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PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
ESTABLISHMENT AND PROJECT REVIEW COMMITTEE MEETING
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TRANSCRIPT

Mr. Robinson Good morning, everyone. Welcome to today's meeting of the Establishment and Project Review Committee. My name is Peter Robinson. I want to welcome the members of the committee, participants, observers. I also want to acknowledge, so I don't do it for each of the applications that we've received numerous communications from interested parties around individual applications just want to assure the public that those have been read and incorporated into the thinking that the committee does as it makes it evaluates each of these applications.

Mr. Robinson A little bit of housekeeping. We need to remind council members, staff and the audience that this meeting is subject to the Open Meeting Law and is broadcast over the internet. The webcast are accessed at the Department of Health's website NYHealth.Gov. The On Demand webcast will be available no later than 7 days after the meeting for a minimum of 30 days, and then a copy will be retained in the department for four months. A few suggestions. There is synchronized captioning that takes place, so it's important people don't talk over each other. The first time you speak, please state your name and briefly identify yourself as a council member or a member of the staff and that will help the broadcasting company to record the meeting properly. Also a note that I'm sure you've been reminded of every time we meet that the mics are hot. They can pick up sounds and conversations, so be a little bit discreet with regard to sidebar conversations, also for our audience, there is a form that needs to be filled out before you enter the meeting room, which records your attendance at these meetings. It is required by the Joint Commission on Public Ethics in accordance with Executive Law Section 166. Also, the form is posted on the department's website, which I referenced earlier under a Certificate of Need. You can fill out the form prior to the council meetings. Thank you all for your cooperation in all of this.

Mr. Robinson Calling our first application 2 0 2 0 8 6 B, Coit House LLC in Erie County. This is to establish and construct a midwifery birth center to be located at 414 Virginia Street in Buffalo. The department is recommending disapproval for this application. I'm going to call for a motion for disapproval.

Mr. Robinson Dr. Berliner.

Mr. Robinson A second?

Mr. Robinson Mr. La Rue.

Mr. Robinson To the department.

Ms. Glock Thank you.

Ms. Glock This is Shelly Glock from the department. The Coit House is an existing LLC. This application is requesting approval for the establishment and construction of an Article 28 Midwifery Birth Center at 414 Virginia Street in Buffalo. 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, also known as Fika Midwifery. This is a private home birth practice currently operating at the proposed address. This application is seeking approval to license that currently operating private practice as an Article 28 Licensed Midwife Birthing Center. I'd like to begin by providing some brief legislative background. In 2019, the Department added new Title 10 regulations at Part 795 to govern the establishment, construction and the operation of midwifery birth centers. These regulations were drafted in consultation with general hospital associations and midwifery advocacy groups and subsequently adopted by the council. In 2021, the public health law was amended to add new criteria regarding the department's Certificate of Need process for review of midwifery birth centers, including setting forth new accreditation options designed to help expedite and streamline the department's approval process. The intent of these amendments were to ensure that the department's regulations regarding establishment and operation of midwifery birth centers were not inconsistent with the Midwifery Practice Act or the standards of national accrediting bodies specializing in midwifery birth centers. This amendment would have allowed accreditation as a path to licensure, but when this bill was signed on December 31st, 2021, the approval letter acknowledged the understanding of all relevant parties during the negotiations that further chapter amendments were necessary and indeed forthcoming. The chapter amendments were delivered to the Governor in early 2022, in February, to be exact, to reflect New York State's foundational requirements for establishment of Article 28 facilities. It included requirements for the Public Health and Health Planning Council approval of midwifery led birth centers. Those requirements include evidence of the capability to fund renovations and construction, life safety and building standards, namely compliance with the National Federal Protection Association 101 Life Safety Code, Facility Guidelines Institute requirements for birth centers and the ADA Standards for Accessible Design and an assessment of the owner's character and competence. These are the same Article 28 establishment requirements that physician led birth centers in small primary care clinics are required to meet for establishment in the ability to receive an Article 28 facility fee for meeting those higher standards. The department is committed to increasing access to midwifery services in New York State as part of an effort to reduce racial disparities and maternal mortality. The department has worked closely with midwifery stakeholders to revise the current regulations to ensure that they meet industry standards and protect the health and safety of pregnant people and their newborns. The Commission for the Accreditation of Birth Centers Accreditation an American Academy of Birth Centre standards largely align with New York State

regulations. The department anticipates these amended regulations will be proposed and open for public comment at an upcoming meeting. The department welcomes applications and will work to process them as expeditiously as possible. In regard to this particular application, the application was acknowledged by the department in October of 2020. There are three significant reasons why it has taken the department some time in conducting a thorough review in order to make a recommendation to the Establishment Project Review Committee. At the time of submission the proposed site showed that the proposed space is not compliant to life safety code and of 101 Facility Guidelines Institute in the Americans with Disabilities Act, as required for Article 28 licensed facilities. The building does not meet NFPA code requirements due to a three story open stair. Nor does it meet FGI due to a lack of handwashing sinks in gynecological exam rooms. There's an ADA compliance issues around the bathroom. As I mentioned, in 2021, there was legislation introduced that would have allowed midwifery birth centers to be licensed as an Article 28 facility based solely on accreditation. As previously stated, this legislation was later necessarily amended, requiring midwife birthing centers to meet Article 28 licensing requirements. The third factor that delayed this application is the fact that in September of 2020, the department received a letter from the Erie County Medical Examiner's Office expressing concern about two baby deaths that occurred due to gross negligence on the part of staff midwives at Fika Midwifery and they informed the department that the case had been referred to the State Education Department's Office of the Professions for Investigation. In response to the Erie County Medical Examiner's letter, the applicant acknowledged that Fika Midwifery was being investigated by the State Education Department Office of Professional Discipline, informed the department that the events occurred in her practice, but stated she was not involved in either of the deaths that occurred and did not have firsthand knowledge of the events because she was on maternity leave when both of those incidents occurred and that the midwives who were involved no longer worked at Fika Midwifery. Additionally, after the department's inquiry about the State Education Department's Office of Professional Discipline Investigation, Mrs. Winkler disclosed being named in two malpractice suits related to the death. The department requested additional information from Ms. Winkler and her counsel about the investigation, but none was provided. As part of the character and competence review, the department requested evidence from the applicant that the practice did root cause analysis to determine what the contributing factors were in these deaths since there were more than one and they occurred in a relatively short period of time from each other. When asked to provide evidence of how these functional events changed Fika Midwifery, courthouse policies and procedures in practice, Ms. Winkler responded that she pursued CABC accreditation. Ms. Winkler did not provide any 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 the documented efforts to ensure safe patient care. She also did not provide any evidence of the CABC, the accrediting bodies review of those events. The department is recommending disapproval based upon the individual background review, which indicates that the proposed member has not met the standard for approval as set forth in Public Health Law 2801 A3B, which states that the standard for approval is based on a substantially consistent high level of care. Title 10 NYCRR 600.2B4 clearly states that

the determination that is substantially consistent high level of care has been rendered shall be made after evaluating the aforementioned information with the following criteria the gravity of any violation, the manner in which the applicant operator exercised supervisory responsibility over the facility operation and the remedial action, if any, taken after the violation was discovered. Based on the department's review, disapproval is recommended.

Mr. Robinson Thank you very much.

Mr. Robinson I am going to momentarily pause the committee meeting to allow Mr. Kraut to convene briefly the full council.

Mr. Robinson Thank you very much.

Mr. Kraut Those members who have questions based on Shelly. You might want to jot them down so you don't forget them. The Commissioner has graciously agreed to come and help us form the quorum. He's up in Albany, as is we now have fourteen members

Mr. Robinson We're returning to the application related to Coit House. You will recall the recent comments by Shelly on the department's assessment of this application. I first want to open it to members of the committee or other members of the council for any questions you have of the department staff. If you do have questions of the applicant, we'll call the applicant up.

Mr. Robinson Anybody either in Albany or here have any questions?

Ms. Monroe Did you call on me?

Mr. Robinson Ann Monroe, you're not on screen yet.

Ms. Monroe Well, I'm here.

Ms. Monroe I have a few comments. I want to address a few of them to Shelly, and then I would like to talk to the applicant as well. First of all, Shelly, how many things have come to the council for disapproval? I've never seen one. I don't need exact numbers.

Ms. Sheltry I can only speak for the time that I've been with the center. We did have an application that came to the council with a recommendation of disapproval based on an open investigation from the AG's Office. It was a nursing home operator. That application was disapproved. The applicant did withdraw that application prior to the full counsel, but that's the only one that I'm aware of.

Ms. Monroe That's what I thought. I'd never seen one that came to the council.

Mr. Kraut Just to clarify that. That happened prior to COVID, where again, open investigation. We were awaiting the facts. The person had the ability to apply to purchase a nursing home in New York. It was an operator who also operated in New Jersey. Subsequently, learned during COVID that operator had thirteen deaths in his nursing home in a very short time span, basically confirming our concerns that led to its demise. We have turned down applicants in the years that I've been here, which is...probably you can't count on one hand, you know, how many we turned down most recently.

Mr. Kraut Typically, the process is when the applicant learns that there's going to be a disapproval vote rather than proceed or and on the basis of that disapproval, they tend to withdraw the application. That's why we see so few of them. The process solves that issue.

Ms. Monroe I probably will ask the applicant why they did not do that. My second question for you, Shelly, is these investigations, have there been findings in any of them or are they all still pending?

Ms. Glock The investigation is still open, but the State Education Department, the department was unable to... The applicant and counsel were unable did not provide the department with any specifics of the investigation. As far as I know, we know it's open.

Ms. Monroe Could you remove your mask when you talk, please? It's hard for me to hear you.

Ms. Glock The investigation is open and pending.

Ms. Monroe They've not been found to have violated any of the... I'll use the generic term rules that the investigation is pursuing. Is that correct?

Ms. Ngwashi Can you hear me?

Ms. Ngwashi It's Marthe Ngwashi. I'm an attorney at the Department of Health.

Ms. Ngwashi Can you hear me?

Ms. Monroe I can hear you.

Ms. Ngwashi The relevance of the situation that we have here, similar to the other scenario where the department recommended disapproval on the project application of the proposed nursing home operator is that the subject of the investigation is on the license of which the project application has been submitted to the department. The department is not in a position to move forward on a project application that is going to rely on a license that is the subject of an active and open investigation.

Ms. Monroe Well, I appreciate that. I can understand that. I'm concerned that when you say no to this and you ask the counsel to support a no based on character and competence, that is a very, very serious charge. It can affect Ms. Winkler for the rest of her career, even if those investigations are found to be not founded. I'm very concerned that we move forward on this application with so much up in the air. Her attorney responded that all of the information requested was provided. I can't judge whether it was or not. But to me, it seems that it is inappropriate to move forward at this time with such investigations pending and not knowing the outcome. If they're found to not have grounds for any pursuit that issue is no longer on the table, and yet we will have denied a birthing center, one of only four in New York State, and the only one that's certified by the commission from becoming more stable. I have serious problems with the idea that we would vote this down rather than postpone it.

Mr. Kraut That's exactly what the first part of your question was that. The applicant had that opportunity to withdraw the application, postpone its consideration, so it wouldn't become public and follow her for the rest of her life. The applicant chose to do that. We have a responsibility based on the facts were presented and we'll talk to the applicant about that to act if we believe an applicant does not meet our criteria for character and competence. I would agree with you. It's a very serious action, but that action was initiated by the applicant, not by the Department of Health, knowing the facts. Therefore, we have a higher authority to protect the public and that is our job in this room.

Ms. Monroe I don't disagree with our responsibility. One of my questions is whether or not we can, as the committee vote to pend this application.

Mr. Robinson We have to act on the application because the applicant has asked for a ruling on it. That's exactly what we're put in the position to have to do.

Ms. Monroe Pending it is not an option.

Mr. Robinson They can always come back. They can always come back in at some later point and file a new application. That's not prohibited to them.

Ms. Monroe Peter, my question was, is it an option for this committee to pend the application?

Mr. Robinson No, not at this point because we have no sense of the timeline for the resolution of the investigation by the Department of Education.

Mr. Robinson Mr. Lawrence.

Mr. Lawrence I think it would be important to hear from the applicant, because I'm assuming that the department advised the applicant of it's recommendation and the applicant made a decision to proceed.

Mr. Robinson Absolutely.

Mr. Robinson Can we hear from the applicant?

Mr. Robinson Absolutely.

Mr. Robinson Can you please introduce yourselves.

Frederick Cohen My name is Frederick B Cohen. I'm an attorney from Buffalo, New York. I represent Maura Winkler, who is a certified nurse midwife. I also represent her in the application of CON 202086 the Coit House.

Frederick Cohen Thank you.

Frederick Cohen The other people introduce themselves.

Maura Winkler I'm Maura Winkler. I'm a certified nurse midwife and the operator of the birth center.

Mr. Robinson Thank you.

Frank Cicero Frank Cicero. I'm a consultant to the applicant.

Mr. Robinson Thank you.

Frederick Cohen As some of you might remember, I was on the State Hospital and Planning council. I actually sat next to Dr. Berliner or near Dr. Berliner for many years. I'm also at this time the Chair of the Medicaid Managed Care Advisory Panel, the panel that oversees the Medicaid program in New York State. I have had a long and I have a concurrent relationship with the Health Department. When I speak today, it's not just on my client side. It's also with a knowledge and understanding of what the Establishment Committee has to do and the council has to do. During my time, I developed an expertise in analyzing Health Department staff reports. I received some grudging appreciation from staff members and council alike who said, when we prepare our presentations, we ask what questions will Cohen ask? I think it culminated one day when I read an excellent staff report, and I said, as I sat out there, I know it says something about me, but I thoroughly enjoyed that report to peals of laughter. I say this because using my expertise I reviewed the staff report. I have to say it was extremely unbalanced. It does not in any way discuss the positive attributes of Maura Winkler. There is no intent to see her in the light of her role in the community as one of the few midwives and at one time the only midwife who did home births. The staff report says that the reason for the recommendation of disapproval is because of character and competence, yet there is no discussion of Maura Winkler's character in the report. It doesn't say she has a criminal record. It doesn't say that she's not a good Mother. Those things would not be true. There's no discussion of her competence. In your packet you have a table of her continuous quality improvement scores, which began when her practice began in 2017, and has been brought up to date. Looking at it, she

has either attended or her practice has attended 547 births. Yes, there were two stillborn births three years ago. There has not been a stillborn birth since then. She will speak to them. The report does not talk at all about her character or her competence. What the report does do is discuss the two stillborn births. The verbiage is taken from a report submitted probably by us at one point thoroughly explaining those two cases from the standpoint of Maura Winkler's attorney who's handling a malpractice case. Again, two stillbirths, Maura's reaction to them and what she did she will tell you. The point we need you to understand. She was not in attendance. She was on maternity leave. Part of the time she wasn't even in the country. The report misleads by not making it clear that Maura was not attending those two births. Another beside the quality improvement scores and I think it's understood that a physician or a provider who has a large number of births or procedures is illustrating their quality, their care and their concern for their patients. The scores show this. The report ignores this. The other thing that the report does not discuss is the fact that the Coit House has been accredited by the Commission for Accreditation of Birth Centers, a nationally recognized accrediting agency for birth centers. In fact, my understanding is it's called CABC is working with the department on the regulations that accompanied the amendment of Article 28 to permit accreditation to be a factor in the approval of birth centers for licensure. That organization, I understand, is working with the department. Obviously, that is a signal, an important factor in understanding the very importance and value of an accredited birth center and an accredited midwife practice. The report doesn't at all inform about the significance of that accreditation. There's an allegation. I'll answer Ms. Monroe's question that Maura Winkler did not disclose the investigations by the Office of Professional Discipline. When this application was originally submitted in August of 2020, there were no investigations. It was only later when that question was added to the form that she immediately answered concerning the investigations.

Maura Winkler I just want to clarify. There were investigations. The question was not asked on the form. They changed the form.

Frederick Cohen To answer Ann Monroe's question, these investigations have been pending since 2019. There hasn't been a hearing scheduled. It's possible they could continue to pend. There have been other investigations. Those seem to have dropped by the wayside without any information that they're no longer being investigated. There's a recent investigation. We've informed the department about that. It's in the file. Who knows when these will ever reach a hearing. The point is the reason Maura Winkler decided to go forward is because there is no way of knowing when and if they'll ever be a hearing. As of this moment, her character and her competence are at a level that should be accepted by this council. There is also a statement that Maura Winkler did not supply requested responses. That's not factual. As of August 19th, 2022, last August, we were informed that the Department of Health had concluded its review of CON 202086. At that time we were not informed of any failure to submit documentation. Usually, a CON process and it's a process is collegial and iterative. The applicant works with the Department of Health representatives to complete an application to complete an acceptable application. In this case you will see and it's in your packet a timeline. It has been twenty-nine months since this application has been filed. It has been halted. It

has been truncated. If you like, I am a believer the process should be neutral and cooperative. This was not so. It took an incredible amount of effort by Maura and those of us who support her. The timeline shows a reluctance on the part of the department to approve and recommend a midwife operate at the birth center. There are two factors I think, that demonstrate this reluctance. When the law was amended to promote midwife operated birth centers in 2016, it took the department three years to promulgate regulations. The law was again amended December 31st, 2021. Regulations were supposed to accompany that. We still don't have regulations.

Mr. Robinson If I can, what I'd like to do and I apologize for interrupting your flow there, but I would actually like to give the members of the committee an opportunity to ask you questions relating to the application and to turn this over to them.

Mr. Robinson I'll open it up.

Mr. Robinson Ms. Monroe, do you want to ask some questions first?

Dr. Bennett I have a question. I have a question for the applicant. Let me preface this by saying that the description that we've read that I've read here sounds like it's almost right out of the bill of particulars of the complaint. I want those who are familiar with the malpractice process to take note of that, because I am very familiar with it. I've been there. I'm also aware of the high malpractice suit rate of delivery and obstetricians and midwives in New York State. It's very high. I'm going to ask you, how many deliveries have you performed in your career?

Maura Winkler I wouldn't be able to give you an exact number, but the majority of this 547 of them were attended by me either as the primary midwife or me as the secondary midwife. I would estimate less than 100 of them were attended by other midwives in the practice.

Dr. Bennett These two deliveries were not attended by you, as has been made clear, correct?

Maura Winkler They weren't.

Dr. Bennett I'm going to guess that they were under your employ and you were sued as you were brought into the suit as a matter of that?

Maura Winkler Yes, that's correct. I was named in the lawsuit for vicarious liability.

Dr. Bennett You're the owner of the LLC. I've been there. I think people need to realize that.

