. Documentation of the patient's desire to receive GBS treatment and refusal to receive erythromycin and Vitamin K after delivery occurred on August 14, 2019.

On September 7, 2019, time unknown, the patient contacted CNM Protter, informing that she had clear, odorless fluid leaking but had good fetal movement and the patient was instructed to come to Fika Midwifery at 10 pm if she had not started labor to assess for rupture of membranes. It is unclear what time the patient arrived, but it is noted at 9:30 pm that gross rupture of membranes had occurred (the patient's water broke), and the patient refused to do a sterile speculum exam, which is needed to determine whether dilation is occurring appropriately. On September 8, 2019, time unknown, the patient informed CNM Protter that she had irregular contractions throughout the night, but they eventually regulated. The patient and CNM Protter returned to Fika Midwifery and an IV access was attempted for GBS prophylaxis medication. The IV was successfully placed but IV access was lost after the initial saline flush and the patient declined a second IV attempt. The patient was informed that without the use of the IV, she would not receive GBS treatment (as she had originally requested and is required when a patient has tested positive for GBS). The patient was offered the option of hospital transfer and declined.

In the late evening of September 8, 2019, while the patient was still at Fika Midwifery, the baby began crowning and thick meconium was noted, whereby the baby had a bowel movement while still in the patient's womb, which is a very dangerous occurrence. Eventually, delivery occurred where the baby's body followed before the nuchal cord could be reduced and the baby was apneic (the umbilical cord was around the baby's neck) with no audible heart rate upon delivery. Neonatal resuscitation began, breaths were delivered, and suction was attempted. The ambulance was called, and the baby was transported to

Oishei Children's Hospital, where the baby was pronounced dead. The cause of death was determined to be complications from prolonged rupture of membranes with acute necrotizing chorioamnionitis. The case remains pending.

The second case was filed in Erie County Supreme Court on April 12, 2022, by the patient. The patient alleges negligent, careless, and unskilled care and treatment, causing her to suffer severe injury on February 24, 2020. The patient was treated by Ms. Winkler as a non-medical consult and given a tour of Fika Midwifery. The patient was treated by CNM Protter as a new patient on August 12, 2019. The patient had a past medical history that was significant for a previous Cesarean section in August 2017. CNM Protter discussed the benefits and risks of an out-of-hospital birth, including the risk of morbidity and mortality. Thereafter, the patient was seen again at Fika Midwifery on January 24, 2020, by a different midwife, Lydia Doublestein, CNM, CLC, and the risks of emergent care and the option for transfer to a different practice for elective C-section were discussed. On February 24, 2020, the patient called CNM Protter and indicated she was in labor. The patient was instructed to go to Fika Midwifery where she labored for seventeen (17) hours. At some point during the evening of February 24, the fetal heart rate was unable to be heard and unable to be visualized with a sonogram. The ambulance was called, and the patient was transferred to Oishei Children's Hospital where an emergency C-section was performed. The baby was stillborn and unable to be resuscitated. The case remains pending.

Ms. Winkler was asked to provide patient selection criteria, risk criteria, and selection criteria for Coit House. Ms. Winkler stated that all risk criteria and transfer protocols for the Coit House will be in accordance with standards for Birth Centers and that patients will remain low risk throughout the course of their care. Further, Ms. Winkler stated that if a patient has a chronic medical condition, develops a complication of pregnancy that requires hospital care, or Coit House is unable to comply with the patient requirements, they will transfer the patient to a provider/birth facility that can meet the patient's needs. The transfer indication and guidelines dictated by the Commission for Accreditation of Birth Centers accreditation (CABC) are proposed to be implemented at Coit House. As indicated in the malpractice lawsuits, both patients had chronic medical conditions or developed complications of pregnancy that would not classify them as a low-risk pregnancy, such that Fika Midwifery (or Coit House) would not be the appropriate facility for the patients to have their diagnoses treated.

Ms. Winkler was asked to provide information on the Continuous Quality Improvement (CQI) that was conducted by Fika Midwifery/Coit House before and as a result of the prior adverse events that took place. Ms. Winkler stated that CQI was implemented in 2020 after and for purposes of pursuing CABC accreditation but did not provide evidence of any previous CQI activity. Ms. Winkler disclosed that the baby deaths resulting in the malpractice lawsuits were reviewed by the CABC using root cause analysis methodology but did not provide evidence of the CABC review and its outcome. Ms. Winkler provided a chart of a breakdown of data from years 2017 through 2022 but did not include audits, quality minutes, or data on how the practice changed or evolved to achieve lower percentages of poor outcomes. Ms. Winkler also did not provide evidence that the sentinel events were reviewed prior to or after pursuing CABC accreditation for auditing of practice purposes.

When asked to provide evidence of how the sentinel events changed Fika Midwifery/Coit House policies, procedures, and practice, Ms. Winkler responded that she pursued CABC accreditation. CABC accreditation requires policies and procedures that are supported by evidence-based practice. Ms. Winkler did not provide evidence of changes to policies and procedures due to the sentinel events, due to any independent audit of the events, or produce evidence of changes that were made that would support documented efforts to ensure safe patient care. The changes at Fika Midwifery/Coit House that were revealed and reported to have been implemented by Ms. Winkler upon pursuing CABC accreditation included increased access to educational resources, updates to policies and procedures to include a risk assessment including evaluation throughout care from prepartum through postpartum, a chart review mechanism where postpartum charts are reviewed to assess compliance with practice policies, an updated policy that emphasizes chain of command when the Director of Midwifery is absent, and staff attended a drill to role-play how to manage a difficult client and family members. Although the staff is provided with neonatal resuscitation training bi-annually and was trained in 2019 and 2021, Ms. Winkler did not provide review of the neonatal resuscitation or any drills after the sentinel events occurred for additional training opportunities for staff. Based on the foregoing representations by Ms. Winkler, Fika Midwifery/Coit House received accreditation by CABC in September 2021.

Finally, Ms. Winkler was asked, based on the submitted risk criteria, how it would be decided when/if to consult a physician, transfer care, decide where the patient would be treated or give birth, identification of the patient's primary provider, and what input the patient had in the decision-making process. Ms. Winkler provided a general overview stating the answers are dependent on the patient diagnosis and that some clients will risk out-of-birth center care based on the provider's initial assessment and will need to birth in the hospital setting while others remain in midwifery and community birth center care with modifications.

The staff from the Division of Certification & Surveillance also review the ten-year surveillance history of all associated licensed facilities. There are no known associated licensed facilities for the applicant.

### Physical Environment

The proposed site is an existing 3-story residential, historic building consisting of (2) birth rooms on the 2<sup>nd</sup> floor and (2) gynecological exam rooms on the 3<sup>rd</sup> floor. As submitted, the proposed space is not compliant with Life Safety Code (NFPA 101), Facility Guidelines Institute, and Americans with Disabilities Act (ADA) as required for Article 28 Licensed facilities.

The physical environment issues remain unresolved with the applicant due to the Department's recommendation of disapproval on the basis of character and competence.

The major areas that require review are egress, infection control, and accessibility:

- 1) The single exit stair for the 3-story building contains multiple egress deficiencies and requires further review to determine if modifications could achieve a nontraditional code path toward compliance.
- 2) Hand-washing sinks, required for infection control in rooms where hands-on patient care is provided, are not provided in the gynecological exam rooms.
- 3) As a place of business for public accommodation and access to healthcare, no provisions for ADA accessibility are provided for patients, staff, or visitors. Provisions for accessibility should be provided to the maximum extent feasible.

Verification of other Life Safety Code and Facility Guidelines Institute standards, including emergency lighting, exit signage, basement and attic fire protection, and secure medication storage are outstanding.

### Conclusion

Disapproval is recommended as the applicant member has not met the standard for approval as set forth in Public Health Law §2801-a (3)(b).

## Financial Analysis

### Total Project Cost and Financing

The project costs are for moveable equipment and CON Fees and are estimated at \$2,022, detailed as follows.

Moveable Equipment	\$22
CON Fees	<u>2,000</u>
Total Project Cost	\$2,022

The proposed member of Coit House, LLC will provide equity through her personal resources to meet the total project cost.

### Lease Rental Agreement

The applicant has provided an executed lease rental agreement for the site that they will occupy, which is summarized below:

Premises	4,398 square feet located at 412 Virginia Street, Buffalo, New York
Lessor	Winkler Properties, LLC
Lessee	The Coit House LLC
Term	5-year term
Rental	Year One \$61,500 annually (\$13.98 per sq. Ft.) with a 2.5% increase thereafter.
Provisions	The lessee shall be responsible for maintenance, utilities, repairs, and real estate taxes.

The applicant has indicated that the lease arrangement will be a non-arm's length lease arrangement in that Maura Winkler and her husband are members of the realty company. The applicant submitted two real estate broker letters attesting to the reasonableness of the per-square-foot rental.

### Capability

Project costs of \$2,022 will be met via equity from the proposed member's personal resources. Presented as BFA Attachment A is the personal net worth statement of the proposed member of Coit House, LLC, indicating the availability of sufficient funds for the equity contribution.

### Conclusion

The applicant has demonstrated the capability to proceed in a financially feasible manner.

## Attachments

BFA Attachment A	Personal Net Worth Statement
BFA Attachment B	Pro Forma Balance Sheet



**Project # 222087-C  
Mount Sinai Beth Israel**

**Program: Hospital  
Purpose: Construction**

**County: New York  
Acknowledged: October 7, 2022**

**Executive Summary**

**Description**

Beth Israel Medical Center (BIMC), d/b/a Mount Sinai Beth Israel (MSBI), requests approval to certify The New York Eye and Ear Infirmary (NYEEI), d/b/a New York Eye and Ear Infirmary of Mount Sinai, as a new division of BIMC. Under the plan of merger, NYEEI will be merged into BIMC, with BIMC being the surviving corporation.

BIMC is a 696-bed not-for-profit teaching hospital at First Avenue at 16th Street on Manhattan’s East Side which also operates a division, Mount Sinai Brooklyn, a 212-bed acute-care community hospital in the Midwood neighborhood of Brooklyn.

NYEEI is a 69-bed not-for-profit specialty care teaching hospital at 310 East 14th Street also located on Manhattan’s East Side. NYEEI is certified for two (2) extension clinics at 230 Second Avenue and 380 Second Avenue, New York. BIMC will assume operation of NYEEI’s existing extension clinics. The hospital site and two extension clinic sites will continue to use the name New York Eye and Ear Infirmary of Mount Sinai. MSBI and NYEEI are 0.2 miles and 5 minutes’ walking time apart in the Gramercy neighborhood of Manhattan.

Mount Sinai Hospitals Group, Inc. (MSHG) is currently the sole member, active parent, and co-operator of BIMC and NYEEI and will continue in the same capacity with BIMC following the merger. MSHG will be disestablished from NYEEI as a result of the merger. No cash or other consideration will be paid or delivered in exchange for converting MSHG’s membership interest in NYEEI. Mount

Sinai Health System, Inc. (MSHS) will remain the sole member and passive parent of MSHG following the merger. MSHS is also the sole member of the Icahn School of Medicine at Mount Sinai, which is not a part of the merger. There will be no change in authorized services or the number or type of beds as a result of the merger. There will also be no change to the board of trustees of BIMC.

The applicant indicated the purpose of the transaction is to further create an academically based integrated healthcare system, advancing high-quality care, increasing access, and lowering costs in the communities served by both BIMC and NYEEI.

Pre- and Post-Organization Charts as well as a listing of MSHGs New York State Affiliated Facilities are contained in BFA Attachment A.

OPCHSM Recommendation  
Contingent Approval

Need Summary  
Through this project, residents of New York County will retain access to valuable services. Visits for the first and third years are projected to be in line with volume experienced in 2021.

Program Summary  
A favorable recommendation can be made regarding the facility’s current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law.

## Financial Summary

There are no project costs associated with this application. For 2021, MSHG's co-operated hospitals had an excess of revenue over expenses of \$260M and net assets of \$3.6B. The submitted budget for BIMC and NYEEI indicates a projected net loss of \$137,621,324 in years one and three. MSHG's Senior Vice President and Chief Financial Officer has submitted a letter indicating commitment to support projected losses at BIMC. Management is developing a financial plan to reduce costs, monetize certain assets, modernize BIMC's campus, and evaluate opportunities for synergies within MSHS.

<u>Budget:</u>	<u>First Year</u>	<u>Third Year</u>
	<u>2023</u>	<u>2025</u>
Revenues	\$1,111,124,143	\$1,111,124,143
Expenses	<u>1,248,745,467</u>	<u>1,248,745,467</u>
Gain/(Loss)	(\$137,621,324)	(\$137,621,324)

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a photocopy of an executed Amended and Restated Certificate of Incorporation of Beth Israel Medical Center, Inc., acceptable to the Department. [CSL]
2. Submission of a photocopy of an executed copy of the Merger Agreement, acceptable to the Department. [CSL]
3. Submission of a photocopy of an executed copy of the Merger Certificate, acceptable to the Department. [CSL]

**Approval conditional upon:**

1. This project must be completed by **one year from the date of this letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]

Council Action Date

February 9, 2023

# Need Analysis

## Background and Analysis

MSBI and NYEEI are located in the Gramercy neighborhood of Manhattan 0.2 miles and 5 minutes walking time apart. NYEEI, located at 310 East 14th Street, New York (New York County), New York 10003, is a 69-bed not-for-profit specialty care teaching hospital. NYEEI is certified for two extension clinics located at 230 Second Avenue, and 380 Second Avenue. BIMC will assume the operation of NYEEI's existing extension clinics. The hospital site and two extension clinics will continue to use the name New York Eye and Ear Infirmary of Mount Sinai. NYEEI provides the following services:

- Ambulatory Surgery – Multi-Specialty
- Audiology O/P
- Clinic Part Time Services
- Dental O/P
- Medical Services – Other Medical Specialties
- Medical Services – Primary Care
- Therapy – Speech Language Pathology O/P

<b>New York Ear and Eye Visits by Service</b>					
<b>Service</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>
Inpatient	273	307	436	312	456
Outpatient	158,192	141,835	138,727	82,287	102,658
Ambulatory Surgery	25,568	22,943	21,710	13,594	16,778
Other Outpatient Visits	132,624	118,892	117,017	68,693	85,880

Source: SPARCS

The applicant anticipates volume similar to that of 2021 in Years One and Three.

## Conclusion

There will be no change in beds or services as a result of the merger. Through this project, residents of New York County will retain access to valuable services.

# Program Analysis

## Program Description

Mount Sinai Beth Israel Medical Center (BIMC) is a 669 bed not for profit teaching hospital, located at First Avenue at 16<sup>th</sup> Street in New York (New York County) seeks approval to certify The New York Eye and Ear Infirmary d/b/a New York Infirmary of Mount Sinai, as a new division of Mount Sinai. Under the plan of merger, New York Eye and Ear Infirmary will be merged with and into BIMC, with BIMC being the surviving corporation. There will be no change to beds or services as a result of the merger.

New York Eye and Ear Infirmary (NYEEI) is a 69 bed not for profit specialty care teaching hospital located at 310 East 14<sup>th</sup> Street in New York (New York County). NYEEI is certified for two extension clinics located at 230 Second Avenue in New York (New York County) and 380 Second Avenue in New York (New York County). BIMC will assume operation of the clinics. The clinics will continue use the name New York Eye and Ear Infirmary.

Mount Sinai Hospitals Group, Inc is currently the sole member, active parent, and licensed co-operator of BIMC and NYEEI and will continue to be the sole member, active parent, and licensed co-operator of BIMC following the merger transaction. Mount Sinai Health System, Inc will remain the sole member and passive parent of Mount Sinai Hospitals Group, Inc. following the merger.

The Applicant reports the purpose of the transaction is to further create an academically based integrated healthcare system, with the objective of advancing a high-quality system of care, increasing access, and lowering the cost of healthcare in the community.

Staffing is expected to remain the same at 4926.20 FTEs through the third year of the completed project.

## Compliance with Applicable Codes, Rules and Regulations

The medical staff will continue to ensure that the procedures performed at the facility conform to generally accepted standards of practice and that privileges granted are within the physician's scope of practice and expertise. The Facility's admissions policy includes anti-discrimination provisions regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures are performed in accordance with all applicable federal and state codes, rules and regulations.

- *The Department issued a Stipulation and Order (S&O) dated October 4, 2022, and fined Mount Sinai West \$10,000.00 based on deficiencies found during an inspection completed on June 15, 2020. Deficient practice was found in the area of Patient Rights.*
- *The Department issued a Stipulation and Order (S&O) dated May 5, 2017, and fined Mount Sinai Medical Center \$2,000.00 based in deficiencies found during an inspection completed on January 25, 2016. Deficient practice was found in the area of Patient Rights.*

## Conclusion

Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law.

## Financial Analysis

### Operating Budget

The applicant has submitted the current year 2021 (BIMC) operating budget in 2023 dollars for years one and three (consolidating BIMC and NYEEI), as summarized below:

Revenues:	<u>Per Discharge Visit</u>	<u>Current Year 2021</u>	<u>Per Discharge Visit</u>	<u>First Year 2023</u>	<u>Per Discharge Visit</u>	<u>Third Year 2025</u>
<b><u>Inpatient</u></b>						
Medicaid-FFS	\$44,243	\$55,657,251	\$44,243	55,657,251	\$44,243	\$55,657,251
Medicaid-MC	\$10,561	51,550,246	\$11,620	59,376,698	\$11,620	59,376,698
Medicare-FFS	\$25,540	135,669,575	\$25,664	136,609,561	\$25,664	136,609,561
Medicare-MC	\$15,629	83,224,523	\$15,833	84,564,985	\$15,833	84,564,985
Commercial-FFS	\$59,502	9,758,306	\$52,829	14,052,480	\$52,829	14,052,480
Commercial-MC	\$25,017	70,397,542	\$26,322	76,886,419	\$26,322	76,886,419
Private Pay		-210,995	\$13,019	143,211	\$13,019	143,211
All Other		0		2,428,936		2,428,936
Bad Debt		<u>-5,307,091</u>		<u>-5,415,987</u>		<u>-5,415,987</u>
Subtotal-Inpatient		<u>\$400,739,357</u>		<u>\$424,303,554</u>		<u>\$424,303,554</u>
<b><u>Outpatient</u></b>						
Medicaid-FFS	\$110	\$1,411,600	\$230	\$3,622,906	\$230	\$3,622,906
Medicaid-MC	\$325	57,634,520	\$362	78,427,495	\$362	78,427,495
Medicare-FFS	\$537	51,087,175	\$599	67,597,192	\$599	67,597,192
Medicare-MC	\$408	51,252,944	\$443	67,604,385	\$443	67,604,385
Commercial-FFS	\$247	14,029,001	\$424	28,251,087	\$424	28,251,087
Commercial-MC	\$1,217	180,228,085	\$1305	218,601,713	\$1,305	218,601,713
Private Pay	\$20,086	4,117,534	\$884	4,875,292	\$884	4,875,292
All Other	\$78	35,400,341	\$77	35,098,293	\$77	35,098,293
Bad Debt		<u>-8,939,414</u>		<u>-20,302,774</u>		<u>-20,302,774</u>
Subtotal-Outpatient		<u>\$386,221,786</u>		<u>\$483,775,589</u>		<u>\$483,775,589</u>
Other Operating		\$155,851,000		\$166,422,000		\$166,422,000
Non-Operating		<u>5,464,000</u>		<u>36,623,000</u>		<u>36,623,000</u>
Total Revenues		<u>\$948,276,143</u> \$		<u>\$1,111,124,143</u> \$		<u>\$1,111,124,143</u>
<b>Expenses</b>						
Operating		\$994,757,836		\$1,129,073,726		\$1,129,073,726
Capital		<u>107,967,631</u>		<u>119,671,741</u>		<u>119,671,741</u>
Total Expenses		<u>\$1,102,725,467</u>		<u>\$1,248,745,467</u>		<u>\$1,248,745,467</u>
Net Income		(\$154,449,324)		(\$137,621,324)		(\$137,621,624)
Inpatient Visits		19,818		20,291		20,291
Outpatient Visits		1,084,663		1,209,565		1,209,565

The following is noted with respect to the submitted budget:

- Other operating revenue includes CARES Act funds of \$2.2M, investment income and net realized gains & losses of \$7.9M, net assets released from restrictions \$1.9M, HMO incentives \$16.9M, pharmacy 340B \$59.9M, rental income \$3.2M, joint venture \$3.7M, contracts revenue \$4.9M, FEMA disaster relief \$29.2M. and other \$26M. First and third years exclude CARES Act funding but includes NYEEI other income of \$12.8M (primarily rental income).
- Non-operating revenue includes the net change in unrealized gain & losses \$1.5M, net change in captive insurance program \$17.6M, gain on sale of joint venture interest \$7.9M, third-party settlements \$8.0M, impairment of construction costs (\$29.6M), change in estimated CARES Act (\$37.7M), and transfer from Mount Sinai Hospital (MSH) \$37.7M. First and third years include

NYEEI non-operating revenue of \$31.2M (primarily change in pension liability to be recognized in future periods \$26.3M).

- Current Year revenues and expenses are based on the BIMC 2021 certified financial statements
- The change in utilization and revenue is the result of consolidating BIMC and NYEEI.
  - Negative Inpatient private pay revenue of \$210,995 is due to the net impact of self-pay revenue offsets by refunds and write-offs.
  - Outpatient Private Pay rates decrease from \$20,086 in the current year to \$884 in the first and third years as a result of adding NYEEI's lower-acuity services to the mix.
  - BIMC expenses include NYEEI.

Utilization by payor for the BIMC is as follows:

<u>Inpatient</u>	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>2021</u>		<u>2023</u>		<u>2025</u>	
Payor:	<u>Discharges</u>	<u>%</u>	<u>Discharges</u>	<u>%</u>	<u>Discharges</u>	<u>%</u>
Medicaid FFS	1,258	6.35%	1,258	6.20%	1,258	6.20%
Medicaid MC	4,881	24.64%	5,110	25.19%	5,110	25.19%
Medicare FFS	5,312	26.80%	5,323	26.23%	5,323	26.23%
Medicare MC	5,325	26.87%	5,341	26.32%	5,341	26.32%
Commercial FFS	164	0.83%	266	1.31%	266	1.31%
Commercial MC	2,814	14.19%	2,921	14.40%	2,921	14.40%
Private Pay	4	0.02%	11	0.05%	11	0.05%
Charity	60	0.30%	61	0.30%	61	0.30%
All Other	<u>0</u>	<u>0%</u>	<u>0</u>	<u>0%</u>	<u>0</u>	<u>0%</u>
Total by Payor	19,818	100%	20,291	100%	20,291	100%

<u>Outpatient</u>	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>2021</u>		<u>2023</u>		<u>2025</u>	
Payor:	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Medicaid FFS	12,786	1.18%	15,781	1.30%	15,781	1.30%
Medicaid MC	177,362	16.35%	216,486	17.91%	216,486	17.91%
Medicare FFS	95,191	8.78%	112,891	9.33%	112,891	9.33%
Medicare MC	125,518	11.57%	152,634	12.62%	152,634	12.62%
Commercial FFS	56,896	5.25%	66,553	5.50%	66,553	5.50%
Commercial MC	148,070	13.65%	167,535	13.85%	167,535	13.85%
Private Pay	205	0.02%	5,517	0.46%	5,517	0.46%
Charity	12,351	1.14%	15,884	1.31%	15,884	1.31%
All Other	<u>456,284</u>	<u>42.06%</u>	<u>456,284</u>	<u>37.72%</u>	<u>456,284</u>	<u>37.72%</u>
Total by Payor	1,084,663	100%	1,209,565	100%	1,209,565	100%

#### Merger Agreement

The applicant has submitted a draft Merger Agreement between Beth Israel Medical Center (BIMC) and The New York Eye and Ear Infirmary (NYEEI). There will be no financial consideration for the Merger. The agreement terms are summarized below.

Merging Entities:	BIMC and NYEEI
Board of Directors:	The Boards of each entity has adopted and approved this Merger
Surviving Entity:	Beth Israel Medical Center (BIMC)
Terms and Conditions of the Merger:	NYEEI shall be merged with and into BIMC, with BIMC being the Surviving Corporation. The Certificate of Merger shall be filed with the New York Department of State immediately following receipt of all necessary regulatory consents and approvals in connection with the Merger, including, without limitation, Public Health and Health Planning Council approval under its certificate of need and licensure laws and approval of the New York State Attorney General in accordance with Section 907 of the New York Not-for-Profit Corporation Law (NPCL). The members of the Board of Trustees of Beth Israel Medical Center (BIMC) immediately prior to the

	Effective Date shall continue to be the Trustees of BIMC upon consummation of the Merger and duly elected or appointed and qualified in the manner provided in the BIMC Certificate of Incorporation and By-laws.
Purchase Price:	There will be no cash or other consideration paid in exchange for any membership interest.

### Capability and Feasibility

There are no project costs associated with this application. NYEEI is merging with BIMC and becoming a division of BIMC. This transaction will not impact Mount Sinai Hospitals Group, Inc.(MSHG), as BIMC and NYEEI are already members of MSHG. BFA Attachment B, MSHG's 2021 Consolidated Report (supported by certified financial statements) shows \$1.74B in working capital. For 2021, MSHG's co-operated hospitals had \$90.4M in operating profits, \$260.0M in net revenue, and \$3.645B in net assets.

The submitted budget indicates a net loss of \$137,621,324 in Year One and Year Three. MSHG's Senior Vice President and Chief Financial Officer submitted a letter stating their commitment to financially support projected losses. Management is developing a financial plan to reduce costs, monetize certain assets, modernize BIMC's campus, and evaluate opportunities for synergies within MSHS. The budget appears reasonable.

BFA Attachment C, BIMC 2021 Certified Financial Statement shows positive working capital, a net loss of \$154,449 and net assets of \$17.93M. BFA Attachment D, NYEEI 2020-2021 Certified Financial Statement shows positive working capital, \$917K in net revenue, and \$138.5M in net assets.

### Conclusion

The applicant has demonstrated the capability to proceed in a financially feasible manner.

## Attachments

BFA Attachment A	Mount Sinai Hospitals Group, Inc.(MSHG) – Pre- and Post-Organization Chart and MSHG's New York State Affiliated Facilities
BFA Attachment B	Mount Sinai Hospitals Group, Inc. 2021 Consolidated Report
BFA Attachment C	Beth Israel Medical Center (BIMC), 2020-2021 Certified Financial Statement
BFA Attachment D	The New York Eye and Ear Infirmary (NYEEI), 2020-2021 Certified Financial Statement
BFA Attachment E	The Mount Sinai Hospital (MSH), 2020-2021 Certified Financial Statement
BFA Attachment F	South Nassau Communities Hospital and Subsidiaries (SNCH), 2020-2021 Certified Financial Statement
BFA Attachment G	The St. Luke's- Roosevelt Hospital Center and Affiliates (SLR), 2020-2021 Certified Financial Statement



**Project # 182144-C  
Nassau University Medical Center**

**Program: Hospital  
Purpose: Construction**

**County: Nassau  
Acknowledged: September 28, 2018**

**Executive Summary**

**Description**

Nassau University Medical Center (NUMC), a 530-bed, Public Article 28 acute care hospital located at 2201 Hempstead Turnpike, East Meadow (Nassau County), requests approval to certify Cardiac Catheterization – Percutaneous Coronary Intervention (PCI) and Cardiac Catheterization – Electrophysiology (EP) services, with requisite renovations. NUMC will convert its existing adult diagnostic cardiac catheterization laboratory to a PCI-capable cardiac catheterization laboratory center and EP studies laboratory. North Shore University Hospital (NSUH), a full-service cardiac surgery provider located at 300 Community Drive in Manhasset (Nassau County), will be the cardiac surgery backup facility. NSUH is a 756-bed quaternary hospital approximately 12 miles from NUMC. NSUH will work collaboratively with NUMC to expand NUMC’s established quality and performance improvement program to include PCI and EP service.

NUMC refers approximately 50 PCI and 36 EP cases each year. Implementation of this project will enable NUMC to perform these procedures on-site. Seven physicians have committed to providing PCI and EP procedures at NUMC’s proposed PCI-capable cardiac catheterization laboratory. These physicians currently work at Long Island Jewish Medical Center and North Shore University Hospital.

**OPCHSM Recommendation  
Contingent Approval**

**Need Summary**

The applicant has projected 50 Emergency PCI procedures in Year One and 100 by Year Three of operation.

**Program Summary**

Based on the results of this review, a favorable recommendation can be made regarding the facility’s current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law.

**Financial Summary**

The total project cost of \$4,079,014 for renovation and equipment will be funded with equity from Nassau Health Care Corporation (Operator).

<u>Budget:</u>	<u>Year One</u>	<u>Year Three</u>
	<u>2024</u>	<u>2026</u>
Revenues:	\$3,234,491	\$5,738,686
Expenses:	<u>\$2,946,000</u>	<u>\$4,425,247</u>
Net Income:	\$288,491	\$1,313,439

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a fully executed clinical sponsorship agreement. [HSP]
3. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-02 [AER]
4. The submission of Engineering (MEP) Drawings, per SHC guidelines, for review and approval, as described in BAER Drawing Submission Guidelines DSG-02. [AER]

**Approval conditional upon:**

5. This project must be completed by **July 9, 2024**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
6. Construction must start on or before **August 9, 2023**, and construction must be completed by **April 9, 2024**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date this shall constitute abandonment of the approval. [PMU]
7. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

February 9, 2023

## Need Analysis

### Background and Analysis

New York Title 10 Cardiac Services Regulation 709.14, effective September 25, 2019, requires facilities seeking to add percutaneous coronary intervention, PCI, services to project a minimum of 36 emergency PCI procedures in year one of operation. Emergency PCI (E-PCI) includes any procedure not scheduled and not elective. The tables below display various breakdowns of 2021 E-PCIs performed on Long Island residents at various facilities in and out of the Long Island Region.

2021 Emergency PCI's Migration of Long Island Region Residents: County-Specific Location of Treatment			
Resident Migration	Nassau	Suffolk	Total
County Residents Treated All Locations	3,277	4,256	7,533
County Residents Receiving Emergency PCI Treatment in Long Island	2,900	4,133	7,033
County Residents Leaving Long Island for Emergency PCI Treatment	377	123	500

2021 Emergency PCI's Performed on Long Island Region Residents by County, By Operational Long Island Region Facilities					
Travel Time and Distance from Nassau University					
Operational Long Island Region Facility	Nassau	Suffolk	Total	Minutes	Miles
Good Samaritan University Hospital	68	735	803	30	19.2
Huntington Hospital	22	261	283	38	16.8
John T. Mather Memorial Hospital	1	88	89	79	41.4
Long Island Community Hospital		304	304	46	34.1
Mercy Medical Center	80	4	84	20	7.8
Mount Sinai South Nassau Hospital	484	14	498	22	9.9
North Shore University Hospital	728	138	866	26	12.4
NYU Langone Hospital - Long Island	599	300	899	20	6.1
Peconic Bay Medical Center	4	203	207	71	55.4
South Shore University Hospital	30	610	640	36	19.2
St. Catherine of Siena Medical Center	3	198	201	48	29.1
St. Francis Hospital	865	392	1257	24	11.1
Stony Brook Southampton Hospital		54	54	81	67.5
University Hospital at Stony Brook	16	832	848	73	41.8
St. Joseph Hospital (Services started in 2021)	N/A	N/A	N/A	19	4.3
<b>Total</b>	<b>2,900</b>	<b>4,133</b>	<b>7,033</b>		

Applicant Projected Emergency PCI's				
Project	Facility	County	Projected Emergency PCIs	
			Year One	Year Three
182144	Nassau University Medical Center	Nassau	50	100

Nassau University Medical Center has projected 50 Emergency PCI procedures by year one and 100 by year three of operation.

The applicant projects 150 total PCIs by year one and 300 by year three of operations.

By providing PCI-capable Cardiac Catheterization services, Nassau University Medical Center hope to:

- Reduce the “door-to-balloon” time for residents of the service area requiring PCI.
- Improve mortality rates for PCI services.
- Reduce travel inconvenience.

- Reduce the number of patients requiring a second cardiac catheterization for PCI after undergoing the initial diagnostic cardiac catheterization.

#### Conclusion

Through this project Nassau University will increase access to PCI services in their service area. and increase .

# Program Analysis

## Project Proposal

Nassau University Medical Center (NUMC), a 530-bed not-for-profit acute care hospital, located at 2201 Hempstead Turnpike in East Meadow (Nassau County), seeks to convert its existing adult diagnostic cardiac catheterization laboratory to a PCI capable cardiac catheterization laboratory center and EP studies laboratory with renovation of space to accommodate these services.

The program will be coordinated () with Northwell Health North Shore University Hospital via an executed clinical sponsorship agreement. North Shore is a 738-bed acute care hospital on Manhasset, Long Island (Nassau County) that offers a full-service cardiac surgery center and is also a member of Northwell Health. North Shore University Hospital will facilitate integration of expertise and resources for the cardiac catheterization laboratory located at Nassau University Medical Center and will provide quality oversight.

Based on internal tracking from NUMC, in 2017, patients having a total 186 procedures were transferred to North Shore for higher level cardiac procedures, including 128 cardiac catheterization procedures and 36 electrophysiology procedures. Presently, NUMC refers out 50 PCI and 36 EP cases each year due to inability to perform advanced interventional procedures. There are no PCI or EP providers located within the primary service area of NUMC, Not having these interventional services available at NUMC forces these patients to be sent to a more distant hospital and causes and delay in care. The implementation of this project will enable NUMC to perform these procedures for patients in a more convenient, local facility.

Upon approval, Nassau University Medical Center will have the following services added to their operating certificate:

- Cardiac Catheterization – Electrophysiology (EP)
- Cardiac Catheterization – Percutaneous Coronary Intervention (PCI)

The Applicant has submitted a written plan that demonstrates their ability to comply with all of the standards for PCI Capable Cardiac Catheterization Laboratories and electrophysiology services and they have assured the Department that their program will meet all of the requirements of 405.29(e)(1), 405.29(e)(2) and 405.29(e)(5).

## Compliance with Applicable Codes, Rules, and Regulations

This facility has no outstanding Article 28 surveillance or enforcement actions and based on the most recent surveillance information, is deemed to be currently operating in substantial compliance with all applicable State and Federal codes, rules, and regulations. This determination was made based on a review of the files of the Department of Health, including all pertinent records and reports regarding the facility's enforcement history and the results of routine Article 28 surveys as well as investigations of reported incidents and complaints.

## Conclusion

Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law.

## Financial Analysis

### Total Project Costs and Financing

Project costs for renovation and moveable equipment are estimated at \$4,079,015 broken down as follows in 2022 dollars:

Renovation & Demolition	\$2,125,495
Asbestos Abatement or Removal	\$232,368
Design Contingency	\$212,549
Construction Contingency	\$212,549
Architect/Engineering Fees	\$182,025
Construction Manager Fees	\$100,940
Other Fees	\$10,300
Moveable Equipment	\$567,530
Telecommunications	\$421,064
Application Fee	\$2,000
Processing Fee	<u>\$12,194</u>
Total Project Cost with fees	\$4,079,015

The project will be financed via equity from Nassau Health Care Corporation (NHCC), the operator of NUMC.

### Operating Budget

The applicant has submitted the year one and year three incremental operating budget, in 2022 dollars, as summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>2024</u>		<u>2026</u>	
<u>Inpatient Revenues:</u>	<u>Per</u>	<u>Total</u>	<u>Per</u>	<u>Total</u>
	<u>Disch.</u>		<u>Disch.</u>	
Commercial FFS	\$24,219	\$532,824	\$23,629	\$968,808
Medicare FFS	\$29,285	\$790,698	\$29,287	\$1,347,197
Medicare MC	\$26,361	\$158,165	\$26,361	\$316,329
Medicaid FFS	\$14,882	\$714,367	\$15,146	\$1,211,734
Medicaid MC	\$15,547	\$361,191	\$15,546	\$722,381
Other: (Bad Debt)		<u>(\$9,323)</u>		<u>(\$18,645)</u>
<b>Total Inpt Revenue</b>		<b>\$2,547,922</b>		<b>\$4,547,804</b>
<u>Outpatient Revenues:</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Commercial FFS	\$7,284	\$160,253	\$7,182	\$294,468
Medicare FFS	\$9,669	\$261,055	\$9,125	\$419,758
Medicare MC	\$6,507	\$39,039	\$6,506	\$78,077
Medicaid FFS	\$3,460	\$166,087	\$3,478	\$278,308
Medicaid MC	\$2,712	\$62,397	\$2,712	\$124,795
Other: (Bad Debt)		(\$2,262)		(\$4,524)
<b>Total Outpt Revenue</b>		<b><u>\$686,569</u></b>		<b><u>\$1,190,882</u></b>
<b>Total Revenues</b>		<b>\$3,234,491</b>		<b>\$5,738,686</b>
<u>Expenses (Combined):</u>				
Operating	\$19067.67	\$2,536,000	\$16,941.97	\$4,015,247
Capital	<u>\$3082.71</u>	<u>\$410,000</u>	<u>\$1,729.26</u>	<u>\$410,000</u>
<b>Total Expenses</b>	<b>\$11,075.18</b>	<b>\$2,946,000</b>	<b>\$9,335.96</b>	<b>\$4,425,247</b>
<b>Gain/(Loss)</b>		<b><u>\$288,491</u></b>		<b><u>\$1,313,439</u></b>

Utilization: (procedures)		
Total Inpatient	133	237
Total Outpatient	133	237
EP Procedures	116	174
PCI Procedures	<u>150</u>	<u>300</u>
Total Procedures	266	474
Avg. Cost Per Procedure	<u>\$11,075.18</u>	<u>\$9,335.96</u>

The following is noted concerning the operating budget:

- Revenues and rate assumptions for inpatient and outpatient services are based on the current experience of the existing cardiac catheterization lab volume within NUMC.
- Commercial rates are based upon a percentage of Medicare and negotiated rates. Commercial reimbursement rates are lower than Medicare FFS due to the blend of procedures. NUMC has a small percentage of commercially insured patients and rates are negotiated.
- EP reimbursement is based upon the following DRG and outpatient procedure CPT codes.
- Utilization and expense projections are based on NUMC's current experience in providing diagnostic cardiac catheterization services. Projected utilization is based on the volume of patients NUMC currently transports to other facilities for EP or PCI services, with an increase expected due to EMS transporting patients with suspected coronary syndrome.
- Payor mix is based upon the historical payor mix of NUMC and the payor mix of patients transferred out to NSUH (the cardiac affiliate for NUMC) for PCI and EP procedures.

Utilization by payor source for inpatient and outpatient services is projected as follows:

	<u>Year One</u>		<u>Year Three</u>	
	<u>2023</u>		<u>2025</u>	
<u>Inpatient:</u>	<u>Disch</u>	<u>%</u>	<u>Disch</u>	<u>%</u>
Commercial-FFS	22	16.5%	41	17.3%
Medicare-FFS	27	20.3%	46	19.4%
Medicare-MC	6	4.5%	12	5.1%
Medicaid-FFS	48	36.1%	80	33.8%
Medicaid-MC	23	17.3%	46	19.4%
Private Pay	<u>7</u>	<u>5.3%</u>	<u>12</u>	<u>5.1%</u>
Total	133	100%	237	100%

	<u>Year One</u>		<u>Year Three</u>	
	<u>2023</u>		<u>2025</u>	
<u>Outpatient:</u>	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Commercial-FFS	22	16.5%	41	17.3%
Medicare-FFS	27	20.3%	46	19.4%
Medicare-MC	6	4.5%	12	5.1%
Medicaid-FFS	48	36.1%	80	33.8%
Medicaid-MC	23	17.3%	46	19.4%
Private Pay	<u>7</u>	<u>5.3%</u>	<u>12</u>	<u>5.1%</u>
Total	133	100%	237	100%

#### Capability and Feasibility

Total project costs of \$4,079,014 will be funded with equity from Nassau Health Care Corporation (NHCC), a Public Benefit Corporation and operator of NUMC. BFA Attachments A and B present NHCC's 2020 - 2021 certified financial statements and their internal financial statements as of January 1, 2022, thru September 30, 2022, respectively. The facility 9/30/2022 internal indicates sufficient resources for this project.

NUMC projects an incremental operating income of \$288,491 and \$1,313,439 in Year One and Year Three, respectively. BFA Attachment A, NUMC 2020-21 Certified Financial Statement indicate that the entity, during 2020 and 2021, had negative working capital and net asset positions. Additionally, the facility incurred an operating loss of \$102,277,000 in 2020 and \$135,646,000 in 2021. Operating losses include an underfunded expense of \$39,463,000 for post-employment benefits other than pensions. GASB 75 adopted effective January 1, 2018, required disclosure of these underfunded expenses to be disclosed on the financial statements. Northwell Health has agreed to provide operational assistance and develop a five-year plan for NUMC, of which these PCI and EP services are part of financial sustainability. Also, NUMC will continue to provide funding to decrease debt service and increase revenue via its plan of action.

Attachment B, 9/30/22 Internal Financial Statements, indicate the entity had a negative working capital position and net asset position, and incurred an operating loss of \$94,127,000. This operating loss includes underfunded employee benefits and pension expenses. The net deficit position of NUMC is primarily the result of recording its "Other Post Employment Benefit" obligation for retiree health benefits. There are ongoing discussions between NHCC/NUMC and the NYS DOH focusing on NUMC's current working capital position.

NHCC is a public benefit corporation created by New York State in 1996 to acquire and operate NUMC and its divisions. NHCC has been actively engaged with DOH regarding its financial situation and NHCC leadership indicates the organization is striving to improve its operating results by continuing to progress with collections on patient accounts, through cash flows provided by government subsidies for the funding of capital projects, and by participating in certain other value-based payment programs. The applicant also indicates that NHCC has undertaken several initiatives, including the renegotiation of commercial managed care contracts, changes to medical management practices, improved supply chain, inventory management, rightsizing of personnel, and further cost reductions. Nassau County Interim Finance Authority (NIFA) currently has oversight of the operations of NHCC and, in that capacity, reviews certain operational aspects of the Corporation.

NUMC anticipates that PCI and EP services will generate additional volume and net revenue, as shown in the budget projections, as EMS will be able to transport cases to NUMC because of its PCI-capable hospital status. Currently, the applicant states that emergency services drive by knowing that NUMC cannot perform the necessary procedures putting the patient in jeopardy as minutes count.

Conclusion

The applicant has demonstrated the capability to proceed in a financially feasible manner.

Attachments
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RNR Attachment B	Map
BFA Attachment A	Nassau Health Care Corp. 2020 - 2021 Certified Financial Statements.
BFA Attachment B	Nassau Health Care Corp. 9/30/22 Internal Financial Statement.



**Project # 222012-C  
The New York Eye Surgical Center**

**Program:** Diagnostic and Treatment Center      **County:** Saratoga  
**Purpose:** Construction      **Acknowledged:** August 24, 2022

**Executive Summary**

**Description**

North Country EC, LLC d/b/a The New York Eye Surgical Center (the "Center"), an existing Article 28 Ambulatory Surgery Center (ASC) at 6135 North Road, Wilton, 12831, is seeking approval to convert from a single-specialty-ophthalmology to a multi-specialty ambulatory surgery center. The Center has three operating rooms, approved under Certificate of Need (CON)112382 and was granted permanent life under CON 181438. The Center has determined that it has capacity for additional cases and the flexibility to allow physicians in other specialties to use the Center. Jason Steindler, D.O., board-certified in Pain Management and Anesthesiology, has expressed interest in performing approximately 204 cases during the first year. The service is centered on Warren County but includes Washington, Albany, Saratoga, and Montgomery counties. An executed transfer and affiliation agreement has been submitted between Glens Falls hospital and North Country, EC, LLC.

The Center estimates around 40% of the patients are referred by providers affiliated with Hudson Headwaters Health Network, an FQHC, and accepts patients regardless of their ability to pay. Dr. Steven Solomon will continue as Medical Director.

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

The applicant projects 4,804 procedures in Year One and 5,040 in Year Three with 3.25% Medicaid and Charity Care below 1% by the third year. Nearly 80% of their cases are covered by Medicare annually. The center is current with its SPARCS reporting.

**Program Summary**

Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law.

**Financial Summary**

The project cost of \$119,141 will be met with equity from the existing operations of the current operator, North Country ED, LLC. The budget projects a net income of \$754,935 in year one and \$955,732 by year three.

<u>Budget:</u>	<u>Year 1 2023</u>	<u>Year 3 2025</u>
Revenues	\$4,528,474	\$4,846,506
Expenses	<u>3,773,539</u>	<u>3,890,774</u>
Net Income	\$754,935	\$955,732

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]

**Approval conditional upon:**

1. This project must be completed by **one year from the date of this letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]

Council Action Date

February 9, 2023

# Need Analysis

## Background and Analysis

The Center was approved under CON 112382 and began operations in August 2013 providing ophthalmology surgery services in three operating rooms. Under CON 181438, the center was granted permanent life. The Center has determined that it has the capacity to handle additional surgical cases and would like the flexibility to allow physicians in other specialties to use the center, already securing a commitment from a pain management specialist.

The primary service area consists of Warren County with Washington, Saratoga, Albany, and Montgomery counties included in the secondary service area. According to Data USA, in 2020, 95.8% of the population of Warren County had health coverage as follows:

Total Health Care Coverage	95.8%
Employer Plans	47.7%
Medicaid	15.2%
Medicare	16.9%
Non-Group Plans	14.7%
Military or VA	1.23%

The table below shows the number of patient visits for ASCs within a 25-mile radius of New York Eye Surgical Center for 2019 through 2021. 2020 visits were significantly impacted by the COVID-19 pandemic.

Specialty Type	Facility Name	Patient Visits		
		2019	2020	2021
Ophthalmology	The New York Eye Surgical Center	3,665	3,200	4,503
Multi-Specialty	Center for Advanced Ambulatory Surgery (opened 3/15/21)	N/A	N/A	797
Multi-Specialty	OrthoNY Surgical Suites (opened 2/1/19) <sup>1</sup>	N/A	0	0
Pain Management	The Northway Surgery and Pain Center	12,281	10,326	10,686
<b>Total Visits</b>		<b>15,936</b>	<b>13,526</b>	<b>15,986</b>

<sup>1</sup> No data located for 2020 & 2021

The number of projected procedures is 4,804 in Year One and 5,040 in Year Three. These projections are based on the current practices of participating surgeons. The table below shows the projected payor source utilization for Years One and Three. A new physician has committed to performing approximately 204 pain management procedures at the center in the first year. These pain management procedures are currently being performed in a hospital or another ASC.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Commercial FFS	775	16.13%	875	17.36%
Medicare FFS	1,899	39.53%	1,964	38.97%
Medicare MC	1,983	41.28%	2,025	40.18%
Medicaid FFS	15	0.31%	24	0.48%
Medicaid MC	120	2.50%	140	2.78%
Uninsured/Private Pay	12	0.25%	12	0.24%

The following table shows the Center's utilization for the last three years. Payor distribution reflects the disproportionate prevalence of ophthalmology surgery with Medicare eligible patients.

	<b>2019</b>	<b>2020</b>	<b>2021</b>
Visits	3,665	3,200	4,503
Medicare	79.21%	80.91%	81.61%
Medicaid	3.85%	4.09%	2.65%

The Center has Medicaid Managed Care contacts with the following: Amerigroup, Fidelis, CDPHP, MVP, Empire BCBS, and Blue Shield of Northeastern NY. The center estimates that approximately 40% of its patients are referred by providers affiliated with Hudson Headwaters Health Network, a Federally Qualified Health Center, based in Wilton, NY. The center's operating hours are Monday through Friday from 8 am until 5 pm. The center is current with its SPARCS reporting. The applicant is committed to serving all persons in need without regard to the ability to pay or source of payment.

#### Conclusion

Approval of this project will enhance access to multi-specialty surgery services for the residents of Warren County and the surrounding communities in Saratoga, Washington, Albany, and Montgomery Counties.

## Program Analysis

### Compliance with Applicable Codes, Rules and Regulations

The medical staff will continue to ensure that the procedures performed at the facility conform to generally accepted standards of practice and that privileges granted are within the physician's scope of practice and expertise. The Facility's admissions policy includes anti-discrimination provisions regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability or source of payment. All procedures are performed in accordance with all applicable federal and state codes, rules and regulations.

### Conclusion

Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law

## Financial Analysis

### Total Project Cost and Financing

The total project cost for renovations and movable equipment is estimated at \$119,141 and is distributed as follows:

Moveable Equipment	\$116,500
Application Fee	2,000
Processing Fee	<u>641</u>
Total Project Costs	\$119,141

The total project cost will be met with equity from operations.

### Operating Budget

The applicant has submitted the 2021 current year budget and first and third years operating projected budget, in 2022 dollars, as summarized below:

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>2021</u>		<u>2023</u>		<u>2025</u>	
Revenues:	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Commercial- FFS	\$985	\$690,371	\$1,005	\$778,642	\$1,024	\$896,070
Medicare- FFS	\$914	1,638,212	\$932	1,770,399	\$951	1,867,056
Medicare-MC	\$920	1,731,990	\$938	1,860,847	\$957	1,937,439
Medicaid-FFS	\$822	6,174	\$838	12,576	\$855	20,514
Medicaid-MC	\$828	110,891	\$845	101,347	\$862	120,666
Self-Pay/Uninsured	\$381	<u>3,050</u>	\$389	<u>4,663</u>	\$397	<u>4,761</u>
Total Revenues		\$4,180,688		\$4,528,474		\$4,846,506
Expenses:						
Operating	\$727.18	\$3,274,490	\$725.04	\$3,483,126	\$712.05	\$3,588,745
Capital	<u>59.74</u>	<u>269,016</u>	<u>60.45</u>	<u>290,413</u>	<u>52.93</u>	<u>302,029</u>
Total Expenses	\$786.92	\$3,543,506	\$785.49	\$3,773,539	\$764.98	\$3,890,774
Net Income		<u>\$637,182</u>		<u>\$754,935</u>		<u>\$955,732</u>
Utilization: (Procedures/Visits)		4,503		4,804		5,040
Cost Per Procedure/Visit		\$786.92		\$785.49		\$764.98

The following is noted with respect to the submitted budget:

- Revenue, expense, and utilization assumptions are based on the combined current experience and current reimbursement rates received.
- A sliding fee scale is in place for those without insurance and provisions are made for those who cannot afford services.
- Utilization and associated revenues are expected to increase because a new physician is joining the practice and performing pain management procedures. This is reflected in the projected utilization of 204 and 390 pain management treatments during the first and third year, respectively.
- The Center covers areas with aging populations and the majority of the procedures with follow-up visits are for Medicare patients as shown in the budget above.

Utilization by the payor for the current, first and third years is anticipated as follows:

	<u>Current</u> <u>2021</u>	<u>Year One</u> <u>2023</u>	<u>Year Three</u> <u>2025</u>
Commercial FFS	15.57%	16.13%	17.36%
Medicare FFS	39.82%	39.53%	38.96%
Medicare MC	41.79%	41.28%	40.18%
Medicaid-FFS	.16%	.31%	.48%
Medicaid MC	2.49%	2.50%	2.78%
Uninsured/Private	.18%	.25%	.24%
Total	100%	100%	100%

### Capability and Feasibility

Total project costs of \$119,141 will be met with equity from the current operator, North Country ED, LLC. BFA Attachment A, 2021-2020 Certified Financial Statements show the facility has maintained a positive working capital and net asset position for both periods. Additionally, the Center achieved a net income of \$738,556 and \$553,874, respectively. BFA Attachment B, The New York Eye Surgery Center 9/30/22 Internal financial Statement shows a positive working capital and net asset position. The Center also shows a net income of \$444,528 as of September 30, 2022.

The submitted budget indicates a net income for the first year of \$754,935 and a third-year net income of \$955,732. The working capital requirements for this project are estimated at \$628,924, representing two months of the first year's expenses to be covered through operations. Attachment A is the Center's 2021 certified financial statement which shows enough equity to cover the working capital position. The budget appears reasonable.

### Conclusion

The applicant has demonstrated the capability to proceed in a financially feasible manner.

## Attachments

BFA Attachment A	North Country ED, LLC 2021-2020 Certified Financial Statements
BFA Attachment B	The New York Eye Surgery Center 9/30/22 Internal Financial Statement



**Project # 221257-C**  
**Open Door Family Medical Center, Inc**

**Program:** Diagnostic and Treatment Center      **County:** Westchester  
**Purpose:** Construction      **Acknowledged:** August 15, 2022

**Executive Summary**

**Description**

Open Door Family Medical Center, Inc. (Open Door), a not-for-profit, Article 28 diagnostic and treatment center (D&TC) and Federally Qualified Health Center (FQHC) at 165 Main Street in Ossining, is seeking approval to certify an extension clinic at 2 Church Street, Ossining.. The proposed extension clinic would be kitty-corner to the current main site only 148 feet away, allowing the expansion of services at that location.

Open Door would move primary care and behavioral health to the proposed extension clinic and keep specialty medical services as well as dental at the main site, creating a community-focused medical campus centered on the two buildings. A separate Certificate of Need application will be submitted for renovations needed at the main site to complete the plan.

Upon PHHPC approval, the new extension clinic will be called Open Door Family Medical Center – Ossining Primary Care. Daren Wu, M.D., who is Board-certified in Family Medicine, will serve as the Medical Director.

Open Door has an existing Transfer Agreement with Phelps Hospital, 4.2 miles (14 minutes travel time) away, which will be extended to cover the extension clinic.

**OPCHSM Recommendation**

Contingent approval

**Need Summary**

The applicant projects 50,564 visits in Year One and 56,855 in Year Three with 47.43% Medicaid utilization in both years and Charity Care at 0.35% in Year One and 0.62% in Year Three.

**Program Summary**

Based on the results of this review, a favorable recommendation can be made regarding the facility’s current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law.

**Financial Summary**

The total project cost of \$15,169,784 will be met with accumulated funds from Open Door’s operations. The submitted budget projects break-even operating performance during Years One and Three of operations, respectively.

<u>Budget</u>	<u>Year One</u> <u>2024</u>	<u>Year Three</u> <u>2026</u>
Revenues	\$8,900,079	\$10,074,746
Expenses	<u>8,900,079</u>	<u>10,074,746</u>
Net Income	\$0	\$0

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of forty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. The submission of Design Development and State Hospital Code (SHC) Drawings, as described in BAER Drawing Submission Guidelines DSG-1.0 Required Schematic Design (SD) and Design Development (DD) Drawings, and 3.38 LSC Chapter 38 Business Occupancies Public Use, for review and approval. [CSL]

**Approval conditional upon:**

1. This project must be completed by **February 15, 2025**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **August 15, 2023**, and construction must be completed by **November 15, 2024**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

February 9, 2023

# Need Analysis

## Background and Analysis

The primary service area is Ossining, Westchester County. Open Door is currently a designated FQHC in a Medically Underserved Area. The applicant expects the majority of patients to come from Ossining and Croton-on-Hudson, which they report as communities with large immigrant populations (26% foreign-born) and a high percentage of Latino residents (41.3%) specifically living in Ossining. The proposed extension clinic will allow Open Door to create a community-focused medical campus in Ossining centered around the proposed extension clinic and the existing D&TC at 165 Main Street. The following services will be provided: primary care and other medical specialties including behavioral health. Hours of operation will be Monday-Thursday, 8:30 AM-7:00 PM; Friday, 8:30 AM-5:00 PM; Saturday, 9:00 AM-3:00 PM. The number of projected visits is 50,564 in Year One and 56,855 in Year Three.

According to Data USA, in 2019 94.5% of the population in Westchester County had health coverage as follows:

Employer Plans	55.9%
Medicaid	14.2%
Medicare	12.8%
Non-Group Plans	11.3%
Military or VA	0.3%

The applicant projects the following payor mix:

Projected Payor Mix		
Payor	Year One	Year Three
Commercial	16.22%	16.22%
Medicare	3.79%	3.79%
Medicaid	47.43%	47.43%
Private Pay	23.63%	23.63%
Charity Care	2.0%	2.0%
Other	6.93%	6.93%

Prevention Quality Indicators (PQIs) are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease. The table below provides information on the PQI rates for the overall PQI condition.

Hospital Admissions per 100,000 Adults for Overall PQIs				
PQI Rates: 2017	Zip Code (10562) Ossining	Zip Code (10520) Croton-on-Hudson	Westchester County	New York State
All PQI's	1,059	1,548	1,250	1,431

Through this project, Open Door is looking to expand its services to the community but cannot do so due to space constraints at the current D&TC site, which provided approximately 53,700 in-person visits in 2021.

## Conclusion

The proposed extension clinic will allow Open Door Family Medical Center to better meet the needs of its community.

## Program Analysis

### Program Description

The Applicant reports that Open Door is looking to expand their services in the community but cannot do so due to space constraints at the current D&TC. The building at 2 Church Street will be renovated to become a primary medical and behavioral health center. The behavioral health services will be provided by a psychiatrist and remain under the OMH thresholds.

The Applicant reported in its 2020 Uniform Data Systems report in its Primary Health Care that it cared for 59,026 unduplicated users with 235,709 encounters in all of its sites. By providing comprehensive primary care and specialty care that is accessible and affordable, Open Door is helping to eliminate disparities in healthcare and ensuring the community receives quality services regardless of insurance status or ability to pay.

Staffing is expected to increase as a result of this construction/expansion project to 92.6 FTEs in Year One of the completed project with an increase to 104.2 FTEs by Year Three.

### **Compliance with Applicable Codes, Rules and Regulations**

The medical staff will continue to ensure that the procedures performed at the facility conform to generally accepted standards of practice and that privileges granted are within the physician's scope of practice and expertise. The Facility's admissions policy includes anti-discrimination provisions regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures are performed in accordance with all applicable federal and state codes, rules and regulations.

### Conclusion

Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law.

## Financial Analysis

### Total Project Cost and Financing

The total project cost for renovations and movable equipment is estimated at \$15,169,784 and is distributed as follows. The project will be funded with accumulated funds from operations.

New Construction	\$1,214,645
Renovation & Demolition	9,271,274
Site Development	156,750
Design Contingency	1,048,592
Construction Contingency	987,859
Architect/Engineering Fees	1,010,765
Other Fees	544,123
Movable Equipment	866,573
Application Fee	1,250
Additional Processing Fee	<u>67,953</u>
Total Project Cost	\$15,169,784

### Operating Budget

The applicant has submitted an operating budget, in 2022 dollars, for Years One and Three, summarized below:

	<u>Year One (2024)</u>		<u>Year Three (2026)</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
<b>Revenues:</b>				
Commercial FFS	\$60.49	\$496,118	\$60.49	\$557,850
Medicare FFS	\$118.31	226,558	\$119.45	257,296
Medicaid FFS	\$217.26	627,881	\$219.47	713,068
Medicaid MC	\$217.29	4,583,431	\$219.47	5,205,284
Private Pay	\$31.71	378,977	\$31.71	426,133
All Other*		<u>761,045</u>		<u>864,299</u>
Total Op. Rev		\$7,074,010		\$8,023,930
Other Revenue**		<u>1,826,069</u>		<u>2,050,816</u>
Total Revenue		\$8,900,079		\$10,074,746
<b>Expenses:</b>				
Operating	\$171.55	\$8,674,263	\$169.26	\$9,623,114
Capital	<u>\$4.47</u>	<u>225,816</u>	<u>\$7.94</u>	<u>451,632</u>
Total	\$176.02	\$8,900,079	\$177.20	\$10,074,746
Net Income / (Loss)		<u>\$0</u>		<u>\$0</u>
Total Visits		50,564		56,855
Cost per Visit		\$176.02		\$177.20

\*All Other includes revenues received from visits reimbursed from Child Health Plus.

\*\*Other Revenue is comprised of NYS Safety Net Funds, a Federal 330 Grant, and Patient-Centered Medical Home revenue.

Utilization by payor source for Year One and Year Three is as follows:

<u>Payor:</u>	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	16.22%	16.22%
Medicare FFS	3.79%	3.79%
Medicaid FFS	5.72%	5.72%
Medicaid M/C	41.71%	41.71%
Private Pay	23.63%	23.63%
Charity	2.0%	2.0%
All Other	<u>6.93%</u>	<u>6.93%</u>
Total	100.00%	100.00%

The following is noted with respect to the submitted budget:

- Commercial rates are based on organization's current average reimbursement rates.
- Private pay visits for the proposed site are based on actual visit payer mix data and services currently offered at the 165 Main Street location.
- Medicare and Medicaid rates are based on Open Door's current average rates and are enhanced to reflect the annual 1% Medicare Economic Index (MEI) rate adjustment.
- NYS Safety Net and Federal 330 grants funds are allocated towards uninsured visits. Year One and Year Three projections are based on Open Door's prior year uninsured visits rate with an underlying assumption that the rate of uninsurance among the population remains steady.
- Patient Centered Medical Home incentive revenues are based on the current Medicaid Fee-For-Service rate add-on and capitation per-member, per-month rate for Medicaid Managed Care.
- Staffing is based on expected utilization and experience of Open Door providing outpatient services.
- Expenses are based predominantly on the labor costs for a staffing model that includes 92.6 FTEs in Year One and 104.2 FTEs in Year Three, medical and non-medical supplies, and other direct expenses. Salary expenses are based on Open Door's 2022 operating budget, employee benefits are based on budgeted fringe rate of 21.26%.
- Utilization is based on average visits per FTE by discipline based on organization's historical experience.

#### Capability and Feasibility

Project costs of \$15,169,784 will be met with accumulated funds from Open Door. Working capital requirements are estimated at \$1,679,124, based on two months of third-year expenses, and will be funded through the ongoing operations of Open Door Family Medical Center, Inc. Open Door has sufficient funds to cover any potential losses during Years One and Three. Medicare and Medicaid rates are based on Open Door's current average rates, Commercial rates are based on organization's current average reimbursement rates. Private pay rates are based on actual visit payer mix data and services currently offered at the 165 Main Street location. The submitted budget projects a break-even operating performance during Years One and Three of operations, respectively. The budget appears reasonable.

BFA Attachment A presents audited financial statements for Open Door Family Medical Center, Inc. and Affiliates for the year ended December 31, 2021, which show Open Door reported positive working capital and net assets of \$8,836,948 and \$145,465,632, respectively. For this same period, operating income amounted to \$1,493,125 and was augmented by \$10,853,678 in unrealized gains and a \$17,892 change in net assets with donor restrictions, resulting in a positive change in net assets of \$12,328,911. During 2021, Open Door received \$2.5M in Provider Relief Funds, \$14.4M in American Rescue Plan Act (ARPA), and \$1.2M in American Rescue Plan – Health Center Construction and Capital Improvements (ARP-Capital) funds. The applicant anticipates meeting the expenditure requirements for these funds.

Attachment B presents Open Door Family Medical Center's internal financial statements for the period ended November 30, 2022 and show the facility reported positive working capital and total net assets of \$13,067,665 and \$139,368,812, respectively. During the same period, Open Door reported a \$4,691,459, net gain from operations, offset by \$2,689,406 in depreciation expenses, resulting in a net income of \$2,002,053 after depreciation.

The proposed extension is expected to increase the availability of needed primary medical care and behavioral health care for the low-income service area population, improve the timeliness of care delivery, and overall efficiency in providing care suited to meet the needs of the targeted population.

Conclusion

The applicant has demonstrated the capability to proceed in a financially feasible manner.

<h2>Attachments</h2>
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BHFP Attachment	Map
BFA Attachment A	2021 Audited Financial Statement – Open Door Family Medical Center, Inc. and Affiliates
BFA Attachment B	November 30, 2022 Internal Financial Statements – Open Door Family Medical Center



Project # 221252-B
Upstate Endoscopy Associates, LLC d/b/a Upstate Endoscopy Center

Program: Diagnostic and Treatment Center County: Rensselaer
Purpose: Establishment and Construction Acknowledged: July 12, 2022

Executive Summary

Description

Upstate Endoscopy Associates, LLC d/b/a Upstate Endoscopy Center, an existing LLC, requests approval to establish and construct a single specialty (gastroenterology) ambulatory surgery center. The proposed center will have three procedure rooms at 112 McChesney Ave., Suite 100, Troy, New York. The sublessor, Practice Support Services, LLC, will finance the portion of the leasehold improvements.

The service area will center on Rensselaer County, but also include Albany, Saratoga and Greene Counties, covering the catchment area for the applicant's members' medical practice. There are currently no ASCs in Rensselaer county and all of the gastroenterology cases projected in this application are currently being performed in a hospital setting.

Ownership of Upstate Endoscopy Associates, LLC is as follows:

Table with 2 columns: Name and Percentage. Rows: Richard Eslow, MD (25%), William Robinson, Sr. MD (25%), Barry Pronold, MD (25%), William Robinson Jr. MD (25%).

The proposed Medical Director will be William Robinson Sr. MD.

OPCHSM Recommendation

Contingent approval with an expiration of the operating certificate five years from the date of its issuance.

Need Summary

Upstate Endoscopy Associates, LLC proposes to establish a single-specialty ambulatory surgery center (ASC) providing gastroenterology surgery services in Rensselaer County. This will be the first ASC in Rensselaer County. The applicant projects 6,786 procedures in the first year and 6,988 by the third with Medicaid at 4% and Charity Care at 2% each year.

Program Summary

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a (3).

Financial Summary

Total project costs of \$3,636,925 will be met with a bank loan of \$2,414,910 at an interest rate of 7.5% for a 15-year term, equity of \$120,368 from proposed members personal resources, an equipment lease of \$986,647, and a loan of \$115,000 at an interest rate of 5% for a five-year term.

Table with 3 columns: Budget, Year One, Year Three. Rows: Revenues, Expenses, Net Income.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an equipment lease that is acceptable to the Department of Health. [BFA]
3. Submission of a bank loan (applicant) that is acceptable to the Department of Health. [BFA]
4. Submission of a bank loan (sublessor) that is acceptable to the Department of Health. [BFA]
5. Submission of a working capital loan commitment that is acceptable to the Department of Health. [BFA]
6. Submission of an executed sublease agreement that is acceptable to the Department of Health. [BFA]
7. Submission of an executed transfer and affiliation agreement, acceptable to the Department. [HSP]
8. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
9. Submission of a signed agreement with an outside, independent entity satisfactory to the Department to provide annual reports to DOH. Reports are due no later than April 1st for the prior year and are to be based upon the calendar year. Submission of annual reports will begin after the first full or, if greater or equal to six months after the date of certification, partial year of operation. Reports should include:
  - a. Data displaying actual utilization including procedures;
  - b. Data displaying the breakdown of visits by payor source;
  - c. Data displaying the number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
  - d. Data displaying the number of emergency transfers to a hospital;
  - e. Data displaying the percentage of charity care provided;
  - f. The number of nosocomial infections recorded during the year reported;
  - g. A list of all efforts made to secure charity cases; and
  - h. A description of the progress of contract negotiations with Medicaid managed care plans. [RNR]
10. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
11. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0 [AER]
12. Submission of a copy of the Operator's Operating Agreement that is acceptable to the Department. [CSL]
13. Submission of a copy of the Sublease Agreement that is acceptable to the Department. [CSL]
14. Submission of a copy of the Lease Agreement that is acceptable to the Department. [CSL]

**Approval conditional upon:**

1. This project must be completed by **July 15, 2024**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **August 15, 2023**, and construction must be completed by **April 15, 2024**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:  
[https://www.health.ny.gov/facilities/hospitals/docs/hcs\\_access\\_forms\\_new\\_clinics.pdf](https://www.health.ny.gov/facilities/hospitals/docs/hcs_access_forms_new_clinics.pdf). Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: [hospinfo@health.ny.gov](mailto:hospinfo@health.ny.gov) [HSP]
6. The submission of annual reports to the Department as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. [RNR]

Council Action Date

February 9, 2023

# Need Analysis

## Background and Analysis

The proposed service area centers on Rensselaer County but includes Albany, Saratoga and Greene Counties, which represent the catchment area for the applicant's medical practice. The proposed Upstate Endoscopy Center will be the first ASC in Rensselaer county. The population of Rensselaer County in 2020 was 161,130 and is estimated to increase slightly to 161,987 by 2025.

According to Data USA, in 2019, 96.3% of the population of Rensselaer County has health coverage as follows:

Employer Plans	55.9%
Medicaid	15.9%
Medicare	12.9%
Non-Group Plans	10.6%
Military or VA	0.982%

The applicant projects 6,786 procedures in Year One and 6,988 in Year Three with Medicaid at 4.01% and Charity Care at 2.00% each year. These projections are based on the current practices of participating surgeons. The applicant states that all of the projected procedures are currently being performed at Samaritan Hospital, in Troy. The table below shows the projected payor source utilization for Years One and Three.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Commercial FFS	3,189	46.99%	3,284	46.99%
Commercial MC	1,153	16.99%	1,188	17.00%
Medicare FFS	1,425	21.00%	1,467	20.99%
Medicare MC	611	9.00%	629	9.00%
Medicaid FFS	68	1.00%	70	1.00%
Medicaid MC	204	3.01%	210	3.01%
Charity Care	136	2.00%	140	2.00%

The center initially plans to obtain contracts with the following Medicaid Managed Care plans Fidelis Care, CDPHP, MVP, United Healthcare, and WellCare. The center will work collaboratively with local Federally Qualified Health Centers such as Whitney M. Young Jr. Health Center to provide service to the under-insured in their service area. The center has developed a financial assistance policy with a sliding fee scale to be utilized when the center is operational. The operating hours will be Monday through Friday from 7 am until 4 pm. Weekend or evening hours will be available, if needed, to accommodate scheduling issues.

While there are no other ASCs in Rensselaer County, there are ASCs in the surrounding counties of Albany and Saratoga within 15 miles, however, none are gastroenterology centers. The closest single-specialty gastroenterology ASC is in Ballston Spa, NY, 23 miles and 33 minutes away.

Facility	Specialty Type	Distance/Time
New England Laser & Cosmetic Surgery Center	Multi-Specialty	10 miles/17 minutes
Everett Road Surgery Center	Multi-Specialty	10.5 miles/19 minutes
St. Peter's Surgery And Endoscopy Center	Multi-Specialty	14.1 miles/20 minutes
OrthoNY Surgical Suites	Multi-Specialty	14.5 miles/22 minutes
The Northway Surgery and Pain Center	Multi-Specialty	14.8 miles/21 minutes

### Opposition

Samaritan Hospital, a 277-bed community hospital in Troy, opposes the application, citing the negative impact the creation of this ASC would have on its operations and its ability to continue supporting health care services to the community.

In 2018, St. Peter's Health Partners invested \$5.2M to create the current Samaritan Endoscopy Center. Per Samaritan Hospital their endoscopy center performed 9,718 cases in the fiscal year ending June 2022 with 53.5% of procedures being completed by the physicians of Upstate Endoscopy Associates LLC. The proposed ASC is two miles from the hospital.

Samaritan submitted financial information showing that outpatient endoscopy is their largest source of outpatient revenue and that approval of this proposed ASC would lead to \$10.8M in lost revenue annually to their hospital.

### Conclusion

While the Department has concluded that the creation of this ASC will have a significant impact on Samaritan Hospital, since Samaritan is not a Critical Access Hospital or a Sole Community Hospital and will be able to continue operations, the Department is prioritizing access to cheaper and more convenient outpatient care in this instance.

## Program Analysis

### Project Proposal

Upstate Endoscopy Center, LLC d/b/a Upstate Endoscopy Center an existing New York State limited liability company, seeks approval to establish and construct a single-specialty freestanding ambulatory surgery center specializing in Gastroenterology to be located at 112 McChesney Avenue, Suite 100 in Troy (Rensselaer County).

<b>Proposed Operator</b>	Upstate Endoscopy Center, LLC
<b>Doing Business As</b>	Upstate Endoscopy Center
<b>Site Address</b>	112 McChesney Avenue, Suite 100, Troy, New York 12180 (Rensselaer County)
<b>Surgical Specialties</b>	Single-Specialty-Gastroenterology
<b>Operating Rooms</b>	0
<b>Procedure Rooms</b>	3
<b>Hours of Operation</b>	Monday to Friday 7:00 am to 4:00 pm
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	20.0 FTEs / 20.0 FTEs
<b>Medical Director(s)</b>	William T. Robinson, Sr., M.D.
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Samaritan Hospital 2.2 Miles / 6 minutes
<b>On-call service</b>	Patients who require assistance during off-hours will engage the 24-hour answering service to reach the on-call surgeon during hours when the facility is closed

### Character and Competences

The ownership of Upstate Endoscopy Center, LLC is:

Member Name	Proposed Interest
William Robinson, Sr., M.D.	25.00%
Richard Eglow, M.D.	25.00%
Barry Pronold, M.D.	25.00%
William Robinson, Jr., M.D.	25.00%
<b>TOTAL</b>	<b>100.00%</b>

**Dr. Richard Eglow** is a Gastroenterologist and Vice President at Upstate Gastroenterology Associates for approximately 30 years. He was the previous Director of the GI Endoscopy unit at Winthrop University Hospital for over one (1) year. He received his medical degree from The Chicago Medical School. He completed his residency in Internal Medicine at University Hospital. He completed his fellowship in Gastroenterology at Boston University School of Medicine. He is board certified in Internal Medicine with a sub-certification in Gastroenterology.

**Dr. Barry Pronold** is. He is a Gastroenterologist at Upstate Gastroenterology Associates for over nine (9) years. He received his medical degree from the Medical College of Wisconsin. He completed his residency in Internal Medicine and fellowship in Gastroenterology at The Ohio State University Medical Center.

**Dr. William Robinson, Jr.** is a Gastroenterologist with Upstate Gastroenterology Associates for over nine (9) years. He received his medical degree from Albany Medical Center. He completed his residency in Internal Medicine at Rhode Island Hospital and his fellowship in Gastroenterology at Ohio State University Hospital. He is board certified in Internal Medicine with a sub-certification in Gastroenterology.

**Dr. William Robinson, Sr.** is a Gastroenterologist and President at Upstate Gastroenterology Associates for 34 years. He is a Gastroenterologist at Upstate Gastroenterology Associates, P.C. for 26 years. He was a Gastroenterologist at William T. Robinson, M.D. and Frederick Braunstein, M.D., PC for approximately 10 years. He was a Clinical Assistant Professor at Albany Medical College for approximately five (5) years. He was a Gastroenterologist at Internal Medicine/Gastroenterology Associates, PC for approximately one (1) year. He received his medical degree from SUNY Downstate Medical College. He completed his residency in Internal Medicine at Kings County Hospital Center. He completed his fellowship in Gastroenterology at Boston University Medical Center. He is board certified in Internal Medicine with a sub-certification in Gastroenterology.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

*Dr. Robinson Jr. and Dr. Pronold disclosed one malpractice suit. The malpractice suit was filed on July 26, 2017 arising from an incident on February 6, 2015. The suit was filed by the patient alleging negligence during sigmoidoscopy resulting in colon perforation. This led to colostomy and ileostomy placement. The case was closed on March 23, 2020.*

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

#### Integration with Community Resources

For those patients who do not identify a primary care provider (PCP), the Applicant will encourage the establishment of one and will provide the patient with a list of primary care providers in the area. The Center does not discriminate regardless of payer and currently performs all procedures in the hospital setting. These procedures will be performed in the outpatient Center once completed regardless of ability to pay. The Center will adopt a financial assistance policy with a sliding scale fee schedule. The Applicant will promote the financial assistance policy by informing the patient of its existence through the website, an information packet, and through Upstate Gastroenterology P.C. The Applicant will encourage patients who express hardship or concern for paying balances to apply for financial assistance and assist those patients in applying for financial assistance. The Applicant will also advise the clinics and other referral sources of the financial assistance policy. The Center will notify Whitney Young Health Clinic, an FQHC, that it is being constructed and when it is opened. The Center will participate in traditional fee-for-service Medicaid and with area Medicaid Managed Care Plans including CDPHP, Wellcare, Fidelis, United Healthcare, and MVP.

The Center intends on using an Electronic Medical Record (EMR) program. The EMR platform the Applicant will consider participating in a RHIO or HIE. The Applicant will become members of Innovative Health Alliance of New York, LLC.

#### Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a (3).

## Financial Analysis

### Total Project Cost and Financing

Total project cost, which is for new construction and the acquisition of moveable equipment, is estimated at \$3,636,925, broken down as follows:

New Construction	\$1,976,551
Construction Contingency	100,000
Architect/Engineering Fees	200,000
Construction Manager Fees	138,359
Other Fees (Consultant)	20,000
Moveable Equipment	1,180,132
CON Fee	2,000
Additional Processing Fee	<u>19,883</u>
Total Project Cost	<u>\$3,636,925</u>

The applicant's financing plan appears as follows:

Bank Loan (7.5% interest rate for a 15-year term) (Sublessor)	\$2,414,910
Equity (Applicant)	120,368
Equipment Lease (5% interest rate for a five-year term)	986,647
Loan (Applicant) (5% interest rate for a five-year term)	115,000
Total	<u>\$3,636,925</u>

The sublessor, Practice Support Services, LLC will finance \$2,414,910 of the total project cost via a bank loan. The applicant will finance via a bank loan a portion of the total project cost.

### Operating Budget

The applicant has submitted an operating budget, in 2022 dollars, for the first and third years, summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>2024</u>		<u>2026</u>	
	<u>Per Procedure</u>	<u>Total</u>	<u>Per Procedure</u>	<u>Total</u>
Revenues:				
Commercial FFS	\$622.74	\$1,985,910	\$622.74	\$2,045,070
Commercial MC	\$623.28	\$718,639	\$622.74	\$739,812
Medicare FFS	\$444.68	\$633,662	\$444.67	\$652,338
Medicare MC	\$444.67	\$271,696	\$444.68	\$279,701
Medicaid FFS	\$367.68	\$25,002	\$367.67	\$25,737
Medicaid MC	\$367.68	<u>\$75,006</u>	\$367.68	<u>\$77,212</u>
Total Revenues		\$3,709,915		\$3,819,870
Expenses:				
Operating	\$395.29	\$2,682,428	\$395.38	\$2,762,901
Capital	<u>\$107.96</u>	\$732,638	<u>\$103.37</u>	\$722,344
Total Expenses	\$503.25	<u>\$3,415,066</u>	\$498.75	<u>\$3,485,245</u>
Net Income		\$294,849		\$334,625
Utilization: (Procedures)		6,786		6,988

The following is noted with respect to the operating budget:

- The Center will participate with traditional fee-for-service Medicaid and with area Medicaid Managed Care Plans including CDPHP, Wellcare, Fidelis, United Healthcare and MVP.
- Utilization assumptions are based on the current case volume of the four members and are accurately being performed by these physicians in a hospital setting.
- The applicant has submitted letters from physicians in support of utilization projections.
- Expense assumptions are based on the historical experience of ambulatory surgery centers.

Utilization broken down by payor source during the first and third years is as follows:

	<u>Year One</u>	<u>Year Three</u>
	<u>2024</u>	<u>2026</u>
Commercial FFS	46.99%	46.99%
Commercial MC	16.99%	17.00%
Medicare FFS	21.00%	20.99%
Medicare MC	9.00%	9.00%
Medicaid FFS	1.00%	1.00%
Medicaid MC	3.01%	3.01%
Charity Care	<u>2.00%</u>	<u>2.00%</u>
Total	100.00%	100.00%

#### Sublease Rental Agreement

The applicant has submitted a draft sublease agreement for the site that Upstate Endoscopy Associates, LLC will occupy, which is summarized below:

Premises	12,179 square feet located at 112 McChesney Ave, Troy, New York.
Sublessor	Practice Support Services, LLC
Sublessee	Upstate Endoscopy Associates, LLC
Term	15 years with two five-year renewal options.
Rental	\$290,305.50 annually (\$23.84 per sq.ft.)
Provisions	The sublessee shall be responsible for real estate taxes and utilities.

The Applicant entered into a Sublease Agreement with Practice Support Services, LLC (Landlord), in which the Landlord will lease the property from 112 McChesney Real Estate Group, LLC (Prime Landlord). The Prime Landlord will construct approximately 12,179 rentable square feet of unimproved space and all tenant improvements necessary to fulfill the tenant's requirements for an Article 28 single-specialty (gastroenterology) ambulatory surgery center. The initial term of the Sublease will be 15 years, and the Tenant will have the right to extend the Sublease.

Upstate Endoscopy Associates, LLC will pay supplemental rent, an additional annual expense of \$290,305.50 on top of the lease, equal to the actual design and construction costs incurred by Practice Support Services, LLC.. The Applicant has indicated that the sublease agreement will be an arm's length lease arrangement and has submitted two real estate letters attesting to the reasonableness of the per square foot rental.

#### Capability and Feasibility

Total project costs of \$3,636,925 will be met through a \$2,414,910 bank loan at an interest rate of 7.5% for a 15-year term by the sublessor, \$120,368 in equity from the proposed members' resources, an equipment lease of \$986,647, and a bank loan of \$115,000.

Working capital requirements are estimated at \$580,874, equivalent to two months of third-year expenses. The applicant will finance with a loan of \$290,437 at an interest rate of 5% for a five-year term. The remaining \$290,437 will be provided with equity from the personal resources of the proposed members. BFA Attachment A, Personal Net Worth Statements - Proposed Members, indicates the

availability of sufficient funds for the equity contribution. BFA Attachment B, Pro Forma Balance Sheet shows a positive net asset position of \$483,922 on the first day of operations.

Conclusion

The applicant has demonstrated the capability to proceed in a financially feasible manner.

<h2>Attachments</h2>
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BHFP Attachment	Map
BFA Attachment A	Personal Net Worth Statements - Proposed Members
BFA Attachment B	Pro Forma Balance Sheet



**Project # 221280-E  
Specialists' One-Day Surgery Center, LLC**

**Program:** Diagnostic and Treatment Center  
**Purpose:** Establishment

**County:** Onondaga  
**Acknowledged:** September 9, 2022

**Executive Summary**

**Description**

Specialists' One-Day Surgery Center, LLC (the Company), is seeking approval to restructure by transferring 100% of the Company's current membership interest to SOS ASC Holdings, LLC, which will be the sole member of the Company and comprised of all 34 former members of the Company as well as one new member. Immediately after the reorganization, ASC Holdings LLC will sell a 25% membership interest to St. Joseph's Hospital Health Center. Upon approval of this transaction, Specialists' One-Day Surgery, LLC will be owned by SOS ASC Holdings, LLC, and St. Joseph's Hospital Health Center. Through this sale, all current members will become indirect members of Specialists' One-Day Surgery Center, LLC.

BFA Attachment A shows the membership interests pre-and post-transaction.

Upon PHHPC approval, the Company will have seven board members, six of whom will be members of SOS ASC Holdings, LLC and one of whom will be appointed by St. Joseph's Hospital Health Center. This governance structure will allow the Hospital to participate from a strategic level. In addition, the Company has submitted an executed transfer agreement between St Joseph's Hospital Health Center and Specialists' One-day Surgery, LLC. J. Alan Lemley, M.D., will continue as the current medical director.

**OPCHSM Recommendation  
Approval**

**Need Summary**  
There will be no need review per Public Health Law §2801-a (4)

**Program Summary**  
The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a (3).

**Financial Summary**  
The purchase price for St. Joseph's Hospital Health Center's 25% membership interest is \$25,175,000, which will be paid in equity through an intercompany transfer from Trinity Health System, the active parent of St. Joseph's Hospital Health Center. St Joseph's will hold the 25% membership interest. Operating budget projections are not included as part of this application as it is limited to a change in membership, with no project costs or changes in services or location.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval conditional upon:**

1. This project must be completed by **one year from the date of this letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:  
[https://www.health.ny.gov/facilities/hospital/docs/hcs\\_access\\_form\\_new\\_clinics.pdf](https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf). Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: [hospinfo@health.ny.gov](mailto:hospinfo@health.ny.gov) [HSP]

Council Action Date

February 9, 2023

## Program Analysis

### Character and Competence

The table below details the proposed changes in the proposed membership of Specialists' One-Day Surgery Center, LLC.

\*\*\*Members Subject to Character and Competence

<u>Member Name/Title</u>	<u>Current Ownership</u>	<u>Proposed Ownership</u>	<u>Proposed Ownership following sale of 25% Membership Interest</u>
<b>SOS ASC Holdings</b>	<b>0.00000%</b>	<b>100.000%</b>	<b>75.00000%</b>
<b>Members:</b>			
Stephen Bogosian, M.D.	3.22580%	3.543%	2.65725%
P. James Newman, M.D.	3.22580%	3.543%	2.65725%
John Cambereri, M.D.	3.22580%	3.543%	2.65725%
John Fatti, M.D.	3.22580%	3.543%	2.65725%
Daniel Whorowski, M.D.	3.22580%	3.543%	2.65725%
Timothy Izant, M.D.	3.22580%	3.543%	2.65725%
Glenn Axelrod, M.D.	3.22580%	3.543%	2.65725%
Brett Greenky, M.D.	3.22580%	3.083%	2.31225%
Seth Greenky, M.D.	3.22580%	3.083%	2.31225%
Warren Wulff, M.D.	3.22580%	3.083%	2.31225%
Daniel Murphy, Jr., M.D.	3.22580%	3.543%	2.65725%
John Parker, M.D.	3.22580%	3.083%	2.31225%
Richard Distefano, M.D.	3.22580%	3.083%	2.31225%
Michael Clark, M.D.	3.22580%	3.083%	2.31225%
Frederick Lemley, M.D.	3.22580%	3.083%	2.31225%
Robert Tiso, M.D.	1.84320%	1.428%	1.07100%
Joseph Catania, M.D.	1.84322%	1.428%	1.07100%
Todd Battaglia, M.D.	3.22580%	3.083%	2.31225%
Eric Tallarico, M.D.	1.84322%	1.428%	1.07100%
James Lemley, M.D.	3.22580%	3.083%	2.31225%
Lawson Smart, M.D.	3.22580%	3.083%	2.31225%
Mary Trusilo, M.D.	1.84322%	1.428%	1.07100%
Aaron Bianco, M.D.	3.22580%	3.083%	2.31225%
Jason Lok, M.D.	1.84322%	1.428%	1.07100%
Bradley Raphael, M.D.	3.22580%	3.083%	2.31225%
Naven Dugal, M.D.	3.22580%	3.083%	2.31225%
Nathan Everding, M.D.	3.22580%	3.083%	2.31225%
Michael Fitzgerald, M.D.	3.22580%	3.083%	2.31225%
Justin Iorio, M.D.	3.22580%	3.083%	2.31225%
Kevin Kopko, M.D.	3.22580%	3.083%	2.31225%
Cassandra Riggs, M.D.	3.22580%	3.083%	2.31225%
Ryan McConn, M.D.	1.84322%	1.428%	1.07100%
Anthony Orio, M.D.	3.22580%	3.083%	2.31225%
Brendan McGinn, M.D.	1.84322%	1.428%	1.07100%
Max Greenky, M.D.***	-----	3.083%	2.31225%
<b>St. Joseph's Hospital Health Center***</b>	-----	-----	<b>25.0000%</b>
<b>Total</b>	<b>100.0000%</b>	<b>100.000%</b>	<b>100.0000%</b>

**Guha Bala** is the President of Velan Studios, a video game developer and publisher, for six years. He was the President of Vicarious Visions, a video game developer and publisher, for 25 years. Mr. Bala declares membership interest in the following healthcare facilities:

<i>St. Peter's Health Partners</i>	<i>09/2011-present</i>
<i>Northeast Health and affiliates</i>	<i>01/2005-09/2011</i>
<i>Rubin Dialysis Centers</i>	<i>03/2019-03/2011</i>
<i>St. Joseph Hospital</i>	<i>10/2011-present</i>
<i>Eddy Village Green</i>	<i>09/2011-present</i>
<i>Eddy Home Care</i>	<i>09/2011-present</i>
<i>Empire Home Infusion</i>	<i>09/2011-present</i>
<i>The Terrace at Glen Eddy</i>	<i>09/2011-present</i>
<i>Terrace at Hawthorne Ridge</i>	<i>09/2011-present</i>
<i>Eddy Alzheimer Center at Hawthorne Ridge</i>	<i>09/2011-present</i>
<i>Heritage House Nursing Center</i>	<i>09/2011-present</i>
<i>Eddy VNA</i>	<i>09/2011-present</i>
<i>Our Lady of Mercy Life Center</i>	<i>09/2011-present</i>
<i>Samaritan Hospital</i>	<i>09/2011-present</i>
<i>Eddy Senior Care</i>	<i>09/2011-present</i>
<i>Schuyler Ridge</i>	<i>09/2011-present</i>
<i>St. Mary's Hospital</i>	<i>09/2011-present</i>
<i>St. Peter's Hospital</i>	<i>09/2011-present</i>
<i>Sunnyview Hospital</i>	<i>09/2011-present</i>
<i>Eddy Village Green</i>	<i>09/2011-present</i>
<i>The Community Hospice</i>	<i>09/2011-present</i>
<i>Eddy Memorial Geriatric Center</i>	<i>09/2011-present</i>
<i>The Marjorie Doyle Rockwell Center</i>	<i>09/2011-present</i>
<i>St. Peter's Nursing and Rehab</i>	<i>09/2011-present</i>
<i>Northeast Health</i>	<i>09/2011-present</i>

**Kevin Barnett** is a Senior Investigator at the Public Health Institute. He serves as Co-Director of the California Health Workforce Alliance and is on the Board of Directors of the Communities Joined in Action. He is a Member of the Board of Directors for Trinity Health Corporation.

**Joseph Betancourt** is an Assistant Attending Physician at Massachusetts General Hospital for 21 years. He is a Senior Scientist at the Mongan Institute for Health Policy for 21 years. He was an Assistant Attending Physician at New York Presbyterian. He is an Assistant Professor at Harvard Medical School for 21 years. He was an Instructor and Assistant Professor at Weill Cornell College of Cornell University for three years. He received his medical degree from New Jersey Medical School. He completed his Internal Medicine residency at New York Hospital-Cornell. He completed his Minority Health Policy Fellowship at Harvard Medical School.

**Rita Brogley** serves on the Board of Directors for Trinity Health Corporation for the Audit Committee for three years. She is on the first Independent Board Director of the Board of Directors of Narvar for three years. She is the Chair of the Compensation Committee of Strategic Education Inc. for four years. She was the Chair of the Nominating and Governance Committee and a Member of the Compensation Committee of Capella Education Company for four years. She was the Head of Product Growth and Partnerships of Business Messaging Platforms for three years at Facebook. She held multiple executive positions including CEO, President, Chief Customs Officer, and she was on the Board of Directors of MyBuys, Inc. for four (4) years. She developed new strategy and focus for the company, aligned with the core competencies, and product offerings. She transformed client success and professional services operations, new service delivery processes, and back-office systems designed to scale and improve customer satisfaction. She was the CEO of Amedesa for three years. She transformed the company's business from project-based services to a software company with recurring revenue. She restructured sales, product strategy, and product development processes. She was an Entrepreneur in Residence at V2 Capital for one year. She evaluated investment opportunities for angel investors. She was an Independent Consultant for four years. She advised consumer internet and technology clients on market entry opportunity, sales, and fundraising.

**Linda Falquette** was a Member of the Community Leadership Team of the Institute of the Sisters of Mercy of the Americas for seven years. She was on a five-member team responsible for canonical oversight and civil administration of all facets of the South-Central Community. She was the Tuition and Financial Aid Coordinator of Notre Dame Academy for three years. She created and implemented a tuition payment policy that improved cash flow and eliminated the need for a line of credit. She was the Executive Director of the Double ARC for nine years. She was responsible for carrying out the mission and vision of the organization. She developed and implemented the strategic plan, carried out administrative functions including human resources, finances, grant writing, fund raising, public relations, collaborations, and program development. She held various roles including Director of Planning, Director of Finance, and Financial Analyst of Mercy Health System for 12 years.

**Sr. Mary Fanning** is retired. She is a Board Member of Trinity Health System.

**Dr. Max Greenky** is an Orthopedic Surgeon at Syracuse Orthopedics for one year. He received his medical degree from Thomas Jefferson College. He completed his Orthopedic Residency at Thomas Jefferson University. He completed his Reconstructive Surgery Fellowship at Duke University.

**Barry Hatches** retired in May of 2022. He serves on the Board of Directors of Trinity Health Corporation. He is the Owner of Hatches Consulting, LLC. He focuses on leadership development, performance technology, organizational and professional development, community relations, and stakeholder management. He served as the President and CEO of Chicago Family Health Center. He previously held multiple executive positions including COO, Executive Vice President, and President/CEO within Swope Health Services. He provided services to 40,000 patients in primary care, behavioral health, dental, and outreach services. He was the previous President/CEO of Northern Indiana Public Services Co. while also serving as CEO of Northern Indiana Fuel and Light Co. and Kokomo Gas and Fuel Co. He was the President and CEO of ENSTAR Natural Gas. He served as Senior Management at SEMCO Energy and Western Resources Gas Service Division.

**Daniel Isacksen** is the Executive Vice President and CFO of Trinity Health for over one year. He leads all financial functions for the system and across the national organization's Health Ministries. He previously served as the Executive Vice President and Regional CFO of Loyola Medicine. He was responsible for operational improvements, financial turnaround, and stabilization of the regional ministry. He serves as an Officer on the Board of Directors of Trinity Health Corporation.

**Kathleen Jimino** is retired since 2018. She was the County Executive for Rensselaer County for over 16 years. As the County Executive, she led the organization that provided services to 160,000; oversaw a budget of \$330M and a workforce of 1,600; provided guidance to managers of 20 departments providing social services, criminal justice services, health services, real property services, highway maintenance, and economic development services. Mrs. Jimino declares membership interest in the following healthcare facilities:

<i>St. Peter's Health Partner</i>	<i>09/2011-present</i>
<i>Northeast Health and affiliates</i>	<i>01/2005-09/2011</i>
<i>Rubin Dialysis Centers</i>	<i>03/2019-03/2011</i>
<i>St. Joseph Hospital</i>	<i>10/2011-present</i>
<i>Eddy Village Green</i>	<i>09/2011-present</i>
<i>Eddy Home Care</i>	<i>09/2011-present</i>
<i>Empire Home Infusion</i>	<i>09/2011-present</i>
<i>The Terrace at Glen Eddy</i>	<i>09/2011-present</i>
<i>Terrace at Hawthorne Ridge</i>	<i>09/2011-present</i>
<i>Eddy Alzheimer Center at Hawthorne Ridge</i>	<i>09/2011-present</i>
<i>Heritage House Nursing Center</i>	<i>09/2011-present</i>
<i>Eddy VNA</i>	<i>09/2011-present</i>
<i>Our Lady of Mercy Life Center</i>	<i>09/2011-present</i>
<i>Samaritan Hospital</i>	<i>09/2011-present</i>
<i>Eddy Senior Care</i>	<i>09/2011-present</i>
<i>Schuyler Ridge</i>	<i>09/2011-present</i>
<i>St. Mary's Hospital</i>	<i>09/2011-present</i>
<i>St. Peter's Hospital</i>	<i>09/2011-present</i>

<i>Sunnyview Hospital</i>	<i>09/2011-present</i>
<i>Eddy Village Green</i>	<i>09/2011-present</i>
<i>The Community Hospice</i>	<i>09/2011-present</i>
<i>Eddy Memorial Geriatric Center</i>	<i>09/2011-present</i>
<i>The Marjorie Doyle Rockwell Center</i>	<i>09/2011-present</i>
<i>St. Peter's Nursing and Rehab</i>	<i>09/2011-present</i>
<i>Northeast Health</i>	<i>09/2011-present</i>

**Courtney Lang** is the Founder and Principal of Langco & Partners for 11 years. She provides leadership and solutions to stakeholders. She also creates sustained value, bridges relationships, and strategic communication for advocacy, issues outreach, and campaign advancement. She was the Senior Director of Alliance Development for Pfizer for four (4) years. She directed strategy and outreach for patient advocacy and alliance development partnerships in support of five (5) global business units. She led grassroots advocacy efforts with key third party groups, prioritizing proactive legislative and regulatory initiatives, and developing and executing best practices across the product lifecycle. She was the US Public Affairs Liaison for Eli Lilly & Co. for 10 years. She designed and executed national public affairs strategies leading federal, state, and local advocacy efforts, aligned, measured processes and outcomes with 12 state based public affairs liaisons, and implemented global and national partnerships to promote product marketing goals and successful chronic disease management. She was in Marketing and Community Relations for the NBA's Cleveland Cavaliers for one year. She assisted with media development, community relations, project implementation, corporate partnerships, and provided substantive private-public sector collaborations for healthcare partnerships in support of community-based outreach.

**Sr. Mary Ann Logiudice** is the Local Coordinator of the Sisters of Mercy in Albany for over seven years. She was the Executive Director of Community Maternity Services for 25 years. She was responsible for the overall administration and management of Community Maternity Services in accordance with agency policies and procedures and implemented the mission and philosophy of Catholic Charities. Specifically, she secured financial and personnel resources, represented the agency before various community, judicial, and governmental bodies, consulted with the agency Board of Directors, and discerned trends in needed services. She was the Associate Executive Director for Outreach Services for five years. She assisted the Executive Director in and with the supervision of the development, coordination, and implementation of the agency rural outreach, fiscal resources, and personnel programs throughout a nine-county region. She was the Program Director for Maternity Center and Branson Family Development Center for seven years. She was responsible for the general supervision of the Maternity Residency and non-residential program serving pregnant and parenting adolescents. She was the Executive Director of Arbor House, Inc. for two years. She was responsible for the overall management of a residential program for 11 women. She was responsible for fiscal management, recruitment and supervision of staff, fundraising, public relations, program development and implementation, house meetings, scheduling activities, crisis/conflict intervention, and serving as liaison to community agencies. Sr. Logiudice discloses membership interest in the following healthcare facilities:

<i>St. Peter's Health Partners</i>	<i>09/2011-present</i>
<i>Northeast Health and affiliates</i>	<i>01/2005-09/2011</i>
<i>Rubin Dialysis Centers</i>	<i>03/2019-03/2011</i>
<i>St. Joseph Hospital</i>	<i>10/2011-present</i>
<i>Eddy Village Green</i>	<i>09/2011-present</i>
<i>Eddy Home Care</i>	<i>09/2011-present</i>
<i>Empire Home Infusion</i>	<i>09/2011-present</i>
<i>The Terrace at Glen Eddy</i>	<i>09/2011-present</i>
<i>Terrace at Hawthorne Ridge</i>	<i>09/2011-present</i>
<i>Eddy Alzheimer Center at Hawthorne Ridge</i>	<i>09/2011-present</i>
<i>Heritage House Nursing Center</i>	<i>09/2011-present</i>
<i>Eddy VNA</i>	<i>09/2011-present</i>
<i>Our Lady of Mercy Life Center</i>	<i>09/2011-present</i>
<i>Samaritan Hospital</i>	<i>09/2011-present</i>
<i>Eddy Senior Care</i>	<i>09/2011-present</i>
<i>Schuyler Ridge</i>	<i>09/2011-present</i>

<i>St. Mary's Hospital</i>	<i>09/2011-present</i>
<i>St. Peter's Hospital</i>	<i>09/2011-present</i>
<i>Sunnyview Hospital</i>	<i>09/2011-present</i>
<i>Eddy Village Green</i>	<i>09/2011-present</i>
<i>The Community Hospice</i>	<i>09/2011-present</i>
<i>Eddy Memorial Geriatric Center</i>	<i>09/2011-present</i>
<i>The Marjorie Doyle Rockwell Center</i>	<i>09/2011-present</i>
<i>St. Peter's Nursing and Rehab</i>	<i>09/2011-present</i>
<i>Northeast Health</i>	<i>09/2011-present</i>

**John Marshall** is a Certified Public Accountant and Senior Counsel at Bonadio & Co., LLC for seven years. He is responsible for personal income tax and business consulting. He semi-retired in April 2017 and gave up his partnership in the company. He was previously a CPA/Partner of Testone, Marshall & Discenza, LLP for 38 years. He was responsible for business and personal financial statements, tax preparation, and business consulting. He was a CPA and Manager of Deloitte & Touche for five years. He managed the business and personal finance statements of clients, performed tax preparation, and business consulting.

**Lee McEleroy** is the Associate Vice President and Director of Athletics of RPI for eight years. He oversees RPI's men and women NCSS intercollegiate teams involving over 550 student athletes. He was the Vice President and Director of Athletics at SUNY Albany for 15 years. He oversaw the Athletic Department. Mr. McEleroy discloses membership interest in the following healthcare facilities:

<i>St. Peter's Health Partners</i>	<i>09/2011-present</i>
<i>Northeast Health and affiliates</i>	<i>01/2005-09/2011</i>
<i>Rubin Dialysis Centers</i>	<i>03/2019-03/2011</i>
<i>St. Joseph Hospital</i>	<i>10/2011-present</i>
<i>Eddy Village Green</i>	<i>09/2011-present</i>
<i>Eddy Home Care</i>	<i>09/2011-present</i>
<i>Empire Home Infusion</i>	<i>09/2011-present</i>
<i>The Terrace at Glen Eddy</i>	<i>09/2011-present</i>
<i>Terrace at Hawthorne Ridge</i>	<i>09/2011-present</i>
<i>Eddy Alzheimer Center at Hawthorne Ridge</i>	<i>09/2011-present</i>
<i>Heritage House Nursing Center</i>	<i>09/2011-present</i>
<i>Eddy VNA</i>	<i>09/2011-present</i>
<i>Our Lady of Mercy Life Center</i>	<i>09/2011-present</i>
<i>Samaritan Hospital</i>	<i>09/2011-present</i>
<i>Eddy Senior Care</i>	<i>09/2011-present</i>
<i>Schuyler Ridge</i>	<i>09/2011-present</i>
<i>St. Mary's Hospital</i>	<i>09/2011-present</i>
<i>St. Peter's Hospital</i>	<i>09/2011-present</i>
<i>Sunnyview Hospital</i>	<i>09/2011-present</i>
<i>Eddy Village Green</i>	<i>09/2011-present</i>
<i>The Community Hospice</i>	<i>09/2011-present</i>
<i>Eddy Memorial Geriatric Center</i>	<i>09/2011-present</i>
<i>The Marjorie Doyle Rockwell Center</i>	<i>09/2011-present</i>
<i>St. Peter's Nursing and Rehab</i>	<i>09/2011-present</i>
<i>Northeast Health</i>	<i>09/2011-present</i>

**Michael Meath** is the Principal of Fallingbrook Associates, LLC for eight years. He provides advice and guidance as a crisis communication and regulatory risk management consultant. He held multiple roles including Department Chair, Professor, Visiting Professor, and Adjunct Professor at Newhouse School of Public Communications for 14 years. He was the Founder and President of Strategic Communication, LLC for 10 years. He developed an integrated strategic planning, public relations, crisis management, and public affairs consulting firm that served businesses and non-profit organizations. He was the Vice President of Business Development & Public Affairs and the Director of Public/Legal Affairs & Regulatory Compliance for eight years. He had oversight of all public affairs and media relations issues associated

with \$700M energy business. He led new business strategies, including creation of a new business that grew to 80,000 customers and \$75M in sales.

**Gina Myers** is the Interim Director, Adjunct Faculty in Nursing, and Director of the Education in Executive Leadership Program for 17 years. She recruits new applicants, meets with current students regarding progress or concerns, organizes and coordinates the program milestones for students, collaborates to provide structure to dissertation process, recruits adjunct faculty, coordinates the student learning assessment, and engages with leaders in the community organizations to create partnerships. She was an Assistant and Adjunct Professor for eight (8) years. She taught undergraduate and graduate students online and in hybrid formats. She was a co-advisor and program mentor for students and provided academic advisement. She has held multiple roles at St. Joseph's Hospital for over 29 years including Staff Nurse, Clinical Coordinator, Clinical Nurse Specialist, Director, and Associate.

**George Phillip** retired in 2013. He was the President of SUNY Albany for four years. He served as the Interim President for 18 months. He previously served as the Executive Director of the New York State Teacher's Retirement System for 12 years. He was the Chief Investment Officer for three years.

**Merriette Pollard** is retired since 2002. She was a Social Work Field Instructor and Director of Peer Counseling and Tutorial Programs at Livingston College. She also served as Director of Minority Retention and Program Development at La Roche College. She served as the Program Associate to the Vice President of Academic Affairs and Assistant Professor of Sociology and Gerontology at Grambling State University. She served as Executive Director of the Dunbar Association. She Co-chaired the Mayor's Taskforce on Youth Violence. She served as Co-chair of the Community Development Committee of Syracuse's Twenty Twenty. She has served on numerous boards.

**Lee Reed** was the President and CEO of St. Peter's Health Partners for 12 years. He retired on January 1, 2023. He was directly involved in the creation of St. Peter's Health Partners from the original concept to all phases of negotiation, review, and board approval votes. He has created initiatives to create a common culture, increase system integration, pursue major physician group acquisition, and hit financial metrics. He was the President and CEO of Northeast Health for 12 years. He was responsible for the overall direction and leadership of the Northeast Health System including development of the organization's vision, culture, and values. He was the COO for four years. He was responsible for the administration of all systems operating activities with a particular focus on maximizing efficiencies, improving quality, and developing integration opportunities. He was the CMO for six years. He was responsible for all medical quality issues across the integrated system including physician strategies, information, technology, utilization review, development and implementation of medical staff bylaws, and supervision of the system's medical directors. He received his medical degree from Cornell University Medical College. He completed his Internal Medicine residency at St. Clare's Hospital. Dr. Reed discloses membership interest in the following healthcare facilities:

<i>St. Peter's Health Partners</i>	<i>09/2011-present</i>
<i>Northeast Health and affiliates</i>	<i>01/2005-09/2011</i>
<i>Rubin Dialysis Centers</i>	<i>03/2019-03/2011</i>
<i>St. Joseph Hospital</i>	<i>10/2011-present</i>
<i>Eddy Village Green</i>	<i>09/2011-present</i>
<i>Eddy Home Care</i>	<i>09/2011-present</i>
<i>Empire Home Infusion</i>	<i>09/2011-present</i>
<i>The Terrace at Glen Eddy</i>	<i>09/2011-present</i>
<i>Terrace at Hawthorne Ridge</i>	<i>09/2011-present</i>
<i>Eddy Alzheimer Center at Hawthorne Ridge</i>	<i>09/2011-present</i>
<i>Heritage House Nursing Center</i>	<i>09/2011-present</i>
<i>Eddy VNA</i>	<i>09/2011-present</i>
<i>Our Lady of Mercy Life Center</i>	<i>09/2011-present</i>
<i>Samaritan Hospital</i>	<i>09/2011-present</i>
<i>Eddy Senior Care</i>	<i>09/2011-present</i>
<i>Schuyler Ridge</i>	<i>09/2011-present</i>
<i>St. Mary's Hospital</i>	<i>09/2011-present</i>
<i>St. Peter's Hospital</i>	<i>09/2011-present</i>

<i>Sunnyview Hospital</i>	<i>09/2011-present</i>
<i>Eddy Village Green</i>	<i>09/2011-present</i>
<i>The Community Hospice</i>	<i>09/2011-present</i>
<i>Eddy Memorial Geriatric Center</i>	<i>09/2011-present</i>
<i>The Marjorie Doyle Rockwell Center</i>	<i>09/2011-present</i>
<i>St. Peter's Nursing and Rehab</i>	<i>09/2011-present</i>
<i>Northeast Health</i>	<i>09/2011-present</i>

**Carrie Rich** is the CEO and Co-founder of the Global Good Fund for 10 years. She was previously the Senior Director of Vision Translation an Inova Health System. She was an Adjunct Faculty Member at Georgetown University. She is a Board Member of Trinity Health Corporation.

**Linda Ross** is the Executive Vice President and Chief Legal Officer of Trinity Health. She is responsible for all legal matters across Trinity Health including canon law. She acts as counsel to the Trinity Health Board of Directors. She was the previous Senior Vice President, Mergers and Acquisition Counsel. She was responsible for systems and regional health care transactions including mergers, acquisitions, divestitures, joint operating agreements, joint ventures, partnerships, and affiliations. She was a Partner and served as the Chair of the Health Care Department and Leader of the Corporate Department Health Care Practice Group at Honigman Miller Schwartz and Cohn LLP. She was lead counsel in affiliations, acquisitions, divestitures, mergers, reorganizations, joint ventures, and other alignment transactions.

**Michael Slubowski** is the President and CEO of Trinity Health System. He provides leadership, and is accountable for, the overall achievement, advancement, and success of the Trinity Health System. Prior to his executive leadership role, he served as the system's President and COO of Trinity Health. He oversaw all operations. He previously served as President and CEO of Sister of Charity of Leavenworth Health System. He was the President of Health Networks for Trinity Health prior to its merger with Catholic Health. He has served in executive leadership positions in the Henry Ford Health System, Samaritan Health Services, and Providence Hospital.

**David Southwell** is retired since September 2011. He was the Group Vice President, Financial Officer, and Treasurer of Wellmark Blue Cross Blue Shield for 14 years. He was responsible for treasury, accounting, financial reporting, internal audit, underwriting, actuarial, capital and operating budgeting, facilities and facility construction, customer pricing, provider pricing and contracting, and merger and acquisition activities. He was the previous Senior associate Director and Hospitals Financial Officer at the University of Michigan Health System for 24 years. He was responsible for the financial operations of the University of Michigan Clinical Delivery System with assets of over \$1.4B and revenue of over \$900M. He has held many board memberships including Advanced Member Healthcare Financial Management Association, Board Member and Finance Committee Chair of Huron Services for Youth, Child, and Family Services; Board Member and Treasurer of MCare HMO; Board Member and Treasurer of Hospital and Health Services Credit Union.

**Joan Steadman** is the Executive Director of the LWCR National Board for seven years. She is a Sister of the Holy Cross of Notre Dame and was President of her community for five years. She previously served in community leadership for 10 years. She was the Associate Director of Healthcare Ethics at Santa Clara University, the Vice President for Mission at Holy Cross Hospital, Regional Executive team Member at Holy Cross Health Services, Pastoral Associate at St. Therese Parish, Novice Director for her Community, and Administrator and Teacher in several elementary and secondary schools. She is a Board Member of the Trinity Health Corporation.

**Roberta Waite** is The Dean of the School of Nursing at Georgetown University for two months. She was previously a Professor of Nursing and the Associate Dean of Community Centered Health & Wellness and Academic Integration at Drexel University for 20 years. She was a Psychiatric Mental Health Clinical Nurse Specialist at 11<sup>th</sup> Street, a Federally Qualified Health Center. She was a Director of Psychiatric Nursing at Hahnemann University Hospital.

**Larry Warren** retired in 2012. He serves as Vice Chair on the Board of Directors for Trinity Health. He was named the Interim CEO of Trinity Health System in 2013 and retired from this position on August 13,

2013. He was the former CEO, Interim Executive Director, and Associate Vice President of University of Michigan Health and Hospital System for over 24 years.

**William Wildridge III** is a Partner at Fust Charles Chambers LLP and the CEO and Managing Partner of MicroscopeHC, LLC. He provides accounting and audit services to many healthcare and not-for-profit clients of Fust Charles Chamber LLP. He is also a member of their Executive Committee and provides oversight of the Firm management. As CEO/Managing Partner of MicroscopeHC, he provides healthcare organizations guidance on strategic direction, conducts feasibility studies, performs forecasting studies, conduct due diligence procedures on mergers and acquisitions and debt capacity studies. He also performs service line analysis and corporate restructuring, addresses third party reimbursement issues, and recommends revenue cycle improvements.

**Veronica Wiedower** serves on the Board of Directors for Trinity Health Corporation. She has been President of the Sisters of the Holy Cross for eight (8) years. She was the Vice President for Missions of St. Mary's Hospital for three years. She was the Music and Liturgy Minister for two years. She was the Coordinator and Formation Director for the Sisters of the Holy Cross for eight years. She was the Director of the Office for Women Religious for the Diocese of San Diego for two years. She was a Councilor of General Team Leadership for Sisters of the Holy Cross for 10 years. She is a member of the Saint Mary College Board of Trustees, the International Union of Superiors General, the Leadership Conference of Women Religious, and the Liturgy Network at the University of Notre Dame.

**Kerry Sweet Zavaglia** is the Senior Vice President and US General Counsel of National Grid for three years. She is responsible for all aspects of the Company's legal affairs across its US territories including corporate governance, compliance, mergers and acquisitions, commercial, real estate, siting, Federal and state regulatory, litigation, environmental, and labor. She is the Incident Commander, Vaccine Mandate & Executive Sponsor, and Plan Forward for over one year. She leads the incident command structure for implementation of federal vaccine requirements across the US business. She is responsible for operations, logistics, procurement, union negotiations, change management, compliance, and change to a hybrid work environment. She is the Executive Sponsor of PRIDE for six months. She oversees employee resources on supporting LGBTQ colleagues and allies. She was the Executive Sponsor to Women in Non-traditional Roles for four years. She oversaw employee resource groups focused on supporting women in non-traditional roles and increasing awareness and participation in underrepresented areas of business. She was the Vice President and Deputy General Counsel for one year. She was accountable for corporate governance, mergers, and acquisitions, commercial, Federal and New York regulatory, and real estate practice groups. She was the Vice President of New York Performance and Strategy for three years. She was accountable for the overall performance of National Grid's three operating companies, including achieving financial, regulatory, operational, and customer satisfaction targets. She was the Acting Vice President of Upstate New York Gas Operations Maintenance and Construction for three years. She was accountable for all maintenance, construction, and damage prevention activities across National grid's Upstate New York gas business. She was the Assistant General Counsel and Director of New York Regulatory for over three years. She managed a team of eight lawyers responsible for New York electric regulatory matters. She was the Associate Attorney to Senior Counsel for over five (5) years. She was the Assistant District Attorney in Philadelphia for over three years.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

*Eddy Heritage House Nursing and Rehabilitation Center was fined \$10,000 pursuant to Stipulation and Order NH-21-038 dated February 11, 2021, for surveillance findings set forth in the reports of inspection dated December 2, 2020. Deficiencies were found under the areas of Infection Control-PPE, Sterilization, Hand Washing, and Infection Spread.*

*Eddy Heritage House Nursing and Rehabilitation Center was fined \$16,000 pursuant to Stipulation and Order NH-21-028 dated February 4, 2021, for surveillance findings set forth in the reports of inspection*

dated November 12, 2020. Deficiencies were found under the areas of failing to notify the next of kin when a resident or staff member of the facility tested positive for COVID-19 or suffered a death related to COVID-19 pursuant to the Governor's Executive Order 202.18.

Eddy Memorial Geriatric Center was fined \$12,000 pursuant to Stipulation and Order NH-20-074 dated December 1, 2020, for surveillance findings set forth in the reports of inspection dated August 27, 2020. Deficiencies were found under the areas of Infection Control-Facemask; Sterilization-Hand washing; and Infection Control- Facemask & Social Distancing.

Eddy Memorial Geriatric Center was fined \$4,000 pursuant to Stipulation and Order NH-20-049 dated September 25, 2020, for surveillance findings set forth in the reports of inspection dated May 14, 2020. Deficiencies were found under the area of Infection Control.

Eddy Village Green was fined \$10,000 pursuant to Stipulation and Order NH-22-060 dated May 4, 2022, for surveillance findings set forth in the reports of inspection dated February 2, 2022. Deficiencies were found under the area of Resident Assessment and Comprehensive Care Plan.

Eddy Village Green was fined \$16,000 pursuant to Stipulation and Order NH-21-069 dated April 15, 2021, for surveillance findings set forth in the reports of inspection dated December 1, 2020. Deficiencies were found under the area Infection Control- Social Distancing and PPE.

Eddy Village Green was fined \$2,000 pursuant to Stipulation and Order NH-21-010 dated January 21, 2021, for surveillance findings set forth in the reports of inspection dated December 22, 2020. Deficiencies were found under the area Infection Control-Social Distancing and PPE.

Eddy Village Green was fined \$2,000 pursuant to Stipulation and Order NH-17-025 dated March 27, 2017, for surveillance findings set forth in the reports of inspection dated August 17, 2016. Deficiencies were found under the area of Quality of Care-Highest Practicable Potential.

Eddy Village Green at Beverwyck was fined \$2,000 pursuant to Stipulation and Order NH-21-246 dated December 28, 2021, for surveillance findings set forth in the reports of inspection dated September 28, 2021. Deficiencies were found under the area of Resident Right's-Visitation.

Hawthorne Ridge was fined \$924.00 pursuant to Stipulation and Order ACF-18-070 dated August 22, 2018, for surveillance findings set forth in the reports of inspection dated November 23, 2016, and March 8, 2018. Deficiencies were found under the area of Late Review of Individualized Service Plan.

St. Peter's Hospital was fined \$2,000 pursuant to Stipulation and Order BHS-16-03 dated August 18, 2016, for surveillance findings set forth in the reports of inspection dated January 7, 2016. Deficiencies were found under the area Food Services violations.

In 2010, the U.S. Department of Justice served subpoenas on hospitals and health systems nationwide including St. Peter's Hospital, as part of a fraud investigation into whether hospitals billed Medicare for implantable cardioverter defibrillators (ICDs) for patients whose conditions did not satisfy coverage criteria in a CMS National Coverage Determination. St. Peter's Hospital settled the matter in August 2015.

## Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a (3).

## Financial Analysis

### Membership Interest Purchase Agreement

The applicant has submitted an executed Membership Interest Purchase Agreement for the proposed members, the terms of which are summarized below:

Date:	June 3, 2022
Description:	Purchase of 25% Membership interest of SOS ASC Holding, LLC
Seller:	SOS ASC Holdings, LLC
Buyer:	St. Joseph's Hospital Health Center
Purchase Price:	\$25,175,000
Percentage Interest:	25% Membership Interest
Transfer:	Upon PHHPC Approval within 10 business days following written notice from the Department of Health Approval.

### Amended and Restated Administrative Service Agreement

The applicant has submitted an executed Administrative Services Agreement (ASA) updated and already in effect. The terms of the agreement are summarized below with no changes to the existing agreement.

Date:	January 1, 2021
Consultant:	Specialists' Operations Consulting Services, LLC
Licensed Operator:	Specialists One Day Surgery, LLC
Services Provided:	Administrative services; billing services; purchasing services; financial service preparation including accounts receivable; provide monthly reports to the operator on the bank account and other functions as agreed to.
Term:	One Year with automatic one-year renewals
Fee:	\$225,000 in monthly installments

The operator shall retain direct, independent authority over all the operations. The operator accepts responsibility for all oversight of all these provisions as agreed to.

### Lease Agreement

The applicant has submitted an executed existing building lease and sublease for both locations with no changes in location and has already been subsequently approved by the Department. The sublease that was submitted has no changes to the original except for allowing the new member, SOS ASC Holdings, LLC to lease from the Company which is already currently under a lease agreement. It is a duplicate of the original. There will be no change in space, rent, or term.

### Capability and Feasibility

BFA Attachment A shows the current and proposed membership change after PHHPC approval. No project costs are associated with this application; however, the total membership purchase price is \$25,175,000 for St. Joseph's Hospital Health Center, Inc.'s 25% membership interest. As the active parent, Trinity Health will provide the cash funding to St. Joseph's with no loans or reimbursement back. SOS ASC Holdings, LLC will distribute the funds to selected members that are diluting their membership interest. In addition, St. Joseph's Hospital Health Center, Inc. will fund the cost with equity at closing per the membership purchase transfer agreement.

Working capital requirements are estimated at \$2,814,255, based on two months of projected first-year expenses, and will be covered through existing operations. BFA Attachment C demonstrates sufficient resources for the equity requirement from Specialists' One-Day Surgery, LLC.

As shown in BFA Attachment B, St. Joseph's Health, Inc. maintained an average positive working capital and net asset position in 2020 and 2021. The hospital recorded a net loss of (\$47,383,000) in 2020. Operational losses were primarily a result of decreased surgeries and rising salary expenses due to the

COVID-19 Pandemic; however, the hospital rebounded in 2021 after achieving a net income of \$31,853,000. St. Joseph's Health, Inc.'s internal financial statement ending May 31, 2022, shows a positive working capital and net asset position and a net operating loss of (\$31,001,000) with operating revenue of \$617,843,000 and operating expenses of \$648,844,000. The hospital indicates that labor costs have increased due to staffing shortages and contract labor expense has increased. The Hospital has implemented and is actively working on initiatives to increase revenue and lower costs, including (i) profitable growth via partnering with outside facilities, (ii) revenue optimization, (iii) labor stabilization, (iv) clinical program optimization, (v) non-labor expense reduction, and (vi) management integration with St. Peter's Health Partners in Albany, NY.

Attachment C presents the certified financial statements for Specialists' One-Day Surgery, LLC, dated December 31, 2020, and 2021. As shown, the company had a positive working capital position and positive net asset in both years. The company also achieved net income of \$6,602,961 and \$11,709,178 in 2020 and 2021 respectively. The internal financial statements from January 1, 2022, thru August 31, 2022, show the facility had positive working capital and a negative equity position, with a net income to date of \$7,839,284. The negative equity position was due to accelerated depreciation which is a noncash expense associated with a buildout of the new surgery center in 2019. This accounting is on a cash basis and therefore does not count accounts receivable, and it is expected that when the year end 12/31/22 financials are presented on an accrual basis, they will have a positive equity position.

Attachment D presents the 2021 and 2022 certified financial statements for Trinity Health, the active parent of St. Joseph's Health, Inc. Trinity Health maintained a positive working capital position and net asset position. Trinity Health experienced an operating income of \$845,759,000 and (\$148,514,000) for 2021 and 2022, respectively. In fiscal year 2022, the estimated total operating revenue was \$19.9 Billion, resulting in a -.7% margin impact. The reason for the loss was contract labor resources, supply chain disruption, and COVID surges impacting volumes and labor costs. To offset future losses Trinity has focused on expedited cash reserves; clinical program optimization; access; revenue optimization; labor stabilization; non-labor expense reduction and focusing on administrative cost and support services.

#### Conclusion

The applicant has demonstrated the capability to proceed in a financially feasible manner.

## Attachments

BFA Attachment A	Organizational Chart (Membership Interest)
BFA Attachment B	St. Joseph's Hospital Health Center, Inc Certified (Fiscal Year July 31 thru June 30, 2020-2021. (Internal 5/31/2022)
BFA Attachment C	Specialists' One-Day Surgery Center, LLC - Certified 2020-2021 (Internal 8/31/2022)
BFA Attachment D	Trinity Health (2021 – 2022) Fiscal Year Certified Financials



**Project # 222011-B  
Flushing Endoscopy Center, LLC**

**Program:** Diagnostic and Treatment Center      **County:** Queens  
**Purpose:** Establishment and Construction      **Acknowledged:** September 8, 2022

**Executive Summary**

**Description**

Flushing Endoscopy Center, LLC (the Center), an existing Article 28 Diagnostic and Treatment Center (D&TC) at 136-02 Roosevelt Avenue, Flushing (Queens County) currently certified as a single-specialty (gastroenterology) freestanding ambulatory surgical center (FASC), is seeking approval to certify and construct a tri-single-specialty (gastroenterology, otolaryngology, and urology services) extension clinic to be located at 168 Centre Street (New York County), and to transfer a 38.65% membership interest from three members in the Center to two existing members, and four new members.

Upon approval of the proposed transaction, the new extension clinic will have four procedure rooms and will be named Soho Ambulatory Surgical Center (the "Soho Division"). The extension clinic will occupy 6,303 square feet of leased space in an existing building located at 168 Centre Street, New. The building is owned by Centre Court Holdings, LLC, an entity unrelated to the Center and its members.

Current and Proposed Membership Interest is as follows:

<b>Member</b>	<b>Current</b>	<b>Proposed</b>
Che-Nan Chuang, M.D.	16.67%	8.33%
King Chen Hon, M.D	19.70%	9.85%
Alan Yao, M.D.	40.91%	20.45%
Danny Chu, M.D.	11.36%	13.79%
Mark Chu, M.D.	11.36%	13.79%
Anthony Chan, D.O	0.00%	10.00 %
Alex Ky-Miyasaka, M.D	0.00%	10.00%
Anthony Ng, M.D.	0.00%	10.00%
Wallace Wang, M.D.	0.00%	3.79%
<b>Total</b>	<b>100.00%</b>	<b>100.00%</b>

Danny Chu, M.D., an existing member of the Center and existing Medical Director of the Flushing Division will serve as the Soho's Division's Medical Director.

The Center will have a transfer agreement with NYP Lower Manhattan Hospital 1.1 miles and 11 minutes away.

**OPCHSM Recommendation**  
 Contingent approval with an expiration of the operating certificate five years from the date of its issuance.

**Need Summary**  
 Approval of this project will increase access to outpatient gastroenterology, otolaryngology, and urology surgery services in New York County. The applicant projects 8,230 procedures in Year One and 8,395 in Year Three, with Medicaid at 36.64% and Charity Care at 2.01%.

**Program Summary**  
 The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3).

### Financial Summary

The Total Project Cost of \$3,452,058 will be funded via a construction loan of \$1,800,000, an equipment loan of \$675,000 with the remainder funded via the Center's and new members' cash. The purchase price for the 4 new members has already been paid and is being held in escrow pending approval of this project by the Public Health and Health Planning Council (PHHPC).

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$16,078,539	\$16,078,539
Expenses	<u>\$9,287,127</u>	<u>\$9,412,431</u>
Net Income	\$253,671	\$582,771

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

### **Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed construction loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed equipment loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
5. Submission of an Operating Agreement that is acceptable to the Department. [CSL]
6. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
7. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
8. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
9. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations, and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women, and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include a commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
10. Submission of a signed agreement with an outside, independent entity satisfactory to the Department to provide annual reports to DOH. Reports are due no later than April 1st for the prior year and are to be based upon the calendar year. Submission of annual reports will begin after the first full or, if greater or equal to six months after the date of certification, partial year of operation. Reports should include: a. Data displaying actual utilization including procedures; b. Data displaying the breakdown of visits by payor source; c. Data displaying the number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery; d. Data displaying the number of emergency transfers to a hospital; e. Data displaying the percentage of charity care provided; f. The number of nosocomial infections recorded during the year reported; g. A list of all efforts made to secure charity cases; and h. A description of the progress of contract negotiations with Medicaid managed care plans. [RNR]

### **Approval conditional upon:**

1. This project must be completed by **November 15, 2024**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **August 15, 2023**, and construction must be completed by **August 15, 2024**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section

710.10(a), if construction is not started on or before the approved start date this shall constitute abandonment of the approval. [PMU]

3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:  
[https://www.health.ny.gov/facilities/hospital/docs/hcs\\_access\\_form\\_new\\_clinics.p df](https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf). Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: [hospinfo@health.ny.gov](mailto:hospinfo@health.ny.gov) [HSP]
5. The submission of annual reports to the Department as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. [RNR]

Council Action Date

February 9, 2023

# Need Analysis

## Background

The service area is New York County. The population of New York County in 2020 was 1,694,251 and is projected to increase slightly to 1,709,958 by 2025. According to Data USA, in 2019, 95.3% of the population of New York County had health coverage as follows:

Employer Plans	52.8%
Medicaid	19.6%
Medicare	10.2%
Non-Group Plans	12.4%
Military or VA	0.305%

The number of projected procedures is 8,230 in Year One and 8,395 in Year Three with Medicaid at 36.64% and Charity Care at 2.01%. These projections are based on the current practices of participating surgeons. The applicant states that all of the procedures moving to this center are currently being performed in an office-based setting. The table below shows the projected payor source utilization for Years One and Three for just the proposed extension clinic.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Commercial FFS	2,670	32.44%	2,723	32.44%
Medicare FFS	618	7.51%	631	7.52%
Medicare MC	1,658	20.15%	1,691	20.14%
Medicaid MC	3,015	36.64%	3,076	36.64%
Private Pay	104	1.26%	106	1.26%
Charity Care	165	2.00%	169	2.00%

The center initially plans to obtain contracts with the following Medicaid Managed Care plans: Emblem, Fidelis, Health First, Metroplus, UHC Community Plan, VNS, and WellCare. The center will work collaboratively with local Federally Qualified Health Centers such as Charles B. Wang Community Health Center and NYS Community Care s Program to provide service to the under-insured in their service area. The center has developed a financial assistance policy with a sliding fee scale to be utilized when the center is operational. Flushing Endoscopy is current with their SPARCS reporting through September 2022.

The table below shows the number of patient visits for relevant ASCs in New York County for 2019 through 2021. The number of patient visits for 2020 was significantly impacted by COVID-19.

Specialty Type	Facility Name	Patient Visits		
		2019	2020	2021
Gastroenterology	Carnegie Hill Endo, Inc.	13,862	9,581	12,943
Gastroenterology/ Pain Management	East Side Endoscopy & Pain Management Center	8,812	6,038	9,269
Multi	Fifth Avenue Surgery Center	3,936	3,464	3,637
Multi	Fifth Avenue Surgery Center (opened 7/20/21)	N/A	N/A	1,452
Gastroenterology	Gramercy Park Digestive Disease Center	12,335	8,616	7,989
Gastroenterology	Gramercy Park DDC- Bennett Ave (opened 4/8/20)	N/A	2,122	4,898
Multi	Gramercy Surgery Center	4,851	3,521	4,580
Multi	Hudson Surgery Center (opened 1/13/22)	N/A	N/A	N/A

Gastroenterology	Kipps Bay Endoscopy Center	10,051	6,431	9,480
Gastroenterology	Liberty Endoscopy Center	6,568	4,154	4,954
Gastroenterology	Manhattan Endoscopy Center	12,298	8,122	9,875
Multi	Manhattan Surgery Center	6,326	4,091	4,799
Multi	Midtown Surgery Center	3,749	2,449	1,765
Multi	NY Center for Ambulatory Surgery (opened 12/13/19)	N/A	480	939
Multi	Surgicare of Manhattan, LLC	4,257	2,878	2,665
Multi	Surgicare of Westside (opened 12/16/20)	N/A	N/A	156
Gastroenterology	The Endoscopy Center of New York	14,758	9,907	13,421
Multi	The Derfner Foundation ASC (opened 2/22/22)	N/A	N/A	N/A
Gastroenterology	Upper West Side Endoscopy (opened 7/21/21)	N/A	N/A	1,201
Gastroenterology	West Side GI	17,894	10,348	11,401
<b>Total Visits</b>		<b>119,697</b>	<b>82,202</b>	<b>105,424</b>

#### Conclusion

Approval of this project will provide increased access to gastroenterology, otolaryngology, and urology surgery services in an outpatient setting for the residents of New York County. From a need perspective, approval is recommended for a limited period of five years.

## Program Analysis

### Program Description

Flushing Endoscopy Center, LLC, an existing single specialty (gastroenterology\_ freestanding Ambulatory Surgery Center (FASC) seeks approval to transfer 38.65% ownership interest from three (3) members to two (2) existing members and four (4) new members and certify and construct a three single specialties extension ASC with the specialties being gastroenterology, otolaryngology, and urology. The existing FASC is located at 136-02 Roosevelt Avenue in Flushing (Queens County). The extension clinic will be located at 168 Centre Street in New York (New York County).

<b>Proposed Operator</b>	Flushing Endoscopy Center, LLC
<b>Doing Business As</b>	Soho Ambulatory Surgical Center
<b>Site Address</b>	168 Centre Street New York, NY 10013 (New York County)
<b>Shift/Hours/Schedule</b>	Monday through Friday 7:30 am to 4:30 pm
<b>Approved Services</b>	Ambulatory Surgery-Single Specialty Gastroenterology Otolaryngology Urology
<b>Operating Rooms</b>	0
<b>Procedure Rooms</b>	4
<b>Staffing (1<sup>st</sup> Year/3<sup>rd</sup> Year)</b>	34.1 FTEs/34.1 FTEs
<b>Medical Director</b>	Danny Chu, MD
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	New York Presbyterian Lower Manhattan 1.1 miles/11minutes
<b>On-call Service</b>	Patients who require assistance during off-hours will engage the 24-hour answering service to reach the on-call surgeon during hours when the facility is closed

### Character and Competence

The proposed membership Flushing Endoscopy Center, LLC is provided in the chart below.

<b>Member Name/Title</b>	<b>Current Ownership</b>	<b>Proposed Ownership</b>
Che-Nan Chuang, M.D.	16.67%	8.33%
King Chen Hon, M.D	19.70%	9.85%
Alan Yao, M.D.	40.91%	20.45%
Danny Chu, M.D.	11.36%	13.79%
Mark Chu, M.D.	11.36%	13.79%
Anthony Chan, D.O**	0.00%	10.00 %
Alex Ky-Miyasaka, M.D**	0.00%	10.00%
Anthony Ng, M.D.**	0.00%	10.00%
Wallace Wang, M.D.**	0.00%	3.79%
<b>Total</b>	<b>100.00%</b>	<b>100.00%</b>

\*\*Members Subject to Character and Competence

**Dr. Anthony Chan** is a Gastroenterologist and Internist at Anthony Chan MD PC for 23 years. He is affiliated Ney York Presbyterian for 23 years. He received his medical degree from Philadelphia College of Osteopathic Medicine. He completed his Internal Medicine residency at Maimonides Medical Center. He completed his Gastroenterology fellowship at Guthrie Healthcare System. He is board certified in Internal Medicine with a sub-certification in Gastroenterology.

**Dr. Alex Ky-Miyasaka** is an Attending of Surgery at Mount Sinai Hospital for 22 years. He has been an Assistant Professor, Associate Professor, and Professor at Mount Sinai School of Medicine for nine (9) years. He has been a Medical Director at Mount Sinai Downtown Office for 11 years. He received his medical degree from SUNY Stony Brook. He completed his General Surgery residency at Lenox Hill Hospital. He completed his Colon and Rectal Surgery fellowship at Mount Sinai Icahn School of Medicine. He is board certified in Colon and Rectal Surgery.

**Dr. Anthony Ng** is an Assistant Attending Gastroenterologist at NYU Downtown Hospital for over 20 years. He received his medical degree from SUNY Health Science Center in Syracuse. He completed his Internal Medicine residency at Harvard Medical School. He completed his Gastroenterology fellowship at Mount Sinai Medical Center. He is board certified in Internal Medicine with a sub-certification in Gastroenterology.

**Dr Wallace Wang** is an Attending Physician at Downtown Gastroenterology Associates for five (5) years. He is and Attending Physician at New York Presbyterian Queens for five years. He is an Attending Physician at Mount Sinai Beth Israel for five years. He is an Assistant Attending Physician at New York Presbyterian Lower Manhattan Hospital and Weill Cornell Medical Center for seven (7) years. He is a Clinical Assistant Professor of Medicine at Weill Cornell Medical College for five years. He was a previous Assistant Professor of Clinical Medicine at Weill Cornell Medical College for over one (1) year. He was a Clinical Instructor of Medicine at Albany Medical College for one (1) year. He received his medical degree from New York Medical College School of Medicine. He completed his Internal Medicine residency at Albany Medical Center. He completed his Gastroenterology fellowship at New York Presbyterian Queens. He completed his Advanced Therapeutic Endoscopy fellowship at Mount Sinai Beth Israel. He is board certified in Internal Medicine with a sub-certification in Gastroenterology.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

### **Integration with Community Resources**

For those patients who do not identify a primary care provider (PCP), the Applicant will maintain a list of local primary care providers which it will refer any patient without a physician. The Applicant is committed to serving all persons in need without regard to race, sex, age, religion, creed, sexual orientation, source of payment, ability to pay, or other personal characteristic. The Applicant reports that the proposed budget projects that 2% of all cases will be for persons requiring charity care. The Applicant also reports that a sliding scale fee will be applied to the extension clinic. The Proposed extension clinic is projected to provide approximately 37% Medicaid and Charity Care utilization to the underserved patient in the area. The main site Center has worked to become in-network with many Medicaid Managed Care plans including Emblem Medicaid, Fidelis Medicaid, Healthfirst Medicaid, Metroplus Medicaid, UHC Community Plan Medicaid, VNS Medicaid and Wellcare Medicaid. They are currently pursuing additional partnerships with the Charles B. Wang Community Health Center, a Federally Qualified Health Center, and will seek to partner the extension clinic with the FQHC as well. The main site receives many referrals from Charles B.

Wang however, the patients must travel many miles to receive services at the main site and once the extension clinic is operation it will reduce this burden on the patients.

The Center intends on using an Electronic Medical Record (EMR) program. The clinic will consider joining a RHIO and/or the Health Information Exchange when it commences operations. The Applicant will join an Accountable Care Organization (ACO) as the physicians who will be practicing at the extension clinic are already members of an ACO.

#### Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3).

## Financial Analysis

### Total Project Cost and Financing

Total project costs for renovations, equipment and fees are estimated at \$3,452,058 with the following allocation:

Renovation & Demolition	\$2,029,300
Design Contingency	202,930
Construction Contingency	202,930
Architect/Engineering Fees	35,360
Other Fees	15,640
Movable Equipment	819,626
Telecommunications	10,400
Financing Costs	25,000
Interim Interest Expense	90,000
CON Fee	2,000
Additional Processing Fee	18,872
<b>Total Project Cost</b>	<b>\$3,452,058</b>

Total project costs of \$3,452,058 will be met via a construction loan of \$1,800,000, a \$675,000 equipment loan and the remaining \$977,058 will be funded via the Center's existing cash resources and via the cash resources of the new members of the Center. BFA Attachments A, the Net Worth Statements of the new members, and BFA attachment C, the Center's Internal Financial Statement as of September 30, 2022, both reveal sufficient liquid resources to cover the equity requirement for the construction. Chase for Business, a lending institution, has provided a letter of interest for both the construction and equipment loan at the stated terms at 7 years Treasury Constant Maturity Rate (TCM) +3%, for a seven-year term and a payout period of 20 years;

### Operating Budget

The applicant has submitted their current year (2021) enterprise operating budget in 2022 dollars consisting of all services provided by Flushing Endoscopy Center, LLC, for the first and third years after occupancy in the new facility.

	Current Year <u>2021</u>		Year One <u>2024</u>		Year Three <u>2026</u>	
	Per <u>Procedure</u>	<u>Total</u>	Per <u>Procedure</u>	<u>Total</u>	Per <u>Procedure</u>	<u>Total</u>
<b>Revenues:</b>						
Medicaid FFS		\$0		\$0		\$0
Medicaid MC	\$533.52	\$2,098,867	\$708.10	\$4,747,126	\$708.10	\$4,747,126
Medicare FFS	\$409.77	\$343,794	\$786.33	\$1,124,446	\$786.33	\$1,124,446
Medicare MC	\$475.97	\$1,166,603	\$797.82	\$3,332,474	\$797.82	\$3,332,474
Commercial FFS	\$733.77	\$3,041,479	\$926.65	\$6,318,815	\$926.65	\$6,318,815
Commercial MC	\$596.20	\$106,720	\$813.73	\$248,188	\$813.73	\$248,188
Private Pay	\$1,577.85	\$214,588	\$1,325.39	\$307,490	\$1,325.39	\$307,490
<b>Total Revenues</b>		<b>\$6,972,051</b>		<b>\$16,078,539</b>		<b>\$16,078,539</b>
<b>Expenses:</b>						
Operating	\$241.12	\$2,817,935	\$391.39	\$7,795,414	\$397.03	\$7,907,726
Capital	\$53.04	\$619,872	\$74.90	\$1,491,713	\$75.55	\$1,504,705
<b>Total Expenses</b>	<b>\$294.16</b>	<b>\$3,437,807</b>	<b>\$466.29</b>	<b>\$9,287,127</b>	<b>\$472.58</b>	<b>\$9,412,431</b>
<b>Net Income (Loss)</b>		<b>\$3,534,244</b>		<b>\$6,791,412</b>		<b>\$6,666,108</b>
Procedures		11,687		19,917		19,917
Cost/Procedure		\$302.41		\$466.29		\$472.58

Utilization by payor source for the current year and projected first, and third years is distributed as follows:

	Current Year 2021	Year One 2024	Year Three 2026
Medicaid MC	33.66%	33.66%	33.66%
Medicare FFS	7.18%	7.18%	7.18%
Medicare MC	20.97%	20.97%	20.97%
Commercial FFS	35.47%	34.24%	34.24%
Commercial MC	1.53%	1.53%	1.53%
Private Pay	1.16%	1.16%	1.16%
Charity Care	0.03%	1.26%	1.26%
Total Utilization	100.00%	100.00%	100.00%

The following is noted with respect to the submitted budget:

- The current year reflects the main site only (Flushing Division).
- Projected Years 1 & 3 reflect the main site and the proposed extension clinic
- The Center expects to receive Charity Care referrals to the Extension Clinic from the Charles B. Wang Community Clinic and the Gouverneur Clinic, both of which are located two blocks away from the proposed Extension Clinic site.
- The projected utilization is based on the experience of the participating physicians and their estimate of the number of cases they will bring to the center. The eight surgeons who will initially perform cases at the Soho Division extension clinic have provided letters of interest demonstrating their commitment to perform a total of 8,230 procedures in the first year of project implementation. All these additional projected procedures are currently being performed in the surgeons' private, office-based surgical practices, which are located within walking distance of the Soho Division; none of the projected procedures are currently being performed in hospitals or other FASCs.
- The operating expenses are based on the experience of the participating provider, as well as the projections and experience of other FASCs in New York State.
- Reimbursement rates reflect current and projected Federal and State government rates, with private payers reflecting adjustments based on experience in the region.
- Operating revenues are based on the experience of the participating providers, in accordance with the expected collection rate of the Center.

#### Purchase and Sale Agreement

The applicant has submitted an executed Purchase and Sale Agreement for the proposed members, the terms of which are summarized below:

Date:	12/21/2021
Company:	Flushing Endoscopy Center, LLC
Seller:	Danny Chu M.D. (2.50%), Mark Chu M.D. (2.50%)
Purchaser:	Wallace Wang M.D.
Purchase Price:	\$345,000
Payment of Purchase Price:	Upon PHHPC approval purchase agreement

BFA Attachment A, the net worth statements of the new members of the Center reveal Dr. Wang has sufficient resources available to fund the purchase price of the respective membership interest of the sellers.

## Lease Agreement

Premises:	6,303 square feet located at 168 Centre Street, New York, NY 10013; 6 <sup>th</sup> Floor
Landlord:	Center Court Holdings, LLC
Tenant:	Flushing Endoscopy Center, LLC
Term:	15 years with a five-year renewal option
Rent:	\$412,500 in Year 1 incrementing 3% in successive years to Year 15 \$623,928
Provisions:	Tenant is responsible for insurance, maintenance, repairs, utilities, and real estate taxes.

The applicant has submitted an affidavit that the lease is an arm's length agreement, as there is a no relationship between the landlord and the tenant. The applicant has submitted letters from two New York realtors attesting to the rent reasonableness, which were based on the total square footage and the completion of construction of the space.

## Capability and Feasibility

Total project costs of \$3,452,058 will be met via a construction loan of \$1,800,000, a \$675,000 equipment loan and the remaining \$977,058 will be funded via the Center's existing cash resources and via the cash resources of the new members of the Center. BFA Attachments A, the Net Worth Statements of the new members, and BFA attachment C, the Center's Internal Financial Statement as of September 30, 2022, both reveal sufficient liquid resources to cover the equity requirement for the construction. Chase for Business, a lending institution, has provided a letter of interest for both the construction and equipment loan at the stated terms at 7 years Treasury Constant Maturity Rate (TCM) +3%, for a seven-year term and a payout period of 20 years;

BFA Attachment B shows Flushing Endoscopy Center's Certified Financial Statements as of December 31, 2021, and indicates that the entity had a positive working capital position, positive net asset position, and a net income of \$3,660,352. The Internal Financial Statement as of September 30, 2022 show that the Center continued to have positive working capital, a positive net asset position, and a net income of \$2,173,296.

## Conclusion

The applicant has demonstrated the capability to proceed in a financially feasible manner.

## Attachments

BHFP Attachment	Map
BFA Attachment A	Personal Net Worth Statements of the new members of Flushing Endoscopy Center, LLC
BFA Attachment B	2021 Certified Financial Statements and September 2022 Internal Financial Statements of Flushing Endoscopy Center, LLC



Project # 222024-B  
787 Ortho ASC LLC d/b/a Peakpoint Midtown West ASC

**Program:** Diagnostic and Treatment Center      **County:** New York  
**Purpose:** Establishment and Construction      **Acknowledged:** September 13, 2022

**Executive Summary**

**Description**

787 Ortho ASC, LLC d/b/a Peakpoint Midtown West ASC (Peakpoint Midtown West), a New York limited liability company, requests approval to establish and construct a multi-specialty, Article 28 freestanding ambulatory surgery center (FASC) to be located at 787 11th Avenue, New York (New York County). The FASC will specialize in Orthopedic, Neuro and breast surgeries. The FASC will be housed in approximately 18,000 gross sq. ft. of space on the sixth floor of an existing eight story, multi-use building that will be renovated by the applicant. The applicant will sublease the space from Icahn School of Medicine at Mount Sinai. The FASC will consist of two operating rooms and two procedure rooms. Upon approval, the FASC will be known as Peakpoint Midtown West ASC.

Ownership of the operations is as follows:

<b>Peakpoint Midtown West Members</b>	<b>% Operating Entity</b>
<b>Individual Members</b>	<b>43.20%</b>
Edward Adler, M.D.	2.45%
Joseph Bax, M.D.	2.45%
Stephanie Bernik, M.D.	2.45%
Paul Cagle, M.D.	2.45%
Saad Chaudhary, M.D.	2.45%
Darwin Chen, M.D.	2.00%
Samuel Cho, M.D.	2.45%
Leesa Galatz, M.D.	2.45%
James Gladstone, M.D.	2.45%

Brett Hayden, M.D.	2.45%
Kazimierz Komperda, M.D.	2.45%
Nolan Maher, M.D.	2.00%
Calin Moucha, M.D.	2.45%
Bradford Parsons, M.D.	2.45%
Chanland Roonprapunt, M.D.	2.45%
Jeremy Steinberger, M.D.	2.45%
Sherwin Su, M.D.	2.45%
Douglas Unis, M.D.	2.45%
<b>Peakpoint Partners, LLC (ownership below)</b>	<b>56.80%</b>
William Mulhall	4.60%
Sarah Sanford	0.83%
Matthew Searles	6.67%
Richard Searles	4.60%
Mt. Sinai Ambulatory Ventures, Inc.	40.10%
<b>TOTAL</b>	<b>100%</b>

Dr. James Gladstone, who is Board Certified in orthopedic surgery, will be the ASC's Medical Director. Mount Sinai Hospital will have a Board seat but will not have management authority or an active role in the operations of the proposed ASC. The applicant has a Transfer Agreement for backup and emergency services with St. Luke's-Roosevelt Hospital ASC d/b/a Mount Sinai West, located 0.4 miles (5 minutes travel time) from the proposed ASC.

The physicians who will be using the ASC have provided letters demonstrating their commitment. Based on the volume estimates in

these letters, 787 Ortho ASC, LLC expects to perform 2,544 procedures during the first year of operation.

#### OPCHSM Recommendation

Contingent approval with an expiration of the operating certificate five years from the date of its issuance.

#### Need Summary

The applicant projects 2,544 procedures in Year One and 2,699 in Year Three, with Medicaid at 3.0% and Charity Care at 2.0%.

#### Program Summary

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3)(b).

#### Financial Summary

The total project costs of \$15,131,060 will be funded via \$1,932,620 in members' equity (\$49,700 in cash and \$1,882,920 in Landlord equity through tenant allowance), a 5-year equipment loan for \$1,200,000 at 7.72% interest (3.72% swap rate plus 4.00% interest) and a ten-year self-amortizing mortgage loan with interest of 6% for \$11,998,440. Valley National Bank has provided a letter of interest for the mortgage loan and Dext Capital has provided a letter of interest for the equipment line of credit.

Budget:	<u>Year One</u> <u>2023</u>	<u>Year Three</u> <u>2025</u>
Revenues	\$17,371,813	\$18,421,260
Expenses:	<u>16,722,299</u>	<u>17,240,344</u>
Gain/(Loss)	\$659,514	\$1,180,916

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed construction loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed sublease agreement, acceptable to the Department of Health. [BFA]
4. Submission of an executed Administrative Services Agreement, acceptable to the Department of Health. [BFA]
5. Submission of an executed equipment loan commitment, acceptable to the Department of Health. [BFA].
6. Submission of a photocopy of the amended and executed copy of the Master Lease between Georgetown Eleventh Avenue Owners, LLC and the ICAHN School of Medicine at Mr. Sinai, acceptable to the Department. [CSL]
7. Submission of a photocopy of the Sub-Lease Agreement between the ICAHN School of Medicine at Mount Sinai and 787 Ortho ASC, LLC, acceptable to the Department [CSL]
8. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations, and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women, and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include a commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
9. Submission of a signed agreement with an outside, independent entity satisfactory to the Department to provide annual reports to DOH. Reports are due no later than April 1st for the prior year and are to be based upon the calendar year. Submission of annual reports will begin after the first full or, if greater or equal to six months after the date of certification, partial year of operation. Reports should include:
  - a. Data displaying actual utilization including procedures;
  - b. Data displaying the breakdown of visits by payor source;
  - c. Data displaying the number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
  - d. Data displaying the number of emergency transfers to a hospital;
  - e. Data displaying the percentage of charity care provided;
  - f. The number of nosocomial infections recorded during the year reported;
  - g. A list of all efforts made to secure charity cases; and
  - h. A description of the progress of contract negotiations with Medicaid managed care plans. [RNR]
10. Submission of an executed transfer and affiliation agreement, acceptable to the Department. [HSP]
11. The submission of Design Development and State Hospital Code (SHC) Drawings, as described in NYSDOH BAER Drawing Submission Guidelines DSG-1.0 Required Schematic Design (SD) and Design Development (DD) Drawings, and 3.38 LSC Chapter 38 Business Occupancies Public Use, for review and approval. [DAS]

**Approval conditional upon:**

1. This project must be completed by **September 1, 2024**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **August 1, 2023**, and construction must be completed by **June 1, 2024**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a) if construction is not started on or before the approved start date this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:  
[https://www.health.ny.gov/facilities/hospitals/docs/hcs\\_access\\_forms\\_new\\_clinics.pdf](https://www.health.ny.gov/facilities/hospitals/docs/hcs_access_forms_new_clinics.pdf). Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: [hospinfo@health.ny.gov](mailto:hospinfo@health.ny.gov) [HSP]
6. The submission of annual reports to the Department as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. [RNR]

Council Action Date  
February 9, 2023

# Need Analysis

## Background

The service area is New York County. The population of New York County in 2020 was 1,694,251 and is projected to increase slightly to 1,709,958 by 2025. According to Data USA, in 2019, 95.3% of the population of New York County had health coverage as follows:

Employer Plans	52.8%
Medicaid	19.6%
Medicare	10.2%
Non-Group Plans	12.4%
Military or VA	0.305%

The applicant projects 2,544 procedures in Year One and 2,699 in Year Three, with Medicaid at 3.0% and Charity Care at 2.0%. These projections are based on the current practices of participating surgeons. The applicant states that 90.8% of the procedures moving to this center are currently being performed in a hospital and 9.2% are being performed in an ASC setting. According to the applicant, there are 18 physicians interested in performing procedures at the proposed center. The table below shows the projected payor mix for Years One and Three.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Medicaid MC	76	3.00%	81	3.00%
Medicare FFS	254	10.00%	270	10.00%
Medicare MC	51	2.00%	54	2.00%
Commercial FFS	865	34.00%	918	34.00%
Commercial MC	1,145	45.00%	1,215	45.00%
Other	102	4.00%	108	4.00%
Charity Care	51	2.00%	54	2.00%

The center initially plans to obtain contracts with the following Medicaid Managed Care plans: Fidelis, Health First, AmicaCare, United Community Plan, and Empire HealthPlus. The center will work collaboratively with local Federally Qualified Health Centers such as the Institute for Family Health and Community Healthcare Network to provide service to the under-insured in their service area. The center has developed a financial assistance policy with a sliding fee scale to be utilized when the center is operational.

