

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

**COMMITTEE DAY**

**AGENDA**

*June 6, 2024*  
*10:00 a.m.*

*90 Church Street, 4<sup>th</sup> Floor, Conference Rooms 4 A/B, NYC, 10007*

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

Peter Robinson, Chair

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

**Acute Care Services- Construction**

**Exhibit # 1**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>
1.	231324 C	Northern Westchester Hospital (Westchester County)
2.	231339 C	Long Island Jewish Medical Center (Queens County)
3.	241112 C	BronxCare Hospital Center (Bronx County)
4.	241115 C	Montefiore Medical Center - Henry & Lucy Moses Div (New York County)

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

**Acute Care Services - Establish/Construct**

**Exhibit # 2**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>
1.	231286 B	Carthage Area Hospital Inc. (St. Lawrence County)

**Ambulatory Surgery Centers - Establish/Construct**

**Exhibit # 3**

	<u>Number</u>	<u>Applicant/Facility</u>
1.	232010 B	Bridge Street ASC (Kings County)
2.	231328 B	HSS Long Island ASC, LLC t/b/k/a HSS Long Island Ambulatory Surgery Center, LLC (Nassau County)
3.	232204 E	St. Peter's Ambulatory Surgery Center, LLC d/b/a St. Peter's Surgery and Endoscopy Center (Albany County)
4.	232243 E	Advanced Surgery Center (Rockland County)
5.	241100 B	Holistic Birth Center New York (Kings County)
6.	241153 E	Digestive Disease Center of Central New York, LLC (Onondaga County)

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

**Exhibit # 4**

	<u>Number</u>	<u>Applicant/Facility</u>
1.	241024 B	WellMed NY LLC d/b/a WellMed (Kings County)
2.	241028 B	1771 Utica, LLC d/b/a/ Care Plus Health Center (Kings County)

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

**Exhibit # 5**

	<u>Number</u>	<u>Applicant/Facility</u>
1.	211102 E	Rockville Holdings Operating LLC d/b/a Rockville Skilled Nursing and Rehabilitation Center (Nassau County)
2.	232078 E	Brooklyn-Queens Nursing Home (Kings County)

**Home Care Service Agency Licensures**

**Exhibit # 6**

**New Licensed Home Care Services Agencies**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>
1. 222202 E	Priority Cares Home Services, LLC (Please see exhibit for list of Geographical Service Area)
2. 231058 E	Excel Homecare Inc. (Please see exhibit for list of Geographical Service Area)

**Changes of Ownership**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>
1. 222208 E	Caregiver Pro Homecare, Inc (Please see exhibit for list of Geographical Service Area)
2. 222209 E	Galaxy Home Care Inc. (Please see exhibit for list of Geographical Service Area)
3. 222110 E	Pentec Infusions Of New York, LLC (Please see exhibit for list of Geographical Service Area)
4. 231012 E	Long Life Home Care Inc (Please see exhibit for list of Geographical Service Area)
5. 231034 E	Golden Age Home Care Inc. (Please see exhibit for list of Geographical Service Area)
6. 231097 E	Key to Life Homecare, Inc. (Please see exhibit for list of Geographical Service Area)

**C. Certificates**

**Exhibit # 7**

**Certificate of Dissolution**

**Applicant**

Bridge Regional Health System, Inc.

Moses-Ludington Nursing Home Company, Inc.

**Restated Certificate of Incorporation**

Applicant

First Chinese Presbyterian Community Affairs Home Attendant Corp.

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

Applicant

Seniors First Foundation, Inc.

**II. ADJOURNMENT**

*\*\*\*Agenda items may be called in an order that differs from above\*\*\**





Project # 231324-C Northern Westchester Hospital

Program: Hospital Purpose: Construction

County: Westchester Acknowledged: July 17, 2023

Executive Summary

Description

Northern Westchester Hospital (NWH), a 245-bed, voluntary not-for-profit, Article 28 acute care hospital at 400 East Main Street, Mount Kisco (Westchester County), requests approval to decertify three maternity beds and renovate the maternity unit. The 29,382 square-foot modernization project on the hospital's 3rd floor and a portion of the 5th floor's East wing will result in 24 single-bedded mother and baby rooms. Also, the labor, delivery, and C-section rooms will be enlarged. The unit changes will align with the service area's needs for an improved obstetric patient-centered experience, allowing for better recovery, patient/baby bonding, and private family time.

NWH is co-operated by Northwell Healthcare, Inc., whose sole corporate member is Northwell Health, Inc. Northwell Health, Inc., is an integrated healthcare delivery network serving the residents of the greater New York Metropolitan Area.

OPCHSM Recommendation Contingent Approval

Need Summary

The applicant projects 2,311 patient discharges in Year One and 2,528 in Year Three, with Medicaid at 27.6% and no Charity Care in both years.

Program Summary

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

Financial Summary

The total project cost of \$51,373,715 will be funded with \$5,137,371 in equity from NWH and a bond issuance of \$46,236,344 at 5% interest for a 30-year term.

Table with 3 columns: Budget, Year One 2027, Year Three 2029. Rows: Revenues, Expenses, Net Income.

Health Equity Impact Assessment

There was no Health Equity Impact Assessment required for this project under Section 2802-B of the PHL, as it was received by the Department on June 16, 2023.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a bond resolution acceptable to the Department of Health. Included with the submission must be a source and uses statement and debt amortization schedule for both new and refinanced debt. [BFA]

**Approval conditional upon:**

1. This project must be completed by **February 15, 2027**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **November 15, 2024**, and construction must be completed by **November 15, 2026**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

June 20, 2024

# Need Analysis

## Project Description

Northern Westchester Hospital (NWH), an existing 245-bed not-for-profit acute care hospital, requests approval to restructure and renovate its maternity unit and remove three maternity beds. The number of maternity beds will decrease from 27 to 24, with minimal adverse effects on utilization expected.

## Background and Analysis

The primary service area for this project is Westchester County. The proposed site is within a Medically Underserved Area/Population. The population of Westchester County is estimated to increase to 1,033,428 by 2029 per projection data from the Cornell Program on Applied Demographics, an increase of 4.3%. Demographics for the primary service area are noted below including a comparison with the county and New York State.

Demographics	Westchester County	New York State
Total Population	990,427	19,994,379
Hispanic or Latino (of any race)	26.3%	19.5%
White (non-Hispanic)	50.0%	53.8%
Black or African American (non-Hispanic)	13.0%	13.8%
Asian(non-Hispanic)	6.2%	8.8%
Other (non-Hispanic)	4.5%	4.1%

Source: 2022 American Community Survey (5-Year Estimates Data Profiles)

In 2021, 94.9% of the population of Westchester County had health coverage as follows:

Employee plans	56.2%
Medicaid	14.2%
Medicare	12.7%
Non-group plans	11.5%
Military or VA plans	0.291%

Source: Data USA

The projected payor mix includes:

Applicant Projected Payor Mix		
Payor	Year One	Year Three
Commercial	72%	72%
Medicare	0.3%	0.3%
Medicaid	27.6%	27.6%
Private Pay	0%	0%
Charity Care	0%	0%
Other	0.2%	0.2%

<b>Current and Projected Beds at Northern Westchester Hospital, Source HFIS/Applicant</b>			
<b>Bed Type</b>	<b>Current Beds</b>	<b>Bed Change</b>	<b>Beds Upon Completion</b>
Coronary Care	6		6
Intensive Care	10		10
Maternity	27	-3	24
Medical / Surgical	153		153
Neonatal Intensive Care	5		5
Neonatal Intermediate Care	5		5
Pediatric	12		12
Psychiatric	15		15
Transitional Care	12		12
<b>Total</b>	<b>245</b>	<b>-3</b>	<b>242</b>

The removal of 3 of the 27 existing Maternity beds will have minimal consequences as the utilization of the beds shows occupancy rates around 50% for the last few years, as the following chart illustrates:

<b>Facility Utilization of Maternity Beds, Source: SPARCS</b>						
<b>Services</b>	<b>2021</b>		<b>2022</b>		<b>2023</b>	
	<b>Discharges</b>	<b>Occupancy</b>	<b>Discharges</b>	<b>Occupancy</b>	<b>Discharges</b>	<b>Occupancy</b>
Obstetric	1,760	46.5%	1,951	51.7%	1,293	47.7%

**Conclusion**

Approval of this project will allow for improvement and consolidation of the maternity services for those residing in Westchester County.

## Program Analysis

### Program Description

Northern Westchester Hospital (NWH), a 245-bed not-for-profit acute care hospital at 400 East Main Street in Mount Kisco (Westchester County), seeks approval to decertify three (3) maternity beds and expand the maternity unit on the 3rd floor to include a portion of the 5th floor. Approval of the application will result in a net decrease of three maternity beds from 27 to 24, with all maternity rooms in the existing unit being single-bedded rooms.

The applicant reports that women of childbearing age are expected to decline slightly in the next five (5) years. However, the specific age groups of 18-24 and 25-34 are expected to increase by over 1%. Therefore, NWH is seeking to modernize its hospital to improve patient satisfaction and the experience of patients seeking inpatient obstetrical care. Additionally, having more space can enable healthcare professionals to move about freely, making it easier to attend to the patient's needs and monitor their condition. In 2019, NWH had 999 births. This number had increased to 1,069 by 2021.

Staffing is expected to increase by 10.9 FTEs by Year Three of the completed project.

### Prevention Agenda

The Northern Westchester Hospital is seeking approval to modernize the maternity unit with single-bedded patient rooms to provide the privacy needed for the new mothers, their babies, and their families. The project will reduce the number of maternity beds from 27 to 24, a reduction of three (3) beds.

The Northern Westchester Hospital is implementing multiple interventions to support priorities of the 2019-2024 New York State Prevention Agenda, including:

- Prevent Chronic Diseases
- Promote Well-being and Prevent Mental and Substance Abuse Disorders
- Promote Healthy Women, Infants and Children

Modernization of the maternity unit advances the Prevention Agenda priority 'Promote Healthy Women, Infants, and Children.' This project will improve access to quality obstetric care for all patients, regardless of their background or socioeconomic status, and contribute to interventions focused on reducing maternal and infant mortality and morbidity.

In 2021, Northern Westchester Hospital spent \$5,754,848 on community health improvement services, representing 1.57% of total operating expenses.

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

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

The Department issued a Stipulation and Order dated November 21, 2016, and fined Northern Westchester Hospital \$10,000 based on findings from a survey that was completed on April 26, 2016. Deficient practice was cited in the area of Nursing Services-Patient Death due to the death of a newborn.

This facility has no outstanding Article 28 surveillance or enforcement actions and, based on the most recent surveillance information, is deemed to be currently operating in substantial compliance with all applicable State and Federal codes, rules, and regulations. This determination was made based on a

review of the files of the Department of Health, including all pertinent records and reports regarding the facility's enforcement history and the results of routine Article 28 surveys, as well as investigations of reported incidents and complaints.

#### Conclusion

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

## Financial Analysis

### Total Project Cost and Financing

Total project costs for renovations and movable equipment are estimated at \$51,373,715, broken down as follows:

Renovation & Demolition	\$32,731,078
Asbestos Abatement or removal	896,460
Design Contingency	2,060,485
Construction Contingency	3,129,531
Architect/Engineering Fees	1,155,000
Construction Manager Fees	84,000
Movable Equipment	8,610,948
Financing Costs	2,423,214
Application Fee	2,000
Processing Fee	<u>280,999</u>
Total Project Cost	\$51,373,715

The applicant's financing plan appears as follows:

Equity	\$5,137,371
Bond Issuance (5% interest, 30-year term)	<u>46,236,344</u>
Total	\$51,373,715

BFA Attachment B, Northern Westchester Hospital's 2022 Certified Consolidated Financial Statements, shows sufficient resources to meet the equity requirement. Citigroup Global Markets, Inc. has provided a letter of interest to underwrite the bond financing, noting that if the financing is completed on a tax-exempt basis, the bonds will be issued through DASNY.

### Operating Budget

The applicant has submitted their current year (2022) and projected operating budgets for the first and third years in 2024 dollars, summarized below:

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>2022</u>		<u>2027</u>		<u>2029</u>	
	<u>Per Disch.</u>	<u>Total</u>	<u>Per Disch.</u>	<u>Total</u>	<u>Per Disch.</u>	<u>Total</u>
Revenues						
Medicaid FFS	\$10,034	\$561,900	\$10,014	\$590,800	\$9,982	\$648,800
Medicaid MC	\$5,105	5,916,800	\$5,109	6,222,800	\$5,105	6,809,800
Medicare FFS	\$5,767	69,200	\$5,767	69,200	\$5,900	76,700
Commercial MC	\$16,343	51,905,500	\$16,345	54,527,800	\$16,345	59,772,200
All Other	\$16,114	<u>112,800</u>	\$16,114	<u>112,800</u>	\$16,288	<u>130,300</u>
Total Revenues		\$58,566,200		\$61,523,400		\$67,437,800
Expenses						
Operating	\$6,930	\$30,559,100	\$6,666	\$30,877,200	\$6,553.26	\$33,270,900
Capital	<u>\$0.</u>	<u>0</u>	<u>\$1,157</u>	<u>5,360,300</u>	<u>\$1,040.00</u>	<u>5,280,100</u>
Total Expenses	\$6,930	\$30,559,100	\$7,823	\$36,237,500	\$7,593.26	\$38,551,000
Net Income (Loss)		\$28,007,100		\$25,285,900		\$28,886,800
Discharges		4,410		4,632		5,077

The following is noted concerning the submitted budget:

- Northwell Health's internal cost accounting system generated the revenue, expense, utilization, and payer rate assumptions based on the inpatient maternity services applicable to the program.
- Revenue and payer rate assumptions are based on the current maternity volume and payer mix at Northern Westchester Hospital.
- Staffing assumptions were developed with clinical and operational leadership using staffing models in existing programs. Expense assumptions are based on the current maternity experience at Northern Westchester Hospital plus estimated added capital costs.

Utilization by payor source is as follows:

Payor:	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>2022</u>		<u>2027</u>		<u>2029</u>	
	<u>Disch.</u>	<u>%</u>	<u>Disch.</u>	<u>%</u>	<u>Disch.</u>	<u>%</u>
Medicaid FFS	56	1.27%	59	1.27%	65	1.28%
Medicaid MC	1,159	26.28%	1,218	26.30%	1,334	26.28%
Medicare FFS	12	0.27%	12	0.26%	13	0.26%
Commercial MC	3,176	72.02%	3,336	72.02%	3,657	72.03%
<u>All Other</u>	<u>7</u>	<u>0.16%</u>	<u>7</u>	<u>0.15%</u>	<u>8</u>	<u>0.15%</u>
Total by Payor	4,410	100%	4,632	100%	5,077	100%

#### Capability and Feasibility

The total project cost of \$51,373,715 will be funded with \$5,137,371 equity from NWH and a bond issuance of \$46,236,344 at 5% interest for a 30-year term. Citigroup Global Markets, Inc. has provided a letter of interest to underwrite the bond financing, noting that if the financing is completed on a tax-exempt basis, the bonds will be issued through the Dormitory Authority of the State of New York (DASNY).

Working capital of \$6,425,167 based on two months of third-year expenses will come from hospital operations. Northern Westchester Hospital projects a net income of \$25,285,900 in Year One and \$28,886,800 in Year Three. The budget appears reasonable.

BFA Attachment B, Northern Westchester Hospital's 2022 Certified Financial Statements, shows positive working capital and net asset positions. NWH had positive operating income of \$34.3M. BFA Attachment C, Northwell Health, Inc.'s Third-Quarter Financial Statements shows positive working capital and net assets positions, and positive revenue over expenses of \$449.2M.

#### Conclusion

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

## Attachments

BHFP Attachment	Map
BFA Attachment A	Northern Westchester Hospital's 2022 Certified Financial Statements
BFA Attachment B	Northwell Health, Inc's Third Quarter 2023 Financial Statements





**Project # 231339-C  
Long Island Jewish Medical Center**

**Program: Hospital  
Purpose: Construction**

**County: Queens  
Acknowledged: July 18, 2023**

**Executive Summary**

**Description**

Long Island Jewish Medical Center (LIJMC), a 1,004-bed hospital at 270-05 76th Avenue, New Hyde Park, New York (Queens County), requests approval to certify a pediatric heart transplant program within its Cohen Children's Medical Center (CCMC), a 206-bed pediatric specialty division of LIJMC. Through this application, North Shore University Hospital (NSUH) will extend its adult heart transplant program to LIJMC-Cohen Children's Medical Center of New York (CCMC) to establish a pediatric heart transplant program. CCMC consists of multi-disciplinary teams and surgical specialists along with Dr. Jeffrey Gossett, who will serve as the Program Director and Medical Director, and a Board-Certified Surgeon.

**Financial Summary**

The project costs of \$403,758 are for equipment only. There is no construction or renovation associated with this project. Equipment costs will be met with accumulated funds.

Budget	Year One (2025)	Year Three (2027)
Revenue:	\$1,100,000	\$2,400,000
Expenses:	<u>2,861,782</u>	<u>\$6,954,667</u>
Gain/(Loss)	(\$1,761,782)	(\$4,554,667)

**Health Equity Impact Assessment**

There was no Health Equity Impact Assessment required for this project under Section 2802-B of the PHL, as it was received by the Department on June 19, 2023

**OPCHSM Recommendation  
Contingent Approval**

**Need and Program Summary**

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

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

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

**Approval conditional upon:**

1. This project must be completed by **one year from the date of the recommendation letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. The applicant obtaining membership, in good standing, with the NY Center for Cardiothoracic Transplantation (NYCTC). [HSP]
3. Actively participating in the NYCTC by sharing data, participating in peer review, research, quality improvement, and other activities endorsed by the Department, including but not limited to coordinating the facility's plan with efforts that NYCTC may be conducting. [HSP]
4. Develop and implement an active outreach plan to educate and support Northwell affiliated and non-affiliated hospitals and providers in underserved areas, facilitating access to pediatric heart transplant evaluation and care.
  - a. Implementation of patient evaluation services in underserved areas of the state.
  - b. Report on these efforts annually to the Department. [HSP]
5. The applicant committing and devoting resources to improving organ donation and NYS Donate Life Registry enrollments as a top priority in all system hospitals. This commitment must be reflected in a written plan to create a system-wide institutional culture that supports organ donation and NYS Donate Life Registry enrollment, which is continually evaluated and updated as needed. This plan includes, but is not limited to:
  - a. Implementation of and participation in programs and initiatives to promote health and prevent diseases associated with the need for organ and tissue donation and transplantation;
  - b. Implementation of practitioner-focused education and outreach efforts to inform them of the availability and breadth of LIJ-CCMC pediatric heart transplant services.
  - c. Improving communication and coordination with the OPO(s), for example, establishing onsite transplant coordinators, conducting regular multi-disciplinary clinical case reviews to identify missed opportunities and/or opportunities for improvement, and reporting and reviewing aggregate donor data jointly with the OPO(s);
  - d. Enlisting participation, improving coordination, and holding staff throughout the facility accountable as partners in achieving these goals, including but not limited to critical care, emergency department, and palliative care staff;
  - e. Increasing awareness and education of staff about organ donation throughout system facilities and the communities they serve by partnering and coordinating with organ donation stakeholders (e.g., the NY Alliance for Donation, OPOs, and tissue banks) and others (e.g., community-based organizations such as interfaith organizations, organizations that provide services to different ethnic and cultural groups, etc.) to implement awareness and education initiatives;

- f. Conducting specific activities to improve enrollment in the NYS Donate Life Registry;
- g. Annually for the first five years and upon request, providing the Department with information and updates about the plan, including progress towards meeting the goals, benchmarks, and timelines developed and described above. [HSP]

Council Action Date  
June 20, 2024

## Need and Program Analysis

### Background and Project Proposal

Long Island Jewish Medical Center – Cohen Children's Medical Center of New York seeks approval to certify a pediatric heart transplant program at Cohen Children's Medical Center located at 270-05 76th Avenue, New Hyde Park, NY 11040.

Cohen Children's Medical Center (CCMC) is located at the border of Queens and Nassau Counties. As a result, the applicant identifies the primary service area for the requested pediatric heart transplant program as serving children residing in Nassau and Suffolk Counties on Long Island and children residing in Queens, Brooklyn, Staten Island, and Westchester Counties as their secondary service area.

Cohen Children's Hospital is a 195-bed acute care quaternary hospital exclusively for the care of children. The applicant reports 68,000 inpatient and outpatient visits annually. The facility offers Cardiology, Cardiothoracic Surgery, Neurosurgery, Orthopedic Surgery, Minimally Invasive Surgery, Nephrology, Urology, Kidney Transplantation, and Stem Cell (Bone Marrow) Transplantation. In addition, the Center provides a comprehensive array of pediatric services, including infectious disease, radiology, hematology, pulmonology, neonatal intensive care, rehabilitation, anesthesia, recovery rooms, trauma, nephrology, pathology, laboratory/blood bank, nursing, pharmacy, nutrition, social work, child life & creative art therapies program, and child psychiatry.

The Cohen Children's Heart Center currently includes cardiothoracic surgery, cardiac critical care, pediatric intensive care, neonatal intensive care, cardiac anesthesia, echocardiography, cardiac MRI, cardiac CT, heart failure, cardiomyopathy, electrophysiology, cardiac catheterization, and outpatient services to assure that these multiple specialists all contribute in their own separate but critical ways to optimize the care of children with all types of cardiac disease and adults with congenital heart disease.

The applicant describes the mission of Cohen Children's Medical Center as providing care to children while keeping the family unit intact and delivering services in a family-centered approach. In keeping with this mission, their primary motivation for seeking approval for a Pediatric Transplant Program is to serve their patients on Long Island in a location close to their home residence.

The heart transplant team would work closely with patients, their families and their local cardiologist to provide optimal care and communication for each individual patient. Due to patient acuity while waiting for a donor heart, pediatric heart transplant candidates would predominately be cared for in the hospital. Those who can wait at home while on the waitlist would be managed by the facility's heart failure team in close collaboration with their local cardiologist. The applicant notes that the proposed program's shared management model with a CCMC advanced heart failure team working with the patient's local cardiologist provides the ability to deliver exceptional care in their own communities for waitlisted patients.

The elements of the proposed program include:

- An inpatient multi-disciplinary pediatric intensive care unit with 37 beds that cares for more than 2,700 patients per year and houses a cardiac intensive care unit. The cardiac intensive care unit currently provides critical care to children with a broad range of pediatric cardiology diagnoses, from congenital heart defects to heart failure and conduction abnormalities requiring electrophysiology interventions in a dedicated CICU service.
- A Left Ventricular Assist Device (LVAD) program providing care for children with severe heart failure as a bridge to transplant while they await a suitable heart for transplantation.
- An Extracorporeal Membrane Oxygenation (ECMO), renal replacement therapy, and advanced respiratory support, including high-frequency oscillatory support and high-frequency percussive ventilation.
- Pre and Post-transplant outpatient care delivered within the dedicated space of their pediatric cardiology ambulatory center in an office across the street from the CCMC medical campus, where there is space for evaluation and post-transplant care of our patients and families. The ambulatory space provides for 9 exam rooms, 8 dedicated echocardiogram rooms, 3 consult rooms, an

exercise stress lab with bike and treadmill, as well as a private consultation room for family meetings and a transplant conference room.

The applicant presents the following information as a rationale for the need of an additional pediatric heart transplant program in NYS:

- A review of the home addresses of CCMC patients who were referred to another facility for transplant evaluation and care identified that most of these patients resided in the immediate local area of CCMC, in Queens County, and extended to the south shore of Nassau and as far as Suffolk County.
- In 2022 CCMC referred eight (8) children to New York Presbyterian Columbia Medical Center in Manhattan for heart transplant evaluation and care. Two of the referred children were under 12 months old. The proposed pediatric heart transplant service would serve the residents of Queens, Nassau, Suffolk, making these transfers in care unnecessary and allowing patients to be cared for in close proximity to their homes. Facility data shows waitlist time often exceeds 6 months, with the majority of that time spent as an inpatient, with approximately 35% of patients going to transplantation on a Ventricular Assist Device.
- According to 2023 data from the Organ Procurement Transplantation Network (OPTN), through October 31, 2023, a total of 25 pediatric heart transplants were performed in New York State. Approximately 1 out of 3 of these children (32%) who needed a heart transplant were from our primary service area of Queens, Nassau, and Suffolk County. This means patients who needed a pediatric heart transplant had to travel miles past CCMC in order to get this life-saving treatment.

Cohen Children's Medical Center (CCMC) of New York is a division of Long Island Jewish Medical Center (LIJ). Northwell Healthcare, Inc. co-operates Long Island Jewish Medical Center. In 2017, Long Island Jewish Medical Center – Cohen Children's Medical Center received CON approval to establish a kidney transplant program. This program received CMS certification after undergoing a successful survey the following year. To date, the LIJ-CCMC kidney transplant program has performed over 50 transplants for children ages 1 to 17 years of age.

North Shore University Hospital (NSUH) and LIJ/Cohen's hospitals are members of the Northwell Health system, which, in 2023, established a Transplant Institute. The Northwell Transplant Institute formally integrates components of and shares resources and expertise among the NSUH liver, kidney, heart, and lung transplant programs. These programs have been collaborating since 2017 and maximizing their ability to successfully impact and deliver optimal transplant care. NSUH received CON approval to perform adult heart transplants in 2018 and has performed more than 100 transplants since that time, according to the Organ Procurement Transplant Network.

If approved, the applicant notes that the CCMC pediatric heart transplant program will be affiliated with the NSUH Transplant Institute, gaining access to a broader pool of resources, including specialized adult medical expertise for the patient in transition, state-of-the-art technology, and research capabilities. Additionally, collaboration with a larger institute facilitates knowledge exchange and continuous learning and collaboration, allowing pediatric cardiologists and transplant surgeons to stay abreast of the latest advancements in transplant medicine, ultimately improving patient care and long-term prognosis.

The Northwell Home Care Network currently provides home infusion therapies to the NSUH adult heart transplant and Left Ventricular Assist Device patients. It is trained and prepared to extend these services to the pediatric population as well as coordinate care with other local home agencies. Children receiving heart failure care from affiliated practitioners in the surrounding communities have access to advanced heart services such as home infusion therapy; however, initial and ongoing LVAD therapy for these patients requires travel to CCMC.

In addition, Northwell established the Business Employee Resource Group (BERG) to enhance engagement, innovation, and talent development and to promote an inclusive culture, ensuring the delivery of culturally sensitive quality patient care. Under this, Northwell Health set up an organ donation-focused BERG entitled the Donate Life Employee Network (DLEN). The goal of this BERG is to sustain life while eliminating unnecessary deaths on the waiting list by addressing the social, emotional, and wellness aspects of those who have been touched by organ donation.

Northwell's Donor Champion program, which provides in-depth training about all aspects of organ donation, was formally known as "Donor Nurse Champion." This program is intended to be revived in 2024 and expanded beyond the staff nurses to the medical doctors and advanced care professionals.

The applicant reports being recognized by the Health Resource and Service Administration (HRSA) with a platinum-level award for their National Hospital Organ Donation Campaign.

#### Transplant Program Review

In addition to materials provided as part of the CON application and the applicant's response to the Department's Request for Additional Information, staff reviewed the facility's recent CMS survey(s), CCMC's UNOS/Organ Procurement and Transplantation Network (UNOS/OPTN), the Scientific Registry of Transplant Recipients (SRTR) data, and that of other NYS and out-of-state hospitals that perform pediatric heart transplants, as well as reports and information provided by the NYS Cardiac Advisory Committee (CAC) on Pediatric Congenital Cardiac Surgery.

#### CCMC Kidney Transplant Program

As noted previously, LIJ-CCMC received CON approval to establish a pediatric kidney transplant program in 2017 and received CMS certification of this program shortly thereafter. To date, the LIJ-CCMC kidney transplant program has performed over 50 transplants on children ages 1 to 17 years of age, averaging seven (7.5) kidney transplants a year over a 7-year period.

In the January 2024 SRTR report of CCMC's performance, it was reported that CCMC's:

- Transplant rate is lower than expected;
- Pre-transplant and waitlist mortality rates are lower than expected;
- One year post-transplant mortality rate is lower than the national average and
- One year graft failure rate is higher than the national average.

#### LIJ Pediatric Cardiac Surgery Program

LIJ has an active pediatric surgery program. See below for information gained from the NYS Department of Health Cardiac Advisory Committee of 2018-2023 physician volumes.

	2018	2019	2020	2021	2022	2023
Dr. Abdullah	0	0	4	2	0	0
Dr. Dodge-Khatami	0	0	33	7	0	0
Dr. Martens	0	0	0	8	49	48
Dr. Meyer D	59	63	41	134	98	78
Dr. Parnell	39	33	13	0	0	0
<b>Hospital Total</b>	<b>98</b>	<b>96</b>	<b>91</b>	<b>151</b>	<b>147</b>	<b>126</b>

Table 1: LIJ Pediatric Surgery Volume by Surgeon, 2018 - 2023

No published outcome data is available for the period of time reported in the table above. However, the Cardiac Advisory Committee's Pediatric Congenital Cardiac Surgery in NYS 2014-2017 report includes the table below, which indicates that LIJ's cardiac surgery program has a risk-adjusted mortality rate (RAMR) that was higher than the statewide RAMR of 2.81 for the period of the report but not significantly higher.

## Hospital Observed, Expected, and Risk-Adjusted Mortality Rates for Pediatric Congenital Cardiac Surgery in New York State, 2014-2017 Discharges

(Listed Alphabetically by Hospital)

Hospital	Cases	Deaths	OMR	EMR	RAMR	95% CI for RAMR
Albany Medical Center	275	5	1.82	2.35	2.17	(0.70, 5.08)
LIJ Medical Center	428	10	2.34	2.18	3.01	(1.44, 5.54)
Montefiore - Moses	223	13	5.83	1.98	8.26 *	(4.39,14.12)
Mount Sinai	478	14	2.93	1.67	4.92	(2.69, 8.26)
NYP-Columbia Presbyterian	1611	43	2.67	3.27	2.29	(1.66, 3.08)
NYP-Weill Cornell	264	1	0.38	1.37	0.78	(0.01, 4.32)
NYU Hospitals Center	616	9	1.46	2.87	1.43 **	(0.65, 2.71)
Strong Memorial	755	38	5.03	4.05	3.49	(2.47, 4.79)
Univ. Hosp. - Upstate	52	0	0.00	0.33	0.00	(0.00,60.60)
Westchester Medical Center	179	4	2.23	2.26	2.77	(0.75, 7.10)
<b>Total</b>	<b>4881</b>	<b>137</b>	<b>2.81</b>			

\* Risk-adjusted mortality rate significantly higher than the statewide rate based on 95 percent confidence interval.

\*\* Risk-adjusted mortality rate significantly lower than the statewide rate based on 95 percent confidence interval.

### Status of Donation and Heart Transplantation in NYS

#### *Donation*

There is a significant need for pediatric hearts available for transplantation. Strategies that work to increase the number of hearts available for transplantation in the adult population, e.g., increasing Registry enrollments, accepting harder-to-place hearts, etc., will not necessarily have the same effect in making more hearts available for transplantation in children. OPTN data indicates that of the 390 hearts that were donated and transplanted in children in NYS between 2018 and 2024 year to date, 19 of them came from NYS donors.

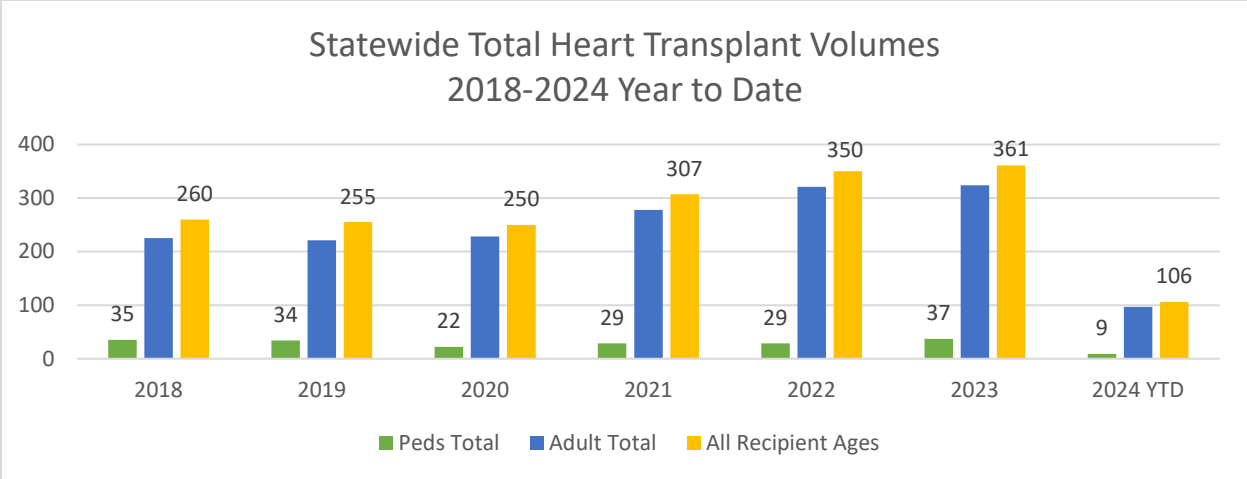
#### *Transplantation*

There are eight (8) adult heart transplant programs in New York State, four (4) of which also perform pediatric heart transplants. Five (5) of the existing centers are located in the boroughs of New York City, including all four existing pediatric heart transplant centers. Outside of NYC, one adult heart transplant program is located in Nassau County, one is in Westchester County, and one is in Monroe County. See Table 2.

		Adult	Pediatrics
Montefiore Medical Center	NYC, Bronx County/Borough	X	X
NYU Langone Medical Center	NYC, New York County/Borough	X	X
NY Presbyterian-Columbia	NYC, New York County/Borough	X	X
Mount Sinai Medical Center	NYC, Queens County/Borough	X	X
<b>Long Island Jewish - Cohen Children's Hospital</b>	New Hyde Park, NY, Nassau County		<b>Applicant</b>
Westchester Medical Center	White Plains, NY, Westchester County	X	
North Shore University Hospital	Manhasset, NY Nassau County	X	
NY Presbyterian-Cornell	NYC, New York County/Borough	X	
Strong Memorial Hospital	Rochester NY, Monroe County	X	

Table 2: NYS Heart Transplant Programs

Graph 1 and Table 3 below show that while the volume trend for adult transplants was stagnant from 2018-2020, it has been increasing since 2021. During this same period of time the number of pediatric heart transplants performed declined somewhat in 2020 but otherwise remained relatively stable. (Source OPTN)



Graph 1

Heart Transplant Centers		2018	2019	2020	2021	2022	2023	2024 YTD	Center Totals
All Centers	Peds	35	34	22	29	29	37	9	195
	Adult	225	221	228	278	321	324	97	1694
Montefiore MC	Peds	6	4	1	2	0	0	0	13
	Adult	37	47	29	44	41	27	9	234
Mount Sinai MC	Peds	1	0	2	2	3	9	1	18
	Adult	30	23	29	29	41	46	12	210
NYP - Columbia MC	Peds	28	30	19	24	22	24	7	154
	Adult	56	61	63	76	85	66	20	427
NYU Langone MC	Peds	0	0	0	1	4	4	1	10
	Adult	35	38	39	49	69	71	27	328
NYP -Weill Cornell	Adult	0	0	0	0	0	13	5	18
North Shore MC	Adult	14	14	16	25	24	30	8	131
Westchester MC	Adult	38	23	36	37	39	31	10	214
Strong Memorial MC	Adult	15	15	16	18	22	40	6	132
<b>Statewide Peds Total</b>		<b>35</b>	<b>34</b>	<b>22</b>	<b>29</b>	<b>29</b>	<b>37</b>	<b>9</b>	<b>195</b>
<b>Statewide Adult Total</b>		<b>225</b>	<b>221</b>	<b>228</b>	<b>278</b>	<b>321</b>	<b>324</b>	<b>97</b>	<b>1694</b>

Table 3: NYS Heart Transplant Volumes 2018-2024 Year to Date

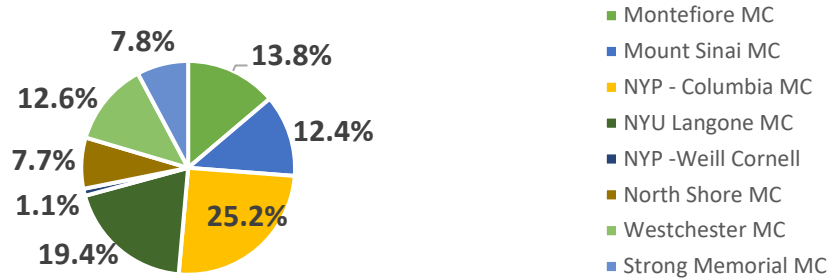
Heart transplant volume data 2018-2024 year to date, as noted in Table 3, Graphs 2 and 3 below show that NY Presbyterian Columbia Medical Center consistently performed the most adult (25.2%) and pediatric heart transplants (79%) during this period of time.