Dr. Bennett Let me ask you another question. Is this your first malpractice suit?

Maura Winkler Yes.

Dr. Bennett You've not been sued before?

Maura Winkler No.

Dr. Bennett How many years you've been practicing?

Maura Winkler A little over five.

Dr. Bennett I practiced for twenty-five years. I was involved in four malpractice suits. I did invasive and non-invasive cardiology. I know how this goes. There are a number of issues with this case, as I read it, where this patient refused several examinations, refused transfer to hospital on the first came. I'm going to point that out to the committee. On the second case, it appears as though the patient was promptly transferred to hospital and there was a stillborn death. I think what you've told me is that these are your first malpractice cases. I want the committee to be aware of the fact that if you're delivering babies in New York State, you're going to be sued. You're going to be sued. Everyone knows that. I'm going to go on the record of saying that because you've been sued twice on cases that you weren't even present at, that I find offensive to attack your character and competency on that basis alone. I find it offensive as a practicing physician in the State of New York, for someone to say that your character is challenged solely, solely on that basis.

Dr. Bennett Thank you.

Mr. Robinson Thank you, Dr. Bennett.

Mr. Robinson Other comments or questions?

Ms. Ngwashi It's Marthe Ngwashi from the Department of Health. Dr. Bennett, I would just like to clarify that character and competence and the determination that the department has made is not going to be based solely on one thing, as is the case here. Yes, the fact that there is an active and open investigation is highly relevant. However, as Ms. Glock stated in her introduction to this project, that is not the sole reason why this project received a recommendation from the department as a disapproval based on character and competence. I'd like to clarify that.

Ms. Ngwashi Thank you.

Dr. Bennett Can I ask a follow up question? What is the other reason? I know there are some things about the building itself, but those seem like correctable things. Aside from the building, what else is there?

Mr. Robinson Dr. Bennett, I think that just as a general observation and I don't want to get too specific because I don't know that I can, but I think when the concern is overall quality of care within an organization and the responsibility of the person who is leading

that organization really reflects and gets incorporated into an assessment of character and competence. It's executive responsibility, overall responsibility for quality of care that is a component, not the individual practitioner and his or her performance.

Dr. Bennett With all due respect, I think that's circular reasoning.

Mr. Robinson Mr. Thomas and then Dr. Berliner.

Mr. Thomas Thank you, Mr. Robinson.

Mr. Thomas Hugh Thomas, member of committee and the council. Following on Mr. Robinson's comment, notwithstanding Dr. Bennett's comments. You were on maternity leave during these two stillbirths, but you own the center. Is that correct? I'm not going to get into the facts because I'm sure they're very complicated. I guess I'd like to better understand what was your plan for managing, overseeing, ensuring what Mr. Robinson just spoke to, which is the orderly and safe administration of that center? Secondly, has the Department of Health been involved in any kind of survey process that has resulted in any findings relating to the center at this point? Excuse me. That question may not be relevant because I don't know what other center is under the jurisdiction at this point or not. Those are my questions following Mr. Robinson's comments.

Frank Cicero Mr. Thomas, this is Frank Cicero. Ms. Winkler is prepared with a statement to go through exactly what you said, just exactly what she did. This private practice is not under the State Health Department's jurisdiction right now. If possible could Mr. Cohen finish? We could make the rest of our presentation.

Mr. Kraut In all fairness out a time, I think we want to get our questions in, so you respond to them in your statements to do it. If what you say is true, you're saying this. Why didn't Ms. Winkler provide the information that was requested when we asked for it when we were reviewing the application? I don't think it's helpful to provide it to us now.

Frank Cicero Mr. Kraut, we believe that she did. I think that the point of contention with the department.

Mr. Kraut Let's get some of our questions.

Maura Winkler You had asked about my maternity leave. Do you want me to answer that now?

Maura Winkler When you own a private practice, you don't really get a maternity leave. When I say maternity leave, I mean that I wasn't taking call and I wasn't doing clinic. I was in the office all the time. I was in the office when my baby was five days old. I was available by phone. I had it set up such that the midwives, even if my phone was silenced, they were on a setting that they could get through to me at any time. When I was out of the country same thing. They were aware that they could get a hold of me if

they needed me. We had also talked extensively about what the plan was for them to cover the call and the clinic hours.

Mr. Thomas One follow up.

Mr. Thomas That very helpful.

Mr. Thomas Thank you.

Mr. Thomas Especially the first part of your comment, which was at that time, you were private practice and now you're to become a DNT or whatever. You're the owner. The two individuals working while you're on maternity and you're staying close to the practice are subject to your really oversight at some level. From my perspective, that's a significant issue here because these two individuals now, I don't know the malpractice facts. I've read what I've read. That's a significant issue in terms of that's why I asked the question. What what were your steps? What we were backstops? What were your safety criteria? Maybe your statement will go through that, as Mr. Cicero just suggested. That's what I was getting at, because that speaks to the next step. If this is granted, you now have responsibility, by the way, subject to DOH oversight for the larger center, which you hope will give you nearer reaching accreditation expand. That's why I asked the question, and I think it would be helpful at least to understand the facts a bit more.

Mr. Robinson I'm going to let Dr. Berliner ask his question, and then I'm going to turn to you for your statement.

Dr. Berliner I have some facts. I will be relatively brief, but some facts that go to what has been discussed here today, comparison to other types of reviews that have occurred. I would like to get that on the record. I think it's important we did speak with the council's executive secretary during the past week to make sure that we would have time.

Mr. Robinson We'll go back to the members of the committee for further discussion.

Frank Cicero Thank you.

Frank Cicero We appreciate that.

Frank Cicero First, just starting off, the staff report, as we know, focuses on two events that were early in the history of this practice. They have been followed by well over 300 additional births without major incidents and by the practice securing accreditation from the Commission on Accreditation of Birth Centers, which is the national accrediting body. The CABC, as part of its review, reviewed those events in the accrediting process. They decided to accredit Ms. Winkler's practice after that, and they recently wrote your body separate and apart from what we gave to you in support of this application. The next thing we'd like to state is that national incident statistics show neonatal mortality and birth centers and home births in the range of 1 to 4 per 1,000

births. With two neonatal deaths and 547 total births, the practice is inside the range. With no neonatal deaths in the more than 300 births at the practice since early 2020 and since it was accredited the practice is at the lowest end of the range. I'd next like to discuss briefly Section 795.11 of tenure codes, which was the section referenced in prior testimony. That section states that accreditation by a recognized accrediting body can be deemed to indicate that the facility satisfies operational requirements. The report says essentially that Ms. Winkler did not reply and did not provide information. I'll speak to in just a moment. Is it not evidence that she did take the necessary actions to improve her practice given the fact that the CABC reviewed the Sentinel events, Ms.Winkler's response to the same and her policies and procedures. To the standard for CNC approval under 28 A1 A3 B, the staff report states that Ms. Winkler did not meet the standard, but many surgeons and other physicians who have had patient deaths as a direct result of their procedures. Some with cases still in discovery have passed CNC review and have been approved. In fact, the 2022 agendas show two such examples, one of which was still in discovery. I'll read it right here. The case is in the discovery phase. In this case, Ms. Winkler was on maternity leave, not present when the tragic events occurred in her practice, but she is being recommended for disapproval despite having taken decisive action to seek and secure accreditation and to improve her practice subsequent to those events. Further to 2801 disapproval statements in the staff report indicated supposed failure to respond or disclose information. Mr. Cohen has talked about the change in the CNC form as Ms. Winkler's rapid change once the new form was published that required her to make a disclosure. The record also shows that no requests for additional programmatic information were made to Ms. Winkler for over 18 months during the review of this project, and once a request was made, Ms. Winkler submitted the thorough response that she has copied to you as a comparison in the past year multiple proprietary nursing operators who failed to disclose out of state ownership after the Dear Administrator letter was published on that very subject and circulated to their industry, were given second chances to disclose and were approved for CNC. Based on my direct experience, cardiac surgery and nursing home dialysis programs have been approved in the state after extensive iterative processes in which the department and applicant work collaboratively to produce a final policy and procedure package that would result in a high quality. This practice is everything New York State is seeking with respect to health equity. Some 52% of its patients are covered by Medicaid. A quarter of its patients are from traditionally underserved minority groups. It has designation under the National Health Services Court due to its service to the underserved, has an existing collaborative relationship with Kawada Health system and its children's hospital. Ms. Winkler has noted her efforts and plans in her CON to promote health equity, including staff recruitment, which will be aided by this certification and its attendant enhanced Medicaid reimbursement. In conclusion, if not approved, this practice will continue as it is today without the oversight and with the same risks that are there today. Our suggestion is why not approve this? Bring the private practice into the system under the same premise where so many private surgical practices have been approved when proposing to convert to ASC's.

Frank Cicero I'll turn it over to Ms. Winkler.

Frank Cicero Thank you.

Maura Winkler I just wanted to start by backing up and saying thank you for the opportunity to be at this meeting. I know I'm the first midwife that sat in front of you all. I'm grateful for that. I grew up in a in a family that a lot of people worked in health care. My Mother was a nurse and my grandmother actually was a nurse manager in labor and delivery at a local Buffalo hospital. It was no surprise I actually landed myself in medical school in 2011. Three semesters in at which time I had a wonderful homebirth with midwives in Chicago. I left medical school knowing that I was leaving to become a midwife. I'm grateful that I had that opportunity to have a birth experience when I was twenty-three years old that went exactly the way I wanted it to. It's one of the things that has brought me to midwifery and kept me and midwifery through this 29 month long process, which has been emotionally distressing at times. I want to correct the assumption that I didn't do anything about the stillbirths. What happened in reality was that I returned from my maternity leave much earlier than planned. One of the midwives who was involved in those had essentially immediately resigned after it occurred. I took over her call and her office hours. We did do a RCA. I was not asked for information about that from the Department of Health, but I would have provided it. I changed many of our policies, including policies about Group B strep, antibiotics and labor, and policies for when transfer was indicated for long labors as well as many others. I immediately applied for CABC accreditation within months of this happening, as well as actually the Department of Health issued new guidelines for birth centers in May of 2020, which was shortly after this happened. I also immediately applied for licensure in August of 2020. The CABC took a year long process to review my birth center. They did not leave a single stone unturned. They looked at every policy. They pulled random charts. They reviewed these two stillbirths that happened as sentinel event reviews. Again, if the Department of Health had wanted information about that, I could have provided it to them. We are the only CABC accredited birth center in New York State at this point. The care that we provide is extremely high quality. In the three years since these events occurred, I allowed midwives to slowly leave the practice. I've been in solo practice now for almost two years on call 24/7. In fact, if someone goes into labor while I'm at this meeting, they have to go to the hospital because I don't have anyone to cover my birth center. It's impossible to take a vacation. That speaks to my character. I have missed important things in my life to be at a birth for patients that I have made a relationship with. I also wanted to come back to the fact that of these 547 births, 331 of them have occurred after the second stillbirth. There's a multitude of studies that indicate that the safest way for birth centers to operate is with licensure and accreditation. And that, I want to say, is why that I moved forward with a disapproval because it doesn't make my birth center any safer not to have it integrated into the greater health care system. I wanted to speak a bit to some of our statistics. As you know, 52% of our clients are recipients of New York State Medicaid. 25% of them identify as people of color, whether that's Black, Indigenous or Latinx. About 50% of the births have been at the Coit House. I now essentially only do birth at the Coit House. Occasionally I will do a home birth, but we are mostly a birth center practice. Our cesarean rate is 7.3%. In most New York hospitals, including those in Buffalo, it's between 30 and 40%. These include, obviously,

people who have transferred to the hospital these statistics. Our admission rate is 3.5%. Most of those babies are preterm babies. Our preterm birth rate is 1.6%. 1.3% of babies, including those who have transferred to the hospital, have had a five minute less than seven. I know no one in the room is necessarily an OB, I don't think, but that's essentially an indicator of how well a baby has handled the process of labor and birth and how well they're adapting to life outside the uterus. We've never had a maternal ICU admission and only 3% of our clients require pharmacological induction of labor in the hospital. Clients receive all their care at the birth center. They can have ultrasounds. We work with an MFM telemedicine company that does all of our ultrasound reads. They have all of the labs in-house. We offer group prenatal care and lactation support. Many of our clients, as is typical with a Medicaid population, have transportation issues, and so getting all of their care done in one place is very important. Our nurses can provide home visits as needed, and we do for those clients that have trouble getting to the birth center. Family members and children are welcome to attend appointments and participate in care. We're also designated as a National Health Service Corps NHC site, which means that we have a sliding scale and we don't turn clients away for inability to pay. As a result of this, practitioners would be eligible for student loan repayment, which supports recruitment, training and retention of midwives. We're located in a medically underserved area and a health professional shortage area. We hope to eventually add behavioral health services to all of the services we provide at the birth center. The final thing I have to say to you is that I feel that you have everything in front of you today to make a recommendation that this center be licensed, because ultimately the safest thing for public health is that we be integrated into the health care system in New York State. That is why I moved forward with the disapproval, even though, yes, it can affect my career for my lifetime.

Dr. Bennett Dr. Bennett, again. The way I understand it, if you don't do this, or if we don't allow you to do this or the state or somebody doesn't allow you to do it, you are allowed to continue doing what you're doing, right?

Maura Winkler That is correct. It's not necessarily a requirement to be licensed.

Dr. Bennett If you take the argument that what happened was bad, then we're not protecting anything because it could still happen. I want the council to reflect on the absurd logic of that decision and that in fact, this has led to you are seeking certification, you are improving your processes of care. You obviously changed out some staff and and frankly, you know, we don't even know why you changed out that staff. That staff probably, you know, when you go through a traumatic malpractice trial around a stillborn death, it's enormously stressful on the practitioner and the guilt is enormous. I wonder if even that nurse practitioner who was involved in that is able to continue to practice. They may have decided to exit practice as so many of our people doing deliveries in New York State are. We can't get people to deliver babies because of the malpractice situation in New York State. It's something that I've been dealing with for thirty-five, forty years as a clinician. Again, I'll just close with the fact that by denying this, we do nothing to protect the citizens of New York State. In fact, we are denying people of color, people who have issues with transportation, etc., who you've mentioned. We're denying that on

the basis of two malpractice cases that we have no idea that there's even any merit in those cases. Who are we to decide that there's merit in those cases? The malpractice world is a.... It's about money. Why do you sue the owner of the clinic? Because the owner of the clinic has the money. It's the pocket. That's why they sued you. Make no mistake about it. Everybody in this room. They sued Ms. Winkler because she's got the money and she's got the malpractice coverage.

Dr. Bennett I'll stop.

Mr. Robinson Thank you.

Mr. Robinson Dr. Berliner, Mr. Lawrence and then Mr. Kraut.

Dr. Berliner The two midwives who performed the births where there were fatalities, they've left the practice. Did they leave on their own or were they fired if you can talk about that.

Maura Winkler They both left on their own. The one left before. I had actually put the one on a leave while I was investigating, and she essentially resigned by her own devices. The other one did continue to practice with us for a few more months and then she did also leave the practice. I also want to address the point that these midwives were forever changed by these events. They do not do any deliveries anymore. They don't do any OB.

Dr. Bennett I'm going to I'm going to ask our hospital colleagues, if you took the license of a hospital away because one of your surgeons had a bad malpractice case, how would you feel?

Dr. Berliner The problems with the Article 28 facility, how will they be addressed? Have they been addressed?

Maura Winkler The building is the oldest house in Buffalo. It was built in 1815. I have an adaptive reuse permit that I used to convert it to a birth center. It's up to business occupancy code. I have a lot of restrictions because there's a deed restriction on the house since it's historical. The department essentially, it seems, suspended their building review. My architect had sent them a lengthy analysis of all of the building issues and there was no response to that. Certain things I will not be able to do. For example, the stairwell, the main stairwell is protected by the deed restriction and there's no place to add a second stairwell. In terms of ADA accommodations, we meet the CABC's criteria in large part because AABC, which is the American Association of Birth Centers, and they are the body that's more of the advocacy role. They also come up with standards for birth centers. They actually state that birth centers should not be subjected to all of these building requirements that hospitals typically are because we care for healthy, low risk people. That said, you know, most of our accommodations around accessibility is that we can provide care anywhere. We can go into the client's

home and provide care if we need to. We would never expect someone to need to navigate a facility without an elevator if they weren't able to.

Dr. Berliner I mean, I understand what you're saying. I've served on the board of a hospital that was denied accreditation, because it couldn't change some historical. It wasn't a staircase, but it was some kind of event. I understand that. If you can't meet.... I mean, independent of the other issues, I mean, we would turn you down if you couldn't meet the architectural standards.

Maura Winkler Because I didn't receive a response from the Department of Health with this report my architect had wrote up I can't say what the negotiations would be around the building issues other than I would be more than happy to have a conversation about it. There was never a time that I said, well, I'm not going to do any of those things. My understanding in speaking with the department is that they are able to negotiate some things and not others.

Mr. Lawrence Ms. Winkler, I'm a big supporter of birthing centers. When I think of the world, I think most women deliver some in corn fields, some in jacks, and maybe not the best of environment, but I think birthing centers work. I guess what I am struggling with is you're looking to become, I guess, an Article 28. There's a certain standard, just like with the codes in terms of and I don't think anyone is questioning. I'm not questioning your character. I think to Mr. Thomas's point earlier about operationally when you're running a facility. There's a certain level of competency that's required to protect the patients and the people that you serve. When I'm listening to the department, I'm not just hearing about the cases. I'm trying to understand what is the quality performance and quality improvement activities that your birthing centers involved with on a routine basis to ensure that the quality is always at the highest level. I also understand that as you transition from a private practice to a more institutionalized practice that at some point you don't have that built in the infrastructure to do risk management, to do quality performance. You may not have the staffing to do that. Again, in an institution setting, an institutional setting, that is that comes just like with codes. That's part of what we are legitimizing or confirming when we say, okay, you're an Article 28. Then there's a certain expectation about how you perform. Your staffing and to support quality improvement, I would assume that is very thin and that as you describe yourself, you tend to do everything. I admire that. That's how many organizations start and grow with a committed leader and the person at the front. I guess my question to you is whether it might be advantageous at this point for you to step back, give a little time and then come back after you have checked a couple of these boxes, so that we can I think my sense is that most people would want to support this application as opposed to denying it based on some technicalities.

