

## RESOLUTION OF APPROVAL

WHEREAS, on April 10, 2014, this Council proposed to disapprove the following application for the establishment and construction of a multi-specialty freestanding ambulatory surgical center, located at 5959 Big Tree Road, Orchard Park, New York; and

WHEREAS, following the Applicant's request for a public hearing pursuant to said Section 2801-a, such a hearing was held before an Administrative Law Judge, and the Administrative Law Judge has, by his Report and Recommendation dated February 20, 2015, recommended approval of the application; and

WHEREAS, this Council has considered said Report and Recommendation; it is hereby

RESOLVED, that this Council, after due deliberation, and for the reasons stated on the record at the meeting of this Council, on this 16<sup>th</sup> day of April, 2015 hereby adopts all of the 22 numbered Findings of Fact set forth in said Report and Recommendation except those numbered Findings of Fact specifically rejected on the record at the meeting of this Council; and be it further

RESOLVED, that this Council, after due deliberation, on this 16<sup>th</sup> day of April, 2015, hereby approves the following application for the establishment and construction of a multi-specialty freestanding ambulatory surgical center, with the conditions and contingencies specified below, and it be further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Executive Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

131347 B

FACILITY/APPLICANT:

Southtowns Ambulatory Surgery Center, LLC  
(Erie County)

APPROVAL CONTINGENT UPON:

**Approval with an expiration of the operating certificate five (5) years from the date of its issuance, contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802 (7) states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the DOH beginning in the second year of operation. Said reports should include:
  - Data showing actual utilization including procedures;
  - Data showing breakdown of visits by payor source;
  - Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
  - Data showing number of emergency transfers to a hospital;
  - Data showing percentage of charity care provided, and
  - Number of nosocomial infections recorded during the year in question. [RNR]
3. Submission of a statement, acceptable to the Department, that the applicant will consider creating or entering into an integrated system of care that will reduce the fragmentation of the delivery system, provide coordinated care for patients, and reduce inappropriate utilization of services. The applicant will agree to submit a report to the Department beginning in the second year of operation and each year thereafter detailing these efforts and the results. [RNR]
4. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]

5. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
6. Submission of an executed construction loan commitment, acceptable to the Department. [BFA]
7. Submission of an executed personal loan from Dr. Joshua Jones, acceptable to the Department. [BFA]
8. Submission of an executed administrative services agreement, acceptable to the Department. [BFA]
9. Submission of an executed subscription agreement from each proposed member, acceptable to the Department. [BFA]
10. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]
11. Submission of a photocopy of the applicant's executed and Amended Articles of Organization, acceptable to the Department. [CSL]
12. Submission of a photocopy of the applicant's executed Operating Agreement, acceptable to the Department. [CSL]
13. Submission of a photocopy of an executed assignment of the Lease Agreement, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within two years from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-03, prior to the applicant's start of construction. [AER]
7. The applicant shall complete construction by July 31, 2016 in accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]
8. Kaleida Health decommissioning four (4) operating rooms at Buffalo General Medical Center on or before completion of this project. [RNR]

Documentation submitted to satisfy the above-referenced contingencies  
(4 copies) should be submitted within sixty (60) days to:

Barbara DelCogliano  
Director  
Bureau of Project Management  
NYS Department of Health  
Empire State Plaza  
Corning Tower, Room 1842  
Albany, New York 12237