NYU Langone Medical Center performed the second-highest number of adult heart transplants at 19.4% during this period, followed by Montefiore, Mount Sinai, and Westchester Medical Centers at 12-13%. University of Rochester Strong Memorial Hospital and North Shore University Hospital performed 7-8% of adult heart transplants during this time. NYP Weill Cornell's program performed the fewest heart transplants in that they only began performing them in 2023.

Following NYP Columbia in the order of the number of pediatric heart transplants performed during the period are Mount Sinai, Montefiore, and NYU Medical Center, performing 9.2, 6.7, and 5.1 percent, respectively.

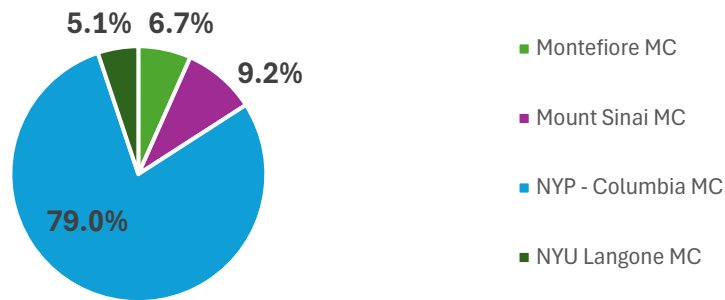


Percent of Adult Heart Transplants by Center  
2018-2024 Year to Date



Graph 2: Percent of Adult Heart Transplants per Center 2018-2024 Year to Date

Percent of Pediatric Heart Transplants by Center  
2018-2024 Year to Date



Graph 3: Percent of Pediatric Heart Transplants per Center 2018-2024 Year to Date

Waitlist

As noted in Table 4, while there are a total of 318 adults waiting to receive a heart transplant at a New York State heart transplant center, there are 15 children on the list waiting for a pediatric heart. Nine of these children were listed by Columbia, 4 by Mount Sinai, and 2 by NYU. Table 4 below also shows how long the children currently listed have been on the waitlist.

	NY State		NYMA		NYUC		NYCP		NYMS	
	Statewide WL Volume		Montefiore Medical Ctr		NYU Langone Medical Ctr		NYP - Columbia		Mount Sinai Medical Ctr	
	Adults	Peds	Adults	Peds	Adults	Peds	Adults	Peds	Adults	Peds
All Times	318	15	33	0	46	2	105	9	32	4
<30 Days (D)	35	2	7	0	9	0	12	2	2	0
30 to < 90 D	34	3	4	0	7	0	8	1	1	2
90 D - <6 mo.	40	4	3	0	6	1	9	3	1	0
6 mo. - 1 Year	59	1	5	0	10	0	17	0	4	1
1 Yr. - < 2 Yrs.	58	3	5	0	8	1	17	1	9	1
2 Yrs. - < 3 Yrs	36	0	3	0	3	0	16	0	7	0
3 Yrs. - 5 Yrs.	35	1	5	0	3	0	13	1	6	0
5 or more Yrs.	21	1	1	0	0	0	13	1	2	0

Table 4: Statewide and Pediatric Heart TP Center Waitlist Volumes (Organ Procurement and Transplant Network (OPTN) data through 05/23/2024)

Table 5 below indicates that the average national wait time for a heart during the period of July 2017 through the end of December 2022, combined adult and pediatric hearts, is reported as 3.4 months. Of

the centers with pediatric heart programs, Montefiore and NYU Langone have wait times of less than the national average. NYP Columbia's wait time is slightly longer, and Mount Sinai's wait time is significantly longer than the national average.

Of the adult-only heart transplant centers, Westchester and North Shore have wait times below the national average, and both NYP Columbia and Strong wait times are longer.

Heart Transplant Centers	Median Time to Transplant 07/01/2017 - 12/31/2022 Months to Transplant		Waitlist Mortality Rate 07/01/2021 - 06/30/2022			
		Center	National		Center	National
Montefiore Medical Ctr.	Combined Adult & Pediatrics	3	3.4	Adult	7	6.1
				<b>Peds</b>	<b>5.2</b>	<b>4.3</b>
NYU Langone Med. Ctr.	Combined Adult & Pediatrics	1.1	3.4	Adult	44.7	6.1
				<b>Peds</b>	<b>5.2</b>	<b>4.3</b>
NYP -Columbia Med. Ctr.	Combined Adult & Pediatrics	4.3	3.4	Adult	3	6.1
				<b>Peds</b>	<b>5.3</b>	<b>4.3</b>
Mount Sinai Med. Ctr.	Combined Adult & Pediatrics	18	3.4	Adult	4.5	6.1
				<b>Peds</b>	<b>0</b>	<b>4.3</b>
Westchester Med. Ctr.	Adult	0.7	3.4	Adult	7	6.1
North Shore Univ. Hosp	Adult	1.7	3.4	Adult	5.6	6.1
NYP - Cornell	Adult	7.5	3.4	Adult	0	6.1
Strong Memorial Hosp.	Adult	11.7	3.4	Adult	5.8	6.1

Table 5: Heart Transplant Center Median Time to Transplant and Waitlist Mortality

#### Program Outcomes

One (1) year post-transplant mortality number and one-year patient mortality hazard ratio are two different but related metrics published by SRTR to reflect program performance. Programs with patient mortality numbers greater than the expected numbers in Table 6 below reported more deaths than expected. The average one year patient mortality hazard ratio is one. Programs with a mortality ratio of less than one reported fewer deaths than the average among heart transplant programs of a similar type. The same is true for programs with mortality ratios of greater than one; these programs reported more deaths than similar programs during the reporting period. Through time, the mortality hazard ratio is thought to be a better reflector of program outcomes.

Adult heart transplant programs with one-year mortality hazard ratios lower than the national average include Montefiore, NYU, and Columbia. Strong's and North Shore's one-year mortality hazard ratios are basically equal to the national average, while Mount Sinai's and Westchester's ratios are greater than the national average.

One-year mortality hazard ratios for three of the four pediatric heart transplant programs are greater than the national average, while Mount Sinai's ratio is less than the average national ratio of one.

Heart Transplant Centers		1 Year Post-Transplant: 7/1/2020-12/31/2022		Patient Mortality Hazard Ratio
		Mortality		
		Observed	Expected	
Montefiore Medical Center	Adult	3	6.64	0.96
	<b>Peds</b>	<b>1</b>	<b>0.04</b>	<b>1.49</b>
NYU Langone Medical Center	Adult	3	8.29	0.49
	<b>Peds</b>	<b>2</b>	<b>0.34</b>	<b>1.71</b>

NY Presbyterian-Columbia	Adult	8	13.07	0.56
	Peds	6	4.4	1.28
Mount Sinai Medical Center	Adult	10	5.77	1.54
	Peds	0	0.65	0.76
Westchester Medical Center	Adult	9	7.69	1.14
North Shore University Hospital	Adult	4	3.78	1.04
NY Presbyterian-Cornell	Adult	NA	NA	NA
Strong Memorial Hospital	Adult	3	3.03	0.99

Table 6

### *OPTN Program Review*

The Organ Procurement and Transplant Network approved the application of Long Island Jewish Medical Center/Cohen Children's Medical Center to establish a pediatric heart transplant program in June 2023.

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

Cohen Children's Medical Center underwent a successful Medicare recertification survey of their kidney transplant program in May 2023 and was found to be in substantial compliance with federal regulations.

North Shore University Hospital has undergone a number of Medicare initial and recertification surveys since 2019. The facility was found to be in substantial compliance with federal regulations in the:

- February 2019 initial certification survey of their adult heart transplant program,
- September 2020 recertification survey of their adult kidney transplant program,
- August 2021 initial certification survey of their adult liver transplant program and
- January 2023 initial certification survey of their adult lung transplant program.

The Joint Commission carried out an accreditation survey of LIJ in April 2023. No deficiencies were found, and the facility was deemed in substantial compliance with CMS hospital conditions of participation.

The NYS Hospital Profiles website notes that Long Island Jewish Medical Center has received a total of 10 citations resulting from three onsite surveys between July 2021 and June 2023. There were 8 surveys in which no citations were issued. This hospital is part of a group that is authorized under the same operating certificate. Citations from some of the inspections apply to the group as a whole. The other members of the group include LIJ Forest Hills and LIJ Valley Stream. Posted citations issued include:

- 7/8/2022 - Complaint investigation survey: Emergency Services policies citation issued.
- 1/12/2022 - Complaint investigation survey: Patient Rights and Patient Rights-grievances citations issued.
- 3/25/2021 - Complaint investigation survey: Citations issued included Adverse Event Reporting, Governing Body-Care of Patients, Nursing Services-Delivery of Services, and Quality Assurance Program.

### Summary of Review of Application

The Department identified a number of experts in the field of pediatric heart transplantation, provided them with the information contained within this Exhibit, and requested feedback on the merits of the proposed project, any strengths or weaknesses in the project discernable from the information provided, and the need for an additional pediatric heart transplant program in NYS.

Reviewers noted that LIJ-CCMC has:

- A goal to provide the complete range of pediatric cardiac services to the patients they serve, ensuring continuity of care and making those services available in and as close to the communities they serve as possible.
- Active pediatric, pediatric cardiology, and pediatric cardiac surgical programs that have demonstrated good outcomes.
- An existing pediatric cardiology and surgery infrastructure within the LIJ-CCMC and the Northwell System that is likely to enable the leveraging of existing services and patients served by the system

to generate a waitlist and support the number of pediatric heart transplants projected for their new program.

- An existing physical plant capable of supporting the provision of pediatric heart transplant services;
- A familiarity with the demands and requirements of implementing a successful transplant program.
- An alliance with and support of the LIJ Pediatric Cardiac Surgery Program as well as that of the Northwell Health Transplant Institute;
- Gained OPTN/UNOS approval of the program after having demonstrated it meets their strict rules for infrastructure, qualified and credentialed personnel, quality assurance and performance improvement, etc.

Reviewers also noted that:

- There is a shortage of pediatric hearts available for transplantation, and traditional methods of increasing the number of organs available for transplantation, such as increasing enrollments in the Registry, will not work to increase the number of pediatric hearts available for transplantation.
- There are four established pediatric heart transplant (PHTP) programs in New York State, all located in the boroughs of New York City.
- The applicant's objective of establishing a pediatric heart transplant program at LIJ-CCMC as a way to facilitate continuity of care for the applicant's patients and make available to their patients the full complement of pediatric cardiac and cardiac surgery services is laudable.

However, it was noted that there are many hospitals with pediatric cardiology and congenital heart surgery programs that do not perform pediatric heart transplants because this is such a specialized service and very resource-intensive.

In this case, pediatric heart transplant services are already available in the primary service area of the applicant (Queens County/Borough) and are costly to establish and maintain when the needs of these children could be met by collaboration with existing providers and programs rather than opening a new program.

- The size of a facility's pediatric congenital heart program is generally a predictor of disease burden and volume of an associated pediatric heart transplant program. Information from the DOH Cardiac Advisory Committee indicated that LIJ-CCMC performed 100-150 pediatric cardiac surgeries per year from 2018 to 2023 and that the volume of pediatric heart transplants projected by the applicant, 2, 3, and 3-5 in years one, two, and three, respectively, were thought to be reasonable, especially in a new program.
- The volume of pediatric heart transplants performed per year at the existing programs varies significantly. The NYP-Columbia program performs 25-30 pediatric heart transplants a year. Two of the other programs generally perform less than 5 transplants a year, and Montefiore has not performed a pediatric heart transplant since 2021. The 2021 addition of NYU's pediatric heart transplant program has not increased the overall number of pediatric heart transplants performed in the state.

The factors contributing to the low pediatric transplant volumes at the Montefiore, Mount Sinai, and, to a certain extent, the NYU programs are unknown. It may be that they are not receiving or generating enough referrals to increase their transplant volume. It may be that the low-volume centers choose to list and transplant the more "straightforward" cases while referring the more complex cases to Columbia in order not to incur the negative impact a potential post-transplant death would have on their program metrics and bring attention to their program(s). Any number of other factors, e.g., staffing, may also be contributing to low program volumes.

- There is capacity at the existing programs sufficient to meet the number of pediatric heart transplants the applicant projected they would be performing, at least in the early days of the program.
- A new program is not likely to destabilize NYP-Columbia, which was the recipient of 8 referrals for pediatric heart transplant evaluation in 2022, but the impact of a new program on the other existing low-volume programs is unclear.
- There are currently 15 children waiting for a pediatric heart transplant in NYS; nine were placed on the list by Columbia.

- The median time to transplant in three of the four existing pediatric programs is less than or approximately equal to the national norm of three months, with Mount Sinai having a significantly longer wait time for children on their list.
- Additions to the pediatric waitlist by Montefiore have been zero, 7-8 for NYU and Mount Sinai, and 28-30 for NYP – Columbia for the last few years.
- Waitlist Mortality is higher, though not significantly, than the national average for Montefiore, NYU, and NYP–Columbia pediatric transplant programs and less than the national norm for Mount Sinai.

#### Reviewers Recommendation

Reviewers concluded that although the merits of the application would support approval and that it is likely that LIJ-CCMC and Northwell Health system providers would be able to generate a sufficient number of referrals to result in the projected number of transplants in years 1-3 of program functioning, their conclusion is that there is no need for another pediatric heart transplant program in the region to increase access to these vital services.

#### Prevention Agenda

Long Island Jewish Medical Center in Queens County is seeking approval to establish a pediatric heart transplant program at the Cohen Children's Medical Center (CCMC) of New York. This project will improve the continuity of pediatric cardiac care by bring a crucial service to a community where children with advanced / end-stage heart failure must travel to receive care in Manhattan.

Long Island Jewish Medical Center is implementing multiple interventions to support the priority areas of the 2019-2024 prevention agenda. These priorities include:

- Prevent Chronic Disease
- Promote Well-Being and Prevent Mental and Substance Use Disorders
- Promote Healthy Women, Infants and Children

The pediatric heart transplant program advances the following Prevention Agenda priority areas: 'Prevent Chronic Diseases' and 'Promote Healthy Women, Infants and Children'. The program will also increase access to an essential service that is not currently present within the county.

In 2021, Long Island Jewish Medical Center spent \$ 105,594,711 on Community Health Improvement Services and Community Benefit Operations, which accounts for 3.08% of their total operating expenses.

#### Conclusion

This application reflects that LIJ-CCMC and the Northwell Health System are dedicated to increasing the availability of pediatric cardiac surgery and organ transplantation to the residents of Long Island, Queens, and Westchester Counties.

The application and responses to Department requests for additional information assured the Department that LIJ-CCMC, with the support of the Northwell Health System, has the structure, processes, staff, and other resources to implement a pediatric heart transplant program.

The Organ Procurement and Transplant Network contractor, United Network for Organ Sharing (UNOS), has approved the establishment of a pediatric heart transplant program at LIJ-Cohen Children's Medical Center.

Based on the information and data evaluated, the Department's recommendation differs from that of the Reviewers and recommends approval of the application.

## Financial Analysis

### Total Project Cost and Financing

The total cost of the project is anticipated to be \$403,758, broken down as follows in 2024 dollars:

Movable Equipment	\$399,560
CON Application Fee	2,000
Additional CON Fees	<u>2,198</u>
Total Project Cost	\$403,758

Total project cost will be met with the accumulated funds.

### Operating Budget

The applicant has submitted an operating budget for the first and third years of operation of the service.

	<u>Year One</u>		<u>Year Three</u>	
	<u>2025</u>		<u>2027</u>	
	<u>Per Visit</u>	<u>Dollars</u>	<u>Per Visit</u>	<u>Dollars</u>
Inpatient Revenue				
Commercial MC	\$700,000	\$700,000	\$700,000	\$1,400,000
Medicaid MC	\$400,000	400,000	\$400,000	800,000
Medicaid FFS	-	<u>0</u>	\$200,000	<u>200,000</u>
Total Inpatient Revenue		\$1,100,000		\$2,400,000
Outpatient Expense				
Operating	\$1,402,051.00	\$2,804,102	\$1,379,397.40	\$6,896,987
Capital	<u>28,840.00</u>	<u>57,680</u>	<u>11,536</u>	<u>57,680</u>
Total Expense	\$1,430,891.00	\$2,861,782	\$1,390,900.40	\$6,954,667
Net Income (Loss)		(\$1,176,782)		(\$4,554,667)
Transplants		2		5
Cost per Transplant		\$1,430,891.00		\$1,390,900.40

The budget is based on the following assumptions:

- Staffing assumptions apply to the actual transplant procedure and full inpatient stay, which is 4.2 FTEs and 12 FTEs in Year One and Year Three, respectively.
- The expense and utilization assumptions are based on inpatient detail variables. Once the variable direct costs were calculated, overhead costs, depreciation, and interest were developed using the experience of the clinical and management staff.
- Staffing assumptions were developed with Clinical and Operational leadership using staffing models based on existing programs. Revenue, expense, and utilization assumptions are based on the current cardiology and cardiac surgery experience at Northwell Health.
- Revenues were based on the internal cost accounting system that Northwell Health's internal system uses for similar cardiac transplant programs.
- The CFO provided a letter stating that Northwell Health, Inc., is committed to providing financial support to absorb the financial operations losses in years one and three.

Utilization by payor source is anticipated as follows:

	<u>Year One</u> <u>Discharges</u>	<u>Year Three</u> <u>Discharges</u>
Commercial MC	50%	40%
Medicaid MC	50%	40%
Medicaid FFS	-	20%
Total	100%	100%

#### Capability and Feasibility

The total project cost of \$403,758 will be covered by accumulated funds. The working capital requirements are estimated at \$1,159,111, based on two months of third-year expenses, and will be funded through equity from Northwell, Inc. operations. BFA Attachment B, 2022-2023 Certified Financial Statements – Northwell Health, Inc., shows sufficient resources to fund the total project cost and working capital requirement.

The submitted budget indicates a net loss of (\$1,761,782) and (\$4,554,667) in Years One and Year Three, respectively. The CFO of Northwell Health, Inc. has submitted a letter stating that they will absorb the operational losses of the Pediatric Heart Transplant program. The budget is based on existing reimbursement methodologies, including donor and recipient reimbursement. The budget appears reasonable.

BFA Attachment B, 2022-2023 Certified Financial Statements – Northwell Health, Inc., shows the entity maintained positive working capital, a positive net equity position for both years, and an excess of operating revenue over operating expenses of \$117,648,000 and \$197,702,000, in 2022 and 2023, respectively.

#### Conclusion

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

## Attachments

BFA Attachment A	Organizational Chart of the North Well Health, Inc., and the Obligated Group
BFA Attachment B	2022-2023 Certified Financial Statement - Northwell Health, Inc.



**Project # 241112-C  
BronxCare Hospital Center**

**Program:** Hospital  
**Purpose:** Construction

**County:** Bronx  
**Acknowledged:** March 18, 2024

**Executive Summary**

**Description**

BronxCare Hospital Center (BCH), a 415-bed, voluntary not-for-profit, Article 28, safety-net hospital at 1650 Grand Concourse, Bronx (Bronx County), requests approval to add 33 medical-surgical beds in an effort to address inadequate capacity. Current and projected medical-surgical bed occupancy is greater than 100%. The additional beds will be placed in available space on the 14th floor. This floor is currently occupied by a Women’s Health Outpatient Service. The Women’s Health Outpatient Service will be relocated on the Concourse Campus into vacant Article 28 outpatient clinic space. A Limited Review Application to relocate the Women’s Health Outpatient Service was submitted on 1/30/2024 (CON # 241039).

BronxCare Health System is the largest safety net hospital serving the South and Central Bronx. Its Concourse and Fulton Campuses are located approximately 1.5 miles apart. Inpatient and outpatient medical services are provided at the BronxCare Concourse Hospital Division (415 total beds; 250 medical surgical and 165 specialties). Behavioral health services are provided at the Fulton Division

Currently, the average wait time for an inpatient bed is 13 hours, more than three times the recommended standard of four hours. Approximately 600 hours of ED staff time is dedicated to caring for boarded patients daily.

The proposed beds will be focused on treating people presenting to the ED with chronic conditions such as asthma, heart disease,

diabetes, cancer, and other illnesses. Bronxcare is trying to reduce hospitalizations and time to diagnosis by providing preventative care through screening and early detection.

**OPCHSM Recommendation  
Contingent Approval**

**Need Summary**

The applicant projects 17,624 medical/surgical discharges in Year One and 17,816 in Year Three with 50% Medicaid.

**Program Summary**

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

**Financial Summary**

The total project cost of \$9,607,924 will be funded with equity.

<u>Budget:</u>	<u>Year One</u> <u>2026</u>	<u>Year Three</u> <u>2028</u>
Revenues	\$405,436,108	\$408,679,928
Expenses	<u>338,649,833</u>	<u>340,088,715</u>
Net Income	\$66,786,275	\$68,591,213

**Health Equity Impact Assessment**

Based on the information and analysis presented in the Health Equity Impact Assessment and the applicant’s mitigation plan, which demonstrates the proposed project will not result in any significant adverse health equity impacts.



## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

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

**Approval conditional upon:**

1. This project must be completed by **11/30/25** including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **12/30/24**, and construction must be completed by **8/30/25**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

June 20, 2024

# Need Analysis

## Project Description

BronxCare, a safety net hospital at 1650 Grand Concourse, Bronx, NY 10457, is seeking approval to certify 33 medical-surgical beds. These beds will be added to available space at BronxCare's Concourse Hospital Division.

## Background and Analysis

BronxCare is within a Health Professional Shortage Area for Dental Health, Mental Health, and Primary Care and is in a Medically Underserved Area.

BronxCare's 12 zip-code service area is among the poorest in the nation with high disease incidence rates, large minority and immigrant populations, and low socioeconomic status.

The population of Bronx County is projected to increase to 1,597,728 by 2029 per Cornell Program on Applied Demographics. Demographics for the primary service area are noted below.

<b>Demographics</b>	<b>Bronx County</b>	<b>New York State</b>
Total Population – 2022 Estimate	1,443,229	19,994,379
Hispanic or Latino (of any race)	56.4%	19.50%
White (non-Hispanic)	8.6%	53.8%
Black or African American (non-Hispanic)	28.3%	13.8%
Asian (non-Hispanic)	3.8%	8.8%
Other (non-Hispanic)	2.9%	4.1%

Source: 2022 American Community Survey (5-Year Estimates Data Profiles)

In 2021 92.2% of the population in Bronx County had health coverage as follows:

Employer Plans	30.7%
Medicaid	42.3%
Medicare	6.78%
Non-Group Plans	12%
Military or VA	0.4 %

Source: Data USA

<b>Applicant Inpatient Payor Mix</b>			
<b>Payor</b>	<b>Current</b>	<b>Year One</b>	<b>Year Three</b>
Commercial	6.58%	6.64%	6.65%
Medicare	42.47%	41.60%	41.50%
Medicaid	49.67%	50.48%	50.57%
Other	1.28%	1.28%	1.27%
Total Visits	16,085	17,624	17,816

Source: Applicant

The table below shows high utilization at BronxCare for medical/surgical beds exceeding 100% for 2023 with projections still above 100% for Year 1 and Year 3:

Utilization for BronxCare Historical and Projected								
Major Service Category	Current Beds	Projected Beds	Utilization	2021	2022	2023	Projected Year 1	Projected Year 3
Medical/Surgical	309	342	ADC	294.5	305.1	362.2	353.7	358.2
			ALOS	6.2	6.6	6.8	7.0	7.0
			Occ.	95.3%	98.7%	105.6%	103.4%	104.7%
Pediatric (Includes Pediatric ICU)	30	30	ADC	11.2	13.7	11.1	11.1	11.1
			ALOS	3.1	3.2	3.3	3.3	3.3
			Occ.	37.5%	45.7%	37.2%	37.0%	37.2%
Obstetric/Maternity	36	36	ADC	16.2	15.4	14.8	14.7	14.8
			ALOS	2.6	2.6	2.6	2.6	2.6
			Occ.	45.0%	42.9%	41.0%	40.9%	41.0%
High-risk Neonates	40	40	ADC	16.0	8.5	9.8	9.8	9.8
			ALOS	17.5	11.4	17.5	17.5	17.5
			Occ.	40.0%	21.1%	24.6%	24.5%	24.6%
Total	415	448	ADC	337.9	342.7	362.0	389.3	393.9
			ALOS	5.8	6.0	6.6	6.5	6.5
			Occ.	81.4%	82.6%	87.2%	86.9%	87.9%

ADC: Average Daily Census; ALOS: Average Length of Stay; Occ: Occupancy  
Source: Applicant

The applicant projects 16,085 medical/surgical discharges in the current year, 17,624 in Year One and 17,816 in Year Three.

Also, BronxCare reports significant Emergency Department (ED) volume that is both contributing to and being exacerbated by their medical/surgical bed undercapacity.

Historical/Current ED Volume for BronxCare					
	2019	2020	2021	2022	2023
Total Bays	69	69	69	69	69
Total Visits	129,623	112,311	116,717	119,592	118,826
Total Visits per ED Bay	1,879	1,628	1,692	1,733	1,722
Standard Bays	58	58	58	58	58
Standard Visits - Adult	97,629	94,518	95,463	95,564	93,921
Standard Visits per ED Bay	1,683	1,630	1,646	1,648	1,619
Specialty Bays	11	11	11	11	11
Visits - Pediatrics	31,994	17,793	21,254	24,028	24,905
Visits per Specialty Bay	2,909	1,618	1,932	2,184	2,264

Source: Applicant

According to the applicant, patients waiting for inpatient beds are being housed in BronxCare's ED, leading to overcrowding, long wait times, and delayed procedures. Currently, the average wait time for an inpatient bed is 13 hours, more than three times the recommended standard of four hours. Approximately 600 hours of ED staff time is dedicated to caring for boarded patients daily.

The proposed beds will be focused on treating people presenting to the ED with chronic conditions such as asthma, heart disease, diabetes, cancer, and other illnesses. BronxCare is trying to reduce hospitalizations and time to diagnosis by providing preventative care through screening and early detection.

## Conclusion

The addition of these 33 medical-surgical beds would allow the facility to achieve the following:

- Reduce the long wait time for inpatient units.
- Strengthen BronxCare's capability to quickly respond to surges in demand.
- Reduce ED overcrowding.
- Reduce ED wait times.
- Free up ED staff to focus on patients.

## Program Analysis

### Project Proposal

<b>Proposed Operator</b>	<b>BronxCare Health System</b>
<b>To Be Known As</b>	<b>BronxCare Hospital Center</b>
<b>Site Address</b>	<b>1650 Grand Concourse Bronx, NY 10457</b>
<b>Service</b>	<b>Certify 33 Medical / Surgical Beds</b>
<b>Hours of Operation</b>	<b>24/7</b>
<b>Medical Director(s)</b>	<b>Dr. Sai Lakshmi Akella</b>

BronxCare is the largest safety-net hospital system serving the South and Central Bronx, among the poorest communities in the nation. This Certificate of Need application requests approval to add 33 critically needed medical-surgical beds into available space at BronxCare's Concourse Hospital Division.

Increasing medical surgical capacity will:

- Represent an essential starting point in resolving BronxCare's medical surgical overcapacity occupancy, which exceeded 100 percent throughout 2023 and is continuing into 2024.
- Address the increasing severity of acute conditions and a multitude of health challenges facing BronxCare's service area population.
- Reduce patient overcrowding and long ER wait times for patients requiring inpatient admission. The average waiting time for an inpatient bed is now 13 hours, more than three times the recommended standard of four hours.
- Result in more efficient use of ER staff. Currently, approximately 600 hours of ER staff time is now dedicated to caring for boarded patients daily.
- Maximize the benefit of patients receiving timely care in the inpatient units.
- Strengthen BronxCare's capability to quickly respond to surges in demand, which are frequently occurring.

Occupancy for BronxCare's medical-surgical bed complement is at over-capacity levels. These high occupancy levels are continuing and demonstrate the major need and demand for additional medical-surgical beds. The additional 33 beds will result in Bronx Care becoming better positioned to accommodate and care for the large number of patients requiring hospital admission. It will also address the continuing health disparities associated with BronxCare's vulnerable service area, which is among the poorest in the nation with high disease incidence rates, large minority and immigrant populations, and low socioeconomic status. The average waiting time for an inpatient bed from BronxCare's ER is 13 hours, more than three times the Joint Commission recommended standard of four hours, with patients requiring inpatient admission often being transferred to hallway areas or the maternity and pediatric units. These types of actions temporarily reduce the pressures on the ER staff regarding inpatient admissions.

The table below shows the projected FTEs in Year One And Year Three:

<b>Position</b>	<b>FTEs Year One</b>	<b>FTEs Year Three</b>
Management & Supervision	1.0	1.0
Technician & Specialist	14.4	15.8
Registered Nurses	13.3	15.2
Aides, Orderlies & Attendants	3.0	3.0
<b>Totals</b>	<b>31.7</b>	<b>35.0</b>

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

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

### Prevention Agenda

BronxCare Hospital Center, in Bronx New York is seeking approval for the addition of 33 critically needed medical-surgical beds into available space at BronxCare's Concourse Hospital Division. An increase in medical-surgical capacity represents an essential starting point in resolving BronxCare's medical-surgical overcapacity occupancy, which exceeded 100 percent throughout the previous calendar year and continues to do so. It will also enable the facility to better cater to the increasing severity of acute conditions and a multitude of health challenges presented within the service area population and reduce patient overcrowding and wait times for patients requiring inpatient admission.

BronxCare Hospital is implementing multiple interventions to support priorities of the 2019-2024 New York State Prevention Agenda, including:

- Prevent Chronic Diseases
- Promote Wellbeing and Prevent Mental and Substance Use Disorders

The proposed project, however, does not explicitly advance the selected local Prevention Agenda priorities that were identified in the most recently completed Community Service Plan (CSP), but it does improve access to care for patients who require medical-surgical intervention.

In 2022, BronxCare Hospital spent \$1,397,426 on community health improvement services.

### Conclusion

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

## Financial Analysis

### Total Project Cost

Total project costs for renovations and movable equipment are estimated at \$9,607,924, broken down as follows:

Renovation & Demolition	\$6,661,150
Design Contingency	666,115
Construction Contingency	666,115
Architect/Engineering Fees	440,000
Other Fees	20,000
Movable Equipment	700,000
Telecommunications	400,000
Application Fee	2,000
Processing Fee	<u>52,544</u>
Total Project Cost	\$9,607,924

The applicant's financing plan appears as follows:

Equity	\$9,607,924
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BFA Attachment A presents BronxCare Health System's 2022 Certified Consolidated Financial Statements, which show sufficient resources to meet the equity requirement.

### Operating Budget

The applicant has submitted their current year (2022) and projected operating budgets for the first and third years in 2024 dollars, summarized below:

	<u>Current Yr.</u>		<u>First Year</u>		<u>Third Year</u>	
	<u>2022</u>		<u>2026</u>		<u>2028</u>	
	<u>Per Disch.</u>	<u>Total</u>	<u>Per Disch.</u>	<u>Total</u>	<u>Per Disch.</u>	<u>Total</u>
Revenues						
Medicaid FFS	\$13,710	\$23,005,137	\$14,152	\$26,081,475	\$14,199	\$26,466,018
Medicaid MC	\$30,824	194,529,686	\$28,901	203,867,215	\$28,692	205,030,407
Medicare FFS	\$40,291	55,601,581	\$39,326	58,045,196	\$39,188	58,350,648
Medicare MC	\$17,097	93,195,246	\$17,576	102,904,713	\$17,629	104,116,883
Commercial FFS	\$8,163	5,820,161	\$8,577	6,784,657	\$8,632	6,905,219
Commercial MC	\$10,343	3,578,673	\$10,208	3,879,013	\$10,199	3,916,556
All Other	\$18,014	<u>3,710,966</u>	\$17,217	<u>3,873,839</u>	\$17,155	<u>3,894,197</u>
Total Revenues		\$379,441,450		\$405,436,108		\$408,679,928
Expenses						
Operating	\$20,535	\$330,304,169	\$19,149	\$337,485,259	\$19,003	\$338,551,641
Capital	<u>\$49</u>	<u>792,075</u>	<u>\$66</u>	<u>1,164,574</u>	<u>\$86</u>	<u>1,537,074</u>
Total Expenses	\$20,584	\$331,096,244	\$19,215	\$338,649,833	\$19,089	\$340,088,715
Net Income (Loss)		\$48,345,206		\$66,786,275		\$68,591,213
Discharges		16,085		17,624		17,816

The following is noted concerning the submitted budget:

- The current year reflects the facility's 2022 revenue and expenses for the 250-bed Medical/Surgical unit.
- The addition of 33 Medical / Surgical beds is expected to generate 1,539 incremental discharges in Year One and 1,731 incremental discharges by Year Three.
- Medicaid and Medicaid MCO rates were based on DOH calculations effective January 1, 2024. Medicare and Medicare MCO are based on the current rate, effective October 1, 2023. Commercial

and Commercial MCOs are based on average payment rates in 2023. All other rates are based on average payment rates in 2023. No changes to reimbursement rates were assumed after 2024.

- Payor mix assumptions are based on the 2023 experience.
- Expense assumptions consider staffing for the added 33 Medical/Surgical beds, contractually obligated salary increases, supply costs, and added depreciation.

Utilization by payor source is as follows:

Utilization by Payor <u>Payor:</u>	<u>Current Year</u> <u>2022</u>		<u>Year One</u> <u>2026</u>		<u>Year Three</u> <u>2028</u>	
	<u>Disch</u>	<u>%</u>	<u>Disch.</u>	<u>%</u>	<u>Disch.</u>	<u>%</u>
Medicaid FFS	1,678	10.43%	1,843	10.46%	1,864	10.46%
Medicaid MC	6,311	39.24%	7,054	40.02%	7,146	40.11%
Medicare FFS	1,380	8.58%	1,476	8.37%	1,489	8.36%
Medicare MC	5,451	33.89%	5,855	33.22%	5,906	33.15%
Commercial FFS	713	4.43%	791	4.49%	800	4.49%
Commercial MC	346	2.15%	380	2.16%	384	2.16%
All Other	<u>206</u>	<u>1.28%</u>	<u>225</u>	<u>1.28%</u>	<u>227</u>	<u>1.27%</u>
Total by Payor	16,085	100%	17,624	100%	17,816	100%

#### Capability and Feasibility

The total project cost of \$9,607,924 will be funded from equity. Working capital of \$1,498,745 based on two months of third-year incremental expenses will come from hospital operations. BronxCare Hospital Center projects a net income of \$66,786,275 in Year One and \$68,591,213 in Year Three. The budget appears reasonable.