Maura Winkler Well, it's taken 29 months since I applied. A lot has happened in that 29 months. We have extensive CQI policies and procedures in place. We do staff drills. We review charts. My charts have to be reviewed by an outside eye if they meet certain criteria. We have to report certain events to the CABC if they happen. We have a list of events that we need to do RCA on those charts. We have been meeting all those

requirements and in fact the CABC evaluated that when they did a site visit in November of 2020 and again in August of 2021.

Frank Cicero With my client's permission, would it be possible to return the application to the department to determine if the architectural items can be resolved? If they cannot be resolved, then we understand what the result has to be.

Mr. Kraut I think that that is an idea, but I think I have more threshold issues than the facility being, frankly, your statement regarding the facility questions if you understand what you're asking to do to be licensed. Licensed not only means the quality and care and the operation, it's the policies and procedure and oversight you have in place to effectively deliver safe, high quality care. I'll put the facility issues. It's kind of inside ball and you hire consultants to help you understand that. If you have a deeded place, you may have to move. If you can't meet minimum safety and exit requirements, those are non-negotiable. Fire and safety are non-negotiable, but that's not an issue. Let me just step up. I agree with Dr. Bennett. In fact, Dr. Bennett, I never even saw the word malpractice. We believe what occurred is a malpractice, but I never saw one word of malpractice in this report, nor did I think that was what was driving me. What I was taken about by is in all the years I've served on the council and the predecessor council with Mr. Cohn, I have never received a letter from a Medical Examiner about an application that was warning me and warning this council that whatever their findings were and whatever the data that supported the writing of this letter telling us not to grant the license. I've never received that. That's what stopped me and say, wait a minute. What's going on here? I understand you were not the ones doing it and you were away, but you are responsible. It's the policies and procedures and how you oversee your facility. You're the name and unfortunately, you're the sole member. I don't know what your board is going to look like when you're an Article 28. I have no idea, because we never got to that because they stopped. They stopped in character and confidence. You place a lot of weight, as do we, on the accreditation of the CABC. I think, you know, your point is they've come in. They've taken a look at everything you've done. You've received accreditation. Is that is that one of the facts that you're holding to? Because you're accredited, we should get comfort in that?

Mr. Kraut Is CABC accreditation a critical part of why we should approve you?

Maura Winkler I don't know how many birth centers there are in the United States. Probably a thousand if I had to guess. Only one-hundred of them are accredited by CABC.

Mr. Kraut I grant it. We want to see birthing centers. We want to see accredited birthing centers, but we want to see it in accordance with our process. I'll ask you this, did you disclose to the CABC when you applied that you were not licensed in the State of New York?

Maura Winkler Yes. CABC actually withheld accreditation for a period of time waiting on the license and they were asking me for updates about it. Their policy states that licensure is required where licensure is available. That's the verbiage they use.

Mr. Kraut That's correct. I'm looking at it right now, and according to their own bylaws, they are not permitted to accredit you unless you're licensed in a state that has licensure. I ask you, how did you get licensed? How did you get accredited in this state when you are not licensed yet?

Maura Winkler I don't know what conversations happened behind closed doors. However, my guess is that the CABC felt that licensure was not possible at that time that they issued accreditation and that I had pursued every possible avenue to obtain it.

Mr. Kraut Well, I think that's another thing I'm going to want to understand, because according to their own bylaws, which I'm reading, you could not have received accreditation as long as we had licensure available in the state. This is a pattern. These are just things that are of concern for us. As soon as I make my statement. I'm trying to explain why. These things when you taken together, maybe in any one of them don't matter, but it just gives me concern if you understand what you're asking to do and if this is the right center to license. That's our question.

Ms. Glock Jeff, can I just add also before the applicant responds also. You're correct, the state has been working with the CABC on a process. According to Standard 4A.2 for CABC accreditation they also must comply with local codes, state and federal codes, regs and ordinance for construction, fire prevention, public safety and access for birth centers. That includes NFPA 101 as well.

Mr. Kraut I mean, you're going to have to talk to the CABC. I mean, how do they accredit a facility that doesn't meet their own requirements?

Frederick Cohen I would like to reply.

Mr. Kraut Okay.

Frederick Cohen The first point that I want to make is that Medical Examiner's report was actually made to the department years ago. Maura Winkler replied to that. Her reply to that was all of the things that she just testified that she did because of those two stillbirths. That is in the record years ago. This is a regeneration of it. She replied to it again with what she testified to today, her responsibility, her reaction to two serious stillbirths, two unfortunate deaths. As far as CABC is concerned, they at first wanted the state to license Maura Winkler's birth center, but this timeline, which they are aware. This truncated, halting timeline where the department was reluctant to move forward is something that they were informed of. When they realized, because the regulations have not even been promulgated 17 months later, they accredited the birth center in September 2021 and in your package you have the certificate of accreditation. That certificate is the equivalent of a commission accreditation with which you're very familiar

and and secure accreditation of health plans. I think that this is an opportunity for the council. We were dealing with everything that was new; office space surgery, stroke centers, the proliferation of ambulatory surgery centers. Midwifery is ancient. The law of New York that describes what a midwife can do just describes the services a midwife can provide. There's nothing about quality. There's nothing about safety. There is nothing about efficiency in that law. I have to ask the council, why would the council vote down this application when it is giving the Health Department the opportunity to regulate and monitor what is right now an unregulated except for license ancient profession? How does that make sense not to undertake that responsibility by approving this application?

Mr. Kraut I understand your point of view, but I would say to you with all those other applications no one came to us with two deaths as the first one. That's why.

Mr. Robinson Mr. Lawrence, I think if I could, I think once we have concluded our conversation here, let's take a vote on the motion and see what the outcome of that is and then we can determine what our next steps are.

Ms. Monroe I have a comment, Mr. Chair, when you're ready.

Maura Winkler You're asking me if I would want the application sent back to the department for assessment of the architectural requirements? Is that what you're asking me?

Ms. Soffel I come to this council with the lens of improving consumer access to services and increasing health equity. Although I know that the health equity regs are not yet on the books, they certainly shape the way I approach the decisions that we have to make as a council. My understanding of midwifery practices just from personal experience and many, many years of observation, is that women who are served by midwives have very high satisfaction rates and that they provide an important alternative for many women seeking prenatal and gynecological services. It seems to me that we as a council have an interest in encouraging and supporting birth centers as an alternative for women who are looking for those kinds of services. I certainly believe that from a health equity perspective, when Ms. Winkler describes her patient mix, her payer mix, the racial profile of her patients, that she is absolutely enhancing health equity in the Buffalo community. I think that there is a sort of often we bring prejudices against midwifery as an alternative practice and as a female driven practice and as a practice that physicians have historically vehemently opposed. It seems to me that we need to sort of back away from those prejudices and those sort of old ways of thinking and acknowledge that birthing centers are, in fact a really vital and important service that improve access, that improve consumer satisfaction and that improve health equity.

Mr. Robinson Ms. Monroe, I think you're up next.

Ms. Monroe Thank you.

Ms. Monroe I appreciate the questions that have been asked about what kind of oversight did you provide after the deaths, etc. To me, that's what the investigations are determining. They will decide whether or not there was sufficient oversight over two deaths, whether or not there was appropriate policies put in place. That's the job of the investigation. I'm very reluctant to even evaluate how to vote on this without the results of those investigations, because in the meantime, we are just assuming. Jeff, I don't know what you were asking about. Is she licensed? Is she a licensed midwife, was that your question?

Mr. Kraut It's a chicken and egg issue that you cannot receive accreditation unless the facility was licensed. The midwife licensure is independent or is related to, but it's independent of Article 28 licensure. Essentially, you cannot get accredited in the state if there's a licensure category for Article 28.

Ms. Monroe Well, apparently she met whatever that was.

Mr. Kraut That raises a whole bunch of other issues.

Ms. Monroe It's not in front of us today.

Mr. Robinson I'm going to let you ask a question and then I'm going to I have to see if there's anybody.

Mr. Robinson Thank you.

Dr. Berliner It's not a question. It's a comment. Actually, two comments. The first is, I agree 100% with Denise about the importance of midwifery and midwife attended births. Mr. Cohen might remember back we had an application for the first nurse midwife center in New York. It was placed on the Upper East Side. I'm blocking on the name of the woman who led it, but she was very famous. You might know Denise. I'm not sure. She was given the hardest time for exactly the reasons that you say. All the hospital based members of the council thought this was, like, the worst thing ever. She swore up and down that anyone who had, like a 10th of a degree of raised temperature would be shipped to the hospital if it was going to be Lenox Hill, but that was before your time, Jeff. I mean, everything. I think eventually we approved it with lots of conditions and constraints on it. I believe it's been fine. Second thing, as I was thinking about this application yesterday, there was an article in the Times about a physician obstetrician at Woodhull whose actions would I think what we would say would lead to questions about competence. We don't come in and say let's take Woodhull's obstetrics license away. We don't say we've got to make sure this physician can't... It seems that it is unfair and inequitable to blame the operator of a center for actions that happened there. Again, not knowing all the facts and not being a party to any of it. But if, in fact, that's the case and there are a lot of people in this room where patients have died, where they were the operators or the owners. We would have to give up their licenses.

Dr. Berliner Thank you.

Mr. Robinson Mr. Lawrence, I'm trying to get to a vote.

Mr. Robinson We're going to do the motion on the floor first, and then we'll see where we stand.

Mr. Robinson I think we need to act on the motion first and then see where we go.

Mr. Robinson If I could, I'd like to make sure...

Mr. Robinson Thank you.

Ms. Glock First of all, I just want to again state as I started that the department is supportive of midwifery birth centers, but in particular to this application, as Mr. Kraut pointed out, the delay in this application really had a number of factors which I outlined. One of those was an allegation by the county Medical Examiner of gross negligence. I believe there was the second letter from a pediatrician from a Children's Hospital. As a result of that, it's the department's responsibility to due diligence to make sure that appropriate remedial actions were taken. I've heard here today. We've heard that there was root cause analysis done by both Ms. Winkler and the CABC. I just want to say for the record that the department has not received after requests for any evidence of that. It has not been provided. We are looking for the root cause analysis of those deaths and what corrective actions were taken to come to a level of comfort that the appropriate policies and procedures were changed. The third piece that I want to point out is that with the regulations that I mentioned that will be becoming before the council for a vote, there are options in those regulations that if accredited, accreditation can substitute in lieu of surveillance. A lot of talk today about bringing it into the Article 28 regulatory oversight and the accreditation will be just like we have with hospitals with some deemed status. In this case, the accrediting organization will be the substitute in lieu of surveillance by the department. You will see those regulations shortly.

Mr. Robinson First, I have to ask if there's anybody else from the public that wishes to speak on this application.

Mr. Robinson We have a motion for disapproval on the table.

Mr. Robinson I think Dr. Berliner made the motion and Mr. La Rue seconded. I hope my memory's correct on that. Let's proceed with a vote on essentially the department's recommendation, and then we can see where we stand.

Mr. Robinson Please do a roll call for the committee.

Mr. Robinson Colleen, if you would.

Colleen Sure.

Colleen I just wanted to clarify that a yay is for disapproval. You're recommending disapproval. A nay is opposing the disapproval.

Colleen Mr. Robinson?

Mr. Robinson Yes.

Colleen Dr. Bennett?

Dr. Bennett No.

Colleen Dr. Berliner?

Dr. Berliner No.

Colleen Mr. Kraut?

Mr. Kraut Yes.

Colleen Mr. La Rue.

Colleen We couldn't hear your vote.

Mr. La Rue Yes.

Colleen Mr. Lawrence?

Mr. Lawrence No.

Colleen Ms. Monroe?

Ms. Monroe No.

Colleen Mr. Thomas?

Mr. Thomas Yes.

Colleen Motion does not carry.

Mr. Robinson Ms. Monroe, you voted no.

Mr. Kraut What was your vote?

Colleen Ann's vote was no.

Mr. Kraut What was Ms. Monroe's vote? We didn't hear it in New York.

Ms. Monroe No.

Mr. Robinson Thank you.

Colleen That's the end of the roll call.

Colleen Motion does not pass.

Mr. Robinson The way this will work then, is that this application will move forward to the full council without a recommendation from the committee. We'll take up consideration there at the next meeting.

Mr. Robinson Is there anything else that anybody wants to bring up on this application?

Mr. Robinson I think at this point, the applicant can still make their own decision about what they want to do. They would work with the department on that. That's what between them and the department.

Mr. Robinson Thank you very much.

Mr. Robinson A lengthy and well aired discussion and an important issue.

Mr. Robinson The next application to come back to it and move on to an application which calls for Mr. Kraut's recusal. This is an application 1 8 2 1 4 4 C, Nassau University Medical Center in Nassau County. This is to certify cardiac catheterization and electrophysiology, including percutaneous coronary intervention PCI services with the requisite renovations to be processed as part of a full review. The department is recommending approval with conditions and contingencies.

Mr. Robinson A motion, please.

Mr. Robinson Dr. Berliner.

Mr. Robinson Can I get a second?

Mr. Robinson Thank you, Mr. La Rue.

Ms. Glock Thank you.

Ms. Glock Nassau University Medical Center is requesting approval through this application to certify a cardiac catheterization PCI in cardiac catheterization EP services with the requisite renovations. Will convert its existing adult diagnostic cardiac catheterization lab to a PCI capable Cath lab in EPI study laboratory. North Shore University Hospital, which is a full-service cardiac surgery center located in Nassau County, will be the cardiac surgery backup facility. They are a 756-bed cautionary

hospital twelve miles and that the program will be coordinated with Northwell Health North Shore University executed clinical sponsorship agreement. Folks remember that Title 10 Cardiac service reg 709.14, which we adopted in September of 2019, requires facilities seeking to add PCI services to project a minimum of thirty-six emergency procedures in year one. Currently refers approximately fifty PCI and thirty-six EP cases each year. Implementation of this project will enable them to perform those procedures on site. Seven physicians have committed to providing procedure at the proposed PCI capable lab. These physicians currently work at Long Island Jewish Medical Center and North Shore University Hospital. Therefore, projecting the fifty emergency PCI by year one and one hundred by year three. By providing these services, the goal is to reduce door to door time for residents and the service area, requiring PCI, improve mortality rates and reduce the number of patients requiring a second cardiac catheterization. Based on our review, the department is recommending approval with contingencies and conditions.

Mr. Robinson Thank you.

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

Mr. Robinson Applicant questions only.

Mr. Robinson Thank you.

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

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

Mr. Robinson All in favor?

Mr. Robinson Thank you.

Mr. Robinson Any opposed?

Mr. Robinson That motion carries.

Mr. Robinson Thank you.

Mr. Robinson Have Mr. Kraut returned, please.

Mr. Robinson This is an application for an ambulatory surgery center. Dr. Bennett has identified a conflict and is recusing himself from this application. This is application 2 1 2 2 5 2 B, Upstate Endoscopy Associates, LLC doing business as Upstate Endoscopy Center. It's located in Rensselaer County. This is to establish and construct a single specialty ambulatory surgery center for Gastroenterology at 112 McChesney Avenue in Troy. The department is recommending approval with conditions and contingencies.

Mr. Robinson A motion, please.

Mr. Robinson Dr. Berliner.

Mr. Robinson Second, Mr. LaRue.

Ms. Glock Upstate Endoscopy Associates is requesting approval to establish and construct a single specialty gastroenterology ambulatory surgery center in Troy, New York. The service area will center on Rensselaer County, but it's also going to include Albany, Saratoga and Greene counties. There are currently no ASC's in Rensselaer County. All of the gastroenterology cases projected in this application are currently being performed in a hospital setting. While there are no other ASC's in Rensselaer County, there are ASC's in the surrounding counties. However, none are gastroenterology centers. The closest single specialty Gastroenterology AFC is located twenty-three miles or thirty-three minutes away. Ownership of the Upstate Endoscopy Associate LLC is comprised of four gastroenterologists as depicted in your exhibit each with 25%. The proposed Medical Director will be Dr. Robinson. The applicant is projecting 6,786 procedures in year one, with Medicaid at 4% and charity care at two. These projections are based on the current practices of the participating surgeons. The applicant states that all of these projected procedures are currently being performed at Samaritan Hospital in Troy. Samaritan Hospital is a 277 bed community hospital in Troy. They have written a letter to the department opposing the application, citing the negative impact the creation of this ASC will have on its operation and its ability to continue supporting health care services to the community. In 2018, St. Peter's Health Partners, who is the operator for Samaritan invested 5.2 Million to create the current Samaritan Endoscopy Center. According to Samaritan, 53.5% of the procedures being completed by the physicians of Upstate Endoscopy will move to the proposed ASC two miles away. Samaritan submitted financial information showing that the outpatient endoscopy is their largest source of outpatient and revenue. The approval of this proposed ASC will lead to a $10.8 Million in lost revenue annually to the hospital. As the committee and council members will recall, this policy discussion did take place in 2019 at a public planning meeting. As the department's current public need regulation and policy leans towards approval of new ASC's as they offer consumer choice in lower cost alternative for, say, same day surgeries. Currently, New York State is 47th in ASC's per capita. At that time, a policy decision was made that if a proposed ASC financially threatened a sole community hospital or a critical access hospital, the department would recommend disapproval. 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 recommending approval as the new ASC will offer consumers a much lower cost, safe and convenient setting. Based on our review, the department is recommending approval with contingencies and conditions, with an expiration of the operating certificate five years from the date of its issuance.

Mr. Robinson Thank you very much.

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

Ms. Glock I have a question.

Dr. Soffel I see that the Medicaid population in Rensselaer County is 16% of the population, while this Endoscopy Center proposes serving 4% Medicaid. I am wondering why that is why they are selectively choosing their patients firstly. Secondly, what kind of financial impact would that have on the hospital? Because I presume that all those Medicare patients who are not being invited to the private ambulatory surgery center will be remaining at the hospital and therefore creating even further financial distress.

Mr. Robinson Great question.

Mr. Robinson Can the applicant come forward if they're present?

Mr. Robinson Is there somebody in Albany that represents the applicant?

Mr. Robinson We do have somebody.

Dr. Robinson Good morning, Mr. Robinson. I am Dr. Robinson. I am the principal partner of Upstate Gastroenterol.

Mr. Robinson Did you hear the question?

Dr. Robinson I did.