The table below shows the number of patient visits for relevant ASCs in New York County for 2019 through 2021. The number of patient visits for 2020 was significantly impacted by COVID-19.

Specialty Type	Facility Name	Patient Visits		
		2019	2020	2021
Multi	Fifth Avenue Surgery Center	3,936	3,464	3,637
Multi	Fifth Avenue Surgery Center (opened 7/20/21)	N/A	N/A	1,452
Multi	Gramercy Surgery Center	4,851	3,521	4,580
Orthopedics	HSS ASC of Manhattan	3,603	2,646	3,217
Orthopedics	HSS West Side ASC (opened 7/16/19)	N/A	1,593	1,845
Multi	Hudson Surgery Center (opened 1/13/22)	N/A	N/A	N/A
Multi	Manhattan Surgery Center	6,326	4,091	4,799
Multi	Midtown Surgery Center	3,749	2,449	1,765
Multi	NY Center for Ambulatory Surgery (opened 12/13/19)	N/A	480	939
Multi	Surgicare of Manhattan, LLC	4,257	2,878	2,665
Multi	Surgicare of Westside (opened 12/16/20)	N/A	N/A	156
Multi	The Derfner Foundation ASC (opened 2/22/22)	N/A	N/A	N/A
<b>Total Visits</b>		<b>26,722</b>	<b>21,122</b>	<b>25,055</b>

Conclusion

Approval of this project will provide increased access to orthopedic surgery, neurosurgery, and breast surgery in an outpatient setting for the residents of New York County.

<b>Program Analysis</b>
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Program Description

787 Ortho ASC, LLC, d/b/a Peakpoint Midtown West ASC, an existing New York State limited liability company, seeks approval to establish and construct a multispecialty freestanding ambulatory surgery center specializing in Orthopedic Surgery, Neurosurgery, and Breast Surgery to be located at 787 11<sup>th</sup> Avenue in New York (New York County). Upon approval of the project, the name of the facility will be Peakpoint Midtown West.

<b>Proposed Operator</b>	787 Ortho SC, LLC
<b>Doing Business As</b>	Peakpoint Midtown West ASC
<b>Site Address</b>	787 11 <sup>th</sup> Avenue, New York, New York 10019 (New York County)
<b>Surgical Specialties</b>	Multispecialty ASC Orthopedic Surgery Neurosurgery Breast Surgery
<b>Operating Rooms</b>	2
<b>Procedure Rooms</b>	2
<b>Hours of Operation</b>	Thursday and Friday 7:00 am to 5:00pm
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	27.15 FTEs / 27.15 FTEs
<b>Medical Director(s)</b>	James Gladstone, MD
<b>Emergency, In-Patient, and Backup Support Services Agreement and Distance</b>	Is expected to be provided by: Mount Sinai West 0.4 Miles / 5 minutes
<b>On-call service</b>	Patients who require assistance during off-hours will engage a 24-hour a day seven (7) day a week physician on-call service

Character and Competence

The ownership of 787 Ortho ASC, LLC is:

Member Name	Proposed Interest
Edward Adler, M.D.	2.45%
Joseph Bax, M.D.	2.45%
Stephanie Bernik, M.D.	2.45%
Paul Cagel, M.D.	2.45%
Saad Chaundry, M.D.	2.45%
Darwin Chen, M.D.	2.00%
Samuel Cho, M.D.	2.45%
Leesa Galatz, M.D.	2.45%
James Gladstone, M.D.	2.45%
Brett Hayden, M.D.	2.45%
Kazimierz Komperda, M.D.	2.45%
James Lin, M.D.	1.00%
Nolan Mahar, M.D.	2.00%

Calin Moucha, M.D.	2.45%
Bradford Parsons, M.D.	2.45%
Chanland Roonprapunt, M.D.	2.45%
Jeremy Steinberger, M.D.	2.45%
Sherwin Su, M.D.	2.45%
Douglas Unis, M.D.	2.45%
<b>Peakpoint Partners, LLC</b> Mount Sinai Ambulatory Ventures (39.39%) William Mulhall (4.52%) Sarah Sanford (0.82%) Matthew Searles (6.55%) Richard Searles (4.52%)	55.80%
<b>TOTAL</b>	<b>100%</b>

Mount Sinai Ambulatory Ventures, Inc. (MSAV) is an existing not for profit corporation whose sole passive member is the Mount Sinai Health System. MSAV has the following Board Members/Officers:

<i>Kelly Cassano</i>	<i>Board Member</i>
<i>Jodi Cohen</i>	<i>Board Member</i>
<i>Vicki LoPachin, M.D.</i>	<i>Board Member</i>
<i>Michael Pastier</i>	<i>Board Member</i>
<i>Denise Prince</i>	<i>Board Member</i>
<i>Brent Stackhouse</i>	<i>Board Member</i>

The managing members of Peakpoint Midtown West are:

*Richard Searles*  
*William Mulhall*  
*Sarah Sanford*

**Dr. Edward Adler** is a Physician and Partner of Madison Avenue Orthopedic Associates for 22 years. He is a Physician and Faculty Member of the Icahn School of Medicine for three (3) years. He was a Physician and Faculty Member of the NYU School of Medicine. He received his medical degree from Rutgers. He completed his General Surgery residency and Orthopedic Surgery fellowship at University Hospital. He is board certified in Orthopedic Surgery.

**Jodi Cohen- Ansari** is the System Senior Vice President of Business and Strategic Planning at Mount Sinai Health System for 14 years. She was the previous Vice President, Senior Director, and Director of Business Planning. She participates in the decision-making process with System Leadership through presentation of relevant financial and market analysis related to multimillion clinical investment and evaluates managed care strategy. She prepares business plans to evaluate physician recruitment and program development through collaboration with Hospital and Medical School/Departmental leadership. She created compensation structure relative to market data, MD experience, and productivity including individual and group models. She plans and tracks revenue improvement initiatives, reviews and approves and monitors hospital budgetary support of \$560M. She was the Vice President of Finance and Clinical Services at St. Vincent's for seven (7) years. She was the previous Administrative Director of Finance and Manager of Finance/Business Planning. She managed the development of \$550M hospital operating budget and worked with the Vice President of Budget and Reimbursement and directed departmental budgets. She led in the development of zero-based budgeting and institution wide Performance Initiative Committee charged with identifying cost reductions and revenue enhancements. She was a Senior Associate at Pricewaterhousecoopers, LLP for two (2) years, She performed revenue cycle diagnostics, accounts receivable reduction, interim managerial services, and system implementation. She facilitated problem resolution and implementation of recommended policy and procedure enhancements. She was the Assistant Manager of Patient Financial Services at Memorial Sloan Kettering for five (5) years. She provided leadership and operational management of the registration and cashiering units, planned and rolled out policies related to managed care patients, and monitored quality of services.

**Dr. Joseph Bax** is an Interventional Physiatrist at Mount Sinai Hospital for four (4) years. He was an Interventional Physiatrist at Comprehensive Pain Management Associates for over three (3) years. He was an Interventional Physiatrist at Korunda Pain Management for over two (2) years. He was an Interventional Physiatrist at Niagara Orthopedics for five (5) months. He received his medical degree from Chicago College of Osteopathic Medicine. He completed his Physical Medicine and Rehabilitation internship at Johns Hopkins University. He completed his Pain Management and Palliative Care fellowship at Beth Israel Medical Center. He is board certified in Physical Medicine and Rehabilitation with two sub-specialties, Interventional Pain Management and Hospice & Palliative Medicine.

**Dr. Stephanie Bernik** is the Chief of Breast Surgery at Mount Sinai West for four (4) years. She was the Chief of Surgical Oncology for eight (8) years at Lenox Hill Hospital. She was the Chief of Breast Surgery at The St. Vincent Comprehensive Cancer Center for five (5) years. She was the Associate Chief of Breast at The St. Vincent Comprehensive Cancer Center for one (1) year. She was an Attending Surgeon in Breast Oncology for 10 years at The St. Vincent Comprehensive Cancer Center. She received her medical degree from Yale University School of Medicine. She completed her General Surgery and Breast Surgery residency at St. Vincent's Hospital and Medical Center. She completed her Breast Surgery fellowship at Memorial Sloan Kettering Cancer Center. She is board certified in General Surgery.

**Dr. Paul Cagle** is an Associate Professor in the Orthopedic Surgery Department at Mount Sinai Hospital for five (5) years. He was an Assistant Professor in Orthopedic Surgery for three (3) years at Southern Illinois University School of Medicine. He completed his medical degree at Loyola University School of Medicine. He completed his Orthopedic residency at University of Minnesota. He completed his Shoulder and Elbow fellowship at Mount Sinai Hospital.

**Dr. Kelly Cassano** is the Chief Executive Officer of the Mount Sinai Doctors Faculty Practice for over one (1) year. She is the Senior Vice President of Ambulatory Operations for the Mount Sinai Health Systems for two (2) years. She is the Dean of Clinical Affairs at the Icahn School of Medicine for eight (8) years. She was the Chief of Ambulatory Surgery at Mount Sinai Downtown for six (6) years. She was the Senior Associate Dean of Clinical Affairs at the Icahn School of Medicine for three (3) years. She is an Internist at Mount Sinai Doctors for five (5) years. She is the Medical Director of Mount Sinai Doctors Downtown Union Square for eight (8) years. She was an Internist at Mount Sinai Doctors West Park Medical Group for eight (8) years. She was the Senior Medical Director at Continuum Medical Group for two (2) years. She was the Medical Director of West Park Medical Group for 14 years. She was the Chief Liaison at Beth Israel for two (2) years. She was an Internist at Daytop Village for five (5) years. She received her medical degree from the University of New England College of Osteopathic Medicine. She completed her Internal Medicine residency at St. Vincent's Hospital.

**Dr. Saad Chaudhary** is an Associate Professor in Orthopedic Surgery at the Mount Sinai Health System for two (2) years. He was an Assistant Professor in Orthopedic Surgery at the Mount Sinai Health System for six (6) years. He was an Assistant Professor in Orthopedic Surgery at Rutgers New Jersey Medical School for five (5) years. He was an Attending Spinal Surgeon for one (1) year at Orthopedics Institute Oklahoma City. He received his medical degree from Tufts University. He completed his Orthopedic Surgery residency at Rutgers New Jersey Medical School. He completed his AOSpine and Spine Surgery fellowship at Cleveland Clinic. He is board certified in Orthopedics.

**Dr. Darwin Chen** is an Associate Professor at The Mount Sinai Hospital for three (3) years. He was previously an Assistant Professor for seven (7) years. He is an Attending Physician at Mount Sinai South for two (2) years. He was an Attending Physician at Elmhurst Hospital Center for one (1) year. He was a Clinical Instructor at Rush University for one (1) year. He received his medical degree at Columbia University College of Physician and Surgeons. He completed his Orthopedic residency at Mount Sinai Hospital. He completed his Traveling Hip Surgery fellowship at St. John's Health Center, Washington University, Schulthess Klinik, and Inselspital. He completed his Adult Reconstruction and Joint Replacement fellowship at Rush University Medical Center.

**Dr. Samuel Cho** is a Professor at the Icahn School of Medicine at Mount Sinai in the Department of Orthopedics and Neurosurgery for 12 years and nine (9) years respectively. He is the Director of the Spinal Surgery Fellowship at the Icahn School of Medicine for five (5) years. He is Didactic Faculty of the Graduate School of Biomedical Sciences at Mount Sinai for four (4) years. He is an Attending Spinal

Surgeon in Orthopedic Surgery at Mount Sinai Hospital for 12 years. He is the Chief of Spine Surgery in Orthopedic and Neurosurgery for five (5) years. He received his medical degree from the Washington University School of Medicine. He completed his General Surgery and Orthopedic Surgery residency at Columbia University Medical Center. He completed his Adult and Pediatric Spinal Surgery fellowship at Washington University Medical Center. He is board certified in Orthopedic Surgery.

**Dr. Leesa Galatz** is a Consultant Physician for Shoulder and Elbow Surgery at John Cochrane Veteran's Administration for 23 years. She is the Professor and Systems Chair of Shoulder and Elbow Surgery at Icahn School of Medicine for seven (7) years. She was an Instructor in the Department of Orthopedic Surgery at the Washington University School of Medicine for three (3) years. She was an Assistant Professor and Professor in the Department of Surgery at Barnes Jewish Hospital for seven (7) years. She received her medical degree from George Washington School of Medicine in Washington DC. She completed her residency in Orthopedic Surgery at George Washington University Hospital. She completed her fellowship at the University of Pennsylvania. She is board certified in Orthopedic Surgery.

**Dr. James Gladstone** is the proposed Medical Director. He is an Attending Physician and Chief of the Division of Sports Medicine in the Department of Orthopedic Surgery of the Mount Sinai Health System for 26 years. He is an Associate Professor at the Icahn School of Medicine at Mount Sinai for 17 years. He was previously at Assistant Professor for nine (9) years. He received his medical degree from Tufts University School of Medicine. He completed his Orthopedic Surgery residency at The New York Orthopedic Hospital. He completed his Sports Medicine fellowship at the American Sports Medicine Institute. He is board certified in Orthopedic Surgery with a sub-specialty in Sports Medicine.

**Dr. Brett Hayden** is an Assistant Professor in the Department of Orthopedics at Icahn School of Medicine at Mount Sinai for three (3) years. He is received his medical degree from Albany Medical Center in 2013. He completed his Orthopedic Surgery residency at Tuft University. He completed his Adult Reconstructive fellowship at Brigham and Women's Hospital. He completed his Musculoskeletal Oncology fellowship at UT Health Sciences.

**Dr. James Lin** is an Assistant Professor of Orthopedic Surgery in The Mount Sinai Spine center for three (3) years. He received his medical degree from Mount Sinai School of Medicine in 2012. He completed his Orthopedic Surgery residency at Columbia University Medical Center. He completed his Adult and Pediatric Comprehensive Spine fellowship at The Spine Hospital at Columbia University Medical Center.

**Dr. Kazimierz Komperda** is the Assistant Professor of Orthopedic Surgery at Mount Sinai for four (4) years. He was an Assistant Surgeon at Congress Orthopedic Associates for six (6) months. He was a per-diem Orthopedist at Main Line Health Orthopedics for 10 months. He received his medical degree from the University of Pennsylvania. He completed his General Surgery and Orthopedic Surgery residency at Temple University. He completed his Sports Medicine fellowship at Congress Orthopedic Associates. He is board certified in Orthopedic Surgery.

**Dr. Vicki LoPachin** is the Chief Medical Officer and Senior Vice President of Mount Sinai Health System for nine (9) years. She was the previous Medical Director of North Shore University Hospital for five (5) years. She was an Internal Medicine Physician in private practice for 10 years. She is an Assistant Professor at Mount Sinai School of Medicine for eight (8) years. She was an Assistant Professor at Hofstra North Shore LIJ School of Medicine for three (3) years. She was an Assistant Clinical Professor at the Mount Sinai School of Medicine for four (4) years. She was a Clinical Instructor at Mount Sinai School of Medicine for seven (7) years. She is an Attending Physician at Mount Sinai for 25 years. She was an Attending Physician at North Shore University Hospital for six (6) years. She was an Attending Physician at Jewish Home and Hospital for 11 years. She received her medical degree from SUNY Stony Brook. She completed her Internal Medicine residency at Mount Sinai Hospital. She is board certified in Internal Medicine. Dr. LoPachin discloses membership interest in the following healthcare facilities:

<i>Carnegie Hill Endoscopy</i>	<i>07/2017-present</i>
<i>South Brooklyn Endoscopy Center</i>	<i>07/2017-present</i>
<i>East Side Endoscopy</i>	<i>07/2017-present</i>
<i>Liberty Endoscopy Center</i>	<i>07/2017-present</i>
<i>Northern Westchester Facility Project</i>	<i>12/2018-present</i>
<i>Manhattan Surgery Center</i>	<i>07/2017-present</i>

West Side GI  
The Endoscopy Center of New York

07/2017-present  
12/2017-present

**Dr. Nolan Maher** is the Assistant Professor of Adult Reconstruction Surgery for over two (2) years. He completed his medical degree at Loyola University Chicago Stritch School of Medicine. He completed his Orthopedic Surgery residency at Mount Sinai Hospital. He completed his Adult Reconstruction Surgery fellowship at NYU Insall Scott Kelly Institute. He is board eligible.

**Dr. Calin Moucha** is the System Chief of Joint Replacement Surgery in the Department of Orthopedic Surgery at Mount Sinai for two (2) years. He is the Chief of the Division of Adult Reconstruction and Joint Replacement at Department of Orthopedic Surgery at Mount Sinai for three (3) years. He has previously been an Assistant Professor and Associate Professor at the Icahn School of Medicine for 13 years. He is the current Professor of the University at the Icahn School of Medicine. He was the previous Chief in the Division of Joint Replacement at the University of Medicine and Dentistry of New Jersey. He was the Assistant Professor at the University of Medicine and Dentistry of New Jersey for six (6) years. He received his medical degree from Mount Sinai School of Medicine. He completed his General Surgery and Orthopedic Surgery residency at Roosevelt Hospital Center. He completed his Orthopedic Oncology Service residency at Memorial Sloan-Kettering Cancer Center. He completed his Orthopedic Sports Surgery residency at Beth Israel Medical Center. He completed his Pediatric Orthopedic Surgery Service at the Alfred I. duPont Hospital for Children. He is board certified in Orthopedic Surgery.

**William Mulhall** is a Partner at Merritt Healthcare Holdings, LLC for 19 years. He is responsible for all clinical and operational activities of the organization. His areas of focus include facility design, development and construction, accreditation, clinical operations, regulatory compliance, equipment planning, staffing, and policy development. He was the Previous Director of Nursing of Wilton Surgery Center for five (5) years. He was responsible for managing, directing, and supervising all peri-anesthesia nursing and ancillary clinical services including central processing, materials management, and radiology services. He is responsible for drafting, implementing, and enforcing all standard operating procedures in conjunction with the Facility Administrator, staffing, and hiring of all clinical personnel, oversight, and maintenance of Quality Assessment, and Performance Improvement. He was the Chief Procedure Nurse of Pain Management Associates of Connecticut for three (3) years. He was a Special Care Unit Staff Nurse, Charge Nurse, and Cardiovascular Suite Nurse at The Stamford Hospital for two (2) years. He provided daily nursing care to patients on a monitored 20 bed cardio-respiratory/surgical step-down unit. He was responsible for staffing, shift coordination, delegation of duties to ancillary staff members, and interaction and coordination with interdisciplinary team members. He was the Operations Manager, Director of Volunteers and Director of Operation of Stamford EMS for six (6) years. He managed and directed all operations staff and functions of a 60 employee, 50 volunteer not for profit and regional emergency medical service serving a population of 120,000. Mr. Mulhall discloses ownership interest in the following healthcare facilities:

<i>River Valley ASC, LLC</i>	<i>2012-2016</i>
<i>Surgical Center of Connecticut, LLC</i>	<i>2013-2016</i>
<i>Western Connecticut Orthopedic Surgical Center</i>	<i>2013-2017</i>
<i>Ellicott City ASC</i>	<i>2013-2017</i>
<i>Bloomfield ASC LLC</i>	<i>2015-2021</i>
<i>Summer Street ASC LLC</i>	<i>2015-2021</i>
<i>Guilford Surgery Center</i>	<i>2015-present</i>
<i>Waterbury Surgery Center</i>	<i>2016-2021</i>
<i>Orthopedic Specialty Surgery Center</i>	<i>2018-present</i>
<i>Northern Westchester Facility Project LLC</i>	<i>2019-present</i>
<i>UWS ASC LLC</i>	<i>2021-present</i>

**Dr. Bradford Parsons** is an Attending Orthopedic Surgeon at Mount Sinai Hospital for 17 years. He is an Attending Orthopedic Surgeon at Elmhurst Hospital Center for 17 years. He was an Orthopedic Surgeon at North General Hospital for four (4) years. He was the Chief of Orthopedic Surgery for over two (2) years at North General Hospital. He is an Orthopedic Surgeon at Maimonides Medical Center for 11 years. He received his medical degree from the University of Vermont College of Medicine. He completed his Orthopedic Surgery residency at Mount Sinai Hospital. He completed his Shoulder and

Elbow Surgery fellowship at the Hospital of the University of Pennsylvania. He is board certified in Orthopedic Surgery. Dr. Parsons disclosed ownership in the following healthcare facilities:

*Midtown Surgery Center*

*06/2013-present*

*New York Center for Ambulatory Care*

*06/2021-present*

**Michael Pastier** is the Senior Vice President and CFO of the Mount Sinai Health System for seven (7) years. He was the Senior Vice President and CFO of Mount Sinai Hospital 12 years. He was also Vice president of Financial Planning and Reporting for three (3) years. And the Director of Finance for 13 years. He is responsible for financial management, planning, organization, direction, and control of the health system. He manages over 700 finance employees, oversees operating and capital budgeting processes, manages all cash and liquidity, and is responsible for preparation of monthly financial statements, determines revenue impact of new programs and program enhancements, and ensures the operation and liquidity supports the strategic mission of the institution. He also ensures efficient billing and collections for each hospital and standardized reporting from several different systems. He was a Senior Auditor at Deloitte & Touche for three (3) years. He managed several audits of hospitals ranging from 100-800 beds, consulted with several healthcare organizations on reimbursement issues and on maximizing revenue, and supervised and delegated assignments to staff. Mr. Pastier discloses membership interest in the following healthcare facility:

*HealthFirst*

*12/2021-present*

**Denise Prince** is the Senior Vice President of Population Health at Mount Sinai Health System for five (5) years. She is also the Chief Operating Officer, of Mount Sinai Health Partners, and New York Medical Partners ACO, LLC. She serves as a member of the population health leadership team and partners with the CMO for Population Health to innovate and transform clinical operations to create, maintain, and optimize population health infrastructure in support of value-based care principles. She builds, develops, and manages the clinical operations team to drive reliable outcomes on key performance indicators and value-based contracts. She was the System Vice President of Value based Care and Vice President of Population Health at Geisinger Health System five (5) years. She also held the roles of CEO Keystone ACO and CEO of Sun Home Health and Hospice. She co-led Geisinger's participation in Physician Group Practice Transition demonstration; partnered with CMS to refine key model attributes including benchmarking, data access, and quality measures. She spearheaded the creation of the Keystone ACO (KACO) joint venture to support population health, oversaw KACO joint venture governance and operations team, tracked and commented on CMS proposed rules and CMMI innovation models, negotiated data and analytics contracts with vendors in support of alternate payment models, and led CMMI Bundled Payment for Care Improvement Initiatives. She was the Founder, Managing Partner, COO, and CEO of Geisinger Ventures for eight (8) years. She proposed, founded, and implemented Geisinger Ventures to access outside capital and maximize the benefit of intellectual property, for profit businesses, and corporate relationships. Additionally, she vetted proposals, conducted due diligence, created business plans, and launched new businesses. The Geisinger Ventures team negotiated and implemented strategic partnerships. She led teams that raised more than \$22M from outside sources to support the system's innovation and mission. She was the Senior Vice President of Geisinger Diversified Services 12 years. She directed and managed all aspects of operations and strategy for a portfolio of for-profit and not for profit services in partnership with clinical enterprise and insurance leaders. She was a Director of Management Services of Geisinger Diversified Services for two (2) years. She directed all retail pharmacies, home infusion pharmacies, and emergency support services. She consulted to outside hospitals to align with system strategies. Mrs. Prince discloses membership interest in the following healthcare facilities:

*New York Medical Partners ACO*

*05/2107-present*

**Dr. Chanland Roonparpant** is an Assistant Professor of Neurological Surgery at Mount Sinai for eight (8) years. He was an Assistant Professor of Neurologic Surgery at Continuum Health Partners for six (6) years. He was an Attending Neurologist at North Shore-LIJ for two (2) years. He completed his medical degree at New York University School of Medicine. He completed his General Surgery and Neurological Surgery residency at Albert Einstein College of Medicine. He completed an Orthopedic Spine Surgery

fellowship at the Spine Institute at Beth Israel Medical Center. He is board certified in Neurological Surgery.

**Sarah Sanford** is the President of Finance of Merritt Healthcare for six (6) years. She is responsible for business operations of the affiliated ASCs. She was the Vice President of Firmwide Planning and Analysis of JP Morgan Chase for two years. She was responsible for consolidating firmwide results to senior management. She was the Manager of Financial Planning and Analysis at Moody's Corporation for two (2) years. She was responsible for financial analysis and budgeting for the corporate finance group. She was the Manager of Finance at Traveler's Insurance Company for seven (7) years. She was responsible for various financial reporting and budgeting roles for multiple lines of business.

**Matthew Searles** is the Founding Managing Director and Founding Partner of Merritt Healthcare Advisors for over 21 years. He is responsible for successfully completing over \$3B in healthcare transactions since 2001, spanning over 75 separate transactions. He is a leading developer and manager of ASCs in Eastern New York. He has developed 20 ASCs that perform over 75,000 annually. Mr. Searles discloses ownership information in the following healthcare facilities:

<i>River Valley ASC</i>	<i>2013-2016</i>
<i>Surgical Center of Connecticut, LLC</i>	<i>2013-2016</i>
<i>Western Connecticut Orthopedic Surgical Center</i>	<i>2013-2017</i>
<i>Ellicott City ASC</i>	<i>2013-2017</i>
<i>Bloomfield ASC, LLC</i>	<i>2015-2021</i>
<i>Summer Street ASC, LLC</i>	<i>2015-2021</i>
<i>Guilford Surgery Center</i>	<i>2015-present</i>
<i>Waterbury Surgery Center</i>	<i>2016-2021</i>
<i>Orthopedic Specialty Surgery Center</i>	<i>2018-present</i>
<i>Northern Westchester Facility Project, LLC</i>	<i>2019-present</i>
<i>UWS ASC, LLC</i>	<i>2021-present</i>

**Richard Searles** is a Partner and Chief Financial Officer at Merritt Healthcare for 14 years. He oversees business operations for Merritt's affiliated surgery center, including personal ownership in 12 ASCs in the Northeast. He has served as a Manager or Consultant for over 36 surgery centers. His duties include development, finance, and serving as a Board Member. He is a Partner in Merritt Healthcare Advisors for 14 years. He represents over 100 physicians, surgery centers, and surgical hospitals. He also provides analysis of operations and financials, as well as long term strategic planning. He is a Board Member and Treasurer of the Connecticut Associations of Ambulatory Surgery Centers for six (6) years. Mr. Searles discloses ownership interest in the following healthcare facilities:

<i>UWS ASC LLC</i>	<i>2021-present</i>
<i>Northern Westchester Facility Project LLC</i>	<i>2019-present</i>
<i>Orthopedic Specialty Surgery Center</i>	<i>2018-present</i>
<i>Waterbury Surgery Center</i>	<i>2016-2021</i>
<i>Guilford Surgery Center</i>	<i>2015-present</i>
<i>Summer Street ASC</i>	<i>2015-2021</i>
<i>Bloomfield ASC LLC</i>	<i>2015-2021</i>
<i>Ellicott City ASC LLC</i>	<i>2013-2017</i>
<i>Western Connecticut Orthopedic Surgery Center</i>	<i>2013-2017</i>
<i>Surgical Center of Connecticut LLC</i>	<i>2013-2016</i>
<i>River Valley ASC</i>	<i>2012-2016</i>

**Brent Stackhouse** is the Managing Director of Mount Sinai Ventures for eight (8) years. He is the head of subsidiary holding companies responsible for the development, acquisition, and management of ambulatory care delivery joint ventures. He is responsible for sourcing, diligence, and in NYS DOH licensed care delivery companies. He grew the portfolio from 14 to 20 joint ventures, with seven (7) exits, increasing investment returns by 270%. He was the Executive Director of Strategy for the Primary Care Information Project in the Health Care Access and Improvement Division of the New York City Department of Health and Mental Hygiene for five (5) years. He was responsible for overseeing 60 direct reports across six (6) teams responsible for finance, operations, business development, marketing, and

strategy. He turned around a failing \$23M federal grant program, improved deliverables 500%, elevated staff morale, and increased national ranking from 59<sup>th</sup> to 4<sup>th</sup> in 15 months. He secured \$50M in federal, states, and foundation funding within three years by developing new product lines, marketing strategies, metrics based tracking, and strategic partnerships. Mr. Stackhouse discloses membership interest in the following healthcare facilities:

Carnegie Hill Endoscopy	09/2013-present
South Brooklyn Endoscopy Center	09/2013-04/2021
East Side Endoscopy	09/2013-present
Liberty Endoscopy Center	01/2017-10/2021
Yorktown Center for Special Surgery	12/2018-present
Manhattan Surgery Center	09/2013-present
Upper West Side Endoscopy Center	07/2021-present
West Side GI	09/2013-present
The Endoscopy Center of New York	12/2017-present
Hudson Surgery Center	01/2022-present
Empire State ASC	04/2018-11/2019
North Queens Surgical Center	04/2016-11/2019
Island ASC	09/2013-present

**Dr. Sherwin Su** is an Attending Orthopedic Surgeon at Summit Health for one (1) year. He was an Attending Orthopedic Surgeon at High Mountain Orthopedics for four (4) years. He completed his medical degree at SUNY Downstate. . He was an Attending Physician at St. Luke's Roosevelt Hospital for 10 years. He was an Assistant Clinical Professor at Columbia College of Physician and Surgeons for 10 years. He received his medical degree from Case Western Reserve University. He completed his Orthopedic Surgery residency at Northwestern University. He completed his Adult Reconstruction fellowship at Rush University. He is board certified in Orthopedic Surgery.

**Dr. Douglas Unis** is the Founder and Chief Medical Officer of Monogram Orthopedics, Inc. for seven (7) years. He is a Professor at the Icahn School of Medicine for eight (8) years. He an Attending Physician at Mount Sinai Health System for eight (8) years

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

*Dr. Adler disclosed multiple malpractice suits. The first malpractice suit was filed on April 13, 2016, by the patient against Dr. Adler, other providers, and the hospitals. The patient underwent a right total hip arthroplasty in another institution. Postoperatively, she developed a MRSA infection and had cement removal with an antibiotic spacer inserted followed by a six-week course of Vancomycin. She was referred to Dr. Adler for follow up. On November 11, 2013, Dr. Adler performed a revision total hip arthroplasty with antibiotic spacer insertion. The patient was transferred to the ICU post operatively for pain medication oversedation. On November 25, 2013, she began to complain of fullness in the left ear and a CT was performed. On return, she was noted to be vomiting, unable to hear out of the left ear, and a left beating nystagmus was noted. The stroke team was notified. Another CT was performed. On November 27, 2013, ENT was consulted and noted severe ototoxicity from Vancomycin. ENT ordered tests to evaluate hearing loss and Prednisone was ordered. On December 3, 2013, she was evaluated by ENT again who noted that Vancomycin was less like to be the reason for the hearing loss. The patient was discharged on December 23, 2013. Dr. Adler was dismissed from the case.*

- The second malpractice case was filed on December 5, 2015, by the patient against Dr. Adler. The patient alleged improper surgery. Specifically, the patient presented to Dr. Adler with wear of hip replacement many years out from surgery. Dr. Adler performed the revision, and she was discharged. She developed pain at home and returned to the emergency room. An x-ray revealed

the revision component had shifted. Dr. Adler performed another revision surgery, and the patient was subsequently discharged from the hospital. Dr. Adler paid the patient \$200K.

- The next malpractice suit was filed on October 25, 2016, by the patient against Dr. Adler, the outpatient practice, and two hospitals. The patient alleged nerve injury during hip surgery. The patient had a total right hip replacement on September 27, 2014. The patient experienced a known complication, nerve injury. The hospital made the decision to settle the matter on Dr. Adler's behalf for \$290K with no admission of wrongdoing by Dr. Adler.
- The next malpractice suit was filed on August 26, 2019, by the family of the patient. The suit alleged death of the secondary to a C.diff infection six (6) days following bilateral knee replacement surgery. The patient had elective bilateral knee replacement surgery performed on January 5, 2018. She was transferred to rehab on January 8, 2018. While at rehab, she complained of acute abdominal pain, tachycardia, tachypnea, and altered mental status. The patient was transferred back to the hospital on January 10, 2018, after remaining tachycardic in the rehab overnight. A workup revealed that the patient had a partial bowel obstruction. She worsened over a 24-hour period was taken emergently to the OR for an exploratory laparotomy. She had a distended bowel with no evidence of necrosis or perforation and no gross peritonitis. Her abdomen was left open, and a vacuum dressing was applied. She was transported to the Surgical ICU, intubated, and on pressor support. She was transferred to the Tisch ICU because of her condition. She remained hypotensive, was found to be profoundly acidotic, and was positive for C-diff. A decision was made to perform a bedside abdominal exploratory surgery due to the patient's deteriorating condition. On January 11, 2018, the patient was taken back to the OR for exploratory laparotomy due to increased lactic acid, pressor requirements, and hemodynamic instability. She continued to remain hemodynamically unstable post-operatively and the family was consulted to make the patient a DNR. On January 12, 2018, the patient died. The case is currently in the discovery process.
- The last malpractice suit was filed on May 11, 2021, by the patient against Dr. Adler, the outpatient practice, and the hospitals. The patient alleged improper insertion of the hip replacement. The patient also alleges that they continue to be in pain following the hip replacement. The suit is currently in the discovery phase.
- Dr. Saad Chaudhary disclosed two malpractice lawsuits. The first suit occurred on August 25, 2014. The patient alleged inappropriate anticoagulation post-surgery. Dr. Chaudhary performed a multi-level thoraco-lumbar decompression and fusion on a morbidly obese male with spinal cord compression and an incomplete spinal cord injury. On August 25, 2016, the patient developed bilateral lower extremity DVTs that led to occlusion of his inferior vena cava under his IVC filter. This resulted in compartment syndrome and bilateral lower extremity amputation due to multi system organ failure. The claims were dismissed voluntarily on March 22, 2022.
- The second suit occurred on April 30, 2018. The patient alleged that further surgery needed to be performed, specifically a laminectomy. On April 30, 2018, a minimally invasive and indirect decompression and fusion was performed on the patient. A consent and detailed documentation exist in the chart. The patient and her husband claim that a laminectomy needed to be performed. The issues is currently pending a formal legal investigation. A motion for summary judgment and dismissal is also being considered.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

- The Department issued a Stipulation and Order (S&O) dated October 4, 2022, and fined Mount Sinai West \$10,000.00 based on findings from a survey that was completed June 15, 2020. Deficient practice was cited in the area of Patient Rights.

- The Department issued a Stipulation and Order (S&O) dated May 15, 2017, and fined Mount Sinai \$2,000.00 based on findings from a survey that was completed on January 25, 2016. Deficient practice was cited in the area of Patient Rights.

**Out of state facilities:**

**Connecticut:**

- The Facility Licensing and Investigation Section of the Department of Public Health made an unannounced visit to Surgical Center of Connecticut, LLC on February 17, 2016. Deficient practice was cited in the area of Chief Executive Officer and/or Professional Staff and/or Records/Reports. Specifically, the facility failed to ensure that an unintended retention of a foreign object in a patient following surgery was reported and/or the surgical record was completed accurately. The foreign object retention not being retrieved was reflected in charting but was not reported to the Department per state statute. A review of the surgical count identified that all the instruments were accounted for, and the counts were correct however, this piece of equipment was not routinely included in equipment counts allowing it to be retained by the patient.
- The Facility of Licensing and Investigation Section of the Department of Public Health made an unannounced visit to Surgical Center of Connecticut, LLC on May 19, 2016. Deficient practice was cited in the area of Ownership and Administration and/or Chief Executive Officer and/or Professional Staff and/or Records and Reports and/or Nursing Staff and/or General. Specifically, the facility failed to ensure that instruments are inspected for integrity prior to wound closure. The patient had surgery on December 29, 2015, and an x-ray on March 21, 2016, identified that a piece of guide wire pin had been left in the patient.
- The Facility Licensing and Investigation Section of the Department of Public Health made an unannounced visit to Naugatuck Valley Endoscopy Center, LLC on June 10, 2016. Deficient practice was cited in the area of Ownership and Administration and/or Chief Executive Officer and/or Professional Staff and/or Records and Reports and/or General. Specifically, the facility failed to ensure that the anesthesia consent and/or record was accurate and/or complete and/or the anesthesia provided was in accordance with facility policy. The facility policy for levels of sedation identified that no general anesthesia will be administered for endoscopic procedures. The records of six (6) patients recorded the administration of general anesthesia.
- The Facility Licensing and Investigation Section of the Department of Public Health made an unannounced visit to Guilford Surgery Center on January 24, 2018, and cited the facility under Ownership and Administration and/or Chief Executive Officer and/or Profession Staff. Specifically, Anesthesiologists #1, #2, #3 performed epidural steroid injections (ESI) on three patients. These Anesthesiologists were not credentialed to be performing ESI injections on the patients by the board. Additionally, the Facility Policy and Procedure manual that was reviewed and approved by the board on January 18, 2018, did not include pain injection procedures.
- The Facility Licensing and Investigation Section of the Department of Public Health made an unannounced visit to the Naugatuck Valley Endoscopy Center, LLC on September 28, 2018. Deficient practice was cited in the area of Ownership and Administration and/or Chief Executive Officer and/or Professional Staff and/or Nursing Staff and/or General. Specifically, the facility failed to ensure the correct lens was implanted for one patient. A time out procedure was completed, and the error was not picked up.
- The Facility Licensing and Investigation Section of the Department of Public Health made an unannounced visit to Naugatuck Valley Endoscopy Center, LLC on September 10, 2019. Deficient practice was cited in the area of Ownership and Administration and/or Professional Staff and/or Nursing Staff and/or General. Specifically, the facility failed to ensure that the manufacturer recommendations were followed when drying endoscopes.
- The Facility Licensing and Investigation Section of the Department of Public Health made an unannounced visit to Summer Street ASC LLC on December 18, 2020. Deficient practice was cited in the area of Owner and Administration and/or Chief Executive Officer and/or Professional Staff. Specifically, the facility failed to ensure that the physician remained in the facility until the patient was awakened from anesthesia and transported to the PACU in stable condition. The facility also failed to ensure the procedure was performed as per the surgical consent.

- The Facility Licensing and Investing Section of the Department of Public Health made an unannounced visit to Bloomfield ASC on July 24, 2019. Deficient practice was cited for Surgical Services. Specifically, the Surgeon and CRNA failed to effectively communicate the timing of electrocautery and oxygen resulting in the concurrent use of the two. The combination of electrocautery in an oxygen rich environment area resulted in a fire and injury to the patient. Subsequent to the event, the facility failed to ensure all the surgical staff were educated on fire safety protocols and the safe use of electrocautery. During the period after the fire and staff not being educated, 81 surgeries were performed which resulted in an Immediate Jeopardy.
- During the above survey the facility also failed the Life Safety Code survey due to failure of the facility staff to execute the Fire Safety Plan. Specifically, the staff failed to activate the fire alarm to activate emergency services/personnel and to warn other building occupants.
- The Facility Licensure and Investigation Section of the Department of Public Health made an unannounced visit to Guilford ASC on January 28, 2020. Deficient practice was cited in the area of Chief Executive Office and/or Professional Staff. Specifically, the facility failed to ensure the quarterly reviews for radiology safety were being conducted by the Radiology Officer and the Radiology Physicist recommendations were evaluated or implemented from 2018. The facility's c-arm was not equipped with the proper required components with failure to do so leading to high x-ray exposure.
- The Facility Licensing and Investigating Section of the Department of Public Health made an unannounced visit to Bloomfield ASC on October 1, 2021. Deficient practice was cited in the area of failing to ensure an adverse event was reported to the state agency in a timely manner. Specifically, three patients had the wrong lens power implanted in their eye and one patient had the wrong lens implanted in their eye. The Officer Manager had reported the incident to the surgery center five days after the event and the state agency was not notified until 28 days after the event.

#### Integration with Community Resources

For those patients who do not identify a primary care provider (PCP), the Center plans to work closely with patients to educate them regarding the availability of primary care services in the area offered by local providers, including the array of services offered by Mount Sinai West. Prior to leaving, each patient will be provided with information regarding the availability of local primary care services. The members of the Center are committed to serving all patients without regard to race, sex, age, religion, creed, sexual orientation, source of payment, ability to pay or other personal characteristics. The operating budget projects includes 3% Medicaid and that 2% of procedures will be for charity care, reduced compensation, or uncompensated care. The Applicant is committed to the development of a formal outreach program directed to the members of the local community. The Applicant submitted letters of support from two FQHCs within the proposed catchment area. As any partnership with FQHCs and other providers, the Center will agree to waive all or a portion of its fees for the patients who qualify for charity care and will allow the physicians from these facilities to become credentialed at the Center. As part of the Center's commitment to enhance access for the underserved populations, the Center will contract with HealthFirst, Fidelis, United Community Plan, AmidaCare, and Empire Health Plus to provide ambulatory surgical services at the Center. The Center also plans to coordinate its services with inpatient and or specialty ambulatory facilities to which a patient is referred. The Applicant will also develop a Quality Assurance Program that will include an analysis of the effectiveness of the coordination efforts.

The Center plans to utilize an Electronic Medical Record (EMR) system and to fully integrate and exchange information with an established RHIO with the capability for clinical referral and event notification. The Applicant will not consider joining any Accountable Care Organization (ACO) at this time.

#### Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a (3)(b).

## Financial Analysis

### Total Project Cost and Financing

The total project cost for New Construction, fixed and movable equipment, is estimated at \$15,131,060, broken down as follows.

New Construction	\$7,197,706
Design Contingency	784,550
Construction Contingency	784,550
Architect/Engineering Fees	941,460
Other Fees	65,284
Movable Equipment	4,275,000
Financing Costs	50,000
Interim Interest Expense	299,961
Application Fees	2,000
Additional Processing Fees	<u>82,755</u>
<b>Total Project Cost</b>	<b>\$15,131,060</b>

Project costs are based on a construction start date of 4/1/2023, with an eight-month construction period.

The financing plan is as follows:

Equity- members*	\$1,932,620
Equipment loan (7.72%-3.72% swap rate as of 1/11/2023 plus 4.00% for 5 years)	\$1,200,000
Bank Loan (6.0 interest, 10-year term)	<u>\$11,998,440</u>
<b>Total</b>	<b>\$15,131,060</b>

\*\$49,700 cash and \$1,882,920 in landlord equity through tenant allowance.

Valley National Bank has provided a letter of interest for the mortgage and Dext Capital has provided a letter of interest for the equipment loan. BFA Attachments A, Net Worth Summary of the Proposed Members, shows sufficient resources overall to meet the equity requirement for the project.

### Operating Budget

The applicant has submitted the first (2023) and third year (2025) projected operating budgets, in 2022 dollars, as summarized below:

Revenues:	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Procedure.</u>	<u>Total</u>	<u>Per Procedure.</u>	<u>Total</u>
Medicaid – MC	\$2,508	191,377	\$2,433	\$197,033
Medicare – FFS	\$5,169	1,314,958	\$5,168	\$1,394,838
Medicare – MC	\$4,394	223,543	\$4,393	237,123
Commercial - FFS	\$8,270	7,153,371	\$8,269	7,587,921
Commercial – MC	\$7,495	8,580,100	\$7,494	9,101,321
All Other	\$2,584	262,992	\$2,584	<u>278,968</u>
Bad Debt		<u>(354,527)</u>		<u>(375,944)</u>
<b>Total Revenues:</b>		<b>\$17,371,813</b>		<b>\$18,421,260</b>
<b>Expenses:</b>				
Operating	\$5,101	\$12,977,582	\$5,007	\$13,513,405
Capital	<u>\$1,472</u>	<u>3,744,717</u>	<u>\$1,381</u>	<u>3,726,939</u>
<b>Total Expenses:</b>	<b>\$6,573</b>	<b>\$16,722,299</b>	<b>\$6,388</b>	<b>\$17,240,344</b>
<b>Net Income (Loss)</b>		<b><u>\$649,514</u></b>		<b><u>\$1,180,916</u></b>
Procedures		2,544		2,699

The following is noted with respect to the submitted ASC budget.

- Expense assumptions are based upon similar size and type of ambulatory surgery ASCs as well as experience of proposed member in operating ASC.
- All reimbursement rates are based upon the CPT-4 codes provided in the MD volume letters of support. Each CPT-4 code is associated with a specific procedure and an analysis of CPT-4 code reimbursement was performed for both Medicare and Medicaid FFS, separately. Medicaid MC was estimated to be reimbursed at 85% of the Medicaid FFS rate. All other payers, including Medicare MC, Commercial FFS, Commercial MC and All Other payers are reimbursed based upon a percentage of the Medicare FFS rate.
- Utilization assumptions are supported by letters from the participating physicians who will be utilizing the ASC and is based on their current experience. The proposed operator is committed to providing 2% charity care to patients.
- Utilization by payer source for years one and three is summarized below:

Payor:	<u>Year One (2023)</u>		<u>Year Three (2025)</u>	
	<u>Procedures</u>	<u>%</u>	<u>Procedures</u>	<u>%</u>
Medicaid - MC	76	3.00%	81	3.00%
Medicare - FFS	254	10.00%	270	10.00%
Medicare -MC	51	2.00%	54	2.00%
Commercial-FFS	865	34.00%	918	34.00%
Commercial – MC	1,145	45.00%	1,215	45.00%
All Other	102	4.00%	108	4.00%
Charity Care	<u>51</u>	<u>2.00%</u>	<u>54</u>	<u>2.00%</u>
Total	2,544	100.00%	2,699	100.00%

#### Lease Rental Agreement

The applicant has submitted an executed Lease Agreement for the proposed site, the terms of which are summarized below:

Date:	March 1, 2021
Premises:	The entire 6 <sup>th</sup> floor, 7 <sup>th</sup> floor, and 8 <sup>th</sup> floor and portions of the ground floor, the 2 <sup>nd</sup> floor, the 4 <sup>th</sup> floor, and the 5 <sup>th</sup> floor of the building located at 787 11 <sup>th</sup> Avenue, New York, New York
Landlord:	Georgetown Eleventh Avenue Owners, LLC
Lessee:	Icahn School of Medicine at Mount Sinai
Term:	30 years
Rental:	\$10,787,882.15 1st year (\$898,990.18 per month); \$9,300,787.50 2 <sup>nd</sup> year (775,065.63 Monthly) with an annual 2.5% increase from years 3-31
Provisions:	Tenant is responsible for taxes, insurance, utilities, and maintenance.

The Mount Sinai School of Medicine of the City University of New York is currently known as Icahn School of Medicine at Mount Sinai.

#### Sub-Lease Agreement

The applicant has submitted a draft sub-lease rental agreement for the site to be occupied, summarized below:

Premises:	Approx. 19,826 sq. ft. located on 6 <sup>th</sup> floor at 787 11 <sup>th</sup> Avenue, New York, New York
Sub-Lessor:	Icahn School of Medicine at Mount Sinai
Sub-Lessee:	787 Ortho ASC, LLC
Term:	15 years with 2 additional 5-year options
Rental:	Base rent for total leased space is \$1,831,294 per year (\$152,607.83 per month) for the first year. Rent will increase by 2.5% of the base year rent beginning in year 2 and thereafter.
Provisions:	Tenant is responsible for utilities and maintenance.

An affidavit has been submitted from 787 Ortho, LLC confirming that the lease between Georgetown Eleven Avenue Owners, LLC and Icahn School of Medicine at Mount Sinai is an arm's length lease, and the Sublease is a non-arm's length agreement. The sublandlord and subtenant are related in that they are both corporately affiliated with Mount Sinai Health System, Inc.

The applicant has submitted letters from two NYS licensed realtors attesting to the reasonableness of the per square footage rental.

#### Administrative Services Agreement

The applicant has provided a draft administrative services agreement, summarized below

Operator:	787 Ortho ASC, LLC
Contractor:	Merritt Healthcare Holdings, LLC
Term:	5 years with unlimited automatic 1-year renewals
Services of contractor:	Assistance to established Operator's administrator, consulting/advisory services related to administration and operational functions, regulatory monitoring, compliance and quality assurance, oversight of all functions related to accounts receivables, develop, and implement a marketing plan and operate, supervise, and oversee all functions related to billing and Preparation of health facility assessments, Review rate sheets and assisting with filing necessary appeals.
Compensation:	\$250,000 for year 1 with an annual 3% increase for every year thereafter

The agreement provides that the facility operator will retain ultimate control in all the final decisions associated with the facility. The applicant has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers that must not be delegated, the applicant will not willfully engage in any illegal delegation and understands that the Department will hold the applicant accountable.

#### Capability and Feasibility

Total project costs of \$15,131,060 will be funded via \$1,200,000 equipment loan at the previously stated terms, \$49,700 in members equity, \$1,882,920 In landlord equity through tenant allowance and a 10-year self-amortization loan for \$11,998,440 at the previously stated terms. Valley National Bank has provided a letter of interest for the mortgage loan and Dext Capital has provided a letter of interest for the equipment loan.

BFA Attachments A, B and C present the members' net worth summary, the 2020-2021 certified, and the Internal Financial as of 9/30/22 for Mount Sinai Health Care System and Affiliates, which show sufficient resources to meet the equity requirements. The applicant will sublease the space from Icahn School of Medicine at Mount Sinai via a non-arm's length lease arrangement. There is a relationship between the sublandlord and the proposed operator in that they have common membership.

The working capital requirement is estimated at \$2,873,391 based on two months of third-year expenses. BFA Attachments A, Net Worth of Proposed Members, shows sufficient resources to meet the working capital requirement.

BFA Attachment B presents the Mount Sinai Hospitals 2020-2021 certified financial statements, which show an average positive working capital position, a positive average net asset position, and an average net income of \$179,969,500 for 2020-2021. BFA Attachment C presents the Mount Sinai Hospitals internal financial statements through 9/30/2022, and shows a positive working capital position, a positive net asset position, and a net loss of \$168,437,000. The loss in 2022 was due to a \$319.2M unrealized loss on investments due to market declines in the first nine months of the year. The hospital also had to deal with increased staffing costs due to staffing shortages and higher costs associated with COVID-19 patients and inflationary pressures.

BFA Attachment D, 787 Ortho ASC, LLC's pro forma balance sheet shows the entity will have \$6,006,011 in equity as of the first day of operations. The budget appears reasonable.

Conclusion

The applicant has demonstrated the capability to proceed in a financially feasible manner

<h2>Attachments</h2>
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BHFP	Map
BFA Attachment A	Net Worth Summary of Proposed Members
BFA Attachment B	2021 Certified Financial Statement of Mt. Sinai Health Care system and Affiliates
BFA Attachment C	9/30/2022 Internal Financial Statement of Mt. Sinai Health Care system and Affiliates
BFA Attachment D	Pro Forma Balance Sheet of 787 Ortho ASC, LLC
BFA Attachment E	Organizational Chart of 787 Ortho ASC, LLC



**Project # 222036-B**  
**Excelsior ASC LLC d/b/a Excelsior Ambulatory Surgery  
 Center**

**Program:** Diagnostic and Treatment Center    **County:** Kings  
**Purpose:** Establishment and Construction    **Acknowledged:** October 6, 2022

**Executive Summary**

**Description**

Excelsior ASC LLC d/b/a Excelsior Ambulatory Surgery Center (Excelsior) is seeking to establish and construct a new Article 28 Diagnostic and Treatment Center (D&TC), as a multispecialty freestanding ambulatory surgery center (FASC). The proposed center will be in renovated space at 833 65th Street in Brooklyn providing ophthalmology and gastroenterology surgery services. Upon approval of this application, the center will be known as Excelsior Ambulatory Surgery Center.

The proposed operator members are part of the Excelsior Integrated Medical Group (EIMG) practice which has 49 primary care and physician extenders, 125 specialists, 19 divisions, 21 primary care sites, and 27 specialty sites.

Excelsior ASC, LLC has entered into a proposed lease agreement with Great Empire 65 Realty, LLC for site control of the facility.

The proposed members and their ownership percentages are as follows:

Excelsior ASC, LLC	
George Hall, M.D.	20.0%
Dashi Bao, M.D.	20.0%
Ann Long, M.D.	20.0%
Jiansheng Zhao, M.D.	20.0%
Yanfeng Chen, M.D.	20.0%
<b>Total</b>	<b>100.0%</b>

Kevin Tin, M.D., who is board-certified in Family Medicine, will serve as the ASC's Medical

Director. All proposed members will be practicing physicians at the Center and are Board-Certified in their respective specialties. NYU Langone Hospital – Brooklyn, 1.6 miles (7-minute travel time) from the proposed facility, has communicated support for the project and signed a transfer agreement.

**OPCHSM Recommendation**  
 Contingent approval with an expiration of the operating certificate five years from the date of its issuance.

**Need Summary**  
 The applicant projects 4,887 procedures in Year One and 7,638 in Year Three, with Medicaid at 40% and Charity Care at 2%.

**Program Summary**  
 The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a (3).

**Financial Summary**  
 The total project cost of \$9,165,990 will be met with \$7,587,412 of leasehold improvements, \$157,858 in members' equity, and a seven-year movable equipment loan for \$1,420,720 at 6% interest.

	<u>Year One</u>	<u>Year Three</u>
<u>Budget:</u>	<u>2024</u>	<u>2026</u>
Revenues	\$2,908,640	\$4,822,344
Expenses	<u>\$2,890,141</u>	<u>\$3,884,422</u>
Net Income (Loss)	\$18,499	\$937,922

# Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

## **Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations, and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women, and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include a commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
3. Submission of a signed agreement with an outside, independent entity satisfactory to the Department to provide annual reports to DOH. Reports are due no later than April 1st for the prior year and are to be based upon the calendar year. Submission of annual reports will begin after the first full or, if greater or equal to six months after the date of certification, partial year of operation. Reports should include:
  - a. Data displaying actual utilization including procedures;
  - b. Data displaying the breakdown of visits by payor source;
  - c. Data displaying the number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
  - d. Data displaying the number of emergency transfers to a hospital;
  - e. Data displaying the percentage of charity care provided;
  - f. The number of nosocomial infections recorded during the year reported;
  - g. A list of all efforts made to secure charity cases; and
  - h. A description of the progress of contract negotiations with Medicaid managed care plans. [RNR]
4. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
5. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
6. Submission of an executed equipment loan commitment acceptable to the Department of Health. [BFA]
7. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
8. Submission of a copy of an Operating Agreement that is acceptable to the Department. [CSL]
9. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-1.0. [AER]
10. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-1.0. [AER]

## **Approval conditional upon:**

1. This project must be completed by **June 1, 2024**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **September 1, 2023**, and construction must be completed by **March 1, 2024**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a) if

construction is not started on or before the approved start date this shall constitute abandonment of the approval. [PMU]

3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The submission of annual reports to the Department as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. [RNR]
5. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
6. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:  
[https://www.health.ny.gov/facilities/hospitals/docs/hcs\\_access\\_forms\\_new\\_clinics.pdf](https://www.health.ny.gov/facilities/hospitals/docs/hcs_access_forms_new_clinics.pdf). Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: [hospinfo@health.ny.gov](mailto:hospinfo@health.ny.gov) [HSP]

Council Action Date  
February 9, 2023

# Need Analysis

## Background and Analysis

Excelsior ASC LLC d/b/a Excelsior Ambulatory Surgery Center is seeking approval to establish a multi-specialty ambulatory surgery center (ASC) to be located at 833 65<sup>th</sup> Street, Brooklyn, 11220 in Kings County. The center will provide ophthalmology and gastroenterology surgery services. The center will have two operating rooms and four procedure rooms.

The service area consists of Kings County. The population of Kings County in 2020 was 2,736,074 and is projected to increase slightly to 2,810,876 by 2025. According to Data USA, in 2019, 93.7% of the population of Kings County had health coverage as follows:

Employer Plans	41.7%
Medicaid	33.2%
Medicare	8.05%
Non-Group Plans	10.5%
Military or VA	0.222%

The number of projected procedures is 4,887 in Year One and 7,638 in Year Three with Medicaid at 40% and Charity Care at 2%. These projections are based on the current practices of participating surgeons. The applicant states that all procedures moving to this center are currently being performed in an office-based setting. The table below shows the projected payor source utilization for Years One and Three.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Commercial FFS	293	6.00%	458	6.00%
Commercial MC	195	3.99%	306	4.01%
Medicare FFS	977	19.99%	1,528	20.01%
Medicare MC	1,222	25.01%	1,909	24.99%
Medicaid FFS	49	1.00%	76	1.00%
Medicaid MC	1,906	39.00%	2,979	39.00%
Private Pay	147	3.01%	229	3.00%
Charity Care	98	2.00%	153	2.00%

The center initially plans to obtain contracts with the following Medicaid Managed Care plans Affinity Health, Fidelis, Health First, MetroPlus, United Health Care, and Well Care. The center will work collaboratively with local Federally Qualified Health Centers such as Bedford Stuyvesant Family Health Center and Community Health Initiatives to provide service to the under-insured in their service area. The center has developed a financial assistance policy with a sliding fee scale to be utilized when the center is operational.

The table below shows the number of patient visits for relevant ASCs in Kings County for 2019 through 2021. The number of patient visits for 2020 was significantly impacted by COVID-19.

Specialty Type	Facility Name	Patient Visits		
		2019	2020	2021
Multi	All City Family Healthcare Center, Inc.	7,358	5,611	8,664
Multi	Bay Ridge Surgi-Center	1,184	1,336	2,780
Multi	Brook Plaza Ambulatory Surgery Center	12,421	7,980	10,871
Ophthalmology	Brooklyn Eye Surgery Center	6,695	5,145	7,093
Multi	Brooklyn Surgery Center	10,278	7,844	9,862
Gastroenterology	Endoscopic Ambulatory Specialty Center of Bay Ridge <sup>1</sup>	0	0	0
Gastroenterology	Endoscopic Diagnostic and Treatment Center	1,913	1,198	1,350
Gastroenterology	Gastroenterology Care, Inc.	2,510	1,686	2,481
Multi	GoldStep Ambulatory Surgery Center	1,848	1,340	1,489

Gastroenterology	Greater NY Endoscopy Surgical Center	7,270	6,482	9,205
Multi	Island Ambulatory Surgery Center	7,568	6,047	9,518
Multi	Millennium Ambulatory Surgery Center	371	531	436
Gastroenterology	Moshenyat Gastroenterology Center (opened 4/10/20) <sup>2</sup>	N/A	0	0
Gastroenterology	South Brooklyn Endoscopy Center	14,629	11,532	14,271
Multi	Surgicare of Brooklyn	2,802	4,666	3,860
<b>Total Visits</b>		<b>76,847</b>	<b>61,398</b>	<b>81,548</b>

<sup>1</sup> No data for the years 2019, 2020, and 2021.

<sup>2</sup> No data for the years 2020 and 2021.

#### Conclusion

Approval of this project will provide increased access to ophthalmology and gastroenterology surgery services in an outpatient setting for the residents of Kings County.

## Program Analysis

### Project Proposal

Excelsior ASC, LLC d/b/a Excelsior Ambulatory Surgery Center, an existing limited liability company, seeks approval to establish and construct a multispecialty freestanding ambulatory surgery center specializing in Gastroenterology, and Ophthalmology to be located on the first floor of 833 65<sup>th</sup> Street in Brooklyn (Kings County).

<b>Proposed Operator</b>	Excelsior ASC, LLC
<b>Doing Business As</b>	Excelsior Ambulatory Surgery Center
<b>Site Address</b>	833 65 <sup>th</sup> Street Brooklyn, New York 11220 (Kings County)
<b>Surgical Specialties</b>	Multispecialty ASC Gastroenterology Ophthalmology
<b>Operating Rooms</b>	2
<b>Procedure Rooms</b>	4
<b>Hours of Operation</b>	Monday to Friday 8 am to 5 pm
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	12.25 FTEs / 18.25 FTEs
<b>Medical Director(s)</b>	Kevin Tin, MD
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Is provided by: NY Langone Lutheran Hospital 1.6 Miles / 7 minutes
<b>On-call service</b>	Patients who require assistance during off-hours will be provided a phone number for a 24-hour/day, seven (7) days/week on-call service to immediately refer the patient to the Center's on-call physician.

### Character and Competence

The ownership of Excelsior ASC, LLC is:

Member Name	Proposed Interest
Dashi Bao, M.D.	20.00%
Yanfeng Chen, M.D.	20.00%
George Hall, M.D.	20.00%
Ann Long, M.D.	20.00%
Jiansheng Zhao, M.D.	20.00%
<b>TOTAL</b>	<b>100%</b>

**Dr. Dashi Bao** is the Division Head of Excelsior Integrated Medical Group for four years. He is the Director of East Sunrise Medical, PLLC for eight (8) years. He was an Attending Physician at Orange County Medical Center for one year. He was an Instructor in the Department of Neurology of Albert Einstein Medical College for over one year. He received his medical degree from Harbin Medical University. He completed his Internal Medicine residency at Jamaica Hospital Medical Center. He completed his Nephrology fellowship at Nassau University Medical Center.

**Dr. Yanfeng Chen** is the Treasurer of Excelsior Integrated Medical Group, P.C. for five years. He is the President and Physician of Yanfeng Chen Physician PC for 23 years. He was an Attending Physician in Hematology and Oncology at The Brooklyn Hospital Center for three years. He received his medical degree at Sun Yat-sen University of Medical Sciences. He completed his Internal Medicine residency at Brookdale Hospital Medical Center. He completed his Hematology and Oncology fellowship at NYU Medical Center. He is board certified in Internal Medicine with a sub-specialty in Oncology.

**Dr. George Hall** is the President of Excelsior Integrated Medical Group, PLLC for over eight years. He is the Medical Director of George Hall, MD, PC for 25 years. He received his medical degree from Sun Yat-sen University. He was a Physician in clinical research at Guangdong Provincial Occupational Hospital in China for four years. He worked in the Environmental and Occupational Laboratory of WPK Laboratory for four years in Monitoring and Testing. He completed his Internal Medicine residency at Flushing Hospital and St. Barnabas Hospital. He is board certified in Internal Medicine.

**Dr. Ann Long** is an Aesthetics Physician at Live Long Cosmetics private practice for 23 years. She received her medical degree from the Sun Yat-sen University of Medical Sciences. She completed her Medical and Dermatology residency at The Sun Yat-sen University of Medical Sciences.

**Dr. Kevin Tin** is the proposed Medical Director. He is the Division Director of Healthier Gastroenterology and Hepatology Division of Excelsior Integrated Medical Group, PLLC for over three years. He is an Attending Internal Medicine Physician at Boro Park Center for Nursing and Rehabilitation for over seven years. He was an Attending Gastroenterologist at Gastroenterology Associates of Brooklyn for one year. He was a Faculty Attending in the Division of Gastroenterology at Maimonides Medical Center for one year. He is the President of Fujianese Medical Associates of America for four (4) years. He received his medical degree from the American University of Antigua. He completed his Internal Medicine and Gastroenterology residency at Maimonides Medical Center. He is board certified in Internal Medicine with a sub-certification in Gastroenterology.

**Dr. Jiansheng Zhao** is an Attending Physician in private practice for 23 years. He is an Attending Physician at North Shore University Hospital in the Department of Medicine for 25 years. He is an Attending Physician at New York Presbyterian Department of Medicine for 16 years. He received his medical degree from Zhongshan Medical College and Sun Yat-sen University of Medicine in China. He completed his Head and Neck Surgery residency at Sun Yat-sen University in China and his Internal Medicine residency at Woodhull Medical and Mental Health Center. He is board certified in Internal Medicine.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

#### Integration with Community Resources

For those patients who do not identify a primary care provider (PCP), the Center, who are also owners of a large multi-specialty medical group including primary care, will provide the patients with access to primary and specialty care services as needed. The Applicant plans to outreach to the following FQHCs, Bedford Stuyvesant Family Health Center and Community Health Initiatives, Inc. Upon approval, the efforts will be expanded upon.

The Center plans to utilize an Electronic Medical Record (EMR) system and to fully integrate and exchange information with an established RHIO with the capability for clinical referral and event notification. The Applicant will consider joining any Accountable Care Organization (ACO).

#### Conclusion

Based on the information reviewed, staff found nothing that would reflect adversely upon the applicants' character and competence or standing in the community.

## Financial Analysis

### Total Project Cost and Financing

The total project cost for renovations and movable equipment is estimated at \$9,165,990 and is distributed as follows:

New Construction	\$5,508,955
Design Contingency	550,896
Construction Contingency	550,896
Planning Consultant Fees	25,000
Architect/Engineering Fees	440,716
Other Fees	100,000
Movable Equipment	1,578,578
Financing Costs	215,294
Interim Interest Expense	143,529
Application Fee	2,000
Additional Processing Fee	<u>50,126</u>
<b>Total Project Cost</b>	<b>\$9,165,990</b>

The financing for this project will be as follows:

Landlord Leasehold Improvements	\$7,587,412
Cash from Members Equity	157,858
Moveable Equipment Loan (7 years, 6% interest)	<u>1,420,720</u>
<b>Total</b>	<b>\$9,165,990</b>

### Operating Budget

The applicant has submitted an operating budget, in 2022 dollars, for years one and three, summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>2024</u>		<u>2026</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
<b>Revenues:</b>				
Commercial FFS	\$949.85	\$278,307	\$1,007.46	\$461,416
Commercial MC	\$875.36	170,695	\$924.84	283,002
Medicare FFS	\$612.60	598,510	\$649.41	992,293
Medicare MC	\$563.25	688,287	\$597.77	1,141,136
Medicaid FFS	\$549.65	26,933	\$587.54	44,653
Medicaid MC	\$507.01	966,355	\$537.82	1,602,156
Private Pay	\$1,221.45	<u>179,553</u>	\$1,299.95	<u>297,688</u>
<b>Total Revenue</b>		<b>\$2,908,640</b>		<b>\$4,822,344</b>
<b>Expenses:</b>				
Operating	\$295.45	\$1,443,894	\$331.22	\$2,529,841
Capital	<u>295.94</u>	<u>1,446,247</u>	<u>177.35</u>	<u>1,354,581</u>
<b>Total</b>	<b>\$591.39</b>	<b>\$2,890,141</b>	<b>\$508.57</b>	<b>\$3,884,422</b>
<b>Net Income / (Loss)</b>		<b><u>\$18,499</u></b>		<b><u>\$937,922</u></b>
<b>Total Visits</b>		<b>4,887</b>		<b>7,638</b>
<b>Cost per Visit</b>		<b>\$591.39</b>		<b>\$508.57</b>

Utilization by payor source for Year One and Year Three is as follows:

<u>Payor:</u>	<u>Years One</u>	<u>Year Three</u>
Commercial FFS	6.00%	6.00%
Commercial MC	3.99%	4.01%
Medicare FFS	19.99%	20.01%
Medicare M/C	25.01%	24.99%
Medicaid FFS	1.00%	1.00%
Medicaid M/C	39.00%	39.00%
Private Pay	3.01%	3.00%
Charity	<u>2.00%</u>	<u>2.00%</u>
Total	100.00%	100.00%

The following is noted with respect to the submitted budget:

- The basis for utilization, revenue, and payor mix is based on the surgical volume being performed by proposed member physicians. The increase in utilization between Years One and Three is based on the expanded growth of the existing population served by both Excelsior Integrated Medical Group and the proposed FASC.
- Payor sources are based on the actual experience of the existing medical practice.
- Medicare Fee for Service and Medicaid Fee for Service revenue is based on the Current Procedural Terminology (CPT) codes.
- Commercial rates are projected based on a percentage of the 2022 Medicare fee for service (FFS) rate, ranging from 150% for Commercial FFS payors down to 90% for Commercial managed care payors.
- Private Pay rate is based on 200% of the 2022 Medicare Rate.
- Expenses are based predominantly on the labor costs for the staffing model that includes Registered Nurses (8.00 FTE by year three), Technicians and Specialists (at 5.20 FTEs by year three), Clerical and Other Administrative staff (3.00 FTEs by year three) Management and Supervision (5.20 FTEs by year three), as well as medical supplies, other direct expenses and rent expense as documented per the lease assignment agreement.

The applicant indicated they are committed to serving underinsured populations and all persons in need without regard to the patient's ability to pay or the source of payment. The center developed a sliding fee scale as well as policies and procedures for serving the uninsured and persons without ability to pay.

#### Draft Lease Agreement

The applicant has submitted a draft lease agreement, the terms of which are summarized below:

Date:	April 1, 2023 - Commencement Date
Premises:	Approx. 12,000 sq. ft. in building located at 833 65 <sup>th</sup> Street, Brooklyn, New York, 11220
Landlord:	Great Empire 65 Realty, LLC
Tenant:	Excelsior Ambulatory Surgery Center, LLC
Term:	5-year term with an option to renew for an additional five (5) years.
Rental:	Year 1 - \$0 Year 2 - \$900,000 (\$75,000/monthly) Year 3 - \$936,000 (\$78,000/monthly) Year 4 - \$973,440 (\$81,120/monthly) Year 5 - \$1,012,377.60 (\$84,364.80/month)  Security deposit \$87,739.39. Rent will increase by 4%
Provisions:	Tenant is responsible for real estate taxes, insurance, utilities, and maintenance

The applicant submitted an affidavit stating the lease agreement between the property owner and the lessee is an arm's length arrangement. The applicant has submitted letters from two NYS licensed realtors attesting to the reasonableness of the per square footage rental.

### Capability and Feasibility

The total project cost of \$9,165,990 will be met with \$7,587,412 of leasehold improvements completed by the current landlord, \$157,858 in members' equity and a seven-year moveable equipment loan for \$1,420,720 at 6% interest. Working capital requirements are estimated at \$647,404 based on two months of third year expenses. The working capital will be funded with members' equity of \$323,702 and a bank loan of \$323,702 for a three-year term at 6% interest. Hudson Shine Capital has provided a letter of interest for the respective loans at the stated terms. BFA Attachment A presents the member's personal net worth statement, which indicates sufficient resources overall to fund the equity requirements. BFA Attachment D is the Pro-Forma balance sheet for Excelsior, which shows the operation will start with \$435,582 in members' equity.

The submitted budget projects a net income of \$18,499 and \$937,922 during Years One and Three of operations, respectively. Revenue growth is based on growth in utilization between Years One and Three driven by an increase of the existing population served by the proposed FASC. Jiansheng Zhao, M.D. and Dashi Bao, M.D. will contribute a disproportionate share for the equity requirement. The budget appears reasonable.

### Conclusion

The applicant has demonstrated the capability to proceed in a financially feasible manner.

## Attachments

BHFP	Map
BFA Attachment A	Net Worth Statement of Proposed Member of Excelsior Ambulatory Surgery Center
BFA Attachment B	Proposed Member Equity Analysis
BFA Attachment C	Organization Chart
BFA Attachment D	Pro-Forma Balance Sheet



Project # 222089-B  
Peakpoint Flatiron LLC d/b/a New York Eye and Ear of  
Mount Sinai Surgery Center

**Program:** Diagnostic and Treatment Center    **County:** New York  
**Purpose:** Establishment and Construction    **Acknowledged:** October 14, 2022

Executive Summary

**Description**

Peakpoint Flatiron LLC d/b/a New York Eye and Ear of Mount Sinai Surgery Center (the "Center"), a Delaware limited liability company registered to do business in New York State, requests approval to establish and construct an Article 28 freestanding ambulatory surgery center (FASC). The Center will be certified as a dual single-specialty FASC specializing in ophthalmology and otolaryngology, head and neck surgical services. The applicant will lease 16,672 square feet on the second floor in an existing building at 1115 Broadway, New York (New York County) 10010. The site will include two operating rooms, four procedure rooms, and requisite support areas.

The Center's proposed ownership structure is shown below:

Members	% Operating Entity
<b>Individual Physicians</b>	<b>49.00%</b>
Maria Basile, M.D.	1.44%
Brian Campolattaro, M.D.	1.59%
Courtney Chou, M.D.	1.59%
Christopher Coad, M.D.	1.59%
Charles Cole, M.D.	1.59%
Maura Cosetti, M.D.	1.59%
Mark Courey, M.D.	1.00%
Alan Dayan, M.D.	1.59%
Anthony Del Signore, M.D.	1.59%
Jay Dolitsky, M.D.	1.59%
David Godin, M.D.	1.59%
Satish Govindaraj, M.D.	1.59%
Mingyang Gray, M.D.	1.59%
Anita Gupta, M.D.	1.00%

Gregory Harmon, M.D.	1.59%
Juan Horta-Santini, M.D.	1.59%
Gregory Levitin, M.D.	1.44%
Fred Lin, M.D.	1.59%
Bruce Moskowitz, M.D.	1.00%
Richard Najac, M.D.	1.59%
Andrew Nightingale, M.D.	1.59%
Enrique Perez, M.D.	0.67%
Roheen Raithatha, M.D.	1.59%
Joshua Rosenberg, M.D.	1.59%
Valeria Rubinstein, M.D.	1.59%
Madeleine Schaberg, M.D.	1.00%
Edward Shin, M.D.	1.44%
Eric Smouha, M.D.	1.00%
Mark Speaker, M.D.	1.44%
Tak Yee Tania Tai, M.D.	1.59%
Gregory Tsai, M.D.	1.59%
Calvin Wei, M.D.	1.59%
Dina Weintraub, M.D.	1.00%
Herbert Jay Wisnicki, M.D.	1.59%
<b>Peakpoint Partners, LLC. (Ownership % detailed below)</b>	<b>51.00%</b>
Mount Sinai Ambulatory Ventures, Inc. (MSAV)	36.01%
William Mulhall	4.13%
Sarah Sanford	0.75%
Matthew Searles	5.98%
Richard Searles	4.13%
<b>Total Operating Entity</b>	<b>100.00%</b>

Mount Sinai Ambulatory Ventures, Inc. (MSAV) is an existing, not-for-profit corporation whose sole passive member is the Mount Sinai Health System. The applicant members have an ownership interest in various New York State

and out-of-state FASCs (refer to BFA Attachment E.)

Richard Najac, M.D., is board certified in Ophthalmology and will serve as the Center's Medical Director. The applicant will enter into a Transfer and Affiliation Agreement for backup and emergency services with Mount Sinai Beth Israel, 2 miles (16 minutes travel time) from the Center.

The 34 physicians that will have ownership in the proposed Center have provided a letter of interest in performing procedures at the proposed Center. Collectively, this represents 8,345 cases translating to 9,180 procedures that are projected to be performed at the Center during the first year of operation. All of the proposed surgical cases will originate from Mount Sinai facilities.

#### OPCHSM Recommendation

Contingent approval with an expiration of the operating certificate five years from the date of its issuance.

#### Need Summary

The applicant projects 9,180 procedures in Year One and 9,738 in Year Three with Medicaid at 20.0% and Charity Care at 2.0%.

#### Program Summary

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a (3)(b).

#### Financial Summary

Total project costs of \$12,989,358 will be met through equity of \$1,312,814 (\$1,200,250 from the landlord and \$112,564 from members), with the remaining \$11,676,544 financed through two loans (project loan and equipment loan). The \$10,176,544 project loan is for ten years at a 6% interest rate; Valley National Bank has provided a letter of interest. The \$1,500,000 equipment loan is for five years at 7.91% interest. Dext Capital has provided a letter of interest.