BFA Attachment A, BronxCare Health System's 2022 Certified Financial Statements, indicates positive working capital, a positive net asset position, and a net income of \$97,311,906. BFA Attachment B, BronxCare Health System's November 30, 2023, Internal Financial Statements shows positive working capital, positive net assets, and a net gain of \$20,814,000.

#### Conclusion

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



## Health Equity Impact Assessment

### Health Equity Impact Assessment Summary

BronxCare Health System aims to add 33 medical/surgical beds to its Concourse hospital facility at 1650 Grand Concourse, Bronx, NY 10457. The primary objective of the project is to augment the facility's inpatient bed capacity, thereby alleviating the issue of overcrowding in the emergency department and meeting the existing healthcare needs of the community. Given that Bronx County faces the highest socioeconomic challenges in New York State, addressing the lack of adequate healthcare access in this region is imperative. Socioeconomic status has been identified as a significant risk factor for delayed access to healthcare services and individuals from low-income backgrounds face substantial barriers to accessing care and exhibit higher rates of departing before being seen.

The Independent Entity states that prolonged wait times at the hospital escalate the risk of patients delaying care and/or prematurely leaving without receiving medical care, further compounding the challenges in obtaining timely medical attention. The expansion of additional beds intends to improve issues surrounding high emergency room utilization rates, accessibility, reduce inpatient admission care and subsequently elevate the quality of life for patients and the community.

### Conclusion

Based on the information and analysis presented in the Health Equity Impact Assessment and the applicant's mitigation plan, which demonstrates the proposed project will not result in any significant adverse health equity impacts.

## Attachments

BFA Attachment A	BronxCare Health System's 2022 Certified Financial Statements
BFA Attachment B	BronxCare Health System's November 30, 2023, Internal Financial Statements
OHEHR Attachment	Health Equity Impact Assessment Report



**Project # 241115-C**  
**Montefiore Medical Center - Henry & Lucy Moses Div**

**Program: Hospital**  
**Purpose: Construction**

**County: New York**  
**Acknowledged: April 1, 2024**

**Executive Summary**

**Description**

Montefiore Medical Center, a 1,558-bed not-for-profit hospital, requests approval to certify a new 21-bed Child and Adolescent Psychiatric Division on the New York City Children's Center Bronx Campus at 1500 Waters Place, Bronx (Kings County). The proposed facility will comprise 18,300 square feet of leased space with a separate entrance and will be self-contained and distinct from NYCCC. The proposed unit, an extension of the Montefiore Einstein Center for Children's Mental Health, will be designed to provide treatment for youth with serious behavioral health conditions, including severe depression, anxiety, trauma, suicidal thoughts, psychosis, co-morbid mental health issues, and other acute psychiatric conditions. The site will be dually licensed by NYSDOH and NYSOMH.

**OPCHSM Recommendation**  
**Contingent Approval**

**Need Summary**

The applicant projects 348 psychiatric inpatient discharges in Year One and 364 in Year Three with 100% Medicaid utilization.

**Program Summary**

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

**Financial Summary**

The total project cost of \$8,860,545 will be met with \$3,160,546 from Montefiore Medical Center capital and philanthropy and \$5,700,000 from the New York State Capital Assistance Program.

<b>Budget:</b>	<b>Year One</b>	<b>Year</b>
	<b>(2025)</b>	<b>(2027)</b>
Revenues	\$14,504,085	\$15,190,115
Expenses	<u>14,463,118</u>	<u>15,343,921</u>
Excess	\$40,967	(\$153,806)
Revenues		

**Health Equity Impact Assessment**

The information and analysis presented in the Health Equity Impact Assessment and the applicant's mitigation plan demonstrate the proposed project will not result in any significant adverse health equity impacts.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of documentation of approval from the New York State Office of Mental Health. [PMU]
3. Submission of an executed lease rental agreement that is acceptable to the Department of Health. [BFA]
4. Submission of the receipt of grant funding that is acceptable to the Department of Health. [BFA]
5. Acceptance by the Bureau of the Applicant's RFAI responses and revisions to the Engineering (MEP) drawings, as described in BAEFP Drawing Submission Guidelines DSG-1.0. [AER]

**Approval conditional upon:**

6. This project must be completed by **November 30, 2025**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
7. Construction must start on or before **December 31, 2024**, and construction must be completed by **August 31, 2025**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
8. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
9. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

June 20, 2024

# Need Analysis

## Project Description

Montefiore Medical Center - Henry & Lucy Moses Division is seeking to certify a 21-bed child and adolescent psychiatry unit in the New York City Children's Center (NYCCC) - Bronx Campus at 1500 Waters Place Bronx, NY 10461 (Bronx County). The Montefiore Einstein Center for Children's Mental Health of the Children's Hospital at Montefiore Einstein (CHAM) proposes to establish an Inpatient Acute Psychiatric Unit for Children and Adolescents by expanding and enhancing the complement of services provided by Montefiore Medical Center and its Children's Hospital at Montefiore Einstein. The site will be dually licensed by the New York State Department of Health and the New York State Office of Mental Health. This new unit will focus on children and adolescents, ages 5-17, and is designed to treat patients with serious behavioral health conditions, including severe depression, anxiety, trauma, suicidal thoughts, psychosis, co-morbid mental health issues, and other acute psychiatric conditions. The beds will be flexible allowing the facility to accommodate children or adolescents in all.

## Background and Analysis

This project will treat patients located in Bronx County. This location is within a Health Professional Shortage Area for Dental Health, Mental Health, and Primary Care. The population of Bronx County is projected to increase to 1,597,728 by 2029, per Cornell Program on Applied Demographics. Demographics for the primary service area are noted below.

Demographics	Bronx County	New York State
Total Population – 2022 Estimate	1,443,229	19,994,379
Hispanic or Latino (of any race)	56.4%	19.50%
White (non-Hispanic)	8.6%	53.8%
Black or African American (non-Hispanic)	28.3%	13.8%
Asian (non-Hispanic)	3.8%	8.8%
Other (non-Hispanic)	2.9%	4.1%

Source: American Community Survey (5-Year Estimates Data Profiles)

In 2021, 92.2% of the population in Bronx County had health coverage as follows.

Employer Plans	30.7%
Medicaid	42.3%
Medicare	6.78%
Non-Group Plans	12%
Military or VA	0.4 %

Source: Data USA

The applicant projects Medicaid as the payor for all discharges.

The table below provides the proposed bed change by category:

Bed Change at Montefiore Medical Center - Henry & Lucy Moses			
Bed Category	Current Beds	Bed Change	Beds Upon Approval
AIDS	13		13
Bone Marrow Transplant	4		4
Coronary Care	12		12
Intensive Care	48		48
Medical / Surgical	581		581
Pediatric	116		116
Pediatric ICU	20		20
Psychiatric	22	21	43
Total	816	21	837

The applicant is projecting 348 children and adolescents in the new unit in Year 1 and 364 in Year 3 and anticipates an 18/19-day average length of stay. These visits are expected to come mostly from within the Montefiore Health System.

According to the applicant, Montefiore has witnessed an increase in the number of children presenting to the emergency department (ED) experiencing psychiatric conditions and staying extended times due to the lack of inpatient beds. Symptoms often include suicidality or psychosis, which puts further strain and added time on ED staff. Montefiore Medical Center currently does not have a Child and Adolescent Inpatient unit for psychiatric patients.

Montefiore Medical Center Children's Hospital on the Moses Campus transfers children to out-of-network facilities such as Four Winds and St. Vincent's Hospital, both in Westchester County. The table below shows the child and adolescent psychiatric-related ED visits and how many were transferred to inpatient units.

Year	Psychiatric-Related ED Visits	Transferred to Inpatient Psychiatric Units
2021	1,008	159
2022	1,120	163
2023	1,117	160

Source: Applicant

The table below indicates transfers for children and adolescents needing inpatient psychiatric care. With the addition of the proposed inpatient unit to Montefiore, these patients would be able to utilize the unit as well.

Montefiore System Transfers for Child Inpatient Psychiatric Care 2023		
Facility	Per Month	Per Year
Moses Campus ED	13	160
Wakefield Campus ED	1	16
Montefiore St. Luke's Cornwall Hospital	2	22
White Plains Hospital	7	80
Montefiore Mount Vernon	2	21
Children not admitted due to bed availability	4	51
Total	29	350

Source: Applicant

The Montefiore Health System is transferring a total of 299 children to other facilities, with 51 being discharged due to a lack of bed availability. Many hospitals divert these inpatients, knowing the lack of availability at Montefiore.

The facility has listed its project goals as follows:

- To provide a safe environment for children and adolescents who are at risk of harming themselves or others or cannot function safely in the community due to their psychiatric condition.
- To treat acute psychiatric symptoms with medications and psychotherapy and to monitor the effects and side effects of these interventions.
- To coordinate outpatient support for children and adolescents, such as referrals to community services for continued treatment and support.
- To help children, adolescents, and their families develop coping skills, self-care strategies, and recovery plans for their psychiatric condition.
- To educate patients and their families about mental illness, its causes, treatments, and prognosis.
- To allow the Children's Hospital at Montefiore Einstein to expand its focus on the mental health care of pediatric patients at Montefiore.

## Conclusion

The addition of these beds will allow for the timely treatment of child and adolescent mental health patients, preclude the transfer of these patients out of county, and reduce the current strain on the emergency department.

## Program Analysis

### Project Proposal

<b>Proposed Operator</b>	Montefiore Medical Center
<b>Doing Business As</b>	Montefiore Einstein Center for Children's Mental Health of the Children's Hospital at Montefiore Einstein
<b>Site Address</b>	1500 Waters Place, Bronx, NY 10461
<b>Shift/Hours/Schedule</b>	24 hours 7 days a week
<b>Staffing (1<sup>st</sup> Year/3<sup>rd</sup> Year)</b>	72.5 FTEs for 1 <sup>st</sup> and 3 <sup>rd</sup> years
<b>Medical Director</b>	Dr. Jonathan E. Alpert
<b>Emergency, In-Patient, and Backup Support Services Agreement and Distance</b>	Montefiore Medical Center - Moses - Children's Hospital. 4.6 miles / 23 minutes.

Montefiore Medical Center does not currently have a Child and Adolescent Inpatient unit for psychiatric patients. Montefiore Medical Center's Division of Child and Adolescent Psychiatry services and treatments are currently delivered through a range of Montefiore units and programs on an outpatient/ambulatory basis.

The proposed Montefiore Medical Center operated 21-bed Child and Adolescent Inpatient unit for psychiatric patients within New York City Children's Center will add to the service continuum and have a great benefit to the patients of the Bronx.

The Applicant reports that Bronx children are suffering from behavioral health disorders at elevated levels:

- 281,629 children ages 5-17 live in the Bronx.
- 56,326 of those children have a behavioral health disorder.
- 28,163 are considered to have serious emotional disturbances.
- 74% of Bronx high school students report high levels of stress and anxiety.
- Suicide among Bronx children ages 5-17 has doubled in the past decade.
- 35% of children in the Bronx report suffering from depression.
- 12% of Bronx students report one or more suicide attempts in the past year.

There is a scarcity of specialists practicing child and adolescent psychiatry and inpatient beds, specifically for this population, with fewer than 120 inpatient psychiatric beds for children and adolescents in service in the Bronx. There are 25 beds at BronxCare, 92 beds at the NYS-operated New York City Children's Center, and none within the Montefiore network.

From January to September 2023, 1,117 children and adolescents made psychiatric-related Emergency Department (ED) visits, and of those, 145 were transferred to inpatient psychiatric units. In 2022, 1,120 children were seen, and 163 were transferred to inpatient psych units. In 2021, 1,008 children and adolescents made psychiatric-related ED visits, and of those, 159 (16%) were transferred to inpatient psychiatric units. Typically, only one or two of these transfers can go to a Bronx facility due to a lack of available inpatient psychiatric beds.

A unit under Montefiore's auspices will help address the behavioral health of the children in the Bronx, alleviate back-ups in the ED, address prolonged length of stay of patients awaiting psychiatric transfer on CHAM inpatient units, and would integrate well with the existing and anticipated outpatient and intensive outpatient services for children and adolescents at Montefiore.

The hours of operation are 24 hours a day, 7 days a week. In the first year of operations, it is projected that the unit will provide care for 348 discharges, and in the third year, the projection is for 364 discharges.

The table below shows the projected FTEs in Year One and Year Three following completion of the project:

<b>Positions</b>	<b>FTEs Year One</b>	<b>FTEs Year Three</b>
Aides, Orderlies & Attendants	3.00	3
Nurse Practitioners	2.00	2
Social Worker & Psychologist	4.00	4
Other Therapists and Assistants	20.2	20.2
Clerical & other administrative	5.44	5.4
Pharmacist and pharmacy tech.	4.00	4
Dietitian	5.00	5
Security	10.00	10
<b>Totals</b>	<b>72.5</b>	<b>72.5</b>

*\*Numbers and mix of staff based on volume projections as well as experience.*

Staffing will increase by 72.5 FTEs in Year 1 & Year 3.

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

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

#### Prevention Agenda

Montefiore Medical Center – Henry & Lucy Moses Div, in Bronx, New York, is seeking to establish a 21-bed Child and Adolescent psychiatry unit in leased space at the New York City Children's Center (NYCCC) – Bronx Campus. Through the establishment of this unit, Montefiore Medical Center aims to increase access to acute inpatient psychiatry care for children and adolescents in a community where there is currently an unmet need for these services.

Montefiore Medical Center is implementing multiple interventions to support priorities of the 2019-2024 New York State Prevention Agenda, including:

- Prevent Chronic Diseases
- Promote Healthy Women, Infants and Children

The proposed project does not explicitly advance the selected local Prevention Agenda priorities that were identified in the most recently completed Community Service Plan (CSP), but it does improve access to care for patients who require child and adolescent psychiatry care in an underserved community.

In 2021, Montefiore Medical Center spent \$38,838,022 on community health improvement services, representing 0.84% of total operating expenses.

#### Conclusion

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

## Financial Analysis

### Total Project Cost and Financing

The total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at \$8,860,545, broken down as follows:

Renovation and Demolition	\$3,037,687
Site Development	1,499,718
Asbestos Abatement or Removal	16,380
Design Contingency	453,740
Construction Contingency	453,740
Fixed Equipment	420,420
Architect/Engineering Fees	683,737
Construction Manager Fees	272,244
Other Fees (Consultant)	130,320
Moveable Equipment	861,588
Telecommunications	980,516
CON Fee	2,000
Additional Processing Fee	<u>48,455</u>
Total Project Cost	<u>\$8,860,545</u>

The applicant's financing plan appears as follows:

Medical Center Capital and Philanthropy	\$3,160,546
Grants (NYS Capital Assistance Program)	<u>\$5,700,000</u>
Total	<u>\$8,860,545</u>

The applicant has submitted documentation of receipt of gift proceeds. As a contingency of approval, the applicant must provide final documentation of receipt of grant proceeds.

### Operating Budget

The applicant has submitted an incremental operating budget, in 2024 dollars, for the first and third years, summarized below:

	Year One (2025)		Year Three (2027)	
	<u>Per Patient Day</u>	<u>Total</u>	<u>Per Patient Day</u>	<u>Total</u>
<b>Revenues</b>				
Medicaid Fee for Service	\$2,267	\$1,441,645	\$2,267	\$1,511,914
Medicaid Managed Care	\$2,234	\$12,792,440	\$2,234	13,408,201
Professional Fees		<u>270,000</u>		<u>270,000</u>
Total Revenues		\$14,504,085		\$15,190,115
<b>Expenses:</b>				
Operating	\$2,046	\$13,016,855	\$2,084	\$13,897,658
Capital	<u>\$227</u>	<u>\$1,446,263</u>	<u>\$217</u>	<u>\$1,446,263</u>
Total Expenses	\$2,273	\$14,463,118	\$2,301	\$15,343,921
Net Income (Loss)		\$40,967		(\$153,806)
Utilization: (Patient Days)		6,362		6,669

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

- Revenues are based on current per-day reimbursement methodologies for psychiatric services.
- Expense assumptions are based on the hospital's current historical experience for psychiatric services.



- Utilization assumptions are based on the hospital's current historical experience for psychiatric services.
- The hospital will hire 72.5 FTEs in Year One and Year Three, comprised of nurses, physicians, therapists, and assistants.

Utilization broken down by payor source for the first and third years are as follows:

	<u>Year One</u> <u>(2025)</u>	<u>Year Three</u> <u>(2027)</u>
Medicaid FFS	10.00%	10.00%
Medicaid Managed Care	<u>90.00%</u>	<u>90.00%</u>
Total	100.00%	100.00%

#### Lease Rental Agreement

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

Premises	18,300 square feet located at 1500 Waters Place, Bronx, New York.
Lessor	The Dormitory Authority Of The State of New York.
Lessee	Montefiore Medical Center
Term	10 years
Rental	Years 1-3: \$462,334 (\$25.26 per sq.ft.)
	Years 4-10: \$659,000 (\$36.01 per sq.ft.)
Provisions	The lessee shall be responsible for utilities, maintenance, and real estate taxes.

The lease agreement will be an arm's length lease arrangement. The applicant submitted two real estate letters attesting to the reasonableness of the per-square-foot rental.

#### Capability and Feasibility

The total project cost of \$8,860,545 will be met with \$3,160,546 from Montefiore Medical Center capital and philanthropy and \$5,700,000 from the New York State Capital Assistance Program. As a contingency of approval, the applicant must provide documentation of receipt of grant proceeds. Montefiore received a gift totaling \$13M, authorized by the NYS Attorney General, as a result of the dissolution of the August Aichorn Center, a nonprofit that offered inpatient mental health treatment to teens.

Working capital requirements are estimated at \$2,557,320 at two months of incremental third-year expenses. The hospital will provide equity from operations to meet the working capital requirement. As shown in BFA Attachment A, the hospital has the availability of sufficient funds to meet the working capital requirement.

The submitted budget indicates incremental net revenues of \$40,969 and an incremental loss of (\$153,806) during the first and third years, respectively. The incremental losses in the third year are the result of increased salaries, employee benefits, and supplies expenses. The third-year incremental loss will be offset by the \$13M gift they received via Aichorn. Revenues are based on current reimbursement methodologies for psychiatric services. The submitted budget appears reasonable.

BFA Attachment A, 2022-2023 Certified Financial Statements of Montefiore Medical Center, show the hospital had an average positive working capital position and an average negative net asset position during the period. Also, the hospital incurred operating losses of \$65,611,000 in 2022 and an operating gain of \$60,231,000 in 2023. The average negative net asset positions are the result of rolling historical losses and the impacts of the COVID-19 pandemic. To improve operations, the hospital continues to have ongoing discussions with the NYSDOH, and other governmental agencies related to the availability of additional rate enhancements. The hospital has applied for reimbursement for qualifying expenses related to COVID-19 under the FEMA Disaster Relief Fund. Also, driven by top-down executive leadership, the organization has targeted multiyear initiatives on revenue growth and expense management.

#### Conclusion

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

# Health Equity Impact Assessment

## Health Equity Impact Assessment Summary

Montefiore Medical Center proposes to certify a 21-bed inpatient psychiatric unit space leased at the New York City Children's Center (NYCCC) – Bronx Campus for children and adolescents ages 5-17 years old. The facility aims to address the need for mental health inpatient services in the area. Currently, residents in Bronx County face a lack of local options for mental health inpatient services, leading to prolonged wait times for referrals and other barriers to receiving adequate care. Many residents are forced to travel longer distances to access pediatric facilities in Westchester and Manhattan. Discharge data from Montefiore reveals that over 1,000 children visit the emergency department annually for mental health-related disorders, but only approximately 10% follow up with transfers to Westchester and Manhattan hospitals. The lack of local mental health inpatient services creates accessibility challenges for patients who must rely on public transportation, endure long referral times, and miss days of work to seek services in other areas.

According to the Health Resources and Services Administration, the Bronx is experiencing a significant shortage of pediatric psychiatrists, with less than 100 inpatient beds available in the area, none of which are available in the Montefiore network. In addition, the zip codes surrounding the proposed project are among the highest levels of social and economic stress in the state. This project aims to address these challenges and reduce wait times for child and adolescent patients and their families.

## Conclusion

The information and analysis presented in the Health Equity Impact Assessment and the applicant's mitigation plan demonstrate the proposed project will not result in any significant adverse health equity impacts.

## Attachments

BFA Attachment A	Financial Summary- 2022-2023 Certified Financial Statements Montefiore Medical Center.
OHEHR Attachment	Health Equity Impact Assessment Report



**Department  
of Health**

**Public Health and Health  
Planning Council**

**Project # 231286-B**

**Carthage Area Hospital Inc.**

**Program: Hospital**

**County: St. Lawrence**

**Purpose: Establishment and Construction**

**Acknowledged: August 7, 2023**

**Executive Summary**

**Description**

Carthage Area Hospital, Inc. (Carthage) requests approval to establish a 25-bed Critical Access Hospital (CAH) at 214 Kings Street, Ogdensburg, New York. Carthage Area Hospital, Inc. currently operates another CAH at 1001 West Street, Carthage, NY, in southern St. Lawrence County. Claxton-Hepburn Medical Center (Claxton) currently operates a 127-bed hospital at the 214 Kings Street site in Ogdensburg, NY, as well as numerous clinics at this site and other locations in St. Lawrence County. Carthage and Claxton operate as part of the same healthcare system, with North Star Health Alliance, Inc. serving as both providers' corporate passive parent and sole member.

Due to the financial distress experienced by Claxton, a strategic sustainability plan is being implemented to preserve critical acute care and behavioral health services in St. Lawrence County. The plan will result in the simultaneous closure of Claxton's operation of an Article 28 hospital at the 214 Kings Street, Ogdensburg site, and a total of seven (7) Article 28 associated clinics at this site and other locations, and the concurrent opening of a new 25-bed CAH by Carthage at the existing 214 King Street, Ogdensburg site. Claxton will separately operate a 40-bed, Article 31 behavioral health facility at the same site, ensuring adequate separation from the CAH. The operation of five (5) rural health clinics was transferred in an initial phase through Certificate of Need application 232015. The remaining (2) two clinics, CHMC-Ravinder Agarwal Renal Center at 124 Ford Avenue, Ogdensburg, NY, and Heuvelton Health Center at 103 Rensselaer

Street, Heuvelton, NY, will be transferred as part of this application.

No services are planned to be eliminated as a result of this project.

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

At the completion of the project, there will be 62 fewer (out of the current 127) beds at the 214 Kings Street hospital site. Carthage projects 2,193 discharges for Year One and 2,209 by Year Three, with Medicaid utilization of 21.3% by Year Three.

**Program Summary**

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

**Financial Summary**

The total project cost of \$6,292,520 will be met with accumulated funds from Carthage Area Hospital.

Budget:	Year One	Year Three
	(2024)	(2026)
Revenues	\$203,645,539	\$211,836,881
Expenses	<u>201,996,515</u>	<u>202,796,722</u>
Excess of Revenues	\$1,649,024	\$9,040,159

## Health Equity Impact Assessment

There was no Health Equity Impact Assessment required for this project under Section 2802-B of the PHL, as it was received by the Department on June 7, 2023.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed lease rental agreement for the site located at 214 King Street, Ogdensburg, New York. [BFA]
3. Submission of an executed lease rental agreement for the site located at 124 Ford Avenue, Ogdensburg, New York. [BFA]
4. Submission of an executed lease rental agreement for the site located at 103 Rensselaer Street, Heuvelton, New York. [BFA]
5. Submission of closure plans, acceptable to and approved by the Department, for two facilities: CHMC Ravinder Agarwal Renal Center and Heuvelton Health Center. [HSP]

**Approval conditional upon:**

1. This project must be completed by **December 31, 2025**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **December 20, 2024**, and construction must be completed by **January 20, 2025**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. Submission of documentation showing final approval by CMS for the 40-bed behavioral health hospital co-located within the CAH. [PMU]
4. Submission of documentation showing final approval by OMH for the 40-bed behavioral health hospital co-located within the CAH. [PMU]
5. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
6. Submission and approval of Form-855 to the Fiscal Intermediary prior to onsite inspection. [HSP]
7. A determination by CMS that the facility meets the Critical Access Hospital (CAH) requirements. [HSP]

Council Action Date

June 20, 2024

# Need Analysis

## Project Description

Carthage Area Hospital Inc. (Carthage) is seeking approval to establish a 25-bed Critical Access Hospital (CAH) at 214 King Street, Ogdensburg, New York. Carthage Area Hospital Inc. is currently the operator of a CAH located at 1001 West Street, Carthage, New York, in southern St. Lawrence County. Claxton-Hepburn Medical Center (Claxton) currently operates a 127-bed hospital at the 214 Kings Street site in Ogdensburg, NY as well as numerous clinics both at this site as well as other locations in St. Lawrence County.

Claxton will separately operate a 40-bed Article 31 behavioral health facility at the same 214 Kings Street site in Ogdensburg address, ensuring adequate separation from the CAH. Between the two proposed licensed facilities, there is no planned elimination of services as a result of this project at the site; however, there will be 62 fewer beds. Carthage and Claxton are in discussions with other providers in St. Lawrence County to ensure there is no interruption of service delivery.

## Background and Analysis

The CAH will be in a Health Professional Shortage Area for Dental Health, Mental Health, and Primary Care. The primary service area is Ogdensburg within St. Lawrence County. The population of St. Lawrence County is projected to decrease to 105,990 by 2028 based on Cornell Program on Applied Demographics estimates. Demographics for the primary service area are noted below, including a comparison with New York State.

Demographics	St. Lawrence County	New York State
Total Population	108,670	19,994,379
Hispanic or Latino (of any race)	2.4%	19.5%
White (non-Hispanic)	91.6%	53.8%
Black or African American (non-Hispanic)	2.1%	13.8%
Asian (non-Hispanic)	1.0%	8.8%
Other (non-Hispanic)	2.9%	4.1%

Source: 2022 American Community Survey (5-year Estimates Data Profiles)

In 2021, 94.4% of St. Lawrence County residents had health coverage as follows:

Employer Plans	45.8%
Medicaid	20.3%
Medicare	12.6%
Non-Group Plans	14.4%
Military or VA	1.24%

Source: Data USA

The table below shows the projected payor mix showing only inpatient services of the new CAH.

Applicant Projected Payor Mix		
Payor	Year One	Year Three
Commercial	34.23%	33.07%
Medicare	47.68%	48.54%
Medicaid	18.09%	18.39%
<b>Total Discharges</b>	2,193	2,209

Currently, Claxton operates the 127-bed hospital. The table below shows the SPARCS data for occupancy and Average Daily Census (ADC) details for 2020-2022. SPARCS data for 2023 is incomplete. Total occupancy has been below 43% for this time frame; however, the psychiatric occupancy was between 82-86% prior to the hospital adding additional psychiatric beds in 2022. Occupancy of the 25 beds is expected to be close to 100%.

<b>Claxton-Hepburn Medical Center Facility Utilization, Beds, and Average Daily Census</b>							
<b>Category</b>	<b>Beds</b>	<b>2020</b>		<b>2021</b>		<b>2022</b>	
		<b>ADC</b>	<b>Occupancy</b>	<b>ADC</b>	<b>Occupancy</b>	<b>ADC</b>	<b>Occupancy</b>
<b>Med/Surg</b>	<b>77</b>	17	22%	25	32.4%	22	28.5%
<b>Obstetrics</b>	<b>10</b>	1	10%	1	10%	1	10%
<b>Psychiatric</b>	<b>40*</b>	24	85.7%	23	82.1%	25	62.5%
<b>Total</b>	<b>127</b>	43	37.3%	49	42.6%	48	37.8%

*\*In 2022, 12 psychiatric beds were added*

*Source: SPARCS*

The table below shows the current beds at Claxton, proposed changes, and totals of beds moving to the CAH. There will be no change to the number of available psychiatric beds in the area, as the current psychiatric beds within Claxton will move to the Article 31 Mental Health Hospital in the same location.

<b>Current and Projected Beds at Claxton-Hepburn/Carthage CAH</b>			
<b>Bed Type</b>	<b>Current Beds</b>	<b>Bed Change</b>	<b>CAH Beds</b>
Coronary Care	6	-6	0
Intensive Care	4	+2	6
Maternity	10	-8	2
Medical / Surgical	67	-50	17
Psychiatric	40	-40*	0*
<b>Total</b>	<b>127</b>	<b>-102</b>	<b>25</b>

*\*40 beds will be transitioned to the Article 31 Mental Health Center*

*Source: HFIS/Applicant*

At the completion of this project, there will be a loss of 62 total beds at the site. However, given the historical occupancy at Claxton and the beds remaining between the new CAH operated by Carthage and the new Article 31 behavioral health facility operated by Claxton, there should be adequate resources to meet the preponderance of the need for services within Claxton's current service area.

<b>Claxton's Historical Total Inpatient Discharges</b>		
<b>2020</b>	<b>2021</b>	<b>2022</b>
2,711	2,841	2,631

*Source: SPARCS*

Carthage projects 2,193 discharges for Year One and 2,209 by Year Three at the new CAH. Historically, Carthage has had an average length of stay (ALOS) of approximately 4 days for medical in their currently operating CAH. Claxton's ALOS has been approximately 5.5 days. It is expected that the ALOS of the new CAH will be in line with Carthage's operational experience.

The table below lists hospitals closest to the proposed site, their distances from the applicant's location, and SPARCS occupancy data for medical/surgical and obstetric services, which will be decreased in the area with the proposed application.

Neighboring Hospital	Distance/Time from Applicant	2021 Occupancy		2022 Occupancy	
		Med/Surg	Obstetrics	Med/Surg	Obstetrics
Gouverneur Hospital	29 miles/40 min	20.2%	N/A	21.4%	N/A
Canton-Potsdam Hospital	31 miles/42 min	63.1%	52.9%	69.5%	14.5%
Massena Memorial Hospital	36 miles/43 min	45.3%	N/A	57.8%	N/A
Samaritan Medical Center	59 miles/1 hr 10 min	44.0%	34.8%	38.8%	32.6%
Carthage Area Hospital	62 miles/1 hr 18 min	43.2%	24.2%	35.7%	26.9%
University Hospital SUNY Health Science Center	127 miles/2 hr 6 min	99.0%	N/A	94.8%	N/A
St. Joseph's Hospital Health Center	127 miles/2 hr 7 min	65.7%	54.3%	50.5%	41.8%
Crouse Hospital	128 miles/2 hr 7 min	69.8%	65.8%	70.2%	67.8%

Source: Google Maps and SPARCS

The table below shows the geographic distribution of discharges for Claxton-Hepburn Medical Center. Of note, 44.7% of the discharges came from Claxton's own zip code and those immediately contiguous. 16.9% came from zip codes that also contain a hospital (Potsdam, Massena, and Gouverneur).

Market Share Analysis for 000798: Claxton-Hepburn Medical Center Service area: 85% of hospital discharges based on patient Zip Codes of origin including the facility with the biggest share in each zip code						
Patient Zip Code	Post Office Name	Annual Average Discharges	Percent of facility's total discharges	Cumulative Percent	Facility's Share of Zip Code	Facility with biggest share of this zip code (%)
13669	Ogdensburg	893	36.1	36.1	59.9	000798: Claxton-Hepburn Medical Center (60%)
13662	Massena	192	7.8	43.9	8.5	000804: Massena Memorial Hospital (37%)
13617	Canton	131	5.3	49.2	14.4	000815: Canton-Potsdam Hospital (59%)
13642	Gouverneur	121	4.9	54.1	12.1	000815: Canton-Potsdam Hospital (28%)
13676	Potsdam	103	4.2	58.3	9.8	000815: Canton-Potsdam Hospital (65%)
13646	Hammond	81	3.3	61.5	40.7	000798: Claxton-Hepburn Medical Center (41%)
13654	Heuvelton	70	2.8	64.4	36.8	000798: Claxton-Hepburn Medical Center (37%)
13658	Lisbon	61	2.5	66.8	29.8	000815: Canton-Potsdam Hospital (36%)
13619	Carthage	42	1.7	68.5	3.9	000379: Carthage Area Hospital Inc (29%)
13664	Morristown	41	1.7	70.2	63.1	000798: Claxton-Hepburn Medical Center (63%)
13680	Rensselaer Falls	39	1.6	71.8	36.8	000798: Claxton-Hepburn Medical Center (37%)
13660	Madrid	38	1.5	73.3	17.3	000815: Canton-Potsdam Hospital (56%)



<b>Market Share Analysis for 000798: Claxton-Hepburn Medical Center Service area: 85% of hospital discharges based on patient Zip Codes of origin including the facility with the biggest share in each zip code</b>						
<b>Patient Zip Code</b>	<b>Post Office Name</b>	<b>Annual Average Discharges</b>	<b>Percent of facility's total discharges</b>	<b>Cumulative Percent</b>	<b>Facility's Share of Zip Code</b>	<b>Facility with biggest share of this zip code (%)</b>
13667	Norfolk	38	1.5	74.8	8.2	000815: Canton-Potsdam Hospital (54%)
13655	Hogansburg	36	1.5	76.3	8.9	000815: Canton-Potsdam Hospital (25%)
13694	Waddington	30	1.2	77.5	24.0	000815: Canton-Potsdam Hospital (45%)
13630	De Kalb Junction	29	1.2	78.7	22.3	000815: Canton-Potsdam Hospital (35%)
13601	Watertown	28	1.1	79.8	0.6	000367: Samaritan Medical Center (72%)
13668	Norwood	27	1.1	80.9	7.7	000815: Canton-Potsdam Hospital (68%)
13652	Hermon	22	0.9	81.8	12.5	000815: Canton-Potsdam Hospital (54%)
13684	Russell	21	0.8	82.6	14.3	000815: Canton-Potsdam Hospital (50%)
13681	Richville	20	0.8	83.5	16.9	000815: Canton-Potsdam Hospital (32%)
13679	Redwood	18	0.7	84.2	11.7	000367: Samaritan Medical Center (34%)
13613	Brasher Falls	17	0.7	84.9	5.6	000815: Canton-Potsdam Hospital (51%)

Data source: SPARCS inpatient data (Apr. 1, 2022 - Mar. 31, 2023) - Date Extracted: 08/18/2023 (Note: 2022-2023 SPARCS data are incomplete for some facilities)

#### Conclusion

Approval of this project will preserve adequate medical/surgical, obstetric, and psychiatric services in the target service area.

## Program Analysis

### Project Proposal

Carthage Area Hospital, Inc. (Carthage) seeks to establish a 25-bed Critical Access Hospital in Ogdensburg to be co-located with a 40-bed Article 31 Behavioral Health facility operated by Claxton Hepburn Medical Center (Claxton). Carthage will also be established as the operator of a total of seven (7) Article 28 clinics currently operated by Claxton. Five (5) were transferred in an initial phase through Certificate of Need (CON) application 232015. The remaining (2) two clinics, CHMC-Ravinder Agarwal Renal Center at 124 Ford Avenue, Ogdensburg, NY, and Heuvelton Health Center at 103 Rensselaer Street, Heuvelton, NY, will be transferred as part of this application.