Dr. Robinson In response, I would say to you that it must be a statistical skew. Upstate Gastroenterology has been in existence since 1986. I was one of the founding partners. Since that time, we've accepted every insurance, including Medicaid. We service Whitney Young in Albany. We accept there's an entity called the ARC in Rensselaer County, which is for severely handicapped, mentally and physically handicapped patients. We must account for a 90% of their GI services. We exclude no insurances, and partly I can only elaborate a little bit or speculate. It's not that we're refusing Medicaid patients. We lose patients with the way the system is established now. The hospital is the only way that we can do procedures and deliver outpatient services to the patient population that we serve. We see patients with Medicaid or advantage plans and whatnot. They go elsewhere to have their procedures done simply because of accessibility. Samaritan is part of Trinity. They basically run St. Peter's Partners and Health, which is St. Peter's in Albany and Samaritan in Troy. They run the outpatient endoscopy unit. They set the schedule, the times that they're open, the times that we can function. It limits us tremendously. It's a huge disservice because there's basically three parts to this. One is the patient. The patient population is really being screwed, if I may use that term. When we do procedures at a hospital setting, the patients have enormously high co-pays, $300.00 versus a $40.00 or $50.00 co-pay in an ASC

elsewhere. If they have a deductible, they have to pay the entire cost that the hospital charges. Many patients come to us. We may do the consult. They're referred to our practice.

Mr. Robinson We understand the difference in costs to patients of going to a freestanding ASC versus a hospital based program. The real question here was with the communities Medicaid population as a percentage of the total population being pretty high, yet you are projecting a very low percentage of Medicaid in your practice. We're trying to understand why that is the case.

Dr. Robinson Our practice is open to all Medicaid patients. As I explained, Trinity's policies, their endoscopy unit basically functions Monday through Friday from 7:00am to 1:30 in the afternoon. There are no afternoon hours. There are no evening hours. There are no outpatient weekend hours. Many of the Medicaid patients, if you're a single parent and you have children, someone has to mind the children.

Mr. Robinson That makes a lot of sense, but then, therefore, why is your percentage of Medicaid 4% in your projections, where the percentage of the Medicaid population is so much higher. We would expect you to have somewhere near a half of your patient population being Medicaid. You projected only 4%.

Mr. Kraut Dr. Robinson, all the arguments you're giving is essentially explaining to us that you take care of Medicaid without regard to the ability to pay, right? You take care of patients. The arguments you're giving us are not answering the question. Why in the application did you say you are going to take a disproportionately lower share of Medicaid relative to your community? That's what your application says and the numbers you gave us.

Dr. Robinson That's correct.

Mr. Kraut Why are you taking less than your historic volume?

Dr. Robinson I believe, as a subspecialty most of our patients are referred by primary care people and other specialties. The refers basically refer these Medicaid patients elsewhere where there is greater access. If you're referring a patient for a screening colonoscopy and if you call today, my next available appointment at the hospital is in June. Whereas if you go to Albany and they can accommodate that because they have an ASC, they can do it next week. The referrer basically directs the patients.

Mr. Kraut Dr. Robinson, what we're trying to say, this is no longer a private practice. You're not in the private practice of medicine. We're giving you a medallion. We're giving you a license that allows you to bill a facility fee. If you don't want that, just continue to do it in your office. The expectation is you are going to be part of the fabric of that community. You have an affirmative responsibility to take care of your relatively proportionate amount of Medicaid patients and charity care. This is not a private practice anymore.

Dr. Robinson We do that. We accept all the patients referred through the emergency room at Samaritan Hospital. We accept anybody that walks through the door. However, if their primary care physicians refer them elsewhere, I have no control over that. Part of that reasoning why they're referring them elsewhere is accessibility. I have no control over that. Trinity determines the hours of operation of the endoscopy unit. I can't force these patients into our practice.

Mr. Robinson It's not a forcing. It's really more you are projecting which means that some how you're organizing your practice. You expect only 4% of the patient population to be Medicaid, whereas in the practice that's taking place in the hospital setting where your group is responsible for taking all comers, that percentage is much higher. That's the issue we're trying to get to.

Mr. Lawrence I guess what I'm hearing from him is that his 4% is dependent upon the referral pattern. If he's not out soliciting, he's depended on network.

Mr. Kraut What has happened with prior GI programs they come to us with affirmative program of outreach to federally qualified health centers. You talked about AHRC and the OPWDD population. That's what we're just trying to say, that there's a responsibility here to do that. Look, we can just explain that. It's not exclusionary. I mean, we've approved at this level, Denise. We're just trying to make sure the applicant understands a responsibility under Article 28 is to affirmatively do this. One of the things we might want to add here is a plan for outreach to the Medicaid providers so there's direct referrals to the center. That's one of the ways we've mitigated this in another application. Adding that I don't know if it's condition, I keep confusing conditions. Submit A plan is part of opening survey.

Ms. Glock The applicant has stated that they are planning on working collaboratively with the FQHC Whitney Young Health Center.

Mr. Robinson That's helpful.

Ms. Glock It's in the application.

Mr. Robinson That would certainly be a part of the plan.

Mr. Robinson Is that acceptable to you as the applicant?

Dr. Robinson Absolutely.

Mr. Kraut That's a good answer.

Mr. Robinson Any other questions from the committee?

Mr. Robinson Anybody from the public in Albany or New York wish to speak on this?

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

Mr. Robinson All in favor?

Mr. Robinson Any opposed?

Mr. Robinson Motion carries.

Dr. Robinson Thank you.

Mr. Robinson Have Dr. Bennett return.

Mr. Robinson We're going back to the application we skipped over. Calling application 2 2 2 0 8 7 C, this is Mt. Sinai Beth Israel in New York County to certify in New York Eye and Ear Infirmary of Mount Sinai is a new division of Mount Sinai Beth Israel with no change to beds or services. The department is recommending approval with a condition and contingencies.

Mr. Robinson A motion, please.

Mr. Robinson Dr. Berliner.

Mr. Robinson Second, Mr. La Rue.

Ms. Glock Thank you.

Ms. Glock Beth Israel Medical Center during business as Mount Sinai Beth Israel is requesting approval to certify the New York Ear and Eye Infirmary of Mount Sinai as a new division of BMMC, Beth Israel Medical Center. Under this plan of merger, New York Ear and Eye Infirmary will be merged into Beth Israel Medical Center with Beth Israel Medical Center being the surviving corporation. There will be no change in authorized services or the number of beds as a result of this merger. There will also be no change to the Board of Trustees of Beth Israel Medical Center. Beth Israel Medical Center is a 696 bed not for profit teaching hospital located at First Avenue and 16th Street in Manhattan. New York Eye and Ear is a 69 bed, not for profit specialty care teaching hospital located at 310 East 14th Street, also located on the East side. New York Eye and Ear Infirmary certified for two extension clinics. Beth Israel Medical Center will assume operation of those extension clinics. The hospital site and the two extension clinics will continue to use the name New York Eye and Ear Infirmary of Mount Sinai. Just to note that Mount Sinai, Beth Israel, New York Eye and Ear are about .2 miles or five minutes walking time apart. Mt. Sinai Hospital Group is the currently the sole member active parent and the co operator of Beth Israel Medical Center in New York, Eye and Ear Infirmary. They will continue in the same capacity with Beth Israel Medical Center following the merger. Mount Sinai Hospital Group will be dis established from New York Eye and Ear Infirmary as a result of the merger. There is no cash or other

considerations to be paid. Mount Sinai Health system will remain the sole member and the passive parent following the merger. I just want to point out that back in 2019 there was an application approved by the committee and council in February of 2020. That application was an application that proposed to build a new hospital building located at 362 East 14th Street. As part of that replacement hospital, it would be located in a to be constructed building located directly adjacent to the existing building of New York Eye and Ear Institute of Mount Sinai. That replacement hospital would include a portion of the current building on that current New York Eye and Ear campus. The new buildings in the existing building would be connected to each other. It should be noted that that application for that replacement hospital which was approved, you know, that was pre-COVID and it was withdrawn in July of 2021. Just a little bit of history there. The pre and post organizational charts, as well as the listing of Mount Sinai Hospital Group's affiliate facilities are in your attachment. I want to note that the department received various correspondence from the Assembly physicians, community members and disability advocacy groups expressing concern with this merger and that it would lead to a discontinuation of services at New York Eye and Ear Infirmary as a specialty hospital with the moving of all services out of New York Pioneer Infirmary to different sites within the Mount Sinai Health system and then leading to the eventual sale of the real estate. Questions were raised regarding the financial success of the merger and what Mt. Sinai clinical and financial plans were in regard to the future of New York Eye and Ear Infirmary. Disability advocates voiced concern that if New York Eye and Ear Infirmary were to close and its services divided across a number of sites, it would further challenge the already difficult challenges faced by patients with disabilities to access those services. Those letters had been shared with the committee prior to today's meeting. As noted in the staff review, according to the 2021 data, New York Eye and Ear Infirmary had only 456 inpatient admissions for their 69 inpatient beds, which comes to a little over two patients per day for an average daily census. The applicant anticipates volumes similar to that of 2021 in years one and three. As advances in medical technology have moved many ear and eye procedures from the inpatient to the outpatient setting. This becomes critical for CMS, Center for Medicare and Medicaid Services certification and as an inpatient hospital and as procedures continue to move to an outpatient setting, New York Eye and Ear could be vulnerable to losing their federal acute care in patient hospital certification. This would prohibit the treatment of any inpatients at New York Eye and Ear Infirmary. However, if New York Eye and Ear is merged with Mount Sinai Beth Israel, it will become a division of Mount Sinai Beth Israel and its utilization will be merged with that of Mount Sinai Beth Israel, which will allow for the continued certification and accreditation of New York Eye and Ear Infirmary as an acute care hospital. As noted in Mount Sinai, correspondence to the committee loss of federal inpatient hospital status certification will also lead to loss of the graduate medical education funding, resulting in a need to relocate graduate medical programs. There are no projected cost associated with this application. The submitted budget indicates a projected loss in years one and three. Mt. Sinai Hospital Group's Senior Vice President and Chief Financial Officer has submitted a letter indicating commitment to support those projected losses at Beth Israel Medical Center. Based upon our review, the department is recommending approval of this application with a condition and contingencies.

Mr. Robinson Thank you.

Mr. Robinson I apologize. My mic was off. I'm inviting the applicant up to make a brief statement and then I will turn to the committee and the council for questions.

Jeremy Boal Sorry about that.

Jeremy Boal Thank you to the members of the Public Health and Health Planning Council's establishment and project review committee for your time today. My name is Jeremy Boal. I'm the Executive Vice President and Chief Clinical Officer of the Mount Sinai Health System, as well as the President of Mount Sinai, Beth Israel, and Downtown, which encompasses both of these hospitals. I would like to start by thanking the members and the Department of Health Staff. I know this is very difficult work, but it's critical to the operation of our state's health care system and everyone's efforts to keep our neighbors healthy. That is exactly the goal behind this application for project number 2 2 2 0 8 7 C, to ensure the continued operation of the New York Eye and Ear Infirmary of Mount Sinai, so our staff can continue to care for their patients and can continue to train the next generation of ophthalmologists and otolaryngologist. Over many years, as you have just heard, and as you are well aware, many procedures that used to require lengthy inpatient hospital stays have evolved to only a very short hospital stay or even to a purely ambulatory basis. This has certainly been the case in the fields of ophthalmology, where only the most very complex procedures still require in-patient hospitalization. New York Eye and Ear consequently has seen a decrease in its inpatient census. For 2022, as you heard, the average daily inpatient census was only 2.2 patients. Under Center for Medicare and Medicaid Services and Federal Law, a certified acute care hospital must be primarily engaged in providing by or under the supervision of physicians services to inpatients and be treating at least two inpatients at the time of survey. In addition to the triennial unannounced surveys, each year, we are required to update the Joint Commission on the hospital's average daily census. That information is, of course, reported to CMS. We are quite literally on the cusp of the cut off. If New York Eye and Ear census falls lower, we will lose its hospital status. New York Eye and Ear will no longer be able to serve any inpatients. We will lose Medicare deemed status and its HOPD rate status will also be lost, greatly reducing outpatient rates and calling into question the continued existence of important New York Eye and Ear programs. It will most certainly result in a loss of local access to New York Eye and Ear service for many patients, and in particular with regard to those who are most disadvantaged. New York Eye and Ear will lose graduate medical education funding and its graduate medical education programs, including the largest ophthalmology residency in the country, will need to be relocated or eliminated. There will necessarily and consequently be an impact on employment status for those working at New York Eye and Ear, which are almost exclusively all union positions. We must keep New York Eye and Ear open. The way to do that is by making it a division within the Mount Sinai Beth Israel Hospital. This will preserve New York Eye and Ear hospital status and keep all New York Eye and Ear Services and their programs operational. Bringing New York Eye and Ear under Mount Sinai Beth Israel is not without precedent. Mount Sinai

Brooklyn has been a division of MSBI for decades, and the new Behavioral Health Center we are opening at Rivington Street on the Lower East Side will be as well. That's the state's largest private investment in behavioral health and substance abuse in its history. We are confident that this is the best path forward for New York Eye and Ear as an institution and for our patients, our staff and our graduate medical trainees. I want to take one minute to address some of the responses we have seen in public comments that you may hear today. Some of those opposed to this project are concerned that it will spell the end for New York Eye and Ear or that it is connected to a larger plan for other parts of Mount Sinai. I want to assure you that this application is specifically designed to ensure New York Eye and Ear can continue to function. Anyone implying otherwise does not understand the reality that we are on the cusp of losing CMS certification. This is not a decision that Mount Sinai is making ourselves. We are adapting to the situation created by these CMS regulations. As for those who believe this is part of a larger plan, I want to assure you that our application is narrowly focused on the technical merger of these assets so that we can satisfy CMS requirements and continue to operate. Any other major changes would have to come before the you as your own proceeding. To put a fine point on the issue. If this application is not approved at some point soon, New York Eye and Ear will lose its certification as an inpatient hospital and there will no longer be a hospital for us to debate the future of. Once again, I very much appreciate everyone taking the time to review this application.

Mr. Robinson Thank you for the opening comments. I appreciate them.

Mr. Robinson I want to give the members of the committee and the council an opportunity to ask you questions.

Jeremy Boal May I bring up some colleagues?

Mr. Robinson As long as they're introduced, absolutely.

Jeremy Boal Great.

Frank Cicero I'm Frank Cicero, consultant to the applicant.

Michael Pastier Mike Pastier, CFO of the Mount Sinai Hospitals Group.

Mr. Robinson Thank you.

Mr. Robinson To the committee and the council, Mr. Thomas.

Mr. Thomas Good morning. Hugh Thomas, member of council. Just very quickly, I think I followed this. Corporately, you've got two subsidiaries that you operate, Mt. Sinai, Beth Israel and New York Eye and Ear. Both are in your corporate structure now. You are an active parent.

Jeremy Boal Well, actually, it's more than two sites.

Mr. Thomas There'll be two and then a lot more.

Jeremy Boal Yes.

Mr. Thomas That's fine. I'm just speaking to these two specific individuals.

Jeremy Boal Yes.

Mr. Thomas Thank you.

Mr. Robinson Mr. Lawrence.

Mr. Lawrence If I followed that, you're presently the sole member in New York Ear and Eye.

Michael Pastier Established by the Mt. Sinai Hospitals Group is the active parent over both of these entities.

Mr. Lawrence What changed with this new structure? What provides that lifeline to New York Eye and Ear that does not already exist in the relationship that you have?

Jeremy Boal Right now, because it's independent in its licensure, CMS treats it independently and CMS is requirement is that as you know, one of the ways that they measure whether a hospital meets acute care status is by looking at the inpatient census at the time of survey. If it doesn't meet the inpatient census that's required, which is a minimum of two patients, they look back for the prior twelve months. They need to see an average daily census of two, and in most cases they will revisit and look again. There have been a number of instances since CMS changed its guidance in 2016 and it was affirmed by the court in 2018, a number of instances of hospitals around the country that have lost their acute care status for exactly this reason. By merging this into as a division of Mt. Sinai Beth Israel, the significant change is that CMS counts all those beds as the census. They wouldn't count New York Eye and Ear alone, so we would have more than enough beds for all of these assets to retain their acute care hospital status.

Mr. Lawrence This is really not going to change the operating profile of New York.

Jeremy Boal It is not.

Mr. Lawrence There's no, I guess, strategic plan to increase the number of of patients or any of that stuff. This is just a structural change.

Jeremy Boal This particular change is purely defensive to protect the mission of New York Eye and Ear. All the missions of New York Eye and Ear in the absence of this and I think you might hear from our opponents that you know this is a plot to disassemble

New York Eye and Ear. If we wanted to just assemble New York Eye and Ear, we wouldn't be here today. We would allow it to stay on its own license. It would lose its acute care status, and that would be the end of it. This is a purely defensive move to protect these assets so that we can preserve the mission of these programs.

Mr. Lawrence Thank you.

Jeremy Boal You're welcome.

Mr. Robinson Please go ahead.

Dr. Soffel It's interesting to me because when I read the CON application, that is not the argument that is put forth in the application itself. This feels like an after the fact explanation for why you're doing what you're doing. When I read the application, it says that the goal is to further create an academically based, integrated health care system. Yet, you haven't addressed that at all in your comments today. I'm just wondering, I sort of feel like you had one argument and that doesn't look like it's going to sell, so now you used a different argument. I would just like you to clarify that.

Jeremy Boal I appreciate the comment. This actually has been our concern for a number of years. In fact, going back to the application that we put in in 2019 that was approved in 2020. One of the cases that we were making was in order to preserve New York Eye and Ear acute care status, we needed to enable it to a larger hospital. This is not a new issue for us. This has been a concern of ours from day one as we watched the inpatient census declining. It's definitely not a new issue for us. It's not a new argument. We have been concerned year over year as we've watched this. It would have been resolved this year. Actually, this is the year that the Beth Israel Hospital would have opened on that campus if COVID hadn't hit. We had gotten the approvals just as COVID was hitting, as you'll recall. We would have had to merge these assets through some process here as well. The solution back then was it was all going to live on the same campus. We can't wait any longer because the census is so tenuous. We have to find some way to a larger hospital.

Mr. Robinson Does that answer your question?

Mr. Robinson Ask it again.

Dr. Soffel My question was that argument does not appear in the CON. In what does appear in the CON is the goal of further creating an academically based integrated health care system. You have made no points that address how this potential merger would, in fact, because it doesn't seem like anything is different in terms of the ownership, in terms of the management. It seems like it's just moving pieces around. I don't understand why it's going to be more academically integrated as a single unit rather than the current structure, which is under a single corporate parenthood.

Michael Pastier I think in answering that question, the reasoning which has existed for some time and you've heard Dr. Boal's say was not communicated well to the department. It's not the department's fault that what you're reading doesn't express this answer. I think that's the real answer to the question. We didn't communicate it well to the department, but this is the reason for this application.

Mr. Robinson Dr. Berliner.

Dr. Berliner Two questions. Would it be possible for the hospital to become a critical access hospital instead of a general hospital because of the low occupancy?