Budget:	<u>Year One</u>	<u>Year Three</u>
	<u>2023</u>	<u>2025</u>
Revenues	\$18,165,858	\$19,045,635
Expenses:	<u>17,510,050</u>	<u>18,194,265</u>
Gain/(Loss)	\$655,808	\$851,370

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

### **Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations, and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women, and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include a commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
3. Submission of a signed agreement with an outside, independent entity satisfactory to the Department to provide annual reports to DOH. Reports are due no later than April 1st for the prior year and are to be based upon the calendar year. Submission of annual reports will begin after the first full or, if greater or equal to six months after the date of certification, partial year of operation. Reports should include:
  - a. Data displaying actual utilization including procedures;
  - b. Data displaying the breakdown of visits by payor source;
  - c. Data displaying the number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
  - d. Data displaying the number of emergency transfers to a hospital;
  - e. Data displaying the percentage of charity care provided;
  - f. The number of nosocomial infections recorded during the year reported;
  - g. A list of all efforts made to secure charity cases; and
  - h. A description of the progress of contract negotiations with Medicaid managed care plans. [RNR]
4. Submission of an executed project loan commitment acceptable to the Department of Health. [BFA]
5. Submission of an executed equipment loan commitment acceptable to the Department of Health. [BFA]
6. Submission of an executed administrative services agreement acceptable to the Department of Health. [BFA]
7. Submission of a photocopy of the executed Operating Agreement for Peakpoint Flatiron, LLC, acceptable to the Department. [CSL]
8. Submission of a photocopy of the executed Administrative Services Agreement with Merritt Healthcare Holdings, LLC, acceptable to the Department [CSL]
9. Submission of a photocopy of the amended and executed copy of the Lease agreement, acceptable to the Department. [CSL]
10. The submission of Design Development and State Hospital Code (SHC) Drawings, as described in BAER Drawing Submission Guidelines DSG-1.0 Required Schematic Design (SD) and Design Development (DD) Drawings, and 3.38 LSC Chapter 38 Business Occupancies Public Use, for review and approval. [DAS]

### **Approval conditional upon:**

1. This project must be completed by **July 15, 2024**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]

2. Construction must start on or before **August 15, 2023**, and construction must be completed by **April 15, 2024**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The submission of annual reports to the Department as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. [RNR]
5. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
6. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:  
[https://www.health.ny.gov/facilities/hospitals/docs/hcs\\_access\\_forms\\_new\\_clinics.pdf](https://www.health.ny.gov/facilities/hospitals/docs/hcs_access_forms_new_clinics.pdf). Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: [hospinfo@health.ny.gov](mailto:hospinfo@health.ny.gov) [HSP]

Council Action Date  
February 9, 2023

## Need Analysis

### Proposal

Peakpoint Flatiron LLC d/b/a NY Eye & Ear of Mount Sinai Surgery Center is seeking approval to establish a dual single-specialty ambulatory surgery center (ASC) to be located at 1115 Broadway, New York, 10010 in New York County. The center will provide ophthalmology and otolaryngology head and neck surgery services and have two operating rooms and four procedure rooms.

### Background and Analysis

The service area is New York County. The population of New York County in 2020 was 1,694,251 and is projected to increase slightly to 1,709,958 by 2025. According to Data USA, in 2019, 95.3% of the population of New York County had health coverage as follows:

Employer Plans	52.8%
Medicaid	19.6%
Medicare	10.2%
Non-Group Plans	12.4%
Military or VA	0.305%

The number of projected procedures is 9,180 in Year One and 9,738 in Year Three with Medicaid at 20.0% and Charity Care at 2.0%. These projections are based on the current practices of participating surgeons. The applicant states that 96% of procedures moving to this center are currently being performed in a hospital setting, and the remaining 4% are being performed in other ASCs settings. According to the applicant, there are 34 physicians interested in performing procedures at the proposed center. The table below shows the projected payor mix for Years One and Three.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Medicaid	1,836	20.00%	1,948	20.00%
Medicare FFS	2,754	30.00%	2,920	29.99%
Medicare MC	505	5.50%	536	5.50%
Commercial FFS	1,303	14.19%	1,383	14.20%
Commercial MC	2,570	28.00%	2,727	28.00%
Other	28	0.31%	29	0.31%
Charity Care	184	2.00%	195	2.00%

The Center plans to obtain contracts with the following Medicaid Managed Care plans Fidelis, Health First, Amida Care, United Community Plan, and Empire HealthPlus. The Center will work collaboratively with local Federally Qualified Health Centers such as the Institute for Family Health and Community Healthcare Network to provide service to the under-insured in their service area. The Center has developed a financial assistance policy with a sliding fee scale to be utilized when the center is operational.

The table below shows the number of patient visits for relevant ASCs in New York County for 2019 through 2021. The number of patient visits for 2020 was significantly impacted by COVID-19.

Specialty Type	Facility Name	Patient Visits		
		2019	2020	2021
Multi	Fifth Avenue Surgery Center	3,936	3,464	3,637
Multi	Fifth Avenue Surgery Center LLC (opened 7/20/21)	N/A	N/A	1,452
Multi	Gramercy Surgery Center	4,851	3,521	4,580
Ophthalmology	Hudson Specialty Surgery Center (opened 6/30/20)	N/A	27	1,183
Multi	Hudson Surgery Center (opened 1/13/22)	N/A	N/A	N/A
Multi	Manhattan Surgery Center	6,326	4,091	4,799
Multi	Midtown Surgery Center	3,749	2,449	1,765
Multi	NY Center for Ambulatory Surgery (opened 12/13/19)	N/A	480	939
Ophthalmology	Retinal Ambulatory Surgery Center of NY Inc.	4,882	3,142	4,529
Multi	Surgicare of Manhattan, LLC	4,257	2,878	2,665
Multi	Surgicare of Westside (opened 12/16/20)	N/A	N/A	156
Multi	The Derfner Foundation ASC (opened 2/22/22)	N/A	N/A	N/A
<b>Total Visits</b>		<b>28,001</b>	<b>20,052</b>	<b>25,705</b>

The applicant describes the need for bringing surgical cases from Mount Sinai facilities to the proposed center to provide needed services in the community in a cost-effective manner and provide a single center of excellence for surgical services in a convenient location. This will also allow for additional capacity for Mount Sinai facilities to serve more difficult surgical cases.

#### Conclusion

Approval of this project will increase access to ophthalmology and otolaryngology head and neck surgery services in an outpatient setting for the residents of New York County.

## Program Analysis

### Project Proposal

Peakpoint Flatiron LLC d/b/a Peakpoint Flatiron, an existing New York State limited liability company, seeks approval to establish and construct a dual single specialty freestanding ambulatory surgery center specializing in Ophthalmology and Otolaryngology to be located at 1115 Broadway 2<sup>nd</sup> floor in New York (New York County).

<b>Proposed Operator</b>	Peakpoint Flatiron, LLC
<b>Doing Business As</b>	Peakpoint Flatiron
<b>Site Address</b>	1115 Broadway 2 <sup>nd</sup> Floor New York, New York 10010 (New York County)
<b>Surgical Specialties</b>	Single Specialty (Dual) Ophthalmology Otolaryngology
<b>Operating Rooms</b>	2
<b>Procedure Rooms</b>	4
<b>Hours of Operation</b>	Monday and Friday, 7:00 am to 5:00 pm
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	30.14 FTEs / 30.14 FTEs
<b>Medical Director(s)</b>	Richard Najac, MD
<b>Emergency, In-Patient, and Backup Support Services Agreement and Distance</b>	Is expected to be provided by: Mount Sinai Beth Israel 2.0 Miles / 16 minutes
<b>On-call service</b>	Patients who require assistance during off-hours will engage a 24-hour a day seven (7) day a week physician on-call service

### Character and Competence

The ownership of Peakpoint Flatiron, LLC is:

<b>Member Name</b>	<b>Proposed Interest</b>
Maria Basile, M.D.	1.44%
Brian Campolattaro, M.D.	1.59%
Courtney Chou, M.D.	1.59%
Christopher Coad, M.D.	1.59%
Charles Cole, M.D.	1.59%
Maura Cosetti, M.D.	1.59%
Mark Couray, M.D.	1.00%
Alan Dayan, M.D.	1.59%
Anthony Del Signore, M.D.	1.59%
Jay Dolitsky, M.D.	1.59%
David Godin, M.D.	1.59%
Satish Govindaraj, M.D.	1.59%
Mingyang Gray, M.D.	1.59%
Anita Gupta, M.D.	1.00%
Gregory Harmon, M.D.	1.59%
Juan Horta-Santini, M.D.	1.59%
Gregory Levitin, M.D.	1.44%
Fred Lin, M.D.	1.59%
Bruce Moskwitz, M.D.	1.00%
Richard Najac, M.D.	1.59%
Andrew Nightengale, M.D.	1.59%
Enrique Perez, M.D.	0.67%

Roheen Raithatha, M.D.	1.59%
Joshua Rosenberg, M.D.	1.59%
Valeria Rubenstein, M.D.	1.59%
Madeleine Schaberg, M.D.	1.00%
Edward Shin, M.D.	1.44%
Eric Smouha, M.D.	1.00%
Mark Speaker, M.D.	1.44%
Tak Yee Tania Tay, M.D.	1.59%
Gregory Tsai, M.D.	1.59%
Calvin Wei, M.D.	1.59%
Dina Weintraub, M.D.	1.00%
H. Jay Wisnicki, M.D.	1.59%
<b>Peakpoint Partners, LLC</b> Mount Sinai Ambulatory Ventures (36.01%) William Mulhall (4.13%) Sarah Sanford (0.75%) Matthew Searles (5.98%) Richard Searles (4.13%)	51.00%
<b>TOTAL</b>	<b>100%</b>

Mount Sinai Ambulatory Ventures, Inc. (MSAV) is an existing not-for-profit corporation whose sole passive member is the Mount Sinai Health System. MSAV has the following Board Members/Officers:

<i>Kelly Cassano</i>	<i>Board Member</i>
<i>Jodi Cohen</i>	<i>Board Member</i>
<i>Vicki LoPachin, M.D.</i>	<i>Board Member</i>
<i>Michael Pastier</i>	<i>Board Member</i>
<i>Denise Prince</i>	<i>Board Member</i>
<i>Brent Stackhouse</i>	<i>Board Member</i>

The managing members of Peakpoint Flatiron, LLC are:

<i>Richard Searles</i>	<i>Managing Member</i>
<i>William Mulhall</i>	<i>Managing Member</i>
<i>Sarah Sanford</i>	<i>Managing Member</i>

**Jodi Cohen- Ansari** is the System Senior Vice President of Business and Strategic Planning at Mount Sinai Health System for 14 years. She was the previous Vice President, Senior Director, and Director of Business Planning. She participates in the decision-making process with System Leadership through presentation of relevant financial and market analysis related to multimillion clinical investment and evaluates managed care strategy. She prepares business plans to evaluate physician recruitment and program development through collaboration with Hospital and Medical School/Departmental leadership. She created a compensation structure relative to market data, MD experience, and productivity, including individual and group models. She plans and tracks revenue improvement initiatives and reviews, approves, and monitors hospital budgetary support of \$560M. She was the Vice President of Finance and Clinical Services at St. Vincent's for seven (7) years. She was the previous Administrative Director of Finance and Manager of Finance/Business Planning. She managed the development of a \$550M hospital operating budget and worked with the Vice President of Budget and Reimbursement, and directed departmental budgets. She led in the development of zero-based budgeting and institution-wide Performance Initiative Committee charged with identifying cost reductions and revenue enhancements. She was a Senior Associate at Pricewatercoopers, LLP for two (2) years, where she performed revenue cycle diagnostics, accounts receivable reduction, interim managerial services, and system implementation. She facilitated problem resolution and implementation of recommended policy and procedure enhancements. She was the Assistant Manager of Patient Financial Services at Memorial Sloan Kettering for five (5) years. She provided leadership and operational management of the registration and cashiering units, planned and rolled out policies related to managed care patients, and monitored the quality of services.

**Dr. Maria Basile** is an Assistant Professor of the New York Ear and Eye Infirmary of Mount Sinai Department of Ophthalmology for 14 years. She was the previous Assistant Professor of Beth Israel Medical Center's Department of Ophthalmology for two (2) years. She received her medical degree from SUNY Downstate. She completed her Ophthalmology residency and Glaucoma fellowship at Mount Sinai School of Medicine. She is board certified in Ophthalmology.

**Dr. Kelly Cassano** is the Chief Executive Officer of the Mount Sinai Doctors Faculty Practice for over one (1) year. She is the Senior Vice President of Ambulatory Operations for the Mount Sinai Health Systems for two (2) years. She is the Dean of Clinical Affairs at the Icahn School of Medicine for eight (8) years. She was the Chief of Ambulatory Surgery at Mount Sinai Downtown for six (6) years. She was the Senior Associate Dean of Clinical Affairs at the Icahn School of Medicine for three (3) years. She is an Internist at Mount Sinai Doctors for five (5) years. She is the Medical Director of Mount Sinai Doctors Downtown Union Square for eight (8) years. She was an Internist at Mount Sinai Doctors West Park Medical Group for eight (8) years. She was the Senior Medical Director at Continuum Medical Group for two (2) years. She was the Medical Director of West Park Medical Group for 14 years. She was the Chief Liaison at Beth Israel for two (2) years. She was an Internist at Daytop Village for five (5) years. She received her medical degree from the University of New England College of Osteopathic Medicine. She completed her Internal Medicine residency at St. Vincent's Hospital. She is board certified in Internal and Osteopathic Medicine.

**Dr. Brian Campolattaro** is an Ophthalmologist at Pediatric Ophthalmology of N.Y., P.C. for over 27 years. He received his medical degree from New Jersey Medical School. He completed his Ophthalmology residency at The New York Eye and Ear Infirmary. He completed his Pediatric Ophthalmology fellowship at Washington University Medical Center. He is board certified in Ophthalmology.

**Dr. Courtney Chou** is an Assistant Professor of Sleep Surgery at the Icahn School of Medicine for three (3) months. She was a Clinical Instructor in Comprehensive Otolaryngology for one (1) year. She received her medical degree from the University of Virginia School of Medicine. She completed her Otolaryngology Head and Neck Surgery residency at the University of Pittsburgh Medical Center. She completed her Sleep Medicine and Sleep Surgery fellowship at Stanford University. She is board certified in Otolaryngology and Sleep Medicine.

**Dr. Christopher Coad** is the Founding Surgeon and Medical Director of Chelsea Eye Ophthalmology for 32 years. He is an Associate Adjunct Professor in Otolaryngology for 32 years. He is an Associate Ophthalmologist at The Macklod Eye Institute for 32 years. He was an Attending Physician at Cabrini Medical Center for 19 years. He was an Attending Physician at St. Vincent's Hospital and Medical Center for 21 years. He was a Research Assistant and a Teaching Assistant at the University of California, San Diego School of Medicine for one (1) year. He received his medical degree from Baylor College of Medicine. He completed his Ophthalmology residency at New York Eye and Ear Infirmary. He completed his Staff Ophthalmology and International Ophthalmology fellowship at Project ORBIS. He is board certified in Ophthalmology.

**Dr. Charles Cole** is a Physician at Eye Surgeon PC for 19 years. He is the Director of the Glaucoma Clinic at New York Hospital Queens for over 20 years. He is a Clinical Assistant Professor of Ophthalmology at Weill Cornell Medical Center for over 21 years. He was an Assistant Professor for two (2) years. He is an Attending Ophthalmologist at New York Presbyterian Hospital for over 21 years. He is an Attending Physician at New York Eye and Ear Infirmary for over 15 years. He received his medical degree from Columbia University College of Physicians and Surgeons. He completed his Ophthalmology residency at Mount Sinai and NYU Medical Center. He completed his Glaucoma fellowship at Cornell University. He is board certified in Ophthalmology.

**Dr. Maura Cosetti** is the Fellowship Director of Neurotology Fellowship for one (1) year. She is the Director of the Ear Institute at New York Eye and Ear Infirmary for three (3) years. She is an Associate Professor at Icahn School of Medicine for three (3) years. She is a Faculty Surgeon in Otolaryngology and Neurotology at New York Eye and Ear Infirmary for six (6) years. She is a Director of the Cochlear Implant Program at the New York Eye and Ear Infirmary for six (6) years. She was an Assistant

Professor at the Icahn School of Medicine for three (3) years. She was the Associate Residency Program Director and the Co-Director of Otolaryngology of the Department of Otolaryngology at Louisiana State University Health Sciences Center for four (4) years. She was the Course Director of Head and Neck Neurosciences for first-year medical students at Louisiana State University for one (1) year. She was the Clerkship Director of the fourth-year medical students at Louisiana State University for three (3) years. She was the Medical Director of the Ambulatory Care Clinic's Department of Otolaryngology for four (4) years. She was the Assistant Professor of the Department of Otolaryngology at New York University for two (2) years. She received her medical degree from the University of Pittsburgh. She completed her Otolaryngology residency at New York Eye and Ear Infirmary. She completed her Neurotology fellowship at New York University. She is board certified in Otolaryngology with a sub-certification in Neurotology.

**Dr. Mark Courey** is the Vice Chairman of Quality, a Professor of Otolaryngology, the Director in the Division of Laryngology, the Medical Director in Speech-Language Pathology, the Director at Grapscheid Voice and Swallowing Center, and the Director of the Laryngology Fellowship Program at Mount Sinai for over six (6) years. He was the Lewis Francis Morrison, MD Endowed Chair in Laryngology at San Francisco School of Medicine for nine (9) months. He was a Professor in Clinical Otolaryngology, the Director in the Division of Laryngology, and the Medical Director in Speech-Language Pathology at San Francisco School of Medicine for over ten (10) years. He was an Adjunct Instructor in Music at Belmont University for four (4) years. He was an Associate Professor in Otolaryngology at Vanderbilt University for five (5) years. He was the Acting Director of OHNS Associates at St. Thomas Hospital for five (5) years. He was the Medical Director of Vanderbilt Voice Center at Vanderbilt University Medical Center for six (6) years. He was an Instructor in Otolaryngology at Vanderbilt University Medical Center for one (1) year. He received his medical degree from SUNY Buffalo. He completed his General Surgery residency at Beth Israel Hospital. He completed his Otolaryngology residency at SUNY Buffalo. He completed his Laryngology fellowship at Vanderbilt University Medical Center.

Dr. Alan Dayan is the Founder and Managing Partner of New York Retina Consultants, PLLC for five (5) years. He is an Attending Surgeon at New York Eye and Ear Infirmary for 21 years. He is an Attending Physician in private practice for 24 years. He was a Physician at Retina Consultants of NY for 13 years. He received his medical degree from Mount Sinai School of Medicine. He completed his Ophthalmology residency at New York Eye and Ear Infirmary. He completed his Vitreoretinal fellowship at the University of Tennessee.

**Dr. Anthony Del Signore** is an Assistant Professor, the Director of Sinus and Endoscopic Skull Base Surgery, Assistant Residency Program Director, Resident and Faculty Wellbeing Champion, and Social Media Ambassador in Otolaryngology at Mount Sinai Beth Israel and the Icahn School of Medicine for over seven (7) years. He was a Clinical Instructor in Otolaryngology at the University of North Carolina Chapel Hill for one (1) year. He received his medical degree from Warren Alpert School of Medicine at Brown University. He completed his Otolaryngology residency at the Icahn School of Medicine. He completed his Rhinology and Endoscopic Skull Base fellowship at University of North Carolina at Chapel Hill. He is board certified in Otolaryngology.

**Dr. Jay Dorlitsky** is an Otolaryngologist at ENT and Allergy Associates, LLP for 18 years. He was an Otolaryngologist at New York Eye and Ear Infirmary for over 12 years. He is an Attending Physician at New York Eye and Ear for 30 years. He is an Attending Physician at Beth Israel Medical Center for five (5) years and previously for over 17 years. He was an Attending Physician at St. Vincent's Hospital and Medical Center for 18 years. He received his medical degree for SUNY Downstate. He completed his residency and his General Surgery Internship at Bellevue Hospital Center. He completed his Otolaryngology clinical fellowship and residency at Manhattan Eye, Ear & Throat. He completed his Pediatric Otolaryngology fellowship at Children's Hospital of Pittsburgh. He is board certified in Otolaryngology.

**Dr. David Godin** is a Clinical Assistant Professor in Otolaryngology at Mount Sinai School of Medicine for 12 years. He is a Faculty Adjunct Professor at Touro College for 12 years. He received his medical degree from SUNY Upstate Medical Center. He completed his General Surgery and Otolaryngology residency at Tulane University School of Medicine.

**Dr. Satish Govindaraj** is the Director of the Division of Rhinology for over seven (7) years. He is also the Vice Chairman of Clinical Affairs in the Department of Otolaryngology for over eight (8) years. He is an Associate Professor in the Department of Otolaryngology for over nine (9) years. He received his medical degree from Northwestern Ohio Medical University. He completed his Otolaryngology residency and fellowship at the Icahn School of Medicine at Mount Sinai. He is board certified in Otolaryngology.

**Dr. Mingyang Gray** is the Assistant Professor of the Division of Facial Plastic and Reconstructive Surgery in the Department of Otolaryngology Head and Neck Surgery for over two (2) years. He received his medical degree from Tulane University. He completed his Otolaryngology residency at the Icahn School of Medicine at Mount Sinai. He is completing his Facial Plastic and Reconstructive Surgery fellowship at Johns Hopkins University School of Medicine.

**Dr. Anita Gupta** is a Professor at the Icahn School of Medicine at Mount Sinai for four (4) years. She was an Assistant Professor of Ophthalmology at New York Medical College for over one (1) year. She was an Assistant Professor of Clinical Ophthalmology at the Bascom Palmer Eye Institute for over two (2) years. She was an Instructor of Ophthalmology for over one (1) year. She is the Vice Chair of Professional Development and Director of Cornea Services at New York Eye and Ear Infirmary for over two (2) years. She was the Director of the Ophthalmology Residency Program, Director of the Comprehensive Ophthalmology Service, Director of the Medical Student Education, and Assistant Director of the Comprehensive Ophthalmology Service at New York Eye and Ear Infirmary. She received her medical degree from University of California, San Francisco School of Medicine. She completed her Ophthalmology residency at the Wilmer Eye Institute at Johns Hopkins University. She completed her Cornea, External Disease, and Refractory Surgery fellowship at the Bascom Palmer Eye Institute at the University of Miami. She is board certified in Ophthalmology.

**Dr. Gregory Harmon** is the Owner and Attending Physician at Harmon Ophthalmology for over 15 years. He is a Clinical Associate Professor of Ophthalmology at Weill Cornell Medical College for over 15 years. He is an Associate Adjunct Surgeon at New York Eye and Ear Infirmary for over 15 years. He is an Assistant Medical Staff at Manhattan Eye, Ear & Throat Hospital for over 15 years. He is an Associate Professor of Ophthalmology and Director of Glaucoma Services at the New York Hospital for over 15 years. He was the Residency/Coordinator at The New York Hospital Cornell Medical Center for two (2) years. He was an Instructor of Ophthalmology for one (1) year. He received his medical degree from Mount Sinai School of Medicine. He completed his Internal Medicine residency at St. Luke's Roosevelt Hospital. He completed his Ophthalmology residency and Glaucoma fellowship at The New York Hospital. He is a Board Member of The Glaucoma Foundation for 29 years and the Chairman for 23 years. He is board certified in Ophthalmology.

**Dr. Juan Horta-Santini** is the President, General Ophthalmologist, and Glaucoma Specialist at Horta-Santini Eye Care for over five (5) years. He was a General Ophthalmologist and Glaucoma Specialist at Union Square Eye Care for over two (2) years. He was a General Ophthalmologist and Glaucoma Specialist at New York Eye Surgery Center for over one (1) year. He received his medical degree from the University of Puerto Rico School of Medicine. He completed his Ophthalmology residency at the University of Puerto Rico School of Medicine. He completed his Glaucoma fellowship at Tufts University New England Eye Center and Ophthalmologic Consultants of Boston.

**Dr. Gregory Levitin** is the Director of the Vascular Birthmarks and Malformations Program and an Associate Clinical Professor in Otolaryngology for over six (6) years. He is the Director of the Vascular Birthmark Center of New York for over 13 years. He was the Co-Director of Surgical Services at the Vascular Birthmark Center for two (2) years. He was an Associate Physician in the Head and Neck Surgical Group at St. Luke's Roosevelt Hospital for over one (1) year. He was an Associate Physician at ENT and Allergy Associates, LLP for over two (2) years. He received his medical degree from the University of North Carolina School of Medicine. He completed his Otolaryngology Head and Neck Surgery residency at the Mount Sinai Medical Center. He is board certified in Otolaryngology.

**Dr. Fred Lin** is an Assistant Professor of Otolaryngology-Head and Neck Surgery at The Mount Sinai Spine Center for 11 years. He is the Director of The Mount Sinai Sleep Surgery Program, the Division Chief of Sleep Surgery, and an Attending Physician at the Mount Sinai Hospital for over 11 years. He is an Attending Physician at The New York Eye and Ear Infirmary of Mount Sinai for over eight (8) years.

He was an Attending Physician at Beth Israel Hospital for over one (1) year. He was an Attending Physician at Richmond University Medical Center for over three (3) years. He was a Clinical Instructor at Stanford University Medical Center for one (1) year. He received his medical degree from the University of Louisville School of Medicine. He completed his residency in General Surgery and Otolaryngology-Head and Neck at Mount Sinai Hospital. He completed his Sleep Surgery fellowship at Stanford University Medical Center. He is board certified in Otolaryngology.

**Dr. Vicki LoPachin** is the Chief Medical Officer and Senior Vice President of Mount Sinai Health System for nine (9) years. She was the previous Medical Director of North Shore University Hospital for five (5) years. She was an Internal Medicine Physician in private practice for ten (10) years. She is an Assistant Professor at Mount Sinai School of Medicine for eight (8) years. She was an Assistant Professor at Hofstra North Shore LIJ School of Medicine for three (3) years. She was an Assistant Clinical Professor at the Mount Sinai School of Medicine for four (4) years. She was a Clinical Instructor at Mount Sinai School of Medicine for seven (7) years. She is an Attending Physician at Mount Sinai for 25 years. She was an Attending Physician at North Shore University Hospital for six (6) years. She was an Attending Physician at Jewish Home and Hospital for 11 years. She received her medical degree from SUNY Stony Brook. She completed her Internal Medicine residency at Mount Sinai Hospital. She is board certified in Internal Medicine. Dr. LoPachin discloses membership interest in the following healthcare facilities:

<i>Carnegie Hill Endoscopy</i>	<i>07/2017-present</i>
<i>South Brooklyn Endoscopy Center</i>	<i>07/2017-present</i>
<i>East Side Endoscopy</i>	<i>07/2017-present</i>
<i>Liberty Endoscopy Center</i>	<i>07/2017-present</i>
<i>Northern Westchester Facility Project</i>	<i>12/2018-present</i>
<i>Manhattan Surgery Center</i>	<i>07/2017-present</i>
<i>West Side GI</i>	<i>07/2017-present</i>
<i>The Endoscopy Center of New York</i>	<i>12/2017-present</i>

**Dr. Bruce Moskowitz** is an Assistant Professor in Ophthalmology at The New York Medical College for 24 years. He is an Attending Physician at Oculoplastic and Reconstructive Service at New York Eye and Ear Infirmary for 27 years. He is the Associate Clinical Director at New York Eye and Ear Infirmary for 29 years. He was a Clinical Instructor of Ophthalmology at SUNY Downstate for one (1) year. He was the Director of Ambulatory Ophthalmology at Lutheran Medical Center for two (2) years. He was the Assistant Professor of Ophthalmology at SUNY Downstate for two (2) years. He received his medical degree from SUNY Downstate. He completed his Ophthalmology residency at SUNY Downstate. He completed his Neuro-Ophthalmology fellowship at Kingsbrook Jewish Medical Center. He is board certified in Ophthalmology.

**William Mulhall** is a Partner at Merritt Healthcare Holdings, LLC for 19 years. He is responsible for all clinical and operational activities of the organization. His areas of focus include facility design, development and construction, accreditation, clinical operations, regulatory compliance, equipment planning, staffing, and policy development. He was the Previous Director of Nursing of Wilton Surgery Center for five (5) years. He was responsible for managing, directing, and supervising all peri-anesthesia nursing and ancillary clinical services, including central processing, materials management, and radiology services. He is responsible for drafting, implementing, and enforcing all standard operating procedures in conjunction with the Facility Administrator, staffing, and hiring of all clinical personnel, oversight, and maintenance of Quality Assessment, and Performance Improvement. He was the Chief Procedure Nurse of Pain Management Associates of Connecticut for three (3) years. He was a Special Care Unit Staff Nurse, Charge Nurse, and Cardiovascular Suite Nurse at The Stamford Hospital for two (2) years. He provided daily nursing care to patients on a monitored 20-bed cardio-respiratory/surgical step-down unit. He was responsible for staffing, shift coordination, delegation of duties to ancillary staff members, and interaction and coordination with interdisciplinary team members. He was the Operations Manager, Director of Volunteers, and Director of Operation of Stamford EMS for six (6) years. He managed and directed all operations staff and functions of a 60-employee, 50-volunteer not-for-profit and regional emergency medical service serving a population of 120,000. Mr. Mulhall discloses ownership interest in the following healthcare facilities:

<i>River Valley ASC, LLC</i>	<i>2012-2016</i>
<i>Surgical Center of Connecticut, LLC</i>	<i>2013-2016</i>
<i>Western Connecticut Orthopaedic Surgical Center</i>	<i>2013-2017</i>

<i>Ellicott City ASC</i>	<i>2013-2017</i>
<i>Bloomfield ASC LLC</i>	<i>2015-2021</i>
<i>Summer Street ASC LLC</i>	<i>2015-2021</i>
<i>Guilford Surgery Center</i>	<i>2015-present</i>
<i>Waterbury Surgery Center</i>	<i>2016-2021</i>
<i>Orthopaedic Specialty Surgery Center</i>	<i>2018-present</i>
<i>Northern Westchester Facility Project LLC</i>	<i>2019-present</i>
<i>UWS ASC LLC</i>	<i>2021-present</i>

**Dr. Richard Najac** is the President and CEO of Najac Vision for over 22 years. He is an Associate Attending in Ophthalmology at New York Eye and Ear Infirmary for 29 years. He was a Member of the Eye Bank for Sight Restoration for nine (9) years. He received his medical from Weill Cornell Medical College. He completed his Ophthalmic residency and Cornea fellowship at New York Eye and Ear Infirmary. He is board certified in Ophthalmology.

**Dr. Andrew Nightingale** is the Owner of Nightingale Eye Associates for over seven (7) years. He is an Attending Physician at New York Eye and Ear Infirmary, Mount Sinai St Luke's Roosevelt, and Mount Sinai Hospitals for over seven (7) years. He was a Summer Analyst at Citigroup Global Markets for three (3) months. He was a Research Scientist at Liem Lab in Columbia University for one (1) year. He was an Investment Banking Analyst at Citigroup Global Markets for eight (8) months. He was an Analyst at Commercial Industrial Finance Corporation for six (6) months. He received his medical degree from Columbia University College of Physicians and Surgeons. He completed his Ophthalmology residency at New York Eye and Ear Infirmary of Mount Sinai. He is board certified in Ophthalmology.

**Michael Pastier** is the Senior Vice President and CFO of the Mount Sinai Health System for seven (7) years. He was the Senior Vice President and CFO of Mount Sinai Hospital for 12 years. He was also Vice President of Financial Planning and Reporting for three (3) years. He was also the Director of Finance for 13 years. He is responsible for financial management, planning, organization, direction, and control of the health system. He manages over 700 finance employees, oversees operating and capital budgeting processes, manages all cash and liquidity, and is responsible for the preparation of monthly financial statements, determines revenue impact of new programs and program enhancements, and ensures the operation and liquidity supports the strategic mission of the institution. He also ensures efficient billing and collections for each hospital and standardized reporting from several different systems. He was a Senior Auditor at Deloitte & Touche for three (3) years. He managed several audits of hospitals ranging from 100-800 beds, consulted with several healthcare organizations on reimbursement issues and on maximizing revenue, and supervised and delegated assignments to staff. He is a member of the Board of Trustees of Hemophilia Services Consortium, Inc., Healthfirst, Inc., and LiveOnNY, Inc.

**Dr. Enrique Perez** is an Assistant Professor of Otolaryngology for three (3) years. He received his medical degree from the University of Miami Miller School of Medicine. He completed his Otolaryngology residency at Mount Sinai School of Medicine. He completed his Neurotology fellowship at the University of Miami Miller School of Medicine. He is board certified in Otolaryngology with a sup-certification on Neurotology.

**Denise Prince** is the Senior Vice President of Population Health at Mount Sinai Health System for five (5) years. She is also the Chief Operating Officer, of Mount Sinai Health Partners, and New York Medical Partners ACO, LLC. She serves as a member of the population health leadership team and partners with the CMO for Population Health to innovate and transform clinical operations to create, maintain, and optimize population health infrastructure in support of value-based care principles. She builds, develops, and manages the clinical operations team to drive reliable outcomes on key performance indicators and value-based contracts. She was the System Vice President of Value-based Care and Vice President of Population Health at Geisinger Health System for five (5) years. She also held the roles of CEO of Keystone ACO and CEO of Sun Home Health and Hospice. She co-led Geisinger's participation in Physician Group Practice Transition demonstration; partnered with CMS to refine key model attributes including benchmarking, data access, and quality measures. She spearheaded the creation of the Keystone ACO (KACO) joint venture to support population health, oversaw KACO joint venture governance and operations team, tracked and commented on CMS proposed rules and CMMI innovation

models, negotiated data and analytics contracts with vendors in support of alternate payment models, and led CMMI Bundled Payment for Care Improvement Initiatives. She was the Founder, Managing Partner, COO, and CEO of Geisinger Ventures for eight (8) years. She proposed, founded, and implemented Geisinger Ventures to access outside capital and maximize the benefit of intellectual property, for-profit businesses, and corporate relationships. Additionally, she vetted proposals, conducted due diligence, created business plans, and launched new businesses. The Geisinger Ventures team negotiated and implemented strategic partnerships. She led teams that raised more than \$22M from outside sources to support the system's innovation and mission. She was the Senior Vice President of Geisinger Diversified Services for 12 years. She directed and managed all aspects of operations and strategy for a portfolio of for-profit and not-for-profit services in partnership with clinical enterprise and insurance leaders. She was a Director of Management Services of Geisinger Diversified Services for two (2) years. She directed all retail pharmacies, home infusion pharmacies, and emergency support services. She consulted to outside hospitals to align with system strategies. Mrs. Prince discloses membership interest in the following healthcare facilities:

*New York Medical Partners ACO*

*05/2107-present*

**Dr. Roheen Rainthatha** is a Partner at ENT & Allergy Associates for over three (3) years. He was previously an Associate Physician at ENT & Allergy Associates for six (6) years. He is a Clinical Instructor in the Department of Otolaryngology at the Icahn School of Medicine at Mount Sinai for eight (8) years. He is a Reviewer for Allergy and Rhinology for seven (7) years. He is the Co-Chairman of Rhinology and Office-based Sinus Committee ENT & Allergy Associates for seven (7) years. He is a Member of OASIS Risk Management Committee for four (4) years. He is a Member of the Physician Recruitment Committee for three (3) years. He received his medical degree from Tufts University School of Medicine. He completed his Otolaryngology residency at New York Presbyterian Hospital Columbia and Cornell Campus. He completed his Advanced Rhinology and Endoscopic Skull Base Surgery fellowship at Weill Cornell Medical College. He is board certified in Otolaryngology.

**Dr. Joshua Rosenberg** is the Co-Chief of the Division of Facial Plastic and Reconstructive Surgery in the Department of Otolaryngology for over five (5) years. He is an Attending Physician and Assistant Professor in the Department of Otolaryngology for over 11 years. He was an Attending Physician at the Miami VA, the University of Miami Medical Group, Jackson Memorial Hospital, and the Miller School of Medicine for one (1) year. He received his medical degree from Albert Einstein College of Medicine. He completed his Otolaryngology residency at Albert Einstein College of Medicine. He completed his Facial Plastic and Reconstructive Surgery fellowship at Stanford University. He completed his Microvascular Reconstruction and Head and Neck Surgical Oncology fellowship at Miller School of Medicine at the University of Miami. He is board certified in Otolaryngology and Facial Plastic and Reconstructive Surgery.

**Dr. Valeria Rubinstein** is an Ophthalmologist at NY Medical & Surgical Eye Care for over 12 years. She is an Associate Adjunct Surgeon and Clinical Instructor at the New York Eye and Ear Infirmary for 15 years. She was an Assistant Professor at Albert Einstein School of Medicine for over two (2) years. She was an Instructor in Clinical Ophthalmology at College of Physicians and Surgeons of Columbia University for over two (2) years. She was a Clinical Instructor at Manhattan Eye, Ear, and Throat Hospital for over two (2) years. She received her medical degree from Northwestern University. She completed her Ophthalmology residency at Yale University. She completed her Glaucoma fellowship at Columbia University. She is board certified in Ophthalmology.

**Sarah Sanford** is the President of Finance of Merritt Healthcare for six (6) years. She is responsible for business operations of the affiliated ASCs. She was the Vice President of Firmwide Planning and Analysis of JP Morgan Chase for two years. She was responsible for consolidating firmwide results to senior management. She was the Manager of Financial Planning and Analysis at Moody's Corporation for two (2) years. She was responsible for financial analysis and budgeting for the corporate finance group. She was the Manager of Finance at Traveler's Insurance Company for seven (7) years. She was responsible for various financial reporting and budgeting roles for multiple lines of business.

**Dr. Madeleine Schaberg** is the Director of Rhinology and Endoscopic Sinus Surgery at New York Eye and Ear Infirmary of Mount Sinai for over 11 years. She was the Assistant Professor and Attending Surgeon at Thomas Jefferson University for 11 years. She is the Assistant Professor of Otolaryngology of

Head and Neck Surgery for over eight (8) years. She was the Assistant Professor of Otolaryngology of Head and Neck Surgery at New York Medical College for over two (2) years. She was the Assistant Professor of Otorhinolaryngology of Head and Neck Surgery for one (1) year. She was the Assistant Clinical Professor of Otorhinolaryngology for one (1) year. She received her medical degree from Tulane University School of Medicine. She completed her General Surgery Internship and Otolaryngology residency at Mount Sinai School of Medicine. She completed her Rhinology and Skull base Surgery fellowship at Weill Cornell Medical College of Cornell University. She is board certified in Otolaryngology Head and Neck.

**Matthew Searles** is the Founding Managing Director and Founding Partner of Merritt Healthcare Advisors for over 21 years. He is responsible for successfully completing over \$3B in healthcare transactions since 2001, spanning over 75 separate transactions. He is a leading developer and manager of ASCs in Eastern New York. He has developed 20 ASCs that perform over 75,000 annually. Mr. Searles discloses ownership information in the following healthcare facilities:

<i>River Valley ASC</i>	<i>2013-2016</i>
<i>Surgical Center of Connecticut, LLC</i>	<i>2013-2016</i>
<i>Western Connecticut Orthopaedic Surgical Center</i>	<i>2013-2017</i>
<i>Ellicott City ASC</i>	<i>2013-2017</i>
<i>Bloomfield ASC, LLC</i>	<i>2015-2021</i>
<i>Summer Street ASC, LLC</i>	<i>2015-2021</i>
<i>Guilford Surgery Center</i>	<i>2015-present</i>
<i>Waterbury Surgery Center</i>	<i>2016-2021</i>
<i>Orthopaedic Specialty Surgery Center</i>	<i>2018-present</i>
<i>Northern Westchester Facility Project, LLC</i>	<i>2019-present</i>
<i>UWS ASC, LLC</i>	<i>2021-present</i>

**Richard Searles** is a Partner and Chief Financial Officer at Merritt Healthcare for 14 years. He oversees business operations for Merritt's affiliated surgery center, including personal ownership in 12 ASCs in the Northeast. He has served as a Manager or Consultant for over 36 surgery centers. His duties include development, finance, and serving as a Board Member. He is a Partner in Merritt Healthcare Advisors for 14 years. He represents over 100 physicians, surgery centers, and surgical hospitals. He also provides analysis of operations and financials, as well as long-term strategic planning. He is a Board Member and Treasurer of the Connecticut Associations of Ambulatory Surgery Centers for six (6) years. Mr. Searles discloses ownership interest in the following healthcare facilities:

<i>UWS ASC LLC</i>	<i>2021-present</i>
<i>Northern Westchester Facility Project LLC</i>	<i>2019-present</i>
<i>Orthopaedic Specialty Surgery Center</i>	<i>2018-present</i>
<i>Waterbury Surgery Center</i>	<i>2016-2021</i>
<i>Guilford Surgery Center</i>	<i>2015-present</i>
<i>Summer Street ASC</i>	<i>2015-2021</i>
<i>Bloomfield ASC LLC</i>	<i>2015-2021</i>
<i>Ellicott City ASC LLC</i>	<i>2013-2017</i>
<i>Western Connecticut Orthopaedic Surgery Center</i>	<i>2013-2017</i>
<i>Surgical Center of Connecticut LLC</i>	<i>2013-2016</i>
<i>River Valley ASC</i>	<i>2012-2016</i>

**Dr. Edward Shin** is an Attending Physician at Beth Israel Medical Center for over 12 years. He is an Associate Attending in Otolaryngology at New York Eye and Ear Infirmary for over 14 years. He is the Vice Site Chair of Otolaryngology and Mount Sinai Downtown Campus for over five (5) years. He is a Professor of Clinical Otolaryngology at Icahn School of Medicine for over eight (8) years. He was the Interim Vice Chair of Otolaryngology at Mount Sinai Beth Israel for over two (2) years. He was the Chair of Otolaryngology at New York Eye and Ear Infirmary for four (4) years. He was the Chair of Otolaryngology for New York Medical College for over one (1) year. He was the Acting Chair in Otolaryngology at New York Medical College for over one (1) year. He was the Program Director in Otolaryngology at New York Eye and Ear Infirmary for over (2) years. He was an Assistant Professor and Professor of Otolaryngology at New York Medical College for four (4) years. He was a Clinical Instructor and Assistant Professor at Mount Sinai School of Medicine for over five (5) years. He was the Regional Director of Otolaryngology at Elmhurst Hospital Center and Queens Hospital Center for over four (4)

years. He was the Clinical Assistant at Elmhurst Hospital Center and Queens Hospital Center for over five (5) years. He received his medical degree from Stanford School of Medicine. He completed his Otolaryngology residency at the University of California, San Francisco. He is board certified in Otolaryngology.

**Dr. Mark Speaker** is the Medical Director of TLC Laser Eye Centers for 25 years. He is also an Attending Ophthalmologist at Lasix NYC for 25 years. He has held multiple roles at New York Eye and Ear Infirmary for over 37 years, including Resident Director, Chair of Infection Control Committee, Cornea Fellowship Director, and Director of Cornea Service. He received his medical degree from Albert Einstein College of Medicine. He completed his Ophthalmology residency at New York Eye and Ear Infirmary. He completed his Cornea External Disease fellowship at Wills Eye Hospital.

**Dr. Eric Smouha** is an Attending Physician at Long Island Jewish Hospital for over four (4) years. He is an Attending Physician at New York Eye and Ear Infirmary for over eight (8) years. He is an Attending Physician at Mount Sinai Hospital for over 17 years. He was an Attending Physician at Elmhurst Hospital Center for 12 years. He was an Attending Physician at Winthrop University Hospital for 10 years. He was an Attending Physician at Stony Brook University Hospital and Medical Center for five (5) years. He was an Attending Physician at Boston University Hospital, Boston City Hospital, Boston VA Hospital, Boston Children's Hospital, Waltham Weston Hospital, Melrose Wakefield Hospital, and Malden Hospital for two (2) years. He was an Attending Physician at Sarasota Memorial Hospital, HCA Doctor's Hospital of Sarasota, and Rehabilitation Institute of Sarasota for two (2) years. He received his medical degree from McGill University Faculty of Medicine. He completed his General Surgery residency at St. Vincent's Hospital. He completed his Otolaryngology residency at Manhattan Eye, Ear, and Throat Hospital. He completed his Otology-Neurotology fellowship at the Ear Research Foundation. He is board certified in Otolaryngology with a sub-certification in Neurotology.

**Brent Stackhouse** is the Managing Director of Mount Sinai Ventures for eight (8) years. He is the head of subsidiary holding companies responsible for the development, acquisition, and management of ambulatory care delivery joint ventures. He is responsible for sourcing, diligence, and in NYS DOH licensed care delivery companies. He grew the portfolio from 14 to 20 joint ventures, with seven (7) exits, increasing investment returns by 270%. He was the Executive Director of Strategy for the Primary Care Information Project in the Health Care Access and Improvement Division of the New York City Department of Health and Mental Hygiene for five (5) years. He was responsible for overseeing 60 direct reports across six (6) teams responsible for finance, operations, business development, marketing, and strategy. He turned around a failing \$23M federal grant program, improved deliverables by 500%, elevated staff morale, and increased national ranking from 59<sup>th</sup> to 4<sup>th</sup> in 15 months. He secured \$50M in federal, state, and foundation funding within three years by developing new product lines, marketing strategies, metrics-based tracking, and strategic partnerships. Mr. Stackhouse discloses membership interest in the following healthcare facilities:

<i>Carnegie Hill Endoscopy</i>	<i>09/2013-present</i>
<i>South Brooklyn Endoscopy Center</i>	<i>09/2013-04/2021</i>
<i>East Side Endoscopy</i>	<i>09/2013-present</i>
<i>Liberty Endoscopy Center</i>	<i>01/2017-10/2021</i>
<i>Yorktown Center for Special Surgery</i>	<i>12/2018-present</i>
<i>Manhattan Surgery Center</i>	<i>09/2013-present</i>
<i>Upper West Side Endoscopy Center</i>	<i>07/2021-present</i>
<i>West Side GI</i>	<i>09/2013-present</i>
<i>The Endoscopy Center of New York</i>	<i>12/2017-present</i>
<i>Hudson Surgery Center</i>	<i>01/2022-present</i>
<i>Empire State ASC</i>	<i>04/2018-11/2019</i>
<i>North Queens Surgical Center</i>	<i>04/2016-11/2019</i>
<i>Island ASC</i>	<i>09/2013-present</i>

**Dr. Tai Tak Yee Tania** is a Professor of Ophthalmology at the Icahn School of Medicine at Mount Sinai for over nine (9) years. She was the Assistant Professor of New York Medical College for three (3) years. She is an Attending Ophthalmologist at New York Eye and Ear Infirmary for over 12 years. She is also an Attending Physician at Mount Sinai Beth Israel for over nine (9) years. She received her medical degree from University of Pennsylvania School of Medicine. She completed her Ophthalmology residency at

Jules Stein Eye Institute at UCLA. She completed her Glaucoma fellowship at the Wills Eye Institute at Jefferson University Health System. She is board certified in Ophthalmology. She is the Chair of the Pharmaceuticals and Therapeutics Committee of New York Eye and Ear Infirmary. She is the Glaucoma Clinic Director, Clinic Co-Director, and Director of Microsurgical Laboratory of New York Eye and Ear Infirmary.

**Dr. Gregory Tsai** is the Assistant Professor and Attending Physician at Mount Sinai West Department of Otolaryngology for over four (4) years. He was previously a Partner at Head & Neck Surgical Group for over 10 years. He was previously a Partner at The Otolaryngology and Facial Plastics Center for seven (7) years. He is an Attending Physician at Mount Sinai West, Morningside Division, Mount Sinai Hospital, and New York Eye and Ear Infirmary of Mount Sinai for over 14 years. He received his medical degree from Baylor College of Medicine. He completed his General Surgery and Otolaryngology residency at Mount Sinai Hospital. He is board certified in Otolaryngology and Sleep Medicine.

**Dr. Calvin Wei** is an Assistant Professor in the Department of Otolaryngology at Mount Sinai West. He was an Attending Physician at the Department of Otolaryngology for six (6) years. He received his medical degree from Baylor College of Medicine. He completed his residency in Otolaryngology at New York University School of Medicine Affiliated Hospitals. He completed his Rhinology and Skull Base Surgery fellowship at the University of Pennsylvania School of Medicine. He is board certified in Otolaryngology.

**Dr. Dina Weintraub** is an Attending Physician in Private Practice for over 17 years. She was an Ophthalmologist at Beth Israel Medical Group for over eight (8) years. She received her medical degree from Albert Einstein College of Medicine. She completed her Ophthalmology residency and Glaucoma fellowship at Albert Einstein College of Medicine/Montefiore Medical Center. She is board certified in Ophthalmology.

**Dr. Herbert Wisnicki** is a Clinical Professor of Ophthalmology and Pediatrics at Mount Sinai School of Medicine for over eight (8) years. He is an Adjunct Professor of Clinical Ophthalmology & Visual Sciences and Pediatrics at Albert Einstein College of Medicine for over eight (8) years. He is an Adjunct Professor of Ophthalmology at New York University for over 11 years. He is the Medical Director of Union Square Eye Care for over 12 years. He is an Associate Attending Surgeon at the New York Eye and Ear Infirmary for over 26 years. He is an Attending Physician in Ophthalmology and Pediatrics at Beth Israel Medical Center for over 26 years. He was the Deputy Assistant Director of Ophthalmology for the Eye Clinic and Resident Training in Pediatric Ophthalmology at Beth Israel Medical Center for over two (2) years. He was an Assistant Attending and Assistant Professor in Ophthalmology at Mount Sinai Hospital, Mount Sinai School of Medicine, and Elmhurst Hospital for over five (5) years. He was a Consultant Attending at the Bronx VA Medical Center. He was an Associate Adjunct Attending Physician at New York Eye and Ear Infirmary for five (5) years. He was the Acting Chairman of Ophthalmology at Beth Israel Medical Center for 12 years. He was an Adjunct Attending at The New York Eye and Ear Infirmary for five (5) years. He received his medical degree from SUNY Upstate Medical Center. He completed his Ophthalmology residency at Mount Sinai Hospital. He completed a Flexible residency (Internal Medicine, Surgery, ICU, CCU, ER, and Pediatrics) at Framingham Union Hospital. He completed a Neuro-Ophthalmology Research fellowship at the National Eye Institute at the National Institute of Health. He completed a Neurosurgery Research fellowship at SUNY Upstate. He is board certified in Ophthalmology.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

*Mr. Stackhouse disclosed that in October 2016, Empire State Ambulatory Surgery Center was found to be non-compliant with the Conditions of Participation related to Surgical Services and was at risk of having its Medicare participation agreement terminated. The facility submitted an acceptable plan of correction and remained a participating supplier of services in the Medicare program.*

- *Dr. Harmon disclosed one malpractice lawsuit. The suit was filed on November 25, 2015 by the patient. The patient alleged negligent performance of cataract surgery resulting in loss of vision. She had cataract procedures performed on August 24, 2015, September 14, 2015, and November 11, 2015. The patient was referred to another ophthalmologist, transferred her care, and did not return. The malpractice suit is pending.*
- *Dr. Horta-Santini disclosed on malpractice lawsuit. The suit was filed on August 25, 2015 by the patient and alleged negligent care and treatment. Specifically, the patient had a floppy iris from Fosamax and was treated for a cataract. The posterior capsule ruptured and caused mechanical anterior vitrectomy. The wound gape required two sutures. The post-operative cornea wound caused astigmatism and suboptimal visual acuity. A settlement in the amount of \$500,000 was reached out of court.*

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

- *The Department issued a Stipulation and Order (S&O) dated October 4, 2022, and fined Mount Sinai West \$10,000.00 based on findings from a survey that was completed June 15, 2020. Deficient practice was cited in the area of Patient Rights.*
- *The Department issued a Stipulation and Order (S&O) dated May 15, 2017, and fined Mount Sinai \$2,000.00 based on findings from a survey that was completed on January 25, 2016. Deficient practice was cited in the area of Patient Rights.*

#### **Out of state facilities:**

##### **Connecticut:**

- *The Facility Licensing and Investigation Section of the Department of Public Health made an unannounced visit to Surgical Center of Connecticut, LLC on February 17, 2016. Deficient practice was cited in the area of Chief Executive Officer and/or Professional Staff and/or Records/Reports. Specifically, the facility failed to ensure that an unintended retention of a foreign object in a patient following surgery was reported and/or the surgical record was completed accurately. The foreign object retention not being retrieved was reflected in charting but was not reported to the Department per state statute. A review of the surgical count identified that all the instruments were accounted for, and the counts were correct however, this piece of equipment was not routinely included in equipment counts allowing it to be retained by the patient.*
- *The Facility of Licensing and Investigation Section of the Department of Public Health made an unannounced visit to Surgical Center of Connecticut, LLC on May 19, 2016. Deficient practice was cited in the area of Ownership and Administration and/or Chief Executive Officer and/or Professional Staff and/or Records and Reports and/or Nursing Staff and/or General. Specifically, the facility failed to ensure that instruments are inspected for integrity prior to wound closure. The patient had surgery on December 29, 2015, and an x-ray on March 21, 2016, identified that a piece of guide wire pin had been left in the patient.*
- *The Facility Licensing and Investigation Section of the Department of Public Health made an unannounced visit to Naugatuck Valley Endoscopy Center, LLC on June 10, 2016. Deficient practice was cited in the area of Ownership and Administration and/or Chief Executive Officer and/or Professional Staff and/or Records and Reports and/or General. Specifically, the facility failed to ensure that the anesthesia consent and/or record was accurate and/or complete and/or the anesthesia provided was in accordance with facility policy. The facility policy for levels of sedation identified that no general anesthesia will be administered for endoscopic procedures. The records of six (6) patients recorded the administration of general anesthesia.*
- *The Facility Licensing And Investigation Section of the Department of Public Health made an unannounced visit to Guilford Surgery Center on January 24, 2018, and cited the facility under Ownership and Administration and/or Chief Executive Officer and/or Profession Staff. Specifically, Anesthesiologists #1, #2, and #3 performed epidural steroid injections (ESI) on three patients.*

*These Anesthesiologists were not credentialed to be performing ESI injections on the patients by the board. Additionally, the Facility Policy and Procedure manual that was reviewed and approved by the board on January 18, 2018, did not include pain injection procedures.*

- The Facility Licensing and Investigation Section of the Department of Public Health made an unannounced visit to the Naugatuck Valley Endoscopy Center, LLC on September 28, 2018. Deficient practice was cited in the area of Ownership and Administration and/or Chief Executive Officer and/or Professional Staff and/or Nursing Staff and/or General. Specifically, the facility failed to ensure the correct lens was implanted for one patient. A time-out procedure was completed and the error was not picked up.*
- The Facility Licensing and Investigation Section of the Department of Public Health made an unannounced visit to Naugatuck Valley Endoscopy Center, LLC on September 10, 2019. Deficient practice was cited in the area of Ownership and Administration and/or Professional Staff and/or Nursing Staff and/or General. Specifically, the facility failed to ensure that the manufacturer's recommendations were followed when drying endoscopes.*
- The Facility Licensing and Investigation Section of the Department of Public Health made an unannounced visit to Summer Street ASC LLC on December 18, 2020. Deficient practice was cited in the area of Owner and Administration and/or Chief Executive Officer and/or Professional Staff. Specifically, the facility failed to ensure that the physician remained in the facility until the patient was awakened from anesthesia and transported to the PACU in stable condition. The facility also failed to ensure the procedure was performed as per the surgical consent.*
- The Facility Licensing and Investigation Section of the Department of Public Health made an unannounced visit to Bloomfield ASC on July 24, 2019. Deficient practice was cited for Surgical Services. Specifically, the Surgeon and CRNA failed to effectively communicate the timing of electrocautery and oxygen resulting in the concurrent use of the two. The combination of electrocautery in an oxygen-rich environment area resulted in a fire and injury to the patient. Subsequent to the event, the facility failed to ensure all the surgical staff were educated on fire safety protocols and the safe use of electrocautery. During the period after the fire and staff not being educated, 81 surgeries were performed which resulted in an Immediate Jeopardy.*
- During the above survey, the facility also failed the Life Safety Code survey due to failure of the facility staff to execute the Fire Safety Plan. Specifically, the staff failed to activate the fire alarm to activate emergency services/personnel and to warn other building occupants.*
- The Facility Licensure and Investigation Section of the Department of Public Health made an unannounced visit to Guilford ASC on January 28, 2020. Deficient practice was cited in the area of Chief Executive Office and/or Professional Staff. Specifically, the facility failed to ensure the quarterly reviews for radiology safety were being conducted by the Radiology Officer and the Radiology Physicist recommendations were evaluated or implemented from 2018. The facility's c-arm was not equipped with the proper required components with failure to do so leading to high x-ray exposure.*
- The Facility Licensing and Investigating Section of the Department of Public Health made an unannounced visit to Bloomfield ASC on October 1, 2021. Deficient practice was cited in the area of failing to ensure an adverse event was reported to the state agency in a timely manner. Specifically, three patients had the wrong lens power implanted in their eye and one patient had the wrong lens implanted in their eye. The Office Manager had reported the incident to the surgery center five days after the event and the state agency was not notified until 28 days after the event.*

### Integration with Community Resources

For those patients who do not identify a primary care provider (PCP), the Center plans to work closely with patients to educate them regarding the availability of primary care services in the area offered by local providers, including the array of services offered by Mount Sinai Beth Israel. Prior to leaving, each patient will be provided with information regarding the availability of local primary care services. The members of the Center are committed to serving all patients without regard to race, sex, age, religion, creed, sexual orientation, source of payment, ability to pay or other personal characteristics. The operating budget projects include 20% Medicaid and that 2% of procedures will be for charity care, reduced compensation, or uncompensated care. The Applicant is committed to the development of a formal outreach program directed to the members of the local community. The Applicant is supported by the Institute for Family Health and Community Healthcare Network, both FQHCs. The Center will work

with these two FQHCs to reach out to underserved populations. The Center will also reach out to a number of affiliates of the Mount Sinai Health System to promote enhanced access to surgical services offered by the Center. As part of the Center's commitment to enhance access for underserved populations, the Center will contract with HealthFirst, Fidelis, United Community Plan, AmidaCare, and Empire Health Plus to provide ambulatory surgical services at the Center. The Center also plans to coordinate its services with inpatient and or specialty ambulatory facilities to which a patient is referred. The Applicant will also develop a Quality Assurance Program that will include an analysis of the effectiveness of the coordination efforts.

The Center plans to utilize an Electronic Medical Record (EMR) system and to fully integrate and exchange information with an established RHIO with the capability for clinical referral and event notification. The Applicant will consider joining any Accountable Care Organization (ACO).

#### Conclusion

Based on the information reviewed, staff found nothing that would reflect adversely upon the applicants' character and competence or standing in the community.

## Financial Analysis

### Total Project Cost and Financing

Total project costs for renovations and the acquisition of moveable equipment are estimated at \$12,989,358, broken down as follows:

Renovation & Demolition	\$6,366,937
Design Contingency	636,694
Construction Contingency	636,694
Architect/Engineering Fees	764,033
Other Fees	222,547
Movable Equipment	3,985,000
Financing Costs	50,000
Interim Interest Expense	254,413
CON Application Fee	2,000
CON Processing Fee	<u>71,040</u>
Total Project Cost	\$12,989,358

The applicant's financing plan appears as follows:

Cash Equity (Members)	\$112,564
Cash Equity (Landlord)	1,200,250
Project Loan (6%, 10-year term)	10,176,544
Equipment Loan (7.91% swap 3.91% plus 4.00%), 5-year term)	<u>1,500,000</u>
Total	\$12,989,358

Valley National Bank has provided a letter of interest for the \$10,176,544, and Dext Capital has provided a letter of interest for the \$1,500,000 equipment loan.

BFA Attachments A and B present the members' net worth summaries and Mount Sinai Hospital's (MSH) 2021 certified financial statement, which show sufficient resources to meet the equity requirements. MSH will be the source of the Mount Sinai Ambulatory Ventures, Inc. (MSAV) equity contribution documented in a letter from the chief financial officer of Mount Sinai Health System.

## Operating Budget

The applicant has submitted their first and third years' operating budgets in 2023 dollars, as summarized below:

	<u>Year One</u> <u>2023</u>		<u>Year Three</u> <u>2025</u>	
	<u>Per Procedure</u>	<u>Total</u>	<u>Per Procedure</u>	<u>Total</u>
Revenues				
Medicaid Managed Care	\$1,253.96	\$2,302,263	\$1,249.35	\$2,433,733
Medicare Fee-For-Service	\$1,950.04	5,370,419	\$1,951.14	5,697,342
Medicare Managed Care	\$1,657.21	836,890	\$1,656.41	887,836
Commercial Fee-For-Service	\$2,828.78	3,685,897	\$2,665.15	3,685,897
Commercial Managed Care	\$2,535.45	6,516,108	\$2,534.94	6,912,775
All Other	\$575.43	16,112	\$589.38	17,092
Bad Debt		<u>-561,831</u>		<u>-589,040</u>
Total Revenues		\$18,165,858		\$19,045,635
Expenses:				
Operating	\$1,588.23	\$14,579,953	\$1,569.15	\$15,280,427
Capital	<u>\$319.18</u>	<u>2,930,097</u>	<u>299.22</u>	<u>2,913,838</u>
Total Expenses	\$1,907.41	\$17,510,050	\$1,868.37	\$18,194,265
Net Income or (Loss)		<u>\$655,808</u>		<u>\$851,370</u>
Utilization (procedures)		9,180		9,738
Cost Per Procedure		\$1,907.41		\$1,868.37

Utilization by the payor for the first and third years is summarized below:

Payor:	<u>Year One</u> <u>2023</u>		<u>Year Three</u> <u>2025</u>	
	<u>Procedures</u>	<u>%</u>	<u>Procedures</u>	<u>%</u>
Medicaid MC	1,836	20.00%	1,948	20.00%
Medicare FFS	2,754	30.00%	2,920	29.99%
Medicare MC	505	5.50%	536	5.50%
Commercial FFS	1,303	14.19%	1,383	14.20%
Commercial MC	2,570	28.00%	2,727	28.00%
Other	28	0.31%	29	0.31%
Charity	<u>184</u>	<u>2.00%</u>	<u>195</u>	<u>2.00%</u>
Total	9,180	100%	9,738	100%

Breakeven utilization is 8,849 procedures or approximately 96.4% of the first-year projected volume.

The following is noted concerning the submitted FASC budget:

- Reimbursement rates reflect current and projected Federal and State government reimbursement methodologies, with commercial and private payers reflecting adjustments based on experience in the region.
- Operating revenues by payor are based on the experience of the participating providers in accordance with the expected Center's collection rate.
- Utilization is based on 34 physicians' letters of interest in performing procedures at the Center.
- The number and mix of staff were determined by the experience of the participating physicians, Mount Sinai, and industry norms for freestanding ambulatory surgery centers.
- Expense assumptions are based on the experience of the participating providers, the experience of Mount Sinai, and other New York State FASCs.

## Lease Rental Agreement

The applicant has submitted an executed lease agreement; the terms are summarized below:

Date:	July 27, 2021
Premises:	16,672 square feet located at 1115 Broadway, New York 10010
Landlord:	16 Madison Square West Associates
Lessee:	Peakpoint Flatiron, LLC.
Term:	20 years (rent abated for 1st 19 months unless operating sooner). Rent at \$1,300,000 (\$77.98 per sq. ft.) with 3% yearly increases
Improvement Allowance	Landlord agrees to reimburse the tenant up to \$1,200,250 in improvements.
Provisions:	Utilities, Maintenance, Insurance and Taxes

The applicant has provided an affidavit stating that the lease is an arm's length arrangement. Letters from two NYS licensed realtors have been provided attesting to the rental rate being of fair market value.

## Administrative Service Agreement

The applicant has submitted a draft administrative services agreement; the terms are summarized below:

Facility:	Peakpoint Flatiron, LLC.
Contractor:	Merritt Healthcare Holdings Peakpoint, LLC.
Services Provided:	Advise on day-to-day operations in coordination with the Board of Managers and Administrator; make recommendations regarding the procurement of capital equipment, supplies, and IT; negotiate with vendors; assist with the implementation of billing and other IT systems; assist with financial management and bookkeeping; assist with the annual business plan and annual capital and operating budgets; assist with the financing of debt, and assist with recruitment and training of staff, oversee accreditation; assist in purchasing insurance and legal services, and assist in billing and collections.
Term:	5 years with automatic five (5) year renewals
Fee:	\$250,000 per year – adjusted by lesser of the Consumer Price Index (CPI) or 3%

Four (4) members of Peakpoint Partners LLC (member of the operating company) William Mulhall, Sarah Sanford, Matthew Searles, and Richard Searles are associated with Merritt Healthcare Holdings, LLC. The applicant has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers that must not be delegated, the applicant will not willfully engage in any illegal delegation, and understands that the Department will hold the applicant accountable.

## Capability and Feasibility

Total project costs of \$12,989,358 will be met through equity of \$1,312,814 (\$1,200,250 from the landlord and \$112,564 from members), with the remaining \$11,676,544 financed through two loans (project loan and equipment loan). The \$10,176,544 project loan is for ten years at a 6% interest rate; Valley National Bank has provided a letter of interest. The \$1,500,000 equipment loan is for five years at a 7.91% interest rate (swap rate of 3.91% plus 4.00%); Dext Capital has provided a letter of interest.

The working capital requirement is estimated at \$3,032,378 based on two months of third-year expenses. Funding will be met entirely through member equity. A review of BFA Attachments A and B, the members' net worth summaries, and Mount Sinai Hospital 2021 Certified Financial Statements reveal sufficient resources to meet all the equity requirements. BFA Attachment D presents the Center's pro forma balance sheet that shows operations will start with \$4,345,192 in positive equity.

A review of Attachment B, The Mount Sinai Hospital's 2020-2021 certified financial statements show positive working capital, positive net assets, and excess revenue over expenses of \$223.4 million in 2020 and \$396.4 million in 2021. Peakpoint Flatiron, LLC. projects an operating surplus of \$655,808 and \$851,370 in the first and third years of operation. The budget appears reasonable.

BFA Attachment E presents the members' New York State and out-of-state affiliated FASCs'.

Conclusion

The applicant has demonstrated the capability to proceed in a financially feasible manner.

<h2>Attachments</h2>
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BHFP	Map
BFA Attachment A	Peakpoint Flatiron, LLC members' net worth summaries
BFA Attachment B	The Mount Sinai Hospital 2020-2021 Certified Financial Statement
BFA Attachment C	Peakpoint Flatiron, LLC Organizational Chart
BFA Attachment D	Pro Forma Balance Sheet of Peakpoint Flatiron, LLC
BFA Attachment E	Proposed members' ownership interest in NYS and Out of State Affiliated FASCs



**Project # 221281-B  
Integrity Care Services**

**Program:** Diagnostic and Treatment Center    **County:** Kings  
**Purpose:** Establishment and Construction    **Acknowledged:** August 22, 2022

**Executive Summary**

**Description**

Integrity Care Services, Inc. (Integrity or the Center), an existing not-for-profit corporation, requests approval to establish and construct an Article 28 diagnostic and treatment (D&TC) center in the Borough Park section of Brooklyn. Integrity currently operates an Article 31 Mental Health Clinic at 1426 39th Street, Brooklyn, New York. Once approved, this project would establish and construct an Article 28 D&TC on another floor of the same building to complement the Article 31 services.

Integrity intends to co-locate primary care and other medical specialties with their current mental health services with the ultimate goal of becoming a Federally Qualified Health Center (FQHC).

**OPCHSM Recommendation**  
Contingent Approval is recommended.

**Need Summary**

The applicant projects 15,106 visits in Year One and 20,914 in Year Three with 63% Medicaid utilization and 9% Charity Care.

**Program Summary**

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a (3).

**Financial Summary**

Total project costs of \$1,220,814, will be met through \$140,814 in equity from the operations of Integrity Care and \$1,080,000 borrowed by the landlord from Carver Federal Savings Bank (4.25% interest for a five-year term) that will be reimbursed by the applicant through rent payments.

	<u>Year One</u> <u>(2023)</u>	<u>Year Three</u> <u>(2025)</u>
<b>Budget:</b>		
Revenues	\$2,252,278	\$3,118,594
Expenses	<u>2,213,341</u>	<u>2,980,401</u>
Net Income	\$38,937	\$138,193

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of a bank loan commitment that is acceptable to the Department of Health. [BFA]

**Approval conditional upon:**

1. This project must be completed by **May 15, 2024**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **August 15, 2023**, and construction must be completed by **February 15, 2024**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date this shall constitute abandonment of the approval. [PMU]
3. The applicant is required to submit Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's start of construction for record purposes. [AER]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:  
[https://www.health.ny.gov/facilities/hospital/docs/hcs\\_access\\_form\\_new\\_clinics.pdf](https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf). Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: [hospinfo@health.ny.gov](mailto:hospinfo@health.ny.gov) [HSP]

Council Action Date

February 9, 2023

# Need Analysis

## Background and Analysis

Integrity Care Services Inc., an existing Not-for-Profit Corporation, is seeking approval to establish and construct an Article 28 Diagnostic and Treatment Center (D&TC) in the Borough Park neighborhood in Brooklyn that is a HRSA designated Health Professional Shortage Area and Medically Underserved Area.

Prevention Quality Indicators (PQIs) are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease. The table below shows that the PQI rate for Kings County is slightly lower than the Rest of the State.

<b>Hospital Admissions per 100,000 Adults for Overall PQIs</b>		
PQI Rates: 2017	Kings County	New York State
All PQI's	1,407	1,431

According to Data USA, in 2019 93.7% of the population in Kings County had health coverage as follows:

Employer Plans	41.7%
Medicaid	33.2%
Medicare	8.05%
Non-Group Plans	10.5%
Military or VA	0.2%

<b>Projected Payor Mix</b>		
<b>Insurance Type</b>	<b>Year One</b>	<b>Year Three</b>
Commercial	14%	14%
Medicare	14%	14%
Medicaid	63%	63%
Charity Care	9%	9%

Through this project, Integrity intends to provide Article 28 services to its current mental health patient base to provide more integrated care. Integrity's ultimate plan is to become a Federally Qualified Health Center (FQHC) providing comprehensive service to its existing patients. Their goals are to hire new physicians and collaborate with the local community to provide education, testing, and screening to prevent chronic illness.

## Conclusion

The new center will provide primary care and other medical specialty services in an area that has been designated as having a shortage of primary care providers.

## Program Analysis

### Project Proposal

Integrity Care Services Inc. (Integrity), an existing New York State Not for Profit Corporation, seeks approval to establish and construct an Article 28 diagnostic and treatment center to be located at 1426 39<sup>th</sup> Street in Brooklyn (Kings County). The proposed Article 28 diagnostic and treatment center will provide Medical Services-Primary Care and Medical Services- Other Medical Specialties including Neurology, Cardiology, and Radiology. Integrity is an existing Article 31 mental health care provider that operates an Article 31 mental health clinic in good standing with the Office of Mental Health.

Proposed Operator	Integrity Care Services Inc.
To Be Known As	Integrity Care Services
Site Address	1426 39 <sup>th</sup> Street Brooklyn, New York 11218 (Kings County)
Specialties	Medical Services-Primary Care Medical Services-Other Medical Specialties Neurology Cardiology Radiology
Hours of Operation	Monday through Thursday 9 am to 8 pm Friday 9 am to 4 pm Sunday 9 am to 3 pm
Staffing (1 <sup>st</sup> Year / 3 <sup>rd</sup> Year)	11.49 FTEs / 17.02 FTEs
Medical Director(s)	Naftoli Neuberger, M.D.
Emergency, In-Patient, and Backup Support Services Agreement and Distance	Expected to be provided by New York Presbyterian-Brooklyn Methodist 2.6 miles / 14 minutes away

### Character and Competence

The members of Integrity Care Services Inc. are:

<b>Name</b>	<b>Membership Interest</b>
<i>Joel Follman</i>	President/Chairman
<i>Raizel Follman</i>	Secretary/Director
<i>Howard Becker, Psy.D</i>	Director
<i>Yahuda Schonblum</i>	Director
<i>Issac Sternhill</i>	Director

**Dr. Naftoli Neuberger** is the proposed Medical Director. He has been in private practice for approximately 40 years. He was a Research Assistant for two (2) years at the Hospital for Sick Children. He was the Director of the Cardiac Exercise Laboratory at Lutheran Medical Center for two (2) years. He was a Physician in Electrocardiogram Services at Long Island College Hospital for three (3) years. He was the Director of the Cardiac Catheterization Laboratory of Jamaica Hospital for two (2) years. He was an Instructor at Cornell Medical School for seven (7) years. He received his medical degree from the University of Toronto. He completed his residency in Internal Medicine and his fellowship in Cardiology at Montefiore Hospital. He is board certified in Internal Medicine and Cardiology.

**Howard "Hillel" Becker** is the Clinical Director of Integrity Care Services for seven (7) years. He is responsible for co-planning, developing, implementing, and overseeing the clinical operations of the organization. He assists in budgeting, policy development, supervision, and general oversight of operations. He held various roles at the Bronx Veteran Affairs Medical Center for 16 years. Most recently he was the Chief Psychologist and Director of training. He was responsible for planning, developing, implementing, and overseeing all aspects of the psychology program. He hired staff, oversaw the interview process, interfaced with hospital administration and other agencies, completed the program

evaluation, collected statistical data on the program, evaluated treatment protocols, and implemented new treatments. He was the Evidence-Based Treatment Coordinator. In this role, he was responsible for ensuring psychological staff training, education, and proper application of up-to-date research-based treatment modalities for the mental health treatment of veterans. He was a Clinical Psychologist who treated patients in group, individual, couple, and family processes. He was the Director of the Mental Health Intake Clinic where he supervised the organization and coordination of the intake program in the mental health outpatient clinic. He supervised over 1700 psychiatric intakes per year and provided supervision to intake professionals. He was the Assistant Clinical Professor of Psychiatry at Mount Sinai School of Medicine for 16 years. He was a Clinical Supervisor at Ferkauf Graduate School of Psychology for eight (8) years. He was a Clinical Adjunct at New School for Social Research for 16 years. He was a Faculty Member in Geriatric Research Education and Clinical Center at Mount Sinai School of Medicine for three (3) years. He received his Doctorate in Psychology from the Ferkauf Graduate School of Psychology. He completed his externship in Psychology at Long Island Jewish Medical Center. He completed his internship in Psychiatry at the Bronx VA Medical Center. He completed his fellowship in Substance Recovery Services at the Bronx VA Medical Center.

**Joel Follman** is the President and CEO of Integrity Care Services for over nine (9) years. He is responsible for the oversight, development, and advancement of the organization. He oversees the strategic direction of the company including monitoring the quality of care, staff development, financial performance, business development, and continuous performance improvement. He provides leadership to the members of the board, facilitates regularly scheduled meetings, guides the establishment of policies and procedures, discusses and plans financial matters, plans facility upkeep and expansion, and develops organization goals while helping guide the decision-making process. He was the President of Congregation Emek Hatalmud for seven (7) years. He established and operated the religious not-for-profit.

**Raizel Follman** is the Case Manager and Family Counselor for over nine (9) years. She is the Secretary of the Board of Integrity Care Services of six (6) months. She is responsible for assisting the President/CEO in the daily functioning of the organization, facilitating the board meetings, implementing board decisions, and developing policies and procedures. She also ensures that individuals with mental illness receive comprehensive care by coordinating patient services, liaising with doctors and therapists, ensuring patient compliance with medication, coordinating with primary care providers, and maintaining contact with family members. She was a Special Education Specialist at Ohr Halimud School for Special Education for over one (1) year. She specialized in meeting the educational and developmental needs of children with dyslexia and other learning and language disorders.

**Yehuda Schonblum** is a Community Habilitation at Hamaspik of King County for 13 years. He helps individuals with developmental and mental disabilities learn life skills and integrate into society. He is an Intensive Case Manager at Integrity Care Services for 10 years. He is responsible for ensuring that individuals with mental illness receive care and he coordinates their services by liaising with doctors and therapists. He is a member of the board of Integrity Care Services for 10 years. He helps run the organizational activities including planning and managing the budget, reviewing policies and procedures, and helping the organization maintain fiscal stability. He is an Officer on the Board of Directors of Integrity Care Services for

**Isaac Sternhill** is the President of 1152 Expediting Inc. for over eight (8) years. He is the manager of the company, and advocates on behalf of the clients to help them get the services they are eligible for. He is a Board Member of Integrity Care Services for six (6) months.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint

investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

#### Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a (3).

## Financial Analysis

### Total Project Cost and Financing

The total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at \$1,220,814 with the following distribution of costs:

Renovation and Demolition	\$665,995
Design Contingency	66,600
Construction Contingency	66,600
Architect/Engineering Fees	66,600
Construction Manager Fees	16,652
Other Fees (Consultant)	20,000
Moveable Equipment	289,000
CON Fee	2,000
Additional Processing Fee	<u>6,667</u>
<b>Total Project Cost</b>	<b>\$1,220,814</b>

Project costs are based on a July 1, 2023, construction start date and a six-month construction period.