Carthage, in Jefferson County, and Claxton, in St. Lawrence County, have been working collaboratively since October of 2019 through a shared services arrangement to promote financial sustainability and preservation of services in the North Country. Both Carthage and Claxton are part of the same healthcare system, with North Star Health Alliance, Inc. as the sole member and passive parent of both entities. To that end, this project is being undertaken as part of Claxton's strategic sustainability plan to preserve, right-size, and enhance patient access to primary, acute, and behavioral health services.

Over the last decade, Claxton has faced multiple operational and financial issues which has compromised the future sustainability of the organization. The two organizations have developed a strategic plan to ensure the preservation of healthcare services in St. Lawrence County. This multistep plan includes 1) the closure of acute care services currently provided by Claxton, and the conversion of 40 in-patient mental health beds to a standalone Article 31 Mental Health Hospital that will be operated by Claxton, and 2) the establishment of a 25-bed Critical Access Hospital (CAH) by Carthage in Ogdensburg.

Carthage Area Hospital, Inc. will operate 25 beds that will swing from acute to short-term skilled care services in accordance with Critical Access Hospital regulations.

The proposed modification would create an exterior entrance into the Article 31 portion of the building at the basement level and create a distinct receptionist and greeting area. This area will direct the patient to the dedicated elevator that will access the Article 31 spaces of behavioral health on the third and fourth floors. The entire building will house the Article 28 spaces as well as Article 31 spaces, which will conform to all Article 28 and 31 specifications. On the third floor, a new firewall and door will be installed to separate access to the adjacent Article 28 spaces. The building will require no construction, and there will be no changes in bed capacity or number of occupants.

Any patient deemed not to be able to be cared for related to patient acuity and or bed availability will be transferred to the appropriate facility providing those services. Transfer agreements are in place with:

- Carthage Area Hospital Inc. (CAH) at 1001 West Street, Carthage, NY in Jefferson County (63 miles and 85 minutes)
- Clifton-Fine Hospital at 1014 Oswegatchie Trail, Star Lake, NY in St. Lawrence County (51 miles and 70 minutes)
- River Hospital, Inc. at 4 Fuller Street, Alexandria Bay, NY in Jefferson County (36.5 miles and 43 minutes)
- Samaritan Medical Center at 830 Washington St., Watertown, NY in Jefferson County (59 miles and 76 minutes)
- SUNY Upstate Medical at:
  - 750 East Adams St., Syracuse, NY in Onondaga County (128 miles and 128 minutes)
  - 4900 Broad Rd. Syracuse, NY in Onondaga County (131 miles and 136 minutes)

The approval for the Closure/Change in Operator of Claxton-Hepburn Medical Center (CAH) plan was granted on 05/07/2024.

### Prevention Agenda

Carthage Area Hospital, in St. Lawrence County, is seeking approval to 1) establish a second site 25-bed Critical Access Hospital (CAH) with 17 medical/surgical beds, 2 maternity beds, and 6 ICU beds, and 2) close the acute care services currently provided by Claxton, and the conversion of 40 in-patient mental health beds to a standalone Article 31 Mental Health Hospital that will be operated by Claxton.

Carthage Area Hospital is implementing multiple interventions to support priorities of the 2019-2024 New York State Prevention Agenda, including:

- Prevent Chronic Diseases
- Promote Well-being and Prevent Mental and Substance Abuse Disorders

Establishing the CAH advances the Prevention Agenda's priority "Promote Well-being and Prevent Mental and Substance Abuse Disorders." The new CAH will ensure the community can access acute services and mental and behavioral health care for children and adults.

In 2021, Carthage Area Hospital spent \$16,289,729 on community benefits.

### Conclusion

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

## Financial Analysis

### Total Project Cost and Financing

The total project cost for renovations and the acquisition of moveable equipment is estimated at \$6,292,520 and will be met with accumulated funds of Carthage Area Hospital. A further breakdown is as follows:

Renovation and Demolition	\$200,000
Design Contingency	20,000
Construction Contingency	20,000
Moveable Equipment	4,712,873
Telecommunications	1,303,238
CON Fees	2,000
Additional Processing Fee	<u>34,409</u>
<b>Total Project Cost</b>	<b>\$6,292,520</b>

### Operating Budget

The applicant has submitted an operating budget, in 2023 dollars, for the first and third years after project completion, summarized below:

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>(2022)</u>		<u>(2024)</u>		<u>(2026)</u>	
	<u>Per Disch.</u>	<u>Total</u>	<u>Per Disch.</u>	<u>Total</u>	<u>Per Disch</u>	<u>Total</u>
Rev: (Inpatient)						
Medicaid FFS	\$2,454.76	\$81,007	\$4,232	\$757,599	\$4,774	\$768,585
Medicaid MC	\$2,045.65	1,397,182	\$1,346	3,183,676	\$1,347	3,284,833
Medicare FFS	\$2,645.23	5,446,531	\$2,453	12,527,149	\$2,467	12,922,521
Medicare MC	\$2,611.78	2,946,083	\$2,346	3,756,339	\$2,431	3,943,210
Comm FFS	\$991.39	<u>1,380,010</u>	\$1,016	<u>4,890,199</u>	\$1,071	<u>5,005,715</u>
Inpatient Revenues		\$11,250,813		\$25,114,962		\$25,924,864
Exp: (Inpatient)						
Operating	\$2,043.45	\$10,820,049	\$1,409	\$19,817,383	\$1,396.03	\$19,728,751
Capital	<u>39.77</u>	<u>210,603</u>	<u>\$36</u>	<u>506,245</u>	<u>\$20.03</u>	<u>283,002</u>
Inpatient Expenses	\$2,083.22	\$11,030,652	\$1,445	\$20,323,628	\$1,416	\$20,011,753
Inpatient Excess Rev		<u>\$220,161</u>		<u>\$4,791,334</u>		<u>\$5,913,111</u>
Discharges		<u>5,295</u>		<u>14,068</u>		<u>14,132</u>
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Rev (Outpatient)						
Medicaid FFS	\$80.14	\$2,831,608	\$80.14	\$3,612,624	\$81.34	\$3,740,150
Medicaid MC	\$68.92	\$5,510,226	\$68.92	\$13,560,004	\$69.96	\$14,038,673
Medicare FFS	\$198.77	\$6,852,141	\$231.43	\$31,923,099	\$238.91	\$33,614,439
Medicare MC	\$184.86	\$7,422,497	\$221.46	\$45,300,400	\$228.10	\$47,592,600
Comm FFS	\$211.42	<u>\$38,121,358</u>	\$211.42	<u>\$74,175,065</u>	\$215.33	<u>\$77,055,843</u>
Outpatient Revenues		\$60,737,830		\$168,571,192		\$176,041,705
Exp (Outpatient)						
Operating	\$192.69	\$71,335,504	\$189.43	\$177,147,559	\$188.91	\$180,190,475
Capital	<u>3.75</u>	<u>1,388,485</u>	<u>4.84</u>	<u>4,525,328</u>	<u>2.72</u>	<u>2,594,494</u>
Outpatient Expenses	\$196.44	\$72,723,989	\$194.27	\$181,672,887	\$191.63	\$182,784,969
Other Op Revenues		\$10,247,343		\$9,741,564		\$9,644,408
Non-Op Revenues		(\$243,843)		\$217,821		\$225,904
Total Revenues		\$81,992,143		\$203,645,539		\$211,836,881
Total Expenses		<u>\$83,754,641</u>		<u>\$201,996,515</u>		<u>\$202,796,722</u>
Excess Revenues		(\$1,762,498)		\$1,649,024		\$9,040,159
Utilization: (Visits)		370,213		935,152		953,855

The following is noted concerning the submitted RHCF operating budget:

- The above budget was based on the current experience of the applicant and is inclusive of the 25-bed CAH and five (5) rural health clinics.
- Other Operational Revenues include 340B, Indigent Care Pools, VAP, Access, HRSA, School-Based Health, Rural Health Clinic ADP Grants, and Rental/Management income.
- The applicant used an overall blended rate for payors on outpatient services using Claxton-Hepburn Medical Center's Medicare rate as a basis. This allowed the applicant to project a cost savings for the hospital with no proposed changes to existing service line offerings or in the payor mix.
- The model uses a rebuilt version of Claxton's Medicare cost report using historical revenues and expenses, accounting for known changes such as the removal of inpatient psych units and associated support services and the transition of Rural Health Clinics (RHCs) to Carthage.
- For outpatient services, ratios of cost to charge (RCC) were established for each service by determining the proportion of costs/charges. The RCC for each outpatient service was multiplied by the service charges for each financial class to determine the appropriate allocation of outpatient costs for each service by financial class. Cost-based payors were projected to reimburse the allowable costs. Non-cost-based payors were projected to be reimbursed the same as Carthage.
- For inpatient services, their model used cost-finding principles to establish cost-based per diems for each financial class that reimburses on a cost basis. Non-cost-based financial classes were projected to be reimbursed at the same per diem as Carthage.

Utilization is broken down by payor source and by inpatient and outpatient for the current year, the first year after project completion, and the third year after project completion are as follows:

<u>Inpatient</u>	<u>Current Year</u> <u>(2022)</u>	<u>Year One</u> <u>(2024)</u>	<u>Year Three</u> <u>(2026)</u>
Commercial FFS	26.29%	34.23%	33.07%
Medicare FFS	38.89%	36.30%	37.06%
Medicare MC	21.30%	11.38%	11.48%
Medicaid FFS	0.62%	1.27%	1.13%
Medicaid MC	<u>12.90%</u>	<u>16.82%</u>	<u>17.26%</u>
Total	100.00%	100.00%	100.00%
<u>Outpatient</u>			
Commercial FFS	60.55%	37.52%	37.52%
Medicare FFS	9.49%	14.75%	14.75%
Medicare MC	11.06%	21.87%	21.87%
Medicaid FFS	5.79%	4.82%	4.82%
Medicaid MC	<u>13.11%</u>	<u>21.04%</u>	<u>21.04%</u>
Total	100.00%	100.00%	100.00%

### Lease Rental Agreement

The applicant has submitted three (3) draft lease rental agreements, of which one (1) is for the Critical Access Hospital site, and the other two (2) are for extension sites, which are summarized below:

#### **Critical Access Hospital (Draft)**

Premises	139,188 square feet located at 214 King Street, Ogdensburg, New York
Lessor	Claxton Hepburn Medical Center
Lessee	Carthage Area Hospital
Term	10 years
Rental	\$2,908,127 annually (\$20.89 per sq.ft.)
Provisions	The lessee shall be responsible for maintenance, repairs, utilities, and real estate taxes.

#### **Extension Site (Draft)**

Premises	The premises are located at 124 Ford Avenue, Ogdensburg, New York.
Lessor	Claxton Hepburn Medical Center
Lessee	Carthage Area Hospital
Term	10 years
Rental	\$305,200 annually
Provisions	The lessee shall be responsible for maintenance, utilities, and real estate taxes.

#### **Extension Site (Draft)**

Premises	The premises are located at 103 Rensselaer Street, Heuvelton, New York.
Lessor	Claxton-Hepburn Medical Center
Lessee	Carthage Area Hospital
Term	10 years
Rental	\$23,969 annually
Provisions	The lessee shall be responsible for maintenance, repairs, utilities, and real estate taxes.

The applicant has submitted a fair market value study showing that the rents in the proposed leases are reasonable.

#### Capability and Feasibility

Total Project Cost of \$6,292,520 will be met with accumulated funds from Carthage Area Hospital operations. BFA Attachment A, 2021-2022 Certified Financial Statements of Carthage Area Hospital, indicate the availability of sufficient resources to fund the project.

Working capital requirements are estimated at \$1,496,850, which is equivalent to two months of incremental inpatient expenses. The hospital will provide equity to meet the working capital requirement. As shown, the hospital has sufficient funds to meet the working capital requirement.

The submitted budget indicates an excess of revenues over expenses of \$1,649,024 and \$9,040,159 during Year One and Year Three, respectively. Revenues are based on current reimbursement methodologies. The submitted budget appears reasonable.

Attachment A shows that Carthage had an average negative working capital position, a positive net asset position, and an average net income of \$1,618,048 during 2021 and 2022. This was attributed to the effects of the COVID-19 pandemic and the inflationary environment that allowed volumes to begin to recover a return to a regular post-COVID-19 operational environment. Further cost savings initiatives implemented between Carthage and Claxton include sharing administrative personnel and reductions in workforce, some of which resulted in outsourcing revenue cycle functions.

BFA Attachment B November 30, 2023, Internal Financial Statements of Carthage Area Hospital shows Carthage had a positive working capital position, positive net asset position, and incurred a net loss of \$1,850,730 through November 30, 2023.

Conclusion

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

<h2>Attachments</h2>
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BHFP Attachment	Map
BFA Attachment A	2021-2022 Certified Financial Statements of Carthage Area Hospital
BFA Attachment B	November 30, 2023, Internal Financial Statements of Carthage Area Hospital



**Project # 232010-B  
Bridge Street ASC**

**Program:** DTC **County:** Kings  
**Purpose:** Establishment and Construction **Acknowledged:** October 4, 2023

**Executive Summary**

**Description**

Bridge Street ASC, LLC (The Center), a New York State limited liability company, requests approval to establish and construct an Article 28 diagnostic and treatment center to be certified as a multi-specialty freestanding ambulatory surgical center (FASC) specializing in pain management, orthopedic, and spine surgery. The Center, at 79 Bridge Street, Brooklyn (Kings County), will have two operating rooms. The site for this proposed FASC was formerly operated as CHC Surgical Center. The building will also contain a small, private, non-Article 28 physician's office in separate and distinct space for pre- and post-op office visits to be used by the physicians involved with this project.

This project is a partnership between an existing, non-Article 28 private physician group, Downtown Pain Physicians (Downtown), consisting of Daniel Khaimov, MD, and Oryan Baruch, DO (indirect owners in the Center), and individuals affiliated with Surgicore, an existing company that creates joint venture relationships with physicians to establish surgery centers around the tri-state area. Additionally, non-owner physicians will perform surgeries at the Center.

Bridge Street will be managed by its members through a Board of Managers comprised of managers appointed by the members of Bridge Street. The members of Bridge Street ASC are:

Bridge Street ASC Proposed Members	
Bridge Surgical Management, LLC	63.00%
Oryan Baruch, DO (31.5%)	
Daniel Khaimov, MD (31.5%)	
Dumbo 79 Management, LLC	30.0%
Anthony DeGradi (7.5%)	
Wayne Hatami (7.5%)	
Feliks Kogan (15.0%)	
LGL ASC Holding, LLC	7.00%
Kimberly Walker-Lazar (2.4%)	
Roza Yuadgarov (4.6%)	
<b>Total</b>	<b>100%</b>

Daniel Khaimov, M.D., who is board-certified in pain management and anesthesia, will serve as the Medical Director. The applicant has submitted a draft transfer and affiliation agreement for backup and emergency services with The Brooklyn Hospital Center, which is approximately six (6) minutes away.

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

**Need Summary**  
The applicant projects 2,976 procedures in Year One and 4,238 in Year Three, with Medicaid at 5% and Charity Care at 2%.

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



### Financial Summary

The total project cost for renovations and movable equipment is \$701,283, to be funded with members' equity.

Budget:	<u>Year One</u> <u>(2024)</u>	<u>Year Three</u> <u>(2026)</u>
Revenues	\$2,955,444	\$4,457,236
Expenses	<u>2,736,741</u>	<u>3,929,216</u>
Net Income/(Loss)	\$218,703	\$528,020

### Health Equity Impact Assessment

This project does not require a Health Equity Impact Assessment as it does not meet the requirements under Public Health Law Section 2802-B

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval with an expiration of the operating certificate five 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 by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations, and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women, and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include a commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
3. Submission of a signed agreement with an outside, independent entity satisfactory to the Department to provide annual reports to DOH. Reports are due no later than April 1st for the prior year and are to be based upon the calendar year. Submission of annual reports will begin after the first full or, if greater or equal to six months after the date of certification, partial year of operation. Reports should include:
  - a. Data displaying actual utilization including procedures;
  - b. Data displaying the breakdown of visits by payor source;
  - c. Data displaying the number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
  - d. Data displaying the number of emergency transfers to a hospital;
  - e. Data displaying the percentage of charity care provided;
  - f. The number of nosocomial infections recorded during the year reported;
  - g. A list of all efforts made to secure charity cases; and
  - h. A description of the progress of contract negotiations with Medicaid managed care plans. [RNR]
4. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
5. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
6. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]

**Approval conditional upon:**

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

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

Council Action Date  
June 20, 2024

# Need Analysis

## Project Description

Bridge Street ASC, LLC (Bridge Street or the Center), to be known as Bridge Street ASC, seeks to establish and construct an Article 28 diagnostic and treatment center to be certified as a multi-specialty freestanding ambulatory surgical center (FASC) specializing in pain management, orthopedic, spine surgery, and anesthesia services. The Center will be at 79 Bridge Street, Brooklyn, New York 11201 (Kings County). The building will also contain a small, private, non-Article 28 physician's office in separate and distinct space for pre- and post-op office visits to be used by the physicians involved with this project.

## Background and Analysis

The service area consists of Kings County. The population of Kings County is projected to increase to 2,844,643 by 2028 based on Cornell Program on Applied Demographics estimates. Demographics for the primary service are noted below, including a comparison with New York State.

Demographics	Kings County	New York State
Total Population-2022 Estimate	2,679,620	19,994,379
Hispanic or Latino (of any race)	18.9%	19.5%
White (non-Hispanic)	36.1%	53.8%
Black or African American (non-Hispanic)	28.3%	13.8%
Asian(non-Hispanic)	11.9%	8.8%
Other (non-Hispanic)	4.8%	4.1%

Source: 2022 American Community Survey (5-year Estimates Data Profiles)

In 2021, 93.4% of the population of Kings County had health coverage as follows:

Employer Plans	40.9%
Medicaid	32.5%
Medicare	8.13%
Non-Group Plans	11.7%
Military or VA	0.308%

Source: Data USA

The table below shows the number of patient visits for relevant ASCs in Kings County for 2020 through 2022. The number of patient visits for 2020 was significantly impacted by COVID-19.

### Ambulatory Surgery within a 5-Mile Radius of Proposed Center

Facility Name	Type	Patient Visits		
		2020	2021	2022
Brooklyn Hospital Center	Hospital	6,728	8,665	7,517
NYU Langone- Steinburg ASC	Hospital	unavailable	unavailable	unavailable
Woodhull Medical	Hospital	2,649	4,781	4,341
NY-Presbyterian Brooklyn	Hospital	12,058	14,906	14,458
Center for Community Health (opened 12/2020)	Extension Clinic	N/A	0	0
Interfaith Medical Center	Hospital	1,159	1,539	1,679
Wyckoff Heights Medical Center	Hospital	3,115	4,488	4,558
SurgiCare of Brooklyn	ASC	4,666	3,860	6,920
Kings County Hospital	Hospital	4,010	5,425	5,964
University Hospital of Brooklyn	Hospital	3,425	4,114	3,803
<b>Total Visits</b>		<b>37,810</b>	<b>47,778</b>	<b>49,240</b>

Source: HFIS and SPARCS

All of the facilities listed above provide multi-specialty services. There is another proposed multi-specialty ambulatory surgery center under review, CON 241082, ASC of Brooklyn, that will specialize in pain

management, urology, podiatry, and orthopedic surgery (including neuro/spine procedures) in Kings County just 1.5 miles away and 14 minutes away from this site.

Based on the current practices of participating surgeons, the applicant projects 2,976 procedures in Year One and 4,238 in Year Three with Medicaid at 5% and Charity Care at 2%. The applicant states that of the procedures moving to this Center, 99% are currently being performed in an office-based setting, and the remaining are performed in other ambulatory surgery centers. The table below shows the projected payor source utilization for Year One and Year Three.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Commercial FFS	1,486	50%	2,119	50%
Commercial MC	1,042	35%	1,483	35%
Medicare FFS	179	6%	254	6%
Medicare MC	60	2%	85	2%
Medicaid FFS	60	2%	85	2%
Medicaid MC	89	3%	127	3%
Charity Care	60	2%	85	2%

The Center initially plans to obtain contracts with the following Medicaid Managed Care plans: Fidelis, Healthfirst, and Metro Plus. The Center will work collaboratively with local Federally Qualified Health Centers such as Callen Lorde Community Health Center, Housing Works Services II, Metro Community Health Center, and others to provide service to the under-insured in their service area. The center has developed a financial assistance policy with a sliding fee scale to be utilized when the center is operational. The hours of operation will be from Monday through Friday from 7 am to 4 pm. Weekend or Evening hours will be available if needed.

#### Conclusion

Approval of this project will provide increased access to pain management, orthopedic, and spine surgery services in an outpatient setting for the residents of Kings County.

# Program Analysis

## Project Proposal

Bridge Street ASC, LLC (Bridge Street or the Center) seeks to establish and construct an Article 28 diagnostic and treatment center to be certified as a multi-specialty freestanding ambulatory surgical center (FASC) specializing in pain management, orthopedic, and spine surgery. The Center will be located at 79 Bridge Street, Brooklyn (Kings County), New York 11201. The building will also contain a small, private, non-Article 28 physician's office in a separate and distinct space for pre- and post-op office visits to be used by the physicians involved with this project.

Daniel Khaimov, M.D., who will serve as the Center's Medical Director, is board-certified in pain management and anesthesia. Dr. Khaimov has been the Pain Management Medical Director of a private practice since 2010. From 2010 to 2018, he worked as an anesthesiologist on the staff at Lincoln Medical and Mental Health Center and Comprehensive Anesthesia Associates. Dr. Khaimov graduated from the Yale University School of Medicine and served a residency at Columbia Presbyterian Hospital, followed by a Pain Management Fellowship at Beth Israel Medical Center. Dr. Khaimov is registered through 12/2024.

The Center will have a transfer and affiliation agreement with The Brooklyn Hospital to provide backup and emergency services. The Brooklyn Hospital is approximately 1.0 mile and six (6) minutes travel time from the Center.

The applicant reports the proposed project consists of two (2) operating rooms, preoperative and recovery areas. The applicant reports this project will move an office-based surgical practice into a multi-specialty Freestanding Ambulatory Surgical Center, bringing existing procedures into the regulatory environment of Article 28. In addition, this project will allow for economic stability and needed services in the community, while avoiding more expensive care that would occur if most of the proposed cases were in a hospital setting. Renovations will take approximately three months to complete.

The applicant states that the new facility will be open Monday through Friday, 7:00 am to 4:00 pm. Staffing is expected to be 10.0 FTEs in Year One and 14.5 FTEs in Year Three of the completed project. The applicant is projecting procedures to be 2,976 in Year One and with an increase to 4,238 by Year Three.

Bridge Street will be managed by its members through a Board of Managers appointed by the members. The members of Bridge Street are:

Members	% Interest
<b>Total Bridge Surgical Management, LLC</b>	63.0%
Oryan Baruch, D.O (31.5)	
Daniel Khaimov, MD (31.5)	
<b>Dumbo 79 Management, LLC</b>	30.0%
Anthony DeGradi (7.5)	
Wayne Hatami (7.5)	
Feliks Kogan (15.0)	
<b>Total LGL ASC Holding, LLC</b>	7.0%
Kimberly Walker-Lazar (2.4)	
Roza Yuadgarov (4.6)	
Total	100%

**Oryan Baruch, D.O.** received a Doctorate from TourCOM-NY in New York City, NY in July 2012. Dr. Baruch completed a fellowship at the Center for Pain/Spine Fellowship at Rutgers University in Metuchen, New Jersey, in August 2017. Dr. Baruch also completed a Residency at the Department of Physical Medicine and Rehabilitation at the State University of New York in Brooklyn, NY, in 2016 and completed a first-year Residency at North Shore LIJ Plainview Hospital in 2013. Dr. Baruch received a Doctorate in Osteopathic Medicine from the Touro College of Osteopathic Medicine in New York, NY, in 2012. Dr.

Baruch is board-certified by the American Academy of Physical Medicine and Rehabilitation and by the American Board of Pain Medicine. Dr. Baruch was licensed (#276245) in Osteopathic Medicine from New York State on September 30, 2023.

For the past (6) six years, Dr. Baruch has been a practicing physician in physical medicine/rehabilitation and pain management, specializing in ongoing musculoskeletal injuries.

Currently Dr. Baruch is an Attending Medical Concepts in Jamaica, NY since 2017 and is also an Attending Physician at Flushing Hospital Medical Center in Queens, NY since 2017.

**Daniel Khaimov, M.D.** (License No. 244768) is the proposed Medical Director. Dr. Khaimov is board-certified in Pain Management and Anesthesia. As Medical Director, Dr. Khaimov will oversee all clinical aspects of the services provided. Dr. Khaimov is currently the Pain Management Medical Director in a private practice since 2010, and from 2010 to 2018 worked as an anesthesiologist at Lincoln Medical and Mental Health Center and Comprehensive Anesthesia Associates. Dr. Khaimov graduated from Yale University School of Medicine and completed a residency at Columbia Presbyterian Hospital, followed by a Pain Management Fellowship at Beth Israel Medical Center. Dr. Khaimov is registered through 12/2024.

Dr. Daniel Khaimov disclosed an ongoing lawsuit in the Queens Supreme Court 707720/2022 ABDUR-RAHMAN, YUSUF vs. KHAIMOV, DANIEL, et al. The lawsuit alleges that a medical scribe violated HIPPA (Health Insurance Portability and Accountability Act) by asking the Plaintiff a sensitive question about health history in the presence of another patient. The lawsuit is currently ongoing.

**Anthony DeGradi** states having over twenty (20) years of experience in administration, billing/collecting to help practices grow and is currently involved in the day-to-day operations of surgical centers. The ten (10) year employment history includes working for New Horizon Surgical Center, LLC in Patersonville, New Jersey, as the Co-Owner/Managing Partner from 2008 to present; Surgicore Management Inc., Saddle Brook, New Jersey, as a Managing Partner (Ambulatory Care Facility Management Company) from 2018 to present; and for Surgicore Management NY LLC in New York City, New York as a Managing Partner (Ambulatory Care Facility Management Company) from 2019 to present.

Offices held or ownership interests held in Facilities are listed by Anthony DeGradi include the following information: Fifth Avenue Surgery Center, LLC (15.38%) from 2017 to present; All City Family Healthcare Center, Inc. (6.825%) from 2017 to present; NYEEQASC, LLC d/b/a North Queens Surgical Center (16.53%) from 2019 to present; Surgicore of Jersey City LLC (9.30%) from 2016 to present; Surgicore, LLC (10.47%) from 2016 to present; Palm Beach Gardens Regional Surgery Center (25%) from 2022 to present; and Miami Regional Surgery Center (25%) from 2020 to present; Rockland and Bergin Surgery Center LLC (19.98%) from 2020 to resent; and New Horizon Surgical Center, LLC (7.74%) from 2012 to present.

Pending ownership is listed under CON #201240 / Bayonne Medical Center, New Jersey.

**Wayne Hatami** completed a BA degree from West Virginia University in Morgantown, WV, in 1993 and received a Physical Therapy degree/certificate from Hage School Van Amsterdam in Amsterdam, Netherlands, in 1999. The Physical Therapy license #016816 from New York remains active through October 31, 2026.

Wayne Hatami indicates over twenty (20) years of experience as a Physical Therapist and opened a chain of physical therapy centers called NY Spine Physical Therapy. Eight (8) years ago, Wayne Hatami became partners with Surgicore and is involved with the marketing and recruiting of physicians for the Surgical Centers, managing the day-to-day operations and expansion plan development.

The ten (10) year employment history includes working for Surgicore Management Inc., Saddle Brook, New Jersey, as a Managing Partner (Ambulatory Care Facility Management Company) from 2018 to present; Surgicore Management NY LLC in New York City, New York as a Managing Partner (Ambulatory Care Facility Management Company) from 2019 to present; and NY Spine Physical Therapy in Whitestone, New York as Owner/Physical Therapist from 1999 to its closure in 2017.

Offices held or ownership interests held in the facilities listed by Wayne Hatami include the following information: Fifth Avenue Surgery Center, LLC (15.38%) from 2017 to present; All City Family Healthcare Center, Inc. (6.825%) from 2017 to present; Bronx SC, LLC d/b/a Empire State Ambulatory Surgery Center (15.28%) from 2019 to present; NYEEQASC, LLC d/b/a North Queens Surgical Center (16.53%) from 2019 to present; Palm Beach Gardens Regional Surgery Center (25%) from 2022 to present; and Miami Regional Surgery Center (25%) from 2020 to present.

**Feliks Kogan** states having over twenty (20) years of experience in healthcare management and invests in LLC interest and S Corp projects that own and operate ambulatory surgery centers, such as financially distressed ambulatory surgery centers within the New York City area. The ten (10) year employment history includes working for Aleste Corporation in Manalapan, New Jersey, as the Owner/President (Marketing/Business Consultant) from 2013 to present; Manalapan Surgery Center, Inc. in Manalapan, New Jersey, as the Partner/Co-Owner (Ambulatory Care Facility) from 2012 to present; Surgicore Management Inc., Saddle Brook, New Jersey, as a Managing Partner (Ambulatory Care Facility Management Company) from 2018 to present; Surgicore Management NY LLC in New York City, New York as a Managing Partner (Ambulatory Care Facility Management Company) from 2019 to present; and for Syrus Corporation in Elizabeth, New Jersey, as the Owner/President (Marketing and Business Consulting) from 2008 to 2013.

Offices held or ownership interest held in health facilities listed by Feliks Kogan include the following information: Fifth Avenue Surgery Center, LLC (15.38%) from 2017 to present; All City Family Healthcare Center, Inc. (6.61%) from 2017 to present; NYEEQASC, LLC d/b/a North Queens Surgical Center (16.53%) from 2019 to present; Surgicore of Jersey City LLC (9.30%) from 2016 to present; Surgicore, LLC (11.98%) from 2016 to present; Manalapan Surgery Center, Inc. (34.2%) from 2012 to present; Rockland and Bergen Surgery Center, LLC (19.23%) from 2020 to present; Palm Beach Gardens Regional Surgery Center (50%) from 2022 to present; and Miami Regional Surgery Center (50%) from 2020 to present.

Pending ownership is listed under CON #201240 / Bayonne Medical Center, New Jersey.

**Kimberly Walker-Lazar** has been employed at Premier Healthcare Solutions, LLC since 2005 as the president of operations/administrator. Kimberly Walker-Lazar graduated with a Bachelor of Arts with a major in communications and a minor in business management in 1993.

Kimberly Walker-Lazar did not initially disclose involvement in a lawsuit in the Nassau County Supreme Court 601009/2016 LEGUM, STEVEN G. vs. LAZAR, TERRY R., WALKER-LAZAR, KIMBERLY, AMBULATORY SURGERY CENTER OF BROOKLYN, LLC, and BRODER, SCOTT D. Kimberly Walker-Lazar is named as an individual in conjunction with the business owner and the corporation for a matter pertaining to outstanding legal fees in the sum of \$12,000. An attestation was received attesting that Kimberly Walker-Lazar was only an employee at that time, stating as manager of the company, the task was to sign certain documents on behalf of the business in an administrative capacity, not as a personal guarantor. This suit is ongoing. In June of 2022, the suit, Docket # 601009/2016, that is currently ongoing is the same said legal fees in the sum of \$12,000 plus interest. Docket # 608751/2022 was transferred over to Ms. Walker-Lazar as the company has gone out of business and closed and has consulted with counsel to resolve this matter. Docket #601009/2016 and Docket # 608751/2022 are the same ongoing lawsuit.

**Roza Yuadgarov** received a bachelor's/master's degree in teaching from the State Pedagogical Institute in Dushanbe, Russia, in 1977. Rosa Yuadgarov worked as a case worker for the NYC Administration for Children's Services and has eight (8) years of experience as a Financial Analyst analyzing medical bills and reports. Roza Yuadgarov currently works at Group Seven Capital LLC as a Healthcare Investment Analyst in Forest Hills, NY. From 2000 to 2016, Rosa Yuadgarov worked as an Equity Research Analyst at Timex Research and Consulting, Inc. in Forest Hills, NY.

#### Integration with Community Resources

In keeping with the Department's health home and managed care goals for Kings County and elsewhere, the Center plans to work closely with its patients to educate them regarding the availability of primary care



services offered by local providers, including the broad array of outpatient primary care services offered by The Brooklyn Hospital Center, which will be the Center's back-up hospital for the provision of backup and emergency services.

Through this program, the Center's patients will be better able to make informed choices regarding preventive medicine, understand their personal healthcare options going forward, and hopefully avoid unnecessary hospitalization and emergency room visits. Prior to leaving the Center, each patient will be provided information concerning the local availability of primary care services.

The Center plans to utilize an Electronic Medical Record (EMR) system and to fully integrate and exchange information with an established Regional Health Information Organization (RHIO) with the capability for clinical referral and event notification.

The applicant disclosed the following legal court case information:

<b>Defendant/ Related Facility</b>	<b>Jurisdiction (Court)</b>	<b>Additional Details</b>
Bronx SC, LLC	New York State Court	Medical malpractice case filed by Plaintiff against Bronx SC, LLC on July 8, 2020. Plaintiff alleged foot surgery at Bronx SC, LLC was negligent and unskilled podiatric surgery that departed from the standard of care and left plaintiff sore, sick, lame, and disabled.
NYEEQASC, LLC	New York State Court	Medical malpractice case filed by Plaintiff against NYEEQASC, LLC on November 22, 2019. Plaintiff alleged that defendant negligently and improperly placed anchors into right shoulder during surgery, placed the anchors too tightly, and failed to remove spurs.
All City Family Healthcare Center, Inc.	New York State Court	Medical malpractice case filed by Plaintiff against All City on June 24, 2019. Plaintiff alleged All City failed to use reasonable care in rendering medical and anesthesia care during right shoulder surgery, leaving Plaintiff with severe and permanent injuries and mental anguish.
Fifth Avenue Surgery Center	New York State Court	Medical malpractice case filed by Plaintiff against Fifth Avenue on February 13, 2019. Plaintiff claimed Fifth Avenue failed and neglected to render proper and adequate podiatric care, causing damages in an amount exceeding the jurisdictional limits of all lower courts that would otherwise have jurisdiction.
Fifth Avenue Surgery Center	New York State Court	Medical malpractice case filed by Plaintiff against Fifth Avenue on June 17, 2019. Plaintiff claimed they were diagnosed with a perioperative corneal abrasion requiring treatment because of eyes not being properly protected by an anesthesiologist during a non-ocular surgery (eyes were not taped closed or lubricated). Plaintiff experienced severe pain in the eyes and sued for damages in a sum that exceeds the jurisdictional limits of all lower courts except the Supreme Court of New York.
Fifth Avenue Surgery Center	New York State Court	Medical malpractice case filed by Plaintiff against Fifth Avenue on December 4, 2019. Plaintiff claimed Fifth Avenue provided negligent and careless medical and surgical care during left shoulder arthroscopy, causing serious and severe permanent personal injuries, including injury to left hand, scarring, disfigurement, and need for future surgeries. Plaintiff sued for damages in an amount exceeding jurisdictional limits of all lower courts.

