



**Project # 232204-E**  
**St. Peter's Ambulatory Surgery Center, LLC d/b/a St. Peter's  
Surgery And Endoscopy Center**

**Program:** Diagnostic and Treatment Center    **County:** Albany  
**Purpose:** Establishment    **Acknowledged:** December 5, 2023

**Executive Summary**

**Description**

St. Peter's Ambulatory Surgery Center, LLC d/b/a St. Peter's Surgery & Endoscopy Center (St. Peter's or the Center), an existing multi-specialty freestanding ambulatory surgery center (FASC) at 1375 Washington Avenue, Albany (Albany County), requests approval to transfer 84.57% ownership interest in a member LLC from five (5) withdrawing members and three (3) existing members to sixteen (16) new members of that LLC. The FASC is a joint venture between AGC Associates, LLC (AGC), which is comprised of local physicians and St. Peter's Hospital. The direct membership interest in the Center, which is held by St. Peter's Health (50%) and AGC (50%), has not changed since the Center was established.

Since the Center began operations more than 20 years ago, several members have joined and withdrawn from AGC. The Center did not notify the Department and seek prior approval for those indirect ownership changes. The Center assures the Department that it had no intent to ignore the Public Health Law, and when they discovered the issue last year, this application was prepared and submitted. The applicant confirmed that the members of the Center simply believed that because the percentages of the direct members were not changing (i.e., the physician member entity and the St. Peter's entity always remained at 50% each), they did not have to give notice when the membership composition within the physician member entity changed.

Therefore, St. Peter's is seeking approval of 1) certain historical ownership changes that have occurred within AGC over the last 20 years and 2) to add two (2) new physician members (Shai Posner, M.D. and Xinjun Cindy Zhu, M.D.) to AGC.

The Center will continue to provide surgical services in Gastroenterology, Plastics, Otolaryngology, Podiatry, Gynecology, Oral, General, and Colon/Rectal surgery. There will be no change to the services or operating certificate as a result of this application.

Samuel Feldman, M.D., FASC serves as the Medical Director of the Center.

OPCHSM Recommendation  
Contingent 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 the two (2) new members' membership interest will be met with a promissory note of \$1,777,542.

Budget:	Year One (2025)	Year Three (2027)
Revenues	\$29,089,629	\$29,089,629
Expenses	<u>11,172,173</u>	<u>11,245,998</u>
Net Income	\$17,917,456	\$17,843,631

### Health Equity Impact Assessment

This project does not meet the requirements for a Health Equity Impact Assessment under Section 2802-B of the PHL.

## 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 promissory note that is acceptable to the Department of Health. [BFA]

**Approval conditional upon:**

1. This project must be completed by **one year from the date of the recommendation 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

June 20, 2024

## Program Analysis

### Project Description

St. Peter's Ambulatory Surgery Center, LLC d/b/a St. Peter's Surgery & Endoscopy Center (St. Peter's or the Center) is an existing multi-specialty freestanding ambulatory surgery center (FASC) at 1375 Washington Avenue, Albany, New York (Albany County). Through this application, they are seeking to transfer 84.57% ownership interest in a member LLC from five (5) withdrawing members and three (3) existing members to sixteen (16) new members of that LLC. St. Peter's Surgery and Endoscopy Center is also seeking approval of indirect ownership membership changes that have occurred within AGC Associates, LLC (AGC) over the last twenty (20) years and to add two (2) new physician members - Shai Posner, M.D. and Xinjun Cindy Zhu, M.D. to AGC.

St. Peter's consists of a joint venture between AGC Associates, LLC (which is comprised of local physicians) and St. Peter's Hospital (SPH). The direct membership interest in the Center, which is held by SPH (50%) and AGC (50%), has not changed since the Center was established.

Upon approval, AGC will have nineteen (19) members (16 new members along with 3 prior approved members): Jonathan Barsa, M.D.; Mandeep Bhamra, M.D.; John Buhac, M.D.; Joseph Choma, M.D.; Richard Clift, M.D.; Carla Fernando-Gilday, M.D.; Jeffrey Gerson, M.D.; Robert Gianotti, M.D.; Bora Gumustop, M.D.; Sajd Hussain, M.D.; Reena Patel, M.D.; Joseph Polito, M.D.; Shai Posner, M.D.; James V. Puleo, M.D.; Sean Sheehan, M.D.; Domenico Viterbo, M.D.; Neil Volk, M.D.; Matthew Warndorf, M.D. and Xinjun Cindy Zhu, M.D.