The applicant's financing plan appears as follows:

Equity (from Integrity operations)	\$140,814
Bank Loan (4.25% for 5 years)	\$1,080,000
<b>Total</b>	<b>\$1,220,814</b>

### Operating Budget

The applicant has submitted an operating budget, in 2022 dollars, for the first and third years, summarized below:

	<u>Year One</u> <u>(2023)</u>		<u>Year Three</u> <u>(2025)</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Revenues:				
Commercial FFS	\$147.70	\$312,380	\$147.72	\$432,531
Medicare FFS	\$98.46	208,253	98.48	288,354
Medicaid FFS	\$169.08	76,591	169.14	106,052
Medicaid Managed Care	\$182.62	<u>1,655,054</u>	182.62	<u>2,291,657</u>
<b>Total Revenues</b>		<b>\$2,252,278</b>		<b>\$3,118,594</b>
Expenses:				
Operating	\$123.51	\$1,865,615	\$125.87	\$2,632,675
Capital	<u>23.02</u>	347,726	<u>16.63</u>	347,726
<b>Total Expenses</b>	<b>\$146.53</b>	<b><u>\$2,213,341</u></b>	<b>\$142.50</b>	<b><u>\$2,980,401</u></b>
<b>Net Income</b>		<b>\$38,937</b>		<b>\$138,193</b>
Utilization: (Visits)		15,105		20,915

The following is noted with respect to the submitted operating budget:

- The overall projected utilization for the Center was based on a conservative number of visits per square foot, discounted at a rate to account for the need to ramp up the Center over the first few years of operation. The number and mix of staff and operating expenses were determined based on a combination of the projected utilization, experience of the applicant, industry standards, and the experience of similar D&TCS in New York State.
- Reimbursement rates (non-Medicaid) were based on a percentage of Medicare rates for each type of office visit for each payer. Medicaid rates were based on the Downstate Medicaid APG rate calculation (inclusive of case mix, discounts for managed care negotiations, and capital expenses). These conservative rates were applied to the utilization projections to calculate overall revenue for the Center.

Utilization by payor source during the first and third years is as follows:

	<u>Year One</u> <u>(2023)</u>	<u>Year Three</u> <u>(2025)</u>
Commercial FFS	14.00%	14.00%
Medicare FFS	14.00%	14.00%
Medicaid FFS	3.00%	3.00%
Medicaid MC	60.00%	60.00%
Charity Care	<u>9.00%</u>	<u>9.00%</u>
Total	100.00%	100.00%

#### Lease Rental Agreement

The applicant has submitted an executed lease rental agreement for the site that they will occupy, which is summarized below:

Premises	Premises located at 1426 30 <sup>th</sup> Street, Brooklyn, New York.
Lessor	1426-1428 39 <sup>th</sup> Street, LLC
Lessee	Integrity Care Services, Inc.
Term	30 years
Rental	\$270,000 annually year one with annual increases not exceeding 5% per year.
Provisions	The lessee shall be responsible for real estate taxes, insurance, and utilities.

The proposed Center will be constructed on the first floor of a building located at 1426 39th Street, Brooklyn (Kings County), New York 11218. The building is owned by 1426-1428 39th Street, LLC, which leases space in the building to Integrity. Mr. Joel Follman, President and Board Chairman of Integrity, is the sole member of 1426-1428 39th Street, LLC; the lease is not an arm's length agreement. The applicant submitted real estate letters attesting to the reasonableness of the per-square-foot rental.

#### Capability and Feasibility

The total project cost of \$1,220,814 will be met as follows: Equity of \$140,814 via operations of Integrity Care Services, Inc. and a bank loan of \$1,080,000 at an interest rate of 4.25% for a five-year term. The applicant submitted a letter of interest for the financing.

Working capital requirements are estimated at \$496,734, equivalent to two months of third-year expenses. The applicant will provide equity from Integrity Care Services operations. Presented as BFA Attachment A, the internal financial statements of Integrity Care Services, Inc., dated September 30, 2022, indicates the availability of sufficient funds for the equity contribution. Presented as BFA Attachment B, the pro forma balance sheet of Integrity Care Services, Inc. on the first day of operations, indicates a positive net asset position of \$637,548. The submitted budget reflects net income of \$38,937 and \$138,193 during the first and third years, respectively. Revenue assumptions are based on current reimbursement methodologies for primary care services. The submitted budget appears reasonable.

#### Conclusion

The applicant has demonstrated the capability to proceed in a financially feasible manner.

## Attachments

BHFP Attachment	Map
BFA Attachment A	September 30, 2022, internal financial statements of Integrity Care Services, Inc
BFA Attachment B	Pro Forma Balance Sheet



Project # 222032-B
Mount Valley Care LLC

Program: Diagnostic and Treatment Center
Purpose: Establishment and Construction
County: Rockland
Acknowledged: October 6, 2022

Executive Summary

Description

Mount Valley Care, LLC (The Center), an existing Limited Liability Company requests approval to establish and construct an article 28 Diagnostic & Treatment Center (D&TC) for Primary Care and Medical Services and Other Medical Services that would include but are not limited to infectious disease, pulmonary care, endocrinology, and cardiology services.

The sole member of the proposed operator is Meir Oster. Binyomin Nemon, M.D. will serve as the Medical Director.

The proposed center is negotiating a Transfer and Affiliation Agreement with Good Samaritan Hospital which has expressed support for this project and is approximately 4.8 miles away.

OPCHSM Recommendation
Contingent Approval

Need Summary

The applicant projects 6,402 visits in Year One and 7,200 in Year Three with Medicaid at 40.00% and Charity Care at 2.00% for both years.

Program Summary

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a (3).

Financial Summary

Total project costs of \$220,125 will be met with equity from the proposed sole member.

Table with 3 columns: Budget, Year One (2024), Year Three (2026). Rows include Revenues, Expenses, and Net Income.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
3. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
4. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
5. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]

**Approval conditional upon:**

1. This project must be completed by **February 15, 2024**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **August 15, 2023**, and construction must be completed by **November 15, 2023**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:  
[https://www.health.ny.gov/facilities/hospital/docs/hcs\\_access\\_form\\_new\\_clini\\_cs.pdf](https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clini_cs.pdf). Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: [hospinfo@health.ny.gov](mailto:hospinfo@health.ny.gov) [HSP]

Council Action Date

February 9, 2023

# Need Analysis

## Background and Analysis

The primary service area is Spring Valley within Rockland County. The proposed address is not within a Health Professional Shortage Area; however, the applicant has expressed plans to focus on underserved and minority populations.

The center will provide primary care services and other medical specialty services including pulmonology, infectious disease, endocrinology, and cardiology. Hours of operation will be Monday-Friday, 8:00 am to 6:00 pm; with the ability to expand to include Sunday, 8:30 am to 6:00 pm if needed. The number of projected visits is 6,402 in Year One and 7,200 in Year Three.

Prevention Quality Indicators (PQIs) are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease. The table below provides information on the PQI rates for the overall PQI condition.

<b>Hospital Admissions per 100,000 Adults for Overall PQIs</b>			
PQI Rates: 2017	Zip Code (10977) Spring Valley	Rockland County	New York State
All PQI's	957	1,033	1,431

According to Data USA, in 2019 95.3% of the population in Rockland County had health coverage as follows.

Employer Plans	45.8%
Medicaid	26.7%
Medicare	11.6%
Non-Group Plans	11%
Military or VA	0.226%

<b>Current and Projected Payor Mix</b>		
Payor	Year One	Year Three
Commercial	27.99%	28.00%
Medicare	24.99%	25.00%
Medicaid	39.99%	40.00%
Private Pay	5.00%	5.00%
Charity Care	2.03%	2.00%
Other	0.00%	0.00%

## Conclusion

The proposed center will improve access to primary care services and other medical specialty services including pulmonology, infectious disease, endocrinology, and cardiology, to residents in Spring Valley and the surrounding areas of Rockland County.

## Program Analysis

### Project Proposal

Mount Valley Care LLC seeks approval to establish and construct an article 28 diagnostic and treatment center to be located at 290 Route 59 in Spring Valley (Rockland County). The proposed Article 28 diagnostic and treatment center will provide Medical Services-Primary Care and Medical Services- Other Medical Specialties including Pulmonology, Pediatric Pulmonology, Infectious Disease, Endocrinology, and Cardiology.

<b>Proposed Operator</b>	Mount Valley Care LLC
<b>To Be Known As</b>	Mount Valley Care
<b>Site Address</b>	290 Route 59 New York 10977 (Rockland County) Spring Valley,
<b>Specialties</b>	Medical Services-Primary Care Medical Services-Other Medical Specialties Pulmonology/Pediatric Pulmonology Infectious Disease Endocrinology Cardiology
<b>Hours of Operation</b>	Monday to Friday 8:00 am to 6:00 pm Sunday 8:30 am to 6:00 pm as needed
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	4.75 FTEs / 6.05 FTEs
<b>Medical Director(s)</b>	Binyomin Nemon, M.D.
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Expected to be provided by: Good Samaritan Hospital 4.8 miles / 16 minutes away

### Character and Competence

The members of Mount Valley Care LLC are:

Name	Ownership Interest
Meir Oster	100.00 %
<b>Total</b>	<b>100.00%</b>

**Dr. Binyomin Nemon** is the proposed Medical Director. He is the Medical Supervisor for COVID Testing at Express Health NYC for two (2) years. He was a locum tenens Physician at various urgent care locations in the Greater NYC area for one (1) year. He was a locum tenens Occupational Medicine Physician at MTA/NYC Transit MAC for four (4) months. He was a Primary Care/Adult Medicine Physician at the Damian Family Care Center for six (6) months. He was a Primary Care Physician at Adaptation Medical for over six (6) years. He was a Medical and Laboratory Director at Community Urgent Care for over four (4) years. He was a Primary Care Physician for Physician's Medical Group for over 14 years. He was the Medical Director of Express Medical for over three (3) years. He was the Medical Director of Bath Medical for one (1) year. He was a Primary Care Physician and Osteopathic Manipulative Treatment Physician at Care for You Medical for over one (1) year. He was Volunteer Attending Staff at Maimonides Medical Center for three (3) years. He was the Medical Director and Owner of Chai Care Urgent Care for five (5) months. He was a Family Practice and Urgent Care Physician for six (6) years. He was a Physician at Enta Medical for one (1) year. He was Emergency Room Physician for three (3) months. He received his medical degree from the New York College of Osteopathic Medicine. He completed his Family Practice Rural track residency at Colorado Springs Osteopathic Foundation/Western University of Health Sciences. He completed his Family Practice Residency at Mercy Hospital/UPMC. He is board certified in the Osteopathic Board of Family Physicians.

**Meir Oster** is the Director of Social Work services at Rayim for three (3) years. He was the Director of Case Management Services at Attentive Behavior Care for over two (2) years. He oversaw case

management services for the patients. He was a School Social Worker at United Talmudic Academy for seven (7) months. He provided social work management services. He was a School Social Worker at Yeshiva Vinitz for over three (3) years. He provided social work management services. He was an Assistant to Social Work Staff at the Community Outreach Center for one (1) year. He worked with school children in basic educational skills.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

- Dr. Nemon disclosed being sued by Chase bank in 2021. In October 2017, Dr. Nemon entered into a Term Note and Credit Agreement for \$180k with JP Morgan Chase Bank. He defaulted on the loan in 2019 with the loan in the amount of \$140k. Chase Bank sued Dr. Nemon in 2021 and won a judgement in the amount of \$157k. In 2022, Dr. Nemon entered into a new payment agreement with Chase Bank and is presently in compliance with his payments.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

#### Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a (3).

## Financial Analysis

### Total Project Costs and Financing

The total project cost for leasehold improvements, renovations, and moveable equipment is distributed as follows:

Renovation & Demolition	\$75,059
Design Contingency	1,501
Construction Contingency	3,753
Architect /Engineering Fees	5,916
Other Fees	75,000
Moveable Equipment	55,703
CON Fee	2,000
Additional Processing Fee	<u>1,193</u>
<b>Total Project Cost</b>	<b>\$220,125</b>

Total project costs will be met with equity from the proposed sole member, shown on Attachment A personal net worth statement shows sufficient resources to cover this cost.

### Operating Budget

The applicant has submitted their first and third-year operating budget, in 2023 dollars, as shown below:

Revenues:	<u>Year One-2024</u>		<u>Year Three-2026</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Commercial FFS	\$166.50	\$298,368	\$169.83	\$342,377
Medicare FFS	\$185.00	59,200	\$188.70	67,932
Medicaid MC	\$165.50	213,120	\$169.83	244,555
Medicaid FFS	\$160.57	205,530	\$160.57	231,221
Medicaid MC	\$160.57	205,530	\$163.78	235,855
Private Pay	\$200.00	64,000	\$204.00	73,440
Bad Debt		(\$20,915)		<u>(23,907)</u>
<b>Total Revenue</b>		<b>\$1,024,833</b>		<b>\$1,171,463</b>
Expenses:				
Operating	\$143.85	\$920,865	\$144.51	\$1,040,499
Capital	<u>\$11.02</u>	<u>75,562</u>	<u>\$10.74</u>	<u>77,278</u>
<b>Total Expenses</b>	<b><u>\$155.07</u></b>	<b>\$996,127</b>	<b>\$155.25</b>	<b>\$1,117,777</b>
<b>Net Income</b>		<b><u>\$28,406</u></b>		<b><u>\$53,696</u></b>
Visits		6,402		7,200
Cost/Visit		\$155.07		\$155.25

Utilization by payor source during the first and third years is broken down as follows:

	<u>Year One-2024</u>		<u>Year Three-2026</u>	
	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Commercial FFS	1,792	27.99%	2,016	28.00%
Medicare FFS	320	5.00%	360	5.00%
Medicare MC	1,280	19.99%	1,440	20.00%
Medicaid FFS	1,280	19.99%	1,440	20.00%
Medicaid MC	1,280	19.99%	1,440	20.00%
Private Pay	320	5.00%	360	5.00%
Charity Care	<u>130</u>	<u>2.03%</u>	<u>144</u>	<u>2.00%</u>
<b>Total</b>	<b>6,402</b>	<b>100%</b>	<b>7,200</b>	<b>100%</b>

The following is noted concerning the submitted revenues/expense budgets and utilization:

- The applicant plans to reach an underserved population with a growing minority population and ensure that services are sensitive to the needs of the population in a centralized location.
- Year One and Year Three project 5,122 and 5,760 visits for primary care visits, respectively.
- Year One and Year Three project 1,280 and 1,440 in other medical specialties, respectively, treating Infectious Diseases, Pulmonology, Endocrinology, and Cardiology.
- Commercial insurance is negotiated and Medicare FFS is based on the (Part B) fee schedule.
- Medicaid rates are based on actual rates expected for services performed using the APG rates published by the Department for freestanding clinics.
- Expenses in Year One and Year Three, including salaries and administrative costs, project a 6.00% inflation factor based on input from the Medical Director and prior experience operating a D&TC.

#### Lease Agreement

The applicant has submitted a draft lease agreement for the site that Mount Valley Care, LLC will occupy, summarized below:

Data:	December 20, 2022
Premises:	290 Rt. 59 Spring Valley, NY 10977 (Suite 101 & 102)
Landlord:	59 & Cole, LLC
Tenant:	Mount Valley Care, LLC
Term:	5-year term and a renewal option schedule have been sent in with the dates and amounts for a renewal option once exercised by both parties.
Rent:	May 1, 2021, thru April 30, 2022, Rent is \$38,400 annually. May 1, 2022, thru April 30, 2023, Rent is \$39,552 annually. May 1, 2023, thru April 30, 2024, Rent is \$40,738 annually. May 1, 2024, thru April 30, 2024, Rent is \$41,960 annually. May 1, 2025, thru April 30, 2026, Rent is \$43,219 annually. May 1, 2026, thru April 30, 2027, Rent is \$44,516 annually. May 1, 2027, thru April 30, 2028, Rent is \$45,851 annually. May 1, 2028, thru April 30, 2029, Rent is \$47,227 annually. May 1, 2029, thru April 30, 2030, Rent is \$48,643 annually. May 1, 2030, thru April 30, 2031, Rent is \$50,103 annually. May 1, 2031, Thru April 30, 2032, Rent is \$51,606 annually.
Provisions:	The tenant is responsible for cleaning for office, damage, and trash removal. The tenant will pay an additional 28% of total utility bills for the entire floor occupied and space not utilized on the floor will be billed at 90% of the utility bill.

The lease space is an arm's length agreement as stated in the landlord-tenant affidavit submitted. The affidavit states there is no common ownership between the landlord or the tenants, LLC. The applicant has submitted two letters of rent reasonableness as they are related by family.

#### Capability and Feasibility

Total project costs of \$220,125 will be met via equity from the applicant's net worth statement. Attachment A shows the applicant has sufficient funds to meet the total project cost requirements.

Working capital requirements are estimated at \$186,297 based on two months of third-year expenses and will be used via the ongoing operations. Attachment A shows the applicant's net worth indicating sufficient equity to cover the working capital need. Attachment B is the Pro Forma Balance sheet as of the first day of operations indicating a members' equity of \$406,422 for the first day of operations.

#### Conclusion

The applicant has demonstrated the capability to proceed in a financially feasible manner.

Attachments

BHFP Attachment	Map
BFA Attachment A	New Worth Statement (Sole Member)
BFA Attachment B	Pro Forma – Mount Valley Care, LLC



**Project # 192237-E  
JAG Operating LLC d/b/a  
FoltsBrook Center for Nursing and Rehabilitation**

**Program:** Residential Health Care Facility  
**Purpose:** Establishment

**County:** Herkimer  
**Acknowledged:** November 8, 2019

**Executive Summary**

**Description**

JAG Operating LLC d/b/a FoltsBrook Center for Nursing and Rehabilitation, a New York limited liability company, requests approval to be established as the new operator of FoltsBrook Center for Nursing and Rehabilitation (f/k/a Folts Home), a 163-bed, voluntary, Article 28 residential health care facility (RHCF) located at 104 North Washington Street, Herkimer (Herkimer County). The facility operates an on-site, 15-slot adult day health care program (ADHCP) and is certified for outpatient therapy services (physical, speech, and occupational), which are included in this application request. The RHCF has been operating under various receiverships since October 1, 2013. On July 1, 2018, FoltsCare LLC, which has common members to the applicant entity, became the current receiver of the RHCF. Folts Adult Home, Inc., a related 80-bed adult care facility (ACF) located on the RHCF premises, is also in receivership. An application for the establishment of a new operator of the ACF is concurrently under review by the Department's Division of Adult Care Facility and Assisted Living Surveillance (Project # 200002).

On February 16, 2017, Folts Home, Inc. and Folts Adult Home, Inc. entered Chapter 11 Bankruptcy in the United States District Court for the Northern District of New York. In July 2017, the Court approved Cedarcare Holdings LLC's \$16,600,000 bid for the purchase of the operations and real estate of the RHCF and ACF. Cedarcare Holdings LLC is a related entity to the applicant through family membership. Per the applicant, \$13,900,000 of

the total purchase price was allocated to the RHCF, and \$2,700,000 was allocated to the ACF.

On June 1, 2017, Cedarcare Holdings LLC entered into a Purchase Agreement (PA) with Folts Home and Folts Adult Home, Inc. for the sale and acquisition of the personal property and real estate associated with the RHCF and Adult Home. The RHCF transaction will close upon Public Health and Health Planning Council (PHHPC) approval of this application. The applicant will lease the RHCF premises from Cedarcare Holdings LLC.

Ownership of the operations before and after the requested change is as follows:

<u>Current Operator</u>	
FoltsCare LLC (Receiver)	
<u>Members:</u>	<u>%</u>
Aryeh Grinspan	65%
Gedaliah Wielgus	15%
Joshua Peckman	10%
Menachem Yifat	5%
Yosef Farkas	5%

<u>Proposed Operator</u>	
JAG Operating LLC	
<u>Members:</u>	
Aryeh Grinspan*	45%
Gedaliah Wielgus*	45%
Joshua Peckman	5%
Yosef Farkas	5%

\*Managing members of the facility

The proposed members have an ownership interest in New York State RHCfs.

OPCHSM/OALTC Recommendation  
Contingent Approval is recommended.

#### Need Summary

There will be no changes to beds or services as a result of this application. Based upon weekly census data, current occupancy, as of November 16, 2022, was 87.7% for the facility and 86.2% for Herkimer County.

#### Program Summary

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a (3).

#### Financial Summary

The \$16,600,000 purchase price was allocated as follows: \$13,900,000 for the personal property and real property of Folts Home and \$2,700,000 for the personal property and real property of Folts Adult Home, Inc. Per the closing statement dated September 7, 2018, Cedarcare Holdings LLC contributed \$1,660,000 in equity and financed \$14,704,200 via a two-year mortgage with two six-month extension options from Capital Funding LLC. The remaining \$235,800 balance due was contributed by the members of Cedarcare Holdings LLC as additional equity. On August

25, 2021, the loan was amended for the fourth time adding two six-month extensions, ending on September 7, 2022, and March 7, 2023 (5.84% as of May 18, 2022, with principal due at the end of the term). While it was not required, Cedarcare Holdings, LLC paid an additional \$305,100 in principal payments. On December 21, 2022, Capital Funding, LLC., provided a new Letter of Interest (LOI) for a one-year loan of \$14,399,100 with two, one-year extension options. The interest rate is 9.86% as of January 3, 2023, based on One-Month CME Term LIBOR plus a margin of 550 Basis Points and amortization at \$20,000 per month. The applicant intends to secure a HUD loan. There are no project costs associated with this application.

In February 2019, the real property owner of the Adult Home took out a \$2,700,000 five-year loan from Metropolitan Commercial Bank with interest based on the five-year US Treasury rate plus 2.75% with a fixed floor of 5.25% and a 25-year amortization schedule.

	<u>Year One</u>	<u>Year Three</u>
<u>Budget:</u>	<u>2023</u>	<u>2025</u>
Revenues:	\$14,955,900	\$15,040,600
Expenses:	<u>14,257,550</u>	<u>14,295,769</u>
Net Income:	\$698,350	\$744,831

## Recommendations

Long Term Care Ombudsman Program  
The LTCOP recommends Approval. (See LTCOP Attachment)

Health Systems Agency  
There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR].
2. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
3. Submission of an executed Assignment Agreement for the skilled nursing facility operations transfer, acceptable to the Department of Health. [BFA]
4. Submission of a photocopy of the applicant's executed Operating Agreement, which is acceptable to the Department. [CSL]
5. Submission of a photocopy of the applicant's second-level member's executed Restated Articles of Organization, which is acceptable to the Department. [CSL]
6. Submission of a photocopy of the applicant's second-level member's executed Operating Agreement, which is acceptable to the Department. [CSL]
7. Submission of a photocopy of an executed Lease Agreement between Cedarcare Holdings, LLC, and the applicant, which is acceptable to the Department. [CSL]
8. Submission of a photocopy of an executed Assignment between Cedarcare Holdings LLC and JAG Operating LLC, which is acceptable to the Department. [CSL]
9. Submission of an updated Schedule 14B reflecting the correct membership in Section VIII of Folts SNF Partners, LLC. [CSL]

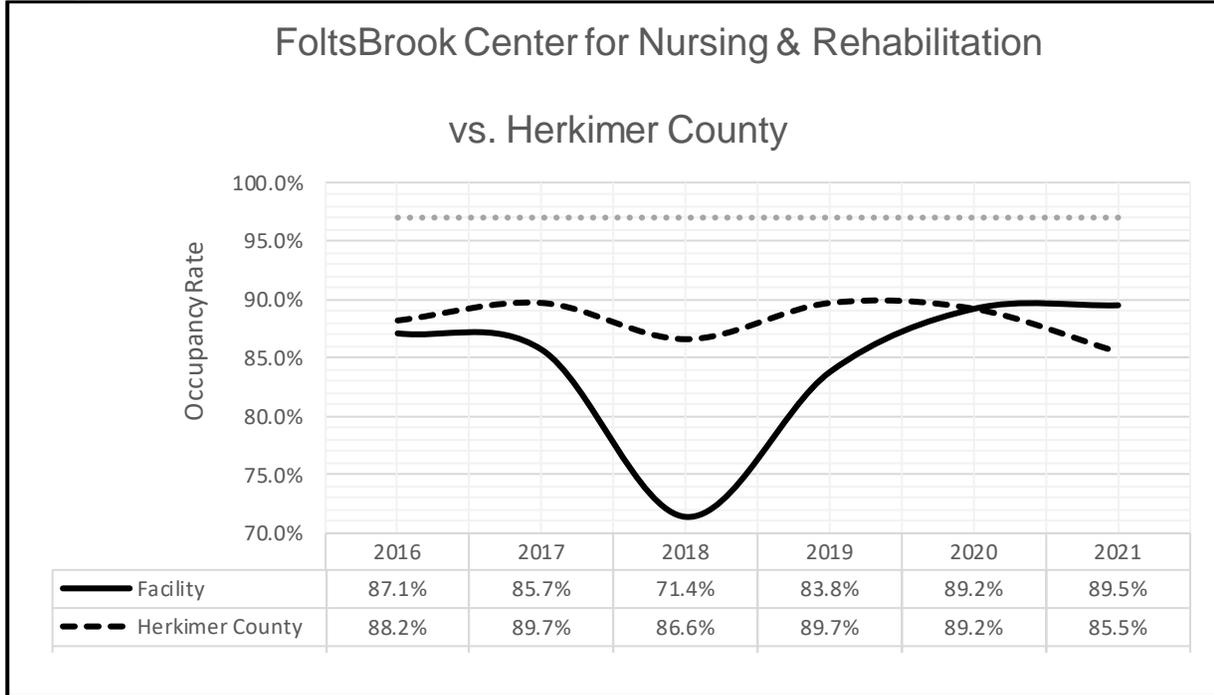
Council Action Date  
February 9, 2023

# Need Analysis

## Project Description

JAG Operating, LLC is requesting approval to become the established operator of Foltsbrook Center for Nursing & Rehabilitation, a 163-bed Article 28 residential health care facility (RHCF) located at 104 North Washington Street, Herkimer, 13350 in Herkimer County.

## Analysis



Occupancy, as of November 16, 2022, was 87.7% for the facility and 86.2% for Herkimer County.

## Medicaid Access

To ensure that the Residential Health Care Facility needs of the Medicaid population are met, 10 NYCRR §670.3 requires applicants to accept and admit a reasonable percentage of Medicaid residents in their service area. The benchmark is 75% of the annual percentage of residential healthcare facility admissions that are Medicaid-eligible individuals in their planning area. This benchmark may be increased or decreased based on the following factors:

- the number of individuals within the planning area currently awaiting placement to a residential health care facility and the proportion of total individuals awaiting such placement that are Medicaid patients and/or alternate level of care patients in general hospitals;
- the proportion of the facility's total patient days that are Medicaid patient days and the length of time that the facility's patients who are admitted as private paying patients remain such before becoming Medicaid eligible;
- the proportion of the facility's admissions who are Medicare patients or patients whose services are paid for under provisions of the federal Veterans' Benefit Law;
- the facility's patient case mix based on the intensity of care required by the facility's patients or the extent to which the facility provides services to patients with unique or specialized needs;
- the financial impact on the facility due to an increase in Medicaid patient admissions.

An applicant will be required to make appropriate adjustments in its admission policies and practices to meet the resultant percentage. The facility's Medicaid admissions rate has been above the threshold of 75% of the Herkimer County rate.

<b>Medicaid Access</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>
Herkimer County Total	43.8%	40.2%	41.5%
Herkimer Threshold Value	32.9%	30.2%	31.1%
Foltsbrook Center for Nursing & Rehab	37.6%	31.7%	35.3%

**Conclusion**

There will be no changes to beds or services as a result of this project. Based upon weekly census data, current occupancy, as of November 16, 2022, was 87.7% for the facility and 86.2% for Herkimer County.

## Program Analysis

### Program Description

This application proposes to establish JAG Operating LLC as the new operator of Foltsbrook Center for Nursing and Rehabilitation Center, a 163-bed residential healthcare facility located at 104 North Washington Street Herkimer.

### Facility Information

	Existing	Proposed
Facility Name	Foltsbrook Center for Nursing and Rehabilitation Center	Same
Address	104 North Washington St Herkimer, NY 13350	Same
RHCF Capacity	163	Same
ADHC Program Capacity	15	Same
Type of Operator	Limited Liability Company/ Voluntary Receivership	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	FoltsCare, LLC  Membership: Aryeh Grinspan                      65% Gedaliah Wielgus                      15% Joshua Peckman                      5% Menachem Yifat                      5% Yosef Farkas                      5%	JAG Operating LLC  Membership: *Aryeh Grinspan                      45.0% *Gedaliah Wielgus                      45.0% Joshua Peckman                      5.0% Yosef Farkas                      5.0%  *Managing Member

### Character and Competence – Assessment

#### Experience

Aryeh Grinspan is the Administrator of Record at ILF Operating LLC/LFG Operating LLC d/b/a Elm Manor Nursing and Rehabilitation Center, as well as the Chief Executive Officer at Foltsbrook Center for Nursing and Rehabilitation. Mr. Grinspan is a New York State licensed nursing home administrator in good standing. Mr. Grinspan holds degrees in Accounting and Business Management from CUNY Brooklyn. Mr. Grinspan discloses the following health facility interests:

Elm Manor Nursing and Rehabilitation Center (15%)	12/2017 to present
Wedgewood Nursing and Rehabilitation Center (15%)	12/2017 to present
The Brook at High Falls Nursing and Rehabilitation (25%)	10/2018 to present
Collar City Nursing and Rehabilitation Wesley Gardens	09/2020 to present

#### Receivership

Foltsbrook Center for Nursing and Rehabilitation (60%)	07/2018 to present
Foltsbrook Center for Senior Living (5%)	07/2018 to present

#### Pending

Embassy of Loyalsock (PA)  
Rolling Meadows Healthcare Center (PA)

Gedaliah Wielgus lists employment as the Chief Financial Officer / Chief Operating Officer of FoltsCare, LLC which operates Foltsbrook Center for Nursing and Rehabilitation located in Herkimer, NY since July 2018. He also reports his current employment as Chief Financial Officer with Elm Manor



New York facility owned by the applicants, has 1-star CMS ratings in all domains (Health Inspection, Quality, Staffing) and is a 1-star overall rated facility.

The applicants have acted as receivers for Foltbrook, the facility, which is the subject of this application, since July 2018. In April and July of 2019, the facility had complaint and recertification health inspection surveys which resulted in 20 health deficiencies, including one scope and severity at the "G" level, and a CMS CMP of \$84,903.

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
<b>New York</b>					
Foltbrook Center for Nursing and Rehabilitation	Subject Facility	*	*	**	*
Wedgewood Nursing and Rehab	Current	****	****	**	****
	12/1/2017	**	***	****	*
Elm Manor Nursing and Rehab	Current	*	**	**	*
	12/1/2017	**	***	**	*
The Brook at High Falls Nursing and Rehab	Current	*	**	*****	*
	10/1/2019	*	*	**	***
Foltbrook Center for Nursing and Rehabilitation* (Receivers)	Current	*	*	**	*
	7/1/2018	*	*	****	***
Collar City Nursing and Rehabilitation	Current	*	*	*	*
	9/1/2020	****	***	*****	***
Westchester Center for Rehab & Nursing	5/1/2013	****	**	*****	****
	End of Ownership 2/1/2019	**	**	*****	*
Green Meadows Nursing and Rehab	2/1/2015	*	*	**	***
	End of Ownership 2/1/2019	**	*	*****	***

**Data date: 11/2022**

\* SFF Candidate

#### Enforcement History

A review of the operations of Elm Manor Nursing and Rehabilitation Center for the time period indicated above revealed the following:

- The facility was fined \$2,000 for surveillance findings on 10/24/2022. Deficiencies were found under 415.19a Infection Control.

A review of the operations of Foltbrook Center for Nursing and Rehabilitation for the time period indicated above revealed the following:

- The facility was fined \$10,000 for surveillance findings on 10/18/2021. Deficiencies were found under 10 NYCRR 415.12 Quality of Care.

- The facility was fined \$10,000 for surveillance findings on 06/09/2021. Deficiencies were found under 10 NYCRR 415.12 Quality of Care.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-19-023 for surveillance findings on 2/21/19. Deficiencies were found under 10 NYCRR 415.12 Quality of Care.
- A federal CMP in the amount of \$84,903 was assessed for the surveillance findings above. CMS has granted the facility the ability to make payments on this CMP over an extended time period.

#### Project Review

This application proposes to establish JAG Operating LLC as the new operator of FoltsBrook Center for Nursing and Rehabilitation. No changes in the program or physical environment are proposed in this application. The applicant has indicated there will be no administrative services or consulting agreements.

#### Conclusion

No negative information has been received concerning the character and competence of the proposed applicants. All healthcare facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard for approval as set forth in Public Health Law §2801-a(3).

## Financial Analysis

### Purchase Agreement (PA)

The applicant submitted an executed PA to acquire the personal property and real property associated with the RHCF and Adult Home. The sale associated with the RHCF will become effective upon PHHPC approval. The terms are summarized below:

Date:	June 1, 2017
Seller/Debtors:	Folts Home and Folts Adult Home, Inc.
Buyer:	Cedarcare Holdings LLC
Asset Acquired:	Rights, title, and interest in and to the real estate, business, and operations of the facilities as approved by the order of the Bankruptcy Court. Includes Leases, tangible property, contracts, accounts receivables, universal settlement, names Folts Home & Folts Adult Home, licenses, records, computer applications, phone numbers, e-mail addresses, insurance proceeds, warranties, deposits, Medicare and Medicaid provider agreements.
Excluded Assets:	Accounts receivable from services provided by the Current Receivers, funds left at the end of the current receivership, personal items, tax refunds, and funds deposited with the US District Court.
Assumption of Liabilities:	Cure obligations, liabilities, and obligations arising with respect to the operation of the Facility after the Closing Date;
Excluded Liabilities:	Free and clear of any liabilities, Liens, Claims against, or Obligations of, Sellers, Current Receivers, or of any predecessor or other affiliate of Sellers or Current Receivers.
Purchase Price	\$16,600,000
Allocation of Purchase Price:	Folts Home: \$13,900,000 (personal and real property) Folts Adult Home: \$2,700,000 (personal and real property)
Payment of the Purchase Price	\$1,660,000 deposit paid \$14,940,000 due at closing Plus, the assumption of \$1,115,496 in Accounts Payables, \$279,000 in accrued payroll, and \$267,000 in accrued expenses offset by \$3,450,000 in accounts receivables.

The purchase price for the personal property and real property associated with Folts Home and Folts Adult Home, Inc. was satisfied as follows:

Equity - Cedarcare Holdings LLC	\$1,660,000
Additional Equity – provided by the members of Cedarcare Holdings LLC	\$235,800
Additional Equity - Cedarcare Holdings LLC provided periodic principal payments.	305,100
Mortgage (1-year loan -2 (1) year extension -interest is 9.86% as of January 3, 2023, based on One-Month CME Term LIBOR plus a margin of 550 Basis Points and amortization at \$20,000 a month (LOI from Capital Funding LLC)	<u>14,399,100</u>
Total	\$16,600,000

BFA Attachment A2 presents the net worth summary for two of the members of Cedarcare Holdings LLC, which reveals sufficient resources to cover the balloon payment. Stephen Werdiger and Jonathan Bleier have each provided affidavits stating their willingness to contribute resources disproportionate to their ownership interest in the reality entity to cover the balloon payment, should the need arise.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement, or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of December 22, 2022, the facility no had outstanding Medicaid liabilities.

### Assignment Agreement Operations Transfer Agreement

The applicant has submitted a draft assignment agreement transferring the RHCf's operations, as summarized below:

Assignor:	Cedarcare Holdings, LLC
Assignee:	JAG Operating LLC
Assigned Rights:	All the assignor's rights, title, and interest in and to (a) All permits, licenses, approvals, franchises, notices, registrations, and authorizations issued by any governmental authority necessary or desirable to operate the skilled nursing facility known as Folts Home. (b) Copies of all books and records. (c) All computer applications, software, electronic medical records programs, and website. (d) All telephone and fax numbers, email addresses, and internet domain names. (d) Resident records and employee personnel records.
Consideration	\$10 (cash at closing)

### Lease Agreement

The applicant submitted a draft lease agreement, the terms of which are summarized below:

Premises:	A 163-bed RHCf located at 104 North Washington Street, Herkimer, New York.
Landlord/Lessor:	Cedarcare Holdings LLC
Lessee:	JAG Operating LLC
Term:	10 years, (4) additional terms of five (5) years each
Rent:	\$1,463,650 for 1 <sup>st</sup> Yr.; and then a 1% increase over the previous year's annual Base Rent plus real estate taxes and insurance of approximately \$130,000 per year
Provisions:	Triple Net

The lease arrangement is a non-arm's length agreement. The applicant attests to a pre-existing business relationship as landlord and tenant between the managers/members of Cedarcare Holdings LLC as landlord and JAG Operating as a tenant.

### Operating Budget

The applicant has provided the current year 2021 and the first- and third-year operating budgets after the change in ownership, in 2023 dollars, summarized as follows:

	<u>Current Year</u> <u>2021</u>		<u>First Year</u> <u>2023</u>		<u>Third Year</u> <u>2025</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
<b>Revenues RHCf:</b>						
Medicaid-FFS	\$170.19	\$6,563,360	\$180.07	\$6,350,213	\$180.05	\$6,349,513
Medicaid-MC	\$182.11	780,523	\$182.11	1,455,787	\$182.11	1,455,787
Medicare-FFS	\$699.84	2,908,539	\$667.16	3,016,900	\$674.68	3,050,900
Medicare-MC	\$500.00	1,032,500	\$500.00	849,500	\$500.00	849,500
Commercial-FFS	\$485.65	101,986	\$308.04	949,700	\$313.72	967,200
Private	\$370.27	1,478,480	\$357.13	1,412,800	\$360.92	1,427,800
All Other		0		1,200		1,200
Non-Operating*		<u>2,253,598</u>		<u>0</u>		<u>0</u>
Sub-Total RHCf		\$15,118,986		\$14,036,100		\$14,101,900
<b>ADHCP/Therapies:</b>						
Medicaid-ADHCP	\$114.45	\$193,762	\$61.11	\$144,900	\$62.59	\$148,400
Medicare-Therapy	\$34.13	<u>778,552</u>	\$34.15	<u>774,900</u>	\$36.23	<u>790,300</u>
Sub-Total		\$972,314		\$919,800		\$938,700
<b>Total Revenues</b>		\$16,091,300		\$14,955,900		\$15,040,600
<b>Expenses:</b>						
Operating		\$12,300,452		\$12,652,600		\$12,656,200
Capital		<u>1,544,055</u>		<u>1,604,950</u>		<u>1,639,569</u>
<b>Total Expenses</b>		\$13,844,507		\$14,257,550		\$14,295,769

Net Income (Loss)	<u>\$2,246,793</u>	<u>\$698,350</u>	<u>\$744,831</u>
Patient Days	53,274	56,520	56,520
Utilization %	89.54%	95.0%	95.0%
ADCHP Visits	1,693	2,371	2,371
Outpatient Visits	22,812	22,691	21,813
* COVID Provider Relief Funds			

The following is noted with respect to the submitted RHCF operating budget:

- The current year reflects 2021 audited revenue and expenses.
- Medicaid revenue is based on the reimbursement methodology under statewide pricing. Medicare rates are projected based on the full federal rates for the Medicare Prospective Payment System in effect for 2018 plus a 1% per annum increase. Private and Other rates are projected based on similar facilities in the same geographical area plus a 1% per annum increase.
- Expenses are based on historical data adjusted by inflation, utilization, and New York State staffing and regulations.
- RHCF utilization under the current receiver and proposed operator was 83.8% in 2019, 89.2% in 2020, 89.5% in 2021, and 88.3% on November 30, 2022, under self-reporting.
- Utilization by the payor for the first and third years after the change in ownership is summarized below:

RHCF	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>2021</u>		<u>2023</u>		<u>2025</u>	
Medicaid-FFS	38,564	72.38%	35,266	62.40%	35,266	62.40%
Medicaid-MC	4,286	8.05%	7,994	14.14%	7,994	14.14%
Medicare-FFS	4,156	7.80%	4,522	8.00%	4,522	8.00%
Medicare-MC	2,065	3.88%	1,699	3.01%	1,699	3.01%
Commercial-FFS	210	.39%	3,083	5.45%	3,083	5.45%
Private Pay	<u>3,993</u>	<u>7.50%</u>	<u>3,956</u>	<u>7.00%</u>	<u>3,956</u>	<u>7.00%</u>
Total RHCF	53,274	100%	56,520	100%	56,520	100%

<u>ADHCP &amp; Therapy</u>	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
Medicaid-FFS	1,693	6.91%	2,371	9.46%	2,371	9.80%
Medicare-FFS	<u>22,812</u>	<u>93.09%</u>	<u>22,691</u>	<u>90.54%</u>	<u>21,813</u>	<u>90.20%</u>
Total Outpatient	24,505	100%	25,062	100%	24,184	100%

- The facility's Medicaid admissions of 37.6% in 2019 and 31.7% in 2020 were above Herkimer County's 75% threshold rate of 32.9% and 30.2% in 2019 and 2020.
- The RHCF breakeven utilization is projected at 90.56% in the first year.

#### Capability and Feasibility

The \$16,600,000 purchase price was allocated as follows: \$13,900,000 for the personal property and real property of Folts Home and \$2,700,000 for the personal property and real property of Folts Adult Home, Inc. Per the closing statement dated September 7, 2018, Cedarcare Holdings LLC contributed \$1,660,000 in equity and financed \$14,704,200 via a two-year mortgage with two (2) six-month extension options from Capital Funding LLC. The remaining \$235,800 balance due was contributed by the members of Cedarcare Holdings LLC as additional equity. On August 25, 2021, the loan was amended for the fourth time adding two (2) six-month extensions, ending on September 7, 2022, and March 7, 2023 (5.84% as of May 18, 2022, with principal due at the end of the term). On December 21, 2022, Capital Funding, LLC provided a new Letter of Interest (LOI) for a one-year loan of \$14,399,100 with two (1) year extension options. The interest rate is 9.86% as of January 3, 2023, based on One-Month CME Term LIBOR plus a margin of 550 Basis Points and amortization at \$20,000 per month. The applicant intends to secure a HUD loan. There are no project costs associated with this application.

In February 2019 the real property owner of the Adult Home took out a \$2,700,000 five-year loan from Metropolitan Commercial Bank with interest based on the five-year US Treasury rate plus 2.75% with a fixed floor of 5.25% and a 25-year amortization schedule.

The working capital requirement is estimated at \$587,754 based on two months of first-year expenses of approximately \$2,370,158 plus \$1,661,496 in assumed liabilities (accounts payable \$1,115,496, accrued payroll \$279,000, and accrued expenses \$267,000) offset by \$3,450,000 in assumed accounts receivables. The applicant will fund the working capital requirement with existing members' equity. BFA Attachment A1 presents the net worth summary for JAG Operating LLC members, which reveals sufficient resources to meet the equity requirements.

The submitted budget projects a first- and third-year profit of \$698,350 and \$744,831. Revenues are expected to increase by \$1,118,198, primarily due to an increase in occupancy. Overall expenses are expected to increase by \$413,043 coming from a \$352,148 increase in operating expenses and a \$60,895 increase in capital expenses (primarily from rent). The increase in operating expenses comes mainly from wages, supplies, utilities, and other direct expenses. Employee benefits decreased going from 17.5% to 16%. BFA Attachment B presents JAG Operating LLC d/b/a FoltsBrook Center for Nursing and Rehabilitation pro forma balance sheet, which shows the entity will start with \$4,660,003 in members' equity (which includes \$1,661,496 in assumed liability). The budget appears reasonable.

BFA Attachment C presents the Financial Summary of FoltsCare LLC for 2019 through 2021. The RHCf has maintained positive assets, positive working capital, and generated an operating surplus each year.

BFA Attachment D presents the proposed members' ownership interest in the affiliated RHCfs and their financial summaries. Two of four RHCfs were acquired in late 2017, one in late 2019, and one in March 2020. By 2021 all the RHCfs had positive net income. Three of the four had positive net assets and positive working capital.

- ILF Operating, LLC d/b/a Elm Manor Nursing and Rehabilitation Center showed small negative assets of \$53,032.
- Troy Diamond Operations, LLC d/b/a Collar Center Nursing & Rehabilitation Center showed small negative working capital of \$73,038.

The applicant has demonstrated the capability to proceed in a financially feasible manner.

## Attachments

LTCOP Attachment	Long Term Care Ombudsman Program Recommendation
BFA Attachment A1	Net Worth of Proposed Members of JAG Operating LLC d/b/a FoltsBrook Center for Nursing and Rehabilitation
BFA Attachment A2	Net Worth for members of Cedarcare Holdings, LLC contributing equity
BFA Attachment B	Pro Forma Balance Sheet, JAG Operating, LLC
BFA Attachment C	Financial Summary FoltsCare LLC d/b/a FoltsBrook Center for Nursing and Rehabilitation (current receiver) 2020 – 2021 certified financial statement.
BFA Attachment D	Proposed Members' Ownership Interest in the Affiliated RHCfs and Financial Summary
BFA Attachment E	Members of Landlord, Cedarcare Holdings LLC



**Project # 212117-E  
Livingston Hills Nursing and Rehabilitation Center**

**Program:** Residential Health Care Facility  
**Purpose:** Establishment

**County:** Columbia  
**Acknowledged:** October 21, 2021

**Executive Summary**

**Description**

Livingston Two Operations, LLC, is proposing to be established as the operator of the current Livingston Hills Nursing and Rehabilitation Center, as operated by Livingston S and V Operations, LLC, an existing, for-profit, 120-bed residential health care facility (RHCF), located at 2781 Route 9, Hudson (Columbia County) New York. Upon approval of the change in ownership, the facility will continue to be known as Livingston Hills Nursing and Rehabilitation Center.

On September 1, 2021, Livingston S and V Operations, LLC, entered into an Asset Purchase/Operations Transfer Agreement with Livingston Two Operations for the sale and acquisition of the operating interests of the Livingston Hills Nursing and Rehabilitation Center effective upon approval by the Public Health and Health Planning Council.

The landlord, KR Livingston Realty, LLC, and the tenant, Livingston Two Operations, LLC, entered into a proposed lease agreement for site control of the facility. The applicant acknowledges there a relationship between the entities in that the individuals have an ownership interest in both the operating entity and the real estate entity.

Ownership of the operations before and after the requested change is as follows:

<u>Current Operator</u>	
<u>Livingston S and V Operations, LLC</u>	
<u>Members:</u>	<u>%</u>
Daniella Schwartz	42%
Illana Lowy	28%
Barry Weiss	5%
Mark Weis	5%
Elaine Zinberg	5%
Jeffrey Vegh	15%
	100%

<u>Proposed Operator</u>	
<u>Livingston Two Operations LLC</u>	
<u>Members:</u>	<u>%</u>
Jack Koschitzki	50%
Pincus Rand	50%
	100%

Livingston Two Operations, LLC will be managed by its members. Presented as Attachment B is the Organizational Chart of the proposed members.

OPCHSM/OALTC Recommendation  
Contingent Approval is recommended.

**Need Summary**

There will be no changes to beds or services as a result of this project. As of November 16, 2022, occupancy was 95.8% for the facility and 93.6% for Columbia County.

### Program Summary

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a (3).

### Financial Summary

There is no purchase price for the operations except for the current union obligations, estimated at \$1,000,000. The terms for the repayment of the union obligations are pending. The purchase of the real estate is \$14,000,000 and will be met as follows: A deposit of \$1,000,000 in escrow, a promissory note of \$2,000,000 for four years with an interest rate of 6% for two years, and 7.5% for last two (2) years and a bank loan of \$11,000,000 at an interest rate of 5% for a three-year term. The loan is

proposed to go to HUD within three years. The applicant has indicated that the bank will agree to extend the loan in the unlikely event that HUD financing is not achieved.

	<u>Year One</u> <u>2023</u>	<u>Year Three</u> <u>2025</u>
<u>Budget:</u>		
Revenues	\$11,303,675	\$12,179,761
Expenses	<u>9,935,000</u>	<u>9,935,000</u>
Net Income	\$1,368,675	\$2,244,761

## Recommendations

Long Term Care Ombudsman Program  
The LTCOP recommends Approval. (See LTCOP Attachment)

Health Systems Agency  
There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR].
2. Submission of an executed asset purchase agreement, acceptable to the Department of Health. [BFA]
3. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
4. Submission of an executed promissory note, acceptable to the Department of Health. [BFA]
5. Submission of an executed real estate purchase and sale agreement, acceptable to the Department of Health. [BFA]
6. Submission of a photocopy of an executed Certificate of Discontinuance of the Assumed Name of Livingston S and V Operations, LLC, acceptable to the Department. [CSL]
7. Submission of a photocopy of an amended and executed Certificate of Amendment of the Articles of Organization of Livingston Two Operations LLC, acceptable to the Department. [CSL]
8. Submission of photocopy of an amended and executed Restated Operating Agreement of Livingston Two Operations LLC, acceptable to the Department. [CSL]
9. Submission of a photocopy of an amended and executed Lease Agreement between Two Operations LLC and KR Livingston Realty LLC, acceptable to the Department. [CSL]

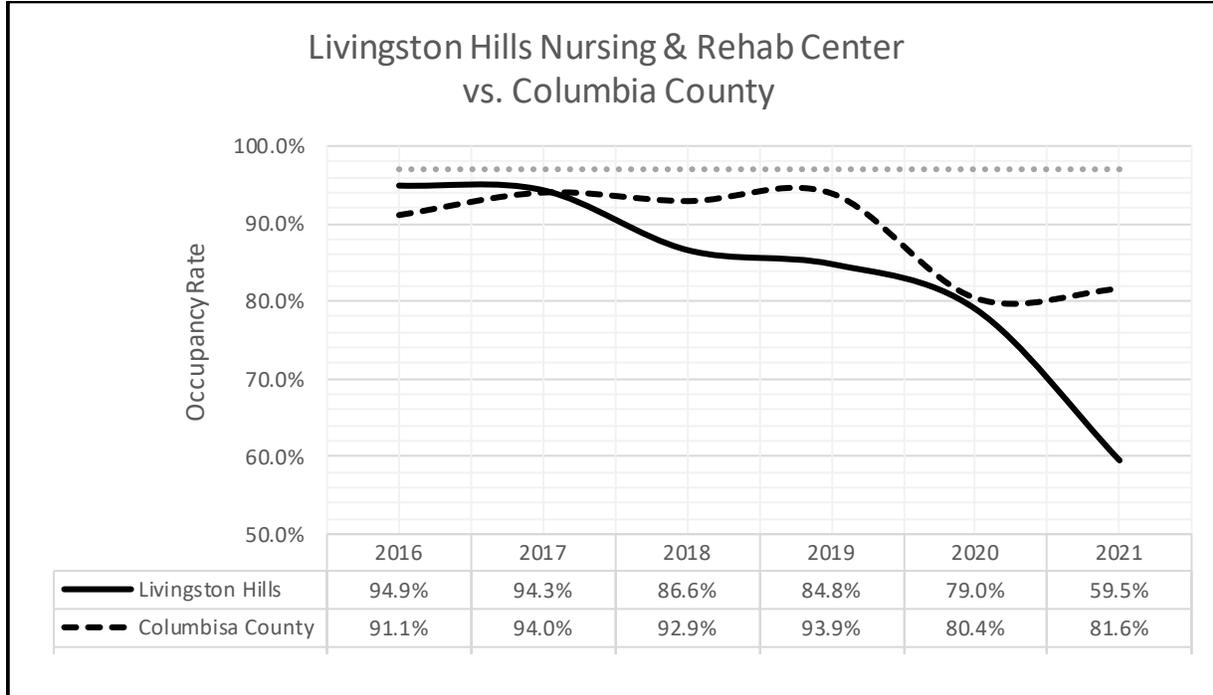
Council Action Date  
February 9, 2023

# Need Analysis

## Project Description

Livingston Two Operations LLC d/b/a Livingston Hills Nursing & Rehabilitation Center is requesting approval to become the established operator of Livingston Hills Nursing and Rehabilitation Center, a 120-bed Article 28 residential health care facility (RHCF) located at 2781 Route 9, Livingston, 12541 in Columbia County.

## Analysis



Historical occupancy data shows declining numbers since 2016, predating the COVID-19 pandemic. However, recent self-reported occupancy numbers, as of November 16, 2022, indicate a dramatic increase to 95.8%. As part of the agreement between the buyer and seller, Jack Koschitzki (member of proposed new operator) was named Chief Executive Officer in September 2021. He hired a new administrator, director of nursing, and other staff which has resulted in increases in the daily census and the overall stability of the operations of the facility.

## Medicaid Access

To ensure that the Residential Health Care Facility needs of the Medicaid population are met, 10 NYCRR §670.3 requires applicants to accept and admit a reasonable percentage of Medicaid residents in their service area. The benchmark is 75% of the annual percentage of residential health care facility admissions that are Medicaid-eligible individuals in their planning area. This benchmark may be increased or decreased based on the following factors:

- the number of individuals within the planning area currently awaiting placement to a residential health care facility and the proportion of total individuals awaiting such placement that are Medicaid patients and/or alternate level of care patients in general hospitals;
- the proportion of the facility's total patient days that are Medicaid patient days and the length of time that the facility's patients who are admitted as private paying patients remain such before becoming Medicaid eligible;
- the proportion of the facility's admissions who are Medicare patients or patients whose services are paid for under provisions of the federal Veterans' Benefit Law;
- the facility's patient case mix based on the intensity of care required by the facility's patients or the extent to which the facility provides services to patients with unique or specialized needs;

- the financial impact on the facility due to an increase in Medicaid patient admissions.

An applicant will be required to make appropriate adjustments in its admission policies and practices to meet the resultant percentage. The facility's Medicaid admissions rate has exceeded the threshold of 75% of the Columbia County rate, as demonstrated in the table below.

<b>Medicaid Access</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>
Columbia County Total	42.5%	50.7%	50.4%
Columbia Threshold Value	31.8%	38.0%	37.8%
Livingston Hills Nursing	37.2%	43.3%	47.4%

#### Conclusion

There will be no change in beds or services as a result of this application. Based upon weekly census data, current occupancy, as of November 16, 2022, was 95.8% for the facility and 93.6% for Columbia County.

## Program Analysis

### Program Description

This application proposes to establish Livingston Two Operations LLC as the new operator of Livingston Hills Nursing and Rehabilitation Center, a 120-bed skilled nursing facility at 2781 Route 9, Livingston.

### Facility Information

	Existing	Proposed
Facility Name	Livingston Hills Nursing and Rehabilitation Center	Same
Address	2781 Route 9 P.O. Box 95 Livingston, NY 12541	Same
RHCF Capacity	120	Same
ADHC Program Capacity	NA	Same
Type of Operator	Limited Liability Company	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	Livingston S and V Operations LLC Members: Jeffrey Vegh 15% Daniella Schwartz 42% Elaine Zinberg 5% *LowCo/Livingston Hills LLC 28% Members: Ilana Lowy (1%) Lauren Lowy (99%) *Marbar Capital I, LLC 10% Members: Barry Weiss (50%) Mark Weiss (50%)	Livingston Two Operations LLC Members: Jack Koschizki 50% Pincus Rand 50%

### Character and Competence – Assessment

#### Experience

Jack Koschizki discloses employment at Livingston Hills Nursing and Rehabilitation Center, as the CEO since 2021 and is concurrently employed at Renaissance Rehabilitation & Nursing Care Center as an operator since 2015. Prior to that Jack Koschizki worked at Palm Gardens Nursing Center as the Administrator / Regional Director / Project Manager from 2006 until 2015. Jack Koschizki holds a bachelor's degree from Torah OHR Seminary and discloses the following health care facility interests:

#### Nursing Homes

Renaissance Rehabilitation & Nursing Care Center (50%)	05/2015-present
The Eleanor Care Center (100%)	12/2016-present

Pincus Rand discloses employment at Y&S Handbags, Inc an import company as the President since 1983. Pincus Rand holds a Rabbinical degree from St. Louis Rabbinical College and discloses the following health facility interests:

#### Nursing Homes

Renaissance Rehabilitation & Nursing Care Center (50%)	05/2015-present
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#### End Dated Ownership

## Quality Review

The proposed owners have been evaluated, in part, on the distribution of CMS Star ratings for their portfolios. For all proposed owners the distribution of CMS star ratings for their facilities meets the standard described in state regulations.

CMS Star Rating Criteria - 10 NYCRR 600.2(b)(5)(iv)					
Duration of Ownership					
< 48 Months					
48 months or more					
<u>Proposed Owner</u>	<u>Total Nursing Homes</u>	<u>Number of Nursing Homes</u>	<u>Percent of Nursing Homes With a Below Average Rating</u>	<u>Number of Nursing Homes</u>	<u>Percent of Nursing Homes With a Below Average Rating</u>
Jack Koschizki	2	0	0.0%	2	100%
Pincus Rand	1	0	0.0%	1	100%

**DURATION OF OWNERSHIP AS OF 2/9/2023**

**Data date: 11/2022**

New York. The proposed owner's portfolio includes ownership in two New York facilities. The two facilities Renaissance Rehabilitation and Nursing Care Center has a CMS overall quality rating of below average and The Eleanor Care Center has a CMS overall quality rating of much below average. When asked to explain the low overall CMS ratings for Renaissance Rehabilitation and Nursing Care Center and The Eleanor Care Center the applicants indicated the following.

*At The Eleanor Care Center improvements to the physical plant and changes in leadership with the hiring of a new administrator and director of nursing have been made to improve the star ratings at the facility.*

*At Renaissance Rehabilitation and Nursing Care Center the PBJ upload of incomplete staffing reports in July of 2021 and nursing and administrative turnover has played a significant role in the current overall rating which had decreased from a five star overall rating at the beginning of 2021 down to a two star overall rating currently. The facility has hired a new Administrator as of 7/15/2022 and a new Director of Nursing was retained on 10/18/2021.*

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
<b>New York</b>					
Livingston Hills Nursing and Rehabilitation Center	Subject Facility	*	*	**	*
Renaissance Rehabilitation and Nursing Care Center	Current	**	***	***	*
	02/2015	**	***	*	***
The Eleanor Care Center	Current	*	*	***	*
	12/2016	*	*	***	***

**Data date: 11/2022**

Quality Review – End Dated Nursing Home

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
<b>New Jersey</b>					
Country Manor Rehabilitation & HCC	08/2017	***	**	*	*
	09/2001*	***	**	*****	**

\*Earliest Data Available 1/2009

Enforcement History

A review of Renaissance Rehabilitation and Nursing Care Center for the period specified above reveals no enforcements.

A review of The Eleanor Care Center for the period specified above reveals the following:

- The facility was fined \$2,000 pursuant to Stipulation and Order NH-22-142 issued on September 14, 2022, for surveillance findings on August 2, 2022. Deficiencies were found under 10 NYCRR 415.19(a), Infection Control for failure to ensure oxygen tubing is changed in a timely manner.
- The facility was fined \$8,652 pursuant to a civil monetary penalty issued on November 09, 2020, which has been paid and closed. Deficiencies were found under F678-H, Cardio Pulmonary Resuscitation.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-21-107 issued on May 18, 2021, for surveillance findings on November 09, 2020. Deficiencies were found under 10 NYCRR 415.3(f)(1)(i), Resident’s Rights, and failure to provide CPR.
- The facility was assessed federal CMPs of \$650 on June 8, 2020, \$975 on June 15, 2020, and \$1,310 on November 16, 2020, for failure to report COVID data.

Project Review

Livingston Two Operations, LLC doing business as Livingston Hills Nursing and Rehabilitation Center, is proposing to be established as the operator of the current Livingston Hills Nursing and Rehabilitation Center, as operated by Livingston S and V Operations, LLC, an existing, for-profit, 120-bed residential health care facility (RHCF), located at 2781 Route 9, Livingston (Columbia County) New York. Upon approval of the change in ownership, the facility will continue to be known as Livingston Hills Nursing and Rehabilitation Center and there will be no changes in the beds, program, or physical environment.

The current operators of Livingston Hills Nursing and Rehabilitation Center, Livingston S and V Operations, LLC have entered into an Asset Purchase / Operations Transfer Agreement dated September 1, 2021, for the sale and acquisition, respectively, of the operating interests of the Livingston Hills Nursing and Rehabilitation Center upon approval by the Public Health and Health Planning Council. The members of Livingston Two Operations LLC are as follows: Jack Koschitzki, 50.00% membership interest, and Pincus Rand, 50.00% membership interest. The LLC will be managed by its members.

KR Livingston Realty, LLC as landlord, and Livingston Two Operations, LLC, as tenant, have entered into a proposed lease agreement for site control of the facility. There is a relationship between the entities which is being acknowledged in this application, in that the individuals have ownership interest in both the operating entity and the real estate entity.

Conclusion

No negative information has been received concerning the character and competence of the proposed applicants. All healthcare facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard for approval as set forth in Public Health Law §2801-a(3).

## Financial Analysis

### Operating Budget

The applicant has submitted RHCF's operating budget, in 2022 dollars, for the current year, first year and the third year after the merger, summarized below:

	<u>Current</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>2021</u>		<u>2023</u>		<u>2025</u>	
Revenues:	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
Comm FFS	\$286.07	\$340,428	\$253.00	\$987,965	\$253.00	\$1,066,395
Medicare FFS	\$485.06	\$1,714,701	\$508.00	\$2,725,420	\$508.00	\$2,942,336
Medicare MC	\$0	\$0	\$493.62	\$1,204,440	\$484.96	\$1,277,384
Medicaid FFS	\$257.56	\$3,936,547	\$228.00	\$5,005,740	\$228.00	\$5,403,828
Medicaid MC	\$247.52	\$394,299	\$269.00	\$918,635	\$269.00	991,803
Private Pay	\$315.05	<u>290,161</u>	\$315.05	<u>436,974</u>	\$315.00	<u>498,015</u>
Total Revenues		\$6,676,136		\$11,074,609		\$12,179,761
 Expenses:						
Operating	\$367.99	\$8,288,143	\$221.33	\$8,531,000	\$221.33	\$8,531,000
Capital	<u>63.52</u>	<u>1,430,691</u>	<u>\$36.42</u>	<u>1,404,000</u>	<u>36.42</u>	<u>1,404,000</u>
Total Expenses:	\$431.51	\$9,718,834	\$260.91	\$9,935,000	\$257.75	\$9,935,000
 Net Income		<u>(3,042,698)</u>		<u>\$1,368,675</u>		<u>\$2,244,761</u>
 Patient Days		22,523		38,545		41,610
 Occupancy		51.42%		88.00%		95.00%

The following is noted with respect to the submitted budget:

- The Medicare and Private Pay rates are projected from the current market rates.
- Expense and utilization assumptions are based on current rates.
- The projections have been based on the 2020 calendar year. The shifts in utilization, as well as expenses, have been normalized for the effects of COVID-19.
- In September of 2021, a new Chief Executive Officer was hired as well as a new Administrator, Director of Nursing and other staff to manage and grow the organization. The applicant has indicated that the projected increase in patient days from the current year to the first and third year is based on the census for the first 10 months of calendar year 2022 when occupancy averaged 96.21%.

Utilization by payor source for the current, first and third year (no changes) is as follows:

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
	<u>2021</u>	<u>2023</u>	<u>2025</u>
Commercial FFS	5.28%	10.13%	10.13%
Medicare FFS	15.70%	13.92%	13.92%
Medicare MC	0.00%	6.33%	6.33%
Medicaid FFS	67.86%	57.06%	56.96%
Medicaid MC	7.07%	8.76%	8.86%
Private Pay	<u>4.09%</u>	<u>3.80%</u>	<u>3.80%</u>
Total	100%	100%	100%

### Asset Purchase Agreement

The applicant has submitted a draft asset purchase agreement of the operation, summarized below:

Purpose	Seller desires to sell, and Buyer desires to purchase, certain assets of Seller relate to the Facility.
Seller	Livingston S and V Operations, LLC
Purchaser	Livingston Two Operations, LLC
Assets Acquired	Transfer of resident trust funds to the New Operator, employee records for all hired employees in the existing Operator's possession, all inventory and supplies of the Existing Operator, assume existing Operator's Medicare and Medicaid provider numbers and Medicare and Medicaid provider reimbursement agreements and all patient records, resident records, and clinical patient trust account records for the period prior to the Transfer Date become property of the New Operator.
Excluded Assets	Existing Operator will retain its right, title and interest in and to all accounts receivable relating to the operation of the business conducted at the Facility before the Employment Date.
Assumed Liabilities	New Operator shall not assume any liabilities or obligations of Existing Operator, except New Operator assume full responsibility for Medicaid audit liabilities and the liabilities owed to the 1199 SEIU Greater New York Pension Funds.
Purchase Price	\$0

The applicant has submitted an original affidavit, acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement, or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the time before the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of February 10, 2022, the facility had no outstanding Medicaid overpayment liabilities.

### Lease Agreement

Facility occupancy is subject to a draft lease agreement, the terms of which are summarized as follows:

Premises:	2781 US Route 9, Hudson, NY
Landlord:	KR Livingston Realty LLC
Tenant:	Livingston Two Operations
Terms:	10 years
Rental:	Annual rent \$652,800 with an annual 3% increase
Provisions	The lessee shall be responsible for maintenance, real estate taxes and insurance.

The lease arrangement is a non-arm's length transaction. The applicant has submitted an affidavit attesting to the relationship between the landlord and the operating entity.

### Real Purchase and Sale Agreement (PSA)

The applicant has submitted a draft PSA for the sale of the RHCF's real property. The terms are summarized below:

Property Purchased:	Located at 2781 US Route 9 Hudson, NY
Seller:	Livingston Hills Realty LLC
Purchaser:	KR Livingston Realty LLC
Purchase Price:	\$14,000,000
Payment of purchase price:	Deposit of \$1,000,000 to escrow, Promissory note of \$2,000,000 for four years with an interest rate of 6% for two years, and 7.5% for last two (2) years and the remaining \$11,000,000 via a loan at an interest rate of 5% for a three-year term.

The members of the KR Livingston Realty, LLC are as follows:

US Nine Realty, LLC	46%
JFK Livingston Acquisition, LLC	46%
Avraham Berns	8%

- The members of US Nine Realty, LLC are as follows: Pinchas Rand 43%, Charles Rand 19%, Louis Rand 19%, and Ali Rand 19%.
- The members of JFK Livingston Acquisitions LLC are as follows: Jack Koschitzki 81% and Faige Koschitzki 19%.

### Capability and Feasibility

There is no cost for the sale of the operation except for the current union obligations estimated to be \$1,000,000. The terms for repayment of the union obligation are pending. The real property purchase price is \$14,000,000 and will be met with a deposit of \$1,000,000 in escrow, a promissory note of \$2,000,000 for four years with an interest rate of 6% for two years, and 7.5% for the last two years and a bank loan of \$11,000,000 at an interest rate of 5% for a three-year term. The loan is proposed to go to HUD within three years. The applicant has indicated that the bank will agree to extend the loan in the unlikely event that HUD financing is not achieved.

The working capital requirement of \$1,655,833 is based on two months of the first year's expenses. The applicant will provide equity to meet the working capital requirement. Presented as BFA Attachment A are the net worth statements for proposed members, indicating sufficient availability to meet the working capital requirement.

The submitted budget indicates an excess of revenues over expenses of \$1,368,675 and \$2,244,761 during the first and third years. Revenues are based on current reimbursement methodologies. The submitted budget appears reasonable.

BFA Attachment C, the financial summary of Livingston Hills Nursing and Rehabilitation, LLC, indicates the facility has experienced negative working capital and equity position and generated an average annual net loss of \$925,168 for 2019-2021. The applicant has indicated that the loss in revenue was directly a result of low occupancy. The average occupancy for the facility from 2019 through 2021 was 71.82%. To address the low occupancy, the current operator began negotiations to sell the facility, and as part of the agreement with the proposed operator, Jack Koschitzki, one of the proposed members of the applicant would become an employee of the existing Livingston Hills Nursing & Rehabilitation Center as Chief Executive Officer. Jack's employment started in September 2021. As part of the CEO's responsibility, the applicant was able to retain a new Administrator, the Director of Nursing, and other staff necessary to stabilize and grow the operation resulting in a significant increase in the census that averaged 96.21% occupancy during the first 10 months of calendar year 2022.

BFA Attachment D, a financial summary of Related Facilities, indicates the following:

- Eleanor Nursing Center has experienced average positive working capital and an average positive net asset position and generated a net operating loss of \$978,857 for 2020. The reason for loss was attributable to covid 19 pandemic.
- Renaissance Rehabilitation and Nursing Center has experienced negative working capital in 2019 and 2021, maintained positive equity position and operating income from 2019-2021.

### Conclusion

The applicant has demonstrated the capability to proceed in a financially feasible manner.

## Attachments

LTCOP Attachment	Long Term Care Ombudsman Program Recommendation
BFA Attachment A	Net Worth Statements of Livingston Hills Nursing and Rehabilitation, LLC
BFA Attachment B	Organizational Chart Proposed Members
BFA Attachment C	Financial Summary of Livingston Hills Nursing and Rehabilitation, LLC
BFA Attachment D	Financial Summary of Related Facilities



**Project # 222123-E  
The Knolls at Goshen, Inc.**

**Program:** Residential Health Care Facility  
**Purpose:** Establishment

**County:** Orange  
**Acknowledged:** October 11, 2022

**Executive Summary**

**Description**

The Knolls at Goshen, Inc., a New York State not-for-profit corporation, is seeking approval to be established as the new operator of a 40-bed residential health care facility operated as part of a Continuing Care Retirement Community (CCRC) known as Glen Arden Inc. Currently, Glen Arden Inc, is operated by two entities, Glen Arden, Inc, and Elant Inc., both Voluntary, not-for-profit corporations. The CCRC also includes 148 independent living units and 28 enriched housing program beds, all of which are located at 214 Harriman Drive, Goshen, New York. Upon approval of this transaction, the applicant will operate the facility under the name The Knolls at Goshen.

On January 24, 2022, Glen Arden, Inc. and Elant, Inc. entered an Asst Purchase Agreement (APA) with The Knolls at Goshen, Inc. whereby The Knolls at Goshen, Inc. will purchase the operating assets of the CCRC from Glen Arden, Inc. and Elant, Inc. The applicant will enter into an Administrative Services Agreement with Bethel Communities Management I, LLC (BCM).

OPCHSM/OALTC Recommendation  
Contingent Approval

**Need Summary**

There will be no need review per Public Health Law §2801-a (4).

**Program Summary**

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard for approval as set forth in Public Health Law §2801-a(3).

**Financial Summary**

There are no projects costs associated with this application. However, the purchase price of the APA is \$41,073,64, and will be met as follows: \$13,570,000 for the assumption of the Bond Debt, \$24,000,000 of refund obligations pursuant to the Assumed Resident Contracts, \$2,500,000 on account of the Assumed Liabilities, \$741,000 for the Assumed Pension Liabilities, \$212,642 for Assumed Liabilities and \$50,000 for Administrative Services to be provided after the Closing Date.

<b>Budget:</b>	<b>Year One 2023</b>	<b>Year Three 2025</b>
Revenues	\$12,658,507	\$12,658,507
Expenses	<u>12,253,240</u>	<u>12,279,868</u>
Excess of Revenues	\$405,267	\$378,639

## Recommendations

Long Term Care Ombudsman Program  
The LTCOP recommends Approval. (See LTCOP Attachment)

Health Systems Agency  
There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a bond resolution, acceptable to the Department. Included with the submitted bond resolution must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
2. Submission of a photocopy of an executed copy of the proposed Certificate of Amendment to its Certificate of Incorporation or Certificate of Dissolution of Glen Arden, Inc., acceptable to the Department. [CSL]

**Approval conditional upon:**

1. This project must be completed by **one year from the date of this letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Submission of documentation of approval by the Continuing Care Retirement Community Council of the full certificate authority application and issuance of a certificate of authority to operate the continuing care retirement community. [BFA]

Council Action Date  
February 9, 2023

## Program Analysis

### Facility Information

	Existing	Proposed
Facility Name	Glen Arden Inc.	The Knolls at Goshen
Address	214 Harriman Drive Goshen, NY 10924	Same
RHCF Capacity	40	Same
ADHC Program Capacity	N/A	N/A
Type of Operator	Corporation	Same
Class of Operator	Voluntary Not for Profit	Same
Operator	Glen Arden, Inc. Co-Operator: Elant Inc.	The Knolls at Goshen, Inc Board Membership: James Campbell Rev. Dr. John Carrington Robert Elliott Rev. Kevan Thomas Hitch Margaret McGarrity Richard Merbaum Andrew Samalin

### Character and Competence - Assessment

**James Campbell** is currently retired and has been so since 2009. Prior to retirement James Campbell was the executive director of Leake and Watts Services, Inc, which is a not-for-profit social services agency providing services for children and families located in Yonkers, NY since 1976. James Campbell holds a master's degree in Social Work from Fordham University. James Campbell discloses the following interests in health facilities:

#### Nursing Homes

Bethel Nursing Home Company Inc. (Board Member)	06/2012 to present
Bethel Nursing & Rehabilitation Center (Board Member)	06/2012 to present

#### End Dated Facilities

Amsterdam Nursing Home ( Board Member)	06/2009 to 07/2022
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#### CCRC

The Knolls (Board Member)	11/2016 to present
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**Rev. Dr. John Carrington** is currently retired and has been so since 2018. Prior to retirement Rev. Dr. John Carrington was the Pastor at St. Mark's United Methodist Church located in New York, NY since 2015. Rev. Dr. John Carrington holds a doctorate degree in Ministry from New York Theological Seminary. Rev. Dr. John Carrington discloses the following interests in health facilities:

#### Nursing Homes

Bethel Nursing Home Company Inc. (Board Member)	06/1976 to present
Bethel Nursing & Rehabilitation Center (Board Member)	06/1976 to present

#### CCRC

The Knolls (Board Member)	11/2016 to present
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#### End Dated Facilities

New York Presbyterian Brooklyn Methodist Hospital (Board Member)	12/1968 to 9/2022
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**Robert Elliott** is currently retired and has been so since January 2022. Before retirement Robert Elliott was a contracted Director at New York Municipal Energy Program an energy aggregator business located in New York, NY since January of 2020. Prior to that Robert Elliott was an Executive Director at Sustainable Westchester, Inc. a nonprofit that business that provided energy programs and education to municipalities and residents of Westchester County located in Mt. Kisco, NY from June 2016 to January 2020. Robert Elliott holds a Master of Business Administration degree from George Washington University School of Government and Business. Robert Elliott discloses the following health facility interests:

End Dated Facilities

Bethel Nursing Home Company Inc. (Board Member)	06/2000 to 06/2022
Bethel Nursing & Rehabilitation Center (Board Member)	06/2000 to 06/2022

CCRC

The Knolls (Board Member)	11/2016 to 06/2022
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**Rev. Kevan Thomas Hitch** lists employment at: Valhalla United Methodist Church as Pastor located in Valhalla, NY since 2003. Rev. Kevan Thomas Hitch holds a Master of Divinity degree from Princeton Theological Seminary and discloses the following health facility interests:

Nursing Homes

Bethel Nursing Home Company Inc. (Board Member)	06/2006 to present
Bethel Nursing & Rehabilitation Center (Board Member)	06/2006 to present

CCRC

The Knolls (Board Member)	11/2016 to present
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**Margaret McGarrity** is currently retired and has been so since 2010. Prior to retirement Margaret McGarrity was the Director of Physical Therapy at Maryknoll Sister's Nursing Home and Assisted Living since 1984 and concurrently worked as a physical therapist for the Visiting Nurse Association and the Visiting Nurse Service since 1977. Margaret McGarrity holds a master's degree in Physical therapy from New York University and disclosed the following health facility interests

Nursing Homes

Bethel Nursing Home Company Inc. (Board Member)	06/2016 to present
Bethel Nursing & Rehabilitation Center (Board Member)	06/2016 to present

CCRC

The Knolls (Board Member)	11/2016 to present
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**Richard Merbaum** is currently retired and has been so since March 2022. Prior to retirement Richard Merbaum worked for Willis Group Holdings Limited an insurance brokerage firm located in New York , NY for 35 years. Richard Merbaum holds an insurance broker license in the state of New York that is in good standing and a Master of Business Administration degree from Columbia University. Richard Merbaum discloses the following health facility interests:

Nursing Homes

Bethel Nursing Home Company Inc. (Board Member)	06/2002 to present
Bethel Nursing & Rehabilitation Center (Board Member)	06/2002 to present

CCRC

The Knolls (Board Member)	11/2016 to present
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**Andrew Samalin** lists employment at: Samalin Investment Counsel, LLC an investment advisory practice as principal located in Chappaqua, NY since 2007. Andrew Samalin holds an active Enrolled Agent license with the IRS and is a licensed Certified Financial Planner in good standing. Andrew Samalin holds

a master's degree from New York University. Andrew Samalin discloses the following health facility interests:

End Dated Facilities

Bethel Nursing Home Company Inc. (Board Member) 06/2007 to 06/2022  
 Bethel Nursing & Rehabilitation Center (Board Member) 06/2007 to 06/2022

CCRC

The Knolls (Board Member) 11/2016 to 06/2022

The proposed applicants have been evaluated, in part, on the distribution of CMS Star ratings for their portfolios. For all proposed owners the distribution of CMS star ratings for their facilities meets the standard described in state regulations.