<b>Defendant/ Related Facility</b>	<b>Jurisdiction (Court)</b>	<b>Additional Details</b>
Fifth Avenue Surgery Center	New York State Court	Medical malpractice case filed by Plaintiff against Fifth Avenue on August 11, 2020. Plaintiff claimed Fifth Avenue negligently and carelessly administered anesthesia during right sacroiliac joint surgery and failed to properly and timely treat aspiration of gastric contents during and following surgery. Plaintiff sustained lung damage and vocal cord damage and sued for damages in a sum that exceeds the jurisdictional limits of all lower courts.
New Horizon Surgical Center LLC, et al.	New York State Court	On or about June 22, 2018, Allstate Insurance Company et al. filed a complaint against New Horizon Surgical Center LLC and its individual owners, including Wayne Hatami and Anthony DeGradi, in addition to referring and treating providers. Claims against New Horizon were for common law fraud, violation of New York General Business Law § 349, and unjust enrichment, arising primarily from allegations challenging New Horizon's ownership structure, the transportation of patients to its facility in New Jersey, and coding and billing in excess of the fee schedule.
New Horizon Surgical Center LLC, et al.	New Jersey District Court	In August 2016, GEICO filed a complaint in the United States District Court for the District of New Jersey against New Horizon and a number of medical providers, alleging, notwithstanding, that the procedures performed at New Horizon were in many instances certified and pre-approved by GEICO, that certain procedures lacked medical necessity and insurance fraud. In October 2017, the parties entered into a settlement agreement resolving GEICO's claims against New Horizon. A stipulation of dismissal was filed with the Court dismissing the action against New Horizon in January 2018.
Anthony DeGradi, et al.	New York District Court	Allstate claimed that defendant professional corporations could not collect no-fault benefit payments from Allstate due to being unlawfully owned and controlled by one or more non-physicians and named Anthony DeGradi as a co-defendant. It was resolved by an order dismissing the case on November 9, 2018, resulting from a notification letter from Plaintiff to the court that parties had reached a settlement agreement.
Leonid Tylman, et al.	New York District Court	Allstate and other insurers sued Zhigun and other defendants, including Leonid Tylman, alleging that the defendants engaged in schemes to submit false claims to the insurance companies. The action was remanded to the New York State Court and then settled.
Surgicore of Jersey City, LLC, et al.	New Jersey State Court	On or about March 5, 2018, Christine Barnes filed suit in the Superior Court, Hudson County, alleging harassment and being retaliated against by former employer, Surgicore of Jersey City, LLC. The allegations were denied, but to spare all parties the cost of further proceedings, the matter was settled pursuant to a settlement agreement, and the case was fully disposed.
Manalapan Surgery Center, Inc.	New Jersey State Court	Medical malpractice case. Entry of default against Manalapan Surgery Center, Inc. was filed on December 3, 2018.
Fifth Avenue Surgery Center, LLC, et al.	New York State Court	Plaintiff underwent a lumbar medial branch nerve radiofrequency ablation in which Plaintiff was left with physical injuries due to the alleged negligent surgical and medical care received.
New Horizon Surgical Center LLC	New York State Court	Plaintiff alleged negligent performance of shoulder surgery on January 28, 2015.

<b>Defendant/ Related Facility</b>	<b>Jurisdiction (Court)</b>	<b>Additional Details</b>
New Horizon Surgical Center LLC	New Jersey State Court	Plaintiff's estate alleged that the negligent and careless treatment received during cervical anterior discectomy resulted in injury and, ultimately, in the death of the patient.
New Horizon Surgical Center LLC	New York State Court	Plaintiff alleged that the medical and podiatric care and treatment she received was careless and negligent, leaving her with injuries including left foot drop, neuralgia and neuritis of left lower leg, and permanent disfigurement.

Anthony DeGradi, Wayne Hatami, and Feliks Kogan, as members of the proposed application, did not fully disclose the following listed legal cases until further DOH inquiry.

There are a total of 306 active legal cases that were further disclosed after DOH inquiry. Noted cases in the following chart include Malpractice and Racketeering:

<b>Defendant/ Related Facility</b>	<b>Jurisdiction (Court)</b>	<b>Additional Details</b>
Anthony Degradi	New York U.S. Eastern District Court	ACTIVE / Docket #23CV08045 - Plaintiff: Allstate Insurance Company, et al.; Defendant: Anthony Degradi, et al.  Filed - 10/27/2023 Racketeer/Corrupt Organization
Anthony Degradi	New York U.S. Eastern District Court	ACTIVE / Docket #24CV01549 - Plaintiff: Roosevelt Road Re, Ltd., et al.; Defendant: Anthony Degradi, et al.  Filed - 03/01/2024 Racketeer/Corrupt Organization
Wayne Hatami	New York U.S. Eastern District Court	ACTIVE / Docket #24CV01549 - Plaintiff: Roosevelt Road Re, Ltd., et al.; Defendant: Wayne Hatami, et al.  Filed - 03/01/2024 Racketeer/Corrupt Organization
New Horizon Surgical Center LLC	New Jersey Passaic Superior Court	ACTIVE / Docket #L00124923 - Plaintiff: New Jersey Manufacturers; Defendant: New Horizon Surgical Center LLC  Filed - 05/10/2023 Other Insurance Claim (including declaratory judgment actions)
Surgicore of Jersey City LLC	New Jersey Hudson Superior Court	ACTIVE / Docket #L00334522 - Plaintiff: Hogan Debra; Defendant: Surgicore of Jersey City LLC  Filed - 10/6/2022 Medical Malpractice
Surgicore of Jersey City LLC	New Jersey U.S. District Court	ACTIVE / Docket #23CV217 - Plaintiff: Joshua Batista; Defendant: Surgicore of Jersey City LLC  Filed - 10/31/2023 Civil Rights
Surgicore 5th Avenue LLC		ACTIVE / Docket #800462-2022E - Plaintiff: Emmanuel Pina; Defendant: Surgicore 5th Avenue LLC  Filed - 01/11/2022 Torts - Medical, Dental, or Podiatrist Malpractice

<b>Defendant/ Related Facility</b>	<b>Jurisdiction (Court)</b>	<b>Additional Details</b>
North Queens Surgical Center	New York Supreme Court Queens County	ACTIVE / Docket #706977-2022 - Plaintiff: Helene Kloepper; Defendant: North Queens Surgical Center, et al.  Filed - 03/31/2022 Torts - Other Professional Malpractice
North Queens Surgical Center	New York Supreme Court Queens County	ACTIVE / Docket #718773-2022 - Plaintiff: Marlene Cole, et al; Defendant: North Queens Surgical Center, et al.  Filed - 09/09/2022 Torts - Medical, Dental, or Podiatrist Malpractice
NYEEQASC, LLC	New York Supreme Court Queens County	ACTIVE / Docket #717504-2023 - Plaintiff: Wendy Halpern; Defendant: NYEEQASC, LLC, et al.  Filed - 08/22/2023 Torts - Medical, Dental, or Podiatrist Malpractice
Empire State Ambulatory Surgery Center	New York Supreme Court Bronx County	ACTIVE / Docket #801809-2022E - Plaintiff: Thirstine Spires; Defendant: Empire State Ambulatory Surgery Center, et al.  Filed - 03/04/2022 Torts - Medical, Dental, or Podiatrist Malpractice
Empire State Ambulatory Surgery Center	New York Supreme Court Bronx County	ACTIVE / Docket #818365/2022E - Plaintiff; Kyle ChanShue; Defendant: Empire Plaintiff; Kyle ChanShue; Defendant: Empire State Ambulatory Surgery Center, et al.  Filed - 12/08/2022 Torts - Medical, Dental, or Podiatrist Malpractice
Empire State Ambulatory Surgery Center	New York Supreme Court Bronx County	ACTIVE / Docket #806654-2023E - Plaintiff: Emiline Delvalle; Defendant: Empire State Ambulatory Surgery Center, et al.  Filed - 04/28/2023 Torts - Medical, Dental, or Podiatrist Malpractice
Bronx SC, LLC	New York Supreme Court Bronx County	ACTIVE / Docket #818365-2022E - Plaintiff; Kyle Chan Shue; Defendant: Bronx SC, LLC, et al.  Filed - 12/08/2022 Torts - Medical, Dental, or Podiatrist Malpractice
Fifth Avenue Surgery Center	New York Supreme Court Bronx County	ACTIVE / Docket #800462-2-22E - Plaintiff: Emmanuel Pina; Defendant: Fifth Avenue Surgery Center.  Filed - 01/10/2022 Torts - Medical, Dental, or Podiatrist Malpractice

Of the current 375 active legal cases pending, 68 cases have been disposed.

NYEEQASC, LLC - an additional fifty (50) active legal cases were not added to the above chart. Examples of cases not added - Torts/Other (Declaratory Judgment), Commercial Insurance Disputes, Commercial Contract disputes, Torts/Motor Vehicles, Non-Commercial Contract Disputes, Contract Disputes, Civil Action General, and Torts-Other (Trial de novo).

EMPIRE STATE AMBULATORY SURGERY CENTER - an additional eight (8) active legal cases were not included in the above chart. Examples of cases not added - Special Proceedings/CPLR Article 75,

Commercial Contract Disputes, Tort/Other (Declaratory Judgment), Contract Disputes, Commercial Insurance Disputes and Contract Disputes.

BRONX SC, LLC - an additional eleven (11) active legal cases were not added to the chart above. Examples of cases not added - Commercial Insurance Disputes, Commercial contract disputes, Non-Commercial Contract Dispute, Contract Dispute, Torts/Other (Declaratory Judgment), and Torts/Motor Vehicle.

ALL CITY FAMILY HEALTHCARE CENTER, INC. - an additional twenty-three (23) active cases were not added to the chart above. Examples of cases not added - Contract Dispute, Special Proceedings/CPLR Article 75, and Commercial Contract Disputes.

FIFTH AVENUE SURGERY CENTER - an additional one hundred and seventy (170) active legal cases were not added to the above chart. Examples of cases not added - Torts/Motor Vehicle, Torts/Other (Declaratory Judgments), Commercial Insurance Disputes, Non-Commercial Insurance Disputes, Contracts Disputes, Civil Actions/General, Employment Discrimination, and Special Proceeding/CPLR Article 75. There were another sixty-eight (68) legal cases that were Disposed between 2018 and 2023.

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

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

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

#### Conclusion

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

## Financial Analysis

### Total Project Cost and Financing

The total project cost for renovations and movable equipment is estimated at \$701,283 and detailed as follows:

New Construction	\$268,289
Design Contingency	26,829
Construction Contingency	26,829
Architect/Engineering Fees	22,804
Construction Manager Fees	6,707
Other Fees	20,000
Moveable Equipment	324,000
Application Fee	2,000
Processing Fee	3,825
<b>Total Project Cost &amp; Fees</b>	<b>\$701,283</b>

The applicant will fund the total project cost with members' equity.

### Operating Budget

The applicant has submitted an operating budget, in 2023 dollars, for years one and three, summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>2024</u>		<u>2026</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
<b>Revenues:</b>				
Commercial FFS	\$1050.20	\$1,560,593	\$1,108.74	\$2,349,424
Commercial MC	\$1,049.60	1,093,680	\$1,114.23	1,652,396
Medicare FFS	\$837.93	149,990	\$892.98	226,818
Medicare MC	\$833.28	49,997	\$889.48	75,606
Medicaid FFS	\$674.57	40,474	\$719.96	61,197
Medicaid MC	\$682.13	60,710	\$722.80	91,795
Charity Care	-	-	-	-
<b>Total Revenue</b>		<u>\$2,955,444</u>		<u>\$4,457,236</u>
<b>Expenses:</b>				
Operating	\$821.32	\$2,444,250	848.50	\$3,595,957
Capital	<u>98.28</u>	<u>292,491</u>	<u>78.64</u>	<u>333,259</u>
<b>Total Expense</b>	<u>\$919.60</u>	<u>\$2,736,741</u>	<u>\$927.14</u>	<u>\$3,929,216</u>
<b>Net Income / (Loss)</b>		<u>\$218,703</u>		<u>\$528,020</u>
<b>Cost per Visit:</b>		<u>\$919.60</u>		<u>\$927.14</u>
<b>Total Visits</b>		2,976		4,238

The following is noted with respect to the submitted budget:

- The basis of revenues is determined by the experience of the applicant and its members in providing ambulatory surgical services, as well as the experience in other similar FASCs in New York State. Managed Care rates regarding FFS and MC will be finalized when negotiated.
- The payer mix has been determined by the demographics of the service area and input from the physicians currently involved with providing service in the area. The treating physicians have signed letters with projections of the number of surgeries and services they stated could be performed at this ASC and intend to provide.
- Expenses were determined based on the experience of the applicant and its members providing ambulatory surgical services, as well as the experience of other similar FASCs in New York State.

- Projections indicate that 10 FTEs and 14.5 FTEs will be needed in years one and three, respectively, and may vary depending on the actual experience of the FASCs.

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

Payor	Year One (2024)		Year Three (2026)	
Commercial FFS	1,486	50%	2,119	50%
Commercial MC	1,042	35%	1,483	35%
Medicare FFS	179	6%	254	6%
Medicare MC	60	2%	85	2%
Medicaid FFS	60	2%	85	2%
Medicaid MC	89	3%	127	3%
Charity Care	<u>60</u>	<u>2%</u>	<u>85</u>	<u>2%</u>
Total	2,976	100%	4,238	100%

### Rental Agreement

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

Date:	October 31, 2022
Premises:	79 Bridge Street, COM-1 Brooklyn, NY 11201 (4,400 sq. ft.)
Lessor:	Bridge Street Offices, LLC
Lessee:	Bridge Street KB Realty, LLC
Sub-lessor:	Bridge Street KB Realty, LLC
Sub-Lessee:	Bridge Street ASC, LLC
Term of Lease:	(7) year with (First year extended shall increase by 4.5%, and after one (1) year extension, the rate will be increased by 3% thereafter.
Rental Amount:	Year (1) - \$363,000.00 Year (2) - \$373,890.00 Year (3) - \$385,106.75 Year (4) - \$396,659.90 Year (5) - \$408,559.70 Year (6) - \$420,816.49 Year (7) - \$433,440.98
Provisions:	Tenant is responsible for repairs and maintenance of property and utilities.

The applicant has submitted an affidavit stating that this is an arms-length agreement. The sub-lessee and the lessor are related entities with similar ownership; therefore, the Sub-Lease will not be an arms-length agreement. Two letters of rent reasonableness have been submitted.

### Administrative Services Agreement

The applicant has submitted an executed Administrative Service Agreement (ASA) to be effective upon PHHPC approval. The terms of the agreement are summarized below:

Date:	May 1, 2023
Consultant:	Surgicore Management NY, LLC
Licensed Operator:	Bridge Street ASC, LLC
Services Provided:	Administrative services; Billing and Collections; Business Assoc. Agreements;
Term:	Initial term is 10 <sup>th</sup> from the effective date and automatic (5-year) renewals.
Fee:	\$15,000 per month flat fee.
Authority:	The decisions and authority ultimately will be employed by Bridge Street ASC, LLC.

### Capability and Feasibility

The total project costs are \$701,283 and will be funded with members' equity proportionate to membership. Working capital requirements are estimated at \$654,869 based on two months of third-year expenses. BFA Attachment A, Proposed Member's Net Worth Statements, shows sufficient resources to fund total project costs and working capital.

BFA Attachment B, Pro Forma Balance Sheet, shows a net equity position of \$1,356,152 as of the first day of operations. The submitted budget projects a net income of \$218,703 in Year One and \$528,020 in Year Three. Revenues are based on prevailing reimbursement methodologies and contracted rates for FASCs. The budget appears reasonable.

Attachment C presents Bridge Street's proposed organization chart showing the direct and indirect members after PHHPC approval.

Conclusion

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

<h2>Attachments</h2>
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BHFP Attachment	Map
BFA Attachment A	Net-Worth Statements of the Proposed Members
BFA Attachment B	Bridge Street ASC, LLC Pro Forma Statement
BFA Attachment C	Proposed Organizational Chart of Bridge Street ASC, LLC





**Project # 231328-B  
HSS Long Island ASC, LLC**

**Program:** Diagnostic and Treatment Center      **County:** Nassau  
**Purpose:** Establishment and Construction      **Acknowledged:** July 17, 2023

**Executive Summary**

**Description**

HSS Long Island ASC, LLC (HSS), to be renamed HSS Long Island Ambulatory Surgery Center, LLC (the Center), an existing limited liability company, requests approval to establish and construct a single specialty ambulatory surgery center for orthopedic surgery at 90 Merrick Avenue, East Meadow, New York (Nassau County). The Center will be in leased space and have two (2) operating rooms with shell space and sufficient infrastructure to add one (1) operating room in the future. The Center will enter into an administrative services agreement with HSS. Additionally, Non-Article 28 physician space for HSS medical staff and a proposed Hospital for Special Surgery Article 28 X-ray extension clinic will be in separate spaces within the same building. A separate CON application will be filed to certify the HSS extension clinic.

The Hospital for Special Surgery will have an aggregate membership interest of 87%, which includes a 67% Class B membership interest and a 20% Class A membership interest. HSS ASC Development Network, LLC (ADN) owns a 13% Class C membership interest.

The proposed medical director will be Michael Ast, M.D. NYU Langone Hospital- Long Island will be the backup hospital, which is located 5.3 miles or 13 minutes away.

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

The applicant projects 1,033 procedures in Year One and 1,849 in Year Three, with Medicaid at 4.27% and Charity Care at 2.00% by Year Three.

**Program Summary**

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

**Financial Summary**

Total project cost of \$30,805,493 will be met with \$383,118 in equity, a bank loan of \$27,571,000 at an interest rate of 6% for a ten-year term, and a tenant improvement allowance of \$2,851,375. The funds for the tenant allowance will come from Hospital for Special Surgery, which is the sub sub-landlord.

	<u>Year One</u> <u>(2025)</u>	<u>Year Three</u> <u>(2027)</u>
Revenues	\$18,830,229	\$35,805,502
Expenses	<u>19,121,110</u>	<u>25,531,041</u>
Net Income	(\$290,881)	\$10,274,461

**Health Equity Impact Assessment**

There was no Health Equity Impact Assessment required for this project under Section 2802-B of the PHL, as it was received by the Department on June 16, 2023.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. The submission of Design Development and State Hospital Code (SHC) Drawings, as described in NYSDOH BAER Drawing Submission Guidelines DSG-1.0 Required Schematic Design (SD) and Design Development (DD) Drawings, and 3.38 LSC Chapter 38 Business Occupancies Public Use, for review and approval. [DASNY]
4. Submission of a bank loan that is acceptable to the Department of Health. [BFA]
5. Submission of an executed sublease agreement that is acceptable to the Department of Health. [BFA]

**Approval conditional upon:**

1. This project must be completed by **May 20, 2026**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **December 20, 2024**, and construction must be completed by **February 20, 2026**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary: [https://www.health.ny.gov/facilities/hospitals/docs/hcs\\_access\\_forms\\_new\\_clinics.pdf](https://www.health.ny.gov/facilities/hospitals/docs/hcs_access_forms_new_clinics.pdf). Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: [hospinfo@health.ny.gov](mailto:hospinfo@health.ny.gov). [HSP]

Council Action Date

June 20, 2024

# Need Analysis

## Project Description

HSS Long Island ASC, LLC is seeking approval to establish a single-specialty ambulatory surgery center providing orthopedic surgery at 90 Merrick Avenue, East Meadows, 11554 in Nassau County. The proposed center will have two (2) operating rooms with shell space and sufficient infrastructure to add one (1) operating room (OR) in the future.

## Background and Analysis

The primary service area consists of Nassau County. The population of Nassau County is projected to increase to 1,429,023 by 2029 based on Cornell Program of Applied Demographics estimates. Demographics for the primary service area are noted below including a comparison with New York State.

Demographics	Nassau County	New York State
Total Population-2022 Estimate	1,389,160	19,994,379
Hispanic or Latino (of any race)	17.2%	19.5%
White (non-Hispanic)	58.3%	53.8%
Black or African American (non-Hispanic)	11.0%	13.8%
Asian (non-Hispanic)	10.5%	8.8%
Other (non-Hispanic)	3.1%	4.1%

Source: 2022 American Community Survey (5-year Estimates Data Profiles)

In 2021, 95.9% of the population of Nassau County had health coverage as follows:

Employer Plans	59.3%
Medicaid	10.5%
Medicare	13.2%
Non-Group Plans	12.7%
Military or VA	0.205%

Source: Data USA

## Ambulatory Surgery within a 10 Mile Radius of Proposed Center

Facility Name	Type	Patient Visits		
		2020	2021	2022
Nassau University Medical Center	Hospital	2,598	3,608	3,803
Garden City Surgi Center	ASC	5,628	7,066	7,127
NYU Langone Hospital-Long Island ASC	Extension Clinic	4,414	5,792	6,178
NYU Langone Hospital-Long Island	Hospital	15,484	18,699	20,030
St. Joseph Hospital	Hospital	2,787	2,811	3,206
Mount Sinai South Nassau	Hospital	11,518	14,782	15,772
Mercy Hospital	Hospital	7,389	9,365	9,491
East Hills Surgery Center	ASC	3,964	4,886	5,559
Long Island Jewish Valley Stream	Hospital	2,596	3,355	3,349
Lynbrook Surgery Center	ASC	5,647	6,207	5,689
<b>Total Visits</b>		<b>62,025</b>	<b>76,571</b>	<b>80,204</b>

Source: HFIS and SPARCS

All the facilities listed above provide multi-specialty services, there are currently no ASCs operating in Nassau County that provide just orthopedic surgical services.

The applicant projects 1,033 procedures in the first year and 1,849 in the third with Medicaid at 4.27% and Charity Care at 2.00% . All of the procedures moving to this center are currently being performed in a hospital setting. HSS anticipates that 225 procedures will shift to the new center in the first year and 603 will shift to the center in the third year following approval.

The table below shows Year One and Year Three's projected payor source utilization.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Comm Ins MC	837	81.03%	1,463	79.12%
Medicare FFS	102	9.87%	180	9.73%
Medicare MC	28	2.71%	48	2.60%
Medicaid FFS	10	0.96%	38	2.06%
Medicaid MC	11	1.06%	41	2.21%
Charity Care	21	2.03%	37	2.00%
Other	24	2.34%	42	2.28%

This project is a partnership between HSS and its physicians. Hospital for Special Surgery will own an aggregate membership interest of 87%, which includes 67% Class B membership and a 20% Class A membership interest in this proposed ASC. HSS will shift less complex outpatient surgeries to this center to free up OR time in the main hospital building for higher acuity orthopedic surgeries.

The center plans to obtain contracts with the following Medicaid Managed Care plans: Affinity, Emblem, Fidelis, Healthfirst, and United Healthcare. The center will work collaboratively with local Federally Qualified Health Centers, local family shelters, and homeless shelters to provide service to the under-insured in their service area. The center's utilization projections reflect Medicaid and Charity Care volume based on HSS's charity care policy, as well as the current proportion of Medicaid and Charity Care provided by orthopedic surgeries in Nassau County. The center will adopt HSS's financial assistance policy.

#### Conclusion

Approval of this project will provide improved access to orthopedic surgery services in an outpatient setting for the residents of Nassau County.

## Program Analysis

### Project Proposal

HSS Long Island ASC, LLC d/b/a HSS Long Island Ambulatory Surgery Center LLC seeks approval to establish and construct a Single Specialty Ambulatory Surgery Center for the provision of Orthopedic Surgery to be located at 90 Merrick Avenue in East Meadow (Nassau County).

<b>Proposed Operator</b>	HSS Long Island ASC, LLC
<b>To Be Known As</b>	HSS Long Island Ambulatory Surgery Center, LLC
<b>Site Address</b>	90 Merrick Avenue East Meadow, NY 11554 (Nassau County)
<b>Surgical Specialties</b>	Ambulatory Surgery-Single Specialty Orthopedic Surgery
<b>Operating Rooms</b>	2 Operating Rooms
<b>Procedure Rooms</b>	0
<b>Hours of Operation</b>	Monday through Friday from 7 am to 7 pm, if needs dictate, hours will be expanded
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	31.8 FTEs / 40.7 FTEs
<b>Medical Director(s)</b>	Michael M. Ast, MD
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Expected to be provided by: NYU Langone Long Island 5.3 miles / 13 minutes away
<b>After-hours access</b>	If the patient requires assistance during hours when the Center is not in operation, the patient will have the number of an on-call service which will be available 24/7 to immediately refer the patient to the Center's on call physician.

### Character and Competence

The list of members of HSS Long Island ASC, LLC are:

<b>Name</b>	<b>Membership Interest</b>	<b>Class Units</b>
HSS	<b>67%</b>	Class B Units
HSS (Individual Surgeon Investors)	<b>20%</b>	Class A Units
HSS ASC Development Network, LLC*	<b>13%</b>	Class C Units
<b>Total</b>	<b>100%</b>	

<b>Member</b>	<b>Ownership in HSS ASC Development Network, LLC</b>	<b>Indirect Ownership in HSS Long Island ASC, LLC</b>
Albert, Todd*	1%	0.13%
Allen, Answorth	0.5%	0.065%
Ast, Michael	1%	0.13%
Blaine, Theodore	1%	0.13%
Blevins, Jason	1%	0.13%
Boettner, Friedrich	1%	0.13%
Bostrom, Mathias*	1%	0.13%
Carli, Alberto	1%	0.13%
Chalmers, Brian	1%	0.13%
Cody, Elizabeth	0.5%	0.065%
Coleman, Struan	1%	0.13%
Cordasco, Frank	1%	0.13%
Cushner, Fred	1%	0.13%

<b>Member</b>	<b>Ownership in HSS ASC Development Network, LLC</b>	<b>Indirect Ownership in HSS Long Island ASC, LLC</b>
DiFelice, Gregory	1%	0.13%
Dines, Joshua	0.5%	0.065%
Dowdell, James	0.5%	0.065%
Drakos, Mark	1%	0.13%
Elliot, Andrew	1%	0.13%
Ellis, Scott	1%	0.13%
Fabricant, Peter	0.5%	0.065%
Fu, Michael	1%	0.13%
Fufa, Duretti	1%	0.13%
Gausden, Elizabeth	1%	0.13%
Gomoll, Andreas	1%	0.13%
Gonzalez Della Valle, Aljandro	1%	0.13%
Green, Daniel	1%	0.13%
Gulotta, Lawrence	1%	0.13%
Haas, Steven	0.5%	0.065%
Huang, Russel	1%	0.13%
Iyer, Sravisht	1%	0.13%
Jerabek, Seth	1%	0.13%
Johnson, A. Holly	1%	0.13%
Kang, Lana	0.5%	0.065%
Kim, Han Jo	1%	0.13%
Lebl, Darren	1%	0.13%
Lee, Gwo-Chin	1%	0.13%
Lee, Steve	0.5%	0.065%
Long, William	1%	0.13%
Marx, Robert	1%	0.13%
Mayman, David	1%	0.13%
McCarthy, Moira	1%	0.13%
McLawhorn, Alexander	1%	0.13%
Nawabi, Danyal	1%	0.13%
Ode, Gabriella	1%	0.13%
O'Malley, Martin	0.5%	0.065%
Osei, Daniel	1%	0.13%
Parks, Michael	1%	0.13%
Pearle, Andrew	1%	0.13%
Queshi, Sheeraz	1%	0.13%
Ranawat, Amar	1%	0.13%
Ranawat, Anil	1%	0.13%
Ricci, William*	1%	0.13%
Roche, Martin	1%	0.13%
Rodeo, Scott	1%	0.13%
Rodriguez, Jose	1%	0.13%
Rozbruch, S. Robert	1%	0.13%
Sama, Andrew*	1%	0.13%
Sama, Nicholas	1%	0.13%
Sandhu, Harvinder	1%	0.13%
Sculco, Peter	1%	0.13%
Simovitch, Ryan	1%	0.13%
Sink, Ernest	1%	0.13%
Sokunbi, Gbolabo	0.5%	0.065%
Strickland, Sabrina	1%	0.13%
Su, Edwin	1%	0.13%
Swenson, Stephanie Buza	0.5%	0.065%

Member	Ownership in HSS ASC Development Network, LLC	Indirect Ownership in HSS Long Island ASC, LLC
Taylor, Samuel	1%	0.13%
Trehan, Samir	1%	0.13%
Vigdorchik, Jonatyhan	1%	0.13%
Wnag, John	1%	0.13%
Wanich, Tony	1%	0.13%
Westrich, Geoffrey	1%	0.13%
Williams, Riley	0.5%	0.065%
Wolfe, Scott	1%	0.13%
<b>Sub-Total Physicians</b>	<b>68%</b>	<b>8.84%</b>
<b>HSS</b>	<b>32%</b>	<b>4.16%</b>
<b>Total</b>	<b>100%</b>	<b>13%</b>

HSS Long Island ASC, LLC Board of Managers	
Bryan T. Kelly, MD	Justin Oppenheimer
Stacey L. Malakoff	Michael Ast, MD
Irene M. Koch	

Board of Trustee Members HSS		
	Giammaria Giuliani	Mary Kathryn Navab
Answorth Allen, M.D	Robert Goldstein	Terence M. O'Toole
Daniel C. Benton	Warren B. Kanders	Douglas Padgett, M.D.
Herbert Black	Scott Kapnick	Matthew H. Peltz
Mathias Bostrom, M.D.	Monica Keany	Steven Rattner
S. Louis Bridges, Jr. M.D.	Bryan T. Kelly M.D.	Scott Rechler
Michael C. Brooks	Sacha Lainovic	William M. Ricci, M.D.
Kathryn Chenault	Laurie Hodges Lapeyre	Andrew A. Sama M.D.
Chase Coleman	Pablo Legorreta	Edward Skyler
Leslie Cornfeld	Lara R. Lerner	Jonathan Sobel
Cynthia Foster Curry	Kathy Lenenthal	Deirdre Stanley
Anthony de Nicola	Thomas H. Lister	Robert K. Steel
James G. Dinan	Patrice J. Louvet	Jonathan Tisch
Katherine Doerge	Alan S. MacDonald	Frances Townsend
Anne Ehrenkranz	Susan Maher, PhD	Robert Vince
Michael Esposito	Celene Menschel	Jeff Wilpon
Wayne A.I. Frederick M.D	Andy O. Miller M.D.	Ellen M. Wright
Marina Kellen French	Sarah E. Nash	Robert D. Yaffa

**\*Character & Competence Reviews were conducted on 128 individuals who comprise the Board of Trustees & Officers of the Hospital for Special Surgery**

Volume Source	Year 1	Year 3
Sum of Surgeon Letters	885	885
Surgeries from Main Campus	570	945
<b>Total</b>	<b>1,455</b>	<b>1,830</b>

**Michael Ast, M.D.** is the proposed Medical Director. Dr. Ast graduated from Temple University in 2003 and Temple University School of Medicine in 2007. Residency was completed in 2012 from North Shore LIJ Health system and a Fellowship for Adult Reconstruction and Joint Replacement was completed at the Hospital for Special Surgery in 2013. Dr. Ast is registered in both New York through April 2025 and New Jersey through June 2025.

Dr. Ast currently is employed since 2018 at Weill Cornell Medical College as an Assistant professor Orthopedic Surgery, and as the Chief Medical Innovation Officer at Hospital for Special Surgery since

2021. Other positions held: Senior Clinical Associate Orthopedic Surgery at Weill Cornell Medical College (1 year), Associate Attending Orthopedic Surgeon Robert Wood Johnson University Hospital (5 years) also serving as Medical Director for Robotic Joint replacement Surgery. Orthopedic Surgeon Capital Health Medical Center (5 years), Associate Attending orthopedic surgeon at St. Mary Medical Center (5 years), Associate Attending orthopedic surgery at University Medical Center of Princeton (3 years), and others simultaneously.

Interest/Ownership: Mercer County Surgery center from 2015-2018 (9%) NJ -. Affidavit in lieu of 2D sent.

Lawsuits: 11/17/2022 New York Supreme Court, NY County *Audrey Birster v. Michael Ast, MD, Et Al.* This matter involves a then 49-year-old female with complaints of bilateral knee pain. On 2/10/2020, patient underwent a right patellofemoral replacement which was complicated with pain and swelling. Plaintiff obtained a second opinion with Dr. Ast, where she expressed concerns related to a metal allergy. Patient alleged failure to consider metal allergy as cause of pain.

3/16/2017 *Unknown vs. Michael P. Ast, M.D. et al.*, Patient alleged the use of the improper sized ball in total hip replacement surgery which resulted in recurrent dislocations. Patient required revision surgery. Settled and closed. MD share: \$200,000.

**Answorth Allen:** Dr. Allen completed his MD degree at Cornell Medical in New York, NY. Dr. Allen is licensed in NY state and registered through 7/31/2025. Dr. Allen was employed at New York Presbyterian as a resident from 1983-1993, then at UPMC in Pennsylvania for a one-year fellowship. Dr. Allen worked for 3 years at Hospital for Special Surgery then went into private practice for 21 years at which time Dr. Allen returned to Hospital for Special Surgery and remained there from 2018 until the present time.

Interest/Ownership: HSS Director Board of Trustees since 9/2023 Hospital for Special Surgery. HSS West Side ASC, New York, NY, voting manager of Entity formed in 2016 (9%)

Lawsuits: 2020 NY Supreme Court; Kings County: Three ongoing cases. 2020 – *Anif Tasoren b. Answorth Allen MD, Michael Ho, MD and HSS.* 36 YO male, presented to Dr. Allen for Left sided knee pain that developed after an altercation while working as an NYPD officer on 12/23/2019. Dr. Allen performed a partial meniscectomy without documented complications. Following surgery, plaintiff reported pain, swelling and numbness of the left lower extremity. On 1/7/2020 plaintiff was diagnosed with a DVT in the left peroneal vein and was treated with anticoagulation. Patient alleged failure to identify compartment syndrome, despite no clinical indication of the condition. 3/9/2016 New York Supreme Court, NY County. *Ethan Barnett b. Answorth Allen, MD and HSS.* Patient alleges partial right sciatic nerve injury that occurred during right ACL reconstruction performed by Dr. Allen on 11/2/2015 in a 24-year-old male, resulting in right foot drop.

12/04/2018 New York Supreme Court, NY County. *Courtney Pabst v Answorth Allen MD, et al.*, 21-year-old female underwent revision of left ACL repair on 5/11/17 with Dr. Allen. During the procedure the patient sustained a cardiopulmonary arrest/embolic event requiring life-sustaining measures and transfer to external hospital for further care. Subsequently the patient underwent right below the knee amputation on 11/14/2018 and was diagnosed with left peroneal nerve palsy. Plaintiff alleges improper performance of ACL reconstruction, which caused fat embolus and arrest.

8/10/2017 New York Supreme Court, NY County. *Mitchell Eilenberg v Answorth Allen MD, et al.*, 50-year-old male presented to Dr. Allen for history of left shoulder dislocations. On 7/23/2009 Dr. Allen performed a left shoulder arthroscopy, labral debridement, subacromial bursectomy, arthroscopy AC joint excision and acromioplasty. The patient subsequently reported persistent pain and weakness in the left arm which patient attributed to surgical technique.

**Todd Albert:** Education includes Amherst College and University of Virginia Medical School. Dr. Albert holds current medical licensure in New York expiring on 5/31/2025 and New Jersey expiring on 6/30/2025. Dr. Albert has completed an internship at Pennsylvania Hospital Surgery, A residency at Thomas Jefferson University Hospital, Pennsylvania, and a fellowship at the Minnesota Spine Center. Dr. Albert has been employed since 2014 at both Hospital for Special Surgery and New York Presbyterian Hospital. Prior to that Dr. Albert worked at Rothman Orthopedic Specialty Hospital (4 Years), Main Line



Health (18 years), Attending orthopedic surgeon at Thomas Jefferson University Hospital for 11 years, and simultaneous positions.

Interest/Ownership: Hospital for Special Surgery ex officio on board of trustees.