Jeremy Boal I don't know the answer to that question.

Dr. Berliner Second question and you may not know the answer to this.

Mr. Robinson There's no way a hospital in New York City could be a critical access hospital. It's not big enough distance.

Dr. Berliner What's happening with other hospitals around the country?

Jeremy Boal It's a great question. They are almost all sitting on other licenses at this point or they have basically moved to DNT status. It's extraordinarily difficult, except for the very, very largest, which can maintain enough of an inpatient census. There's a handful of those around the country that are truly big enough in terms of their volume to do that. It's very, very unusual at this point.

Dr. Berliner Thank you.

Mr. Robinson Are there any questions in Albany?

Dr. Bennett Yes, it's Dr. Bennett.

Dr. Bennett I was trying to understand this whole thing and some of the questions and the answers have clarified some of that. The way I understand it, you've got 69 beds, right, that you're certified for, but you've only got two patients a day. That makes sense because ENT and ophthalmology is all outpatient. I mean, I can't remember. What do you have done? I mean, unless it's an anti-cancer operation. Pretty much, you know, you're going to be all outpatient. You've got no patients in the hospital. You've got 4,000 employees. You're doing outpatient work somewhere, right? I mean, you're doing all these procedures. Where is that going on? Where's that happening?

Jeremy Boal The Mt. Sinai Downtown, the heart of our health system has a very, very robust set of ambulatory services, again, to meet the needs of the community. We are continuing to evolve to meet the needs of the community to meet the expectations of the insurers and to improve access. That's been the mission Downtown for, you know, since we became a system. So far, we've invested just over 600 Million in capital investment

to make sure that we are growing our access while also adapting to the fact that many types of procedures now, as you stated very clearly don't need to be done in hospitals anymore. A lot of our staff are working in ambulatory sites.

Dr. Bennett Because you don't have 4,000 people taking care of two patients, I would hope.

Jeremy Boal 4,000, including Mount Sinai Beth Israel, where we still have an inpatient footprint.

Dr. Bennett I'm trying to understand. What this is to kind of bring some clarity for me. What this is going to enable is for you to keep that program kind of license so the CMS will accredit it and you can continue the training and continue the other thing. My question is a little similar to Dr. Soffel's question about again, I'm always interested in, you know, I too was interested in your comments to further create an integrated system. That's the mom and apple pie that everybody says about hospital mergers, and unfortunately, it rarely is realized. Again, without getting into too much detail, I'm just interested in your high level approach to how you're going to not only improve quality, but lower health care costs.

Jeremy Boal It's an excellent question. It's a big question. We've been on a journey to try to drive value in our market for a very long time. There's many, many examples I can give you. We were out of the gate with hospital at home. We've been aggressively working with 32BJ, one of the biggest unions in the city, to deliver value based solutions, again, in partnership to improve access and to lower the total cost of care. I think we've met with a great deal of success in that. The same applies for Downtown. The best example that I have for you for Downtown is the soon to be launched Behavioral Health and Substance Abuse Center, which sits on the license as another division that will be opening this year. It's a massive investment in providing care for patients who typically struggle to get access and get excellent care. We're working very hard to integrate as a system, so that we can organize ourselves to improve access and lower the total cost in multiple ways, but those are some examples of it.

Dr. Berliner Thank you.

Mr. Kraut Before we call the public, I just have a question about the stakeholders that you had this discussion with. Were they aware of the low census and the emergency of pulling your license, which would result in the closure when you had discussions? We're going to hear from a lot of stakeholder groups, see a lot of people here. Were they aware that if we do not approve this, the hospital is likely to be closed by CMS. They'll yank the license. Where they aware of that?

Jeremy Boal I can say for sure some of the stakeholders were. We have met with Community Board Three and we've been clear with Community Board Three. This has been discussed at faculty meetings as well. I can't say that every stakeholder was aware of all the facts.

Mr. Kraut One other issue.

Jeremy Boal I apologize. We have met with some of the elected on this as well.

Mr. Kraut The elected were aware. Just to clarify, for the council members, this has been a precedent of preserving a hospital or preserving access. The other Eye and Ear, Manhattan Eye and Ear, we approved the same thing, placing it under the license of Lenox Hill in 2000. We have numerous examples of about eight or ten hospitals that we put under the license of a neighboring hospital to preserve access to those facilities. I don't think maybe with one exception, I think Caledonian, when it was under Brooklyn Hospital, well, it turned into an ambulatory care site, as did Manhattan Eye and Ear. There's no inpatient beds there.

Dr. Berliner At the time we did Manhattan Eye and Ear, the problem wasn't that it was going to lose its license.

Mr. Kraut No, no, no. It was an economic issue.

Mr. Robinson I am going to now turn to the public and give them an opportunity to weigh in.

Mr. Lawrence I guess what triggered this was Mr. Kraut's question.

Mr. Robinson Stay right there, Mr. Cicero.

Mr. Lawrence Mr. Kraut's question about stakeholders. Looking through the materials, there are concerns about the access and the loss of service. I guess what we're hearing from you is that there's a commitment on your part to maintain service and to maintain access. Is that a qualified commitment with a timeline or a shelf life?

Jeremy Boal It's a very important question and it's an unqualified commitment. Just so everybody knows exactly what we're committing to. There will not be any closures of New York Eye and Ear inpatient beds. There will be not be any closures of any New York Eye and Ear clinical programs. There will be no change in local access. It is true that some we are, as I've said, over ten years, we've made multiple adjustments to improve access to our communities and made investments. It doesn't mean everything will happen where it is today, but we are not closing a single program and we are going to ensure access, particularly for our most disadvantaged patients. There will be no change to the board that governs the operations. There will be no change to the graduate medical education programs. There will be no changes to the union status for our unionized employees at these assets as well. We commit to all of those things indefinitely.

Dr. Soffel Is that commitment in writing as part of the contractual relationship between Beth Israel and New York Eye and Ear? Will that be a condition of the merger?

Jeremy Boal It's the same board today. It's under the parent. I mean, I think Dr. Soffel, it's on the record here.

Mr. Robinson We have a number of people either who are elected officials or who are representing elected officials. I believe most of them are in Albany, because you're in session. If I can ask Mr. Wiese, who is representing Assemblymember Glick. Let me just see who else I've got here. Dan Mosher, who is representing Senator Kavanagh and I believe Assemblymember Harvey Epstein. Those are the ones I have on my list. There may be others. If you could all approach the table in Albany.

Harvey Epstein My name is Harvey Epstein. I'm a state assembly member representing the 74th District, which includes New York Eye and Ear as well as the Beth Israel site, as well as Bellevue and NYU, that Hospital Row on First Avenue. I'm here because I just have some serious concerns. I know I've heard from constituents about this. If people remember four years ago when they proposed closing Beth Israel, they were like, we're not going to change any services and then the cardiac unit was closed. A friend of mine who almost died, luckily was able to get there, even though they had a heart attack and almost died, They had closed the cardiac unit. There are very little services in Lower Manhattan. Luckily or unluckily, because we had a pandemic, they didn't close the facility. If it did happen six months earlier, we would have a serious problem in Lower Manhattan to have enough beds during the pandemic. What we're really seeing here is the goal is to really close the New York Eye and Ear. They may say they're not going to reduce services, but we have a comprehensive location right now where people go, my daughter's gotten surgery there. Most of these people are coming from Manhattan. 95% of these are New Yorkers who are going to this facility and they're going to break up the services. They may say we're not going to reduce services, but what they are going to do is reduce the comprehensive services that are happening. They've already said here that there's no change in services, but that really contradicts everything that Mt. Sinai, Beth Israel has told us and the public. They're going to change services. That means if you're going there for care to New York Eye and Ear now and you need comprehensive care now, you may have to go to four different locations to get services. If majority of people are going there are seniors and they are seniors, we're going to tell a senior population instead of going to 14th Street for all your services, you're going to go to 28th Street for this, 7th Avenue for that, 5th Avenue for these services. It's a much more difficult thing for our population, especially since the vast majority of these people are Medicare eligible recipients. Being transparent, we've asked for a public meeting. There's been no public meeting. They attended one Community Board Three meeting of a committee that was on Zoom. That's been the public meeting. We've asked for more. We've asked that this process slow down, so we can really engage the 50,000 New Yorkers who go there for over 250,000 services that they get. We really need more. To approve this now without any real community input is, I think, a disservice. I hear the concerns that they have around losing the license. No one wants them to lose their license. This merger, without a commitment, without moving any of those services off site, means that they can just break apart the services that have a serious impact on our community. What do we want? How can we engage?

When we talked about closing Mount Sinai, we created a Manhattan wide taskforce to talk about the impact it would have. We required community surveys, so the impact the community knew what was going on. We were able to then think about what the impact in changing services, moving the cardiac unit Uptown would have on our community. Is it because the license or is it because if they break up these services, they can potentially sell this property? I don't really have the answer to it. I understand that they're losing money. I respect that they're losing money on this, but they're already losing money on the Mount Sinai site to maintain its operations. It feels like there's a contradiction here. I appreciate all the questions that have been asked, but I would encourage us all to really have a community engaged process that has not happened to date to get the public involved, get the elected officials to the table with a comprehensive approach and then hear a plan, not this oh, we're not going to do anything here, but we really know that they're going to do comprehensive changes, which would really break up this facility and break up the services that are available to New Yorkers.

Harvey Epstein Thank you.

Roy Ruiz Thank you.

Roy Ruiz My name is Roy Ruiz. I'm a Community Liaison for Assemblymember Deborah Glick. I will be testifying on her behalf. It's important to note that the testimony that I'm giving in a position to this applies to two different applications here. Her remarks are as follows. Dear Mr. Robinson and members of the committee. I'm writing to express concerns regarding the plans to Mt. Sinai Beth Israel has for the New York Eye and Ear Infirmary. For over two centuries, the New York Eye and Ear has provided efficient, export driven, specialized health care in Lower Manhattan, making it a pillar of clinical care in our community. Its location is a key component of what makes it so accessible to thousands of patients annually. Today, I have serious concerns about two applications before the committee and what they mean to the future of this essential specialized services in our community. Application 2 2 2 0 8 7 C, in which Mount Sinai Beth Israel seeks to merge with the New York Eye and Ear projects a net loss of $137 Million in years one and three. To cover the losses, it states that management is developing a financial plan to reduce costs and monetize certain assets. However, no details of that plan are included in the application. Those vague statements are of great concern to our community, particularly, if the plan results in the reduction, elimination or relocation of the services that are currently provided by New York Eye and Ear Infirmary. Monetizing assets is particularly worrisome considering the real estate value of the current New York Eye and Ear location. If the sale of these buildings is in fact going to be part of the plan, that should be specifically disclosed in the application. The application also states that the applicant anticipates nearly the same volume of inpatient and outpatient visits in year one and three. What is the rationale for the merger? There is no obvious need for a merger to occur unless the explanation lies in application 2 2 2 0 8 9 B. Application 2 2 0 8 9 B, explains the Peakpoint Flatiron LLC, a Delaware limited liability company registered to do business in New York State under the same name of New York Eye and Ear of Mt. Sinai Surgery Center would lease space on the second

floor of 1115 Broadway to establish and construct a freestanding ambulatory surgery center. A list of members and partners shows that Mount Sinai Ambulatory Ventures would own 36% of Peakpoint partners, making it the largest equity partner, as many of the other owners are individual physicians. The application also states that the Medical Director of this location would enter into a transfer and affiliation agreement for backup and emergency services with Mount Sinai Beth Israel just two miles away from the center. Neither application mentions the other's plans. We can see that the two applications work in tandem and should be considered by the committee as part of a larger whole. Application 2 2 2 0 8 9 B, further states that the proposed centre would perform over 9,000 procedures in year one and even more in year three. While it references the numbers of patient visits to different surgical centers around the city, it makes no mention of the number of procedures being performed at the current New York Eye and Ear Campus and provides no rationale for the need to create a new surgery center at 1115 Broadway. More dubious is the implication of the relationship between Mt. Sinai Ambulatory Ventures and Peakpoint partners. The fact that a nonprofit hospital system as renowned as Mt. Sinai would operate as a de facto for profit hospital through this acquisition makes for a troublesome precedent that puts into question the health care priorities and the obligation we have to ensure the well-being of our residents, regardless of income. It would signal to other hospitals in the state that this way of conducting business is appropriate, and that is simply unacceptable. Given these facts, Mount Sinai Beth Israel's lack of transparency and clarity and alarming questions surrounding ownership and the overall lack of community engagement, I urge the committee to set aside consideration of these two Certificate of Need proposals until Mount Sinai Beth Israel allows for ample and robust public input. Lower Manhattan residents rely on the New York Eye and Ear Infirmary for essential care under one well-established roof. For patients with mobility challenges and those with visual and hearing impairments being forced to navigate between several different sites to receive services would be a terrible hardship. It is outrageous that Mount Sinai Beth Israel and Peakpoint Flatiron LLC have filed these applications without engaging in thorough and inclusive community outreach. I join my colleagues in government in calling for a halt to any action on said applications at this time. Thank you for your consideration.

Mr. Robinson Thank you for those remarks for the Assemblymembers remarks.

Mr. Robinson I do believe we have Dan Mosher on behalf of Senator Kavanagh.

Mr. Robinson Is that you?

Daniel Mosher Absolutely.

Daniel Mosher Again, my name is Daniel Mosher. I'm Chief of Staff to Senator Brian Kavanaugh, who represents the 27th Senate District, including the area where New York Eye and Ear Infirmary currently sits. I'll be reading a statement from Senator Kavanaugh into the record. Dear Mr. Robinson, members of the committee. I write regarding the proposed merger of the New York Eye and Ear Infirmary and Mt. Sinai Beth Israel Medical Center. I have heard from concerns, community members and

advocates about the impact that this may have on patients who rely on New York Eye and Ear for crucial vision and hearing care. While I understand that Mt. Sinai has indicated that the merger itself will not lead to any changes in authorized services or a reduction in the number of beds, there are still several outstanding questions and concerns and there has been insufficient community outrage regarding this proposal. I urge the committee to pause in its consideration of this merger and refrain from taking a vote at this time to permit us to ensure that the community's concerns are adequately addressed. As you know, New York Eye and Ear provides comprehensive and high quality ear, nose and throat treatment and services for patients throughout not only my Senate district, but the New York Metropolitan Area. I understand that following the merger, Mt. Sinai intends to transition some services away from New York Eye and Ear's facility at 310 East 14th Street. Many of the community's concerns arise from the prospect of the relocation of these services. Many elderly and disabled patients rely on New York Eye and Ear for care, and it is crucial that all patients are able to continue to receive the same level of care and range of services without disruption or confusion. Before any vote is taken to approve the merger, Mt. Sinai should do more to address these concerns, including the impact the merger may have on New York Eye and Ear on site services, communication and engagement with patients, so that they are properly notified of any changes and oversight to ensure that patients do not experience any reduction in care or lose access to crucial services. I urge the committee to pause on voting on this issue until these discussions have taken place and these concerns are sufficiently addressed. Thank you for your consideration. Signed Senator Brian Kavanagh.

Mr. Robinson Thank you very much. We appreciate the input from the members of the Assembly and the Senate. Really thank you for being here. I'm going to continue to call other members of the public now, if you'll allow us, I think next up is Ms. Utley if she's here.

Speaker 1 Thank you.

Speaker 1 I'm Lois, a independent community health advocate. Like Dr. Soffel, I was quite surprised to hear Dr. Jeremy Boal's new justification for why there is an urgent need for this merger. As she has pointed out, that justification that they're on the cusp of losing their CMS eligibility is indeed nowhere in the materials that were produced summarizing this application. Perhaps, I wonder whether Dr. Boal is responding to some of the comments that have been submitted, including those I contributed to questioning whether there is a compelling need for this merger. We noted that, in fact, the number of inpatient surgeries occurring in the New York Eye and Ear facility has been going up, not down. It went from 273 procedures in 2017 to 456 procedures in 2021. I fail to see why the infirmary would suddenly be on the cusp of losing its CMS eligibility now, when the number of inpatient procedures have been going up. Why was this not a big threat back in 2017 when there were only 273 procedures? What I do wonder is whether in fact that separate CON application that was just referenced, the one to create the New York Eye and Ear of Mt. Sinai Surgery Center might be part of the calculation here because it says that all of the proposed surgeries that will end up at

this outpatient center will originate from Mt. Sinai facilities. Is there, in fact, a plan here to move some of these inpatient procedures out to the ambulatory center thereby risking going below the two patient per day census that threatens the CMS justification? I just want to raise that and urge you all to take that into account because I really feel like Dr. Boal is up here pulling a rabbit out of a hat at the last minute to try to make the justification for this merger that has nowhere been reflected in the materials submitted.

Speaker 1 Thank you.

Mr. Robinson Thank you for your comments.

Speaker 2 Good afternoon. My name is Mark. I'm a resident of the service area of both Beth Israel and New York Eye and Ear. I've been a patient at both those facilities over the years for a variety of services. Professionally, I am Director of Metro New York Health Care for All, which is a citywide coalition of community groups and labor unions. It's been around about thirty years working together on health care issues, both at the national and state level. One of our projects that we've been working on in recent years has been working with fellow advocates across the state through the Community Voices for Health System Accountability Project that we've created to really try to strengthen the state's role of oversight of hospital systems, particularly as they come together and build their empires. What happens to individual patients, the providers who work at those systems, and particularly the communities that they purport to serve in that process. To remind both public officials such as yourself, elected, as well as executives of these hospital systems, that they are legally nonprofit, mission driven organizations that are to serve the community first and foremost. The question then becomes, how do we do that? How do we make it fly, rather than how do we create a business plan that helps us build our empires? I think the situation that we're seeing here around the merger of New York Eye and Ear and Beth Israel Medical Center is an example of like what's really going on here. Both these two applications that have been referenced around the ambulatory care center and this merger are being presented to you as two discrete things as if they had nothing to do with each other. When we put them together, particularly in the experience of what happened three or four years ago around Beth Israel, what we see is an intention to fundamentally change one or both of these facilities. To the extent that the community was brought into either of these conversations, it's happened at the very last minute with a deal that's precooked in advance rather than bringing the community in to that process from the get go. In this case if the CMS certification really is at risk, that's serious. We would care about that as the community. We don't want to see that happen, but we're hearing about it at the last minute. Nobody brought us into a conversation way back when it said, Hey, folks, we got a problem here. Let's sit down together and figure it out. How do we keep our CMS certification while serving the community at the same time? We're kind of in a situation where the gun is to our head. Again, it's sort of like as we experienced three or four years ago, we've heard ad infinitum that we're developing a plan. There's a plan. There's a plan. Where is the plan?