<b>CMS Star Rating Criteria - 10 NYCRR 600.2(b)(5)(iv)</b>					
<b>Duration of Ownership</b>					
<b>&lt; 48 Months</b>					
<b>48 months or more</b>					
<b><u>Proposed Owner</u></b>	<b><u>Total Nursing Homes</u></b>	<b><u>Number of Nursing Homes</u></b>	<b><u>Percent of Nursing Homes With a Below Average Rating</u></b>	<b><u>Number of Nursing Homes</u></b>	<b><u>Percent of Nursing Homes With a Below Average Rating</u></b>
James Campbell	2	1	100%	1	0%
Rev. Dr. John Carrington	2	0	0%	2	50%
Robert Elliott	0	NA	NA	NA	NA
Rev. Kevan Thomas Hitch	2	0	0%	2	50%
Margaret McGarrity	2	0	0%	2	50%
Richard Merbaum	2	0	0%	2	50%
Andrew Samalin	0	NA	NA	NA	NA

**DURATION OF OWNERSHIP AS OF 2/9/2023**

**Data date: 11/2022**

**New York.** The proposed applicant's portfolio currently includes two New York facilities. The first facility Bethel Nursing Home Company Inc. has a CMS overall quality rating of average with a three-star rating. The second facility Bethel Nursing & Rehabilitation Center has a CMS overall rating of below average with a two-star rating. When asked to explain the low overall CMS rating for Bethel Nursing & Rehabilitation Center the applicants indicated the following.

The facility's overall rating was impacted by the health inspection rating of two stars, which was the result of a health inspection that was conducted in October of 2020. Most of the negative findings relating to that health inspection were the result of facility staff not responding quickly enough to resident needs in regard to mealtimes and lack of adequate supervision of those residents who require supervision while eating, as well as several deficiencies relating to the cleanliness of the facility's kitchen. The facility has already addressed all of these deficiencies via a completed plan of correction and the facility continues to monitor these areas periodically via random internal audits to assure that these changes are being sustained. There is now stable leadership at the facility and they have incorporated the following initiatives: all disciplines participate in the quality assurance and performance improvement program, the facility is ensuring on a daily basis that staffing levels meet the minimum requirements, the facility conducts interdisciplinary team meetings to discover potential issues or areas of concern in regard to residents' health and includes an in-depth analysis each week to keep facility staff focused on methods to improve resident outcomes, the facility utilizes a Minimum Data Set (MDS) program called Point Right, which is utilized to monitor any potential resident issues that affect Quality Measures and resident care, and the facility has contracted with an after-hours telehealth service that provides on-site medical assessments to

residents. As a result of these initiatives, the facility expects to improve the overall CMS quality rating at the facility.

<b>Facility</b>	<b>Ownership Since</b>	<b>Overall</b>	<b>Health Inspection</b>	<b>Quality Measure</b>	<b>Staffing</b>
<b>New York</b>					
Glen Arden Inc.	Subject Facility	****	***	*****	****
Bethel Nursing Home Company Inc.	Current	***	***	****	****
	06/1976* Data Date 01/2009	****	***	***	****
Bethel Nursing & Rehabilitation Center	Current	**	**	***	***
	06/1976* Data Date 01/2009	****	***	**	****

*Data date: 11/2022*

**Quality Review – End Dated Nursing Home**

<b>Facility</b>	<b>Ownership Since</b>	<b>Overall</b>	<b>Health Inspection</b>	<b>Quality Measure</b>	<b>Staffing</b>
<b>New York</b>					
Amsterdam Nursing Home Corp (1992)	07/2022	***	**	*****	**
	06/2009	****	****	****	****

**Enforcement History**

A review of operations of Bethel Nursing Home Company Inc., NY for the period identified above reveals no enforcements:

- The facility was fined \$2,000.00 pursuant to Stipulation and Order NH-22-171 issued for surveillance findings on July 27, 2021, under 10 NYCRR 415.19(b)(4) Infection Control.

A review of operations of Bethel Nursing & Rehabilitation Center, NY for the period identified above reveals no enforcements.

**Conclusion**

The individual background review indicates the applicants have met the standard for approval as set forth in Public Health Law §2801-a(3).

## Financial Analysis

### Operating Budget

The applicant has submitted an operating budget, in 2023 dollars, for the first and third years, summarized below:

	Current 2021		Year One 2023		Year Three 2025	
	Per Diem	Total	Per Diem	Total	Per Diem	Total
Medicare FFS	\$721.45	\$1,464,545	\$721.30	\$1,589,031	\$721.30	\$1,589,031
Medicaid FFS	\$268.04	\$170,203	\$268.03	\$184,670	\$268.03	\$184,670
Private Pay	\$173.91	\$1,761,834	\$350.00	\$3,847,247	\$350.00	3,847,247
Independent Living		\$6,077,076		\$6,077,076		\$6,077,076
Adult Care Facility		<u>\$556,785</u>		<u>\$960,483</u>		<u>\$960,483</u>
<b>Total</b>		<b>\$10,030,443</b>		<b>\$12,658,507</b>		<b>\$12,658,507</b>
<b>Expenses:</b>						
Operating	\$730.30	\$9,344,978	\$750.94	\$10,426,070	\$752.86	\$10,452,698
Capital	<u>\$142.79</u>	<u>\$1,827,170</u>	<u>\$131.60</u>	<u>\$1,827,170</u>	<u>\$131.60</u>	<u>\$1,827,170</u>
<b>Total Expenses</b>	<b>\$873.10</b>	<b>\$11,172,148</b>	<b>\$882.54</b>	<b>\$12,253,240</b>	<b>\$884.46</b>	<b>\$12,279,868</b>
<b>Excess/ Loss of Revenues</b>						
		(\$1,141,705)		\$405,267		\$378,639
Patient days		12,796		13,884		13,884
Occupancy		87.64%		95.10%		95.10%

The following is noted with respect to the operating budget:

- The increase in private pay rates is based on the fact that currently Glen Arden does not admit residents to skilled nursing facility directly from the external community thus all skilled nursing facility residents have transferred from other Independent Living or Enriched Housing settings, as such, the facility's current Private Pay rates as shown in the facility's Cost Report are artificially low.
- The applicant has indicated that the increase in projected utilization in year one and year three is due to the following: plans to implement a modest renovation plan to resident housing units as they become unoccupied (similar to what was done by an affiliate entity at The Knolls, located in Valhalla, New York), rebrand the campus and invest heavily in marketing (at levels consistent with a startup community).
- Operating expenses are based on current year operating expenses, increased accordingly for inflation for most items and certain operating costs, such as professional fees and purchased services, are expected to be reduced in year One and year Three due to planned administrative efficiencies.
- Medicare FFS and Medicaid FFS reimbursement rates are projected to remain the same from the 2021 levels.

Utilization, broken down by payor source, during the first and third years is as follows:

	<u>Current</u> <u>2021</u>	<u>Year One</u> <u>2023</u>	<u>Year Three</u> <u>2025</u>
Medicare FFS	15.87%	15.87%	15.87%
Medicaid FFS	4.96%	4.96%	4.96%
Private Pay	79.17%	79.17%	79.17%

### Administrative Services Agreement

The applicant has submitted an executed administrative services agreement, summarized below:

Facility	The Knolls at Goshen, Inc.
Contractor	Bethel Communities Management 1, LLC
Term	This agreement may be terminated by either party upon giving notice 30 days prior to the termination date.
Services Provided	The Contractor shall provide the following services: establish case mix goals, and operating budgets with monthly review as to budget variances, hire, pay, supervise and discharge the personnel necessary to properly manage and maintain the facility, developed operating procedures, systems and controls, together with associated forms, for the purpose of providing effective management techniques and functions, maintain the quality of resident services, resident care and to maintain the efficient administration of the facility, within the guidelines of Federal and State regulations, establish all rates and rate increases and request demand, collect and receive any and all changes and payments from Medicare, Medicaid, Insurance Companies, HMOs, private or other sources of payments, as they become due.
Fee	\$801,000

#### Lease Rental Agreement

The applicant has submitted an executed lease assignment for the site that they will occupy. The applicant will occupy the site under the following terms:

Premises	6 Harriman Drive, Goshen, New York
Lessor	Garnet Health Medical Center
Lessee	Glen Arden, Inc.
Term	99 years
Rental	\$50,000 for the first year beginning with the date the first resident moves into the Glen Arden Facility.
	\$75,000 for each of the second, third, fourth and fifth years.
	\$95,000 for the sixth year
	\$105,000 for each of the seventh and eight years.
	\$112,000 for the ninth and tenth year.
	Thereafter, the Base Rent shall be established annually by landlord, but never more than 105% of the Base Rent for the immediately preceding year.
Provisions	The lessee shall be responsible for real estate taxes, maintenance and utilities.

#### Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement, which is summarized below:

Purpose	The sale of 40 licensed and Medicare certified skilled nursing beds, 148 independent living units and 28 enriched housing units located in Orange County, New York at 214 Harriman Drive, Goshen, New York.
Seller	Glen Arden, Inc. and Elant Inc.
Purchaser	The Knolls at Goshen, Inc.
Assets Acquired	The Buyer shall purchase from the Seller the following Assets: the leasehold interest, the improvements and the equipment, all of Seller's accounts receivable arising out of the ownership and operation of the facility and outstanding as of the Closing Date, all other tangible assets used in the Business, whether owned or leased, including, all inventory, instruments, tools, vehicles, furniture, articles of personal property, office equipment and all fixtures, bank accounts, working capital assets, all cash, cash equivalents, bank deposits or similar items of Glen Arden or related to the Business or Facility, all of Seller's rights in deposits arising and of ownership and operation of the Facility and relating to the prepayments and prepaid expenses and claims for refund, personnel and payroll records, refunds, settlements and retroactive adjustments from goods of services provided by Seller In connection with the Facility prior to, on or after the Closing Date and all of Seller's

	books and records, all resident funds held in trust and goodwill and going concern value of the Business.
Excluded Assets	All contracts of Seller that are not Assumed and Assigned Contracts and any personnel files for employees of Seller who are not Transferred Employees.
Assumed Liabilities	All of the liabilities and obligations of Glen Arden arising under the Assumed and Assigned Contracts, all liabilities associated with the Elant, Inc. (403(b) Plan related to that portion of the 403(b) plan that is spun off, the Bond Debt and all Medicare and Medicaid Liabilities arising under Glen Arden's Medicare and Medicaid provider numbers.
Purchase Price	\$41,073,642.33
Payment of Purchase Price	\$13,570,000 on account of the assumption of the Bond Debt, \$24,000,000 on account of refund obligations pursuant to the Assumed Resident Contracts, \$2,500,000 on account of the Assumed Liabilities, \$741,000 on account of the Assumed Pension Liabilities, \$212,642.33 on account of the Assumed Liabilities and \$50,000 on account of the value of the Administration Services to be provided after the Closing Date.

The applicant submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of December 21, 2022, the applicant has outstanding liabilities of \$53,849.

#### Capability and Feasibility

The purchase price of \$41,073,642.33 will be met as follows: \$13,570,000 on account of the assumption of the Bond Debt, \$24,000,000 on account of refund obligations pursuant to the Assumed Resident Contracts, \$2,500,000 on account of the Assumed Liabilities, \$741,000 on account of the Assumed Pension Liabilities, \$212,642.33 on account of the Assumed Liabilities and \$50,000 on account of the value of the Administrative Services to be provided after the Closing Date.

Working capital requirements are estimated at \$2,046,644, which is equivalent to two months of third year expenses. The applicant will finance \$1,023,322 via 2022 Revenue Bonds at an interest rate of 8% for a 19-year term. The remainder, \$1,023,322, will be provided as equity via the applicant. The applicant provided documentation of the availability of sufficient funds for the equity contribution.

The submitted budget indicates an excess of revenues over expenses of \$405,267 and \$378,639 during the first and third years, respectively. Revenues are based on current reimbursement methodologies. The submitted budget appears reasonable.

Presented as BFA Attachment A are the financial summary for the period 2020 and 2021 of Glen Arden, Inc. As shown, the applicant had a negative working capital position which was due to the fact that the Series 1998 Bonds are being shown on the facility's financial statements as a current liability as a result of the facility being in violation of various bond covenants. However, upon the closing of this transaction and upon assumption of these bonds by The Knolls at Goshen, Inc., these covenant violations, and defaults will be waived by the bond issuer and The Knolls at Goshen, Inc. will then show the bonds as a Long-Term Liability. The entity had a negative net asset position and incurred historical losses because of lower-than-expected level of occupancy at the facility over the past couple years. The applicant has indicated that the increase in projected utilization for the facility will be achieved through plans to implement a modest renovation plan to resident housing units as they become unoccupied (similar to what was done by an affiliate entity at The Knolls, located in Valhalla, New York), rebrand the campus and invest heavily in marketing (at levels consistent with a startup community).

#### Conclusion

The applicant has demonstrated the capability to proceed in a financially feasible manner.

Attachments

LTCOP Attachment	Long Term Care Ombudsman Program Recommendation
BFA Attachment A	Financial Summary- 2020 and 2021 certified financial statements of Glen Arden, Inc



Project # 222124-E  
Woodcrest Rehabilitation & Residential Health Care Center

**Program:** Residential Health Care Facility  
**Purpose:** Establishment

**County:** Queens  
**Acknowledged:** November 4, 2022

**Executive Summary**

**Description**

Woodcrest Rehabilitation and Residential Health Care Center, LLC (Facility), a 200-bed proprietary residential health care facility, requests approval to transfer 20% stock interest in the facility as a gift, to her adult son, and the facility's Comptroller. The facility is located at 119-09 26<sup>th</sup> Avenue, College Point (Queens County). There will be no change in beds or services provided.

On April 12, 2022, Elizabeth Goldbaum entered into a Deed of Gift, Acceptance, and Assumption with Saul Elliot Goldbaum for her 20% ownership interest in the facility. There is no compensation.

Ownership of the operations before and after the requested change is as follows:

Members	Current	Proposed
Elizabeth Goldbaum	20%	0%
Saul Elliot Goldbaum	0%	20%
Esther Friedman	20%	20%
Esther Solomon	20%	20%
Gloria Lieberman	20%	20%
Jack Deutsch	20%	20%
Total	100%	100%

**OPCHSM/OALTC Recommendation Approval**

**Need Summary**

There will be no need review per Public Health Law §2801-a (4).

**Program Summary**

No negative information has been received concerning the character and competence of the proposed applicant. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard for approval as set forth in Public Health Law §2801-a(3).

**Financial Summary**

Woodcrest Rehabilitation and Residential Health Care Center, LLC's shareholder, Elizabeth Goldbaum, is gifting 20% interest to her adult son, Saul Elliot Goldbaum. There are no project costs associated with this application. Operating budget projections are not included as part of this application as it is limited to a change in membership, with no purchase price or changes in services, location, or its business model.

## Recommendations

Long Term Care Ombudsman Program  
The LTCOP recommends Approval. (See LTCOP Attachment)

Health Systems Agency  
There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval conditional upon:**

1. This project must be completed by **one year from the date of this letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]

Council Action Date  
February 9, 2023

## Program Analysis

### Facility Information

	Existing	Proposed
Facility Name	Woodcrest Rehabilitation and Nursing Center., LLC	Same
Address	119-09 26 <sup>th</sup> Avenue College Point, NY 11354	Same
RHCF Capacity	200	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Limited Liability Company	Same
Class of Operator	Proprietary	Same
Operator	Woodcrest Rehabilitation & Residential Health Care Center, LLC	Woodcrest Rehabilitation & Residential Health Care Center, LLC
	Elizabeth Goldbaum 20.0%	Saul Goldbaum 20.0%
	Esther Friedman 20.0%	Esther Friedman 20.0%
	Esther Solomon 20.0%	Esther Solomon 20.0%
	Gloria Lieberman 20.0%	Gloria Lieberman 20.0%
	Jack Deutsch 20.0%	Jack Deutsch* 20.0%
		*Managing Member

### Character and Competence – Assessment

**Saul Goldbaum** is currently employed at FHS Consultants, LLC, an accounting and software health care consulting business, as president since 1992, Cliffside Nursing Home as Controller since 1991, and Woodcrest Nursing Home as Controller since 1987. Saul Goldbaum holds a high school diploma from Ohr Hameir Theological Seminary and holds a professional license as an insurance broker. Saul Goldbaum discloses an interest in the following health related entities:

Forest View Nursing Home Inc. (12.5%)  
Centers Plan for Healthy Living, LLC (7.8%)

03/2022- Current  
08/2017- Current

### Quality Review

The proposed owner has been evaluated, on the distribution of CMS star ratings. The applicant has owned one facility less than forty-eight months; therefore the applicant meets the standards described in state regulations.

CMS Star Rating Criteria - 10 NYCRR 600.2(b)(5)(iv)					
Duration of Ownership					
< 48 Months			48 months or more		
<u>Proposed Owner</u>	<u>Total Nursing Homes</u>	<u>Number of Nursing Homes</u>	<u>Percent of Nursing Homes with a Below Average Rating</u>	<u>Number of Nursing Homes</u>	<u>Percent of Nursing Homes with a Below Average Rating</u>
Saul Goldbaum	1	1	0	n/a	n/a

*Duration of Ownership as of 2/9/2023*

*Data date: 11/2022*

### CMS Star Ratings

<b>Facility</b>	<b>Ownership Since</b>	<b>Overall</b>	<b>Health Inspection</b>	<b>Quality Measure</b>	<b>Staffing</b>
<b>New York</b>					
Woodcrest Rehabilitation & Residential Health Care Center, LLC	Subject Facility	**	**	**	**
Forest View Center for Rehabilitation & Nursing	Current	****	****	****	**
	03/2022	****	****	****	***

**Data date:** 11/2022

**Enforcement History**

A review of the operations of Forest View Center for Rehabilitation & Nursing for the time period indicated above reveals no enforcements.

**Conclusion**

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard for approval as set forth in Public Health Law §2801-a(3).

## Financial Analysis

### Deed of Gift, Acceptance, and Assumption Agreement

The applicant has submitted an executed Deed of Gift, Acceptance, and Assumption Agreement which will be effectuated by the Public Health and Health Planning Council (PHHCP). The terms are summarized below:

Date:	April 12, 2022
Donor:	Elizabeth Goldbaum (Donor), a member of Woodcrest Rehabilitation and Residential Health Care Center, LLC (Facility), holding a 20% interest in the facility.
Donee:	Saul Elliot Goldbaum - Adult Son
Action:	The Donor gives, assigns, and transfer to the Donee all her right, title, interest, and obligations of every kind with respect to the Membership Interest as a gift. The Donee accepts the Gift, duties, restrictions, liabilities, and obligations relating to the membership interest.
Payment:	No compensation.

### Lease Agreement

The applicant submitted an executed Lease Agreement; the terms are summarized below:

Date:	March 7, 2022
Premises:	A 200-bed RHCF, located at 119-09 26 <sup>th</sup> Avenue, College Point, NY 11354
Lessor:	Woodcrest Property, LLC
Lessee:	Woodcrest Rehabilitation and Residential Health Care Center, LLC
Term:	Ten Years
Rental:	\$3,116,666, which includes debt service (principal and interest)
Provisions:	Triple Net

The lease is a non-arm's length arrangement as Woodcrest Property LLC in that members are either the same as the current operator or control their interest through a trust. On January 5, 2022, under the Public Health Sections 2808(5) and 2803-x(4), Woodcrest Rehabilitation and Residential Health Care Center, LLC notified the Department of Health that they would be entering into a new lease with a new landlord that is intending to purchase the real property.

### Capability and Feasibility

Woodcrest Rehabilitation and Residential Health Care Center, LLC's shareholder, Elizabeth Goldbaum, is gifting 20% interest to her adult son, Saul Elliot Goldbaum. There are no project costs associated with this application. Operating budget projections are not included as part of this application as it is limited to a change in membership, with no purchase price or changes in services, location, or its business model

BFA Attachment A presents Woodcrest Rehabilitation and Residential Health Care Center, LLC's 2021 Certified Financial Statement showing positive working capital, positive net assets, and a \$4,781,001 net income from operations. BFA Attachment B presents the facility's September 30, 2022, an internal financial statement showing \$8,497,261 in working capital, \$9,126,132 in net assets, and \$1,812,014 net income from operations.

### Conclusion

The applicant has demonstrated the capability to proceed in a financially feasible manner.

## Attachments

LTCOP Attachment	Long Term Care Ombudsman Program Recommendation
BFA Attachment A	2021 Certified Financial Statements - Woodcrest Rehabilitation and Residential Health Care Center, LLC
BFA Attachment B	September 30, 2022, Internal Financial Statements - Woodcrest Rehabilitation and Residential Health Care Center, LLC
BFA Attachment C	Organization Chart

## MEMORANDUM

**To:** Public Health and Health Planning Council

**From:** Kathy S. Marks, General Counsel

**Date:** December 16, 2022

**Subject:** Certificate of Amendment of the Certificate of Incorporation of Beth Israel Medical Center, Inc.

---

Beth Israel Medical Center, Inc. (“BIMC”) requests Public Health and Health Planning Council (“PHHPC”) approval of a proposed Certificate of Amendment of its Certificate of Incorporation.

BIMC is a New York not-for-profit corporation incorporated on June 18, 1946, under the name of “Beth Israel Hospital Association and Jewish Maternity Hospital” pursuant to Section 50 of the New York Membership Corporations Law. On February 12, 2016, PHHPC approved an amendment to the purposes of the Certificate of Incorporation of BIMC, to include a training program for nursing leading to an associate in applied science (A.A.S.) or bachelor of science (B.S.) degree at the Phillips Beth Israel School of Nursing.

BIMC wishes to further amend the purposes in its Certificate of Incorporation to include a Master of Science degree its training program for nurses at the Phillips Beth Israel School of Nursing. The Certificate of Amendment of the Certificate of Incorporation seeks to reference this new degree by clarifying the purpose “...(b) to operate a program for the training of nurses leading to degrees of associate in applied science (A.A.S.), Bachelor of Science (B.S.), and Master of Science (M.S.); to engage, in conjunction with universities, colleges, and professional schools, in programs related to the training of other health care professionals.”

This amendment to the Certificate of Incorporation was authorized by the unanimous vote of the sole member of the Corporation, Mount Sinai Hospitals Group, Inc., at a meeting of the sole member held on March 21, 2022.

Attached is a March 24, 2022, request Letter from Executive Vice President of Mount Sinai Jeremy Boal, M.D. on behalf of BIMC to the Department, the Bylaws of BIMC, the Resolutions of the Board of Trustees of BIMC from March 21, 2022, the original Certificate of Incorporation of BIMC as well as the proposed Certificate of Amendment of the Certificate of Incorporation of BIMC.

There is no legal objection to the proposed Certificate of Amendment of the Certificate of Incorporation.

Attachments

## MEMORANDUM

**To:** Public Health and Health Planning Council

**From:** Kathy S. Marks, General Counsel *KSM*

**Date:** December 16, 2022

**Subject:** Certificate of Amendment of the Certificate of Incorporation of Beth Israel Medical Center, Inc.

---

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BIMC wishes to further amend the purposes in its Certificate of Incorporation to include a Master of Science degree in its training program for nurses at the Phillips Beth Israel School of Nursing. The Certificate of Amendment of the Certificate of Incorporation seeks to reference this new degree by clarifying the purpose “...(b) to operate a program for the training of nurses leading to degrees of associate in applied science (A.A.S.), Bachelor of Science (B.S.), and Master of Science (M.S.); to engage, in conjunction with universities, colleges, and professional schools, in programs related to the training of other health care professionals.”

This amendment to the Certificate of Incorporation was authorized by the unanimous vote of the sole member of the Corporation, Mount Sinai Hospitals Group, Inc., at a meeting of the sole member held on March 21, 2022.

Attached is a March 24, 2022, request Letter from Executive Vice President of Mount Sinai Jeremy Boal, M.D. on behalf of BIMC to the Department, the Bylaws of BIMC, the Resolutions of the Board of Trustees of BIMC from March 21, 2022, the original Certificate of Incorporation of BIMC as well as the proposed Certificate of Amendment of the Certificate of Incorporation of BIMC.

There is no legal objection to the proposed Certificate of Amendment of the Certificate of Incorporation.

Attachments



Jeremy Boal, M.D.  
Executive Vice President, Chief Clinical Officer  
Mount Sinai Health System

T. 212-420-2520  
F. 212-420-2881  
Email: [Jeremy.Boal@mssm.edu](mailto:Jeremy.Boal@mssm.edu)

President, Mount Sinai Beth Israel and Downtown  
10 Nathan D. Perlman Place  
New York, NY 10003

March 24, 2022

***By Overnight Delivery***

Attn: Barbara DelCogliano, Deputy Director  
NYS Department of Health  
Division of Planning and Licensure  
Corning Tower, Room 1842  
Empire State Plaza  
Albany, NY 12237

Re: Approval of Amending Certificate of Incorporation of the Beth Israel Medical Center

Dear Ms. DelCogliano:

We write on behalf of Beth Israel Medical Center ("Beth Israel") to request approval to amend the charitable purposes and powers stated in its Certificate of Incorporation in order to add the granting of a Master of Science degree under its training program for nurses at the Phillips School of Nursing.

Beth Israel, part of the Mount Sinai Health System, looks forward to supporting the education of nurses in the State of New York through this expansion in its training program.

For your review, we have attached:

A copy of the proposed Certificate of Amendment of the Certificate of Incorporation to be filed with the New York State Department of State.

Please let us know if you have any questions or require further information. Thank you for your assistance with this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeremy Boal". The signature is fluid and cursive, with a prominent loop at the end.

Jeremy Boal, M.D.  
Executive Vice President and President

cc: Brad Beckstrom

**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
BETH ISRAEL MEDICAL CENTER**

Under Section 803 of the Not-for-Profit Corporation Law

The undersigned, being the Chairman of the Board of Trustees of Beth Israel Medical Center (the "Corporation"), does hereby certify:

1. The name of the Corporation is "Beth Israel Medical Center." The Corporation was formed under the name "Beth Israel Hospital Association."
2. The Corporation was created pursuant to Section 50 of the New York Membership Corporations Law and was formed pursuant to a Certificate of Consolidation filed by the Department of State of New York on July 8, 1946 (the "Certificate of Incorporation").
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the New York Not-for-Profit Corporation Law.
4. The Secretary of State of New York is hereby designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation which is served upon the Secretary of State is: Attn: Legal Department, 150 E. 42nd Street, New York, NY 10017.
5. The Corporation's Certificate of Incorporation is hereby amended as follows:

Article THIRD of the Certificate of Incorporation of the Corporation, which specifies the purposes for which the Corporation is organized, is hereby amended by modifying paragraph (b) thereof, which provides for the conduct of certain training programs for nurses and other health care professionals, to include a reference to master of science degrees in connection with nurse training programs, and said paragraph (b) shall, as amended, read in its entirety as follows:

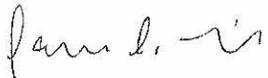
“(b) to operate a program for the training of nurses leading to degrees of associate in applied science (A.A.S.), bachelor of science (B.S.), and master of science (M.S.); to engage, in conjunction with universities, colleges, and professional schools, in programs related to the training of other health care professionals;”

6. This amendment to the Certificate of Incorporation was authorized by the unanimous vote of the sole member of the Corporation at a meeting of the sole member held on March 21, 2022.

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IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment  
this 21st day of March, 2022.

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By:   
Name: James S. Tisch  
Title: Co-Chairman, Boards of Trustees  
Mount Sinai Health System

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CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
BETH ISRAEL MEDICAL CENTER

Under Section 803 of the Not-for-Profit Corporation Law

Filed by:

Name: Suzette Lawrence

Address: Mount Sinai Health System

Legal Department

150 E42nd Street, Suite 2-B.17

New York, NY 10017

**RESOLUTIONS OF  
THE BOARD OF TRUSTEES OF  
BETH ISRAEL MEDICAL CENTER**

**Re: Master's Degree at Phillips School of Nursing**

**March 21, 2022**

WHEREAS, Beth Israel Medical Center (the "Corporation") operates a program for the training of nurses at the Phillips School of Nursing;

WHEREAS, the Board of Trustees of the Corporation (the "Board") has determined that it furthers the Corporation's charitable purposes and is in the Corporation's best interests to expand the training program for nurses to offer a Master of Science degree;

WHEREAS, the Corporation desires to amend its Certificate of Incorporation to add the granting of a Master of Science degree to its corporate purposes pursuant to the proposed Certificate of Amendment attached hereto.

NOW, THEREFORE, BE IT:

RESOLVED, the Board hereby approves the filing of the Certificate of Amendment of the Certificate of Incorporation of the Corporation, substantially in the form attached hereto, subject to the approval of the State Education Department, the Department of Health, the Attorney General, and such other regulatory agencies as may be required; and be it further

RESOLVED, that the officers of the Corporation are authorized to take all such further action, including submitting or modifying documents, as any of the officers may consider necessary or appropriate in furtherance of these resolutions, the execution and delivery thereof to be conclusive evidence of the approval of such officer; and be it further

RESOLVED, that any actions previously taken by any officers of the Corporation in furtherance of these resolutions be, and hereby are, in all respects, approved, ratified, confirmed and adopted on behalf of the Board of the Corporation.

**RESOLUTIONS OF  
THE BOARD OF TRUSTEES OF  
MOUNT SINAI HOSPITALS GROUP, INC.**

**Re: Master's Degree at Phillips School of Nursing**

**March 21, 2022**

WHEREAS, Mount Sinai Hospitals Group, Inc. (the "Corporation") is the sole member of Beth Israel Medical Center ("BIMC");

WHEREAS, BIMC operates a program for the training of nurses at the Phillips School of Nursing;

WHEREAS, the Corporation, acting as the sole member of BIMC, has determined that it furthers BIMC's charitable purposes and is in BIMC's best interests to expand the training program for nurses to offer a Master of Science degree;

WHEREAS, BIMC desires to amend its Certificate of Incorporation to add the granting of a Master of Science degree to its corporate purposes pursuant to the proposed Certificate of Amendment attached hereto.

NOW, THEREFORE, BE IT:

RESOLVED, the Board of Trustees of the Corporation (the "Board") hereby approves the filing of the Certificate of Amendment of the Certificate of Incorporation of BIMC, substantially in the form attached hereto, subject to the approval of the State Education Department, the Department of Health, the Attorney General, and such other regulatory agencies as may be required; and be it further

RESOLVED, that the officers of the Corporation and BIMC are authorized to take all such further action, including submitting or modifying documents, as any of the officers may consider necessary or appropriate in furtherance of these resolutions, the execution and delivery thereof to be conclusive evidence of the approval of such officer; and be it further

RESOLVED, that any actions previously taken by any officers of the Corporation or BIMC in furtherance of these resolutions be, and hereby are, in all respects, approved, ratified, confirmed and adopted on behalf of the Board of the Corporation.

**BETH ISRAEL MEDICAL CENTER**

**CORPORATE BYLAWS**

Amended and Restated  
September 16, 2019

## ARTICLE I

### Purpose

The purposes for which Beth Israel Medical Center (the “Corporation,” and sometimes the “Hospital”) is formed are set forth in its Certificate of Incorporation.

## ARTICLE II

### The Member

**2.01. Member.** The member of the Corporation shall be Mount Sinai Hospitals Group, Inc. (the “Member”).

**2.02. Annual Meeting.** Each year at the annual meeting of the Member, which shall be held at such place and time as shall be fixed by the Chairman of the board of trustees or the board of trustees of the Member from time to time, the class of the Board of Trustees whose term expires that year shall be elected by the Member at the annual meeting of the Member in accordance with the terms of Section 3.04.

**2.03. Action.** The Member may take any action permitted by law in accordance with the certificate of incorporation, the bylaws or the policies and procedures of the Member.

**2.04. Active Parent Powers.** In addition to such other powers, authority, rights and responsibilities vested in the Member in its capacity as the sole member of the Corporation by law or as may be set forth in the Certificate of Incorporation or Bylaws of the Corporation, the Member shall have the power and authority to adopt and approve the Corporation’s operating policies and procedures as may be established by the Corporation or as may be proposed or recommended by the Board of Trustees of the Corporation and approve certificate of need applications to be filed by or on behalf of the Corporation.

## **ARTICLE III**

### **Board of Trustees**

**3.01. Powers.** The activities of the Corporation shall be governed by the Board of Trustees, except as otherwise provided by law or by these Bylaws (the “Bylaws”). The Board of Trustees may adopt such rules and regulations for the conduct of its meetings, the exercise of its powers and the management of the affairs and property of the Corporation as it may deem proper, not inconsistent with the laws of the State of New York, the Certificate of Incorporation or these Bylaws.

**3.02. Number of Trustees.** The Board of Trustees shall consist of 45 trustees.

**3.03. Qualification of Trustees.** All trustees shall be selected for their ability to serve effectively in fulfilling the Board of Trustees’ responsibilities and the purposes of the Corporation. Trustees shall have such other qualifications as the Trustees Committee may deem appropriate to assure that the Board of Trustees represents a broad range of community interests.

**3.04. Term of Office; Election.**

**3.04.1. General.** The trustees shall be divided into three classes, designated Class I, Class II and Class III, for purposes of staggering their terms of office. All classes shall be as nearly equal in number as possible. In order to effectuate the staggering of the terms of office of each class of trustees, Class I trustees have been elected for a term expiring at the time of the annual meeting of the Member in the year 2020 or until the successors to such Class I trustees are elected and qualify; Class II trustees have been elected for a term expiring at the time of the annual meeting of the Member for the year 2021 or until the successors to such Class II trustees are elected and qualify; and Class III trustees have been elected for a term expiring at the time of the annual meeting of the Member for the year 2019 or until the successors to such Class III trustees are elected and qualify. Thereafter, except as provided in Sections 3.04.2, 3.06, 5.03

and 5.04, upon the expiration of the terms of office as provided above, trustees shall be elected to each such Class at the annual meeting of the Member for a term of three years or until their successors are elected and qualify.

**3.04.2. Chairman of the Board; Ex Officio Trustees.** The Board of Trustees may elect either a single individual to serve as Chairman of the Board or two individuals to serve as Co-Chairmen. The term “Chairman” as used in these Bylaws shall refer to (a) if the Board of Trustees has elected a single individual to serve as Chairman, that individual, or (b) if the Board of Trustees has elected two individuals to serve as Co-Chairmen, to both or one of the Co-Chairmen. Notwithstanding Section 3.04.1, (A) the Chairman of the Board of Trustees shall serve as Chairman of the Board of Trustees for a term consistent with his or her term in office as Chairman as provided in Section 5.03, and (B) the Board may designate and elect up to two ex officio trustees to serve on the Board of Trustees for a duration determined by the Board of Trustees or until the expiration of their terms in the office on which their ex officio status is based; however, ex officio trustees shall not be entitled to vote and shall not be counted for purposes of determining a quorum.

**3.04.3. Chairman Emeritus of the Board.** Notwithstanding Section 3.04.1, a former Chairman of the Board may be elected to serve as Emeritus Chair. The Emeritus Chair shall be elected by the Board of Trustees and shall have all of the powers and duties of a trustee.

**3.04.4. Emeritus Trustees.** The Board of Trustees may in its sole discretion designate and elect emeritus trustees to serve on the Board of Trustees for such terms as the Board of Trustees shall determine; however, emeritus trustees shall be invited to attend only the Annual Meeting, shall not be entitled to vote and shall not be counted for purposes of determining a quorum.

**3.05. Resignation; Removal.** Any trustee may resign at any time by giving written notice of such resignation to the Board of Trustees, the Chairman of the Board of Trustees or the Secretary. Such resignation shall take effect at the time specified therein or, if not so specified, upon receipt thereof by the Board of Trustees, the Chairman of the Board of Trustees or the Secretary, as the case may be. Any trustee may be removed from the Board of Trustees by the Member with or without cause at any time.

**3.06. Vacancies.** Vacancies in the membership of the Board of Trustees may be filled at any time as follows:

In the event of a vacancy on the Board of Trustees for any reason, a replacement trustee shall be recommended to the Board of Trustees by the Trustees Committee (or any such committee that may be authorized to recommend candidates to the Board of Trustees) and such replacement trustee shall be elected by the Member or by a vote of a majority of the remaining trustees, though less than a quorum of the Board of Trustees and shall hold office for a term expiring at the annual meeting of the Member at which the term of office of the class to which such trustee has been elected expires and such trustee's successor shall have been duly elected and qualified.

## **ARTICLE IV**

### **Meetings of the Board**

**4.01. Annual Meeting.** The annual meeting of the Board of Trustees for the election of officers of the Corporation and for the transaction of such other business as may properly come before the meeting shall be held at 5 p.m. at the principal office of the Member on the anniversary of the Closing or at such place and time as shall be fixed by the Chairman of the Board of Trustees or the Board of Trustees from time to time upon notice in the manner prescribed in Section 4.04.

**4.02. Regular Meetings.** Regular meetings of the Board of Trustees, which including the Annual Meeting, shall convene no less than four times annually, and shall be held at the principal office of the Corporation at such time as shall be determined from time to time by the Chairman of the Board of Trustees or the Board of Trustees.

**4.03. Special Meetings.** Special meetings of the Board of Trustees shall be held at the offices of the Corporation or at such other place in the City of New York as the Chairman of the Board of Trustees, the Board of Trustees or the Chief Executive Officer may designate in the notice of meeting and may be called at any time by the Chairman of the Board of Trustees, or the Chief Executive Officer, at the time and date specified in the notice of the meeting pursuant to Section 4.04 or in the waiver of notice thereof.

**4.04. Notice of Meetings; Changes in Date, Time and Place of Meetings; Adjourned Meetings.** The annual meeting and regular meetings of the Board of Trustees may be held without notice at the date, time and place specified in Sections 4.01 and 4.02; all annual meetings not held on the anniversary of the Closing and special meetings of the Board of Trustees shall be held upon notice in the manner prescribed in this Section 4.04. The Board of Trustees or the Chairman of the Board of Trustees may change the date, time and/or place of the previously-scheduled annual meeting and any regular or special meeting, provided that notice is given as prescribed in this Section 4.04. All notices of meetings required to be given shall be by mail, by facsimile transmission or by such electronic means of communication for which written confirmation of the electronic communication is available, at least four (4) but not more than thirty (30) days before the meeting to each trustee addressed to such trustee at such trustee's address as it appears in the records of the Corporation or delivered to such trustee personally not less than two (2) nor more than thirty (30) days before the day of such meeting. The Chairman

of the Board of Trustees or, in his absence, the Chief Executive Officer, may adjourn any meeting of trustees at which a quorum does not exist or for any other reason. No notice need be given of any adjourned meeting, provided that the time, date and place to which the meeting is adjourned is announced at the meeting at which the adjournment is taken. The attendance of a trustee at any meeting of the Board of Trustees shall constitute a waiver of notice thereof.

**4.05. Quorum.** Except as may be otherwise expressly required by law, at all meetings of the Board of Trustees the presence of five trustees plus one additional trustee for every ten trustees (or fraction thereof) in excess of fifteen then in office shall be necessary and sufficient to constitute a quorum for the transaction of business. Notwithstanding the foregoing, any appointments to the Hospital Staff pursuant to Section 8.04 by the Board of Trustees, shall require the presence of at least one trustee for every ten trustees (or fraction thereof) then in office to be necessary and sufficient to constitute a quorum. In the absence of a quorum, a majority of the trustees present may adjourn the meeting to another date, time and place. At any such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called.

**4.06. Voting.** Each trustee shall be entitled to one vote on each matter submitted to a vote of trustees. At all meetings of the Board of Trustees, all matters shall be decided by the vote of a majority of the trustees present at the meeting entitled to vote thereon, except as at the time otherwise expressly required by law or by these Bylaws.

**4.07. Action by Board of Trustees Without Meeting.** Any action required or permitted to be taken by the Board of Trustees may be taken without a meeting if all the members of the Board of Trustees give their written or electronic consent to the adoption of a resolution authorizing the action to the extent permitted by law. The resolution and the written or

electronic consents thereto shall be filed with the minutes of the proceedings of the Board of Trustees.

**4.08. Telephone Participation in Meetings.** Any one or more members of the Board of Trustees may participate in a meeting of the Board of Trustees by means of a conference telephone or similar communications equipment allowing all trustees participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

**4.09. Minutes.** Minutes of all meetings shall be taken and shall reflect all business conducted, including findings, conclusions and recommendations, which shall be maintained in the Corporation's official corporate records.

**4.10. Representation of the Hospital Staff.** The Hospital Staff shall have the right to be represented at meetings of the Board of Trustees (through attendance and participation, but not vote) by one member of the Hospital Staff selected by the Hospital Staff and approved by the Board of Trustees, except that this provision shall not apply to executive sessions where attendance of all non-trustees shall be at the discretion of the Board of Trustees.

## ARTICLE V

### Officers

**5.01. Number of Officers.** The officers of the Corporation shall be the Chairman of the Board of Trustees, the Chief Executive Officer, a Treasurer and a Secretary. The Board of Trustees may appoint such additional officers as it shall deem necessary or appropriate, including one or more Senior Vice Chairmen of the Board of Trustees, one or more Vice Chairmen of the Board of Trustees, a President, one or more Executive Vice Presidents and one or more Senior Vice Presidents. The Board of Trustees may also appoint administrative officers to non-policy

setting roles (including Vice Presidents, Associate and Assistant Secretaries and Associate and Assistant Treasurers) and agents as it shall deem necessary or appropriate.

**5.02. Qualification of Officers.** The Chairman of the Board of Trustees, the Treasurer and the Secretary shall be trustees and shall have such additional qualifications as shall be recommended by the Trustees Committee and approved by the Board of Trustees. The Senior Vice Chairman and Vice Chairmen of the Board of Trustees shall be trustees of at least one of the following entities: the Corporation, Mount Sinai Health System, Inc., Mount Sinai Hospitals Group, Inc., The Mount Sinai Hospital, The St. Luke's-Roosevelt Hospital Center, The New York Eye and Ear Infirmary, Icahn School of Medicine at Mount Sinai and The Mount Sinai Medical Center, Inc., and have such additional qualifications as shall be recommended by the Trustees Committee and approved by the Board of Trustees. All other officers may, but need not, be trustees and shall have such additional qualifications as shall be recommended by the Chief Executive Officer and approved by the Board of Trustees.

**5.03. Chairman of the Board of Trustees.** The election, term of office and succession of the Chairman of the Board of Trustees and related provisions shall be governed by this Section 5.03 as follows:

**5.03.1. Election; Term of Office; Selection of Successor Chairman.** The Chairman of the Board of Trustees shall serve for an initial term expiring at the time of the annual meeting of the Board of Trustees in the year 2016, and thereafter, a trustee may serve as Chairman of the Board of Trustees for a maximum of four successive terms, each of which shall be three years. In all cases, the Chairman shall hold office until the annual meeting of the Board of Trustees in the final year of each term or until the Chairman's successor shall have been elected and shall have qualified. Reasonably in advance of the expiration of any such three-year

term of office, the Trustees Committee, and such additional trustees (if any) as the Executive Committee may appoint, shall constitute an ad hoc committee which shall recommend a candidate or candidates (which, subject to the limitation in the first sentence of this Section 5.03.1, could include the incumbent Chairman) for the position of Chairman for consideration by the Board of Trustees for a three-year term of office, with the election to be held prior to the expiration of the then current term of office.

**5.03.2. Temporary Inability of Chairman of the Board to Serve.** In the event of the temporary absence or temporary incapacity of the Chairman of the Board of Trustees, the duties of the Office of Chairman of the Board of Trustees shall be performed by the Senior Vice Chairman of the Board of Trustees designated to act during such period by the Chairman of the Board of Trustees; provided that if there are Co-Chairmen of the Board of Trustees and both Co-Chairmen are not temporarily absent or incapacitated at the time of such temporary absence or incapacity, the duties of the Office of the Chairman of the Board of Trustees shall be performed by the Co-Chairman that is not temporarily absent or incapacitated. In the event that the Chairman of the Board of Trustees does not so designate a Senior Vice Chairman of the Board of Trustees, a Senior Vice Chairman of the Board of Trustees shall be designated by the Executive Committee to act during such period.

**5.03.3. Permanent Inability of Chairman of the Board to Serve.** In the event of the death, resignation, removal or permanent incapacity of the Chairman of the Board of Trustees, a meeting of the Executive Committee or the full Board of Trustees shall be called by any Senior Vice Chairman of the Board of Trustees, the Chief Executive Officer or the Secretary, and the Executive Committee or the full Board of Trustees shall thereupon immediately meet to designate from among the Senior Vice Chairmen of the Board of Trustees

an acting Chairman of the Board of Trustees; provided that if there are Co-Chairmen of the Board of Trustees and one of the Co-Chairmen remains able to serve as Chairman at the time that the other Co-Chairman is permanently unable to serve as Chairman, the duties of the Office of the Chairman of the Board of Trustees shall be performed by the remaining Co-Chairman until such time as the Board of Trustees decides to appoint a Co-Chairman in accordance with the terms of these Bylaws. The Trustees Committee, together with such additional trustees as the Executive Committee may appoint, or the full Board of Trustees shall determine the manner in which a succeeding Chairman of the Board of Trustees shall be selected.

**5.04. Election; Term of Office for Officers Other than the Chairman of the Board of Trustees.** Subject to Section 5.06 relating to vacancies, all officers other than the Chairman of the Board of Trustees shall be elected at the annual meeting of the Board of Trustees and shall hold office until the next annual meeting of the Board of Trustees or until their successors shall have been elected and shall have qualified.

**5.05. Resignation; Removal.** Any officer may resign at any time by giving written notice of such resignation to the Board of Trustees, the Chairman of the Board of Trustees, the Chief Executive Officer, the President or the Secretary. Such resignation shall take effect at the time specified therein or, if not so specified, upon receipt thereof by the Board of Trustees, the Chairman of the Board of Trustees, the Chief Executive Officer, the President or the Secretary, as the case may be. Any officer may be removed with or without cause at any time by the Board of Trustees.

**5.06. Vacancies.** If any office becomes or is declared vacant for any reason, the vacancy may be filled at any time by the Board of Trustees.

**5.07. Honorary Officers.** The Board of Trustees may from time to time appoint such honorary officers as it deems appropriate to serve for such period of time as the Board of Trustees deems appropriate.

**5.08. Powers and Duties.** The powers and duties of the officers shall be those usually appertaining to their respective offices and such other powers and duties as may be prescribed by these Bylaws or from time to time by the Board of Trustees, or the Chairman of the Board of Trustees in the case of offices held only by trustees, or by the Chief Executive Officer in the case of all other offices and all powers and duties incidental to the carrying out of such additional designated powers and duties.

**5.08.1. Chairman of the Board of Trustees.** The Chairman of the Board of Trustees shall preside at and shall set the agenda for all meetings of the Board of Trustees and shall serve as an ex officio member of all committees. The Chairman shall have such powers and duties as may be assigned to the Chairman from time to time by the Board of Trustees.

**5.08.2. Senior Vice Chairman of the Board of Trustees.** The Senior Vice Chairman of the Board of Trustees shall have such powers and duties as may be assigned to the Senior Vice Chairman from time to time by the Board of Trustees or the Chairman of the Board of Trustees.

**5.08.3. Vice Chairmen of the Board of Trustees.** The Vice Chairmen of the Board of Trustees shall have such powers and duties as may be assigned to them from time to time by the Board of Trustees or the Chairman of the Board of Trustees.

**5.08.4. Chief Executive Officer.** The Chief Executive Officer shall be the chief executive officer of the Corporation and shall have such powers and duties as may be assigned to the Chief Executive Officer from time to time by the Board of Trustees or the

Chairman of the Board of Trustees. The Chief Executive Officer shall set the agenda for all meetings of the Board of Trustees at which the Chairman of the Board of Trustees is not present. The Chief Executive Officer shall have the authority and responsibility necessary to operate the Corporation and all of its activities and departments. The Chief Executive Officer shall be responsible for the development, submission and implementation of all plans to maintain the Corporation's compliance with statutory and regulatory requirements. The Chief Executive Officer shall be responsible to the Board of Trustees for the management of the Corporation. The Chairman of the Board of Trustees, together with such other trustees as he deems appropriate, shall be responsible for assuring the Chief Executive Officer's effective performance through ongoing documented monitoring and evaluation of the performance of the Chief Executive Officer against criteria which include the Corporation's compliance with statutory and regulatory requirements, the corrective actions required and taken to achieve such compliance, and the maintenance of corrective actions to achieve continued compliance in previously deficient areas.

**5.08.5. President.** The President shall be the Chief Operating Officer of the Corporation and shall have such powers and duties as may be assigned to him from time to time by the Chief Executive Officer.

**5.08.6. Executive Vice Presidents.** Executive Vice Presidents shall have such powers and duties as may be assigned to them from time to time by the Chief Executive Officer.

**5.08.7. Senior Vice Presidents.** Senior Vice Presidents shall have such powers and duties as may be assigned to them from time to time by the Chief Executive Officer.

**5.08.8. Vice Presidents.** Vice Presidents shall have such powers and duties as may be assigned to them from time to time by the Chief Executive Officer.

**5.08.9. Treasurer.** The Treasurer shall have the care and custody of all the funds and securities of the Corporation. The Treasurer shall keep a full and accurate account of all moneys received and paid on account of the Corporation and shall render a statement of accounts whenever the Board of Trustees shall require. The Treasurer shall have such other powers and duties as may be assigned to the Treasurer from time to time by the Board of Trustees or the Chairman of the Board of Trustees.

**5.08.10. Secretary.** The Secretary shall record all votes and the minutes of all proceedings of the Board of Trustees in a minute book to be kept permanently for that purpose. The Secretary shall give or cause to be given all notices required by law or by these Bylaws. The Secretary shall have custody of the corporate seal and shall have authority to affix the same to any obligation, instrument or contract executed on behalf of the Corporation and, when so affixed, to attest the same by the Secretary's signature. The Secretary shall keep and account for all books, documents, papers and records of the Corporation, except those for which some other officer or agent is properly accountable, and shall have such other powers and duties as may be assigned to the Secretary from time to time by the Board of Trustees or the Chairman of the Board of Trustees.

## **ARTICLE VI**

### **Committees**

**6.01. Appointment of Committees.** The standing committees of the Board of Trustees shall consist of the committees listed in Section 6.09 hereof and the standing committees of the

Corporation shall consist of the committees listed in Section 6.10 hereof. The Board of Trustees may from time to time establish such other standing or special committees of the Board of Trustees and such other standing or special committees of the Corporation as it deems necessary or appropriate. Such standing and special committees shall have such powers, duties and responsibilities as may be prescribed by these Bylaws or from time to time by the Board of Trustees.

**6.02. Membership; Chairmen of Committees; Etc.** Each standing or special committee shall consist of three or more persons to be designated by the Chairman of the Board of Trustees and approved by the Board of Trustees. Standing and special committees of the Board of Trustees shall consist exclusively of members of the Board of Trustees; standing and special committees of the Corporation may consist of trustees and persons who are not trustees. Except as provided below, committee members on all committees may serve for two three-year terms or until their successors are elected and qualify, except that in the case of any such member who has specific expertise essential to a particular committee as determined by the Chairman of the Board of Trustees, such member may serve for additional three-year terms or until his or her successor is elected and qualifies. All committee members, including members of the Executive Committee, shall be elected by the Board of Trustees at the annual meeting of the Board of Trustees for the terms provided above. The Chairman of the Board of Trustees and the Chairman Emeritus shall be ex officio members of all committees. Additional ex officio memberships on any committee may be established by the Board of Trustees or by these Bylaws. All committee members, including members of the Executive Committee, shall serve at the pleasure of the Board of Trustees and the Board of Trustees shall have the power at any time, on the recommendation of the Chairman of the Board of Trustees, to fill vacancies in, change the

membership of, or dissolve any such committee. Each committee shall have a chairman or co-chairmen and may have one or more vice chairmen who, except as provided below, shall be elected by the Board of Trustees from among the committee's members on the recommendation of the Chairman of the Board of Trustees for three-year terms or until their successors are elected and qualify. All committee chairmen, co-chairmen and vice chairmen shall serve at the pleasure of the Board of Trustees and the Board of Trustees shall have the power at any time, on the recommendation of the Chairman of the Board of Trustees, to fill vacant chairmanships or to remove any chairman from office with or without cause.

**6.03. Meetings of Committees.** Committees established by the Board of Trustees may meet either regularly at stated times or specially on notice given at least 24 hours in advance by the Chairman, a Co-Chairman or any Vice Chairman of the committee, the Chairman of the Board of Trustees or not less than one-third of the members thereof (but in any case no less than two members) by mail, telephone or in person or by such electronic means of communication for which written confirmation is available to all other members thereof, but no notice of any regular meeting need be given, and no notice of any special meeting need be given at which all members are present or notice of which has been waived by all absent members before or after such meeting.

**6.04. Vacancies.** In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Trustees to act at the meeting in the place of any such absent or disqualified member.

**6.05. Quorum.** Except as may be otherwise required by law, at any meeting of a committee, the presence of one-third of the members of such a committee (but in any case not less than two

members) shall be necessary and sufficient to constitute a quorum for the transaction of business. In the absence of a quorum, a majority of the committee members present at such meeting may adjourn the meeting to another date, time and place.

**6.06. Action of Committee Members; Operating Procedures; Subcommittees.** At any meeting of a committee, each committee member present shall be entitled to one vote. Except as otherwise provided by law or by these Bylaws, the vote of a majority of committee members present and entitled to vote, if a quorum is present at such time, shall be the act of such committee. Each committee shall have authority to adopt and revise from time to time guidelines and operating procedures or bylaws pursuant to which the committee will discharge and implement its responsibilities. Committees or the Board of Trustees may make rules for the holding and conduct of their meetings and may appoint such subcommittees and staff as they from time to time may deem necessary or appropriate.

**6.07. Action by Committees Without a Meeting.** Any action required or permitted to be taken by any committee may be taken without a meeting if all the members of the committee give their written or electronic consent to the adoption of a resolution authorizing the action to the extent permitted by law. The resolution and the written or electronic consents thereto shall be filed with the minutes of the committee.

**6.08. Telephone Participation in Meeting.** Any one or more of the members of a committee may participate in a meeting of such committee by means of a conference telephone or similar communications equipment allowing all members participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

**6.09. Standing Committees of the Board of Trustees.** The standing committees of the Board of Trustees shall be as follows (subject to the authority of the Board of Trustees to establish additional standing committees set forth in Section 6.01):

**6.09.1 Executive Committee.** The Executive Committee shall have all the powers of the Board of Trustees between meetings of the Board of Trustees to the extent permitted by law.\*

**6.09.2. The Ad Hoc Executive Committee.** In the event of exigent circumstances, the Ad Hoc Executive Committee (consisting of the Chairman, the Chairman Emeritus, and such other Members of the Executive Committee as the Chairman determine are appropriate with respect to the matter under consideration) shall be authorized to act on behalf of the Executive Committee. Any formal actions taken by the Ad Hoc Executive Committee shall be presented to the Executive Committee at its next regular meeting.

**6.10. Standing Committees of the Corporation.** The standing committees of the Corporation shall be as follows (subject to the authority of the Board of Trustees to establish additional standing committees as set forth in Section 6.01):

**6.10.1. Audit and Compliance Committee.** The Audit and Compliance Committee shall monitor (1) the integrity of the Corporation's financial statements; (2) the Corporation's financial reporting process and system of internal controls; (3) the Corporation's

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\* Section 712 of the New York Not-for-Profit Corporation Law (the "NPCL") provides that the Executive Committee does not have authority as to the following matters: (1) the filling of vacancies in the Board of Trustees or in any committee; (2) the fixing of compensation of the trustees for serving on the Board of Trustees or on any committee; (3) the amendment or repeal of the Bylaws or the adoption of the new Bylaws; and (4) the amendment or repeal of any resolution of the Board of Trustees which by its terms shall not be so amendable or repealable. Section 509 of the NPCL provides that certain real estate transactions, including the purchase and sale of real property, can be approved only by the vote of the entire Board of Trustees.

compliance with legal and regulatory requirements and with standards of ethical conduct established by management or the Board of Trustees; (4) the qualifications, independence and performance of the Corporation's independent auditors; and (5) the performance of the Corporation's internal audit and compliance functions. The Audit and Compliance Committee shall have authority to require such reports and other information from management and the independent auditors and obtain (at the Corporation's expense) such outside expert advice as the Audit and Compliance Committee deems necessary to discharge its responsibilities.

**6.10.2. Community and Government Affairs Committee.** The Community and Government Affairs Committee shall monitor matters relating to the Corporation's relationships with the various communities which it serves and to local and community leaders and matters relating to the Corporation's relationships to federal, state, and/or local governmental agencies.

**6.10.3. Compensation and Employee Benefits Committee.** The Compensation and Employee Benefits Committee shall (1) review and approve matters relating to personnel, labor relations, collective bargaining and compensation and fringe benefits of Corporation employees; (2) have the responsibility and authority to establish and fix the compensation and fringe benefits of all Executives<sup>1</sup> and it shall also review the compensation and fringe benefits of other senior and/or highly compensated personnel; and (3) have the authority to serve as, or delegate and appoint, fiduciaries with respect to the Corporation's employee benefit plans.

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<sup>1</sup> Executives shall be those individuals who are "Disqualified Persons" under Treas. Reg. 53.4598-3T and those who, post-recruitment, will be "Disqualified Persons") in accordance with those procedures and requirements set forth in the Operating Procedures of the Committee.

**6.10.4. Development and Campaign Steering Committee.** The Development and Campaign Steering Committee shall monitor matters relating to philanthropic fundraising, donations and testamentary and deferred gifts to the Corporation.

**6.10.5. Education Committee.** The Education Committee shall monitor (1) matters relating to undergraduate medical education and training conducted at or under the auspices of the Corporation, as well as the Corporation's medical residency and continuing medical education and training programs, and matters relating to the housing and other perquisites of undergraduate students and medical residents and (2) matters relating to the Graduate School of Biological Sciences, including its doctoral programs, master's programs and MD/PhD programs, as well as matters relating to the housing and other perquisites of students in the foregoing programs.

**6.10.6. Finance Committee.** The Finance Committee (1) shall monitor matters relating to the finances of the Corporation, including the preparation by management of the annual budget of revenues and expenses and the annual budget of capital expenditures; and (2) shall monitor, establish and fix appropriate levels of general and professional liability, property and other types of insurance.

**6.10.7. Human Capital Management Committee.** The Human Capital Management Committee shall monitor matters related to workforce development and planning, workforce diversity and inclusion, workforce professionalism, employee training development and learning, and employee health and safety.

**6.10.8. Information Technology Committee.** The Information Technology Committee shall monitor the Corporation's information systems, including management information systems, data processing, clinical technology, and computer technology.

**6.10.9. Innovations Committee.** The Innovations Committee shall monitor matters relating to patents, licensing and other activities related thereto, and the Corporation's intellectual property portfolio and any related transactions.

**6.10.10. Investment Committee.** The Investment Committee shall supervise the investment of the Corporation's endowment and other funds and accounts. Unless otherwise limited by the Board of Trustees, it shall have the authority to make investment decisions with respect to, and to authorize and effect investment transactions in, any and all such funds and accounts and to select and employ investment advisors. It shall also exercise any other investment supervisory power the Board of Trustees may have, subject to the approval of the Board of Trustees.

**6.10.11. Legal Committee.** The Legal Committee shall monitor the legal affairs of the Corporation. It shall monitor the selection of outside counsel and the terms of their retention.

**6.10.12. Committee on Quality.** The Committee on Quality shall: (1) review and monitor the provision of patient care and quality assurance activities at or under the auspices of the Corporation; (2) oversee and coordinate the patient safety, malpractice prevention and quality assurance plans and programs at or under the auspices of the Corporation and insure that information gathered pursuant to those programs/plans will be utilized to review and to revise Corporation policies and procedures; (3) review and monitor matters related to professional staff

development; and (4) comply with other applicable legal requirements, including guidelines issued by regulatory bodies.

**6.10.13. Real Estate and Facilities Committee.** The Real Estate and Facilities Committee shall monitor matters relating to the real estate and facilities owned or leased by the Corporation, including the management of such properties and the maintenance and renovation of such properties, the acquisition of new properties, the sale or transfer of existing properties and construction and renovation of new and existing properties.

**6.10.14. Research Committee.** The Research Committee shall monitor matters relating to research conducted at or under the auspices of the Corporation, including matters relating to grants from the National Institutes of Health and other funding sources, the activities of the Institutional Review Board and other internal research-related committees, and the Corporation's policies and procedures relating to human subject safety.

**6.10.15. Strategic Planning Committee.** The Strategic Planning Committee shall be responsible for developing, and recommending to the full Board of Trustees or the Executive Committee for approval, strategic plans for the Corporation as part of an institution-wide strategic planning process. The strategic plans shall: (1) set forth criteria for the selection of primary areas of focus for programmatic growth and investment; and (2) establish priorities among the primary areas of focus, taking into account the missions of patient care, teaching and research of the Corporation.

**6.10.16. Trustees Committee.** The Trustees Committee shall recommend candidates to the Board of Trustees for vacancies in the Board of Trustees and in the offices of the Board of Trustees, including a candidate or candidates for the Office of Chairman of the

Board in conjunction with the Executive Committee as required by Section 5.03, whether occurring by reason of the expiration of the term of office or otherwise. It shall also make recommendations to the Chairman of the Board of Trustees with respect to the chairmanship and membership of each committee, identify potential new trustees, review the performance of sitting trustees and officers of the Board of Trustees, oversee the Board of Trustees' self-assessment, new trustee orientation and ongoing trustee education, and identify governance issues.

**6.10.17. The Trustee Conflicts of Interest Review Committee.** The Trustee Conflicts of Interest Review Committee shall, in accordance with the terms of Section 11.01, monitor and implement compliance with the Corporation's conflicts of interest policies for trustees, officers and key employees, including by exercising decision-making authority assigned to the Committee under such policies.

**6.11. Minutes.** Each committee shall keep regular minutes of its meetings and report the same to the Board of Trustees when required and all such minutes shall be filed with the records of such committee.

## **ARTICLE VII**

### **Medical Director**

**7.01. Appointment.** After consultation with the Hospital Staff in such manner as the Board of Trustees may deem appropriate, the Board of Trustees shall appoint a physician qualified for membership on the Hospital Staff as the Medical Director of the Hospital.

**7.02. Duties.** The Medical Director shall be responsible for directing the Hospital Staff in accordance with applicable provisions of law and regulations and shall perform such other duties as may be required by law and regulations and such further duties as may be specified by the

Board of Trustees or the Chief Executive Officer. The Medical Director shall be responsible to the Chief Executive Officer and to the Board of Trustees.

## **ARTICLE VIII**

### **Hospital Staff**

**8.01. Membership.** The Hospital Staff shall consist of all physicians, dentists and other health care professionals who are appointed to the Hospital Staff pursuant to and in accordance with the Hospital Staff Bylaws (as defined below). The Hospital Staff shall consist of all physicians and dentists who, having received a concurrent appointment to the Faculty of the Icahn School of Medicine at Mount Sinai, have been granted privileges in accordance with these Bylaws and the Hospital Staff Bylaws.

**8.02. Hospital Staff Bylaws.** There shall be bylaws of the Hospital Staff (the “Hospital Staff Bylaws”) which set forth (a) its specific purposes and powers, (b) its organization and the organization of the clinical departments of the Hospital, (c) the rights, duties and obligations of Hospital Staff members and of each category of Hospital Staff membership, (d) the qualifications and performance standards to be met, and specific procedures for appointment and reappointment to and suspension and removal from the Hospital Staff and the delineation of clinical privileges, (e) the specific rights of candidates for appointment and of Hospital Staff members who have been suspended or removed or who have not been reappointed, including fair hearing procedures, (f) the organization of the quality assurance activities of the Hospital Staff as well as the mechanism used to conduct, evaluate and revise such activities, (g) the mechanism for the approval of such policies, rules and regulations as may be necessary for the governance of the Hospital Staff and the furtherance of its purposes, provided that such Hospital Staff Bylaws shall not be inconsistent with and shall be subject to the provisions of these Bylaws, and (h) such

other provisions as shall be required by law and regulations. The Hospital Staff Bylaws, and any amendments thereto, shall not be effective unless and until approved by the Board of Trustees.

The Hospital Staff Bylaws shall further provide appropriate procedures, including, when appropriate, a hearing before the Executive Committee of the Medical Board or an ad hoc committee thereof, and, when appropriate, the right of appeal to the Board of Trustees or a committee thereof, to ensure due process in the case of non-appointment and non-reappointment to the Hospital Staff, curtailment of privileges and suspension, dismissal or other disciplinary action.

**8.03. Medical Board.** The Medical Board shall be the governing body of the Hospital Staff and shall have the responsibility for carrying out its purposes. The Medical Board shall adopt such policies, rules and regulations consistent with the Hospital Staff Bylaws, applicable legal requirements, and these Bylaws as it deems necessary for the governance of the Hospital Staff and the furtherance of its purposes and as shall be required by law and regulations.

**8.04. Appointment.** The Board of Trustees shall appoint to the Hospital Staff, in numbers not exceeding the Hospital's needs, physicians, dentists and other health care professionals who meet the qualifications for membership as set forth in the Hospital Staff Bylaws. Each member of the Hospital Staff shall have appropriate authority and responsibility for the care of that member's patients, within the scope of each member's privileges, subject to any limitations in these Bylaws and the Hospital Staff Bylaws, rules, and regulations of the Hospital Staff and subject, further, to any limitations on that member's appointment. All applications shall be processed in accordance with the Hospital Staff Bylaws. All appointments to the Hospital Staff shall be for a period not to exceed two years, subject to prior removal.

**8.05. Department Directors, Other Appointments to Administrative Positions, Etc.**

Appointments as department directors and as physicians and dentists to administrative positions may be by the Board of Trustees. All department directors, physicians, dentists and other health care professionals in administrative positions (whether employed or voluntary) shall serve at the pleasure of the Board of Trustees, and provided, further, that, notwithstanding any provision of these Bylaws or the Hospital Staff Bylaws to the contrary, any physician, dentist or other health care professional whose engagement by the Hospital requires membership on the Hospital Staff shall have the same due process rights as any member of the Hospital Staff only insofar as termination of that member's Hospital Staff privileges are concerned and such due process rights shall not apply insofar as appointments (whether employed or voluntary) to administrative positions are concerned. The duties and responsibilities of directors of clinical departments shall be set forth in the Hospital Staff Bylaws. Directors of clinical departments shall be required to maintain their qualifications for Hospital Staff membership and privileges appropriate to their assignments.

**ARTICLE IX**

**Board of the Phillips Beth Israel School of Nursing**

**9.01. Board of The Phillips Beth Israel School of Nursing.** The Board of The Phillips Beth Israel School of Nursing (the 'Nursing School Board') shall be responsible to the Board of Trustees of the Corporation for the operation of the Phillips Beth Israel School of Nursing (the 'School'). The Nursing School Board shall appoint the President and Dean for the School of Nursing. The Nursing School Board shall be an independent, policy making body responsible for the quality and integrity of the School of Nursing and for ensuring that the School of Nursing's mission is carried out and that the School of Nursing meets all accrediting standards.

The Nursing School Board will be responsible for the following matters: all financial matters concerning the School of Nursing; all budgetary requests as presented by the Dean in concert with the faculty of the School of Nursing; recommendations of the faculty for those students who have met the stated criteria to be awarded the AAS degree; and any further matters relevant to the operation of the School of Nursing. The number of members of the Nursing School Board shall be determined by the Nursing School Board. The Nursing School Board shall adopt bylaws which set forth (a) the rights, duties and obligation of, and criteria for, membership on the Nursing School Board; and (b) the organization and governance of the Nursing School. Such bylaws and any amendments thereto shall be consistent with these Bylaws and shall not be effective unless and until approved by the Member or the Board of Trustees of the Corporation.

**9.02. Membership; Chairmen of the Nursing School Board; Etc.** Candidates for membership on the Nursing School Board shall be nominated by the Nursing School Board, shall be appointed by the Member or the Board of Trustees of the Corporation from such nominees and shall serve for a term of three years or until their successors are elected and qualify. The Dean of the School of Nursing and the President of the Corporation shall be ex officio members of the Nursing School Board, with the right to vote. The Chairman of the Nursing School Board shall be elected from among the Nursing School Board's members by members of the Nursing School Board. The Member or the Board of Trustees of the Corporation shall not have the power to remove members of the Nursing School Board without cause.

## **ARTICLE X**

### **Indemnification**

**10.01. Limitation of Liability.** Except as otherwise provided by law, no trustee or officer of the Corporation shall be liable to any person other than the Corporation based solely on such

trustee's or officer's conduct in the execution of such office unless such conduct with respect to the person asserting liability constituted gross negligence or was intended to cause the resulting harm to the person asserting liability.

**10.02. Indemnity.** The Corporation shall, to the fullest extent permitted by applicable law, indemnify any person made, or threatened to be made, a party to any action or proceeding, whether criminal or civil, including an action by or in the right of the Corporation to procure a judgment in its favor, by reason of the fact that such person, or such person's testator or intestate, is or was a trustee or officer of the Corporation or a member of a committee established under Article VI, including also an action by or in the right of any corporation, partnership, joint venture, trust, employee benefit plan or other enterprise in which such trustee, officer or Article VI committee member served in any capacity at the request of the Corporation, against judgments, fines, amounts paid in settlement and reasonable expenses, including attorneys' fees actually and necessarily incurred as a result of such action or proceeding, or any appeal therein.

**10.03. Reimbursement or Advancement of Funds.** The Corporation shall, from time to time, reimburse or advance to any person referred to in Section 10.02 the funds necessary for payment of expenses incurred by such person in connection with any action or proceeding, or threatened action or proceeding, or appeal referred to in Section 10.02 upon receipt, if required by the New York Not-For-Profit Corporation Law or deemed appropriate by the Board of Trustees, of a written undertaking by or on behalf of such person to repay such amount(s) if it is ultimately determined that such person is not entitled to indemnification under this Article X or otherwise.

**10.03.1. No Rights Hereunder in Certain Cases.** Notwithstanding anything in this Article X to the contrary, no person referred to in Section 10.02 shall be entitled to

indemnification, or reimbursement or advancement of funds, in connection with (1) any claim initiated by such person unless the Board of Trustees or the Executive Committee thereof has authorized or consented to the initiation of such claim (except as otherwise provided in Section 10.07 with respect to a claim by such person to enforce his rights under this Article X) or (2) any claim by the Corporation against such person if such person was an officer of the Corporation whose employment by the Corporation has terminated and such claim by the Corporation is to recover funds and/or property improperly taken by or paid to such person.

**10.04. Indemnity, Reimbursement and Advancement to Fullest Extent of Law.** The Corporation, by resolution adopted by its Board of Trustees or the Executive Committee thereof, may indemnify and reimburse or advance expenses to any person to whom the Corporation is permitted to provide indemnification or the reimbursement or advancement of expenses to the fullest extent permitted by applicable law, as it may exist from time to time, whether pursuant to rights granted pursuant to, or provided by, the New York Not-For-Profit Corporation Law or other rights created by (1) a resolution of Trustees or (2) an agreement approved by the Board or such Committee providing for such indemnification or reimbursement or advancement of expenses, it being expressly intended that this Article X authorizes the creation of such other rights in any such manner. Any such indemnification and any such reimbursement or advancement of expenses may, in the Board's or such Committee's discretion and to the extent permitted by law, be retroactive and be available with respect to events occurring prior to the adoption hereof and prior to any such resolution or agreement.

**10.05. Interpretation.** Any person entitled to be indemnified or to the reimbursement or advancement of expenses as a matter of right pursuant to this Article X may elect to have the right to indemnification (or reimbursement or advancement of expenses) interpreted on the basis

of the applicable law in effect at the time of the occurrence of the event or events giving rise to the action or proceeding, to the extent permitted by law, or on the basis of the applicable law in effect at the time indemnification (or reimbursement or advancement of expenses) is sought.

**10.06. Contract Right.** The right to be indemnified or to the reimbursement or advancement of expenses pursuant to Sections 10.02 or 10.03 or a resolution authorized pursuant to Section 10.04 (A) is a contract right pursuant to which the person entitled thereto may bring suit as if the provisions hereof (or of any such resolution) were set forth in a separate written contract between the Corporation and such person, (B) is intended to be retroactive and shall, to the extent permitted by law, be available with respect to events occurring prior to the adoption hereof or of any such resolution, and (C) shall continue to exist after any rescission or restrictive modification hereof or of any such resolution with respect to events occurring prior thereto. The Corporation shall not be obligated under this Article X (including any resolution or agreement authorized by Section 10.04) to make any payment hereunder (or under any such resolution or agreement) to the extent the person seeking indemnification hereunder (or under any such resolution or agreement) has actually received payment (under any insurance policy, resolution, agreement or otherwise) of the amount otherwise indemnifiable hereunder (or under any such resolution or agreement).

**10.07. Right to Sue.** If a request to be indemnified or for the reimbursement or advancement of expenses pursuant to this Article X (including any resolution or agreement authorized by Section 10.04) is not paid in full by the Corporation within thirty (30) days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim, and, if successful in whole or in part, the claimant shall be entitled also to be paid the expenses of prosecuting such claim. Neither the

failure of the Corporation (including its Board of Trustees or independent legal counsel) to have made a determination prior to the commencement of such action that indemnification of or reimbursement or advancement of expenses to the claimant is proper in the circumstances, nor an actual determination by the Corporation (including its Board of Trustees or independent legal counsel) that the claimant is not entitled to indemnification or to the reimbursement or advancement of expenses, shall be a defense to the action or create a presumption that the claimant is not so entitled.

**10.08. Binding on Successors.** For purposes of this Article, the term “Corporation” shall include any legal successor to the Corporation, including any corporation which acquires all or substantially all of the assets of the Corporation in one or more transactions.

**10.09. Rights Not Exclusive.** The rights granted pursuant to or provided by the foregoing provisions of this Article X shall be in addition to and shall not be exclusive of any other rights to indemnification and expenses to which such person may otherwise be entitled by law, contract or otherwise.

**10.10. Indemnity Applicable to Service on Related Entities.** Without limitation of any indemnification provided by Section 10.02, any trustee or officer of the Corporation serving (i) another corporation, partnership, joint venture, trust or other enterprise of which 50% or more of the voting power or economic interest is held, directly or indirectly by the Corporation, or (ii) any employee benefit plan of the Corporation or any entity referred to in clause (i), in any capacity shall be deemed to be doing so at the request of the Corporation.