Dr. Buhac and Dr. Fernando-Gilday will each have a 4.79% interest in AGC and a 2.39% indirect interest in the Center. The other seventeen (17) members will have a 5.32% interest in AGC and a 2.66% indirect interest in the Center.

Decisions concerning business affairs and operations of the Center are made by its members acting through representatives appointed to the management committee.

No changes in services are proposed for the Center which is currently certified as a multi-specialty freestanding ambulatory surgical center (FASC) specializing in Gastroenterology; Plastics; Otolaryngology; Podiatry; Gynecological; Oral; General and Colon/Rectal surgery.

The Center's hours of operation are Monday - Friday from 7:00 a.m. to 7:00 p.m.

There are no programmatic changes as a result of this request, and staffing will remain the same at 58FTEs with no change expected.

Samuel Feldman, M.D, serves as the current Medical Director of the Center.

The Center has a transfer and affiliation agreement with St. Peter's Hospital, which is located 3.2 miles and nine (9) minutes travel time from the Center.

The table details the proposed direct and indirect membership interests:

<b>St. Peter's Ambulatory Surgery Center, LLC d/b/a St. Peter's Surgery And Endoscopy Center</b>			
AGC Associates, LLC	50%		
St. Peter's Hospital	50%		
<b>TOTAL</b>	100%		
<b>Proposed Membership in AGC Associates, LLC</b>	<b>Membership Shares</b>	<b>Direct Membership % in AGC</b>	<b>Indirect Membership % SPESC</b>
Richard G. Clift, M.D.	10	5.32%	2.66%
Carla F. Fernando-Gilday, M.D.	9	4.79%	2.39%
Joseph Polito, M.D.	10	5.32%	2.66%
Jonathan Barsa, M.D.	10	5.32%	2.66%
Mandeep Bhamra, M.D.	10	5.32%	2.66%
John Buhac, M.D.	9	4.79%	2.39%
Joseph Choma, M.D.	10	5.32%	2.66%
Jeffery Gerson, M.D.	10	5.32%	2.66%
Robert Gianotti, M.D.	10	5.32%	2.66%
Bora Gumustop, M.D.	10	5.32%	2.66%
Sajd, Hussain, M.D.	10	5.32%	2.66%
Reena Patel, M.D.	10	5.32%	2.66%
Sai Posner, M.D.	10	5.32%	2.66%
James V. Puleo II, M.D.	10	5.32%	2.66%
Sean Sheehan, M.D.	10	5.32%	2.66%
Domenico Viterbo, M.D.	10	5.32%	2.66%
Neil Volk, M.d.	10	5.32%	2.66%
Matthew Warndorf, M.D.	10	5.32%	2.66%
Xinjun, M.D.	10	5.32%	2.66%
<b>TOTAL</b>	<b>188</b>	<b>100.00%</b>	<b>50.00%</b>

#### Character and Competence

Drs. Fiorenz, Notis, Orris, Samuels, and Sax were five (5) of the original eight (8) members of AGC who have withdrawn from membership since approval of project #992612-B. The three (3) remaining doctors, (Clift, Fernando-Gilday, and Polito) were approved in project #992612-B and remain members of AGC today.

#### Proposed Members:

**Dr. Jonathan Barsa** is currently employed by Albany Gastroenterology Consultants. In 2011, Dr. Barsa received a degree from Columbia University.

**Dr. Mandeep Barma** is an attending physician at Albany Gastroenterology Consultants; and received a formal education at Teerth Rural Medical College in India. In 2015, Dr. Barma completed a residency at Albany Medical Center.

**Dr. Jonathan Buhac** has been an attending physician at Albany Gastroenterology Consultants, PLLC since 2004. In 1991, Dr. Buhac completed accreditations at the Tufts University School of Medicine and finished a residency in 1994 at the New England Deaconess Hospital in Massachusetts.

**Dr. Joseph Choma** is currently employed by Albany Gastroenterology Consultants, PLLC as an attending physician. In 2002, Dr. Choma completed an education at the University of Vermont College of Medicine and completed a residency in 2005 at the Tufts New England Medical Center.

**Dr. Jeffrey Gerson** is a physician at Albany Gastroenterology Consultants, PLLC. In 1990, Dr. Gerson graduated from SUNY Health Science Center and completed a residence at Allegheny General Hospital in 1993.

**Dr. Robert Gianotti** is employed at Albany Gastroenterology Consultants, PLLC. In 2008, Dr. Gianotti graduated from Weill Cornell Medical College and completed a residency at Beth Israel Deaconess Medical Center in 2016.