Mr. Robinson You have another minute to go.

Mr. Robinson Thank you.

Speaker 2 That's kind of where we're coming from of the frustration I'm experiencing. Just to close out, the community very much views this as a real an opportunity to enable Mt. Sinai to monetize a real estate asset, just as what they were proposing to do four years ago when they were going to monetize the real estate asset of the then Beth Israel campus. That's where we're looking at. That's what we see.

Mr. Kraut Thank you very much.

Mr. Kraut Unfortunately, Mr. Robinson has to leave. Our Vice Chair is not here. I'm going to take over Chair of the Establishment Project Review Committee. I'll call the next speaker is Paul Lee. Again, you have three minutes and please, it would be very helpful. We have four more speakers after you. If you can bring up points that other speakers have not raised.

Speaker 3 Thank you so much for allowing me to speak.

Speaker 3 I actually prepared, made sure this was less than three minutes. My name is Paul Lee. I completed my residency and fellowship at New York Eye and Ear in 2004. I'm the President of the New York Eye and Ear Infirmary Alumni Association, which includes all residents and fellows who have trained there. The Alumni Association strongly opposes this application. I'm also the Social Program Director of the Ophthalmology Residency Program. I've won various teaching awards in my career and was promoted to Associate Professor at Mount Sinai a few years ago. We've already had meetings with leadership here where they've told the residents that all their cases now to be done at Beth Israel, that we can no longer operate at New York Eye and Ear. Even though he's saying he's not going to reduce services, he's already starting to tell us that we have to leave. In the application, if you can refer to the figure where it has New York Eye and Ear by service, as pointed out, the inpatient numbers are going up. If you can look at the number of outpatient visits in ambulatory surgery center, they have drastically gone down. Please look at the numbers in this application. They tried to tuck it in there and hide it. Mount Sinai has been drastically reducing services at New York Eye and Ear over the past few years, and the numbers show it here. We've had 25,000 surgeries done in 2017. We're down to 16,000 surgeries. We had 130,000 outpatient visits. We're down to 85,000. They've actively been reducing services. Told me in his office, because we I extended his hand to him as the President that he wants to sell the property. Please do not be deceived by this that we're going to merge and we're trying to see the hospital. Again, the numbers do not lie. 2017 inpatient visits were 273. The inpatient, as pointed out, is up to 256. Couple of numbers that I want to point out. If you look at the net assets of Beth Israel, what are the net assets of Beth Israel? 17 Million. 139 Million. How is an institution that is $17 Million in net assets supposed to take over an institution that has $139 Million? It's very easy. It's because of the real estate evaluation. The other thing is the application states that the deficit in three years is going to be 139. They got a letter from the Mt. Sinai CFO. Separate the losses. It's three

words. Support the losses. No one supports this plan. None of the faculty do. The faculty are in the dark. The residents don't. The patients don't. The local elected officials don't. Who wants this plan? The Mt. Sinai Board of Trustees. Those are the only people who want this plan to go through, because by taking away the certificate, they're going to be able to move pieces around and eventually sell it as they wish. The only people who want this is the Board of Trustees at Mt. Sinai. Please do not approve this because this is their first step in moving pieces around.

Mr. Kraut Thank you.

Mr. Kraut You have three minutes.

Speaker 4 I'm Heidi. I'm the Health Policy Director at Center for Independence of the Disabled in New York. We are across disability organization. We serve people with all types of disabilities. That would be including the deaf and hard of hearing and the blind and low vision. Our mission is to make sure that people have the services they need to live independently in the community and not in nursing facilities, psychiatric facility, any type of institution. As we know, we had 15,000 people die in nursing facilities. It would be really nice if this body would care about those people as much as two babies. I will say that we are also concerned about the lack of transparency and moving services from a mission driven hospital to a for profit hospital. People with disabilities have found that market based health care delivery, which privileges profits, has reduced access to care and has resulted in more denials of care. We used to have our office at 841 Broadway in Union Square, and so we serve a lot of deaf people in particular because we have American Sign Language and Deaf employees. People have been going there for hearing aids, ear infections, whatever. We don't know where they are going to be going. We expect that they're going to have difficulty in keeping their services in place, as Harvey had referenced. We think that there really needs to be more community engagement. It needs to be occurring before we're making these kinds of disruptions in delivery systems. We support the proposal of Community Board Three to approach the Borough President to convene a multi-stakeholder process. Stakeholders, of course, should include representatives of the deaf and hard of hearing community and the blind and low vision community. Sydney was involved in the process that Gail Brewer attempted to convene many years ago on the previous radical downsizing. We also are members of Community Voices for Health Systems Accountability. We also joined in their letter that everybody has received.

Speaker 4 Thank you.

Mr. Robinson Thank you.

Mr. Kraut Next is Michael Jascz.

Mr. Kraut You have three minutes.

Speaker 5 I'm a kid from Lancaster, Pennsylvania, who, when my parents brought me here, I was very excited to get to the top of the world, a place I called the Empire State Building. I became a tour guide. I know this doesn't have to do much with the hospital right now and this issue, but I have a nonprofit called the Relationship Foundation. We're explaining to schools around the city about trauma and how to mitigate it because of all the conditions that go on in our society. My retina detached several years ago. Repaired my retina. I happened to live close by. I had since then, the retina has torn again. I was able to continue to go there on a regular basis. My cornea got scratched. I have a replacement. You probably can't tell, but if the cornea failed. I have to have a place that I can go to if I have to travel around. Now, before I went on Social Security, I sat in the clinic on a regular basis. I was a bit out of place because most of the people there were minority people. I think the key point is people who have certain disabilities, especially things like people who are in wheelchairs, you got to wheel somebody around this city for multiple services that the eye and ear provides. It's going to be to the detriment and especially to the minority community, but everybody in Manhattan knows where this place is. If they have to start traveling from one place to another, I might have lost my eyesight if I had had to go. I went in as an emergency. If I was in the wrong location and said, you got to go over to 8th Avenue or wherever, I might have lost my eyesight. I think the point about there should be more community input. This building provides services that are well known. People know where to go. Nothing is more important than keeping your eyesight, as my Mother used to say. Take care of your eyes. I do want to put this off until there's more community input.

Speaker 5 Thank you.

Mr. Kraut Thank you very much.

Mr. Kraut Our last speaker who has signed up is Faith Daniel.

Speaker 6 Good afternoon, committee members. My name is Faith Daniel. I was born and raised in New York City and received my MP from Columbia's Mailman School of Public Health. I am a cofacilitator for Community Voices for Health System Accountability short for CVHSA. Is a statewide network of health care advocates who collectively focus on ensuring that New York state oversight of health facilities considers community concerns about proposed transactions and the likely impact of health equity. As a child, I would accompany my Grandmother, who suffered from cataracts from our home in the Bronx to the New York Eye and Ear Infirmary when she needed eye procedures done. This facility remains as an important source of specialty care for so many across New York City and the surrounding areas. We are particularly concerned with the proposed merger of New York Eye and Ear Infirmary into Mount Sinai's Beth Israel Medical Center. As a Queens New York business article revealed that in last July 2022, there is a well-developed plan to disperse services offered at New York Eye and Ear to several different locations across Manhattan, as many folks have noted. According to the article, surgeries now performed in the facility would be transferred to operating rooms at Beth Israel and a new ambulatory surgery in the Flat Iron District. Those plans are not outlined in the CON application before seeking approval to merge

New York Eye and Ear into Beth Israel. Instead, the application in the New York State DOH summary of it both state that there will be no change in the availability of services as a result of the merger. We noted that a separate CON that appears later on in your agenda today, appears to be the first step in carrying out some of the relocation of services mentioned in that Queens, New York article. If the success of this merger plan actually will rely on reducing costs and monetizing assets, as the New York State DOH summary suggests, these actions could result in the elimination, reduction or relocation of services that are relied upon by many patients within one integrated setting. These patients are unique and include many people with significant, visible, visual and hearing impairments, as my colleague Heidi noted, from whom navigating change, delivery systems and disconnected services can be quite challenging. Such relocations could create inequities in accessing care.

Mr. Kraut You have thirty seconds.

Speaker 6 We urge you to insist on having the full picture of what Mount Sinai plans to do with the New York Eye and Ear facility before you vote on the merger application. Moreover, we request that you direct Mount Sinai to fully engage the affected patients and the community where New York Eye and Ear is located.

Speaker 6 Thank you so much.

Mr. Kraut Thank you very much.

Mr. Kraut That was the last speaker from the public who signed up to speak in opposition to this application.

Mr. Kraut Is there anyone else who has signed up and not been heard?

Mr. Kraut Are there questions for the counsel of the department?

Mr. Kraut We're going to give the applicant the last chance to come up and respond to the comments we've heard. Would you like to ask the questions first?

Ms. Monroe Jeff, I have a question.

Mr. Kraut Bring the applicant up and everybody can ask.

Mr. Kraut Ann, I'm sorry.

Ms. Monroe That's all right. I have a question for the department.

Mr. Kraut Go ahead, Ann.

Ms. Monroe Are there criteria for what is considered sufficient community input in an application of this scope and significance? How does the department decide? Do you

look at whether or not community input has been rich and done to the extent that it justifies the decision that you're making?

Ms. Glock Thanks, Ann, for the question is Shelly Glock from the department. Right now, there is no threshold in if you're looking for a pass fail type thing. We certainly like to see community engagement and certainly solicit through the process community input. I think the community engagement, the legislatively mandated piece, what you're speaking about, will come with that June 2023 health equity piece. That's where that community engagement is going to be a requirement legislatively required part of the CON process, which isn't there right now. Does that answer your question?

Ms. Monroe Yes, it answers it. I'm looking forward to those regulations.

Mr. Kraut You are not the only one. That's another meeting, hopefully. By the way, in all seriousness, hopefully in March we'll have an acceptable draft that we can be sharing.

Mr. Kraut Let me ask the applicant to return, reflect on the comments you heard, which had a certain level of consistency of criticism. Could you please respond to that? Let me just tell you how I'm going to run this. I'll ask after the applicant speaks, I'll ask the members to ask any questions of the applicants of that of the department. I'm going to call a vote. I'm going to try to call a vote. I'm going to stop conversation a certain time. We are going to lose a quorum, which means we will close the meeting and all the other applications pending will not be taken up today if I do at a certain time. I want to give ample time to get everything answered, but on the other hand, I just want to make sure we're very focused in trying to get to a decision one way or the other.

Jeremy Boal Thank you very much.

Jeremy Boal I do want to keep this very brief. I appreciate how long the day is getting. I want to thank everybody who spoke passionately. I appreciate that there is a tremendous amount of caring about our communities and about the assets in our communities and how to provide the best possible care and access for them. I do want to respond to a few specifics. The first one is with regard to a lot of the concerns about the changes that we are or are not planning. All of those would come here. There would be ample time for dialogue and debate. What we're asking for today very specifically, is permission to merge the assets technically so that we can preserve and protect New York Eye and Ear, so that we have the opportunity to have those very robust discussions about what the best course forward is. We welcome those for sure. The second thing I wanted to share is that with regard to the reduction in ambulatory surgeries at the campus, I suspect most of you know that that insurance expectations and physician expectations have been inexorably moving care from hospital settings to lower cost higher convenient settings. Those two things are the primary driver of why our ambulatory surgeries have reduced at this facility, including the loss of physicians who have taken their business to ambulatory surgery centers where they have equity and where the insurers would rather they do the cases. You may hear later about another application. Again, putting the pieces together from my seat. Both of these are

an attempt to stabilize the New York Eye and Ear ecosystem. That is absolutely the primary driver of the loss of those cases. The third thing I wanted to share is that the number of surgical cases is not the same thing as the average daily census. I think you appreciate that as well. The cases that are being done, you know, if they're not long stay cases, your average daily census will continue to drop even if you have more cases. As I said, we are right on the precipice at this point. The last thing I wanted to share is that we take this responsibility very seriously. Beth Israel Hospital is second in the state in fair share, which means that we provide an extraordinary amount of care that is not compensated. We are extraordinarily proud of that. The Mount Sinai health system has backstopped Beth Israel and New York Eye and Ear's losses to the tune of over $1,000,000,000 since the merger. We're proud of that because when we talk about losses, what we're talking about is care for people who are underinsured. We care for people who are marginalized. That's what we do. It's why we're building the behavioral health center. I appreciate that there is suspicion that we have something nefarious planned. I think our record with regard to the investments we've made Downtown and where we choose to spend our dollars and where we continue to spend them, I do think is an important counterpoint to that. I will stop there.

Mr. Kraut Questions from the council.

Mr. Kraut Dr. Berliner.

Dr. Berliner To the best of my understanding, the vast majority of New York Eye and Ear right now consists of group practices that are taking the place of what would have been hospital beds years and years ago. Is that correct?

Jeremy Boal Well, it depends on how you look at it. If you look at where the care that happens on the New York Eye and Ear license, most of it happens at 14th Street, but there are some satellites as well. So, for example, we have an Ear Institute that's at 22nd Street and First Avenue. We have a couple of other ambulatory centers and the like. New York Eye and Ear, by the way, serves all of the city. It doesn't just serve Downtown.

Dr. Berliner No, I understand. In fact, I'm a patient at the 85th Street site. I was also a patient at the 14th Street site for a long time. In fact, just to get it out, I mean, my former ophthalmologist wrote one of the letters criticizing the plan. My question is, is most of what's currently on 14th Street now group practices?

Jeremy Boal Nope. Most of it is actually faculty practice.

Dr. Berliner I mean, has that changed in recent years? In other words, have a lot of those faculty practices shifted out of being faculty practices and gone into ambulatory surgery centers?

Jeremy Boal I can't tell you if it's most, but a considerable number of physicians who used to do their work at New York Eye and Ear have moved their work to centers where they have equity.

Dr. Berliner If I were to walk the halls of New York Eye and Ear today, would I just see lots of empty offices?

Jeremy Boal It's still very busy as an ambulatory center. Very, very busy as an ambulatory center. You wouldn't find a lot of empty space at this point.

Dr. Berliner Thank you.

Jeremy Boal Welcome.

Mr. Kraut Any other questions?

Mr. Kraut I'm just going to take the prerogative of the chair and just kind of sum up some of the things. Every time we have these types of applications, there is always a lot of issues about communication, whether the applicant did it well, whether the stakeholders were all inclusive. Sometimes there's different groups that they speak to and everything. I would say, you know, by your own admission, there was room for improvement here. There's nothing about it. I'm struck by a few years ago our communities and our health providers and our front line people were being celebrated. We had pots and pans coming out. We had parades up and down the city. In such a small time we forgot the roles of these institutions. I know in some they're viewed in very negative ways, with no recognition for all of the hard work that they've done trying to live up to the promise of their mission and why they were founded. I'm so disappointed when the industry, generically, not just your institution, has not been able to get that message out. I'm also disappointed by community members that don't at least recognize the progress that's been made and give credit to that. We've had situations in this city where through community oppositions, terrible things have occurred to a hospital where they closed because they could not find a path of community support to remain open. Denice and I were involved with a very famous one across town from where you were, which that hospital should never have closed. It couldn't get the community support behind it. We have a hospital that's also coming to you and you might not have understood the rationale and that shame on you for not making them understand it that this hospital may actually close as a consequence of inaction. We're confronted with, I think, a lot of valid points that community members have raised. It's beyond our ability, I think, to force certain things to happen other than saying no. If we say no, we also run a risk that we hasten the closure of a hospital that has 1840, I think of serving our citizens in good times and worse times and great times. I'm so frustrated just in this room. I know some of us have discussed that. This is a kind of a case study that there's the ability to do better. I would just ask both applicants and communities to see if they can find that common ground that that's focused obviously on the patient and just improving the health of New Yorkers. That's my comment for today.

Mr. Kraut I think we'll call a vote.

Mr. Kraut Is there any other questions or issues?

Mr. Kraut All those in favor?

Mr. Kraut Albany.

Mr. Kraut All those opposed?

Mr. Kraut I have one in opposition. I have six affirmative votes.

Mr. Kraut Are you in opposition?

Ms. Monroe Yes.

Mr. Kraut Colleen, would you please call in?

Colleen Sure.

Colleen Dr. Bennett?

Dr. Bennett Yes.

Colleen Ms. Monroe?

Ms. Monroe No.

Colleen Dr. Berliner?

Dr. Berliner No.

Colleen Mr. La Rue?

Mr. La Rue Yes.

Colleen Sorry, I couldn't hear.

Mr. Kraut He was a yes.

Colleen Mr. Lawrence?

Mr. Lawrence Yes.

Colleen Mr. Thomas?

Mr. Thomas Yes.

Mr. Kraut I'll vote too, Colleen. It's not a tie, is it?

Colleen No.

Mr. Kraut I would vote yes too.

Colleen Five to two.

Mr. Kraut We cannot get an affirmative amount. The motion does not carry. The application will be remanded to the full council at the February 8th meet.

Mr. Kraut We'll take a lesson from Congress. That's a good place to get lessons.

Mr. Kraut Thank you.

Ms. Monroe There were seven of us who voting---

Mr. Kraut Seven of us voting. Five voted for it. Two voted against it. It was sent to the council without a vote.

Mr. Kraut I want to thank the members of the public, the legislature, who came to speak in the council. We very much appreciated the input.

Mr. Kraut I'm now going to call application 2 2 2 0 1 2 C, the New York Eye Surgery Center, Saratoga County. We have an interest declared by Dr. Bennett to convert from single specialty ophthalmology ambulatory surgery to multi-specialty ambulatory surgery with no construction. DOH has recommended approval with conditions and contingencies.

Mr. Kraut I need a motion because I'm not going to make the motion. I'm here to approve it. May I have a motion to consider?

Mr. Kraut Mr. La Rue.

Mr. Kraut A second by Mr. Lawrence.

Mr. Kraut I'll turn it over to the department now.

Mr. Kraut Thank you.

Ms. Glock North Country EC LLC Doing business as New York Eye Surgical Center, which is an existing Article 28 Ambulatory surgery center in Wilton, Saratoga County is seeking approval to convert from a single specialty ophthalmology to a multi-specialty ASC. The center began operations in 2013. They were granted permanent life under

CON 181438. The center has determined it has capacity for additional cases and the flexibility to allow physicians and other specialties to use the center. A physician board certified in pain management and physiology has expressed interest in performing approximately 200 cases during the first year. This application is to convert to a multi-specialty ASC. The service is really centered around Warren County, but includes Washington, Albany, Saratoga and Montgomery Counties. The center estimates about 40% of the patients are referred by providers affiliated with Hudson, Headwaters Health Network an FQHC, and has stated that they accept patients regardless of their ability to pay. I want to point out that nearly 80% of the cases currently are covered by Medicare due to the ophthalmology specialty. The applicant is projecting about 4,800 procedures in year one with about a little over 3% Medicaid and charity care, just about 1%, a little under one by the third year. Based on the budget projection, net income for year one and year three, based upon our review of character and competence, financial feasibility and public needs, the department is recommending approval with a contingency and conditions.