**10.11. Insurance.** The Corporation is not required to purchase directors’ and officers’ liability insurance, but the Corporation may purchase such insurance if authorized and approved by the Board of Trustees or the Executive Committee thereof. To the extent permitted by law, such

insurance may insure the Corporation for any obligation it incurs as a result of this Article X or by operation of law, and it may insure directly the trustees, officers, employees or volunteers of the Corporation for liabilities against which they are not entitled to indemnification under this Article X as well as for liabilities against which they are entitled or permitted to be indemnified by the Corporation.

## ARTICLE XI

### **Conflict of Interest; Compliance With Laws**

**11.01. Conflict of Interest.** All trustees, employees, members and Hospital Staff (voluntary and full-time) of the Corporation shall discharge the duties of their respective positions in good faith and with that degree of diligence, care and skill which ordinarily prudent individuals would exercise under similar circumstances in like positions. Trustees, employees, members and Hospital Staff (voluntary and full-time) of the Corporation should not use their positions, or confidential information gained therefrom, to their personal advantage. Furthermore, the judgment and independence of trustees, employees, members and Hospital Staff (voluntary and full-time) of the Corporation should not be impaired or appear to be impaired in the discharge of their duties and responsibilities on behalf of the Corporation because of any activity in which they may engage or any personal or financial interest or relationship they may have. A “Conflict of Interest” is defined to be any activity that violates, or could potentially violate, the foregoing standard. The Board of Trustees shall adopt such policies and procedures as may be necessary or appropriate with respect to the further definition of Conflict of Interest and the procedures for disclosing, managing and resolving Conflicts of Interest.

**11.02. Compliance With Laws.** The Board of Trustees shall also adopt policies and procedures intended to promote compliance by trustees, employees, members and Hospital Staff

(voluntary and full-time) of the Corporation with ethical standards of behavior and with applicable laws and regulations.

## **ARTICLE XII**

### **Budget**

**12.01. Adoption of Budget.** The Board of Trustees shall adopt an operating and capital budget for the Corporation, showing the anticipated receipts and expenditures in the operation of the Corporation for the next succeeding fiscal year.

**12.02. Adjustments.** The Board of Trustees may, during the year, make necessary adjustments to the budget for such year. The Board of Trustees may authorize expenditures not included in the Corporation's annual budget.

## **ARTICLE XIII**

### **Corporate Seal**

The corporate seal of the Corporation shall be in such form as may be approved by the Board of Trustees.

## **ARTICLE XIV**

### **Office**

The principal office of the Corporation shall be located at One Gustave L. Levy Place, New York, New York 10029.

## **ARTICLE XV**

### **Amendments**

Except as otherwise provided by law, these Bylaws may be amended or repealed, and new bylaws may be adopted by the affirmative vote of a majority of the trustees then in office or

by the Member; provided, however, that the Board of Trustees may not amend these Bylaws to remove any powers of the Member provided by these Bylaws.

## **ARTICLE XVI**

### **Review of Bylaws**

These Bylaws shall be revised as necessary and shall be reviewed at least once every two years. These Bylaws shall be dated to specify the date of the last such review.

# PHHPC

## ***PUBLIC HEALTH AND HEALTH PLANNING COUNCIL***

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Empire State Plaza, Corning Tower, Room 1805  
Albany, New York 12237

(518) 402-0964  
PHHPC@health.state.ny.us

April 13, 2022

Jeremy Boal, M.D.  
Executive Vice President, Chief Clinical Officer  
Mount Sinai Health System  
President, Mount Sinai Beth Israel and Downtown  
10 Nathan D. Perlman Place  
New York, NY 10003

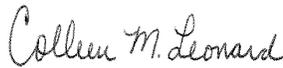
RE: Certificate of Amendment of the Certificate of Incorporation of Beth Israel Medical Center

Dear Dr. Boal:

I have received your letter dated March 24, 2022, requesting approval of the Certificate of Amendment of the Certificate of Incorporation of Beth Israel Medical Center under Section 803 of the Not-for-Profit Corporation Law of the State of New York. Your letter has been forwarded to the Division of Legal Affairs, Bureau of Health Facility Planning and Development for review and approval.

You will be notified when this request has been approved, or if additional information is required. Division of Legal Affairs staff may be reached at (518) 473-3303 if you have any questions.

Sincerely,

  
Colleen M. Leonard  
Executive Secretary

cc: DLA

/ms

***STATE OF NEW YORK***  
***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the  
Department of State, at the City of Albany,  
on December 30, 2015.



*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State



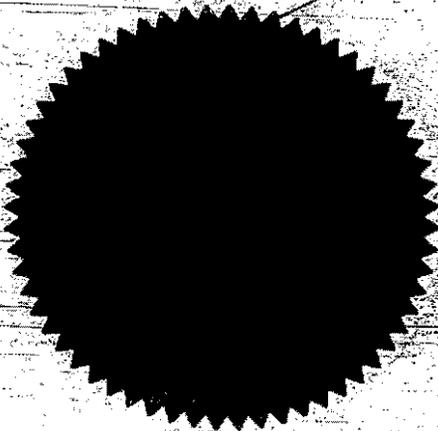
State of New York - Department of Social Welfare  
State Board of Social Welfare

Albany

Know all Men by These Presents:

At a meeting of the State Board of Social Welfare, held on  
the eighteenth day of June, 1946, due inquiry and investiga-  
tion having been made, the Board approved the consolidation of BETH ISRAEL  
HOSPITAL ASSOCIATION and JEWISH MATERNITY HOSPITAL forming the new corporation  
BETH ISRAEL HOSPITAL ASSOCIATION, pursuant to Section 50 of the Membership  
Corporations Law of the State of New York.

106



In Witness Whereof, the State Board of  
Social Welfare has caused these presents to be  
signed in accordance with the provisions of the  
statutes and its by-laws, and the official seal of  
the Board and of the Department to be here-  
unto affixed, this twenty-seventh day of  
June, in the year one thousand  
nine hundred and forty-six.

*Joseph J. ...*

Secretary

4699-106-1

CERTIFICATE OF CONSOLIDATION FORMING BETH  
ISRAEL HOSPITAL ASSOCIATION, PURSUANT TO  
SECTION FIFTY OF THE MEMBERSHIP CORPORATIONS

LAW.

WE, CHARLES H. SILVER, SAMUEL HAUSMAN, LOUIS SATENSTEIN and  
NATHAN RATNOFF, being respectively a Vice-President and the Secretary of  
BETH ISRAEL HOSPITAL ASSOCIATION, and the President and Secretary of  
JEWISH MATERNITY HOSPITAL, do CERTIFY:

1. BETH ISRAEL HOSPITAL ASSOCIATION, whose certificate of  
incorporation was filed in the office of the Secretary of State on the  
28th day of May, 1890, and JEWISH MATERNITY HOSPITAL, whose certificate  
of incorporation was filed in the office of the Secretary of State on  
the 27th day of April, 1906, are the corporations to be included in this  
consolidation.

2. The name of the new corporation is BETH ISRAEL HOSPITAL  
ASSOCIATION.

3. The territory in which its operations are to be prin-  
cipally conducted is the City of New York, New York.

4. The office of the corporation shall be located in the  
and County  
City of New York, New York.

5. The number of its directors shall be not less than  
thirty-five (35) nor more than forty (40).

6. The names and residences of the directors of the cor-  
poration until the first annual meeting, with the street and number of  
the residence of each director residing in a city, are as follows:

NAMESRESIDENCE ADDRESSES

Morris Asinof

1055 Park Avenue,  
New York City

Abraham Blumenkrantz

450 West End Avenue,  
New York City

Joseph H. Cohen

2 Sutton Place,  
New York City

Leo M. Cooper

Dorset Hotel, 30 West 54th  
Street, New York City

Harry Fischel

910 Park Avenue,  
New York City

Paul P. Gelles

77 Greenacres,  
Scarsdale, New York

Samuel H. Golding

5th Avenue Hotel,  
5th Avenue & 9th Street,  
New York City

Samuel Hausman

460 E. Shore Road,  
Great Neck, Kings Pt., L.I.

Henry Homes

239 Central Park West,  
New York City

Isidor Kaplan

160 Central Park South,  
New York City

Irving D. Karpas

1 West 81st Street,  
New York City.

George Kletz

Essex House Hotel,  
160 Central Park South,  
New York City

Abraham Krause

115 Central Park West,  
New York City

Abraham Landau

45 East 82nd Street,  
New York City

Hon. Aaron J. Levy

4551 Livingston Avenue,  
Fieldston, New York

Joseph Levy

115 Central Park West,  
New York City

Hon. Samuel Levy

Waldorf Astoria,  
50th Street & Park Avenue,  
New York City

Irving D. Lipkowitz

15 West 81st Street,  
New York City

Hon. Nathan D. Perlman	25 East 9th Street, New York City
Seymour J. Phillips	1185 Park Avenue, New York City
David L. Podell	1 East 88th Street, New York City
Louis M. Rabinowitz	1052 East 8th Street, Brooklyn, New York
Joseph Ravitch	230 Central Park West, New York City
Saul Ravitch	15 West 81st Street, New York City
Karl Robbins	300 Central Park West, New York City
Samuel Rosen	1185 Park Avenue, New York City
Arthur M. Rosenbloom	812 Park Avenue, New York City
Jonathan Rubin	25 Central Park West, New York City
Jack P. Sadowsky	14 East 75th Street, New York City
Louis Satenstein	115 Central Park West, New York City
Julius Schwartz	1016 - 5th Avenue, New York City
Charles H. Silver	101 Central Park West, New York City
Louis Surut	885 Park Avenue, New York City
Jerome I. Udell	300 Central Park West, New York City
Walter W. Weismann	180 East 79th Street, New York City

7. The terms and conditions of the consolidation are as follows:

(a) The name of the new corporation, the territory in which it is to operate, the office of the new corporation, the number of its directors and the names and residences of the directors.

until the first annual meeting are as heretofore set forth.

~~(b) The purposes and objects of such new corporation shall be:~~

~~To support and maintain an institution known as Beth Israel Hospital and the maternity pavilion thereof known as Jewish Maternity Hospital.~~

~~To give medical and surgical aid, nursing and dispensary service and medical social services to the sick or disabled, to give pre-natal, obstetrical and post-partum care to women, and to cooperate with health and welfare organizations in the prevention of disease, all toward the service of humanity in accord with the highest ideals of medical science.~~

~~To provide the services of this institution to poor people free of charge, regardless of race, creed or nationality.~~

~~In furtherance of the foregoing objects, to make the services of this institution available to persons who are able to pay therefor in order to help defray the cost of providing its services to the poor.~~

~~(c) Mr. Louis Satenstein, one of the directors above named, shall be appointed Chairman of a committee to be named by the President of Beth Israel Hospital for the ensuing year, to deal with matters relating to the Maternity Division of the hospital.~~

~~(d) The time of the annual election shall be the second Tuesday of December in each year.~~

IN WITNESS WHEREOF, we have made and subscribed this Certificate this 23rd day of April, 1946.

*Charles N. Silver*  
Vice-President of Beth Israel Hospital  
Association

*Samuel Kussman*  
Secretary of Beth-Israel Hospital  
Association

*Shirley Satenstein*  
President of Jewish Maternity Hospital

*Mark Satenstein*  
Secretary of Jewish Maternity Hospital

STATE OF NEW YORK )  
COUNTY OF NEW YORK )

SS:

On this 23rd day of April, 1946, before me personally came CHARLES H. SILVER, SAMUEL HAUSMAN, LOUIS SATENSTEIN and NATHAN RATNOFF, to me known and known to me to be the individuals described in and who executed the foregoing Certificate of Consolidation, and they severally duly acknowledged to me that they executed the same.

*Nathan D. Perlman  
Justice Court of Special  
Sessions of City of New York*

STATE OF NEW YORK )  
COUNTY OF NEW YORK )

SS:

CHARLES H. SILVER and SAMUEL HAUSMAN, being duly sworn, depose and say, and each for himself deposes and says:

That he, Charles H. Silver, is a Vice-President and he, Samuel Hausman, is the Secretary of Beth Israel Hospital Association, which has more than 500 members; that he was duly authorized to execute and file the foregoing Certificate of Consolidation by the votes cast by two-thirds of the members of said corporation present, in person or by proxy, at a meeting of such corporation held at 10/17 Livingston Place, in the Borough of Manhattan, New York City, New York, on the 23rd day of April, 1946, upon notice prescribed by Section Forty-Three of the Membership Corporations Law.

Sworn to before me this  
23rd day of April, 1946.

*Charles H. Silver*  
Charles H. Silver  
*Samuel Hausman*  
Samuel Hausman

*Nathan D. Perlman  
Justice Court of Special  
Sessions of City of New York*



The State Department of Social Welfare of the State of  
New York does hereby consent to and approve the foregoing Certificate  
of Consolidation.

Dated, New York,

1946.

STATE DEPARTMENT OF SOCIAL WELFARE

By: \_\_\_\_\_

4698-106-2

Upon the foregoing Certificate of Consolidation, and the petition  
of BETH ISRAEL HOSPITAL ASSOCIATION and JEWISH MATERNITY HOSPITAL, duly  
verified April 23, 1946, I,

**LOUIS A. VALENTE**  
a Justice of the Supreme Court of the First Judicial District of the  
State of New York, hereby approve the said Certificate of Consolidation.

Dated, New York, July 3<sup>RD</sup> 1946.

*Louis A. Valente*

JUSTICE OF THE SUPREME COURT

*Qiu*

\* 4699-146-9

4698-106

5/28/40  
n y lo  
37F-163

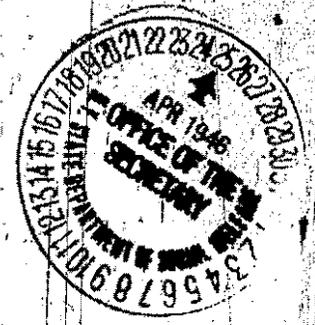
CERTIFICATE OF CONSOLIDATION  
FORMING BETH ISRAEL HOSPITAL  
ASSOCIATION, PURSUANT TO SECTION  
FIFTY OF THE MEMBERSHIP CORPORA-  
TIONS LAW.     *a.d.*

4/27/06  
n y lo  
698-142

STATE OF NEW YORK  
DEPARTMENT OF STATE  
FILED **JUL 8 1946**  
TAX \$ *None*  
FILING FEE \$ *75*

*Thomas J. ...*  
BY *[Signature]*

IRVING D. LIPKOWITZ  
ATTORNEY AT LAW  
270 BROADWAY  
NEW YORK CITY



4698-106-10



***STATE OF NEW YORK***  
***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on December 30, 2015.

*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State

Certificate of Report of Existence  
of

BETH ISRAEL HOSPITAL ASSOCIATION

Exact Name of Corporation

Pursuant to Section 57 of the Membership Corporations Law

1. The name of the corporation is Beth Israel Hospital Association. The  
Name of Corporation

original name was Beth Israel Hospital Association and Jewish Maternity

If name has been changed, insert original name.

Hospital, which were consolidated into Beth Israel Hospital Association by certificate  
of Consolidation filed July 8, 1946.

2. The certificate of incorporation was filed in the Department  
of State on July 8, 1946.

Date of Incorporation

3. The corporation was formed pursuant to the Membership Corporations Law.  
Cite Incorporation Statute
4. The existence of the foregoing corporation is hereby continued.

BETH ISRAEL HOSPITAL ASSOCIATION

BY: Charles H. Silver

President

To be signed by an officer,  
trustee, director or five  
members in good standing.

State of New York }  
County of New York } SS.:

On this 28th day of December, 1950, before me  
personally appeared CHARLES H. SILVER to me personally known  
and known to me to be the person(x) described in and who executed  
the foregoing certificate, and (he) ~~(they)~~ thereupon acknowledged  
to me that (he) ~~(they)~~ executed the same for the uses and purposes  
therein mentioned.

Samuel Romanoff  
Notary Public

County of New York

NOTE: If the foregoing acknowledgment is taken without the State of  
New York, the signature of the notary public should be  
authenticated by a certificate of the clerk of the county in  
which such notary has power to act, or other proper officer.

SAMUEL ROMANOFF  
Notary Public, State of New York  
No. 41-3336200  
Qualified in Queens County  
Certificate filed with  
New York County  
Commission Expires March 30

7EX-58

Certificate of Report of  
Existence of

*Formed by consol.*  
*7/1/46*

BETH ISRAEL HOSPITAL ASSOCIATION  
Exact Name of Corporation

*ny co*

Pursuant to Section 57  
of the  
Membership Corporations  
Law

*4698-106*

*J*

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED JAN 10 1951

FILING FEE \$5.00

*Thomas Gleason*

Secretary of State

***STATE OF NEW YORK***  
***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on December 30, 2015.

*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State

CERTIFICATE OF CHANGE TO PROVIDE  
THAT THE NUMBER OF DIRECTORS SHALL  
BE NOT LESS THAN 35 NOR MORE THAN 75.  
OF BETH ISRAEL HOSPITAL ASSOCIATION,  
PURSUANT TO SECTION 30 OF THE MEMBER-  
SHIP CORPORATIONS LAW.

WE, CHARLES H. SILVER and IRVING D. KARPAS, being  
respectively the president and the secretary of BETH ISRAEL  
HOSPITAL ASSOCIATION, hereby certify:

1. The name of the corporation is BETH ISRAEL  
HOSPITAL ASSOCIATION.

2. The certificate of incorporation was filed in  
the office of the secretary of state on the 8th day of July,  
1946.

3. The statement as to the number of directors  
to be amended is:

The number of directors previously authorized  
is not less than 35 nor more than 40. The number of directors  
as increased by this certificate shall hereafter be not less  
than 35 nor more than 75.

*Charles H. Silver*  
President

*Irving D. Karpas*  
Secretary

STATE OF NEW YORK }  
COUNTY OF NEW YORK } SS:

On this 23rd day of November, 1959, before me  
personally came CHARLES H. SILVER and IRVING D. KARPAS, to  
me known and known to me to be the persons described in and  
who executed the foregoing certificate, and that they there-  
upon duly acknowledged that they executed the same.

*Ida Berger*  
IDA BERGER  
Notary Public, State of New York  
No. 03-5263900  
Qualified in Bronx County  
Certificate filed in New York County  
Commission Expires March 30, 1960

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) SS:

CHARLES H. SILVER and IRVING D. KARPAS,  
being duly sworn depose and say, and each for himself deposes  
and says, that he, CHARLES H. SILVER, is the president of  
BETH ISRAEL HOSPITAL ASSOCIATION, and he, IRVING D. KARPAS,  
is the secretary thereof; that they have been duly authorized  
to execute and file the foregoing certificate of increase in  
number of directors by the concurring vote of a majority of  
the members of the corporation present at a special meeting  
held on the 23rd day of November 1959, upon notice pursuant  
to Section 43 of the Membership Corporations Law.

Subscribed to and sworn  
to before me this 23rd  
day of November, 1959.

*Charles H. Silver*

*Irving D. Karpas*

IDA BERGER  
Notary Public, State of New York  
No. 03-5280900  
Qualified in Bronx County  
Certificate filed in New York County  
Commission Expires March 30, 1960

188961

CERTIFICATE OF CHANGE TO PROVIDE  
THAT THE NUMBER OF DIRECTORS SHALL  
BE NOT LESS THAN 35 NOR MORE THAN  
75, OF BETH ISRAEL HOSPITAL  
ASSOCIATION, PURSUANT TO SECTION 30  
OF THE MEMBERSHIP CORPORATIONS LAW

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED DEC 2-1959

TAXES None

FILING FEE \$ 25

*Charles E. Simon*  
Secretary of State

By J. Fray

LIPKOWITZ & PLAUT  
ATTORNEYS AT LAW  
16 WEST 46TH STREET  
NEW YORK 36, N. Y.

***STATE OF NEW YORK***  
***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the  
Department of State, at the City of Albany,  
on December 30, 2015.



*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State

CERTIFICATE OF CHANGE OF NAME OF  
BETH ISRAEL HOSPITAL ASSOCIATION

-to-

BETH ISRAEL MEDICAL CENTER

(Pursuant to Section 40 of the  
General Corporation Law)

WE, CHARLES H. SILVER and IRVING D. KARPAS, being re-  
spectively the President and Secretary of BETH ISRAEL  
HOSPITAL ASSOCIATION, certify:

- 489549
1. The name of this corporation is BETH ISRAEL  
HOSPITAL ASSOCIATION.
  2. The Certificate of Incorporation of BETH ISRAEL  
HOSPITAL ASSOCIATION was filed in the Office of the Secretary  
of State on the 28th day of May, 1890, and thereafter by  
Certificate of Consolidation filed in the Office of the  
Secretary of State on August 8, 1946 the said BETH ISRAEL  
HOSPITAL ASSOCIATION was consolidated with JEWISH MATERNITY  
HOSPITAL, whose Certificate of Incorporation was filed in  
the Office of the Secretary of State on the 27th day of April,  
1906, and the name of the corporations as consolidated was  
BETH ISRAEL HOSPITAL ASSOCIATION.
  3. The new name to be assumed by this corporation is  
BETH ISRAEL MEDICAL CENTER.

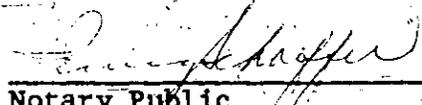
IN WITNESS WHEREOF, we have made and subscribed this  
Certificate this 21 day of February, 1965

*Chas. H. Silver*  
President

*Irving D. Karpas*  
Secretary

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) ss.:

On this 24 day of February, 1965 before me personally came CHARLES H. SILVER and IRVING D. KARPAS, to me known and known to me to be the persons subscribed in and who executed the foregoing Certificate of Change of Name, and they thereupon severally duly acknowledged to me that they executed the same.

  
Notary Public

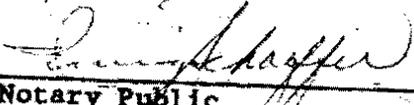
IRVING SCHAEFFER  
Notary Public  
Qualified in New York  
Term Expires 12/31/65

✓

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) ss.:

On this 27 day of February, 1965 before me personally came CHARLES H. SILVER and IRVING D. KARPAS, to me known and known to me to be the persons subscribed in and who executed the foregoing Certificate of Change of Name, and they thereupon severally duly acknowledged to me that they executed the same.

IRVING SCHAEFFER  
Notary Public

  
Notary Public

IRVING SCHAEFFER  
Notary Public, State of New York  
Qualified in New York  
Term Expires 12.30.1965

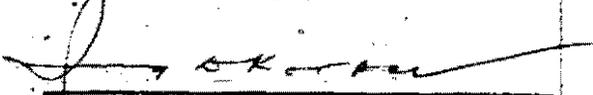
STATE OF NEW YORK )  
COUNTY OF NEW YORK ) ss.:

CHARLES H. SILVER and IRVING D. KARPAS, being duly sworn, depose and says, and each for himself deposes and says:

That he, CHARLES H. SILVER, is President of BETH ISRAEL HOSPITAL ASSOCIATION, and he, IRVING D. KARPAS, is Secretary thereof; that they were duly authorized to execute and file the foregoing Certificate of Change of Name of said corporation by votes of a majority of the Board of Trustees of record of the corporation who are entitled to vote, and that such votes were cast at a meeting called for that purpose, which meeting was held on the 24 day of February, 1965, at 10 Nathan D. Perlman Place, Borough of Manhattan, City of New York, the said Board of Trustees constitute all of the members of said corporation.

Sworn to before me  
this 24 day  
of February, 1965.

  
Charles H. Silver

  
Irving D. Karpas

  
Notary Public

IRVING SCHAEFFER  
Notary Public, State of New York  
No. 24-3175725  
Qualified in Kings County

Term Expires March 30, 1965

*memorandum*

*Formed by Counsel: 7/8/46 nyc*  
*46 P 2 - 106*

489549

**CERTIFICATE OF CHANGE OF  
NAME OF BETH ISRAEL  
HOSPITAL ASSOCIATION**

-to-

**BETH ISRAEL MEDICAL CENTER**

(Pursuant to Section 40  
of the General Corporation  
Law)

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED MAR 31 1965

TAX \$ *how*

FILING FEE \$ *30*

*John P. Linnings*  
Secretary of State

SIDNEY SCHUTZ  
Attorney at law by  
110 West 57th Street  
New York 19, New York

*V. Carpin*

*Do not find*  
*S 3/22*  
*3/30*

*Co.*

***STATE OF NEW YORK***  
***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on December 30, 2015.

*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State

State of New York

101776

Department of State

DIVISION OF CORPORATIONS AND STATE RECORDS  
162 Washington Avenue, Albany 12225

CERTIFICATE OF TYPE OF NOT-FOR-PROFIT CORPORATION  
OF

BETH ISRAEL MEDICAL CENTER

Exact Name of Corporation

Under Section 113 of the Not-for-Profit Corporation Law

The name of the corporation is BETH ISRAEL MEDICAL CENTER

The original name was BETH ISRAEL HOSPITAL ASSOCIATION

The certificate of incorporation was filed by the Department of State on July 8, 1946  
Date of Incorporation

The corporation was formed pursuant to An Act for the Incorporation of Benevolent,  
Charitable, Scientific and Cite Incorporation Statute  
Missionary Societies

The post office address to which the Secretary of State shall mail a copy of any notice required by law is 10 Nathan D. Perlman Place, New York, N.Y.

That under Section 201, it is a Type B Not-for-Profit Corporation as defined in this chapter.  
(Insert A, B, C or-D)

IN WITNESS WHEREOF, this certificate has been subscribed this 30 day of August 1973 at the County of  
by the undersigned who affirm(s) that the statements made herein are true under the penalties of perjury.

To be signed pursuant to  
Section 104(d) of the N-PCL

*Jack A. Rothenstein*  
Jack A. Rothenstein, Secretary  
*Seymour J. Phillips* Vice President  
Seymour J. Phillips

NOTE: The fee for filing the foregoing certificate is \$10 payable to the Department of State by certified check or money order.  
Every corporation required to file under Paragraph (a) of Section 113 of the N-PCL will be considered a Type-B corporation until it has filed a certificate of type.

2  
A101776 CERTIFICATE OF TYPE  
OF  
NOT-FOR-PROFIT CORPORATION  
OF

BETH ISRAEL MEDICAL CENTER

Exact Name of Corporation

Under Section 113  
of the  
NOT-FOR-PROFIT CORPORATION LAW

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED SEP 18 1973

TAX \$ None  
FILING FEE \$ 10

*John P. Tomany*

Secretary of State

By *ams*

*31 ny*  
*Type B*

BETH ISRAEL MEDICAL CENTER

Name and address of filer  
10 Nathan D. Perlman Place  
New York, New York

*and 3-31-65*  
*Formed by consolidation*  
*Beth Israel Hospital*  
*Association*

*7-8-46*

*ny*

*4690-106*

*n.d. not*  
*in type*

*2*

*2*

***STATE OF NEW YORK***  
***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the  
Department of State, at the City of Albany,  
on December 30, 2015.



*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State

CERTIFICATE OF AMENDMENT OF  
CERTIFICATE OF INCORPORATION

- of -

BETH ISRAEL MEDICAL CENTER

(Under Section 803 of the  
Not-For-Profit Corporation Law)

WE, the undersigned, hereby certify:

1. The name of the corporation is BETH ISRAEL MEDICAL CENTER. It was formed under the name of BETH ISRAEL HOSPITAL ASSOCIATION, and its name was changed from that name to BETH ISRAEL MEDICAL CENTER by Certificate of Change of Name dated February 24, 1965 and filed by the Secretary of State on March 31, 1965.

2. The Certificate of Incorporation of said corporation was filed by the Department of State on the 28th day of May, 1890 and thereafter by Certificate of Consolidation filed by the Department of State on <sup>July</sup> ~~August~~ 8, 1946 the said BETH ISRAEL HOSPITAL ASSOCIATION was consolidated with JEWISH MATERNITY HOSPITAL, whose Certificate of Incorporation was filed by the Secretary of State on the 27th day of April, 1906, and the name of the corporation as consolidated was BETH ISRAEL HOSPITAL ASSOCIATION, and thereafter the name was changed to BETH ISRAEL MEDICAL CENTER as aforesaid.

A 292634

3. The corporation is a corporation as defined under sub-paragraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law, and is a Type B corporation under Section 201, *and shall continue to be a Type B corporation.*

4. The post office address to which the Secretary of State shall mail a copy of any notice required by law is:  
Beth Israel Medical Center, 10 Nathan D. Perlman Place, New York, New York 10003.

5. The corporate powers of the corporation are restated to include the following:

To provide on-a non-profit basis, hospital facilities and services for the care and treatment of persons who are acutely ill who otherwise require medical care and related services of the kind customarily furnished most effectively by hospitals, pursuant to Section 242 of the National Housing Act, as amended.

6. The Certificate of Incorporation is amended so that the corporation is empowered:

- (a) To buy, own, sell, convey, assign, mortgage or lease any interest in real estate and personal property and to construct, maintain and operate improvements thereon necessary or incident to the accomplishment of the purposes set forth in paragraph 5 hereof.
- (b) To borrow money and issue evidence of indebtedness in furtherance of any or all of the objects of its business, and to secure the same by mortgage, pledge or other lien on the corporation's property.

- (c) To do and perform all acts necessary to accomplish the purposes of the corporation, including the execution of a Regulatory Agreement with the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner, and of such other instruments and undertakings as may be necessary to enable the corporation to secure the benefits of financing with the assistance of mortgage insurance under the provisions of the National Housing Act. Such Regulatory Agreement and other instruments and undertakings shall remain binding upon the corporation, its successors and assigns, so long as a mortgage on the corporation's property is insured or held by the Secretary of Housing and Urban Development.

7. The manner in which the Amendment of the Certificate of Incorporation was authorized was by consent of a majority of the entire Board of Directors, voting in person, at a meeting of the Board of Directors duly called for that purpose upon due notice to all Directors of record given in the manner required for a regular meeting of the corporation; said meeting was held at the office of the corporation, 10 Nathan D. Perlman Place, New York, New York, at 2:00 P.M. on December 17, 1975; a majority of the entire Board of Directors was present; the Certificate of Incorporation of the corporation does not require the consent of more than a majority of the entire Board of Directors to amend the corporate powers of the corporation. There are no members entitled to vote.

to comply with the purposes of the consolidation  
(c) to do and perform all acts necessary to

8. The following approvals or consents were endorsed on or annexed to the aforementioned Certificate of Incorporation and the aforementioned Certificate of Consolidation at the time they were filed with the Department of State:

(a) A Justice of the Supreme Court of the State of New York, First Judicial <sup>District</sup> Department; and

(b) The State Board of Social Welfare approving the consolidation of Beth Israel Hospital Association and Jewish Maternity Hospital, under the designation of Beth Israel Hospital Association.

No other approvals were required at the time of filing of said Certificate of Incorporation and Certificate of Consolidation.

The following approvals or consents will be endorsed upon or annexed to this Certificate of Amendment prior to its delivery to the Department of State:

(c) A Justice of the Supreme Court of the State of New York, First Judicial <sup>District</sup> Department; and

(d) Public Health Council of the State of New York.

IN WITNESS WHEREOF, we have executed this Certificate  
this 18th day of December, 1975.

*Chas. Silver*

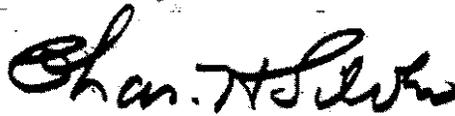
President

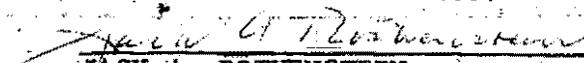
*Jack A. Rothstein*

Secretary

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) ss.:

CHARLES H. SILVER and JACK A. ROTHENSTEIN, being severally, duly sworn, depose and say that they are the President and Secretary, respectively of BETH ISRAEL MEDICAL CENTER, and that they have read the foregoing Certificate of Amendment of Certificate of Incorporation of BETH ISRAEL MEDICAL CENTER, and know the contents thereof; that the same is true to their own knowledge, except as to those matters stated therein to be alleged on information and belief, and that as to those matters deponents believe them to be true.

  
CHARLES H. SILVER

  
JACK A. ROTHENSTEIN

Subscribed and sworn to  
before me this 18<sup>th</sup>  
day of December, 1975.

  
Notary Public

RHEA L. DAVIDSON  
Notary Public, State of New York  
No. 31 3512091  
Commission Expires March 30, 1977

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) ss.:

CHARLES H. SILVER and JACK A. ROTHENSTEIN, being severally, duly sworn, depose and say:

1. That CHARLES H. SILVER is the President of BETH ISRAEL MEDICAL CENTER mentioned in the foregoing Certificate and was such President at the time of the consent mentioned therein to amend the corporate powers of the corporation.

2. That JACK A. ROTHENSTEIN is the Secretary of BETH ISRAEL MEDICAL CENTER mentioned in the foregoing Certificate and was such Secretary at the time of the consent mentioned therein to amend the corporate powers of the corporation.

3. That they were duly authorized to execute and file the foregoing Certificate of Amendment by action of a majority of the entire Board of Directors at a regular meeting.

4. Such consent was given by affirmative votes cast in person by a majority of the entire Board of Directors at a meeting of the Directors duly called for that purpose after due notice to the entire Board of Directors of the corporation given in the manner required for a regular meeting of the corporation; said meeting was held at 10 Nathan D. Perlman Place, New York, New York on December 17, 1975, at 2:00 P.M.; a majority of the entire Board of Directors was present. There are no members entitled to vote.

7

5. That the Certificate of Incorporation of this corporation does not require the consent of more than a majority of the entire Board of Directors to amend the corporate powers of the corporation.

Charles H. Silver  
CHARLES H. SILVER

Jack A. Rothenstein  
JACK A. ROTHENSTEIN

Sworn to before me this  
18th day of December, 1975.

Rhea L. Davidson  
Notary Public

RHEA L. DAVIDSON  
Notary Public, State of New York  
No. 314-12091  
Qualified in New York County  
Commission Expires March 30, 1977

8

CONSENT BY COMMISSIONER OF HEALTH  
TO FILING OF CERTIFICATE TO AMEND  
CORPORATE POWERS

I, ROBERT P. WHALEN, M.D., Commissioner of Health of  
the State of New York, do this 26<sup>th</sup> day of *January*, 1976  
pursuant to Section 804 of the Not-For-Profit Corporation Law,  
hereby certify that I consent to the filing with the Secretary  
of State of the State of New York of the foregoing Certificate.

ROBERT P. WHALEN, M.D.  
COMMISSIONER OF HEALTH

By *Frank T. Green M.D.*  
Deputy Commissioner

WAIVER OF NOTICE OF APPLICATION  
BY ATTORNEY GENERAL

~~Notice of application waived. (This is not to be  
deemed an approval on behalf of any Department or Agency of the  
State of New York, nor an authorization of activities otherwise  
limited by law.)~~

Dated: ) \_\_\_\_\_

LOUIS J. LEFKOWITZ,  
ATTORNEY GENERAL

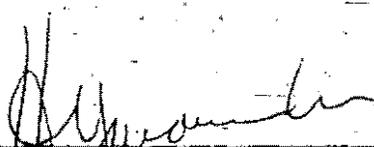
CONSENT BY A RESIDENT SUPREME COURT  
JUSTICE TO FILING OF CERTIFICATE TO  
AMEND CORPORATE POWERS

I, HYMAN KORN, Justice of

the Supreme Court of the State of New York for the First  
Judicial District, hereby approve the within Certificate of  
amend the corporate powers of the corporation, Beth Israel Medical  
Center,

Dated: NEW YORK, N.Y.

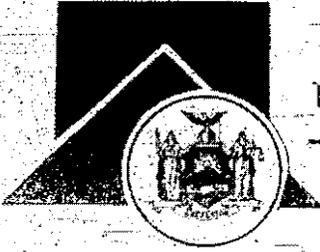
FEB 3 - 1976

  
Justice of the Supreme Court

Notice of Application Waived  
(This is not to be deemed an  
approval on behalf of any  
Department or Agency of the  
State of New York, nor an  
authorization of activities  
otherwise limited by law.)

Dated: JANUARY 30, 1976  
LOUIS J. LEFKOWITZ  
Attorney-General

By Peter J. Berchinsky  
Assistant Attorney General



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
ALBANY 12237

# PUBLIC HEALTH COUNCIL

January 26, 1976

KNOW ALL MEN BY THESE PRESENTS:

In accordance with action taken after inquiry and investigation at a meeting of the Public Health Council held on the 23rd day of January, 1976, I hereby certify that the Certificate of Amendment of the Certificate of Incorporation of Beth Israel Medical Center is APPROVED.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.

MARIANNE K. ADAMS  
Secretary

Sent to: Sidney Schutz, Esq.  
55 Fifth Avenue  
New York, New York 10003

cc: Beth Israel Medical Center  
10 Nathan D. Perlman Place  
New York, New York 10003

COUNCIL

NORMAN S. MOORE, M.D.  
CHAIRMAN

BLONEVA P. BOND  
William Lee Frost  
GORDON E. BROWN  
VERNAL G. CAVE, M.D.

MORTON P. HYMAN

GEORGE METCALF  
JAMES F.X. O'BURKE, M.D.  
W. KENNETH RILAND, D.O.  
JOHN E. ROACH, M.D.

HOWARD A. RUSK, M.D.  
JOHN M. WALSH

COMMISSIONER OF HEALTH  
ROBERT P. WHALEN, M.D.  
EX OFFICIO

A292634-12

*[Handwritten signature]*

**CERTIFICATE OF AMENDMENT OF  
CERTIFICATE OF INCORPORATION**

of  
**BETH ISRAEL MEDICAL CENTER**

(Under Section 803 of the  
Not-For-Profit Corporation Law)

*Accepted 3/1/76*

STATE OF NEW YORK  
DEPARTMENT OF STATE

TAX \$ None  
FILING FEE \$ 30

FILED FEB 10 1976

*W. Randolph*  
Secretary of State

SIDNEY SCHUTZ  
Attorney at Law  
55 Fifth Avenue  
New York, New York 10003  
(212) 929-0400

#377-63

31 ny  
type B

*noted to mother of [unclear]*

12

***STATE OF NEW YORK***  
***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the  
Department of State, at the City of Albany,  
on December 30, 2015.



*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State

WSC



# The University of the State of New York

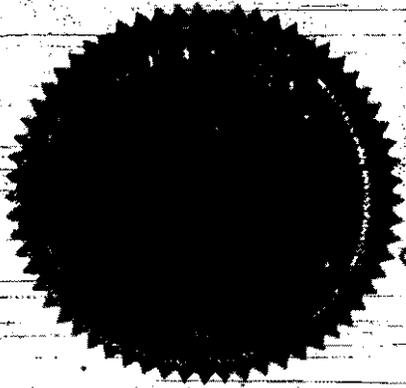
STATE OF NEW YORK :  
: SS.:  
COUNTY OF ALBANY :

Pursuant to the provisions of section 804 of the Not-for-profit Corporation Law, consent is hereby given to the restatement and amendment of the text of the certificate of incorporation of **BETH ISRAEL MEDICAL CENTER** as set forth in the annexed restated and amended certificate of incorporation.

52726

52726

This consent to filing, however, shall not be construed as approval by the Board of Regents, the Commissioner of Education or the State Education Department of the purposes or objects of such corporation, nor shall it be construed as giving the officers or agents of such corporation the right to use the name of the Board of Regents, the Commissioner of Education, the University of the State of New York or the State Education Department in its publications or advertising matter.



IN WITNESS WHEREOF this instrument is executed and the seal of the State Education Department is affixed this 5th day of September, 1985.

Gordon M. Ambach  
Commissioner of Education

BY

Robert D. Stone  
Counsel and Deputy Commissioner  
for Legal Affairs

usc

RESTATED CERTIFICATE OF INCORPORATION

usc

OF

BETH ISRAEL MEDICAL CENTER

(Under Section 805 of the Not-for-Profit Corporation Law)

We, the undersigned, being the President and Secretary of BETH ISRAEL MEDICAL CENTER, do hereby certify that:

(1) The name of the corporation is: BETH ISRAEL MEDICAL CENTER (the "Corporation").

(2) The Corporation was formed pursuant to a Certificate of Consolidation filed by the Department of State of the State of New York on July 8, 1946. The corporations included in such consolidation were Beth Israel Hospital Association, which was formed by the filing of a Certificate of Incorporation on May 28, 1890, and Jewish Maternity Hospital, which was formed by the filing of a Certificate of Incorporation on April 27, 1906. The name of the Corporation as consolidated was Beth Israel Hospital Association. The name was changed from that name to Beth Israel Medical Center by Certificate of Change of Name dated February 24, 1965 and filed by the Secretary of State on March 31, 1965.

(3) The Corporation is a corporation as defined in subparagraph (a) (5) of Section 102 of the Not-for-Profit Corporation Law and is a Type B corporation under Section 201 of said law.

(4) The Secretary of State is hereby designated as agent of the corporation upon whom process against it may be served. The Post Office address to which the Secretary shall mail a copy of any process against the corporation served him is:

Beth Israel Medical Center  
10 Nathan D. Perlman Place  
New York, New York 10003

(5) The Restated Certificate of Incorporation amends or changes the Certificate of Consolidation filed July 8, 1946 and all amendments thereto as follows:

(a) The purposes and powers of the constituent corporations that were parties to the Certificate of Consolidation are hereby amended to read as set forth in Article THIRD of the Restated Certificate of Incorporation.

(b) Paragraph 5 of the Certificate of Consolidation (relating to the number of directors) is hereby amended to read as set forth in Article SIXTH of the Restated Certificate of Incorporation.

(c) To make clear that the Corporation shall have no members, as set forth in Article SIXTH of the Restated Certificate of Incorporation.

(d) Provisions relating to the duration of the Corporation's existence, post office address and by-laws, all as continued by the Certificate of Consolidation, are amended to read as set forth in Articles SEVENTH, EIGHTH and NINTH, respectively, of the Restated Certificate of Incorporation.

(6) The Restated Certificate of Incorporation was authorized by a majority of the votes cast at a meeting of members by the members entitled to vote thereon, such majority having been at least equal to the quorum required at such meeting.

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FIRST: The name of the corporation is: BETH ISRAEL MEDICAL CENTER (hereinafter referred to as the "Corporation").

SECOND: (a) The Corporation is a corporation as defined in subparagraph (a) (5) of Section 102 of the Not-For-Profit Corporation Law of the State of New York.

(b) The Corporation shall be a Type B corporation under Section 201 of the Not-For-Profit Corporation Law of the State of New York.

THIRD: The Corporation is organized exclusively for charitable and educational purposes, within the meaning of section 501(c) (3) of the Internal Revenue Code of 1954, as amended, and the corresponding provisions of any future United States Internal Revenue Law (collectively, the "Code"), which purposes shall include, but are not limited to, the following:

45

(a) to establish, maintain and/or operate an institution or institutions with facilities which include inpatient beds and a broad range of medical services, including dental services, for the diagnosis and treatment of patients, and associated services, including, but not limited to, outpatient care, home care, and extended care provided that the Corporation has obtained all approvals and consents as required by law prior to the provision of any such services;

(b) to operate a program for the training of nurses leading to the degree of associate in applied science (A.A.S.); to engage, in conjunction with universities, colleges and professional schools, in programs related to the training of other health care professionals;

(c) to promote and carry on scientific research related to the care of the sick, injured and disabled, and related to the causes, origins, treatment and prevention of diseases, sickness, injuries and disabilities;

(d) to engage in educational activities related to providing care to the sick, injured and disabled, and related to promoting the health of the public; and

(e) to provide, on a non-profit basis, hospital facilities and services for the care and treatment of

56

persons who are acutely ill who otherwise require medical care and related services of a kind customarily furnished most effectively by hospitals, pursuant to Section 242 of the National Housing Act, as amended.

In furtherance of these objects and purposes, the Corporation is authorized:

(a) To buy, own, sell, convey, assign, mortgage or lease any interest in real estate and personal property and to construct, maintain and operate improvements thereon necessary or incident to the accomplishment of the purposes set forth in this Article;

(b) To borrow money and issue evidence of indebtedness in furtherance of any or all of the objects of its business, and to secure the same by mortgage, pledge or other lien on the Corporation's property; and

(c) To do and perform all acts necessary to accomplish the purposes of the Corporation, including the execution of a Regulatory Agreement with the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner, and of such other instruments and undertakings as may be necessary to enable the Corporation to secure the benefits of financing with the assistance of mortgage insurance under the provisions of the National Housing Act. Such Regulatory Agreement and other instruments and undertakings shall remain binding upon the Cor-

47

poration, its successors and assigns, so long as a mortgage on the Corporation's property is insured or held by the Secretary of Housing and Urban Development.

Notwithstanding any other provision of this Article Third, the Corporation may not exercise any power, either express or implied, in such a manner as to disqualify the Corporation from exemption from Federal income tax under sections 501(a) and 501(c)(3) of the Code. It is the intention of the Corporation at all times to qualify and remain qualified as exempt from Federal income tax under sections 501(a) and 501(c)(3) of the Code. Accordingly:

(1) The Corporation shall receive, administer, maintain, use and employ its funds, net earnings, and real and personal property exclusively for charitable and educational purposes, within the meaning of section 501(c)(3) of the Code, and shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal income tax under section 501(c)(3) of the Code;

(2) No part of the net earnings of the Corporation shall inure to the benefit of any officer, trustee, director, member, employee or any private individual (except that reasonable compensation may be paid for services rendered to or for the Corporation and to make

8

payments and distributions in furtherance of one or more of its purposes). No officer, trustee, director, member or employee of the Corporation or any private individual shall be entitled to share in the distribution of any corporate assets upon dissolution of the Corporation or in any other event;

(3) The Corporation shall not carry on propaganda or otherwise attempt to influence legislation to an extent that would disqualify it from exemption from Federal income tax under section 501(a) of the Code by reason of attempting to influence legislation, and the Corporation shall not participate or intervene (including the publishing or distributing of statements or otherwise) in any political campaign on behalf of or in opposition to any candidate for public office;

(4) In the event of liquidation, dissolution or winding up of the business and affairs of the Corporation upon approval of a Justice of the Supreme Court of the State of New York, whether voluntary or involuntary or by operation of law, the Board of Trustees shall, after paying or making provision for payment of all liabilities of the Corporation, dispose of all assets exclusively for the purposes of the Corporation or to one or more corporations or organizations located in the United States as shall at

98

the time qualify as exempt under section 501(a) of the Code pursuant to section

501(c)(3) of the Code, or to one or more corporations or other organizations, contributions to which are deductible under section 170(c)(1) of the Code, in such manner as the Board of Trustees shall determine. Any assets not so distributed shall be distributed by a court of competent jurisdiction exclusively for such purposes or to such corporations or other organizations as said court shall determine are organized and operated solely for such purposes; and

(5) If the Corporation shall at any time be a private foundation within the meaning of section 509 of the Code, the Corporation, so long as it shall be such a private foundation, shall distribute its income for each taxable year at such time and in such manner as not to subject it to the tax on undistributed income imposed by section 4942 of the Code, and, so long as it shall be such a private foundation, the Corporation shall not (i) engage in any act of self-dealing as defined in section 4941(d) of the Code; (ii) retain any excess business holdings as defined in section 4943(c) of the Code; (iii) make any investments in such manner as to subject it to tax under section 4944 of

7

the Code; or (iv) make any taxable expenditures as defined in section 4945(d) of the Code.

FOURTH: The principal office of the Corporation is to be located in the County and City of New York, State of New York.

FIFTH: The number of directors of the Corporation, who shall be known as Trustees, shall be fixed by, or determined in accordance with, the By-laws of the Corporation, and in any case shall be not less than thirty-five (35) nor more than seventy-five (75). The Corporation shall have no members.

SIXTH: The existence of the Corporation shall be perpetual.

SEVENTH: The Corporation hereby designates the Secretary of State as agent of the Corporation upon whom process against it may be served. The post office address within or without this state to which the Secretary of State shall mail a copy of any process against it served upon him is: 10 Nathan D. Perlman Place, New York, New York 10003.

*H /*

EIGHTH: By-laws of the Corporation may be adopted or amended by an affirmative vote of two-thirds of the Trustees present at any regular meeting, or at any special meeting called for that purpose, at which a quorum of trustees is present so long as the by-laws are not inconsistent with the provisions of this Certificate or the laws of the State of New York.

IN WITNESS WHEREOF, we hereunto sign our names and affirm that the statements made herein are true under the penalties of perjury, this 29th day of May, 1985, at New York, New York.

  
President - Robert Newman

  
Secretary - Robert L. Ginsberg

12.

I, **THOMAS J. HUGHES** Justice of the Supreme Court of the State of New York, First Judicial District, do hereby approve the foregoing Restated Certificate of Incorporation of Beth Israel Medical Center, and consent that the same be filed.

*Thomas J. Hughes*  
Justice of the Supreme Court  
of the State of New York

Dated: SEP 19 1985  
NEW YORK COUNTY

**THOMAS J. HUGHES**

THE UNDERSIGNED HAS NO OBJECTION TO THE GRANTING OF JUDICIAL APPROVAL HEREON AND WAIVES STATUTORY NOTICE.

ROBERT ABRAMS, ATTORNEY GEN.  
STATE OF NEW YORK

*Laura Werner*  
**LAURA WERNER**

Assistant Attorney General

*April 12 1985*

*3*



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING-TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

July 30, 1985

KNOW ALL MEN BY THESE PRESENTS:

After inquiry and investigation and in accordance with action taken at a meeting of the Public Health Council held on the 26th day of July, 1985, I hereby certify that the Restated Certificate of Incorporation of Beth Israel Medical Center dated May 29, 1985 is APPROVED.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.

*Nancy A. Massaroni*  
NANCY A. MASSARONI  
Executive Secretary

Sent to: Robert G. Newman, M.D., President  
Beth Israel Medical Center  
10 Nathan D. Perlman Place  
New York, New York 10003

RECEIVED

AUG 2 1985

PRESIDENT  
Beth Israel Medical Center

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RECEIVED  
SEP 11 1985

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10/10/85

Beth Israel Hospital Association

Formed by consol  
7/8/96 94599-196

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D/O  
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STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED OCT 1 - 1985

NO. OF CHECK \$ 49.50  
FILING FEE \$ 3.00  
COPY FEE \$ 9.50  
SPEC HANDLE \$ 1.00

30 new  
Pg PCB

RESTATED CERTIFICATE OF  
INCORPORATION OF  
BETH ISRAEL MEDICAL CENTER  
(Under Section 805 of the  
Not-For-Profit Corporation  
Law)

Paul, Weiss, Rifkind, Wharton & Garrison  
ATTORNEYS AT LAW  
345 PARK AVENUE, NEW YORK, N. Y. 10154

RECEIVED  
FILED  
SEP 21 9 AM '85  
Oct 1 6 54 AM '85

BILLED

SEP 12 1985

***STATE OF NEW YORK***  
***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the Department of State, at the City of Albany, on December 30, 2015.



*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State

PH

CERTIFICATE OF AMENDMENT OF THE  
RESTATED CERTIFICATE OF INCORPORATION OF  
BETH ISRAEL MEDICAL CENTER

PH

(Under Section 803 of the Not-For-Profit Corporation Law)

We, the undersigned, being the President and Secretary of BETH ISRAEL MEDICAL CENTER, do hereby certify that:

(1) The name of the corporation is: BETH ISRAEL MEDICAL CENTER (the "Corporation").

(2) The Corporation was formed pursuant to a Certificate of Consolidation filed by the Department of State of the State of New York on July 8, 1946. The corporations included in such consolidation were Beth Israel Hospital Association, which was formed by the filing of a Certificate of Incorporation on May 28, 1890, and Jewish Maternity Hospital, which was formed by the filing of a Certificate of Incorporation on April 27, 1906. The name of the Corporation as consolidated was Beth Israel Hospital Association. The name was changed from that name to Beth Israel Medical Center by Certificate of Change of Name dated February 24, 1965, and filed by the Secretary of State on March 31, 1965. A restated certificate of

2

incorporation was filed by the Department of State on  
October 1, 1985.

(3) The Corporation is a corporation as defined  
in subparagraph (a)(5) of Section 102 of the Not-For-Profit  
Corporation Law and is a Type B corporation as defined  
in Section 201 of that law.

(4) The Corporation designates the Secretary  
of State of the State of New York as its agent upon whom  
process against it may be served. The Post Office address  
to which the Secretary of State shall mail a copy of any  
process served upon him is as follows:

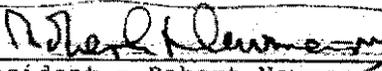
Beth Israel Medical Center  
10 Nathan D. Perlman Place  
New York, New York 10003

(5) The restated certificate of incorporation  
is amended to permit the Corporation to have members.  
Article FIFTH of the restated certificate is amended by  
deleting therefrom the sentence, "The Corporation shall  
have no members." Article FIFTH shall state as follows:

The number of directors of the Corporation,  
who shall be known as Trustees, shall be  
fixed by, or determined in accordance with,  
the By-Laws of the Corporation, and in any  
case shall not be less than thirty-five  
(35) nor more than seventy-five (75).

(6) The above amendment to the restated certificate of incorporation was authorized by a vote of the majority of the entire Board of Trustees.

IN WITNESS WHEREOF, we have signed this certificate this 16<sup>th</sup> date of December, 1987.

  
President - Robert Newman

  
Secretary - Stephen A. Hochman

VERIFICATION

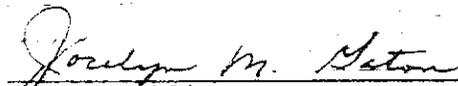
STATE OF NEW YORK     )  
                                  ) SS:  
COUNTY OF NEW YORK    )

ROBERT NEWMAN, being duly sworn, deposes and  
say:

1. I am the President of Beth Israel Medical  
Center.
2. I have read the annexed Certificate of Amendment  
and know the contents thereof to be true.

  
Robert Newman

Sworn to before me this  
16<sup>th</sup> day of DECEMBER, 1987

  
Notary Public

JOCELYN M. EATON  
NOTARY PUBLIC, State of New York  
No. 001601254  
Qualified in Westchester County  
Commission Expires Feb. 28, 1989

~~The undersigned has no objection to the granting of judicial approval hereon and waives statutory notice.~~

ROBERT ABRAMS  
ATTORNEY GENERAL  
STATE OF NEW YORK

By: \_\_\_\_\_

Date: \_\_\_\_\_

**JAWN A. SANDIFER**

I, \_\_\_\_\_, a Justice of the Supreme

Court of the State of New York for the FIRST

Judicial District do hereby approve the foregoing Certificate

of Amendment of the <sup>RESERVED</sup> Certificate of Incorporation of Beth

Israel Medical Center, and consent that the same be filed.

Date: FEB 24 1988  
New York, New York

*Jawn A. Sandifer*  
\_\_\_\_\_  
J.S.C.  
**JAWN A. SANDIFER**  
JUDGE OF THE SUPREME COURT  
OF THE STATE OF NEW YORK  
*First Judicial District*

*Feb 16, 1988*  
THE UNDERSIGNED HAS NO OBJECTION  
TO THE GRANTING OF JUDICIAL  
APPROVAL HEREON AND WAIVES  
STATUTORY NOTICE.  
ROBERT ABRAMS, ATTORNEY GEN.  
STATE OF NEW YORK  
*By: [Signature]*

5



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

January , 1987

Morton P. Hyman  
Chairman

Robert M. Kaufman, Esq.  
Proskauer, Rose, Goetz & Mendelsohn  
300 Park Avenue  
New York, New York 10022

Re: Proposed Certificate of Amendment of the Restated  
Certificate of Incorporation: Beth Israel Medical Center

Dear Mr. Kaufman:

The proposed Certificate of Amendment to the Restated Certificate of Incorporation of Beth Israel Medical Center, as executed on the 16th day of December, 1987, does not, pursuant to §804(a) of the Not-for-Profit Corporation Law, require the formal approval of the Public Health Council, as the amendment neither adds, changes or eliminates a purpose, power or provision the inclusion of which requires the approval of the Council, nor changes the name of the corporation.

Sincerely,

Karen Westervelt  
Acting Executive Secretary  
Public Health Council

PH

160152

BETH ISRAEL MEDICAL CENTER

Certificate of Amendment  
of Restated  
Certificate of Incorporation

(Under Section 803 of the  
Not-For-Profit  
Corporation Law)

BILLED

PROSKAUER ROSE GOETZ & MENDELSON  
COUNSELLORS AT LAW  
300 PARK AVENUE  
BOROUGH OF MANHATTAN,  
NEW YORK CITY 10022

FILED  
MAR 1 9 34 AM '88

MAR 2 7 13 AM '88

FILED

125736

WFP NYC  
assd 3/31/65  
type B

L# 13072659-15

Sis the Corp  
127 Nathaniel Perlmutter  
Place

NY NY Consolidated  
Gen Beth Israel  
Hospital Association  
7/8/46 4699-106  
FEB 13 1988

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED MAR 02 1988

AMT. OF CHECK \$ 80  
FILING FEE \$ 30  
TAX \$  
COUNTY FEE \$  
COPY \$ 40  
CERT \$  
REFUND \$  
SPEC HANDLE \$ 10

4

BY: *[Signature]*  
New  
TYPE B

FEB 13 1988

MARK

**STATE OF NEW YORK**  
**DEPARTMENT OF STATE**

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

---

WITNESS my hand and official seal of the  
Department of State, at the City of Albany,  
on December 30, 2015.



*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State

F990702000684  
CSC 45

CERTIFICATE OF AMENDMENT OF THE  
CERTIFICATE OF INCORPORATION OF  
BETH ISRAEL MEDICAL CENTER

(Under Section 803 of the Not-For-Profit Corporation Law)

The undersigned, the sole member of Beth Israel Medical Center, a corporation organized and existing under the Not-for-Profit Corporation Law of the State of New York (the "Corporation") does hereby certify as follows:

- (1) The name of the corporation is: **BETH ISRAEL MEDICAL CENTER.**
- (2) The Corporation was formed pursuant to a Certificate of Consolidation filed by the Department of State of the State of New York on July 8, 1946. The corporations included in such consolidation were Beth Israel Hospital Association, which was formed by the filing of a Certificate of Incorporation on May 28, 1890, and Jewish Maternity Hospital, which was formed by the filing of a Certificate of Incorporation on April 27, 1906. The name of the Corporation as consolidated was Beth Israel Hospital Association. The name was changed from that name to Beth Israel Medical Center by Certificate of Change of Name dated February 24, 1965, and filed by the Secretary of State on March 31, 1965. A restated certificate of incorporation was filed by the Department of State of October 1, 1985. A certificate of amendment of the restated certificate of incorporation was filed by the Department of State on March 2, 1988.
- (3) The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law and is a Type B corporation as defined in Section 201 of that law.
- (4) The Corporation designates the Secretary of State of the State of New York as its agent upon whom process against it may be served. The Post office address to which the Secretary of State shall mail a copy of any process served upon him is as follows:

Beth Israel Medical Center  
10 Nathan D. Perlman Place  
New York, New York 10003

- (5) The certificate is amended to delete therefrom the fixed number of trustees of the Corporation and permit the number of trustees of the Corporation to be fixed by, or determined in accordance with, the by-laws of the Corporation. Article FIFTH of the certificate of incorporation is amended to delete from the last clause of the sentence the language, "and in any case shall not be less than thirty-five (35) nor more than seventy-five (75)." Article FIFTH is hereby amended to read as follows:

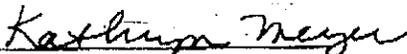
The number of directors of the Corporation, who shall be known as Trustees, shall be fixed by, or determined in accordance with, the By-laws of the Corporation.

(6) The foregoing amendment to the certificate of incorporation of the Corporation was authorized by a majority of the votes cast at a meeting of the sole member of the Corporation, held on June 7, 1999, the affirmative votes cast in favor of the amendment being at least equal to the quorum, blank votes and abstentions not being counted in the number of votes cast.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment this 15 day of June, 1999 and affirms the statements made herein are true under penalties of perjury.

CONTINUUM HEALTH PARTNERS, INC.

By:   
Robert G. Newman, M.D., President  
Continuum Health Partners, Inc.  
555 West 57th Street  
New York, New York 10019

By:   
Kathryn Meyer, Assistant Secretary  
Continuum Health Partners, Inc.  
555 West 57th Street  
New York, New York 10019

/s/contcert

**F00702000684**

**CSC 45**

**STATE OF NEW YORK  
DEPARTMENT OF STATE**

JUL 02 1999

CERTIFICATE OF AMENDMENT

OF

BETH ISRAEL MEDICAL CENTER

Under Section 903 of the No-For-Profit Corporation Law

FILED  
TAX \$  
BY:

*WJL  
NY*

*FILED  
BE.*

JUL 2 7 36 PM '99

FILED

JUL 2 1 39 PM '99

FILED BY: Anna L. Brown, Esq  
BETH ISRAEL MEDICAL CENTER  
555 West 57th Street  
18th Floor-Legal Dept  
New York, NY 10019  
Cust. Ref#295963MPJ

DRAWDOWN

*3*

**990702000716**

***STATE OF NEW YORK***

***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the Department of State, at the City of Albany, on December 30, 2015.



*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
BETH ISRAEL MEDICAL CENTER

Under Section 803 of the Not-for-Profit Corporation Law

The undersigned, being the Chairman of Beth Israel Medical Center (the "Corporation"), does hereby certify:

1. The name of the Corporation is "Beth Israel Medical Center." The Corporation was formed under the name "Beth Israel Hospital Association."
2. The Corporation was created pursuant to Section 50 of the Membership Corporations Law and was formed pursuant to a Certificate of Consolidation filed by the Department of State of New York on July 8, 1946 (the "Certificate of Incorporation").
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL, and is a Type B corporation as defined in Section 201 of the NPCL.
4. The Corporation's Certificate of Incorporation is hereby amended as follows:
  - (a) Article TENTH of the Certificate of Incorporation, which specifies the identity of the sole member of the Corporation and certain affiliates of the Corporation and provides for certain processes relating to the medical staffs of the Corporation and such affiliates, is hereby deleted and replaced in its entirety with a new Article TENTH which shall read in its entirety as follows:

"TENTH: Notwithstanding anything in this Certificate of Incorporation to the contrary, the Corporation shall be a

corporation with members. The identity of the member(s) of the Corporation, and the rights and obligations of the member(s), shall be set forth in the By-Laws of the Corporation.”

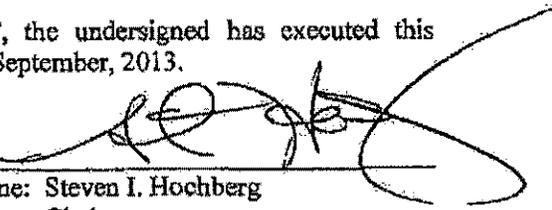
- (b) Article SEVENTH of the Certificate of Incorporation, which designates the Secretary of State as the agent of the Corporation upon whom process against the Corporation may be served and the post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him/her is amended to change the post office address to which Secretary of State shall mail a copy of any process against the Corporation to:

Beth Israel Medical Center  
c/o Mount Sinai Hospitals Group  
One Gustave L. Levy Place  
New York, New York 10029  
Attention: General Counsel

5. This amendment to the Certificate of Incorporation was authorized by the unanimous vote of the sole member of the Corporation at a meeting of the sole member held on July 16, 2013.
6. The Secretary of State of the State of New York is hereby designated as the agent of the Corporation upon whom process against the Corporation may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation which is served upon him/her is:

Beth Israel Medical Center  
c/o Mount Sinai Hospitals Group  
One Gustave L. Levy Place  
New York, New York 10029  
Attention: General Counsel

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment this 12th day of September, 2013.

By   
Name: Steven I. Hochberg  
Title: Chairman

**NEW YORK**  
state department of  
**HEALTH**

Nirav R. Shah, M.D., M.P.H.  
Commissioner

Sue Kelly  
Executive Deputy Commissioner

September 17, 2013

Kenneth L. Davis, MD  
President and CEO  
The Mount Sinai Medical Center  
One Gustave L. Levy Place  
Box 1220  
New York, New York 10029

Re: Certificate of Amendment of the Certificate of Incorporation of Beth Israel Medical Center

Dear Dr. Davis:

The above referenced Certificate of Amendment of the Certificate of Incorporation, dated September 12, 2013 and signed by Stephen I. Hochberg, does not require the formal approval of the Public Health and Health Planning Council or the Commissioner of Health under either the Public Health Law or the Not-for-Profit Corporation Law, since the certificate neither changes the corporation's name nor changes substantively a purpose the inclusion of which requires the consent of the Public Health and Health Planning Council or the Commissioner of Health.

The Department of Health does not object to the certificate being filed with the Department of State.

Sincerely,



Michael M. Stone  
Assistant Counsel  
Bureau of House Counsel

cc: Michael MacDonald, Mount Sinai Legal Counsel  
Beth Essig, Continuum Health Partners Legal Counsel  
Brad Beckstrom, Director, Government Affairs

HEALTH.NY.GOV  
facebook.com/NYSDOH  
twitter.com/HealthNYGov

ACR-41

130920000650

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
BETH ISRAEL MEDICAL CENTER

Under Section 803 of the Not-For-Profit Corporation Law

Epstein, Becker & Green, P.C.  
250 Park Avenue  
New York, NY 10177

2013 SEP 20 PM 12: 29

FILED

loc  
STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED SEP 20 2013

TAXS \_\_\_\_\_

BY: loc

NY

*RRG-OK*

2013 SEP 20 AM 11: 55

RECEIVED

Drawdown

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***STATE OF NEW YORK***  
***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on December 30, 2015.

*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State

090723000 212

**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
BETH ISRAEL MEDICAL CENTER  
Under Section 803 of the Not-For-Profit Corporation Law**

The undersigned, being the President and Chief Executive Officer and the Assistant Secretary of Continuum Health Partners, Inc., the sole member of Beth Israel Medical Center, a New York State not-for-profit corporation (the "Corporation"), do hereby certify and set forth:

1. The name of the Corporation is "Beth Israel Medical Center." The Corporation was formed under the name "Beth Israel Hospital Association."

2. The Corporation was created pursuant to Section 50 of the Membership Corporations Law and was formed pursuant to a Certificate of Consolidation filed by the Department of State of New York on July 8, 1946 (the "Certificate of Incorporation"). The corporations included in such consolidation were Beth Israel Hospital Association, which was formed by the filing of a Certification of Incorporation on May 28, 1890, and Jewish Maternity Hospital, which was formed by the filing of a Certificate of Incorporation on April 27, 1906. The name of the Corporation as consolidated was Beth Israel Hospital Association. The name was changed from that name to Beth Israel Medical Center by a Certificate of Change of Name dated February 24, 1965 and filed by the Secretary of State on March 31, 1965. A Restated Certificate of Incorporation was filed by the Department of State on October 1, 1985. A Certificate of Amendment of the Certificate of Incorporation was filed by the Department of State on March 2, 1988. A Certificate of Amendment was filed by the Department of State on July 2, 1999. A Certificate of Amendment of the Certificate of Incorporation was filed by the Department of State pursuant to Section 803 of the Not-for-Profit Corporation Law on September 27, 2002.

3. The Corporation is a corporation as defined in subparagraph (a)(5) of section 102 of the Not-for-Profit Corporation Law of the State of New York and is a Type B Corporation under section 201 of said law and shall remain a Type B Corporation after this amendment to the Certificate of Incorporation becomes effective.

4. The Corporation's Certificate of Incorporation is hereby amended. A new Article TENTH is added following article NINTH as follows:

"TENTH. The Corporation, The New York Eye and Ear Infirmary and The St. Luke's-Roosevelt Hospital Center (these three hospitals are collectively referred to herein as the "Affiliated Hospitals"), among others, have a common passive parent corporation, Continuum Health Partners, Inc. The Corporation may institute a joint application process to the medical staffs of the Affiliated Hospitals and share credentialing and quality assurance

information concerning medical staff members and applicants with the other Affiliated Hospitals, provided that the Corporation shall make a separate decision concerning admission of each applicant to its medical staff according to its medical staff bylaws.”

5. The Secretary of State of the State of New York is hereby designated as agent of the Corporation upon whom process against the Corporation may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him/her is:

Beth Israel Medical Center  
c/o Continuum Health Partners, Inc.  
555 West 57<sup>th</sup> Street, 18<sup>th</sup> Floor  
New York, New York 10019  
Attn: General Counsel

6. This amendment to the Certificate of Incorporation was authorized by the unanimous vote of the sole member of the Corporation at a meeting on January 30, 2008.

IN WITNESS WHEREOF, the undersigned have executed this Certificate of Amendment this 11 day of June, 2009, and affirmed the contents to be true under the penalty of perjury.

  
\_\_\_\_\_  
Stanley Brezenoff  
President and Chief Executive Officer

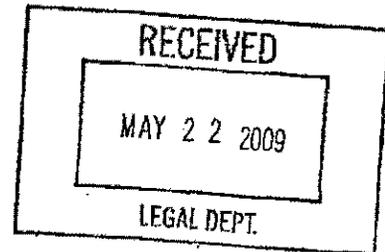
  
\_\_\_\_\_  
Kathryn Meyer  
Assistant Secretary



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

May 18, 2009



Ms. Nina Brodsky  
Senior Associate General Counsel  
Continuum Services  
555 West 57<sup>th</sup> Street, 18<sup>th</sup> Floor  
New York, New York 10019

Re: Certificate of Amendment of the Certificate of Incorporation of  
Beth Israel Medical Center

Dear Ms. Brodsky:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 8th day of May 2009, I hereby certify that the Public Health Council consents to the filing of the Certificate of Amendment of the Certificate of Incorporation of Beth Israel Medical Center, dated January 30, 2008.

Sincerely,

Colleen M. Frost  
Executive Secretary

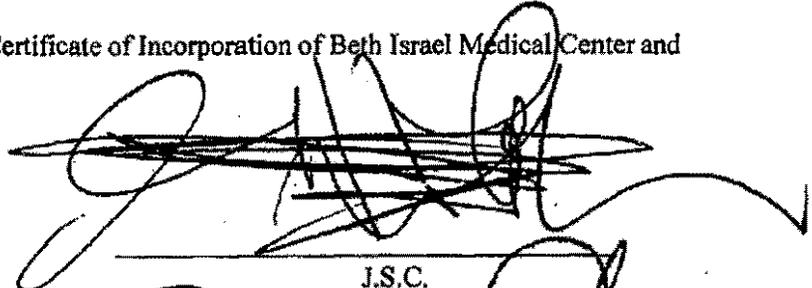
/cf

I, **EDWARD H. LEHNER**, a Justice of the Supreme Court of the State of

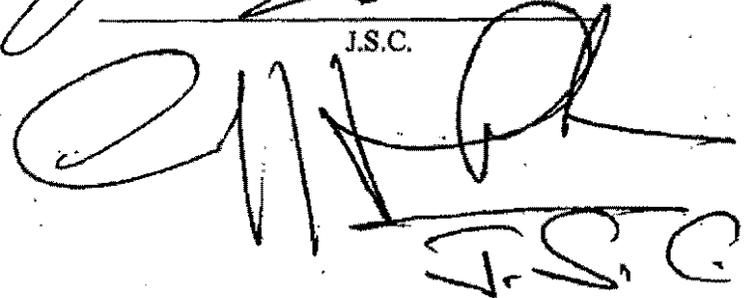
New York for the First Judicial District do hereby approve of the foregoing Certificate of Amendment of the Certificate of Incorporation of Beth Israel Medical Center and consent that the same be filed.

JUL 16 2009

Date: \_\_\_\_\_



J.S.C.



J.S.C.

THE ATTORNEY GENERAL HAS NO OBJECTION TO THE GRANTING OF JUDICIAL APPROVAL HEREON, ACKNOWLEDGES RECEIPT OF STATUTORY NOTICE AND DEMANDS SERVICE OF THE FILED CERTIFICATE. SAID NO OBJECTION IS CONDITIONED ON SUBMISSION OF THE MATTER TO THE COURT WITHIN 60 DAYS HEREAFTER.

by Laura Werner  
ASSISTANT ATTORNEY GENERAL      DATE

June 25, 2009

UNI-37

090723000 2/2

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
Beth Israel Medical Center

Under Section 803 of the Not-for-Profit Corporation  
Law of the State of New York

FILED

2009 JUL 23 AM 10:16

PROSKAUER ROSE LLP  
1585 Broadway  
New York, NY 10036-8299

*1/1/16*

*100*  
STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED JUL 23 2009

TAXS \_\_\_\_\_  
BY: *pmh*

*ny*

2009 JUL 23 AM 9:07 2009 JUL 22 PM 12:03

RECEIVED

RECEIVED

DRAWDOWN

238

***STATE OF NEW YORK***  
***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on December 30, 2015.

*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State

F020927000245

Exhibit A

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
BETH ISRAEL MEDICAL CENTER  
Under Section 803 of the Not-For-Profit Corporation Law

The undersigned, being the President and Chief Executive Officer and the Assistant Secretary of Continuum Health Partners, Inc., the sole member of Beth Israel Medical Center, a New York State not-for profit corporation (the "Corporation"), do hereby certify and set forth:

1 The name of the Corporation is "Beth Israel Medical Center". The Corporation was formed under the name "Beth Israel Hospital Association"

2 The Corporation was created pursuant to Section 50 of the Membership Corporations Law and was formed pursuant to a Certificate of Consolidation filed by the Department of State of the State of New York on July 8, 1946 (the "Certificate of Incorporation") The corporations included in such consolidation were Beth Israel Hospital Association, which was formed by the filing of a Certificate of Incorporation on May 28, 1890, and Jewish Maternity Hospital, which was formed by the filing of a Certificate of Incorporation on April 27, 1906. The name of the Corporation as consolidated was Beth Israel Hospital Association. The name was changed from that name to Beth Israel Medical Center by a Certificate of Change of Name dated February 24, 1965 and filed by the Secretary of State on March 31, 1965. A Restated Certificate of Incorporation was filed by the Department of State on October 1, 1985. A Certificate of Amendment of the Restated Certificate of Incorporation was filed by the Department of State on March 2, 1988. A Certificate of Incorporation was filed by the Department of State on July 2, 1999.

3 The Corporation is a corporation as defined in subparagraph (a)(5) of section 102 of the Not-for-Profit Corporation Law of the State of New York and is a Type B Corporation under section 201 of said law and shall remain a Type B Corporation after this amendment to the Certificate of Incorporation becomes effective.

4. The Corporation's Certificate of Incorporation is hereby amended by adding the following language to the end of paragraph (4) of Article THIRD

" Notwithstanding any other provisions of this paragraph (4), the Corporation shall at all times have the power to convey any or all of its property to the Secretary of Housing and Urban Development or his nominee, subject to approval of a Justice of the

Supreme Court of the State of New York pursuant to New York State Law,"

5 Article EIGHTH of the Corporation's Certificate of Incorporation is hereby amended to delete the language, ["EIGHTH: By-laws of the Corporation may be adopted or amended by an affirmative vote of two-thirds of the Trustees present at any regular meeting, or at any special meeting called for that purpose, at which a quorum of trustees is present so long as the by-laws are not inconsistent with the provisions of this Certificate or the laws of the State of New York "] and insert the following language in its place.

"EIGHTH So long as a mortgage on the Corporation's property is insured or held by the United States Secretary of Housing and Urban Development, the Corporation shall not amend its bylaws to be inconsistent with this Certificate of Incorporation or any Regulatory Agreement between the Corporation and the said Secretary."

6 A new Article NINTH is added following Article EIGHTH as follows.

"NINTH So long as a mortgage on the Corporation's property is insured or held by the United States Secretary of Housing and Urban Development, this Certificate of Incorporation may not be amended without the prior written approval of said Secretary "

7 The Secretary of State is hereby designated as agent of the Corporation upon whom process may be served The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is

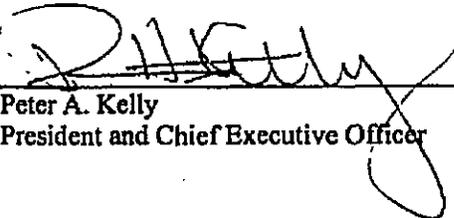
Beth Israel Medical Center  
c/o Continuum Health Partners, Inc  
555 West 57<sup>th</sup> Street, 18<sup>th</sup> Floor  
New York, New York 10019  
Attn. General Counsel

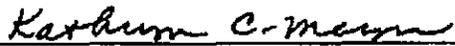
8. This amendment to the Certificate of Incorporation was authorized by the unanimous vote of the sole member of the Corporation at a meeting held on July 17, 2002.