Lawsuits: April 17, 2018 – *Olivier Vidal v. HSS, Chad Craig, MD, and Todd Albert, MD*. 71-year-old male suffered an MI following cervical spine decompression and fusion performed by Dr. Albert on 8/12/2015. Patient alleges improper medical clearance prior to surgery. Settled \$750,000. October 27, 2017 – *John Fanneron v Todd Albert et al.* 56-year-old male that underwent C5-C7 cervical dissection/fusion on 11/23/2016 for cervical radiculopathy. Subsequent imaging was concerning for retained sponge, which required additional surgery for removal.

January 6, 2020 - *Sedat Biringen v. Todd Albert, M.D., Et Al*. Decedent, 72-year-old male, who presented to Dr. Todd Albert on 6/19/17 with complaints of left leg pain and sciatic dysfunction. Plaintiff medical history included bladder cancer that was treated with surgery in 2012. MRI of the pelvis identified an abnormal lumbar plexus, which could be considered neoplastic or non-neoplastic. The decedent was referred to his oncologist and was diagnosed with Stage IV metastatic urothelial carcinoma in early 2018. August 6, 2020 - *Lawrence Finnegan v. Todd Albert, MD and HSS*, Patient, 45-year-old male, who underwent a Synvisc injection to the right knee on 12/6/17. Following the injection, patient developed severe right knee pain and swelling. On 12/8/17 HSS received recall notice for injection. Dr. Albert, Surgeon-in-Chief at the time, notified medical staff of recall. Patient claims delay in notification to staff.

**Daniel Benton:** Most recent education is from Harvard University completed in 1984 with a master's in business administration. Daniel Benton has worked for Andor Capital Management at a hedge fund company 2001 – present. In addition, from 2017- present Daniel Benton worked at Benton Capital Management as CEO at the family office.

Interest/Ownership: Board of Trustee membership as HSS Director of Hospital for Special Surgery.

**Herbert Black:** Graduated High School in 1961 and holds an aviation pilot license in Canada through May 2026. Current employment since 1962 is President and CEO of American Iron & Metal Company Inc. in Canada. 60 years of experience in metal recycling.

Interest/Ownership: Director Board of Trustees Hospital for Special Surgery.

**Theodore Blaine:** Dr. Blaine completed medical school at the University of Connecticut in 1993. Dr. Blaine has current licensure in: New York, registered through 1/31/25; Connecticut, registered through 7/24; New Jersey, registered through 6/25 and Rhode Island, registered through 6/24. Dr. Blaine presently works at Attending Physician for Hospital for Special Surgery, NYP Hospital, Orthopedic surgeon at Hartford Hospital, Yale New Haven Hospital, Greenwich Hospital, and Westerly Hospital. Dr. Blaine held attending physician privileges since 2004 at various facilities and as Orthopedic surgeon since 2007 at various facilities.

Interest/Ownership: Hartford Hospital Physicians LLC. Bone and Joint Institute, CT since 2018 Physician in chief.

**Jason Blevins:** Dr. Blevins most recent education is from University of Maryland School of Medicine received MD degree in 2013, and residency/fellowship completed in 2019. Dr. Blevins holds a NY licensure that expires 1/31/2026. Employment history includes Residency until 2018, Fellowship in Adult reconstruction and joint replacement completed in 2019, and Assistant Attending Orthopedic Surgeon at Hospital for Special Surgery since 2019.

**Friedrich Boettner:** Dr. Boettner graduated in 1997 from Rostock University in Germany. Dr. Boettner currently holds medical licenses in New York registered through 5/31/2025 and New Jersey registered through 6/30/2025.

Dr. Boettner is currently employed at Hospital for Special Surgery since 2006 as Associate and then Attending Surgeon, and at Friedrich Boettner MD PC since 2008.

**Mathias Bostrom:** Dr. Bostrom graduated with a medical degree from Johns Hopkins University School of Medicine in 1989. Their residency was completed at the Hospital for Special Surgery in 1995. Currently licensed in the states of New York through 2/2025, New Jersey through 6/2025, and Connecticut through 3/2024.

Currently, Dr. Bostrom is an attending orthopedic surgeon at Hospital for Special Surgery, New York Presbyterian Hospital, and is also the Chief of Adult Reconstruction and Joint Replacement service at Hospital for Special Surgery. Dr. Bostrom also serves as a Professor of Orthopedic Surgery at Weill Medical College of Cornell University since 2007. They also teach orthopedics at the University of Lund in Sweden since 2011. At the Hospital for Special Surgery, they are the Senior Scientist in the Division of Research and the Chair in Adult Reconstruction and Joint Replacement.

Interest/Ownership: Director ex officio since 2020 for Hospital for Special Surgery.

Open legal disclosures:

5/22/2019 *Marcia Miller v. Mathias Bostrom, MD, et al.*, New York Supreme Court, NY County. Patient, 68-year-old female, presented to Dr. Bostrom on 9/30/2016 for evaluation of metallosis of a left metal on metal total hip replacement that was performed at an outside hospital. On 11/21/16, she underwent aspiration of the left hip with radiology. On 11/26/16, the patient was diagnosed with infection and required explant with placement of a spacer; reimplantation occurred on 2/15/17. Patient claims aspiration was not indicated and caused the infection.

12/08/2022 *Edward Degroff V. Marthias Bostrom MD and HSS.* New York Supreme Court, NY County. Patient, 72-year-old male, presented to Dr. Bostrom for evaluation of right hip pain and underwent right total hip replacement on 11/29/18. Patient subsequently reported hearing an audible pop and inability to bear weight on 4/19/19 and patient required hip revision. Patient suffered right hip dislocation on 7/15/22, and patient underwent revision for broken constrained liner and ring failure. Patient claims initial surgery was improperly performed.

Settled or dismissed:

6/6/2017 *Robert Debois v. Marthias Bostrom, MD, et al.* New York Supreme Court; NY County. This litigation involves a 64-year-old male who underwent bilateral total knee arthroplasty by Dr. Bostrom on 3/23/15. Patient was transferred to St. Charles Hospital Rehabilitation on 3/27/15. Three weeks later, he suffered a non-hemorrhagic stroke. Patient alleged failure to identify DVT, which resulted in a stroke. Defense expert contended impossibility of DVT, and matter was dismissed on motion.

7/1/2020 *Nancy Damato v. Marthias Bostrom MD and HSS.* New York Supreme Court; New York County. Patient developed PE after total hip replacement causing residual neurologist deficits. Dr. Bostrom was senior resident at the time of care and was dismissed from the action.

**Stanley Bridges:** Education includes graduation from Louisiana State University School of Medicine New Orleans in 1984 with an M.D. in medicine and from University of Alabama at Birmingham in 1995 with a Ph.D. in Microbiology. Dr. Bridges completed a residency at the University of Texas Medical Branch followed by a fellowship in immunology and Rheumatology at the University of Birmingham. Current licensure includes LA through 08/2024; AL through 12/2024; TX inactive; NY through 07/2025; FL inactive.

Dr. Bridges currently holds several teaching positions as well as an Attending physician at the Hospital for Special Surgery since 2020 and at Memorial Sloan Kettering Cancer Center since 2021. Prior employment includes a Staff Physician at Veteran Administration Medical Center in Birmingham, AL.

Dr. Bridges is on the Board of Trustees at the Hospital for Special Surgery.

**Michael Brooks:** received their MBA from Harvard Business School in 1973.

Mr. Brooks is currently a consultant to Venerock venture investment firm, where he was previously a General Partner from 2000 - 2013.

They also currently serve on the US Ski and Snowboard Association board as well as a Trustee on the board of Hospital for Special Surgery.

**Alberto Carli:** Education at McGill University in Montreal QC with MDCM in 2008, MSC in 2012 and FRCSC in 2016. Dr. Carli holds licensure in NY through 3/2025 and in NJ through 6/2025. Dr. Carli completed two fellowships at the Hospital for Special Surgery in 2015. Then continued to a Fellowship in Hip Reconstruction from The Hip Society/Maurice Muller Foundation and a second at Rothman Ranawat Fellowship – the Hip Society.

Dr. Carli is currently employed as an Associate Attending surgeon for the Hospital for Special Surgery since 2018. Prior to that D. Cali worked for two (2) years as staff orthopedic Surgeon at the Ottawa Hospital in Canada.

**Brian Chalmers:** Dr. Chalmers completed education at the University of Kansas in 2014. Dr. Chalmers went on to the Mayo Clinic to an ortho residency which was completed in 2019 and then to the Hospital for Special Surgery for a fellowship completed in 2020. Dr. Chalmers currently holds licensure in NY through 8/31/2024, NJ through 12/31/2024, and CT through 9/2024.

Dr. Chalmers is presently employed since 2020 at the Hospital for Special Surgery as Assistant Professor of Orthopedic Surgery, Weill Cornell Medical College as an Assistant Professor of Orthopedic Surgery, and at New York Presbyterian Hospital as an Assistant Attending orthopedic surgeon.

**Kathryn Chenault:** Most recently graduated in 1980 from NYU School of Law. Kathryn Chenault has been retired since 1989.

Ms. Chenault has provided the following additional details regarding her experience: • HSS Board of Trustees, member of the HSS Board of Trustees since April 28, 2011 • The Studio Museum in Harlem, Board member since November 2001 • The Pratt Institute, Board member since December 13, 2012 • Lincoln Center, Board member since September 2023 Interest/Ownership: Hospital for Special Surgery Board of Trustees Director.

**Elizabeth Cody:** Dr. Cody graduated from Columbia University College in 2012. Dr. Cody completed a residency at the Hospital for Special Surgery for orthopedic surgery in 2017 and a fellowship in foot and ankle surgery at Duke University in 2018. Dr. Cody currently holds licensure in NY through 7/2024 and in CT through 8/2024.

Dr. Cody is currently employed as an Assistant Attending orthopedic surgeon since 2018 at the Hospital for Special Surgery, and at Weill Cornell. Dr. Cody was previously an instructor in orthopedic surgery at Weill Cornell from 2018 – 2021. Dr. Cody is currently an instructor of orthopedic surgery from 2020 at New York Medical College.

**Charles Coleman:** Graduated with a master's degree from Williams College. Current employment is with Tiger Global Management from 2001 until present. Charles Coleman has a history of working in the investment industry with this company.

Interest/Ownership: Director Board of Trustees at the Hospital for Special Surgery.

**Struan Coleman:** Graduate of Columbia P and S in 1995 with medical degree. Completed residency and fellowship at Hospital for Special Surgery and completed in 2002. Currently licensed in NY through 12/31/2024; PA through 12/31/2024; and FL through 1/31/2026.

Current employment is Associate professor of clinical orthopedic surgery since 2013 at Weill Cornell Medical College. Dr. Colman is also the Director at Vincera Hip Preservation Center since 2013; Orthopedic surgeon at Vincera Institute since 2013; Associate attending orthopedic surgeon at the

Hospital for Special Surgery since 2013; and an Associate attending orthopedic surgeon at New York Presbyterian since 2013. Prior employment as associate orthopedic attending surgeon at New York Presbyterian from 2002-2012.

Ownership/Interest: The Vincera Institute in PA since 2013. 10% real estate and 10% ASC.

Noted on Philadelphia web site for ASCs, "Vincera 2022 2567." The survey results were released to the facility today 12/12/22, for plan of correction submission. Plan of correction was submitted. The facility is operational.

**Frank Cordasco:** Dr. Cordasco graduated from Rutgers University with a medical degree in 1985. Dr. Cordasco currently holds licensure in NY through 9/2024. Residency for general surgery at the University of Arizona Health Sciences Center and for Orthopedic Surgery at Columbia University, College of Physicians and Surgeons. A fellowship was completed for Shoulder and Elbow surgery at Columbia University, College of Physicians and Surgeons.

Dr. Cordasco currently holds academic positions as a Senior Research Scientist since 2017 for the Hospital for Special Surgery and as a professor of orthopedic surgery at Cornell University since 2014. Dr. Cordasco holds hospital positions since 2014 as an Attending orthopedic surgeon at the Hospital for Special Surgery and The New York Presbyterian Hospital.

Disclosure: Ownership interest - 2015 until present Hospital for Special Surgery ASC of Manhattan. (2.98%).

Disclosure Legal: Open Cases

*04/26/2022 WEISS, ANTHONY E. V. DANIEL GREEN, MD, FRANK CORDASCO, MD, FRANK CORDASCO, PC & HSS Leg length discrepancy.*

*5/25/2021 SCHULTHEIS, DYLAN V. DANIEL GREEN, MD, FRANK CORDASCO, MD, FRANK CORDASCO, MD, PC, RYAN R. FADER, MD, REBECCA JOHNSON, PA & HOSPITAL FOR SPECIAL SURGERY Growth Plate Interference.*

Settled Cases:

*6/16/2017 Alexander Anastassopoulos, by his parent and natural guardian, Kathryn Anastassopoulos v. HSS, Dr. Frank Cordasco and Dr. Daniel Green. Growth plate interference – settled.*

**Leslie Cornfeld:** Graduated from Harvard Law School in 1985. Had been licensed in NY but is currently not active.

Currently employed at National Education Equity Lab as Founder and CEO since 2018. Prior employment was at the Office of the Mayor of NYC 2006-2013; US President Barack Obama Administration 2015-2017.

Interest/Ownership: Director on the Board of Trustees for Hospital for Special Surgery.

**Cynthia Curry:** Graduated in 1990 from Harvard Business School with a master's in business administration.

Currently holds a Real Estate license through 01/2026.

Cynthia Curry has retired in 2022. Past employment includes Cushman/Wakefield 1994-2015; Colliers International 2015-2021; Lex-Markets 2021-2022.

Interest/Ownership: Director Board of Trustees Hospital for Special Surgery.

**Fred Cushner:** Dr. Cushner graduated from the Medical University of South Carolina in 1988. Dr. Cushner currently holds licensure in NY through 5/31/2025; NJ pending, CT through 6/30/2024.

Dr. Cushner is currently employed at the Hospital for Special Surgery since 2019 as an Orthopedic Surgeon. And as an Associated Clinical Professor. Previous Employment was at Northwell Health from May 2005 – May 2019.

Disclosure: Ownership interest in Business ventures – Canary Medical (Medical Device Company)

Legal information: (Disclosed after DOH inquiry)

Open Court Cases:

2/16/2021 - *April Connors v. Fred David Cushner, MD* - Alleged improper performance of cartilage plug to the patella placement.

3/24/2022 - *Virgil Shuler against Fred Cushner, M.D., and Hospital for Special Surgery* - Patient, 67-year-old male, presented to Dr. Cushner with bilateral knee pain and on 1/22/21, Dr. Cushner performed a left total knee replacement without complication. Patient made slow progress postoperatively due to pain and stiffness and was lost to follow-up after 6 months.

1/9/2023 - *Greg Lopez against Frederick Cushner, M.D., Jesu Ysit and Hospital for Special Surgery* - Patient, 55-year-old male, presented to Dr. Cushner for instability of the left knee after a TKR performed at an OSH. After completing an unremarkable revision on 10/11/19, Dr. Cushner performed a right TKR on 7/2/2020 that was complicated by infection. Dr. Cushner performed I&D with liner exchange on 7/28/2020. Patients complained of pain and instability bilaterally.

Settled or Dismissed Cases:

9/27/2019 - *Erasmus Beras against Fred Cushner, M.D.* - Patient 65-year-old male underwent left total knee replacement surgery with Dr. Cushner on 9/19/14 without complication. The patient claimed Dr. Cushner used the wrong-sized tibial component and failed to properly treat the patient postoperatively. The matter was dismissed on summary judgment. Dismissed

1/29/2018 - *Catalina Castillo against Fred Cushner, MD, Et al* - Patient underwent a left total knee arthroplasty that was complicated by thrombosis in her popliteal artery. Despite prompt treatment, she developed past perfusion syndrome resulting in amputation. Settled at \$1.5 M and discontinued.

5/2/2018 - *Melissah Milroy against Fred Cushner, M.D. Et al* - Patient underwent total knee replacement on 11/2/12 for right knee arthritis with Dr. Cushner. Postoperatively, she reported increased pain and suffered a poor outcome. She was noted to be at high risk for chronic pain due to prior use of opioids. Settled at \$100K and discontinued.

**Anthony DeNicola:** Graduated with a master's in business administration from Harvard Business School in 1988. Anthony DeNicola has been employed at Welsh, Carson, Anderson & Stowe since 1994. Anthony DeNicola has been a general partner since then and has held the title of president and managing partner from 2007-2021 at which time Anthony DeNicola became Chairman of the firm.

Interest/Ownership: Director on Board of Trustees for Hospital for Special Surgery.

**Gregory DiFelice:** Dr. DiFelice graduated medical school from UMDNJ in 1994. Dr. DiFelice is currently licensed in NY through 6/2025 and in NJ through 6/2025. Residency was completed in 1999 from Hospital for Special Surgery and a Fellowship was completed in 2000 from Washington University School of Medicine in MO.

Dr. DiFelice is currently employed at Hospital for Special Surgery as an Attending Surgeon since 2010 and is self-employed at DiFelice Orthopedics, PC since 2016. Dr. DiFelice notes he has helped to manage the outpatient units at multiple hospitals he previously worked at.

Legal Disclosures:

Open Cases:

8/22/2018 (Disclosed after DOH inquiry) *Sandra George v. Gregory S. DeFelice, MD, New York City Health and Hospitals Corp. and Jacobi Medical Center* - Alleged failed right total knee replacement due to defective or improperly placed/misaligned hardware.

1/10/2023 - *Charles Bostwick v. Gregory DiFelice, MD, and HSS*- Patient, 60-year-old male, presented to Dr. DiFelice with right hip pain. On 7/15/21, Dr. DiFelice performed a right THR that was complicated by right sided foot drop. Plaintiff was taken back to the OR on 7/17/21 for wound exploration and sciatic neurolysis where a stitch in the nerve was identified. Patient alleged improper performance of surgery causing direct injury to the sciatic nerve.

#### Settled Cases:

10/14/2021 - *Martha Henderson V. Gregory Difelice, MD, and HSS* - Patient, 65-year-old female, presented to Dr. DiFelice on 10/7/19 for evaluation of a left proximal humerus fracture. On 10/11/19, Dr. DiFelice performed an ORIF of the fracture. Five days later, there was notable migration of the greater tuberosity fragment on x-ray. Patient underwent revision 10/31/19 and the fracture healed well.

12/16/2015 - *Larry Grissom vs. New York Presbyterian Hospital, Gregory S. DiFelice, M.D., and HSS* - Patient underwent ORIF of tibia/fibula fracture with IM nail in March 2011. The patient later developed painful clawing of toes and alleged that compartment syndrome was missed. Documented did not support this allegation.

**James Dinan:** Graduated most recently in 1985 from Harvard Business School. Current employment at York Capital Management since 1991.

James Dinan discloses that he is on the Board of Trustees for Hospital for Special Surgery.

**Joshua Dines:** Dr. Dines graduated in 2001 from Weill Cornell Medical College. Dr. Dines is Licensed in NY through 6/2025; NJ through 6/30/2025; CT through 7/31/2024; and CA through 7/31/2025.

Dr. Dines is employed since 2001 at David Dines MD PC as Vice president/orthopedic Surgeon and at the Hospital for Special Surgery as an Orthopedic surgery/researcher and teaching from 2008 to present.

Disclosure: Ownership in HSS West Side ASC (6%) since 2017

Legal Disclosures: Dr. Dines discloses a settled case from 2014, *Raymond Bailey & Natielle Fernandez-Bailey vs. Joshua Dines, MD et al*, Patient, 53-year-old male, alleged Dr. Dines negligently performed a left total knee replacement resulting in need for revision surgery. Settled – Dr. Dines.

**Katherine Doerge:** is the Principal of Kate Doerge Consulting, a stock market management company. Ms. Doerge graduated from Hamilton College double majoring in Communications and Art History.

Principal of Kate Doerge Consulting, an investing firm. Prior employment with iStar as the Head of Marketing. Also, was a partner at Paul Wilmont Communications, a public relations firm. 1996-2017

Interest/Ownership: HSS Director since 2022 Board of Trustees Hospital for Special Surgery.

**James Dowdell:** Dr. Dowdell graduated from Jefferson Medical College in 2014. Dr. Dowdell is currently licensed in NY through 5/2025; NJ through 6/2025; and CT through 6/24. Dr. Dowdell served a Residency for hospital orthopedics at Mount Sinai Hospital that was completed in 2019 and went on for a Resident and Fellowship at Hospital for Special Surgery.

Dr. Dowdell currently works at Hospital for Special Surgery as a Sine Surgery Attending from 2020.

Legal Disclosure: Dr. Dowell discloses one case from 2022 which is currently open in Supreme court New York County, *Patalano, Joseph v. Matthew Cunningham, MD, James Dowdell III, MD, and HSS*, 36-year-old male, presented with complaints of low back pain and right foot weakness following 2 prior lumbar spine procedures performed outside HSS. On 8/12/19, a patient underwent a L3-L4

microdecompression/microdiscectomy that was complicated by right-sided foot drop. Patient underwent revision surgery with repair of dural tear, without improvement and required further revision on 8/26/19.

**Mark Drakos:** Graduated from SUNY at Stony Brook in 2003 with a medical degree and followed with residency and fellowship at the Hospital for Special Surgery completed in 2008. A second fellowship was completed in 2010 from Brown University. Dr. Drakos is licensed in NY through 8/2025.

Current employment includes the Hospital for Special Surgery as an associate orthopedic surgeon attending foot and ankle services since 2011 and New York Presbyterian Hospital at Cornell as an associate professor since 2011.

Ownership/Interest disclosure: Manhattan ASC since 2015. (2.98%)

Legal disclosure: 3 Open Cases:

7/29/2021 - *MURPHY, TARA V. HOSPITAL FOR SPECIAL SURGERY & MARK DRAKOS, MD, MISSED DIAGNOSIS*

7/9/2021 - *MAXWELL, RYAN V. HOSPITAL FOR SPECIAL SURGERY & MARK DRAKOS, MD, 37-year-old male who presented to HSS with complaints of stiffness in the right leg. Patient underwent an Achilles lengthening on 9/17/2020. Plaintiff reported nerve pain postoperatively and developed neuroma of the sural nerve, which required resection and cryoablation. Postoperatively, patient continued to report nerve pain and was referred to pain management. NERVE DAMAGE - S/P FOOT/ANKLE*

2/5/2021 - *WALLACH, BRUCE V. HSS AND MARK DRAKOS, MD, 72-year-old male who presented to Dr. Mark Drakos with left foot pain. Dr. Drakos identified a hammertoe of 2nd digit and bunion deformity; he performed a Scarf bunion correction, with Akin osteotomy and 2nd hammertoe correction on 6/20/17. Plaintiff developed pain in the 2nd digit and imaging showed slight subluxation. On 8/16/18, Dr. Drakos performed a hammertoe revision. Plaintiff again reported pain in the 2nd digit and MRI showed subluxation and dislocation of the 2nd MTP joint. PAIN - S/P FOOT*

Settled/Dismissed:

6/19/2017 - *SCONZO, THOMAS V. DRAKOS, MARK, HENRY, MICHAEL, MD & HSS, INFECTION - S/P FOOT/ANKLE - dismissed.*

7/10/2018 - *WOLFE-SANTOS, MARIVI V. TURTLETAUB, LAUREN, MD, DRAKOS, MARK, MD, PAPARELLA, NICOLE, PA, ROSENBAUM, ANDREW, MD, Infection. Settled HSS*

**Anne Ehrenkranz:** Graduated in 2000 with a Ph.D from City University.

Recent employment is with working on boards including vice-chair of the Board of Visiting Nurse Service and Vice Chair of the Institute of Fine Arts of New York University, for ten years.

Interests/Ownership: HSS Director Board of Trustees for Hospital for Special Surgery.

**Andrew Elliott:** Dr. Elliott graduated from Harvard Medical School in 1991. Dr. Elliott served an orthopedic residency at Yale Medical from 1991-1996 and a Fellowship at Hospital for Special Surgery (foot and ankle) completed in 1997. Dr. Elliott is licensed in NY through 8/2025 and NH through 6/2025.

Dr. Elliott is currently employed as an Assistant Clinical Professor of Orthopedic Surgery at the Hospital for Special Surgery since 2001. Dr. Elliott has had hospital appointments at the Hospital for Special Surgery as Assistant Attending Orthopedic Surgeon since 2001 and Assistant Attending Orthopedic Surgeon at New York Presbyterian Hospital since 2001. Dr. Elliott has been the Assistant Team Physician for New York Redbulls MLS Soccer team since 2013.

Disclosure: Dr. Elliot discloses 0.99% ownership interest in the Hospital for Special Surgery ASC of Manhattan since 2015.

**Scott Ellis:** Dr. Ellis graduated from Johns Hopkins in 2002. Current licensure in NY through 9/2024; NJ through 6/2025; and CT through 10/24.

Current employment is associate attending or orthopedic surgery at NY Presbyterian Hospital and the Hospital for Special Surgery since February 2015 and Full Professor Scientist on the surgery tract Attending for Hospital for Special Surgery since January 2022.

Dr. Ellis discloses ownership in Hospital for Special Surgery ASC in Manhattan since 2015 (2.98%).

Dr. Ellis discloses two (2) legal cases:

9/16/2014 - *TAUBER, ROSLYN v. HSS, AND SCOTT ELLIS, MD*, - Pain s/p foot – Settled by HSS and Dr. Ellis

1/6/2015 - *PEREZ, MARISOL V. ELLIS, SCOTT, M.D., COSTIGLIOLA, STEPHEN, P.A., HSS, JOHN DOE, DEFENANT MDs 1-10, and JANE DOE, R.N. DEFENDANTS 1-10*, pain s/p foot – settled by HSS

**Michael Esposito:** Graduated from Harvard Business School in 1992 with a master's in business administration. Employment from 3/1992 through 2020 as Partner MD in Goldman Sachs & Co. Prior to that Michael Esposito worked for Franchise Equity Partners from 2021 – present as co-managing partner.

Interest/ownership: Director on the Board of Trustees for Hospital for Special Surgery. Trustee since 2020 at New York Presbyterian Hospital.

**Peter Fabricant:** received their MD from Yale University School of Medicine in 2008, and their Master of Public Health from Columbia University in 2013. Dr. Fabricant completed their residency at the Hospital for Special Surgery in 2014. Current licensure in NY through 4/2025 and CT through 5/2024.

Currently employed as an attending orthopedic surgeon at the Hospital for Special Surgery and have been since 2016.

Legal Disclosure: 6/24/2020 - *Daniel Kurtz v. David Hansel, Et Al.*, This matter involves the care of a then 2-month-old infant who was presented to Dr. Peter Fabricant for evaluation on 8/23/18 of a left femur fracture. Parents reported that the injury occurred due to a fall on 8/8/18. The infant was initially evaluated at NYPH and then at Mt. Sinai Hospital, where a femur fracture was diagnosed. Due to concerns surrounding the mechanism of the injury, and after consulting with providers at NYPH and with ACS, HSS submitted a report to ACS and the children were removed. Parents claimed HSS improperly reported the incident to ACS. The matter was dismissed on motion. Dismissed

**Wayne Frederick:** received a Medical Doctorate from Howard University in 1994 and a Master of Business Administration from there in 2011. Dr. Fredrich was previously a practicing physician in Washington DC, Maryland, Texas, Connecticut, and Trinidad and Tobago. Current licensure with District of Columbia through 12/2024.

Currently Dr. Fredrich is the President of Howard University and has been since 2014.

HSS Director Board of Trustees for Hospital for Special Surgery.

**Marina French:** completed their education at the Université de Lausanne in Switzerland in 1962. Marina French volunteers her time with development skills based on volunteering for various organizations for greater than 40 years.

For the last 10 years, Ms. French has served on the Boards of: • The Metropolitan Museum of Art • European Sculpture and Decorative Arts Department (Chairman) • Carnegie Hall • Metropolitan Opera • The Morgan Library (Life Trustee) • The American Academy in Berlin • The World Monuments Fund • National Gallery of Art in Washington DC (Trustee Council)

Currently a board member at the Hospital for Special Surgery.



**Michael Fu:** received a Master of Health Science and a Medical degree simultaneously in 2014 from Yale University. Dr. Fu is currently licensed in New York through 2/2025, New Jersey through 6/2025, and Connecticut through 3/2024.

Current employment includes Attending Orthopedic surgeon and physician at the Hospital for Special Surgery from 2020 and attending Physician at Rush University Medical Center in Chicago.

**Duretti Fufa:** Dr. Fufa graduated from Harvard Medical School in 2006. Dr. Fufa is currently licensed in NY through 8/2025, NJ through 6/2025, CT through 11/2024 and FL. Dr. Fufa completed an internship in general surgery at New York Presbyterian Hospital Cornell in 2007, a residency in Orthopedic Surgery at the Hospital for Special Surgery in 2011, a fellowship in Hand and Upper extremity surgery at Washington University in MO, and a Fellowship in trauma and microvascular surgery in 2013.

Dr. Fufa is currently employed at New York Presbyterian Hospital Weill Cornell Medical College since 2019 as an Associate Professor of Orthopedic Surgery and at the Hospital for Special Surgery since 2018 as Program Director Orthopedic Surgery Residency and since 2019 as an Associate Attending Orthopedic Surgeon.

Disclosure: Dr. Fufa disclosed an ownership interest of 2.06% in the Hospital for Special Surgery ASC of Manhattan since 2015.

Legal Disclosure: 11/10/2015 - *LEWIS, STEVEN v. FUFA, DURETTI, M.D., & HSS INFECTION - S/P HAND* Dismissed

10/25/2018 - *SONI, ROHIT V. LANE, JOSEPH, MD, FUFA, DURETTI, MD, KELLY, ANTON G. MD, and NYPH* Delayed Diagnosis - Settled HSS only.

01/19/2019 - *LARRY, ERIC V. FUFA, DURETTI, MD, NYPH/WEILL CORNELL MEDICAL CENTER* Poor Hand Outcome – Dismissed

OPEN CASE (1/25/2021)- *STAHL, CELINE V. DURETTI FUFA, MD, AND HSS* – Pain s/p Hand

**Elizabeth Gausden:** Dr. Gausden graduated from Weill Cornell Medical College in 2012. Dr. Gausden is licensed in NY through 3/2025. Dr. Gausden served a residency at the Hospital for Special Surgery from 2014-2018. Two fellowships: The University of Texas Health Science Center at Houston completed in 2019 and Mayo Clinic Hospital completed in 2020 for orthopedics.

Dr Gausden is an Attending surgeon at the Hospital for Special Surgery since 2020.

**Giammaria Giuliani:** Graduated with a bachelor's degree in science from Northeastern University in 1998. Employment from 2003-2014 at Giuliani S.p.A. in Italy as a member of the Board of Directors at NGR. 2016-2022 at NOGRA Group SICAF as Chairman of the Board of Directors. 2018-2023 GISEV Family Office S.A. Member of the Board of Directors at GISEV Family Office.

Interest/Ownership: Director at Board of Trustees for Hospital for Special Surgery.

**Robert Goldstein:** Graduated from Binghamton University with a bachelor's degree in economics in 1994. Robert Goldstein is COO BlackRock since 2014. Prior to that position Robert Goldstein was the institutional Client Business, Robert started at BlackRock in 1994.

Interest/Ownership: HSS Director Board of Trustees for Hospital for Special Surgery.

**Andreas Gomoll:** Dr. Gomoll graduated Ludwig Maximilians University Medical School in Germany in 1997 and Technisch Universitaet Muenchen n Germany in 1998. Dr. Gomoll is currently licensed in NY through 10/2024, NJ through 6/2025, and CT through 11/2024. Dr. Gomoll served an internship at Bigham and Women's Hospital for general surgery completed in 2001; a residency for orthopedic surgery at Harvard combined orthopedics completed in 2005; a fellowship at Rush University Medical Center

completed in 2006 for orthopedic sports medicine; a fellowship at Brigham and Women's Hospital for orthopedic Surgery completed in 2020.

Dr. Gomoll held Associate professor positions in orthopedic surgery at Harvard 2008-2018; Weill Cornell Medical School 2018-2022 and as a professor of clinical orthopedic surgery from 2022-present. Dr. Gomoll was employed by the Hospital for Special Surgery as an associate orthopedic surgeon from 2018 – 2022 and as an orthopedic surgeon from 2022 – present.

Disclosure: Dr. Gomoll claims 1.55% ownership interest in Hospital for Special Surgery ASC of Manhattan since 2015.

**Aljandro Gonzalez Della Valle:** Dr. Gonzalez Della Valle graduated from the University of Buenos Aires in Argentina in 1992. Dr. Gonzalez Della Valle holds licensure in NY through 10/2024. Dr. Gonzalez Della Valle served a residency at Hospital Italiano de Buenos Aires from 1993-1998 and completed a fellowship for orthopedics at the same hospital in 1999. Dr. Gonzalez Della Valle then served a fellowship at the Hospital for Special Surgery in 2002-2004.

Dr. Gonzalez Della Valle held an Attending Surgeon position from 2005 to present at the Hospital for Special Surgery. Also, at Alejandro Gonzalez Della Valle Medical, PLLC name from 2007 – present as attending surgeon.

**Daniel Green:** Dr. Green graduated from UTMD in Texas in 1991. He currently holds licensure in NY through 8/2025 and TX through 8/24. Dr. Green served residency from 1992-1996 at the Hospital for Special Surgery and a Fellowship at Children's hospital Los Angeles completed in 1997.

Dr. Green has been a Professor of Clinical Orthopedic Surgery position at Weill Cornell Medical College since 2015. Also, Assistant and Associate Attending positions at New York Presbyterian Hospital since 1998 and Attending at Hospital for Special Surgery since 2015.

Legal Disclosure (disclosed after DOH inquiry): Open Cases:

5/25/2021- *Dylan Schultheis v. Daniel W. Green, MD, Frank Cordasco, MD, Ryan R. Fader, MD, Rebecca A. Johnson, PA, and HSS- Patient*, 13-year-old male, who presented to Dr. Daniel Green with a left ACL tear. He along with another surgeon, they performed an ACL reconstruction on 4/11/17. Approximately 2 years after the surgery, the patient was diagnosed with flexion contracture and limb length discrepancy that was treated with multiple surgical procedures performed by another provider. Patient alleged disruption of growth plate during ACL repair causing limb length discrepancy.

4/27/2022 - *Anthony Weiss v. Daniel Green, MD, Frank Cordasco, MD, and HSS- Patient*, 10-year-old male presented to Dr. Daniel Green with ACL tear. On 6/4/14, Dr. Green along with another surgeon performed a right all epiphyseal ACL reconstruction. Approximately two years postoperatively, patient reported limb length discrepancy with valgus and flexion deformity. Plaintiff transferred care to another surgeon and underwent multiple procedures to correct the deformity. Patient alleged disruption of growth plate during ACL repair causing limb length discrepancy.

Dismissed or Settled:

12/23/2005 - *Elena Mendez-Rico v. Daniel Green, MD, Et Al.* Premature infant twin (400g at birth) with cerebral palsy, developed IV infiltrate that affected the femur – dismissed.

**Lawrence Gulotta:** Graduate of Harvard Medical College in 2003. Residency was completed at the Hospital for Special Surgery in 2009; followed by two (2) fellowships completed in 2007 for science research and in 2010 for shoulder surgery. Dr. Gulotta is licensed in NY through 12/2025.

Current employment is with Hospital for Special surgery since 2010 as an assistant attending orthopedic surgeon then as an attending since 2018.