**Dr. Bora Gumustop** is currently employed at Albany Gastroenterology Consultants since 2001. Current registration in NY through 2/28/2025. Dr. Gumustop graduated with a medical degree from Hacettepe University in Turkey in 1992. Residency was completed at Mary Imogene Bassett Hospital in Cooperstown in 1997 followed by a fellowship in gastroenterology and ERCP completed both in 2000.

Legal disclosure: Schenectady Supreme Court Edward Wildzunas and Karen Zalewski-Wildzunas v. Bora Gumustop, M.D., Albany Gastroenterology Consultants, PLLC, Albany Med Health System, Albany Medical Center Hospital, John Does 1-10 for medical malpractice allegation against multiple parties. Ongoing.

**Dr. Sajid Hussain** has been administering healthcare to his patients at Albany Gastroenterology Consultants, PLLC since 2017. In 2002, Dr. Hussain completed an education in Romania at the University of Oradea and a residency was completed at St. Luke's and Roosevelt Hospital in New York in 2008.

**Dr. Reena Patel** received an education in the nation of Grenada in the Caribbean at St. Georges University School of Medicine in 2010. Currently, Dr. Patel has been practicing at Albany Gastroenterology Consultants, PLLC, since 2020.

**Dr. Shai Posner** completed their education in 2015 at the Icahn School of Medicine at Mount Sinai in New York City and has been an attending physician at Albany Gastroenterology Consultants, PLLC, since 2021.

**Dr. James Puleo** has been a doctor at Albany Gastroenterology Consultants, PLLC, since 2020. In 1994, Dr. Puleo completed a residency at Albany Medical Center after receiving an education at Albany Medical College in 1991.

**Dr. Sean Sheehan** is presently a practicing physician at Albany Gastroenterology Consultants, PLLC, since 2004 as well as Albany Memorial Hospital, St. Peter's Hospital, and St. Peter's Surgery and Endoscopy Center. Dr. Sheehan received medical credentials at SUNY Syracuse College of Medicine in 1998 and completed a residency at Yale New Haven Hospital in 2001.

**Dr. Domenico Viterbo** is a physician employed at Albany Gastroenterology Consultants, PLLC, since 2018. In 2012, Dr. Viterbo completed a residency at Yale New Haven Hospital after receiving an education at SUNY Downstate College of Medicine in 2009.

**Dr. Neil Volk** has been employed at Albany Gastroenterology Consultants, PLLC, since 2019. In 2012, Dr. Volk completed an education at SUNY Stony Brook University School of Medicine. Dr. Volk completed a residency with significant recognition as the Chief Resident at Hitchcock Medical Center in 2016.

**Dr. Matthew Warndorf** is a medical doctor licensed in New York and Vermont and is currently an attending physician at Albany Gastroenterology Consultants, PLLC, since 2016. Dr. Warndorf has privileges at St. Peter's Hospital, Albany Medical Center, Southwest Vermont Medical Center, and Ellis Hospital.

**Dr. Xinjun Zhu** has been a doctor at Albany Gastroenterology Consultants, PLLC, since 2022 and is licensed in both New York and Florida with both licenses up for renewal in 2026. Dr. Zhu disclosed that one (1) case was disposed in the State of Florida filed in 2020. Charges consisted of a recordkeeping violation and a violation of the standard of care in 2023 which resulted in the death of a patient due to metastasis of the colon. Dr. Zhu had to concede to a restitution of \$5,000 fine, payment of costs, and completion of continuing medical reeducation on medical recordkeeping, small bowel obstruction, and risk management. New York State Department of Health has been made aware of this violation and has issued Dr. Zhu a New York State BMPC Order (No. 24-015) that has been in effect since January 24, 2024, and can practice without any hindrances despite this infraction.

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 applicants' 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.

#### 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

## Operating Budget

The applicant has submitted an operating budget, in 2024 dollars, for the current year (2022), year one after ownership change, and year three after ownership change, summarized below:

	<u>Current</u> <u>(2022)</u>		<u>Year One</u> <u>(2025)</u>		<u>Year Three</u> <u>(2027)</u>	
	<u>Per</u> <u>Procedure</u>	<u>Total</u>	<u>Per</u> <u>Procedure</u>	<u>Total</u>	<u>Per</u> <u>Procedure</u>	<u>Total</u>
<b>Revenues:</b>						
<b>Commercial</b>						
FFS	\$1,880	\$197,445	\$1,662	\$199,388	\$1,662	\$199,388
Commercial MC	\$2,029	\$23,058,171	\$2,043	\$23,285,089	\$2,043	\$23,285,089
Medicare FFS	\$518	\$1,507,316	\$516	\$1,522,149	\$516	\$1,522,149
Medicare MC	\$528	\$1,593,684	\$531	\$1,609,368	\$531	\$1,609,368
Medicaid FFS	\$556	\$13,895	\$468	\$14,032	\$468	\$14,032
Medicaid MC	\$649	\$1,144,920	\$651	\$1,156,187	\$651	\$1,156,187
Private Pay	\$2,077	\$1,260,595	\$2,122	\$1,273,001	\$2,122	\$1,273,001
Other	\$615	<u>\$30,119</u>	\$507	<u>\$30,415</u>	\$507	<u>\$30,415</u>
<b>Total Revenues</b>		<b>\$28,806,145</b>		<b>\$29,089,629</b>		<b>\$29,089,629</b>
<b>Expenses:</b>						
Operating	\$467	\$9,287,967	\$497	\$9,943,845	\$498	\$9,956,774
Capital	<u>\$54</u>	<u>\$1,081,676</u>	<u>\$61</u>	<u>\$1,228,328</u>	<u>\$64</u>	<u>\$1,289,224</u>
<b>Total Expenses</b>	<b>\$522</b>	<b>\$10,369,643</b>	<b>\$559</b>	<b>\$11,172,173</b>	<b>\$562</b>	<b>\$11,245,998</b>
<b>Net Income</b>		<b>\$18,436,502</b>		<b>\$17,917,456</b>		<b>\$17,843,631</b>
<b>Utilization:(Proc)</b>		<b>19,868</b>		<b>20,000</b>		<b>20,000</b>

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

- Expense, revenue, and utilization assumptions are based on the Center's historical experience.

Utilization broken by payor source for the current year, first year and the third year after the change in ownership interests:

	<u>Current Year</u> <u>(2022)</u>	<u>Year One</u> <u>(2025)</u>	<u>Year Three</u> <u>(2027)</u>
Commercial FFS	0.53%	0.60%	0.60%
Commercial MC	57.19%	56.98%	56.98%
Medicare FFS	14.66%	14.75%	14.75%
Medicare MC	15.21%	15.15%	15.15%
Medicaid FFS	0.13%	0.15%	0.15%
Medicaid MC	8.87%	8.88%	8.88%
Private Pay	3.06%	3.00%	3.00%
Charity Care	0.12%	0.20%	0.20%
Other	<u>0.25%</u>	<u>0.30%</u>	<u>0.30%</u>
<b>Total</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>

### Capability and Feasibility

The purchase price for the two (2) new members' membership interest, which amounts to \$1,777,542, will be funded with a promissory note. This note will be issued at an interest rate of 1-month Federal Home Loan Bank rate plus 225 basis points (7.77% as of 5/9/2024) for a six-year term. Notably, a portion of Dr. Posner's and Dr. Zhu's annual membership interest distribution will be used to fund the promissory note they had with AGC.

Working capital requirements are estimated at \$1,874,333, equivalent to two months of third-year expenses. The applicant will provide equity from operations to meet the working capital requirement. Presented as BFA Attachment E are the March 31, 2024, Internal Financial Statements of St. Peter's Ambulatory Surgery Center, LLC, indicating sufficient resources to meet the working capital requirement. The submitted budget indicates a net income of \$17,917,456 and \$17,843,631 during Year One and Year Three, respectively. Revenues are based on current reimbursement methodologies for ambulatory surgery services. The submitted budget appears reasonable.

Presented as BFA Attachment D are the 2022 Certified Financial Statements and the 2023 Internal Financial Statements of St. Peter's Ambulatory Surgery Center, LLC. As shown, the Center had an average positive working capital position and an average positive net asset position during the period. Also, the Center generated an average net income of \$18,885,096 during the period shown.

Presented as BFA Attachment E are the March 31, 2024, Internal Financial Statements of St. Peter's Ambulatory Surgery Center, LLC. The Center had positive working capital and net asset positions through March 31, 2024. The Center achieved a net income of \$6,204,367 through March 31, 2024.

### Conclusion

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

## Attachments

BFA Attachment A	Original Ownership of St. Peters Ambulatory Surgery Center
BFA Attachment B	Current Ownership of St. Peter's Ambulatory Surgery Center
BFA Attachment C	Proposed Ownership of St. Peter's Ambulatory Surgery Center
BFA Attachment D	Financial Summary - 2022 Certified Financial Statements and the 2023 Internal Financial Statements of St. Peter's Ambulatory Surgery Center.
BFA Attachment E	Financial Summary- March 31, 2024, Internal Financial Statements of St. Peter's Ambulatory Surgery Center.