Mr. Kraut Thank you.

Mr. Kraut Any questions for the department from the counsel?

Mr. Kraut I have members, the applicant in Albany, available to raise any questions or any members of the public wish to be heard on this?

Mr. Kraut Hearing none, I'll call for a vote.

Mr. Kraut All those in favor?

Mr. Kraut Dr. Bennett.

Dr. Bennett I don't have to recuse on this.

Mr. Kraut Well, you have an interest, but that allows you to vote.

Dr. Bennett Yes, that's kind of what I thought.

Mr. Kraut We need your vote to approve it.

Mr. Kraut The motion passes.

Mr. Kraut Call application 2 2 1 2 5 7 C, Open Door Family Medical Center in Westchester to certify an extension clinic at 2 Church Street to provide medical services, primary care and medical services for other medical specialties as a safety net. DOH recommends approval with conditions. Contingencies is recommended.

Mr. Kraut May I have a motion?

Mr. Kraut I have a motion by Mr. La Rue.

Mr. Kraut I have a second by Mr. Thomas.

Ms. Glock Open door Family Medical Center Open door is a not-for-profit Article 28 Diagnostic and Treatment Center and a federally qualified health center. This application is seeking approval to certify an extension clinic at 2 Church Street. This proposed extension clinic literally is kitty corner to the current site about 148 feet away, which will allow expansion of their services at that location. Open door will move their primary care and behavioral health to the proposed extension clinic and keep the specialty medical services as well as dental at the main site, creating a medical campus centered on the two buildings. A certificate of need will be submitted for renovations to the main site to complete that plan. As said, they're looking to expand the services and the community, but can't do so under the current space constraints at the current DTC. I just want to say that the application projects over 50,000 visits in year one. They're projecting over 47% Medicaid in both years. Based on our review, the department is recommending approval with contingencies and conditions.

Mr. Kraut Any questions about this applicant?

Mr. Kraut We do have the applicant available if there's a need to bring them up. If not, if any member of the public wishes to speak in either Albany or New York, please let me know who hasn't signed up.

Mr. Kraut Seeing none, I'll call for a vote.

Mr. Kraut All those in favor?

Mr. Kraut Opposed?

Mr. Kraut The motion carries.

Mr. Kraut I'll call application 2 2 1 2 8 0 E, Specialist One Day Surgery Center LLC. Transfer 100% ownership interest to a New Member LLC comprised of the current members and one new member, and then immediately transfer 25% of the ownership interest to a new not for profit corporation member. Please note that the revised staff report has been distributed and posted which corrects the proposed membership table. You should have that at your table. DOH recommends approval with conditions is recommended.

Mr. Kraut May I have a motion?

Mr. Kraut I have a motion, Mr. La Rue.

Mr. Kraut A second by Dr. Berliner.

Ms. Glock Specialist One Day Surgery LLC is a single specialty gastroenterology ASC. They're 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 thirty-four 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 Saint Joseph's Hospital Health Center. Upon approval of this transaction Specialist One Day Surgery LLC will be owned by SOS, ASC Holdings LLC and Saint Joseph's Hospital Health Center. You can see the current ownership in the proposed ownership on Page 3 of the staff report. Upon approval, the company will have seven board members, six of whom will be members of SOS, ASC Holdings, and one of whom will be appointed by Saint Joseph's Hospital Health Center. This governance structure will allow the hospital to participate from a strategic level. The department is recommending approval with conditions.

Mr. Kraut Thank you.

Mr. Kraut Any of the members have any questions for the applicant or for the department?

Mr. Kraut Any member of the public wishes to be seen or heard on this application?

Mr. Kraut All those in favor?

Mr. Kraut Opposed?

Mr. Kraut The motion carries.

Mr. Kraut Application 2 2 2 0 1 1 B, Flushing Endoscopy Center LLC in New York County to certify a three single specialty Ambulatory Surgery Center Extension Clinic for Gastroenterology, Otolaryngology and Urology at 168 Center Street in New York and transfer 38.65% ownership interest from three members to two existing and four new members. DOH is recommending approval conditions and contingencies.

Mr. Kraut May I have a motion?

Mr. Kraut I have a motion by Mr. La Rue.

Mr. Kraut I have a second by Dr. Berliner.

Ms. Glock Thank you.

Ms. Glock As stated, this application is looking for approval to certify and construct a tri single specialty extension clinic to be located in New York County and to transfer 38.65% membership interest from three members in the center to two existing members and four new members. You can see the current and proposed membership on Page 7 of the staff report. Upon approval of the project of the transaction, it will be named Soho

Ambulatory Surgery Center. The Medical Director will be Dr. Danny Chew. The applicant is projecting Medicaid at 36.64 and charity care at two. The department based upon a review of character and competence, public need and financial feasibility is recommending approval with contingencies and conditions with an expiration of the operating certificate five years from the date of its issuance.

Mr. Kraut Any questions from the council?

Mr. Kraut The applicant is available if there is any questions to discuss. I would also point out, although Dr. Soffel is not here, this applicant as GI Centre, has 36% Medicaid. Again, it's in Flushing, Queens.

Mr. Kraut If there's any questions, we could respond.

Mr. Kraut Hearing none, I'll call for a vote.

Mr. Kraut All those in favor?

Mr. Kraut Opposed?

Mr. Kraut The motion carries.

Mr. Kraut Application 2 2 2 0 2 4 B, 787 Ortho ASC LLC doing business as Peakpoint Midtown West SC in New York County. This application will establish to construct a new multi-specialty ambulatory center at 787 11th Avenue in New York. DOH recommends approval with conditions and contingencies.

Mr. Kraut May I have a motion?

Mr. Kraut I have a motion by Mr. La Rue.

Mr. Kraut Do I have a second?

Mr. Kraut I have a second by Dr. Berliner.

Ms. Glock This proposed ASC will be located, as Mr. Kraut mentioned, at 787 11th Avenue, New York County. The freestanding ASC will specialize in orthopedics, neuro and breast surgeries. It will be housed in approximately 18,000 square feet on the sixth floor of an existing eight story building that's going to be renovated by the applicant. Upon approval, the freestanding ASC will be known as Peakpoint Midtown West ASC. Ownership of the operation is shown on Page 1 of the staff exhibit. The individual members, all physicians make up 43.2% of the operating entity and Peakpoint LLC makes up 56.8%. The Peakpoint LLC is comprised of four individuals and Mount Sinai Ambulatory Ventures, Inc. If you take 40.1% of the 56.8% of Peakpoint, the membership is about 22.77 for Mount Sinai Ambulatory Ventures Inc. Mount Sinai Ambulatory Ventures Inc is an existing not for profit corporation whose sole passive member is the

Mount Sinai Health System. The managing members of Peak Town Midtown West are Richard Sayles, William Mulholland and Sarah Sanford. They will have an administrative service agreement with Merritt Health Care Holdings LLC. You can see that Dr. Gladstone is going to be the Medical Directory Board certified in orthopedist. Mount Sinai Hospital will have a board seat, but won't have any management authority or an active role in the operations. The applicant has a transfer agreement back up with St Luke's Roosevelt Hospital, known as Mount Sinai West, which is about five minutes away. The physicians who are using the ASC have provided letters demonstrating their commitment. Based on the volume estimates in those letters, 787 Ortho expects to perform about 2,500 procedures during the first year and about 2,700 in year three with Medicaid, a 3% charity care at 2. Those percentages are based on the existing caseload of the physicians who are interested in performing procedures. Based on our review, the department is recommending approval with contingencies and conditions with an expiration of the operating certificate five years from the date of issuance.

Mr. Kraut Any members of the council have questions for the department?

Mr. Kraut We have one individual who's signed up to speak in opposition. The applicant will also be available to speak.

Mr. Kraut Dr. Lee signed up to speak.

Mr. Kraut Could I have a member of the applicant to come up, please. I have a question.

Mr. Kraut I'm assuming you've been in the room since early morning. It just behooves me because some of the people who raised this issue are no longer in the room. I just want to ask you the same question we asked that applicant. You're projecting a 3% Medicaid on the West side of New York City with a significant number of physicians coming. How do you justify that, given the percent of Medicaid in New York City, particularly, the number of housing and people that are... It's at least 20% citywide. I just want to understand.

Evan Flatow I'm Evan Flatow. I'm an orthopedist by trade and the President of Mount Sinai West. I heard the discussion earlier. We recognize our commitment to care for the community. We certainly have that intent. Our hospital is about 26% Medicaid. We are the only hospital in the sort of Lincoln Center area, but we also another Mount Sinai Hospital farther North, Mount Sinai Morningside has a much larger Medicaid community because of their location. Our the department that Dr. Gallet is the Chair of Orthopedics. Their department has about an 8% Medicaid. When you look across the spectrum, because they pull in a lot of referral cases coming in from other areas. We have an existing ambulatory surgery center very close by, Manhattan Surgery Center that we own 40% of. We have 11% Medicaid there. We're very committed. We're going to do outreach and take care of everyone we can. The number you saw there was just based on the pro forma looking at the practices of the doctors that were going there. I assure you, we are committed to caring for the community.

Mr. Kraut This is going to be a limited life. It will come back to us in five years.

Evan Flatow Yep.

Mr. Kraut You'll do it administratively. I would just say that these applications that we've raised this issue with need to be tagged. As you do the administrative reviews, which by the way, you got to come back and report in the annual report on the limited life just to monitor the commitments that are being made.

Mr. Kraut Thank you very much.

Evan Flatow Thank you.

Mr. Kraut Anybody else have questions?

Mr. Kraut Any member of the public wishes to be heard?

Mr. Kraut Hearing none I'll call for a vote.

Mr. Kraut All those in favor?

Mr. Kraut Opposed?

Mr. Kraut Abstentions?

Mr. Kraut The approval of the motion carries.

Mr. Kraut Application is approved.

Mr. Kraut Application 2 2 2 0 3 6 B, Excelsior ASC LLC doing business as Excelsior Ambulatory Surgery Center in Kings County to establish and construct a new multi-specialty ambulatory surgery center at A33 65th Street in Brooklyn. DOH recommends approval with conditions and contingency.

Mr. Kraut May I have a motion?

Mr. Kraut Have a motion, Dr. Berliner.

Mr. Kraut I have a second, Mr. La Rue.

Ms. Glock Are seeking to establish and construct this new Article 28 Diagnostic and Treatment Center as a multi-specialty freestanding ASC. They'll be providing ophthalmology and gastroenterology surgery services. Upon approval they'll be known as Excelsior Ambulatory Surgery Center. The proposed operator members are part of the Excelsior Integrated Medical Group. You can see the proposed members and their

ownership percentages in the staff exhibit. The applicant is projecting Medicaid at 40% in charity care at 2%. Based upon our review, the department is recommending approval with contingencies and conditions with the expiration of the operating certificate five years from the date of its issuance.

Mr. Kraut Thank you.

Mr. Kraut Any questions for the department?

Mr. Kraut We have representatives of the applicant available if need be.

Mr. Kraut All those in favor?

Mr. Kraut Opposed?

Mr. Kraut The motion carries.

Mr. Kraut Actually, Mr. Robinson wanted me to raise the name, but I neglected to do so. Let's just hope they live up to their name.

Mr. Kraut Application 2 2 2 0 8 9 B, Peakpoint Flatiron LLC doing business as New York Eye and Ear of Mount Sinai Surgery Center in New York County. The application is to establish and construct a dual single specialty Ambulatory Surgery center at 1115 Broadway in New York for Ophthalmology in Otolaryngology Head and Neck Surgical Services. Please note that the DBA has been removed from this application. The facility name will remain Peakpoint Flatiron LLC. DOH is requiring approval, conditions and contingencies.

Mr. Kraut May I have a motion?

Mr. Kraut I have a motion, Dr. Berliner.

Mr. Kraut A second Mr. Lawrence.

Ms. Glock Is this better?

Ms. Glock Peakpoint Flatiron LLC is requesting approval to establish and construct this Article 28 Freestanding Ambulatory Surgery Center. It will be certified as a dual single specialty specializing in ophthalmology and otolaryngology in the lease space in the existing building at one 1115 Broadway in New York. The proposed ownership structure is shown on Page 1 of the exhibit. Individual physicians will make up 49%. Peakpoint Partners LLC will make up the other 51%. Of that 51%, Mt. Sinai Ambulatory Ventures Inc has proposed 36.1 membership, which comes to about a little under. It's about 18.41% of the total. As previously stated in the previous application, Mt. Sinai Ambulatory Ventures Inc is an existing not for profit corporation whose sole passive parent is the Mount Sinai system. They do have an optimal board-certified

ophthalmologist who will serve as the Medical Director. The applicant is projecting Medicaid at 20% and charity care at 2%. These are projections based on the current practices. The applicant states that 96% of the procedures moving to the center are currently being performed in a hospital setting, and the remaining 4% are being performed in other ASC settings. All of the proposed surgical cases will originate from Mount Sinai. This will allow for additional capacity. We did hear previously that there was opposition to this project. There was concern with accessibility versus public transportation on the project. There was concern about the transfer agreement and the proposed backup hospital being about sixteen minutes away and also a potential or alleged connection to the Mount Sinai New York Eye and Ear merger. Brad Stackhouse from Peakpoint Flatiron LLC did respond to those concerns. That letter was distributed to the Public Health and Health Planning Council. Based on our review, the department is recommending approval with contingencies and conditions with an expiration of the operating certificate five years from the date of its issuance.

Mr. Kraut Thank you.

Mr. Kraut Are there any questions for the department?

Ms. Monroe I have a question.

Mr. Kraut Yes, Ann.

Ms. Monroe We heard from a number of public speakers today that this application is intrinsically tied to the other. I'm wondering if I vote no, it will come forward without a recommendation. Will we be able to discuss the two of them in tandem at the council meeting?

Mr. Kraut Well, you're going to definitely discuss it at the council meeting. If you believe they're connected yeah, well, put them. They're in different batches. We can certainly if you believe there's a connection, yes. We will discuss it. They're independent votes. That's all I'm suggesting.

Ms. Monroe I appreciate that they're independent votes, but I would request that we look at them together.

Mr. Kraut We're going to also ask the department when it does its comments two weeks from now just take that under consideration and see how it is.

Mr. Kraut Hold on one second.

Mr. Kraut Just so we're clear, in what basis do you believe they're connected?

Mr. Kraut We just approved another application from Mt. Sinai, although it wasn't Beth Israel. It was a different one. I just want to understand where you see the connection.

Ms. Monroe We heard from many public speakers that this was the first step in major changes from the Eye and Ear Institute. I'm just requesting that we take some time.

Mr. Kraut I was going to ask the applicant to come up and explain to us why they think it is connected or not connected. I'll ask you a question I would have is, how many ambulatory surgery centers does New York Eye and Ear have licensed or even joint ventures?

Brent Stackhouse Good afternoon. I'm Brent Stackhouse. I'm President of Peakpoint, Flatiron, LLC, also President of Mount Sinai Military Ventures, Inc. Mount Sinai Military Ventures Inc currently is on the board and has investments in ten operating surgery centers here in the City of New York. Mount Sinai is wholly owned by Mount Sinai Health System, as is New York Eye and Ear. New York Eye and Ear does not currently have ownership in any surgery centers. Previously it had ownership in two. This is a subsidiary of Mount Sinai Health system.

Mr. Kraut This is why they removed the DBA. The mistake is the ownership group is not New York Eye and Ear. It is Mt. Sinai Ventures. Does that clarify it for you?

Ms. Monroe Well, I think I've made my point that I would like to have them looked at together, if that's okay, if that's impossible or unclear.

Mr. Kraut I just am going to ask them.

Ms. Monroe I believe they're connected.

Mr. Kraut Are they connected?

Brent Stackhouse They're only connected through the same parent. There are New York Eye and Ear doctors in this application.

Mr. Kraut We will bring it up. The applicant if you didn't hear them said they're connected only through the parent. There are New York Eye and Ear doctors included, but there are also doctors that are not New York Eye and Ear doctors.

Ms. Monroe I believe I understand.

Ms. Monroe I've made my request.

Mr. Kraut Yes, we certainly will do so.

Mr. Kraut Dr. Berliner.

Dr. Berliner A question for the department. I don't think I've ever heard of a single--

Mr. Kraut I didn't quite understand the alliteration, but go ahead.

Ms. Glock You can have up to three single specialties. Once you get beyond three, you've got to be multi-specialty.

Dr. Berliner To the applicant, why not go for two more specialty?

Frank Cicero One part of that is that and you can have three single specialties a part of it. I think if I'm correct, Shelly, you also have to have at least one room that is built out in order to be a multi specialty.

Mr. Kraut Any other questions?

Frank Cicero There were questions raised we'd like to answer them. We think this is not connected. The driving force behind this is not related to the driving force behind that other application. As you heard, ambulatory surgery cases have been declining at this hospital and they will continue to decline. This is driven by the insurance industry, which is, as people around this table see this type of application, they're being told that these cases will no longer be paid for if they continue to be performed in a hospital ambulatory surgery site. That's the rationale for it. In addition to that, it is Mt. Sinai Health System trying to continue to partner with its surgeons as opposed to having its surgeons go out and form one of these centers on its own, which they relatively easily could do. I think that's the reason for it, the demand for higher quality, lower cost services, and that's why this is being created. I know Shelly has mentioned this, but we just want to make sure that people are aware that there is a 20% Medicaid payer mix in this group. I could have, if you want to understand the physician part of this and how it is not the same as the other application we could speak to that.

Mr. Kraut Well, I would just suggest that might be forwarding a letter to the department in generally response. I got twenty-five minutes before I lose my quorum. I just want to go out of deference to everybody else on the agenda for post-op.

Mr. Kraut All those in favor?

Mr. Kraut All opposed?

Mr. Kraut I have everybody's vote but yours.

Ms. Monroe I'll vote in favor.

Mr. Kraut Thank you.

Mr. Kraut Any against?

Mr. Kraut The motion carries.

Mr. Kraut Thank you very much.