Interest/Ownership – Manhattan ASC from 2015. (2.98%)

Legal disclosure:

7/12/2016 SMITH, NICHOLAS v. GULOTTA, LAWRENCE, M.D., & HSS - POOR OUTCOME – SHOULDER Settled Dr. Gulotta and HSS

11/10/2014 GILLOOLEY, VIRGINIA, V. GULOTTA, LAWRENCE, M.D., & HSS – poor outcome – shoulder – Settled HSS

**Steven Haas:** completed a Doctor of Medicine at the University of Rochester School of Medicine in 1985 and is licensed to practice in New York State through 3/2025. Dr. Haas also received a Master of Public Health from the University of Rochester School of Medicine in 1985. Completed residency in orthopedic surgery in 1991.

Dr. Haas has been an Assistant Scientist in the Research Division at the Hospital for Special Surgery since 1991 and a Professor of Clinical Orthopedics at Weill Medical College since 2010. Dr. Haas an Associate Attending Orthopedic Surgeon since 1991 at Hospital for Special Surgery. Dr. Haas became Chief of Knee Service as well at the Hospital for Special Surgery in 2006.

Dr. Steven Haas disclosed after DOH inquiry:

11/06/2018 - *Janet Karanavich-Dono v. Steven Haas, MD, Steven Haas, MD, PC and HSS.* The patient underwent right total knee replacement with Dr. Haas on 5/16/12 and left total knee replacement on 6/13/16. The patient claimed that knee replacements were improperly performed as she experienced pain. She underwent revisions with outside providers. Claimed related to the right knee were dismissed as time barred. **Case Dismissed.**

9/12/2018 -*Jonathan Durst v. Steven Haas, MD, Steven Haas, MD, PC and HSS.* Patient, 62-year-old male, with a history including left knee meniscectomy, underwent left total knee replacement on 10/7/15 with Dr. Haas that required 2 stage revision that was further complicated by a failed patellar component/patellar fracture and heterotopic ossification. The patient claims knee replacement was improperly performed and has negatively affected his quality of life. **Case ongoing.**

Dismissed or Settled:

12/09/2015 – *Maureen Eagan, v. Steven Haas, M.D., John Lyden, MD, Et Al* - Patient, sought treatment with Dr. Haas after poor outcome following left total knee replacement by another provider. On 3/7/11, Dr. Haas performed revision surgery that required manipulation under anesthesia without improvement in pain and stiffness. Patient claimed Dr. Haas improperly performed revision surgery as there was no notable improvement. Dr. Haas was discontinued.

11/12/2015 - *Janis Altman v. Steven Haas, MD, Steven Haas, MD, PC and HSS* - Patient underwent left total knee replacement on 5/12/09, for severe knee pain with Dr. Haas. Postoperatively the sought treatment with pain management and claimed it was directly related to the knee replacement surgery. Dr. Haas was discontinued from the matter.

**\*\*\*Russell Hutchinson:** Most recently graduated from the University of Chicago in 2001 with a Master of Business Administration. Russell Hutchinson worked in the financial industry for 25 years. Employment history includes Chief Strategy Officer for Goldman Sachs since 2001 and became director in 2008 and a partner in 2016.

Russell Hutchinson discloses that he is Director from 2021 for the Hospital for Special Surgery.

**Russel Huang:** Education includes graduation from Yale School of Medicine in 1998. Dr. Huang went on to residency at Hospital for Special Surgery and graduated in 2003 followed by a fellowship at Case Western Reserve University completed in 2024. Licensed in NY through 2/2025: CT through 3/2024.

Legal Disclosure:

8/18/2023 – MONTEFORTE, LEONARD AND LISA MONTEFORTE V. JAMES FARMER, MD, RUSSEL HUANG, MD, KEITH LYONS, MD, MITCHELL FOURMAN, MD, LEAH PERINE, RN, MARIA PARSUDIAL, RN, AND HSS - This matter involves a 58-year-old male who presented with signs of cervical myelopathy. On 5/5/22, plaintiff underwent a posterior cervical laminectomy and decompression. On post-op day one, plaintiff experienced new onset bilateral upper and lower extremity sensory and motor loss. MRI showed fluid collection and Dr. Huang brought plaintiff to the OR for evacuation of a seroma. Plaintiff was discharged to rehab and progressed slowly. Ongoing.

4/7/2015 - SIMMONS, ROBIN V. HSS AND RUSSEL HUANG, MD - 53-Year-old female presented to HSS Clinic on 8/8/2012 with progressive and severe myelopathy affecting upper and lower extremities. Patient underwent a cervical/thoracic posterior fusion on 8/10/12, performed by Dr. Huang resulting in post op infection. Dismissed.

**Sravisht Iyer:** is a licensed physician in the state of New York, New Jersey, and Connecticut. Dr. Iyer received medical credentials from Harvard Medical School in 2011. Dr. Iyer completed a residency at Hospital for Special Surgery in Orthopedics in 2017. Dr. Iyer remained at the Hospital for Special Surgery as an Attending Surgeon from 2018 to this present day.

Disclosed after DOH Inquiry:

Dr. Iyer was named in three infractions. *QUYNH MADANS AS ADMINISTRATOR OF THE ESTATE OF JEFFREY MADANS AND QUYNH MADANS, INDIVIDUALLY V. HSS, SRAVISHT IYER, MD, NEW YORK PRESBYTERIAN HEALTHCARE SYSTEM, INC., KATHARIN ROONEY, MD, CHARLES MALTZ, PHD., MD, TRANG M. BUI, MD, MILI SHUM, MD, BRIAN LYONS, PA, AND CAMERON NICHOLSON, PA.* This matter involves the 63-year-old male who presented to Dr. Iyer with left sided low back pain. He had a history of constipation and postoperative ileus. On 6/25/21, Dr. Iyer performed a left L4-L5 XLIF via right sided approach, without any documented complications. During the postoperative period, the patient reported abdominal distension and discomfort that progressed. On 6/27/21 the patient decompensation and was transferred to the OSCU, then NYPH where he underwent colon resection. Patient died at NYPH on 6/28/21. **Case ongoing.**

*KUCZYNSKI, ROBERT v. SHARIF. H. ELLLOZY, MD, SRAVISHT IYER, MD AND HSS* This matter involves the care and treatment of a 74-year-old male who presented to Dr. Iyer on 12/17/19 with complaints of L leg pain. Dr. Iyer in concert with another physician performed an anterior lumbar interbody fusion L5- S1 with posterior instrumentation on 2/20/2020. Intraoperatively, the patient suffered a left iliac vein injury that resulted in asystole/PEA with return to NSR within 30 seconds after initiation of full ACLS protocol. The patient lost 25-30 L of blood that required massive transfusion PRBCs, cell saver, FFP, platelets and cryo. He was then transferred to the SICU at NYP for further management. The patient was readmitted to HSS on 2/29/2020 and discharged home. **VASCULAR INJURY - S/P SPINE. Case ongoing.**

*FANNERON, JOHN V. TODD ALBERT, MD ET. AL.* Unintentionally retained surgical sponge during cervical discectomy/fusion in 56-year-old; surgery to remove **RETAINED FOREIGN BODY.** Settled for \$250,000 by HSS.

**Seth Jerabek:** Obtained a Medical degree from the University of Michigan Medical School in 2005. Residency at Harvard Combined Orthopedic Surgery followed by two (2) fellowships from Hospital for Special Surgery and Massachusetts General Hospital completed in 2012. Currently licensed in NY through 6/2025.

Employment history is from Hospital for Special Surgery as an attending surgeon from 2012-2014. Followed by Personal LLC Company Seth Jerabek MD PC from 2014 to present. Working as an attending surgeon.

Legal disclosure – Dismissed/Settled:

9/6/2016 - *Eliud Nieves v. Amar Ranawat, MD, Seth Jerabek, MD, and HSS* - This litigation involves a complex course of multiple knee revision arthroplasties, dislocations, infection and ultimate above the knee amputation in a 54-year-old male following total knee replacement surgery performed at outside hospital. Patients postoperative course was complicated by intermittent imprisonment that caused delay in treatment and follow up surgery. Patient claimed that amputation was related to the surgeries performed at HSS. Matter was dismissed after death of the patient. Dismissed

02/02/2018 - *Ozra Abbassi v. Seth Jerabek, MD, HSS, Raymond Gutierrez And Visiting Nurse Service Of New York* - Patient, 75-year-old female, underwent left total knee replacement by Dr. Jerabek on 5/18/16 without complication. During home physical therapy session with non-HSS physical therapist on 6/3/16 she sustained a quadriceps tendon rupture that required surgical repair. Course was complicated by infection that required multiple procedures. Plaintiff made very slow progress and required knee brace thereafter. Matter discontinued as exercises recommended by physical therapist were not appropriate following total knee replacement. Discontinued.

**Ann Holly Johnson:** Dr. Johnson graduated from the University of Chicago in 2001 and is registered as a physician in NY through 3/2025, CT through 4/2024, and CT through 4/2024. Dr. Johnson served an internship at New York Presbyterian Hospital Weill Cornell Medical College, and a residency followed by a fellowship in foot and ankle surgery at Hospital for Special Surgery Weill Cornell Medical College.

Dr. Johnson holds an assistant professor in orthopedic surgery instructor at Weill Cornell Medical College since 2018. Hospital appointments include Assistant Attending of Orthopedic Surgery at Hospital for Special Surgery since 3/2018; and orthopedic foot and ankle surgeon Massachusetts General Hospital from 12/2008 – 11/2018

Legal Disclosure: Open Cases.

5/4/2021 - *Heripsime Ohanian v. Anne H. Johnson, MD, Eugene A. Goytizolo, MD, Dakota Ward, CRNA, James D. Beckman, MD, Hospital for Special Surgery, East River Medical Associates, PC, and Hospital for Special Surgery Ambulatory Surgery Center of Manhattan, LLC* - Patient, 69-year-old female physician, presented to Dr. Johnson for treatment of bilateral bunions. on 7/2/2020, she underwent right bunionectomy/correction of hammertoes and left bunionectomy, second hammertoe correction on 12/23/2020. Patient reported low back/right lower extremity pain and numbness/tingling to right foot following the first surgery with escalating complaints during recovery. Patient was diagnosed with mild neuropraxia in the distribution of the right sciatic nerve, which patient claimed was due to anesthesia surgical technique.

**Warren Kanders:** Graduated in 1979 from Brown University in RI with a bachelor's degree in economics. Employment history as President of Kanders & Company, Inc since 1990.

Interest/ownership – since 2012 Warren Kanders served as the CEO and member of the Board of Directors of Cadre Holdings, Inc. Also, HSS Director for Hospital for special surgery on the Board of Trustees.

**Lana Kang:** Education is graduation from University of CA San Francisco in 1998 followed by residency and most recent fellowship at Hospital for Special Surgery in 2005 for surgery. Currently licensed in NY through 4/2024.

Current employment is at Lana Kang MD PC since 2000 self-employed orthopedic hand surgery and at the Hospital For Special Surgery since 2005 as Attending surgeon.

**Scott Kapnick:** graduated from the University of Chicago Law School and Business School with an MBA degree. Currently employed with HPS Investment Partners, LLC since 2007 as Chief Executive Officer.

Interest/ownership disclosure: Director on Board of Trustees for Hospital for special surgery.

**Monica Keany:** Graduated in 1998 from Harvard Business School with a master's in business administration. Monica Keany retired from Morgan Stanley in 2010 after holding the position of managing director and continues to hold a position on the board of organizations.

Monica Keany currently serves on the Board of Trustees for the Hospital for Special Surgery as HSS Director.

**Bryan Kelly:** Graduate of Duke University in 1996 with a medical degree and from NYU STEM in 2019 with a master's in business administration. Currently licensed in NY through 11/24; NJ through 6/25; FL through 1/25; and CT through 12/2024.

Dr. Kelly is currently The President and CEO of the Hospital for Special Surgery since 2001. Dr. Kelly also currently holds the position of attending Orthopedic Surgeon at the Hospital for Special Surgery since 2016, and as an associate professor at New York Presbyterian College, Weill Cornell. Dr. Kelly is the Co-director for the Center for Hip Preservation and the assistant scientist on the clinical track for the Hospital for Special Surgery.

Ownership/Interest – HSS Director since 2019 on the Board of Trustees for the Hospital for Special Surgery. HSS ASC of Manhattan since 2014 (HSS owns 52%) Dr. Kelly is one of the managers. HSS West Side ASC, LLC since 2016 (HSS owns 62%) Dr. Kelly is one of the managers. HSS-Florida Physicians, LLC, West Palm Beach since 2018 (HSS owns 51%). HSS Florida Physicians, LLC Wellington since 2018 (HSS owns 51%). HSS Palm Beach Ambulatory Surgery Center, LLC (HSS owns 42.14%). HSS Paramus Outpatient Center since 2014 (HSS owns 100%).

**Han Jo Kim:** Dr. Kim graduated in 2006 from Columbia University. Dr. Kim is registered as a Physician in NY through 4/2025 and was registered in MO through 2014. Residency was completed at Hospital for Special Surgery in 2011 followed by a fellowship completed in 2012. Dr. Kim had a private business from 2012-2018 and worked at HJK Spinal Innovations, LLC from 2012- present. Dr. Kim has also been working at the Hospital for Special Surgery since 2022 as an attending surgeon.

#### Legal Disclosures:

11/02/2020 - *Nicholas Desilvio v. Han Jo Kim, MD, Et Al* - Patient, 37-year-old male, with history of 4 scoliosis surgeries, presented to Dr. Kim on 3/3/17 for evaluation of progressive neck and back pain. On 2/14/18, Dr. Kim performed revision surgery that was complicated by numbness and weakness of the left arm. He was diagnosed with left ulnar nerve neuropathy and underwent ulnar nerve transposition on 6/24/19. Patient alleges neurologic deficits were related to positioning during revision.

6/4/2019 - *Rana Prabhakar v. Han Jo Kim, MD, Et Al.* - Decedent, 82-year-old male, presented to Dr. Kim for chronic back pain. On 7/10/18, Dr. Kim performed an uncomplicated posterior lumbar fusion at L4-5. Post-operatively, the patient developed an ileus that progressed to a small bowel obstruction, and pancreatitis. Patient was transferred to another facility on 7/23/18 and was hospitalized for approximately one year, dying during the hospitalization. Patient alleged spine surgery was not indicated, which was contrary to decedent's clinical presentation.

7/3/2018 - *Daniel Moran v. Frank Schwab, MD, Andy Miller, MD, Han Jo Kim, MD, and HSS* - Patient, 66-year-old male, underwent bilateral laminoforaminotomy of the L2-L3, L3-L4 and L4-L5 and posterolateral fusion of L3-L4 and L4-L5 on 1/5/16. On 2/4/16, the distal portion of the wound opened, and he developed a post-operative wound infection, which initially resolved. On 6/12/16 the wound dehiscd and on 6/23/16 he underwent a I & D with Dr. Kim. He was treated for the infection and developed a non-union. Patient claimed improper management of the infection. Case was dismissed by motion as patient failed to obtain new counsel.

9/15/2017 - *Angelica Schwartz v. Kenton Fibel, MD, Et Al* - Pro se patient, 47-year-old female, presented to Dr. Han Jo Kim for bilateral upper extremity pain on 10/2/2015. Dr. Kim recommended cervical spine fusion which was completed on 10/6/2015. Plaintiff continued to have pain postoperatively. Plaintiff

alleged surgery was unnecessary and shoulder pain persisted. The case was dismissed via motion for failure to provide discovery.

**Irene Koch:** Graduated from Fordham Law School in 1989. Irene Koch is licensed as an attorney in NY through May 2024.

Irene Koch has worked as executive Vice President and Chief Legal Officer since 2015 for the Hospital for Special Surgery. Irene Koch is also employed since 2013 at Helthix, Inc. as Vice President and General Counsel. Prior to that, Irene worked at Brooklyn Health Information Exchange 2007-2013.

Interest/Ownership disclosure – voting manager since 2014 for the Hospital of Special Surgery ASC Manhattan. Irene Koch is a manager (HSS owns 52%). Also, Secretary since 2015 for the Hospital for Special Surgery.

**Sacha Lainovic:** Most recent education was graduation from Stanford University in 1981 with a Master of Business Administration. Sacha Lainovic has worked for Invus Financial Advisors, LLC since 2006 and is currently Managing Director.

Owner/Interest Disclosure: HSS Director Board of Trustees Hospital for Special Surgery.

**Laurie Lapeyre:** Received an MBA from New York University in 1985.

Laurie Lapeyre is a retiree since 2000. They along with their spouse are the new owners of the Upper Saranac Lake luxury resort property purchased February 2024.

Interest/Ownership: Director on Board of Trustees Hospital for Special Surgery.

**Darren Lebl:** Dr. Lebl graduated from Stanford University in 2005 with a medical degree. Dr. Lebl also received a master's in business administration from The Wharton School, The University of Pennsylvania in 2017. Dr. Lebl is registered in NY state through 6/2025. Dr. Lebl completed a residency from Harvard Orthopedic Surgery Residency program in 2010 followed by a fellowship in Spine and Scoliosis at the Hospital for Special Surgery completed in 2011.

Dr. Lebl currently holds three academic appointments, two at the Hospital for Special Surgery – One from 2019 as an Associate Attending Orthopedic Surgeon and the second as an Associate Scientist, Clinical Tract. Also, at New York Presbyterian Hospital Weill Cornell as associate professor of orthopedic surgery.

Legal Disclosure:

8/5/2019 - *Jonathan Klein v. Darren Lebl, MD, Darren Lebl, MD, PC and Hospital for Special Surgery* - Patient, 62-year-old married Ironworker, presented to Dr. Darren Lebl on 3/22/16 for complaints of radiating low back pain. On 7/13/16 Dr. Lebl performed a posterior fusion. Following the procedure, plaintiff continued to report radicular pain in the left lower extremity. Imaging taken on 2/6/17 showed that the L5 pedicle screw breached out of the bone, and he required revision surgery. Patient alleged improper placement of L5 screw which caused new radicular symptoms.

11/6/2020 - *Cirolli, George v. Darren Lebl, MD and HSS* - Patient, 48-year-old male with a history of lumbar (1988) and cervical spine surgery (2015) for congenital spinal stenosis, presented to Dr. Lebl for signs of myelopathy. On 6/18/18, Dr. Lebl performed T3-T4 and L2-S1 laminectomy and upon waking, patient reported the inability to move his lower extremities and he was brought back to the OR for exploration. postoperatively, patient reported persistent right sided foot drop.

**Gwo-Chin Lee:** Dr. Lee Graduated Baylor College of Medicine in 1998. Dr. Lee is registered in NY through 12/2025, PA through 12/2025 and NJ through 6/2024. Dr. Lee served a residency for orthopedic surgery completed in 2003, followed by a fellowship in adult reconstruction at Insall Scott Kelly Institute completed in 2004.

Dr. Lee currently holds an Assistant Professor of orthopedic surgery since 2022 at Weill Cornell Medical Center. Dr. Lee was Attending at Pennsylvania Hospital from 2007-2022 then from 4/2022 until present is an Attending physician at the Hospital for Special Surgery.

**Steve Lee:** Graduated with a Doctor of Medicine from Duke University School of Medicine in 1993 and is licensed to practice in New York State through 6/2025. Dr. Lee completed their residency at Yale Univ School of Medicine in 1998.

Dr. Lee is a professor at Dept of Orthopedic Surgery at Weill Cornell Medical College since 2020 and Research Director at the HSS Center for Brachial Plexus and Complex Nerve Injury since 2011. Dr. Lee is an Attending Orthopedic Surgeon at New York Presbyterian Hospital in New York, NY.

Interest/Ownership: Ownership in Manhattan ASC since 2015 Hospital for Special Surgery (2.98%)

Legal Disclosures: Infractions were disclosed after DOH inquiry.

*6/25/2015 STROHLEIN, KERSTIN V. HSS, STEVE LEE, MD AND SOUMEN DAS DE, MD.* Case alleged WRONG SITE, case resulted in \$112,500.00 paid on Dr. Lee's behalf.

*10/30/2015 JAIN, MOHIT V. STEVE LEE, MD, HSS, NYPH, AND SOUMITRA EACHEMPATI,* case alleged NERVE DAMAGE, case resulted in a dismissal.

*9/28/2016 Michael Elkin v. Steve K. Lee, MD, Jorge Roman, MD,* and New York University Hospital for Joint Diseases: Patient presented to Dr. Lee at NYU when he was on staff there. Complaint involves ongoing issues with upper extremity after surgery and delay in diagnosis of CRPS. Case resulted in Jury Defense Verdict, dismissed.

**Pablo Legorreta:** Graduated in 1985 from Univeridad Iberoamericana Ciudad de Mexico with a Bachelor of Arts degree in Industrial Engineering. Current employment is with Royalty Pharma since 1996 in the position of Founder and CEO. Buyer of biopharmaceutical royalties and funder of innovation across the biopharmaceutical industry.

Interest/Ownership: HSS Director Board of Trustees for Hospital for Special Surgery.

**Lara Lerner:** Education includes University of Pennsylvania and Wharton Business School where Bachelorettes degrees were obtained in 1992.

Lara Lerner retired in 1997. Has had 30 years of experience in the finance and design industries.

Lara Lerner is an HSS director on the Board of Trustees.

**Kathy Leventhal:** graduated with a bachelor's degree from TUFTS University in 1977. Kathy Leventhal retired in 1995. Prior employment history includes: 1994-1998 President of Lucky Lady Distributing Company managing operations for wholesale distributions enterprise, and 1983-1994 The Conde Nast Publications, Inc. in positions as sales development manager, sales manager, advertising director, Founding Publisher for Allure Magazine, and Publisher for Vanity Fair Magazine.

Kathy Leventhal discloses interest in the Hospital for Special Surgery on the Board of Trustees.

**Thomas Lister:** Graduated in 1991 from Harvard Business School with a master's in business administration. Currently employed at the Hospital for Special Surgery since 2011 as co-chairman of the Board.

Interest/Ownership – Board of Trinity (Undergrad College) Duke University since 2015; Member of the Board and Chair of Greens Committees at Deepdale Golf Club since 2017; Board member of HSS since 2011.

**William Long:** Graduate from University of Western Ontario in 2000 with a Doctor of Medicine. Completed residency in 2005 from Queen's University at Kingston. Followed by two (2) fellowships that



were completed in 2007. Most recently Dr. Long graduated from a Surgeon Leadership Program from Harvard in 2022. Currently licensed in NY through 03/2025.

Current employment is with the Hospital for Special Surgery from 2021. Prior to that Dr. Long worked from 2007-2021 for Insall Scott Kelly Institute for Orthopedics and Sports Medicine as an attending orthopedic surgeon.

Dr. Long discloses ownership from 2014-222 in Midtown Surgery Center of two (2) shares. East Hills Surgery Center from 2017-2021 for 1.89 shares. Present ownership in Surgicare of Westside.

Legal disclosures (after DOH inquiry): Open Cases:

8/8/2018 - *Margaret Frasca against St. Francis Hospital, William Long, MD, et al* - Decedent, 66-year-old female, underwent left total hip replacement with Dr. Long. The CRNA during the procedure was unable to administer spinal anesthesia and general was used. Postoperatively, decedent experienced progressive left sided weakness and was diagnosed with epidural hematoma that required surgical decompression.

Settled/Dismissed:

8/29/2014 - *Virginia Reath vs. William J. Long, M.D., et al*- Patient, 60-year-old female underwent bilateral total knee replacement surgery with Dr. Long. Patient alleged that the procedure was improperly performed as the patient developed valgus deformity and required revision surgery. Settled

Unknown - *Unknown vs. William J. Long, M.D.*- Patient, 43-year-old female, alleged the failure to properly perform left total hip replacement surgery resulting in need for revision surgery. Settled

2015 - *Patricia Pendola v. William J. Long, MD*-

2/27/2017 - *Costas Theodorou v. William J. Long, MD and Insall Scott Kelly Orthopedics* - Order to Show Cause/Petition regarding request for copy of medical records; Order signed 8/16/2018 – Dismissed.

**Patrice Louvet:** Most recently graduated from the University of Illinois with a master's in business administration. Patrice Louvet is the current President and CEO of the Ralph Lauren Corporation since 2017. Prior experience is with Proctor & Gamble from 1989-2017 holding the Group President for P & G Beauty.

Patrice Lovet is a Hospital for Special Surgery Board of Trustees Director.

**Alan MacDonald:** Graduated with a Master of Science in Economics from the London School of Economics in 1968 and a PhD from Cambridge University in the United Kingdom in 1976.

Alan MacDonald is the Vice Chairman of CitiCorp, where he has been employed since 1974.

Interest/Ownership: HSS Directory Board of Trustees Hospital for Special Surgery.

**Suzanne Maher:** Graduated from Trinity College in Ireland in 2001 with a Ph.D. Competed fellowships in 2000 for Mechanical and Manufacturing Engineering 2002 from Trinity College in Dublin and Weill Cornell Medical College in 2002 for Biomechanics.

Currently holds positions as associate Scientist Department of Biomechanics Hospital for Special Surgery since 2011; Weill Cornell University as associate professor at the department of Surgery; Cornell University adjunct associate professor since 2011. Most recently became Chief Research Officer for the Hospital for Special Surgery.

Interest/Ownership: since 2023 HSS Director Board of Trustees Hospital for Special Surgery.

**Stacey Malakoff:** Most recently graduated from Washington University in 1985 with a Bachelor of Business Administration degree. Stacey Malakoff held a Certified Public Accountant license that was obtained in 1987 but is not currently active.

Stacey Malakoff has worked for the Hospital for Special Surgery since 1990 as the Chief Financial and Administrative officer.

Stacey Malakoff discloses ownership/interest in:

Hospital for Special Surgery of Manhattan - Management and Treasurer (HSS owns 52%)

Hospital for Special Surgery West Side ASC, LLC. – Management and Treasurer (HSS owns 62%)

Hospital for Special Surgery – Florida Physicians, LLC (West Palm Beach)– Management (HSS owns 51%)

Hospital for Special Surgery – Florida Physicians, LLC (Wellington) – Management (HSS owns 51%)

HSS Paramus Outpatient Center (HSS owns 100%)

Stanley Malakoff is on the Board of Trustees for the Hospital for Special Surgery as an HSS Director and has been treasurer since 1998.

**Robert Marx:** Graduated from McGill University in Canada Medical College in 1991, and from University of Toronto with a master's degree in Epidemiology in 1996. Dr. Marx served residency at the University of Toronto followed by a fellowship in sports medicine and shoulder service at NYP Cornell. Currently licensed in NY through 4/2025.

Current employment includes Attending Orthopedic Surgeon at Hospital for Special Surgery New York Presbyterian Hospital; Professor of Orthopedic Surgery, at Weill Medical College of Cornell University; Vice Chair of Orthopedic Surgery for Faculty Development, at Hospital for Special Surgery; Assistant Team Physician, New York Rangers Hockey; Head Orthopedic Consultant, Ultimate Fighting Championship; Head Orthopedic Consultant, The Juilliard School.

Interest/Ownership in Manhattan ASC since 2015 (2.98%)

Legal:

4/26/2016 - *ISACSSON, RAYMOND V. ROBERT MARX, MD*- POOR OUTCOME – KNEE SCOPE- \$200,000 PAID ON DR. MARX'S BEHALF.

**David Mayman:** Most recently graduated with a medical degree in 1998 from Queens University. Dr. Mayman is registered in NY through 8/2025, NJ through 6/2025, and CT through 9/2024. Dr. Mayman served a Residency through 2003 at Queens University and followed with fellowships at both Hospital for Special Surgery completed in 2004 and at Harvard University completed in 2005.

From 2205-2010 Dr. Mayman worked as an Attending Surgeon at the Hospital for Special Surgery then started a private business in 2010 until present as an Attending Surgeon at David Mayman, MD, PC.

Legal (not initially disclosed): Open:

8/2/2022 - *David Prina v. HSS and David Mayman, MD*- This suit involves a then 51-year-old male who presented to Dr. Mayman with right knee pain. On 12/17/2020 Dr. Mayman performed a right total knee replacement without complication. At approximately 4 weeks postop, plaintiff sustained a patellar fracture after buckling incident and he was placed in a brace to allow the patella to heal. Plaintiff developed pain and stiffness and required lysis of adhesion. Plaintiff sought treatment elsewhere and underwent revision at outside hospital. -Poor outcome knee

Dismissed/Settled:

5/3/2016 - *Maxine Martell vs. David J. Mayman, M.D. Alana Serota, MD, and HSS*- This litigation involves an alleged failure to properly diagnose and treat bilateral hip necrosis in a 58-year-old female. Plaintiff claims that more conservative measures should have been undertaken prior to performing hip replacement surgery. Dr. Mayman performed a left primary hip replacement on 10/18/13. Preoperatively, plaintiff was seen by Dr. Serota for metabolic bone assessment that concluded plaintiff had osteoporosis. At the sixth week postoperative evaluation, the femoral implant had sunk approximately 2-3 mm into the femoral canal with resultant limb length discrepancy. Plaintiff claims Dr. Mayman removed too much bone

from the acetabulum leaving her left leg 5 mm shorter than her right leg. This discrepancy has caused her much pain and due to her underlying osteoporosis, she claims she is not a candidate for revision surgery. POOR OUTCOME – HIP Settled - HSS

3/9/2019 - *Dorothy Green vs. David J. Mayman, M.D., Hollis Potter, MD, and HSS* - This litigation involves persistent pain and motion range limitation in a then 69-year-old female who underwent knee replacement by Dr. Mayman on 1/31/14. Postoperative course was marked by manipulation on 4/18/14 and lysis of adhesions on 10/10/14. Despite these measures, her complaints persisted. She consulted with non-party physicians, Dr. Boettner and Dr. Cross. Neither surgeon recommended surgery. Dr. Boettner administered steroid and anesthetic injection on 6/23/15 and thereafter, she underwent acupuncture which appears to have relieved her symptoms and improved her function. PAIN - S/P KNEE Dismissed.

9/1/2017 - *Richard Bonanno v. Andy Miller, MD, Peter Sculco, MD, Thomas Sculco, MD and HSS* - This litigation involves an alleged failure to properly perform total knee arthroplasty in a 74-year-old male on 11/14/14 resulting in further degeneration, fracture, infection, multiple left knee arthroscopies and revision surgeries through 2017.- POOR OUTCOME – KNEE Case Dismissed.

**Moira McCarthy:** Received a Medical degree in 2008 from Columbia University. Residency and fellowship at the Hospital for Special Surgery completed in 2014. Currently Licensed in NY through 11/24 and CT through 12/2024.

Dr. McCarthy is currently an instructor of orthopedic surgery at Weill Cornell since 2014. Other current employment is with the Hospital for Special Surgery since 2014 and Stamford Hospital since 2015.

**Alexander McLawhorn:** Dr. McLawhorn received a Medical Degree from Columbia University in 2010. Dr. McLawhorn is registered in NY through 7/2025 and in CT through 8/2024. Dr. McLawhorn served residency and fellowship at the Hospital for Special Surgery from 2010-2016.

Dr. McLawhorn was employed by the Hospital for Special Surgery as an orthopedic surgeon from 2016-2018. Then started a private practice at the Hospital for Special Surgery from 2018 – present.

**Celene Menschel:** Graduated from Harvard Business School in 2013 with an MBA degree. Currently employed at Trenchcoat Advisors, LLC as COO and partner since 2022. Prior employment is with Six Trees Capital as COO since 2021, as Head of Operations prior to 2019, and VP of Operations from 2017. Celene Menschel also worked at Godman Sachs & co. in 2016 and 2017; and at Associate, Consumer Retail Healthcare Group from 2013-2016.

Interest/Ownership disclosure HSS Director on Board of Trustees for Hospital for Special Surgery.

**Andy Miller:** Dr. Miller graduated from Harvard Medical in 2001. He is currently licensed in FL through 01/25, NJ through 6/25, CT through 6/24, and NY (medical telehealth) through 5/25. Dr. Miller completed a residency in 2004 at Columbia-Presbyterian Medical Center followed by a Fellowship at NYU School of Medicine completed in 2006.

Dr. Miller is currently working as an Associate professor of clinical medicine at Weill Cornell since 2018. Dr. Miller is also an Associate Attending physician at the hospital for special surgery since 2018 and an Assistant attending physician at NY Presbyterian Hospital Weill Cornell since 2010. He also is Chief, Division of Infectious Diseases at the Hospital for Special Surgery since 2021.

Dr. Miller discloses that he is on the Board of Trustees at Hospital for Special Surgery.

Lawsuits: 9/1/2017 - *Richard Bonanno v. Andy Miller, MD, Peter Sculco, MD, Thomas Sculco, MD and HSS* - This litigation involves an alleged failure to properly perform total knee arthroplasty in a 74-year-old male on 11/14/14 resulting in further degeneration, fracture, infection, multiple left knee arthroscopies and revision surgeries through 2017.- POOR OUTCOME – KNEE Case Dismissed.

7/3/2018 - Daniel Moran v. Frank Schwab, MD, Andy Miller, MD, Han Jo Kim, MD, and HSS - Patient, 66-year-old male, underwent bilateral laminoforaminotomy of the L2-L3, L3-L4 and L4-L5 and posterolateral fusion of L3-L4 and L4-L5 on 1/5/16. On 2/4/16, the distal portion of the wound opened, and he developed a post-operative wound infection, which initially resolved. On 6/12/16 the wound dehisced and on 6/23/16 he underwent an I & D with Dr. Kim. He was treated for the infection and developed a non-union. Patient claimed improper management of the infection. The case was dismissed by motion as the patient failed to obtain new counsel.

9/1/2017 - Richard H. Bonanno and Phyllis L Bonanno against David Mayman, M.D., Andy Miller, M.D., Peter Sculco, M.D., Thomas Sculco, M.D., and Hospital for Special Surgery - Pro se patient, 74-year-old male, underwent total knee replacement with Dr. Mayman on 11/14/14. The patient alleges that the surgery caused further degeneration, fracture and infection that required additional surgeries, including those performed by Dr. Sculco. Matter was dismissed via motion for failure to properly oppose summary judgment motion. Dismissed.

**Sarah Nash:** Graduated in 1974 from Vassar College with an associate degree. Sarah Nash is currently employed since 2018 as owner and CEO of Novagard Solutions, Inc. Sarah Nash is also employed at HBD Industries as board director since 2013, Bath & Body Works as Board Director and Board chair. Past employment included Irving Oil from 2012-2022.

Ownership/Interest disclosures – Director for the Hospital for Special Surgery since 4/2023. Director for The New York and Presbyterian Hospital on the Board of Trustees.

Lawsuits: Nancy Lambrech alleged company failure for oversight creating a “Culture of misogyny, bullying, and harassment. Ties to Jeffrey Epstein and other alleged mismanagement. The case settled in 2022.

**Mary Kathryn Navab:** Graduated from Southern Methodist University with a bachelor’s degree in 1986. Mary Navab is an investor. Mary Navab is a long-standing supporter of HSS and is actively involved in many philanthropic, educational, community, and national organizations.

Interest/Ownership: HSS Director, Board of Trustees of Hospital for Special Surgery

**Danyal Nawabi:** Graduated in 2000 from Oxford University with a medical degree. Licensed in NY through 7/2025. Present employment with the Hospital for Special Surgery since 2011 as an attending orthopedic surgeon.

**Gabriella Ode:** Graduated from Rush Medical College in 2012. Completed residency in 2018 from Atrium Health Carolinas Medical Center. Followed with Fellowships at the Hospital for Special Surgery; CHP Ste. Gregoire/Institut Locomoteur de l’Ouest; Centre Orthopedique Sante; Nice Shoulder Institute in France in 2019. Current licensure in NY through 8/2025 and SC through 6/2025.