2

IN WITNESS WHEREOF, the undersigned have executed this Certificate of Amendment  
this 18<sup>th</sup> day of July, 2002 and affirmed the contents to be true under the penalty of perjury.

CONTINUUM HEALTH PARTNERS, INC.

By:   
Peter A. Kelly  
President and Chief Executive Officer

By:   
Kathryn C. Meyer  
Assistant Secretary

3

The undersigned has no objection to the granting of Judicial approval hereon and waives statutory notice

THE ATTORNEY GENERAL HAS NO OBJECTION TO THE GRANTING OF JUDICIAL APPROVAL HEREON, ACKNOWLEDGES RECEIPT OF STATUTORY NOTICE AND DEMANDS SERVICE OF THE FILED CERTIFICATE SAID NO OBJECTION IS CONDITIONED ON SUBMISSION OF THE MATTER TO THE COURT WITHIN 30 DAYS HEREAFTER.

by Laura Werner DATE  
ASSISTANT ATTORNEY GENERAL

August 5  
2002

ELIOT SPITZER  
ATTORNEY GENERAL  
STATE OF NEW YORK

by: \_\_\_\_\_

Date: \_\_\_\_\_

**PHYLLIS GANGEL-JACOB**

I, \_\_\_\_\_, a Justice of the Supreme Court of the State of

New York for the First Judicial District do hereby approve of the foregoing

Certificate of Amendment of the Certificate of Incorporation of Beth Israel Medical Center

and consent that the same be filed

Date: August 22, 2002

Phyllis Gangel-Jacob  
I.S.C.

**PHYLLIS GANGEL-JACOB**

4



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

Corning Tower

The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

Antonia C. Novello, M.D., M.P.H., Dr.P.H.  
Commissioner

Dennis P. Whalen  
Executive Deputy Commissioner

August 16, 2002

Frederick B. Martinez ↗  
Sidley Austin Brown & Wood LLP  
787 Seventh Avenue  
New York, NY 10019

Re: Certificate of Amendment of the Restated Certificate of Incorporation  
of Beth Israel Medical Center

Dear Mr. Martinez:

The Certificate of Amendment of the Restated Certificate of Incorporation of Beth Israel Medical Center, dated July 18, 2002, does not require the formal approval of the Public Health Council or Commissioner of Health, since the Certificate of Amendment neither changes the corporation's name nor makes any substantive change to the corporation's purposes which would require such approval under either the Public Health Law or Not-for-Profit Corporation law.

The Department has no objection to the subject Certificate of Amendment being filed with the Department of State.

Sincerely,

Frank Barry  
Attorney  
Bureau of House Counsel

FB/mem

5

F 020927000 245

*fac*

CERTIFICATE OF AMENDMENT  
OF  
BETH ISRAEL MEDICAL CENTER

Under Section 803 of the Not-For-Profit Corporation Law

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED SEP. 27 2002

TAX \$ \_\_\_\_\_  
BY: *fac*  
*ny*

FILED BY:

Sidley Austin Brown & Wood LLP  
Attn: Erik F. Remmler, Esq.  
787 Seventh Avenue  
New York, NY 10019  
(212) 839-5796

*6*

*256*

FILING RECEIPT

ENTITY NAME: BETH ISRAEL MEDICAL CENTER

DOCUMENT TYPE: AMENDMENT (DOMESTIC NFP)  
PURPOSES PROCESS

COUNTY: NEWY

FILED:02/17/2016 DURATION:\*\*\*\*\* CASH#:160217000622 FILM #:160217000588

FILER:

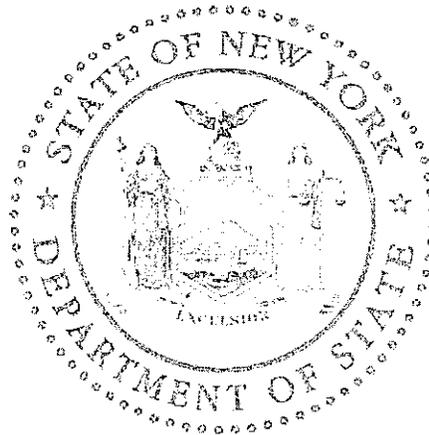
JAY E. GERZOG, ESQ., SHEPPARD  
MULLIN RICHTER & HAMPTON LLP  
30 ROCKEFELLER PLAZA  
NEW YORK, NY 10112-0015

ADDRESS FOR PROCESS:

THE CORPORATION  
ATTN: LEGAL DEPARTMENT  
NEW YORK, NY 10177

150 E. 42ND STREET

REGISTERED AGENT:



SERVICE COMPANY: ALBANY CORPORATE RESEARCH LTD. - 41

SERVICE CODE: 41

FEEs	115.00
FILING	30.00
TAX	0.00
CERT	0.00
COPIES	10.00
HANDLING	75.00

PAYMENTS	115.00
CASH	0.00
CHECK	0.00
CHARGE	0.00
DRAWDOWN	115.00
OPAL	0.00
REFUND	0.00

***STATE OF NEW YORK***  
***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the Department of State, at the City of Albany, on February 18, 2016.



*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State

160217000

588

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
BETH ISRAEL MEDICAL CENTER

Under Section 803 of the Not-for-Profit Corporation Law

The undersigned, being the Chairman of the Board of Trustees of Beth Israel Medical Center (the "Corporation"), does hereby certify:

1. The name of the Corporation is "Beth Israel Medical Center." The Corporation was formed under the name "Beth Israel Hospital Association."
2. The Corporation was created pursuant to Section 50 of the New York Membership Corporations Law and was formed pursuant to a Certificate of Consolidation filed by the Department of State of New York on July 8, 1946 (the "Certificate of Incorporation").
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the New York Not-for-Profit Corporation Law.
4. The Secretary of State of New York is hereby designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation which is served upon the Secretary of State is: Attn: Legal Department, 150 E. 42<sup>nd</sup> Street, New York, NY 10177.
5. The Corporation's Certificate of Incorporation is hereby amended as follows:

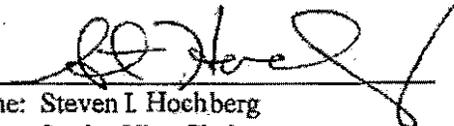
Article THIRD of the Certificate of Incorporation of the Corporation, which specifies the purposes for which the Corporation is organized, is hereby amended by modifying paragraph (b) thereof, which provides for the conduct of certain training programs for nurses and other health care professionals, to include a reference to bachelor of science degrees in connection with nurse training programs, and said paragraph (b) shall, as so amended, read in its entirety as follows:

“(b) to operate a program for the training of nurses leading to associate in applied science (A.A.S.) and bachelor of science (B.S.) degrees at the Phillips Beth Israel School of Nursing; to engage, in conjunction with universities, colleges and professional schools, in programs related to the training of other health care professionals;”

6. This amendment to the Certificate of Incorporation was authorized by the unanimous vote of the sole member of the Corporation at a meeting of the sole member held on October 21, 2013.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment this 6<sup>th</sup> day of December, 2013.

By

  
Name: Steven L. Hochberg  
Title: Senior Vice Chairman

STATE OF NEW YORK  
THE STATE EDUCATION DEPARTMENT  
Albany, New York

**CONSENT TO FILING WITH THE DEPARTMENT OF STATE**  
**(General Use)**

Consent is hereby given to the filing of the annexed certificate of amendment

of Beth Israel Medical Center

[name of entity]

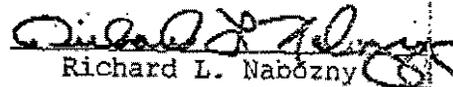
pursuant to the applicable provisions of the Education Law, the Not-for-Profit Corporation Law, the Business Corporation Law, the Limited Liability Company Law or any other applicable statute.

This consent is issued solely for purposes of filing the annexed document by the Department of State and shall not be construed as approval by the Board of Regents, the Commissioner of Education or the State Education Department of the purposes or objects of such entity, nor shall it be construed as giving the officers or agents of such entity the right to use the name of the Board of Regents, the Commissioner of Education, the University of the State of New York or the State Education Department in its publications or advertising matter.

IN WITNESS WHEREOF this instrument is executed and the seal of the State Education Department is affixed.

MaryEllen Elia  
Commissioner of Education

By:

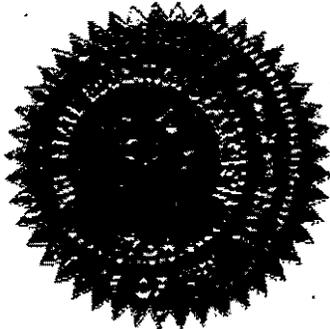
  
Richard L. Nabozny

Commissioner's authorized designee

Date

2-12-2016

**THIS DOCUMENT IS NOT VALID WITHOUT THE SIGNATURE OF THE  
COMMISSIONER'S AUTHORIZED DESIGNEE AND THE OFFICIAL SEAL OF THE  
STATE EDUCATION DEPARTMENT.**





***PUBLIC HEALTH AND HEALTH PLANNING COUNCIL***

---

Empire State Plaza, Corning Tower, Room 1805  
Albany, New York 12237

(518) 402-0964  
PHHPC@health.ny.gov

February 12, 2016

Tamar R. Rosenberg  
Sheppard Mullin, LLP  
30 Rockefeller Plaza  
New York, New York 10112

Re: Certificate of Amendment of the Certificate of Incorporation of Beth Israel  
Medical Center

Dear Ms. Rosenberg:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health and Health Planning Council held on the 11<sup>th</sup> day of February, 2016, I hereby certify that the Public Health and Health Planning Council consents to the filing of the Certificate of Amendment of the Certificate of Incorporation of Beth Israel Medical Center, dated December 6, 2013.

Sincerely,

A handwritten signature in cursive script that reads 'Colleen M. Leonard'. The signature is written in black ink and is positioned above the printed name and title.

Colleen M. Leonard  
Executive Secretary

/cl



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN  
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE  
CHARITIES BUREAU

The Attorney General hereby approves pursuant to NPCL 804(a)(ii)(A) the proposed Certificate of Amendment of Beth Israel Medical Center. Said approval is conditioned on submission to the Department of State for filing within 60 days hereafter. A copy of the filed certificate shall be provided to the Attorney General.

January 22 2016  
Date

Laura Werner

Assistant Attorney General

Laura Werner

588

AGR-41

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
BETH ISRAEL MEDICAL CENTER

Under Section 803 of the  
New York State Not-for-Profit Corporation Law

Filed by:

Jay E. Gerzog, Esq.  
Sheppard Mullin Richter & Hampton LLP  
30 Rockefeller Plaza  
New York, NY 10112-0015

FILED  
2016 FEB 17 PM 2:12

RECEIVED  
RECEIVED  
2016 FEB 17 PM 12:08  
2016 FEB 16 AM 9:07

DRAWDOWN

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(6)

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED FEB 17 2016

TAXS \$

BY: par

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## MEMORANDUM

**To:** Colleen Leonard, Executive Secretary  
Public Health and Health Planning Council

**From:** Mark A. Schweitzer, Associate Attorney  
Division of Legal Affairs, Bureau of Program Counsel

**Date:** January 18, 2023

**Subject:** Cayuga Health System, Inc. – Addition of Corporate Purposes

---

This is to request that the above matter be included on the agendas for the next Establishment and Project Review Committee and Public Health and Health Planning Council (PHHPC) meetings.

The attachments relating to this matter include the following:

- 1) Memorandum to the Public Health and Health Planning Council from Kathy Marks, General Counsel;
- 2) A photocopy of an email letter from Legal Counsel for Cayuga Health System, Inc., Nicole Ozminkowski, dated May 26, 2022;
- 3) A resolution of the Board of Directors of Cayuga Health System, Inc., dated April 7, 2022, authorizing the change of corporate name and amendment of Certificate of Incorporation, with a proposed Restated Certificate of Incorporation;
- 4) An executed photocopy of the proposed Restated Certificate of Incorporation of Cayuga Health System, Inc., signed by Justin P. Runke, as Authorized Person, dated April 7, 2022;
- 5) A photocopy of the current Certificate of Incorporation of Cayuga Health System, Inc., dated June 13, 2014, and filed on September 22, 2014, including associated OMH approval and Operating Certificate, and Consent to File Letter of the Public Health Council for Cayuga Health System, Inc., dated September 15, 2014;
- 6) Operating Certificates of the licensed entities under active parent Cayuga Health System, Inc.

### Attachments

cc: B. DelCogliano



## MEMORANDUM

**To:** Public Health and Health Planning Council (PHHPC)

**From:** Kathy Marks  
General Counsel *Kathy Marks*

**Date:** January 18, 2023

**Subject:** Cayuga Health System, Inc. – Addition of Corporate Purposes

---

Cayuga Health System, Inc. (“CHS”) requests Public Health and Health Planning Council (PHHPC) approval to change its corporate purposes to add language to affiliate with approved chemical dependence and substance abuse programs under the Mental Hygiene Law, and to add additional counties and areas in New York State of operation of those facilities. PHHPC approved CHS as the active parent of Cayuga Medical Center and Schuyler Hospital, and consented to the filing of its Certificate of Incorporation on September 15, 2014, in CON # 141168. CHS / Cayuga Medical Center at Ithaca, Inc. received conditional approval by the NYS Office of Mental Health on September 9, 2014 to operate a Psychiatric Inpatient Unit of a General Hospital, to be known as Cayuga Medical Center at Ithaca Psychiatric Unit, a 26 bed inpatient treatment program, referenced by CON # HD 141168.

Cayuga Health System, Inc. is in the process of affiliating with a substance use disorder treatment facility. In connection with that affiliation, CHS requests permission to amend its Certificate of Incorporation to include certain purposes as required by the Office of Addiction Services and Supports. Because the Department of Health and PHHPC previously approved CHS’s Certificate of Incorporation, and the purposes and the Certificate of Incorporation are being amended, PHHPC approval of the Restated Certificate of Incorporation is required.

CHS requests approval of the following amendments in its Restated Certificate of Incorporation:

1. To revise Section 3 to redefine the corporate purposes and to redefine the definition of “Affiliate”;
2. To revise Section 3(a) to delete the reference to Tompkins County, Schuyler County and surrounding areas of New York State and replace with the central region of New York State; and
3. To add a provision which allows the Corporation the authority to operate chemical dependence, alcoholism and/or substance abuse services, within the meaning of Articles 19 and 32 of the Mental Hygiene Law.

Pursuant to NY N-PCL §804(a)(i) and 10 NYCRR § 600.11, PHHPC must consent to the requested changes prior to the filing of any amended certificate.

There is no legal objection to the change in corporate purposes, and the Restated Certificate of Incorporation of Cayuga Health System, Inc. is in legally acceptable form.

Attachments.

## Schweitzer, Mark A (HEALTH)

---

**From:** Nicole Ozminkowski <nozminkowski@HarrisBeach.com>  
**Sent:** Thursday, May 26, 2022 3:51 PM  
**To:** Leonard, Colleen M (HEALTH)  
**Cc:** Runke, Justin  
**Subject:** Request for approval of CHS Restated Certificate of Incorporation  
**Attachments:** Executed CHS Restated Certificate of Incorporation (4875-5811-5103 1).pdf; Cayuga Health System Inc. filed Certificate of Incorporation (4811-2216-2023 1).PDF; Authorizing Resolution (4859-9396-7906 1).pdf

You don't often get email from nozminkowski@harrisbeach.com. [Learn why this is important](#)

*ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected domains.*

Ms. Leonard:

As you may be aware, Cayuga Health System, Inc. ("CHS") is in the process of affiliating with a substance use disorder treatment facility. In connection with that affiliation, CHS need to amend its certificate of incorporation to include certain purposes as required by the Office of Addiction Services and Supports. Because the Department of Health / Public Health and Health Planning Counsel previously approved CHS's certificate of incorporation we are now asking for approval of the attached Restated Certificate of Incorporation.

I have attached the following for review:

1. Original filed CHS Certificate of Incorporation
2. CHS Restated Certificate of Incorporation which includes the following amendments:
  - a. to revise Section 3 to redefine the corporate purposes and to redefine the definition of "Affiliate";
  - b. to revise Section 3(a) to delete the reference to Tompkins County, Schuyler County and surrounding areas of New York State and replace with the central region of New York State; and
  - c. to add a provision which allows the Corporation the authority to operate chemical dependence, alcoholism and/or substance abuse services, within the meaning of Articles 19 and 32 of the Mental Hygiene Law.
3. CHS board resolution approving the Restated Certificate of Incorporation.

Should you need any additional information or documentation, please let me know.

Best,

Nicole Ozminkowski

**Nicole Ozminkowski**  
Partner

**HARRIS BEACH PLLC**

ATTORNEYS AT LAW

99 Garnsey Road  
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**RESOLUTION  
OF THE  
BOARD OF DIRECTORS  
OF  
CAYUGA HEALTH SYSTEM, INC.**

**WHEREAS**, this Board of Directors has approved an Affiliation Agreement (the "Affiliation Agreement") by and between Cayuga Health System, Inc. ("CHS") and Ithaca Alpha House Center, Inc. d/b/a Cayuga Addiction Recovery Services ("CARS") pursuant to which CHS will become the sole member and active parent of CARS in accordance with the terms and conditions of the Affiliation Agreement (the "Affiliation Transaction"); and

**WHEREAS**, in connection with the Affiliation Transaction, it is necessary for the Certificate of Incorporation to be revised to: (1) permit the Corporation to have affiliates which are licensed under the Mental Hygiene Law; (2) to recast the geographic area served by the Corporation from Tomkins and Schuyler Counties and the surrounding area to a broader reference with the central region of New York State; (3) to specifically allow the Corporation to operate chemical dependence, alcoholism and/or substance abuse services; and (4) to make certain related conforming changes; and

**WHEREAS**, it is in the best interests of the Corporation to amend its Certificate of Incorporation in accordance with the foregoing.

**NOW, THEREFORE, IT IS RESOLVED**, that, the Restated Certificate of Incorporation of the Corporation, in substantially the same form as attached to these Resolutions as Exhibit A, with such changes as may be required by the New York State Department of Health, the New York State Office of Addiction Services and Supports, the New York Attorney General or the New York Department of State is hereby approved and adopted as the Restated Certificate of Incorporation of the Corporation, pending the filing of the same with the New York Department of State; and

**RESOLVED**, that the President and Chief Executive Officer and the Vice President and General Counsel of the Corporation and their designees, and each of them, be and hereby are directed to take any and all actions and to execute, deliver and/or file any and all documents, instruments, or agreements deemed to be necessary and proper by the Authorized Officers or any of them to accomplish the purposes of the foregoing resolutions, his, her or their signature thereon, or filing or completion thereof, to be conclusive evidence of his or her approval thereof.

**CERTIFICATION**

The foregoing is a true and complete copy of the Resolutions duly adopted by the Board of Directors of Cayuga Health System, Inc. on the 7th day of April, 2022, which Resolutions have not been modified, revoked or rescinded and remain in full force and effect on the date hereof.

Date: April 7, 2022

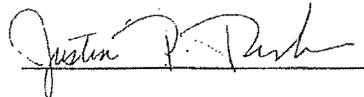
  
Suzanne Blowers, Secretary

State of New York )

)ss:

County of Tompkins )

On the 7th day of April in the year 2022, before me, the undersigned notary public, personally appeared Suzanne Blowers, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual or the person on behalf of which the individual acted, executed the instrument.

 Notary Public

**JUSTIN P. RUNKE**  
Notary Public, State of New York  
Registration No. 02RU6430020  
Qualified in Monroe County  
Commission Expires March 7, 20 26

**RESTATED CERTIFICATE INCORPORATION**

**OF**

**CAYUGA HEALTH SYSTEM, INC.**

**Under Section 805 of the Not-for-Profit Corporation Law**

The undersigned, being the Chair of the Board of Directors of Cayuga Health System, Inc. (the "Corporation"), hereby certifies:

1. The name of the Corporation is Cayuga Health System, Inc.
2. The Corporation's Certificate of Incorporation was filed by the Department of State on September 23, 2014 pursuant to the Not-for-Profit Corporation Law.
3. The Corporation's Certificate of Incorporation is hereby amended in the following respects:
  - (a) to revise Section 3 to change the corporate purposes and to revise the definition of "Affiliate";
  - (b) to revise Section 3(a) to delete the references to "Tompkins County, Schuyler County and surrounding areas of New York State" and replace with a reference to the central region of New York State;
  - (c) to add a provision which allows the Corporation the authority to operate chemical dependence, alcoholism and/or substance abuse services; within the meaning of Articles 19 and 32 of the Mental Hygiene Law;
  - (d) to delete Section 4(j) and to replace entirely with the following:
    - (j) to include the approval of the development of new clinical or treatment programs, including clinical/treatment or programmatic affiliations, or any termination of existing clinical or treatment programs by an Affiliate; provided, however, that any termination of existing clinical or treatment programs of any Affiliate, including the defunding of a clinical or treatment program in the Affiliate's operating budget, shall also require the approval of that Affiliate's Board;
  - (e) to revise Section 4(k) to include within the powers delegated to the Corporation by an Affiliate the authority to approve all applications of an Affiliate to federal or state governmental agencies for establishment or operating licensure, including, but not limited to, Certificate of Need applications to the New York State Department of Health or Certification

Applications to the New York State Office of Addiction Services and Supports, as required;

- (f) to revise Section 4(l) to delete reference to “hospital management services agreements” and replace with reference to management services agreements and to include within the powers delegated to the Corporation by an Affiliate the authority to approve entry into any management services agreements by an Affiliate that would require the approval of the New York State Department of Health or New York State Office of Addiction Services and Supports;
- (g) to revise Section 14 to delete the names and addresses of the initial directors of the Corporation;
- (h) all references to “Chief Campus Executive” or “President and Chief Campus Executive” shall be changed to “chief campus executive” throughout the Certificate of Incorporation and any reference to “Chief Campus Executive” or “President and Chief Campus Executive” shall be deemed a reference to “chief campus executive”; and
- (i) to renumber the paragraphs as a result of the amendments included herein.

4. The text of the Certificate of Incorporation, as amended, is hereby restated to read as hereinafter set forth in full.

1. The name of the Corporation is: Cayuga Health System, Inc.

2. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law.

3. The Corporation is organized and shall be operated to promote and support community health, including to serve as the sole member of one or more entities licensed under the Mental Hygiene Law and/or the Public Health Law and whose purposes are to fulfill the mission and purpose of the Corporation (collectively, the “Affiliates”); so long as such Affiliates are organizations described in Section n501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”). To this end, the Corporation shall:

(a) Support and assist the Affiliates by coordinating and monitoring their missions, objectives, activities and resources with each other and with those of regional health care providers, health care agencies and related organizations, all in furtherance of the purposes of promoting effective and economical health care services, in the central region of New York State;

(b) To solicit, collect, accept, hold, invest, reinvest and administer gifts, bequests, devises, grants, contributions, donations and property of any sort, without limitation as to amount or value, for the foregoing purposes;

(c) To expend, contribute, disburse, donate or otherwise use its assets and/or income for the foregoing purposes;

(d) To operate chemical dependence, alcoholism and/or substance abuse services, within the meaning of Articles 19 and 32 of the Mental Hygiene Law and the Rules and Regulations adopted pursuant thereto as each may be amended from time to time, which shall require as a condition precedent before engaging in the conduct of any such services an Operating Certificate from the New York State Office of Addiction Services and Supports.”; and

(e) To do any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof, but not for the pecuniary profit or financial gain of its members, directors, officers or any private person.

4. In furtherance of its corporate purposes, in addition to the general powers enumerated in Section 202 of the Not-for-Profit Corporation Law, the Corporation shall have the following rights, all of which have been delegated to the Corporation in, and shall be exercised by the Corporation in the manner provided for by, the certificate of incorporation and/or bylaws of each Affiliate:

(a) to elect or appoint, fix the number of, and remove, with cause, the directors of each Affiliate;

(b) to appoint each Affiliate’s chief campus executive subject to the approval of the Affiliate’s Board and the President and Chief Executive Officer of the Corporation; provided, however, that the authority for removing an Affiliate’s chief campus executive shall rest solely with the Corporation’s President and Chief Executive Officer following consultation with the applicable Affiliate’s Board;

(c) to amend or repeal the certificate of incorporation and bylaws or other organizational and governing documents and to adopt any new or restated certificate of incorporation or bylaws or other organizational and governing documents of any Affiliate;

(d) to approve the capital and operating budgets of each Affiliate with input from the respective Boards of each Affiliate;

(e) to approve any strategic plans for each Affiliate with input from the respective Boards of each Affiliate;

(f) to approve the sale, acquisition, lease, transfer, or pledge of real or personal property of any Affiliate with an aggregate fair market value in excess of an amount set from time to time by the Board of the Corporation;

(g) to approve the incurrence of any indebtedness, including lease obligations, or the granting of any mortgage or guaranty by an Affiliate in excess of an amount set from time to time by the Board of the Corporation, excluding (i)

vendor debt incurred in the normal course of business and (ii) debt consistent with approved budgets of the Affiliate;

(h) to approve any plan of merger, consolidation, acquisition, dissolution, joint venture, or liquidation of any Affiliate;

(i) to approve or consent to the filing by an Affiliate of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, or an assignment for the benefit of creditors;

(j) to approve of development of new clinical or treatment programs, including clinical/treatment or programmatic affiliations, or any termination of existing clinical or treatment programs by an Affiliate; provided, however, that any termination of existing clinical or treatment programs of any Affiliate, including the defunding of a clinical or treatment program in the Affiliate's operating budget, shall also require the approval of that Affiliate's Board;

(k) to approve all applications of an Affiliate to federal or state governmental agencies for establishment or operating licensure, including, but not limited to, Certificate of Need applications to the New York State Department of Health or Certification Applications to the New York State Office of Addiction Services and Supports, as required;

(l) to approve entry into any management services agreements by an Affiliate that would require the approval of the New York State Department of Health or New York State Office of Addiction Services and Supports;

(m) to approve the retention of outside general legal counsel by an Affiliate;

(n) to approve allocation of costs to an Affiliate and the formula for such allocation;

(o) to approve settlements of litigation by an Affiliate when such settlements exceed applicable insurance coverage or the amount of any applicable self-insurance fund available to an Affiliate;

(p) to approve all business or marketing plans for each Affiliate with input from that Affiliate's Board;

(q) to approve of any modification of existing clinical programs by an Affiliate;

(r) to approve any integrated services arrangements that would obligate the Affiliates to participate on an ongoing basis, excluding the selection of outside general legal counsel; and

(s) to address any other policy, business, or clinical issue that may arise from time-to-time that is not under the authority of the Affiliate's board or management.

For the purposes of the foregoing, the Corporation shall have: (i) the power to initiate and direct action by an Affiliate without a prior recommendation of that Affiliate's board; and (ii) the power to accept, reject, or modify the recommendation of any Affiliate's board and to direct action by that Affiliate or to return the matter to the Affiliate's Board for reconsideration, with reasons for rejection and/or suggested change. No Affiliate's board nor any Affiliate's officers shall implement any action requiring the approval of the corporation until the Corporation shall have exercised its reserved powers and communicated its determinations in writing to the applicable Affiliate's Board.

5. Notwithstanding anything to the contrary in this certificate of incorporation, in addition to any other powers retained by the Board of each Affiliate, the Board of each Affiliate shall retain the power and authority to do any and all of the following:

(a) to review and recommend candidates for that Affiliate's chief campus executive to the Corporation;

(b) to approve that Affiliate's chief campus executive;

(c) to provide input during performance review process for that Affiliate's chief campus executive; provided, however, that this retained power does not limit in any way the sole authority granted to the President and Chief Executive Officer of the Corporation to remove the chief campus executive of any Affiliate;

(d) to credential members of that Affiliate's medical staff;

(e) to oversee clinical quality and patient care service standards of that Affiliate;

(f) to participate in the development of and provide recommendations for strategic planning priorities, annual operating budgets, and capital budgets for that Affiliate with and to the Corporation;

(g) to recommend to the Governance and Nominating Committee of the Corporation candidates for nomination for election to the Board of that Affiliate;

(h) to identify and recommend approaches to address local community health priorities to the Corporation;

(i) to liaise with, maintain, and support the foundation established to support that Affiliate and related philanthropic initiatives;

(j) to develop and execute communications and outreach initiatives to the local communities served by that Affiliate in accordance with communications guidelines established from time to time by the Corporation;

(k) to exercise all other authorities and to undertake all responsibilities for which not-for-profit hospital boards in New York are legally required to assume, including but not necessarily limited to, compliance oversight and meeting all other hospital and other related health care provider licensing requirements;

(l) to undertake any other duties or initiatives that the Corporation delegates to the board of that Affiliate; and

(m) to exercise all authorities retained by that Affiliate in furtherance of the mission and vision adopted from time to time by the Corporation.

6. The Corporation is a charitable corporation under Section 201 of the Not-for-Profit Corporation Law.

7. Notwithstanding any other provision of these articles, the Corporation is organized and operated exclusively for charitable purposes as specified in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and shall not carry on any activities not permitted to be carried on by an organization exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or by an organization contributions to which are deductible under Section 170(c)(2) of said Code.

8. No part of the net earnings of the Corporation shall inure to the benefit of any member, trustee, director or officer of the Corporation or any private individual (except that reasonable compensation may be paid for services rendered to or for the Corporation affecting one or more of its purposes), and no member, trustee, director or officer of the Corporation or any private individual shall be entitled to share in the distribution of any of the Corporate assets on dissolution of the Corporation.

9. No substantial part of the activities of the Corporation shall be carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided by Section 501(h) of the Internal Revenue Code of 1986, as amended), and the Corporation shall not participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of any candidate for public office.

10. In the event of dissolution, all the remaining assets and property of the Corporation shall, after necessary expenses thereof, be distributed to one or more of the not-for-profit affiliates of the Corporation, provided that the distributee(s) shall then qualify under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, subject to the approval of the Attorney General of the State of New York. If none of the Corporation's not-for-profit affiliates shall so qualify at the time of dissolution, the distribution shall be made to such other organization or organizations that are organized and operated exclusively for religious, charitable, educational or scientific purposes as shall

at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, subject to the approval of the Attorney General of the State of New York. For the purpose of this paragraph, an "affiliate" shall mean any not-for-profit organization that controls, is controlled by or is under common control with the Corporation, and any other not-for-profit organization that expressly and specifically includes among its purposes the benefit or support of the Corporation.

11. In any taxable year in which the Corporation is a private foundation as defined by Section 509 of the Internal Revenue Code of 1986, as amended, the Corporation shall:

(a) not engage in any act of self-dealing that is subject to tax under Section 4941 of said Code;

(b) distribute its income for each taxable year at such time and in such manner as not to subject the Corporation to tax on undistributed income under Section 4942 of said Code;

(c) not retain any excess business holdings in such manner as to subject the Corporation to tax under Section 4943 of said Code;

(d) not make any investments in such a manner as to subject the Corporation to tax under Section 4944 of said Code; and

(e) not make any expenditures that are subject to tax under Section 4945 of said Code.

12. The number of directors constituting the entire board of directors of the Corporation shall not be less than fifteen (15) nor more than twenty-five (25). Subject to such limitation, the number shall be fixed by the bylaws of the Corporation pursuant to Section 702 of the Not-for-Profit Corporation Law.

13. The office of the Corporation is to be located in the County of Tompkins, State of New York.

14. The Secretary of State is hereby designated as the agent of the Corporation upon whom process against it may be served, and the post office address to which the Secretary of State shall mail a copy of any process against the corporation that may be served upon him is: President and Chief Executive Officer, Cayuga Health System, Inc., 101 Dates Drive, Ithaca, New York 14850.

5. This Restated Certificate of Incorporation and the foregoing amendments of the Certificate of Incorporation were authorized by the affirmative vote of a majority of the entire Board of Directors of the Corporation. The Corporation does not have any members.

IN WITNESS WHEREOF, the undersigned has subscribed this Restated Certificate of Incorporation this 7th day of April, 2022.

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Justin P. Runke, Authorized Person

**RESTATED CERTIFICATE INCORPORATION**

**OF**

**CAYUGA HEALTH SYSTEM, INC.**

**Under Section 805 of the Not-for-Profit Corporation Law**

The undersigned, being the Chair of the Board of Directors of Cayuga Health System, Inc. (the "Corporation"), hereby certifies:

1. The name of the Corporation is Cayuga Health System, Inc.
2. The Corporation's Certificate of Incorporation was filed by the Department of State on September 23, 2014 pursuant to the Not-for-Profit Corporation Law.
3. The Corporation's Certificate of Incorporation is hereby amended in the following respects:
  - (a) to revise Section 3 to change the corporate purposes and to revise the definition of "Affiliate";
  - (b) to revise Section 3(a) to delete the references to "Tompkins County, Schuyler County and surrounding areas of New York State" and replace with a reference to the central region of New York State;
  - (c) to add a provision which allows the Corporation the authority to operate chemical dependence, alcoholism and/or substance abuse services, within the meaning of Articles 19 and 32 of the Mental Hygiene Law;
  - (d) to delete Section 4(j) and to replace entirely with the following:
    - (j) to include the approval of the development of new clinical or treatment programs, including clinical/treatment or programmatic affiliations, or any termination of existing clinical or treatment programs by an Affiliate; provided, however, that any termination of existing clinical or treatment programs of any Affiliate, including the defunding of a clinical or treatment program in the Affiliate's operating budget, shall also require the approval of that Affiliate's Board;
  - (e) to revise Section 4(k) to include within the powers delegated to the Corporation by an Affiliate the authority to approve all applications of an Affiliate to federal or state governmental agencies for establishment or operating licensure, including, but not limited to, Certificate of Need applications to the New York State Department of Health or Certification

Applications to the New York State Office of Addiction Services and Supports, as required;

- (f) to revise Section 4(l) to delete reference to “hospital management services agreements” and replace with reference to management services agreements and to include within the powers delegated to the Corporation by an Affiliate the authority to approve entry into any management services agreements by an Affiliate that would require the approval of the New York State Department of Health or New York State Office of Addiction Services and Supports;
- (g) to revise Section 14 to delete the names and addresses of the initial directors of the Corporation;
- (h) all references to “Chief Campus Executive” or “President and Chief Campus Executive” shall be changed to “chief campus executive” throughout the Certificate of Incorporation and any reference to “Chief Campus Executive” or “President and Chief Campus Executive” shall be deemed a reference to “chief campus executive”; and
- (i) to renumber the paragraphs as a result of the amendments included herein.

4. The text of the Certificate of Incorporation, as amended, is hereby restated to read as hereinafter set forth in full.

1. The name of the Corporation is: Cayuga Health System, Inc.

2. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law.

3. The Corporation is organized and shall be operated to promote and support community health, including to serve as the sole member of one or more entities licensed under the Mental Hygiene Law and/or the Public Health Law and whose purposes are to fulfill the mission and purpose of the Corporation (collectively, the “Affiliates”); so long as such Affiliates are organizations described in Section n501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”). To this end, the Corporation shall:

(a) Support and assist the Affiliates by coordinating and monitoring their missions, objectives, activities and resources with each other and with those of regional health care providers, health care agencies and related organizations, all in furtherance of the purposes of promoting effective and economical health care services, in the central region of New York State;

(b) To solicit, collect, accept, hold, invest, reinvest and administer gifts, bequests, devises, grants, contributions, donations and property of any sort, without limitation as to amount or value, for the foregoing purposes;

(c) To expend, contribute, disburse, donate or otherwise use its assets and/or income for the foregoing purposes;

(d) To operate chemical dependence, alcoholism and/or substance abuse services, within the meaning of Articles 19 and 32 of the Mental Hygiene Law and the Rules and Regulations adopted pursuant thereto as each may be amended from time to time, which shall require as a condition precedent before engaging in the conduct of any such services an Operating Certificate from the New York State Office of Addiction Services and Supports.”; and

(e) To do any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof, but not for the pecuniary profit or financial gain of its members, directors, officers or any private person.

4. In furtherance of its corporate purposes, in addition to the general powers enumerated in Section 202 of the Not-for-Profit Corporation Law, the Corporation shall have the following rights, all of which have been delegated to the Corporation in, and shall be exercised by the Corporation in the manner provided for by, the certificate of incorporation and/or bylaws of each Affiliate:

(a) to elect or appoint, fix the number of, and remove, with cause, the directors of each Affiliate;

(b) to appoint each Affiliate’s chief campus executive subject to the approval of the Affiliate’s Board and the President and Chief Executive Officer of the Corporation; provided, however, that the authority for removing an Affiliate’s chief campus executive shall rest solely with the Corporation’s President and Chief Executive Officer following consultation with the applicable Affiliate’s Board;

(c) to amend or repeal the certificate of incorporation and bylaws or other organizational and governing documents and to adopt any new or restated certificate of incorporation or bylaws or other organizational and governing documents of any Affiliate;

(d) to approve the capital and operating budgets of each Affiliate with input from the respective Boards of each Affiliate;

(e) to approve any strategic plans for each Affiliate with input from the respective Boards of each Affiliate;

(f) to approve the sale, acquisition, lease, transfer, or pledge of real or personal property of any Affiliate with an aggregate fair market value in excess of an amount set from time to time by the Board of the Corporation;

(g) to approve the incurrence of any indebtedness, including lease obligations, or the granting of any mortgage or guaranty by an Affiliate in excess of an amount set from time to time by the Board of the Corporation, excluding (i)

vendor debt incurred in the normal course of business and (ii) debt consistent with approved budgets of the Affiliate;

(h) to approve any plan of merger, consolidation, acquisition, dissolution, joint venture, or liquidation of any Affiliate;

(i) to approve or consent to the filing by an Affiliate of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, or an assignment for the benefit of creditors;

(j) to approve of development of new clinical or treatment programs, including clinical/treatment or programmatic affiliations, or any termination of existing clinical or treatment programs by an Affiliate; provided, however, that any termination of existing clinical or treatment programs of any Affiliate, including the defunding of a clinical or treatment program in the Affiliate's operating budget, shall also require the approval of that Affiliate's Board;

(k) to approve all applications of an Affiliate to federal or state governmental agencies for establishment or operating licensure, including, but not limited to, Certificate of Need applications to the New York State Department of Health or Certification Applications to the New York State Office of Addiction Services and Supports, as required;

(l) to approve entry into any management services agreements by an Affiliate that would require the approval of the New York State Department of Health or New York State Office of Addiction Services and Supports;

(m) to approve the retention of outside general legal counsel by an Affiliate;

(n) to approve allocation of costs to an Affiliate and the formula for such allocation;

(o) to approve settlements of litigation by an Affiliate when such settlements exceed applicable insurance coverage or the amount of any applicable self-insurance fund available to an Affiliate;

(p) to approve all business or marketing plans for each Affiliate with input from that Affiliate's Board;

(q) to approve of any modification of existing clinical programs by an Affiliate;

(r) to approve any integrated services arrangements that would obligate the Affiliates to participate on an ongoing basis, excluding the selection of outside general legal counsel; and

(s) to address any other policy, business, or clinical issue that may arise from time-to-time that is not under the authority of the Affiliate's board or management.

For the purposes of the foregoing, the Corporation shall have: (i) the power to initiate and direct action by an Affiliate without a prior recommendation of that Affiliate's board; and (ii) the power to accept, reject, or modify the recommendation of any Affiliate's board and to direct action by that Affiliate or to return the matter to the Affiliate's Board for reconsideration, with reasons for rejection and/or suggested change. No Affiliate's board nor any Affiliate's officers shall implement any action requiring the approval of the corporation until the Corporation shall have exercised its reserved powers and communicated its determinations in writing to the applicable Affiliate's Board.

5. Notwithstanding anything to the contrary in this certificate of incorporation, in addition to any other powers retained by the Board of each Affiliate, the Board of each Affiliate shall retain the power and authority to do any and all of the following:

(a) to review and recommend candidates for that Affiliate's chief campus executive to the Corporation;

(b) to approve that Affiliate's chief campus executive;

(c) to provide input during performance review process for that Affiliate's chief campus executive; provided, however, that this retained power does not limit in any way the sole authority granted to the President and Chief Executive Officer of the Corporation to remove the chief campus executive of any Affiliate;

(d) to credential members of that Affiliate's medical staff;

(e) to oversee clinical quality and patient care service standards of that Affiliate;

(f) to participate in the development of and provide recommendations for strategic planning priorities, annual operating budgets, and capital budgets for that Affiliate with and to the Corporation;

(g) to recommend to the Governance and Nominating Committee of the Corporation candidates for nomination for election to the Board of that Affiliate;

(h) to identify and recommend approaches to address local community health priorities to the Corporation;

(i) to liaise with, maintain, and support the foundation established to support that Affiliate and related philanthropic initiatives;

(j) to develop and execute communications and outreach initiatives to the local communities served by that Affiliate in accordance with communications guidelines established from time to time by the Corporation;

(k) to exercise all other authorities and to undertake all responsibilities for which not-for-profit hospital boards in New York are legally required to assume, including but not necessarily limited to, compliance oversight and meeting all other hospital and other related health care provider licensing requirements;

(l) to undertake any other duties or initiatives that the Corporation delegates to the board of that Affiliate; and

(m) to exercise all authorities retained by that Affiliate in furtherance of the mission and vision adopted from time to time by the Corporation.

6. The Corporation is a charitable corporation under Section 201 of the Not-for-Profit Corporation Law.

7. Notwithstanding any other provision of these articles, the Corporation is organized and operated exclusively for charitable purposes as specified in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and shall not carry on any activities not permitted to be carried on by an organization exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or by an organization contributions to which are deductible under Section 170(c)(2) of said Code.

8. No part of the net earnings of the Corporation shall inure to the benefit of any member, trustee, director or officer of the Corporation or any private individual (except that reasonable compensation may be paid for services rendered to or for the Corporation affecting one or more of its purposes), and no member, trustee, director or officer of the Corporation or any private individual shall be entitled to share in the distribution of any of the Corporate assets on dissolution of the Corporation.

9. No substantial part of the activities of the Corporation shall be carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided by Section 501(h) of the Internal Revenue Code of 1986, as amended), and the Corporation shall not participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of any candidate for public office.

10. In the event of dissolution, all the remaining assets and property of the Corporation shall, after necessary expenses thereof, be distributed to one or more of the not-for-profit affiliates of the Corporation, provided that the distributee(s) shall then qualify under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, subject to the approval of the Attorney General of the State of New York. If none of the Corporation's not-for-profit affiliates shall so qualify at the time of dissolution, the distribution shall be made to such other organization or organizations that are organized and operated exclusively for religious, charitable, educational or scientific purposes as shall

at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, subject to the approval of the Attorney General of the State of New York. For the purpose of this paragraph, an "affiliate" shall mean any not-for-profit organization that controls, is controlled by or is under common control with the Corporation, and any other not-for-profit organization that expressly and specifically includes among its purposes the benefit or support of the Corporation.

11. In any taxable year in which the Corporation is a private foundation as defined by Section 509 of the Internal Revenue Code of 1986, as amended, the Corporation shall:

(a) not engage in any act of self-dealing that is subject to tax under Section 4941 of said Code;

(b) distribute its income for each taxable year at such time and in such manner as not to subject the Corporation to tax on undistributed income under Section 4942 of said Code;

(c) not retain any excess business holdings in such manner as to subject the Corporation to tax under Section 4943 of said Code;

(d) not make any investments in such a manner as to subject the Corporation to tax under Section 4944 of said Code; and

(e) not make any expenditures that are subject to tax under Section 4945 of said Code.

12. The number of directors constituting the entire board of directors of the Corporation shall not be less than fifteen (15) nor more than twenty-five (25). Subject to such limitation, the number shall be fixed by the bylaws of the Corporation pursuant to Section 702 of the Not-for-Profit Corporation Law.

13. The office of the Corporation is to be located in the County of Tompkins, State of New York.

14. The Secretary of State is hereby designated as the agent of the Corporation upon whom process against it may be served, and the post office address to which the Secretary of State shall mail a copy of any process against the corporation that may be served upon him is: President and Chief Executive Officer, Cayuga Health System, Inc., 101 Dates Drive, Ithaca, New York 14850.

5. This Restated Certificate of Incorporation and the foregoing amendments of the Certificate of Incorporation were authorized by the affirmative vote of a majority of the entire Board of Directors of the Corporation. The Corporation does not have any members.

IN WITNESS WHEREOF, the undersigned has subscribed this Restated Certificate of Incorporation this 7th day of April, 2022.

A handwritten signature in cursive script, appearing to read "Justin P. Runke". The signature is written in dark ink and is positioned above a horizontal line.

Justin P. Runke, Authorized Person

FILING RECEIPT

=====

ENTITY NAME: CAYUGA HEALTH SYSTEM, INC.

DOCUMENT TYPE: INCORPORATION (NOT-FOR-PROFIT)

TYPE: C COUNTY: TOMP

=====

FILED: 09/22/2014 DURATION: PERPETUAL CASH#: 140922000770 FILM #: 140922000710

FILER:

EXIST DATE

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HARRIS BEACH PLLC  
99 GARNSEY ROAD

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09/22/2014

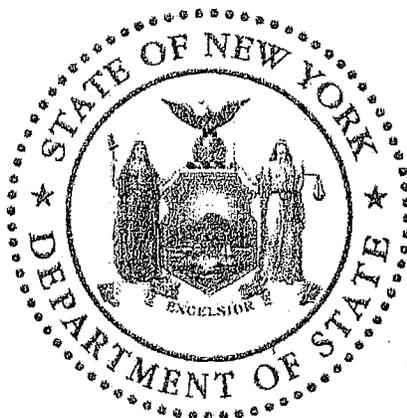
PITTSFORD, NY 14534

ADDRESS FOR PROCESS:

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PRESIDENT AND CHIEF EXECUTIVE OFFICER  
CAYUGA HEALTH SYSTEM, INC.  
ITHACA, NY 14850

101 DATES DRIVE

REGISTERED AGENT:



=====

SERVICE COMPANY: LIBERTY CORPORATE SERVICES, INC. - AL

SERVICE CODE: AL

FEEES                    85.00  
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FILING                    75.00  
TAX                        0.00  
CERT                      0.00  
COPIES                    10.00  
HANDLING                 0.00

PAYMENTS                85.00  
-----  
CASH                      0.00  
CHECK                     0.00  
CHARGE                    0.00  
DRAWDOWN                85.00  
OPAL                       0.00  
REFUND                    0.00

***STATE OF NEW YORK***  
***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the  
Department of State, at the City of Albany,  
on September 23, 2014.

*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State

140922000

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**CERTIFICATE OF INCORPORATION**

**OF**

**CAYUGA HEALTH SYSTEM, INC.**

**Under Section 402 of the Not-for-Profit Corporation Law**

The undersigned, for the purpose of forming a not-for-profit corporation pursuant to Section 402 of the Not-for-Profit Corporation Law of the State of New York, hereby certifies:

1. The name of the Corporation is: Cayuga Health System, Inc.
2. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law.

3. The Corporation is organized and shall be operated exclusively in connection with and for the benefit of Cayuga Medical Center at Ithaca, Inc. and Schuyler Hospital, Inc. (each an "Affiliate" and together, the "Affiliates"), both of which are New York not-for-profit corporations. To this end, the Corporation shall:

(a) Support and assist the Affiliates by coordinating and monitoring their missions, objectives, activities and resources with each other and with those of regional health care providers, health care agencies and related organizations, all in furtherance of the purposes of promoting effective and economical health care services, in Tompkins County, Schuyler County and the surrounding areas of New York State;

(b) To solicit, collect, accept, hold, invest, reinvest and administer gifts, bequests, devises, grants, contributions, donations and property of any sort, without limitation as to amount or value, for the foregoing purposes;

(c) To expend, contribute, disburse, donate or otherwise use its assets and/or income for the foregoing purposes; and

(d) To do any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof, but not for the pecuniary profit or financial gain of its members, directors, officers or any private person.

4. In furtherance of its corporate purposes, in addition to the general powers enumerated in Section 202 of the Not-for-Profit Corporation Law, the Corporation shall have the following rights, all of which have been delegated to the Corporation in, and shall be exercised by the Corporation in the manner provided for by, the certificate of incorporation and/or bylaws of each Affiliate:

(a) to elect or appoint, fix the number of, and remove, with cause, the directors of each Affiliate;

(b) to appoint each Affiliate's Chief Campus Executive subject to the approval of the Affiliate's Board and the President and Chief Executive Officer of the Corporation; provided, however, that the authority for removing an Affiliate's Chief Campus Executive shall rest solely with the Corporation's President and Chief Executive Officer following consultation with the applicable Affiliate's Board;

(c) to amend or repeal the certificate of incorporation and bylaws or other organizational and governing documents and to adopt any new or restated certificate of incorporation or bylaws or other organizational and governing documents of any Affiliate;

(d) to approve the capital and operating budgets of each Affiliate with input from the respective Boards of each Affiliate;

(e) to approve any strategic plans for each Affiliate with input from the respective Boards of each Affiliate;

(f) to approve the sale, acquisition, lease, transfer, or pledge of real or personal property of any Affiliate with an aggregate fair market value in excess of an amount set from time to time by the Board of the Corporation;

(g) to approve the incurrence of any indebtedness, including lease obligations, or the granting of any mortgage or guaranty by an Affiliate in excess of an amount set from time to time by the Board of the Corporation, excluding (i) vendor debt incurred in the normal course of business and (ii) debt consistent with approved budgets of the Affiliate;

(h) to approve any plan of merger, consolidation, acquisition, dissolution, joint venture, or liquidation of any Affiliate;

(i) to approve or consent to the filing by an Affiliate of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, or an assignment for the benefit of creditors;

(j) to approve of development of new clinical programs, including clinical or programmatic affiliations, or any termination of existing clinical programs by an Affiliate; provided, however, that any termination of existing clinical programs of any Affiliate, including the defunding of a clinical program in the Affiliate's operating budget, shall also require the approval of that Affiliate's Board;

(k) to approve all applications of an Affiliate to federal or state governmental agencies for establishment or operating licensure, including, but not limited to, Certificate of Need applications to the New York State Department of Health as required;

(l) to approve entry into any hospital management services agreements by an Affiliate that would require the approval of the New York State Department of Health;

(m) to approve the retention of outside general legal counsel by an Affiliate;

(n) to approve allocation of costs to an Affiliate and the formula for such allocation;

(o) to approve settlements of litigation by an Affiliate when such settlements exceed applicable insurance coverage or the amount of any applicable self-insurance fund available to an Affiliate;

(p) to approve all business or marketing plans for each Affiliate with input from that Affiliate's Board;

(q) to approve of any modification of existing clinical programs by an Affiliate;

(r) to approve any integrated services arrangements that would obligate the Affiliates to participate on an ongoing basis, excluding the selection of outside general legal counsel; and

(s) to address any other policy, business, or clinical issue that may arise from time-to-time that is not under the authority of the Affiliate's board or management.

For the purposes of the foregoing, the Corporation shall have: (i) the power to initiate and direct action by an Affiliate without a prior recommendation of that Affiliate's board; and (ii) the power to accept, reject, or modify the recommendation of any Affiliate's board and to direct action by that Affiliate or to return the matter to the Affiliate's Board for reconsideration, with reasons for rejection and/or suggested change. No Affiliate's board nor any Affiliate's officers shall implement any action requiring the approval of the corporation until the Corporation shall have exercised its reserved powers and communicated its determinations in writing to the applicable Affiliate's Board.

5. Notwithstanding anything to the contrary in this certificate of incorporation, in addition to any other powers retained by the Board of each Affiliate, the Board of each Affiliate shall retain the power and authority to do any and all of the following:

(a) to review and recommend candidates for that Affiliate's President and Chief Campus Executive to the Corporation;

- (b) to approve that Affiliate's President and Chief Campus Executive;
- (c) to provide input during performance review process for that Affiliate's President and Chief Campus Executive; provided, however, that this retained power does not limit in any way the sole authority granted to the President and Chief Executive Officer of the Corporation to remove the President and Chief Campus Executive of any Affiliate;
- (d) to credential members of that Affiliate's medical staff;
- (e) to oversee clinical quality and patient care service standards of that Affiliate;
- (f) to participate in the development of and provide recommendations for strategic planning priorities, annual operating budgets, and capital budgets for that Affiliate with and to the Corporation;
- (g) to recommend to the Governance and Nominating Committee of the Corporation candidates for nomination for election to the Board of that Affiliate;
- (h) to identify and recommend approaches to address local community health priorities to the Corporation;
- (i) to liaise with, maintain, and support the foundation established to support that Affiliate and related philanthropic initiatives;
- (j) to develop and execute communications and outreach initiatives to the local communities served by that Affiliate in accordance with communications guidelines established from time to time by the Corporation;
- (k) to exercise all other authorities and to undertake all responsibilities for which not-for-profit hospital boards in New York are legally required to assume, including but not necessarily limited to, compliance oversight and meeting all other hospital and other related health care provider licensing requirements;
- (l) to undertake any other duties or initiatives that the Corporation delegates to the board of that Affiliate; and
- (m) to exercise all authorities retained by that Affiliate in furtherance of the mission and vision adopted from time to time by the Corporation.

6. The Corporation is a charitable corporation under Section 201 of the Not-for-Profit Corporation Law.

7. Notwithstanding any other provision of these articles, the Corporation is organized and operated exclusively for charitable purposes as specified in Section 501(c)(3) of

the Internal Revenue Code of 1986, as amended, and shall not carry on any activities not permitted to be carried on by an organization exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or by an organization contributions to which are deductible under Section 170(c)(2) of said Code.

8. No part of the net earnings of the Corporation shall inure to the benefit of any member, trustee, director or officer of the Corporation or any private individual (except that reasonable compensation may be paid for services rendered to or for the Corporation affecting one or more of its purposes), and no member, trustee, director or officer of the Corporation or any private individual shall be entitled to share in the distribution of any of the Corporate assets on dissolution of the Corporation.

9. No substantial part of the activities of the Corporation shall be carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided by Section 501(h) of the Internal Revenue Code of 1986, as amended), and the Corporation shall not participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of any candidate for public office.

10. In the event of dissolution, all the remaining assets and property of the Corporation shall, after necessary expenses thereof, be distributed to one or more of the not-for-profit affiliates of the Corporation, provided that the distributee(s) shall then qualify under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, subject to the approval of the Attorney General of the State of New York. If none of the Corporation's not-for-profit affiliates shall so qualify at the time of dissolution, the distribution shall be made to such other organization or organizations that are organized and operated exclusively for religious, charitable, educational or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, subject to the approval of the Attorney General of the State of New York. For the purpose of this paragraph, an "affiliate" shall mean any not-for-profit organization that controls, is controlled by or is under common control with the Corporation, and any other not-for-profit organization that expressly and specifically includes among its purposes the benefit or support of the Corporation.

11. In any taxable year in which the Corporation is a private foundation as defined by Section 509 of the Internal Revenue Code of 1986, as amended, the Corporation shall:

(a) not engage in any act of self-dealing that is subject to tax under Section 4941 of said Code;

(b) distribute its income for each taxable year at such time and in such manner as not to subject the Corporation to tax on undistributed income under Section 4942 of said Code;

(c) not retain any excess business holdings in such manner as to subject the Corporation to tax under Section 4943 of said Code;

(d) not make any investments in such a manner as to subject the Corporation to tax under Section 4944 of said Code; and

(e) not make any expenditures that are subject to tax under Section 4945 of said Code.

12. The number of directors constituting the entire board of directors of the Corporation shall not be less than fifteen (15) nor more than twenty-five (25). Subject to such limitation, the number shall be fixed by the bylaws of the Corporation pursuant to Section 702 of the Not-for-Profit Corporation Law. The names and addresses of the initial directors are:

<u>Name</u>	<u>Address</u>
Fred Tanneberger	4829 Birge Road Burdett, NY 14818
Ben Saks, D.O.	3669 Rose Lane Burdett, NY 14818
Rick Weakland	4375 Merrill Road Burdett, NY 14818
Suzanne Blowers	PO Box 416 Montour Falls, NY 14865
Kyle Tuttle	3167 Abrams Road Watkins Glen, NY 14891
Larry Baum	101 Maplewood Road Ithaca, NY 14850
Greg Hartz	49 Blackchin Boulevard Ithaca, NY 14850
Jean McPheeters	276 Bailor Road PO Box 93 Brooktondale, NY 14817
James Brown	684 Remington Road Ithaca, NY 14850
Noel Desch	132 Updike Road Ithaca, NY 14850

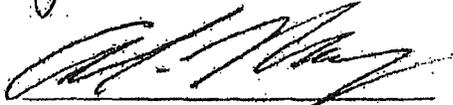
Tom LiVigne	33 Grandview Drive Ithaca, NY 14850
John Neuman	1077 Taughannock Boulevard Ithaca, NY 14850
Gary Ferguson	1485 Meeklenburg Road Ithaca, NY 14850
Paula Younger	7 John Street Eastern Heights Ithaca, NY 14850
Sami Husseini, M.D.	28 Wedgewood Drive Ithaca, NY 14850
Pater Bardaglio	9748 Arden Road Trumansburg, NY 14886
John Rudd	22 Rosina Drive Ithaca, NY 14850

13. The office of the Corporation is to be located in the County of Tompkins, State of New York.

14. The Secretary of State is hereby designated as the agent of the Corporation upon whom process against it may be served, and the post office address to which the Secretary of State shall mail a copy of any process against the corporation that may be served upon him is: President and Chief Executive Officer, Cayuga Health System, Inc., 101 Dates Drive, Ithaca, New York 14850.

IN WITNESS WHEREOF, the subscriber has signed this Certificate of Incorporation this  
13<sup>th</sup> day of June, 2014.

  
\_\_\_\_\_  
John B. Rudd, Incorporator  
101 Dates Drive  
Ithaca, NY 14850

  
\_\_\_\_\_  
Andrew Manzer, Incorporator  
220 Steuben Street  
Montour Falls, NY 14865



State of New York  
Andrew Cuomo  
Governor



Office of Mental Health  
44 Holland Avenue  
Albany, New York 12229  
www.omh.ny.gov

September 9, 2014

John Rudd  
President and CEO  
Cayuga Health System, Inc.  
101 Dates Drive  
Ithaca, NY 14850-1383

Re: Prior Approval Review (PAR) Application  
Project #: CON # ED 141168  
Cayuga Medical Center at Ithaca Psychiatric Unit  
OC #: 7247020  
Application to: Change sponsor of a psychiatric inpatient unit of a general hospital

Dear Mr. Rudd:

The New York State Office of Mental Health is issuing final approval of the above-referenced PAR application to change the sponsor of the Cayuga Medical Center at Ithaca Psychiatric Unit.

The PAR application was reviewed in accordance with Sections 31.22 and 31.23 of the Mental Hygiene Law and Parts 551 and 580 of Title 14 of the Codes, Rules and Regulations of the State of New York (NYCRR).

An Operating Certificate in the Hospitals for the Mentally Ill Class is issued to Cayuga Health System, Inc. and Cayuga Medical Center at Ithaca, Inc. in accordance with Article 31 of the Mental Hygiene Law and Title 14, Part 580 of the Codes, Rules and Regulations of the State of New York (NYCRR). This certification, effective on September 9, 2014 and renewable on November 30, 2015, authorizes the operation of a psychiatric inpatient unit of a general hospital program as follows:

Program:	Cayuga Medical Center at Ithaca Psychiatric Unit
Address:	101 Dates Drive Ithaca, NY 14850
Certificate #:	7247020
Capacity:	Twenty six (26) beds

In accordance with 14 NYCRR 580.4(d) the operating certificate shall be framed and displayed in a conspicuous place, readily accessible to the public. In accordance with 14 NYCRR 580.4(e), your acknowledgment of the receipt of the enclosed certificate and return of the previously issued operating certificate to the above address are requested.

By copy of this letter, we are notifying the NYS Department of Health of our approval.

An addendum to the Operating Certificate is enclosed. As a condition of approval, you must submit a response to this office and the Western New York Field Office, 737 Delaware Avenue, Suite 200, Buffalo, NY 14209.



If you have any questions regarding this approval, please contact Rudy Arias at (518) 474-5570.

Sincerely,



Keith J. McCarthy  
Director

Bureau of Inspection and Certification

KJM:RAA  
Enclosures

cc: Susan Romanczuk Ph.D.  
Mary Hart, DOH  
Shella E. Shea, MHS  
Lawrence Austin  
Susan Knapik/File

cc: Christina Doherty-Smith  
Carol Sabatino  
Cathy Grover  
Janet Foster

Concept/247020

New York State  
Office of Mental Health



### Operating Certificate

### Hospitals for the Mentally Ill Class

I do hereby certify that pursuant to authority conferred by law this operating certificate has been issued on **September 9, 2014**

to: Cayuga Health System/ Cayuga Medical Center at Ithaca, Inc.

to operate a: Psychiatric Inpatient Unit of a General Hospital

to be known as: Cayuga Medical Center at Ithaca Psychiatric Unit

located at: 101 Dates Drive  
Ithaca, NY 14850

in accordance with the rules and regulations made and established by the Commissioner as the statute provides.

Authorized by this operating certificate:

\*\*\*\*\*

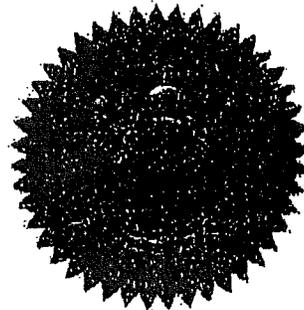
Inpatient Treatment Program for Adolescents & Adults  
with a certified capacity of Twenty-six (26) beds:  
Adult Unit – Twenty (20)  
Adolescent Unit – Six (6)

\*\*\*\*\*

In witness whereof, I have hereunto set my hand on September 9, 2014

  
\_\_\_\_\_  
Keith J. McCarthy, Director  
Bureau of Inspection and Certification

Renewal Date: November 30, 2015  
Operating Certificate Number: 7247020



**Addendum to Operating Certificate**  
**CON # HD 141168**  
**Cayuga Medical Center at Ithaca Psychiatric Unit**  
**7247020**

Please respond to the following:

1. Upon the filing of the documents of incorporation for Cayuga Health System, Inc. approved by the New York State Department of Health, please submit a copy of the incorporation documents and filing receipt to this office. Please also note that should there be a need for the sponsor and/or facilities to operate OMH licensed outpatient programs, the documents of incorporation, as currently drafted, would need to be amended to include the following language under its purposes:

"To operate outpatient programs for the mentally disabled pursuant to Article 31 of the Mental Hygiene Law, subject to the issuance of an operating certificate by the Office of Mental Health. The Corporation may not establish any facility or program without first obtaining such operating certificate."

# PHHPC

## ***PUBLIC HEALTH AND HEALTH PLANNING COUNCIL***

Empire State Plaza, Corning Tower, Room 1805  
Albany, New York 12237

(518) 402-0964  
PHHPC@health.state.ny.us

September 15, 2014

Liebe Meier Swain  
Strategic Planning Manager  
Cayuga Medical Center at Ithaca  
101 Dates Drive  
Ithaca, New York 14850

Re: Application No. 141168 E Cayuga Health System (Tompkins County)

Dear Mr. Meier-Swain:

I HEREBY CERTIFY THAT AFTER INQUIRY and investigation, the application of Cayuga Health System is APPROVED. The Public Health and Health Planning Council considered this application at its meeting of August 7, 2014. You are expected to comply with the conditions listed on the August 14, 2014 letter from Keith W. Servis.

Public Health and Health Planning Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.

To complete the requirements for certification approval, please contact the Operating Certificate Unit, Bureau of Project Management, Empire State Plaza, Corning Tower, Room 1842, Albany, New York, 12237 or (518) 402-0911, within 30 days of receipt of this letter.

Certificate of Need staff are interested in your experience with the CON process for this project. Please take a short survey to let us know how we are doing. Thank you.

The link to the survey is below:

<https://www.surveymonkey.com/s/9Y6258P>

Sincerely,

*Colleen M. Leonard*

Colleen M. Leonard  
Executive Secretary

/cl

CERTIFICATE OF RESERVATION

=====

ENTITY NAME: CAYUGA HEALTH SYSTEM, INC.

DOCUMENT TYPE: RESERVATION (NEW) (DOM. NFP)

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FILED:07/29/2014 DURATION:09/29/2014 CASH#:140729000680 FILM #:140729000638

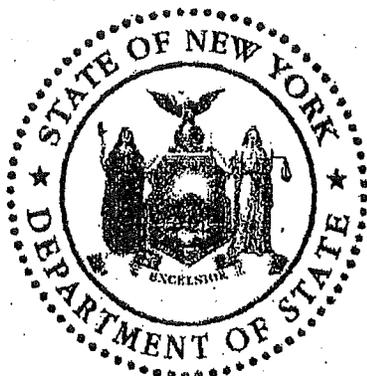
FILER:

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CARLA PENAZEK  
HARRIS BEACH PLLC  
99 GARNSEY ROAD  
PITTSFORD, NY 14534

ADDRESS FOR PROCESS:  
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REGISTERED AGENT:  
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\*\* SUBMIT RECEIPT WHEN FILING CERTIFICATE \*\*

APPLICANT NAME : CARLA PENAZEK

=====

SERVICE COMPANY: LIBERTY CORPORATE SERVICES, INC. - AL

SERVICE CODE: AL

FEES 35.00

PAYMENTS 35.00

FILING 10.00

CASH 0.00

TAX 0.00

CHECK 0.00

CERT 0.00

CHARGE 0.00

COPIES 0.00

DRAWDOWN 35.00

HANDLING 25.00

OPAL 0.00

REFUND 0.00

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54630

DOS-1025 (04/2007)

710

CERTIFICATE OF INCORPORATION  
OF  
CAYUGA HEALTH SYSTEM, INC.

Under Section 402 of the Not-for-Profit Corporation Law

FILED

2014 SEP 22 PM 4:46

**LCS  
DRAWDOWN - #AL**

ICC  
STATE OF NEW YORK  
DEPARTMENT OF STATE  
FILED SEP 22 2014  
TAXS \_\_\_\_\_  
BY: MMO

HARRIS BEACH PLLC  
99 Garnsey Road  
Pittsford, New York 14534

Customer Ref.# 55549

770

Facility Id. 977  
Certificate No. 5401001H

State of New York  
Department of Health  
Office of Primary Care and Health Systems Management

Certified Beds - Total	212
Coronary Care	8
Intensive Care	8
Maternity	20
Medical / Surgical	127
Neonatal Intensive Care	8
Physical Medicine and Rehabilitation	15
Psychiatric	26

**OPERATING CERTIFICATE**  
Hospital

Effective Date: 01/06/2017  
Expiration Date: NONE

Cayuga Medical Center at Ithaca  
101 Dates Drive  
Ithaca, New York 14850

Operator: Cayuga Medical Center at Ithaca, Inc  
Co-Operator: Cayuga Health System, Inc.  
Operator Class: Voluntary Not for Profit Corporation

Has been granted this Operating Certificate pursuant to Article 28 of the Public Health Law for the service(s) specified.

Ambulance	Ambulatory Surgery - Multi Specialty	Audiology O/P	Cardiac Catheterization - Adult Diagnostic	Cardiac Catheterization - Electrophysiology (EP)
Cardiac Catheterization - Percutaneous Coronary Intervention (PCI)	Certified Mental Health Services O/P	Clinical Laboratory Service	Coronary Care	Dental O/P
Emergency Department	Intensive Care	Level II Perinatal Care	Linear Accelerator	Lithotripsy
Maternity	Medical Services - Other Medical Specialties	Medical Services - Primary Care	Medical Social Services	Medical/Surgical
Neonatal Intensive Care	Nuclear Medicine - Diagnostic	Physical Medical Rehabilitation	Psychiatric	Radiology - Diagnostic
Radiology-Therapeutic	Renal Dialysis - Acute	Respiratory Care	Stroke Center	Swing Bed Program
Therapy - Occupational O/P	Therapy - Physical O/P	Therapy - Speech Language Pathology	Therapy - Vocational Rehabilitation O/P	

**Other Authorized Locations**

**Hospital Extension Clinic**

Cayuga Endoscopy Center  
2435 N. Triphammer Road  
Ithaca, New York 14850

Cayuga Medical Center Imaging Services  
16 Brentwood Drive Suite B  
Ithaca, New York 14850

Cayuga Medical Center Physical Therapy  
10 Brentwood Drive  
Ithaca, New York 14850

Convenient Care Center  
10 Arrowwood Drive  
Ithaca, New York 14850

Cortland Convenient Care  
1129 Commons Ave  
Cortland, New York 13045

Island Health Center  
310 Taughhamock Blvd  
Ithaca, New York 14850

*Keith W. Lewis*

20170109 Deputy Director Office of Primary Care and Health Systems Management

This certificate must be conspicuously displayed on the premises.

*Howard Zucker M.D.*

Commissioner

Facility Id.  
Certificate No.

7670  
5401001H

State of New York  
Department of Health  
Office of Primary Care and Health Systems Management

OPERATING CERTIFICATE

Hospital Extension Clinic

Cortland Convenient Care

1129 Commons Ave

Cortland, New York 13045

Operator: Cayuga Medical Center at Ithaca, Inc  
Co-Operator: Cayuga Health System, Inc.  
Operator Class: Voluntary Not for Profit Corporation

Effective Date:  
Expiration Date:

06/01/2015  
NONE

It has been granted this Operating Certificate pursuant to Article 28 of the Public Health Law to operate an Extension Clinic at the above site for the service(s) specified.

Clinical Laboratory Service O/P

Medical Services - Other Medical Specialties Medical Services - Primary Care

*Keith W. Lewis*

20150910

Deputy Director Office of Primary Care and  
Health Systems Management

This certificate must be conspicuously displayed on the premises.

*Howard Zucker M.D.*

Commissioner

Facility Id.  
Certificate No.

4333  
5401001H

State of New York  
Department of Health  
Office of Primary Care and Health Systems Management

OPERATING CERTIFICATE

Effective Date: 06/01/2015  
Expiration Date: NONE

Hospital Extension Clinic

Convenient Care Center

10 Arrowwood Drive  
Ithaca, New York 14850

Operator: Cayuga Medical Center at Ithaca, Inc  
Co-Operator: Cayuga Health System, Inc.  
Operator Class: Voluntary Not for Profit Corporation

Has been granted this Operating Certificate pursuant to Article 28 of the Public Health Law to operate an Extension Clinic at the above site for the service(s) specified.

Ambulatory Surgery - Multi Speciality

Clinical Laboratory Service O/P

Lithotripsy O/P

Medical Services - Other Medical  
Specialties

Medical Services - Primary Care

Therapy - Occupational O/P

Therapy - Physical O/P

Therapy - Respiratory O/P

*Keith W. Lewis*

20150910

Deputy Director Office of Primary Care and  
Health Systems Management

This certificate must be conspicuously displayed on the premises.

*Howard Zucker M.D.*

Commissioner

Facility Id.  
Certificate No.

9023  
5401001H

State of New York  
Department of Health  
Office of Primary Care and Health Systems Management

OPERATING CERTIFICATE

Effective Date: 06/01/2015  
Expiration Date: NONE

Hospital Extension Clinic

Island Health Center  
310 Taughhannock Blvd  
Ithaca, New York 14850

Operator: Cayuga Medical Center at Ithaca, Inc  
Co-Operator: Cayuga Health System, Inc.  
Operator Class: Voluntary Not for Profit Corporation

Has been granted this Operating Certificate pursuant to Article 28 of the Public Health Law to operate an Extension Clinic at the above site for the service(s) specified.

Medical Services - Other Medical  
Specialties

Medical Services - Primary Care

Therapy - Physical O/P

*Keith W. Lewis*

20150910 Deputy Director Office of Primary Care and  
Health Systems Management

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*Howard Zucker M.D.*

Commissioner

Facility Id.  
Certificate No.

9063  
5401001H

State of New York  
Department of Health  
Office of Primary Care and Health Systems Management

OPERATING CERTIFICATE

Hospital Extension Clinic

Effective Date: 10/01/2014  
Expiration Date: NONE

Cayuga Medical Center Physical Therapy

10 Brentwood Drive

Ithaca, New York 14850

Operator: Cayuga Medical Center at Ithaca, Inc  
Co-Operator: Cayuga Health System, Inc.  
Operator Class: Voluntary Not for Profit Corporation

Has been granted this Operating Certificate pursuant to Article 28 of the Public Health Law to operate an Extension Clinic at the above site for the service(s) specified.

Medical Services - Primary Care

Therapy - Physical O/P

*Keith W. Lewis*

20150910

Deputy Director Office of Primary Care and  
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*Howard Zucker M.D.*

Commissioner

Facility Id.  
Certificate No.

9777  
5401001H

State of New York  
Department of Health  
Office of Primary Care and Health Systems Management

OPERATING CERTIFICATE

Hospital Extension Clinic

Effective Date: 01/20/2015  
Expiration Date: NONE

Cayuga Medical Center Imaging Services  
16 Brentwood Drive Suite B  
Ithaca, New York 14850

Operator: Cayuga Medical Center at Ithaca, Inc  
Co-Operator: Cayuga Health System, Inc.  
Operator Class: Voluntary Not for Profit Corporation

Has been granted this Operating Certificate pursuant to Article 28 of the Public Health Law to operate an Extension Clinic at the above site for the service(s) specified.

Medical Services - Other Medical  
Specialties

*Keith W. Lewis*

20150910

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Commissioner

Facility Id.  
Certificate No.

9794  
5401001H

State of New York  
Department of Health  
Office of Primary Care and Health Systems Management

OPERATING CERTIFICATE

Hospital Extension Clinic

Cayuga Endoscopy Center  
2435 N. Triphammer Road  
Ithaca, New York 14850

Operator: Cayuga Medical Center at Ithaca, Inc  
Co-Operator: Cayuga Health System, Inc.  
Operator Class: Voluntary Not for Profit Corporation

Effective Date: 04/03/2015  
Expiration Date: NONE

Has been granted this Operating Certificate pursuant to Article 28 of the Public Health Law to operate an Extension Clinic at the above site for the service(s) specified.

Ambulatory Surgery - Single Specialty -  
Gastroenterology

*Keith W. Lewis*

20150910

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Commissioner

Facility Id. 858  
Certificate No. 4823700C

Certified Beds - Total 25  
Special Use 25

State of New York  
Department of Health  
Office of Primary Care and Health Systems Management

OPERATING CERTIFICATE  
Primary Care Hospital - Critical Access Hospital

Effective Date: 06/01/2015  
Expiration Date: NONE

Schuyler Hospital  
220 Steuben Street  
Montour Falls, New York 14865

Operator: Schuyler Hospital, Inc.  
Co-Operator: Cayuga Health System, Inc.  
Operator Class: Voluntary Not for Profit Corporation

Has been granted this Operating Certificate pursuant to Article 28 of the Public Health Law for the service(s) specified.

Ambulatory Surgery - Multi Specialty	Audiology O/P	Clinic Part Time Services	Dental O/P	Emergency Department
Medical Services - Other Medical Specialties	Medical Services - Primary Care	Medical Social Services	Podiatry O/P	Swing Bed Program
Therapy - Occupational O/P	Therapy - Physical O/P	Therapy - Speech Language Pathology O/P		

Other Authorized Locations

Primary Care Hospital - Critical Access Hospital Extension Clinic

Montour Falls Extension Clinic 401 West Main Street Montour Falls, New York 14865	Primary Care Extension Clinic 2138 West Seneca Street Ovid, New York 14521	September Hill Birth Center 250 Steuben St Montour Falls, New York 14865
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*Keith W. Lewis*

20150910 Deputy Director Office of Primary Care and Health Systems Management

This certificate must be conspicuously displayed on the premises.

*Howard Zucker M.D.*

Commissioner