Mr. Kraut I got twenty minutes left. Application 2 2 1 2 8 1 B, Integrity Care Services in Kings County to establish and construct a new diagnostic treatment center at 1426 39th Street in Brooklyn. DOH recommends approval conditions and contingencies.

Mr. Kraut May I have a motion?

Mr. Kraut I have a motion, Mr. La Rue.

Mr. Kraut A second, Dr. Berliner.

Ms. Glock Integrity Care Services Inc it's looking for approval to establish and construct an Article 28 DTC in the Borough Park section of Brooklyn. Integrity currently operates an Article 31 mental health clinic in Brooklyn, and once approved, this project will establish and construct the DTC on another floor of the same building to complement those Article 31 services. Through the project, they intend to provide Article 28 services to the current mental health patients. Their ultimate goal is to become an FQHC age thing. The new center will provide primary care, other specialty care in a area designated shortage of primary care providers. You can see the Integrity Care Service members in the staff report. The application projects 63% Medicaid, 9% charity care, and the department is recommending approval with contingencies and conditions.

Mr. Kraut Thank you very much.

Mr. Kraut If there's any questions for the department. The applicant is here to answer any questions we may have.

Mr. Kraut Is there any member of the public wishes to be heard on this application?

Mr. Kraut All those in favor?

Mr. Kraut All those against?

Mr. Kraut The application is approved.

Mr. Kraut Application 2 2 2 0 3 2 B, Mt. Valley Care LLC in Rockland County to establish and construct a new diagnostic treatment center at 290 Route 59 in Spring Valley. DOH is recommending approval with conditions and contingencies.

Mr. Kraut May I have a motion?

Mr. Kraut Mr. La Rue.

Mr. Kraut A second, Dr. Berliner.

Ms. Glock Thank you.

Ms. Glock This application, if approved, will allow the DTC to establish and construct to provide primary care and other medical specialties. They will be located in the Spring Valley area. The sole member of the proposed operators, one individual, which you can see in the application. They are projecting Medicaid at 40% and charity care at 2%. The department is recommending approval with contingencies and conditions.

Mr. Kraut Is that Medicare or Medicaid at 40%?

Ms. Glock Medicaid.

Mr. Kraut Thank you.

Mr. Kraut Any questions of the department?

Mr. Kraut The applicants here if there's any questions of them.

Mr. Kraut Any members of the public wishes to be heard?

Mr. Kraut All those in favor,?

Mr. Kraut Opposed?

Mr. Kraut Abstentions?

Mr. Kraut The motion carries.

Mr. Kraut We're going to go now through the residential health care facilities. I know we have questions on some of them. I do not want the members regardless of what happens about the time, ask those questions. Do not rush. Notwithstanding, you know, the other stuff.

Mr. Kraut Application 1 9 2 2 3 7 E, JAG Operating LLC doing business as Foltsbrook's Center for Nursing and Rehabilitation in Herkimer County to establish JAG Operating LLC as the new operator of the Foltsbrook Center for Nursing and Rehabilitation. 163 Bed Skilled Nursing facility located in 104 North Washington Street. DOH is recommending approval with contingencies.

Mr. Kraut May I have a motion?

Mr. Kraut I have a motion, Dr. Berliner.

Mr. Kraut A second, Mr. Thomas.

Mr. Kraut Ms. Glock.

Mr. Furnish I'm Mark Furnish.

Mr. Kraut Oh, I'm sorry, Mr. Furnish. Excuse me. I'm being retrained.

Mr. Furnish That's all right we all are.

Mr. Furnish In the interest of time, I'm going to be as thorough as I can. I'll answer any questions you have. This first one, it deals with Foltsbrook. This facility has a very troubled financial history. In fact, the nursing home has been operating under various receivership since October 1st of 2013, so close to ten years. In 2018, after an extensive search for a new receiver, which would be its third, which almost did not come to fruition, Foltsbrook LLC, which has common members with the current applicant, became the receiver. Now, this receivership is currently expiring. On February 16th, 2017, the current operator, Foltsbrook Inc and Foltsbrook Adult Home, which is also associated with this facility, entered into Chapter 11 bankruptcy. In July 2017, the court approved, the bankruptcy court approved Cedar Care Holdings to purchase the operations in real estate, which is why we're here today. On June 1st, 2017, Cedar Care Holdings entered into the purchase agreement with Foltsbrook and Foltsbrook Adult Home Inc for the sale and acquisition of personal property and real estate associated with the properties. In an effort to bring stability to the nursing home and the adult home, the department recommends approval and as I stated, the receivership, which also has the ownership of the current applicants, is about to expire. It meets the 40% threshold requirement. I wanted to talk about that because I know there's some questions. The level of quality of care, you have to look at consistently high level of care. That's the standard that we have to use. Recently, we enacted new legislation that says that if a portfolio contains fewer than five facilities, then we shall make the determination on a case-by-case basis with the criteria set forth in 600.2 of the New York Code and Rules and Regulations. If you have less than five facilities under the time frame, you don't do that 40% threshold. It's up to you to determine character and competence, which we are in this case. That's why it meets that threshold requirement. You have discretion in terms of quality to look at that. The long-term care approves and it meets needs and financial sustainability and character and competence. The department recommends approval.

Mr. Kraut Thank you.

Mr. Kraut Questions.

Mr. Kraut Mr. La Rue.

Mr. La Rue Good afternoon. I have a couple of questions for the department before I ask the applicant. When I look at Page 8 of the exhibit, I count one, two, three, four, five, six, seven homes.

Mr. Furnish Over the course of forty-five months or something like, I believe. It's more than forty-eight months. There's less than forty-eight months in some of these. That's why it's not included.

Mr. La Rue I'm trying to process this because there are homes that they no longer own which are listed on here. There are homes that they've owned less than five years that are listed on here. You're saying for those two reasons, they technically don't meet the criteria?

Mr. Furnish Correct, for the automatic ban. Now, that's not to say that under your authority under 600.2, if you find they don't meet a consistently high level of care, you can still find that they don't meet that criteria.

Mr. La Rue I'm interested.

Mr. Furnish Go ahead.

Mr. La Rue I'm sorry.

Mr. La Rue I'm interested in whatever nursing homes there are in the immediate geographic area of this one, because it seems like the department has gone to great lengths to keep this facility open with multiple receiverships over a ten-year period. Is it isolated so that there aren't other homes available to the community?

Mr. Furnish It is. It is isolated. There's only a few in the area. We've been trying to keep this afloat for a long time. It is tricky to find locations for residents in this area.

Mr. Kraut Do you deem this a critical access nursing home? Not in a kind of a financial way, but from Department of Health policy that this is important to that county and its population and the surrounding counties?

Mr. Furnish Unofficially, critical. I don't want to use a legal term.

Mr. Kraut Well, I used the term.

Mr. Furnish It is important to the community.

Mr. Kraut That's it.

Mr. Furnish That's the reason why. The receiver ships about to end, like I said.

Mr. La Rue I mean, is it possible to ask the department to share with us what nursing homes are within a ten-mile radius and what the occupancy is or some geographic?

Mr. Furnish Sure.

Mr. La Rue Because the quality of the receiver vary.....the quality ratings are very poor. I'm not sure what service we're doing to the residents by keeping it open and having an operator who doesn't have a history of providing good quality care, according to this report.

Mr. Furnish Yes, we can provide that.

Mr. Kraut I mean, you understand Scott's point. He goes, under other circumstances, this applicant would raise concerns for at least Mr. La Rue and maybe others on the council. You're also telling us it's the only option you have in a county where you're trying to do it and you're recommending we should stand behind that. This is acceptable. That this group will be acceptable to the department.

Mr. Furnish Correct.

Mr. Kraut Any enhanced oversight or surveying your planning? Do you have any plans to just go in there and do surveys more frequently?

Mr. Furnish It would be the normal. We would have them underneath. They would be the proposed operator. They would be included in all the surveys. They'd be on the hook for all the quality. What they're currently doing in receivership, which is kind of on loan There's that as well. We'll be happy to provide the information for you.

Mr. Kraut You want the applicant?

Mr. La Rue I got a couple more questions.

Mr. Kraut Scott, please.

Mr. La Rue I know with the recent indictments of some nursing home operators in the state by the Attorney General, the concern was these related businesses and the sale of the property versus the nursing home and the lease payment that was being paid to the landlord, siphoning resources from the ability to properly run the home. Do we know what the lease payment is in this arrangement? Has there been any judgment as to whether it's appropriate or competitive for that geographic area?

Mr. Furnish It's a triple net lease. The least amount is $1,463,000 a year. It increases 1% over the previous year's annual base rent, plus real estate taxes, insurance, approximately $130,000 per year. It's a non-arm’s length lease arrangement. The applicant attests to the pre-existing business relationship between the tenant and the members of the landlord.

Mr. La Rue I don't have any way of knowing whether that's a appropriate lease payment or not.

Mr. Furnish I should mention that this is... The Federal Bankruptcy Judge approved the sale of the property. That's another factor you got to put it into consideration that we're dealing with bankruptcy law and public health law, which sometimes don't mix.

Mr. Kraut Let's be clear that the corporate structures that nursing home ownership evolved into is in part due to the fact that we've limited to actual individuals and persons. There's an artifact of what we as a state created. I would say that the issues that were raised in the Attorney General's actions and then even today down in Washington, there's a movement afoot to understand this better and maybe put some issues around it. We have no basis to know. We trust the department in their review about the fair market because it does get involved into reimbursement basis, you know, for capital passthrough and rent and stuff. We're not equipped other than the department saying this is acceptable.

Mr. La Rue I mean, based on this quality, I'm not going to be able to support the application.

Mr. La Rue When they had the full council meeting, if we could have the data that indicates this is a critical access facility. I know we're just using that term because there isn't a term. We could demonstrate that the community will be harmed more so than they would be by the quality ratings that we're looking on the sheet. That's another story. I don't have that data here today to tell me.

Mr. Kraut Mark, if you could, at the full council meeting, please come ready to respond to the requests that Mr. La Rue just made.

Mr. Furnish We'll do that.

Mr. Kraut Any other members of the public wishes to speak?

Mr. Kraut The applicant would like to speak.

Andrew Black Good afternoon. Andrew Black, consultant to the applicant. To my left is Ari Greenspan, one of the members of the proposed operator. He's going to make a moment. I just want to also thank the department. Ironically, this application was on for approval at the first meeting that was canceled prior to COVID. That's how long this has been.

Mr. Kraut We'll keep talking and it will not be on approval.

Mr. Kraut Go ahead.

Ari Greenspan Thank you, counsel, for meeting with me today.

Mr. Kraut A little closer, Ari.

Mr. Kraut Thank you.

Ari Greenspan This is actually a tremendous time for us as an organization. When I met with Mr. Furnish five years ago to vouch to him that I would do everything I can to raise the quality of care in this building, bring it out of bankruptcy, and also dedicate my career to that. I've succeeded out of two of those three. What we realized; we must realize that this is a people business. We're talking about this facility in a town that has to be said. How many people live there? It's 6,000 people. It's not a lot of people. We've all done studies. I'm not here to teach anybody anything. We know that people relate to care. It is in a community that is hamstrung by a Medicaid base rate that is negative because it's base rate that was built in the 1980's. I can't pay these CNA's less than I pay in Monroe County. I can't pay them less than I pay in Rensselaer County. I have to keep up with that, but yet we're penalized. I was asked five years ago, Ari, fix this building that you're only getting $0.75 on the dollar. You can see the financials very clearly. You see what we've been able to do. We found other ways to maximize the CCRC. We've turned it into a CCRC. We have a robust outpatient therapy program that is literally what is carrying this building financially while we wait for the department to make moves on rebasing the Medicaid rate. It cannot survive longer. Honestly, if the rates don't change, how am I supposed to recruit against other facilities in Utica, which in this area, as you've mentioned, other facilities in the community, this is a very tough area. The resident population is not your typical geriatric population that's here just for strictly rehab. We have a strong dementia population in this community. They have nowhere else to go. I assure you, it's very difficult to take care of residents who are primary diagnosis are dementia. My leadership team there has been intact for three years. What we've been able to do there is focus on finding the right people and that has been the biggest challenge. We also know that as you find people, as you build a team in any organization, whether you're a football team, whether you're a nursing home, you will sometimes. You will hire the wrong person. As you see, we've been able to keep this building alive through an unprecedented time in history in COVID. You see the numbers. That census was at 106 on July 1st of 2018 when I walked in. We're at 159 on March 1st, 2020 with very healthy ratings walking into a planning council meeting we were prepared for and that all side railed. New York did not recover as quickly as New York City did. There are no people. The people who are nurses, they professionals. Their travel nurses now. Nobody in that community believes in that community. I believe in this community. That's why I'm here. I'm not here to just pick up another nursing home. No, no, no. This community is my family. The people who run this building is part of my community is part of my organization. I know that there's more that needs to be done here. I'm not saying my job is done. On the contrary, I've built over the last five years a robust clinical team. I have a VP of Clinical, a new corporate infection prevention, a Corporate Director of Education. I'm putting all of my eggs in the basket. How can we raise this clinically? On top of that, I've contracted with a QYO. We've worked on many programs since May. This directive you're looking at today is not because we have not attempted to fix this. It's because I can't find the right people sometimes within the organization to put and make these changes happen. That's my biggest challenge. I need stronger rates to appeal to people. I need stronger rates, so I can appeal to a good social worker to appeal to a good Director of Nursing. If I don't

have that, why would they come to me? Equally, I plead to you to look at this as more than just a simple acquisition. I'm not here to acquire anything. I've been running the building, sweating, sleeping there for many, many months, many years. I look forward to the opportunity to officially call this building within our organization. Thank you for letting me speak.

Mr. Kraut Thank you very much.

Mr. Kraut I know you cannot pay them in diamonds.

Mr. Kraut Any other member of the public wishes to be heard?

Mr. Kraut Any other questions from the council?

Mr. Kraut All those in favor?

Mr. Kraut All those opposed?

Mr. Kraut We have two votes opposed.

Mr. Kraut Dr. Bennett, did you vote affirmatively?

Dr. Bennett Yes.

Mr. Kraut I'll say yes.

Mr. Kraut Dr. Berliner and Mr. La Rue had voted no.

Mr. Kraut The application will move to the full council meeting without a recommendation.

Mr. Kraut I'm going to move up one more application. The Knolls Goshen at Orange County. This is application 2 2 2 1 2 3 E, to establish the Knolls at Goshen Inc as the new operator of a 40 bed residential health care facility, which is part of a continuing care retirement community at 214 Harriman Drive in Goshen. It's currently operated by Glenn Arden, Inc. DOH is recommending approval with conditions and contingencies.

Mr. Kraut May I have a motion?

Mr. Kraut Have a motion, Dr. Berliner.

Mr. Kraut A second by Mr. La Rue.

Mr. Kraut Ms. Glock.

Mr. Kraut Mr. Furnish, I am so sorry.

Mr. Furnish I hear we only have a few minutes left. This one's important, which is why we're going to order. The Knoll at Goshen is a not-for-profit corporation seeking approval to be established as a new operator of a 40-bed residential health care facility currently known as Glen Arden. It's part of a continuing care retirement community, CCRC. On January 24th, 2022, Glenn Arden Inc and Alliance entered into an asset purchase agreement whereby Knolls at Goshen Inc will purchase the operating assets of the CCRC from Glenn Arden. The applicant will then enter into an administrative service agreement with Bethel Communities Management One LLC. This is one of three applications required for the transfer of operations of the Glenn Arden CCRC to a new operator. This application is for the nursing home bed portion of the CCRC and will be the only application required to come before you, because it's an article 28. It's your regular CON. It's just part of a CCRC. Under Public Health Law Article 46 approval for the establishment of a new operator for the Article 28 Skilled Nursing Facility License for the Knolls at Goshen must be obtained before the public CCRC Council can act upon the larger Public Health Law Article 46 Certificate of Authority Application. This application, a result of agreements with the department with the CCRC counsel, does appoint the current operators to transfer operations to a new operator under a plan to achieve full statutory compliance for the CCRC. The applicant group was previously established as the operator of the Knolls, a financially distressed CCRC, formerly known as Westchester Meadows. The applicant group was able to increase the occupancy of the Knolls and bring the CCRC into full statutory compliance. The applicant group intends to use similar strategies in operating the Knolls at Goshen. The applicant group recently entered into transactions to sell a nursing home and a CHA with the intent of focusing their efforts and resources on the CCRC within their organizations. Both of these transactions were approved. It passes the 40% litmus tests and the long-term care has been approved. That meets financial and public need as well. We recommend approval.

Mr. Furnish Thank you.

Mr. Kraut Thank you, Mr. Furnish.

Mr. Kraut Does the members have any questions on this application?

Mr. Kraut The applicant is available.

Mr. Kraut Any member of the public wishes to be heard?

Mr. Kraut All those in favor?

All Aye.

Mr. Kraut Opposed?

Mr. Kraut The motion carries.

Mr. Kraut The next application is going to be Livingston Two Operations LLC doing business as Livingston Unfortunately, I'm losing the quorum. Out of deference to the applicants who have stayed here the entire day, I want to have a special project review committee.

Mr. Furnish I would request that as well.

Mr. Kraut I'm going to take the two applications, Livingston, Woodcrest, and the two certificates. We only have two more applications and two certificates. Let me just do this. I'm going to get rid of some of the stuff. Let's do the certificates.

Mr. Kraut We do not want to create a situation where I am rushing and not having a reasonable time for deliberation. We will have an Establishment and a special meeting prior to the February 8th meeting. That will be before the Codes meeting. The Establishment is going to go first on that day and Codes out of deference to the people's state here all day. It will be available both in New York and in Albany.

Colleen Jeff, this is Colleen.

Colleen It's February 9th is the meeting date.

Mr. Kraut Did I say the eighth?

Colleen Yes.

Mr. Kraut Because I'm not here on the eighth.

Mr. Kraut Eighth is the committee day, right? I'm teaching. February 9th is the date.

Mr. Kraut With that, I'm going to adjourn the meeting of the council. I wasn't prepared for this. On Wednesday, February 8th, beginning at 10:00am, the Public Health Committee is going to convene, followed by the Health Planning Committee at 1:30 at both Albany and New York City. On Thursday, February 9th, the Establishment and Project Review Committee will meet at 10:00am followed by the Codes committee and then followed by the annual full council meeting in both Albany and New York City. Again, I apologize to the applicants. I know you and your consultants were here. I tried. Sorry, but we will take them up first and then they will go into the cycle on that day.

Mr. Kraut We are adjourned.

Mr. Kraut Thank you very much. Thanks to staff in Albany. Thank the members.

Mr. Kraut Thank you.