Current employment is with the Hospital for Special Surgery Sports Medicine Institute as an assistant attending physician and Associate Fellowship director from 2022. Weill Cornell Medical College as assistant Clinical professor from 2022. Prior employment from 2019 -2022 at the Department of Orthopedic Surgery Prisma Health – upstate.

**Martin O’Malley:** Graduated in 1986 from Case Medical in Ohio. Residency was completed in 1992 from Tufts University followed by a fellowship completed in 1993 from Hospital for Special Surgery. Dr. O’Malley is licensed in NY through 12/2024 and had held a license in CT but not at this time.

Current employment is Associate attending surgeon at New York Presbyterian Hospital since 2002 and Associate attending orthopedic surgeon at the Hospital for Special Surgery since 2002.

Ownership and Interests – Surgicore Manhattan ASC since 2021 and HSS West Side ASC since 2022.

Legal disclosures: Open Cases

11/30/2021 - *Scott Ellis against Martin J. O'Malley, M.D., Foot & Ankle Orthopedic Surgery, PC and The Hospital for Special Surgery* - Patient, 48-year-old male, presented to Dr. O'Malley with sudden onset Achilles tendon rupture. Dr. O'Malley performed a tendon repair on 5/2/19 with sciatic nerve block. Postoperatively, EMG confirmed right sural sensory and right superficial nerve neuropathy. Patient alleges nerve injury related to surgical repair.

9/21/2022 - *Laura Bryant and Harry Bryant against Martin O'Malley and Hospital for Special Surgery, M.D* - Patient, 59-year-old female, with history of DVT after prior foot surgery, presented to Dr. O'Malley with complaints of left Achilles tendon pain. Repair was performed on 8/12/2020 and she was diagnosed with DVT and PE. Patient claims she was discharged on the improper anticoagulation given her medical history.

11/12/2020 - *Kate Shevack and Brett Shevack against Martin J. O'Malley, M.D., Foot & Ankle Orthopaedic Surgery, PC, James Davies, M.D., and Hospital for Special Surgery* - Patient, 52-year-old female, sustained right ankle fracture while skiing, which was initially treated conservatively. Due to nonunion, she underwent surgical repair that was complicated by pain and 2 additional surgery. She self-referred to Dr. O'Malley who performed right ankle debridement with Achilles lengthening that was complicated by tibial nerve laceration. She underwent tibial nerve neuroplasty and nerve wrapping. Patient alleges the improper performance of surgery resulting in nerve injury.

**Justin Oppenheimer:** Graduated from Harvard Business School with a master's in business administration in 2013. Current employment at the Hospital for Special Surgery from 2013 until present.

Interest/ownership interest: HSS ASC of Manhattan since 2021, (HSS owns 52%) Justin is a manager and vice president; Manager and Vice President at Hospital of Special Surgery from 2016 (HSS owns 62%); Manager of HSS – Florida Physicians, LLC since 2018 (HSS owns 51%); Manager of HSS Palm Beach Ambulatory Surgery Center, LLC since 2016 (HSS owns 42.14%).

**Daniel Osei:** Dr. Osei received a Medical Doctorate from the University of Pennsylvania in 2006 and a Master of Sciences from Washington University in 2014. Dr. Osei is licensed in the states of New York through 8/2024, New Jersey through 6/2025, and Missouri through 01/2025.

Dr. Osei is an Associate Attending Orthopedic Surgeon at the Hospital for Special Surgery and New York Presbyterian. He is also an Associate Professor of Orthopedic Surgery at Weill Cornell Medical College.

**Terence O'Toole:** Graduate of Stanford University for MBA in 1983. Currently self-employed from 2020. Prior employment at Tincum Incorporated. Working as a Co-managing member from 2006-2020.

Interest/Ownership – Terence O'Toole discloses that he is on the Board of Trustees at Hospital for Special Surgery.

**Douglas Padgett:** received an education at New York Medical College in 1982. Dr. Padgett is licensed to practice medicine in New York through 6/2024 and Florida through 1/2026.

Dr. Padgett is the Surgeon in Chief, Medical Director, and Korein-Wilson Chair of Hospital for Special Surgery since 2023. Previously, he was HSS' Chief of Adult Reconstruction and Joint Replacement Service since 2008. Dr. Padgett is also a Professor of Orthopedic Surgery at Weill Medical College of Cornell University since 2021.

Dr Padgett is the HSS Director Board of Trustees at the Hospital for Special Surgery

**Michael Parks:** completed their medical training at the Medical University of South Carolina in 1990. Dr. Parks has been previously licensed in both New York and New Jersey but is currently eligible to practice in New York through 7/2025.

Presently, Dr. Parks is an Attending Orthopedic Surgeon at the Hospital for Special Surgery since 2008. They also are an Associate Professor of Clinical Orthopedic Surgery at Weill Cornell School of Medicine since 2020.

**Andrew Pearle:** Graduated from Stanford University in 1998 with a medical degree. Residency and Fellowship at the Hospital for Special Surgery completed in 2005. Currently licensed in NY through 11/2024.

Currently working at the Hospital for Special Surgery as an attending orthopedic surgeon and at Weill Cornell Medical College as a professor of orthopedic surgery since 2005.

Interest/Ownership: 2015 – present ownership in Manhattan ASC (2.98%)

*Dora Ortiz v. Andrew Pearle, MD, et al. - Index No. 00026725/2008.* Patient underwent total knee replacement on 8/28/06. Subsequently the patient complained of leg length discrepancy. Disposition: Settled on 6/2/11 for \$300,000 - MD Share \$0.00.

**Matthew Peltz:** Graduated from Yale University in 2006 with a bachelor's degree in Classical civilization. Current employment is with Trian's Investment Team since 2008 as a partner and named Co-Chief investment officer in 2023.

Ownership/Interest: Director on Board of Trustees at Hospital for Special Surgery.

**Sheeraz Qureshi:** Graduated in 2002 from Tufts University Medical School in Boston. Completed residency in 2007 from Mount Sinai Hospital and a fellowship from University Hospital Case Western in 2008. And a second fellowship at Multiple national and international institutions was completed in 2008. Currently licensed in NY through 10/24 and NH through 6/25.

Employment at Spine Surgeon at Hackensack University Medical Center 12/10-Current; Spine Surgeon Hudson Crossing Surgery Center 12/2010-Current; Spine Surgeon Hospital for Special Surgery 04/17-Current; Spine Surgeon Department New York Presbyterian Hospital Weill Cornell Medical Center 10/17-Current. Associate Professor Orthopedic Surgery Weill Cornell from 2017-current; Spine service research Director for Hospital for Special Surgery 2020-current.

Legal Disclosure: Open

11/27/2023 - *Maria Safuto v. Ram Kiran Alluri, MD, Todd Albert, MD, Sheeraz Qureshi, MD, and Hospital for Special Surgery* - Patient, 36-year-old female with a history significant for low back pain and sciatica, who underwent anterior lumbar decompression L5-S1 on 6/14/21 that was complicated by cauda equina and findings of hemorrhagic arachnoiditis. Patient returned to the operating room and underwent lumbar decompression L5-S1 with Dr. Qureshi on 6/17/21. Patient regained bowel/bladder control with numbness to perineum and right lower extremity paresthesia. The post-operative course was complicated by low back radicular pain and cramping requiring readmission for revision decompression on 1/25/22.

5/3/2019 - *Gurpreet Singh Walia v. Sheeraz Qureshi, MD, The Mount Sinai Hospital, The Mount Sinai Medical Center, Inc. The Spine Center at the Mount Sinai Hospital and Mount Sinai Doctors Faculty Practice* - Plaintiff underwent a posterior lumbar decompression with L5S1 implant, interbody fusion, and instrumentation on 7/1/2016; plaintiff underwent revision of decompression at L5S1 on 1/9/2017; Plaintiff alleges improper performance of surgery and placement of hardware.

6/13/2017 - *Zachary Bagdon v. Sheeraz Qureshi, MD, Mount Sinai Hospital, Andrew Hecht, MD, and Nomaan Asraf, MD* - Plaintiff alleges improper performance of posterior costotransversectomy at T7-8 with access to the disk at T7-8 to excise the disk and then thoracic laminectomy of T7 and then thoracic laminectomy of T8 for addressing central and lateral recess stenosis followed by posterior thoracic fusion at T7-T8 with pedicle screw instrumentation and local autograft bone at T7-T8 use of operating microscope for thoracic spine surgery.

Settled/Dismissed

9/25/2019 - *Robert Mann and Orly Cogan against Sheeraz Qureshi, M.D. and Hospital for Special Surgery* - Patient, 63-year-old male, underwent posterior lumbar decompression surgery with Dr. Qureshi on 1/2/2020 for low back pain that was complicated by new onset left lower extremity pain that required

revision surgery on 2/7/2020. After the revision, patient reported new onset right leg pain. Patient claims the initial surgery was improperly performed which caused further injury. Settled

9/17/2019 - *Samuel Fineman and Nyla Carleton Fineman against Sheeraz Qureshi, M.D., Hospital for Special Surgery, Ronald MacKenzie, M.D., David Lefkowitz, M.D., Elaine Yang, M.D. and Brandon Carlson, M.D.* - Plaintiff, a 70-year-old male, with a complicated cardiac history presented to Dr. Qureshi with low back pain secondary. After clearance with his outside cardiologist, Dr. Qureshi performed fusion of L2-L5. Following the surgery, patient sustained myocardial infarction and stroke and developed lower extremity weakness. Patient alleged excessive blood loss during surgery caused MI and neurologic injury. Settled

3/27/2017 - *Jose Parades v. Sheeraz Qureshi, MD* - Patient underwent Grade 1 anterior listhesis of L5-S1 with complete disc space collapse and posterior instrumentation; Plaintiff had to undergo a second surgery to remove herniated disc, inflamed tissues, bone spurs, epidural scars and perinerve scars, hypertrophy of foraminal ligaments and facets under direct vision. Dismissed.

**Amar Ranawat:** Graduation from WCMC in 1996. Completed residency in 2001 from Hospital for Special Surgery and followed with fellowship completed in 2002. Licensed in NY through 10/31/2025.

Employment at Lenox Hill Hospital from 2002-2008 as attending surgeon and current position as attending surgeon since 2008.

Legal disclosure: (disclosed after DOH inquiry). Open

12/13/2022 - *Bushra Sheikh against Amar Ranawat, M.D., and Hospital for Special Surgery* - This matter involves a then 63-year-old female who presented to Dr. Ranawat for bilateral knee pain. On 11/5/19, Dr. Ranawat performed bilateral total knee replacements without complication. In September of 2020, plaintiff noted drainage from the right knee and was diagnosed with a fungal joint infection. After consulting with Dr. Henry, on 9/29/2020, Dr. Ranawat performed a DAIR procedure. Subsequent cultures showed continued infection and after transferring her care to Dr. Carli, she underwent a two-stage revision. Plaintiff is currently doing well and is off antifungal medication.

Settled/Dismissed

7/19/2017 - *Young Ae Sun and Bong K. Sun against The Hospital for Special Surgery, Amar Ranawat, Sherwin Leu Su, and Jae Suk Choi* - This case involves a 76-year-old female who underwent a left TKR performed by Dr. Amar Ranawat on 4/15/16. Post operatively, the patient did not use call bell as instructed (in Korean) and apparently got OOB on 4/16/16 without use of walker. Patient recalled having lost her balance and attempted to brace her fall with right hand and subsequently fell on same, resulting in right distal radius/ulnar styloid fracture requiring additional surgery performed by Dr. Daluiski on 4/19/16 for repair of same. Settled

5/12/2017 - *Kathleen Farrey against Amar Ranawat, M.D., Scott Nodzo, M.D., David H. Kim, M.D., and Hospital for Special Surgery* - This case involves a 54-year-old, achondroplastic, scoliotic and spinal stenotic, female who developed acute cauda equina syndrome, bilateral lower extremity weakness/numbness, and disability s/p revision left total hip replacement. Settled

**Anil Ranawat:** Graduated from Cornell Medical College in 2001. Dr. Ranawat served residency at Hospital for Special Surgery and graduated in 2006, then went on for two (2) fellowships one at the University of Pittsburgh for surgery completed in 2007 and the second at Lenox Hill Hospital and Schulthess Klinik completed in 2008. Since that time Dr. Ranawat has worked at The Hospital for Special Surgery as an attending surgeon. Dr. Ranawat is currently licensed in NY through 01/2026, and NJ through 06/2025.

Dr. Ranawat discloses ownership of Manhattan ASC since 2015. (0.99%)

Legal Disclosure:

7/2/2015 - SZATKOWSKI, KRISTINA V. STEPHEN HARRIS, MD, ANIL RANAWAT, MD, KATHRYN DELPIZZO, MD, & HSS - NERVE DAMAGE - S/P KNEE – Settled.

**Steven Rattner:** graduated from Brown University in 1974 with a Bachelor of Science in Economics.

Steven is the Chairman and CEO of Willett Advisors LLC, an investment managing firm since 2012.

Interest/Ownership: HSS Director, Board of Trustees – Hospital for Special Surgery.

**Scott Rechler:** Most recent education is a Master of Science in Real Estate from NYU Schack Institute in 1990. From 1989 until present, he has worked as the Chairman and CEO of Reckson Associates in commercial real estate.

Scott Rechler discloses Board of Trustee Director for Hospital of Special Surgery.

**William Ricci:** Graduated from Duke School of Medicine in 1992. Dr. Ricci is currently licensed in NY through 2/2025; had licenses in MO, FL, and IL but is currently expired.

Current employment at Hospital for Special Surgery Chief Orthopedic trauma service; Weill Cornell Medical College; NYP Deputy Chief Orthopedics.

**Martin Roche:** Dr. Roche earned a medical degree at the National University of Ireland, Cork Medical College in 1990. Dr. Roche completed their residency at the Jackson Memorial Hospital, Florida in 1996 specializing in orthopedic surgery. Currently licensed in FL through 01/2026.

Currently employed at the Holy Cross Orthopedic Institute since 1996 in Ft. Lauderdale, FL.

**Scott Rodeo:** received a medical education from Cornell University in 1989. Dr. Rodeo completed a residency in orthopedic surgery at the Hospital for Special Surgery in 1994. Dr. Rodeo is licensed in the state of New York through 4/2024, New Jersey through 6/2025, and Connecticut through 5/2024.

Current employment as an attending surgeon at the Hospital for Special Surgery since 1996.

Legal Disclosure (disclosed after request from DOH): 12/12/2020 *Joseph Dillon and Rachel Dillon against Scott Rodeo, M.D., Kenneth Lin, M.D., Joseph Lamplot, M.D., Theodore T. Miller, M.D., Carolyn Sofka, M.D. and Hospital for Special Surgery, New York State Supreme Court, (805375/2022)*. Patient, 53-year-old male, presented to Dr. Rodeo and other HSS providers for right knee pain. Dr. Rodeo completed a right total knee replacement on 6/5/2020 that required manipulation due to pain and stiffness postoperatively. Patient was diagnosed with **Complex Regional Pain Syndrome** Type 1. Patient underwent right knee revision outside HSS. Patient claimed knee replacement surgery was improperly performed and caused chronic pain syndrome. Case was settled by HSS - for \$125,000.

**Jose Rodriguez:** Graduated from Columbia P & S in 1089 with a medical degree. Dr. Rodriguez completed a residency at The Hospital for Special Surgery in 1994 and followed with two (2) fellowships completed in 1995. Recent education from Maurice Miller Foundation of North America Fellowship in Surgery of the hip completed in 1995. Currently licensed in NY through 6/2024.

Legal disclosures: Open

9/25/2019 - *Judy Storm against Richard Stuart King, M.D., Jose Antonio Rodriguez, M.D., Coridon M. Huez, M.D. and Hospital for Special Surgery* - Patient, 64-year-old female, presented to Dr. Rodriguez with left knee pain and on 5/16/17, he performed left total knee replacement surgery. Postoperative, patient reported quadriceps weakness and electrodiagnostic studies showed left femoral axonal neuropathy. Patient claimed neurologic deficits were related to prolonged tourniquet time.

**S. Robert Rozbrunch:** Graduated from Cornell Medical in 1990. Dr. Rozbrunch completed an internship in general surgery in 1991 from North Shore University Hospital and a residency in Orthopedic Surgery from the Hospital for Special Surgery at Cornell University. Most recent fellowship was at Maryland Center for Limb Lengthening and Reconstruction in 1999. Current licensure is in NY through 08/2024.



Dr. Rozbruch is a professor of Clinical Orthopedic Surgery at Weill Cornell Medical College since 2012. Current employment includes Attending at the Hospital for Special Surgery 2012 to present; Service Chief Limb lengthening at Hospital for Special Surgery 2005-present, Director, limb salvage and amputation at the Hospital for Special Surgery 2015-Present, and HSS Orthopedic Leadership Council Hospital for Special Surgery 2005-present.

Legal Disclosure: Open

8/14/2023 - *Gail Kimbiz v. S. Robert Rozbruch, MD, and Hospital for Special Surgery* - This suit involves a then 59-year-old female who presented to Dr. Rozbruch requesting placement of osseointegration technology (OI) after left above the knee amputation that occurred in 2008. Dr. Rozbruch performed a two stage OI insertion starting on 1/17/18 that was complicated with loosening and infection. Plaintiff transferred her care to outside hospital for two stage revision and antibiotics. Plaintiff was able to ambulate using the prosthetic starting in May of 2022.

Dismissed:

11/21/2014- *Edward P. Leili v. Robert S. Rozbruch, M.D., Hospital for Special Surgery, Inc., d/b/a Hospital for Special Surgery, New York Society for the Ruptured and Crippled, Maintaining the Hospital for Special Surgery, Inc., Hospital for Special Surgery, PHO, Inc., and Hospital for Special Surgery Fund, Inc.* - Pro se patient claimed that the defendants failed to diagnose and treat bowel perforation and peritonitis resulting in ileostomy and colostomy in a 50-year-old male following left ankle distraction arthrotomy performed by Dr. Rozbruch on 1/18/12. Patient was emergently admitted on 1/25/12 to Danbury Hospital with two abdominal abscesses and cecal perforation requiring surgery that was complicated by multiple medical complications. Case dismissed due to failure to properly serve defendants.

6/9/2016 - *Alaburda Charity against S. Robert Rozbruch, M.D.* - Pro Se patient, 34-year-old female, was treated by Dr. Rozbruch for limb length discrepancy. Plaintiff underwent multiple reconstructive procedures. On 6/20/08, Dr. Rozbruch in conjunction with a plastic surgery performed left lower extremity hardware removal and scar revision. Plaintiff claimed that the wrong lower extremity scar was addressed. Case was dismissed on motion.

**Andrew Sama:** Graduated from The University of Miami in 1995 with a Medical Degree. Followed with a residency for general and orthopedic surgery at the University of Miami and a Fellowship at the Hospital for Special Surgery for Spinal and Scoliosis Surgery completed in 2001. Current licensure with NY through 02/2025; CT through 03/2025; NJ through 06/2025.

Current employment at Hospital for Special Surgery since 2001 as assistant Clinical Scientist; Associate professor of orthopedic surgery at Cornell University Medical College since 2010; Associate Professor of orthopedic surgery at New York College of Podiatric Medicine since 2012. Hospital appointments are currently Associate Attending Orthopedic Surgeon since 2010 at both Hospital for Special Surgery and NY Presbyterian Hospital; Co-Chief Spine service at Hospital for Special Surgery since 2019 and Physician at Large HSS Board of Trustees since 2022.

Interest/Ownership: HSS Director since 2022, ex officio Board of Trustees, Hospital for Special Surgery.

Legal disclosures: Settled

5/24/2016 - *Gary Ahlert against Andrew Sama, M.D., David Lefkowitz, M.D. and Hospital for Special Surgery* - This case involves an alleged failure by Dr. Sama to properly perform a L4-5 microdiscectomy/decompression in a 68-year-old male, resulting in post op neurogenic bladder issues and unresolved pre-op left low back pain.

7/14/2015 - *Greogro Curto and Rachael Curto against Naomi Dong, M.D., Andrew Sama, M.D., and Hospital for Special Surgery* - This litigation involves left ulnar neuropathy following lumbar laminectomy

performed by Dr. Sama on 11/14/13 upon a 67-year-old, right hand dominant male. Plaintiff claims that he was not properly positioned intraoperatively which resulted in the injury.

**Nicholas Sama:** received their medical degree in 1999 from the University of Miami, School of Medicine. They completed their residency in Orthopedic Surgery in 2004 at the University of Miami School of Medicine's Department of Orthopedic Surgery. Dr. Sama is currently licensed to practice in the state of Florida through 01/2026.

Presently, Dr. Sama is employed at the Hospital for Special Surgery Florida Physicians since 2019. Dr. Sama is also appointed as an attending physician at Wellington Regional Medical Center since 2007, and Good Samaritan Medical Center since 2019.

Interest/Ownership: Ownership since 2022 in HSS Palm Beach Ambulatory Surgery Center.

Legal Disclosure: Settled

2/14/2019 - *Gregg Rosenbaum vs. Nicholas Sama, M.D., et al.* - Patient had diagnosis of avascular necrosis of his left hip. He underwent a core decompression by another surgeon which failed. I then performed a primary total hip arthroplasty. The patient reported continued pain. The patient alleged improper performance of total left hip arthroplasty requiring additional surgery. This was highly disputed by expert opinion.

**Harvinder Sandhu:** Dr. Sandhu completed a medical degree at Northwestern Medical School in 1987 and a Master of Business Administration from Columbia Business School in 2001. Currently licensed to practice in New York through 2/2025, New Jersey through 6/2025, California through 3/2024, and Connecticut through 3/2024.

Currently, Dr. Sandhu has operated a private medical practice, Harvinder S Sandhu MD, PC, since 2001.

**Peter Sculco:** Completed their education at Columbia University Medical School in 2009. Their residency in orthopedics was completed at the Hospital for Special Surgery in 2014.

Dr. Sculco has been an attending orthopedic surgeon at the Hospital for Special Surgery since 2015.

Dr. Sculco was named in one case: *Lisa Siemanowicz, As Administratrix of the Estate of Victor Siemanowicz and Lisa Siemanowicz, individually against Peter Sculco, M.D. Hospital for Special Surgery, Arthur Yee, M.D., James Calloway, M.D. and Patrick Lee, M.D. (805246/2019)*, New York Supreme Court. It is alleged the Decedent, 53-year-old male presented to Dr. Peter Sculco for bilateral knee pain and left hip pain. The patient's medical history included DVT, and a clotting disorder treated with anticoagulation. Dr. Sculco recommended proceeding with left hip replacement surgery then with staged knee replacement surgery. On 8/21/17, Dr. Sculco performed a left total hip replacement which was complicated by infection. Dr. Sculco recommended surgical revision and after consulting with the patient's Hematologist, it was decided to hold the Pradaxa until the surgery. On 12/11/17, the patient suffered a stroke prior to surgery and required long term rehabilitation. He died on 9/1/2018. Patient claimed anticoagulation was improperly held resulting in stroke. It was settled by the hospital for \$1.45 Million.

9/1/2017 - *Richard H. Bonanno and Phyllis L Bonanno against David Mayman, M.D., Andy Miller, M.D., Peter Sculco, M.D., Thomas Sculco, M.D. and Hospital for Special Surgery* - Pro se patient, 74-year-old male, underwent total knee replacement with Dr. Mayman on 11/14/14. Patient alleges that the surgery caused further degeneration, fracture and infection that required additional surgeries, including those performed by Dr. Sculco. Matter was dismissed via motion for failure to properly oppose summary judgment motion. Dismissed.

2/19/2019 - *Dennis Higgins against Hospital for Special Surgery and Peter Sculco, M.D.* - Patient, 68-year-old male, with a medical history of osteoarthritis and alcohol use, presented to Dr. Peter Sculco for complaints of left knee pain. On 9/23/16, Dr. Sculco performed a left total knee replacement. On 9/24/16, while ambulating with a mobility technologist, he fell onto his left knee and required an incision and drainage of a hematoma with wound closure. Patient attributed the fall to the need for additional surgery. Dr. Sculco was voluntarily discontinued. Settled

**Ryan Simovitch:** is a licensed physician in the state of Florida through 01/31/2026. Dr. Simovitch completed a medical degree at the Chicago Medical School in 2000.

Dr. Simovitch serves as an orthopedic surgeon at the Hospital for Special Surgery in Florida and has been doing so since 2020 as the Director of the shoulder division. Prior employment from 2006-2020 at Palm Beach Orthopedic Institute as an Orthopedic Surgeon.

**Ernest Sink:** Dr. Sink received a medical degree at the University of Texas Southwestern Medical School in 1994 and completed a residency there in 1999. Currently licensed to practice in New York through 12/2024, and New Jersey 6/2025. Has also held licensure in Colorado but not at this time.

Currently, Dr. Sink is an attending orthopedic surgeon at the Hospital for Special Surgery and has been since 2011. Dr. Sink has also been the professor of clinical orthopedic surgery at HSS since 2022 and is the Chief for the Hip Preservation Service there as well.

2001 Dr. Sink has one lawsuit: *Polk vs. Ernest Sink, M.D., et al.* Patient, 6'7" 330-pound football player patient presented for complex meniscus repair and ACL reconstruction. Intraoperatively, the sutures securing the graft to the bone pulled through the bone, Dr. Sink was able to reconstruct the joint without laxity. Postoperatively, patient was found to have Rhabdomyolysis and partial lower extremity nerve impairment. Case settled \$95,000. Infraction was not initially disclosed.

**Edward Skyler, Esq.:** graduated with a Juris Doctorate in 2000 from Fordham University in 2000; Current license in NY through April 2024. Current member of the New York Bar Association.

Current employment as the head of Enterprise Services and Public Affairs at Citi a company part of Citigroup and Citibank, N.A. since 2010.

Interest/Ownership: HSS Director since 2023 Board of Trustees for Hospital for Special Surgery.

They have been named as a defendant in the following Supreme Court case, *Beter v. Baughman et al* (1:24-cv-00079) Southern District of New York. This is a personal injury lawsuit that alleges charges of RICO and sexual assault. Edward Skyler is not the actual alleged offender, but an alleged to have knowledge of the incident. They are part of a countersuit against the plaintiff *Baughman et al v. Baughman et al v. Beter* (1:23-cv-11278) District of Massachusetts. Beter (1:23-cv-11278) District of Massachusetts. Both cases are ongoing. On January 5, 2024, Mr. Baughman removed the case to the US District Court for the Southern District of New York. On February 2, 2024, Ms Beter filed a motion for remand. Opposition to the motion for remand is due on February 16, 2024, and any reply brief must be filed by February 23, 2024. Mr. Skyler has not been served with the complaint and therefore he is not a party to the litigation. To the extent that Mr. Skyler becomes a party to the litigation, he intends to vigorously defend himself. May 7, 2024, motion to dismiss without prejudice ordered.

**Jonathan Sobel:** Graduated in 1988 with a bachelor's degree from Columbia University.

Employment is with DTF Holdings, LLC as a managing member and advisor. Employment is with Goldman Sachs & Co. from 1987-2008 as Global head of the mortgage department.

Interest/Ownership – Jonathan Sobel disclosed he is on the Board of Trustees for the Hospital for Special Surgery as a Director.

**Gbolabo Sokunbi:** Most recently graduated from Robert Wood Johnson Medical School in 2006. Dr. Sokunbi is currently licensed in NY through 3/2025 and in NJ through 6/2025. Current employment as Associate Professor of Orthopedic Surgery at Weill Cornell Medical Center since 2021. Also, at the Hospital for Special Surgery from October 2021 and Section Chief Spinal Surgery since 2015.

Legal Disclosure:

3/23/2018 - *Joseph Merigris vs. Gbolabo O. Sokunbi, M.D.* – Alleged Complication related to dorsal column stimulation implant. Unknown closure.

**Dierdre Stanley:** received a Juris Doctorate from Harvard Law School in 1989 and is currently an attorney in New York.

Deidre is currently the Executive Vice President and General Counsel for The Estee Lauder Companies, Inc. since 2019. Previously Deidre was the General Counsel and Senior Executive for Thompson Reuters, a technology firm from 2008 to 2019.

Interest/Ownership: HSS Director Board of Trustees Hospital for Special Surgery.

**Robert Steel:** Current employment is at Perella Weinberg Partners since 2014, current position is Vice Chairman, Partner.

Robert Steel discloses interest in Hospital for Special Surgery as Director of the Board of Trustees.

**Sabrina Strickland:** Completed medical credentials at the Rush Medical College in 1996. Dr. Strickland is a licensed orthopedic surgeon in the state of New York through 8/2024.

Dr. Strickland is currently employed at the Hospital for Special Surgery and has been since 2006. Additionally, she is an associate professor at Weill Cornell Medical College.

Interest/Ownership: Ownership in Manhattan ASC since 2015 (2.98%)

Legal disclosure: Open

11/17/2022 - *BIRSTER, AUDREY V. SABRINA STRICKLAND, MD, MICHAEL AST, MD, & HSS* – Poor outcome s/p knee.

**Edwin Su:** Graduated from Weill Cornell Medical Center in 1997. Completed residency and fellowship at the Hospital for Special Surgery in 2003. Licensed in NY through 10/2025.

Employment at the Hospital for Special Surgery from 2003-2005 as an attending surgeon. Currently self-employed at Edwin P. Su MC PC 2005- present.

Legal disclosure: Disclosed after DOH inquiry Open.

10/14/2022 - *Sarah Higgins and Bradford Lyon against Hospital for Special Surgery and Edwin Su, M.D.* - Patient, 62-year-old female, presented to Dr. Su with complaints of left hip pain and underwent left total hip replacement on 3/2/2020. The patient was lost to follow up due to the COVID pandemic and when she returned, she reported a limb length discrepancy and right ankle pain. Dr. Su recommended right total hip replacement to address the length discrepancy. Patient alleged improper performance of total hip replacement.

9/20/2022 - *Stephen Petrillo against Edwin P. Su and Hospital for Special Surgery* - Patient, 59-year-old male, presented to Dr. Su with right hip pain. On 3/6/2020 Dr. Su performed a right hip resurfacing without complication. Approximately one year postop, plaintiff complained of pain and swelling. Due to concern for a metal allergy, Dr. Su performed a conversion to a total hip replacement on 5/3/21 that was complicated by infection. Patient alleged delay in identifying and treating infection.

2/16/2022 - *Frank DeRuggiero and Haydee DeRuggiero against Hospital for Special Surgery and Edwin P. Su, M.D.* - Patient, 59-year-old male, presented to Dr. Su with bilateral hip pain and was diagnosed with right avascular necrosis and left hip arthritis. Patient proceeded with left hip resurfacing, which was performed on 8/19/21. Following the surgery, plaintiff continued to report severe groin pain. Patient asserted improper performance of hip resurfacing.

Settled/Dismissed

4/26/2017 - *Ilene Rosenfeld and Gadi Rosenfeld against Edwin P. Su, M.D., Hospital for Special Surgery and Edwin P. Su, M.D. PC* - This matter involves the alleged failure by Dr. Su to properly perform unicompartmental knee replacement in 70-year-old female. Plaintiff claims the angle in the anteroposterior tibial cut was too acute and revision surgery was required. Settled

4/26/2017 - *Phillip J. Smith and Magdalena Smith against Edwin P. Su, M.D., John Anderson, M.D., Hospital for Special Surgery* - Patient, 61-year-old male, underwent left total knee replacement on 8/20/2010 that was complicated by persistent pain and arthrofibrosis. Patient underwent manipulation without improvement. Dismissed

**Stephanie Swenson Buza:** completed her education at NYU School of Medicine in 2013 and is licensed in New York through 10/2024. Dr. Buza completed her residency at NYU Langone Orthopedic Hospital in 2018 and a fellowship at the Hospital for Special Surgery in 2020.

Dr. Buza is an attending physician at the Hospital for Special Surgery since 2020.

**Samuel Taylor:** Most recent education at Columbia College P & S. Followed with a residency at Hospital for Special Surgery for orthopedic surgery completed in 2013 and a fellowship at Hospital for Special Surgery for Sports Medicine and Shoulder surgery completed in 2014. Dr. Taylor is licensed in NY through 2/2026; CT through 3/2025; and NJ through 6/2025.

Since 2014 Dr. Taylor has worked as assistant professor of orthopedic Surgery at Weill Cornell Medical College and as Assistant Attending Orthopedic Surgeon at the Hospital for special surgery. Dr. Taylor currently holds these positions.

Legal disclosure: Open

1/4/2021 - *Sarah Labance against Samuel A. Taylor, M.D., PC, Samuel Arthur Taylor, and The Hospital for Special Surgery* - patient, 46-year-old female, presented to Dr. Taylor with a history of recurrent bilateral shoulder dislocations. On 11/29/18, Dr. Taylor performed a Latarjet procedure on the left shoulder and within 6 weeks of surgery, imaging showed collapse of the left humeral head. Plaintiff subsequently underwent shoulder replacement surgery at another facility. Patient claims Latarjet procedure was contraindicated and improperly performed.

**Jonathan Tisch:** received a Bachelor of Arts from Tufts University in 1976.

Jonathan is currently the Executive Chairman of the Loews Corporation, a hotel company, where Jonathan has been employed since 2012.

**Frances Fragos Townsend:** Graduated from the University of San Diego Law in 1985 with a JD. Currently licensed as an attorney in NY, CA, and DC.

Frances Townsend runs an independent consulting business service as EVP of Corporate Affairs, Chief Compliance Officer, and Corporate Secretary at Activision Blizzard. Frances Townsend also serves as senior counsel to the CEO and Board of Directors. Prior employment was ten years at MacAndrews' portfolio companies.

Interest/Ownership: HSS Director Board of Trustees Hospital for Special Surgery.

**Samir Trehan:** received an education in medicine at Brown Medical School in 2011. Residency in orthopedic surgery was completed in 2016 at the Hospital for Special Surgery. Dr. Trehan is licensed in the state of New York through 7/31/2024.

Dr. Trehan is an assistant attending orthopedic surgeon for hand and upper extremity service and has been since 2018 at Hospital for Special Surgery, New York. Additionally, Dr. Trehan is an assistant professor of orthopedic surgery at Weill Cornell Medical College, since 2018.

Interest/Ownership: Since 2015 Manhattan ASC (2.06%)

Dr. Trehan has one legal infraction (disclosed after DOH inquiry): *CHADWICK, DOUGLAS V. NYPH, SAMIR TREHAN, MD, & RESMI CHARALEL, MD*, Bronx Supreme Court (29486/2019E). The case alleges a vascular injury; however, the case was dismissed in 2022.

**Jonathyan Vigdorichik:** Graduate of the University of Missouri – Columbia School of Medicine in 2007. Residency completed in 2012 from Detroit Medical Center followed by a fellowship completed in 2013 for Surgery at the Hospital for Special Surgery. Currently licensed in NY through 11/2025.

Current employment is with JV Medical PC as an attending surgeon since 2022. Prior employment includes Hospital for Special Surgery as an attending surgeon from 2019 – 2021 and NYU as an attending surgeon from 2013 through 2018.

Legal Disclosures: Open

6/18/2019 - *Souzana Stamatelos against Jonathan Vigdorichik, M.D., Dora Leung, M.D., The Hospital for Special Surgery, Craig Antell, D.O., Jason Fritzhand, D.O., Preston Robert Tisch Center for Men's Health, Donator R. Pacione, M.D., NYU Langone Neurosurgery Associates, Jason Kim, DPM, NYU Langone Ambulatory Care West Side, NYU Langone Health System, Nicholas Megdanis, DPM, Greater Queens Podiatry, PLLC, Zeeshan Sardar, M.D., Columbia Doctors Midtown, Columbia University Irving Medical Center and New York Presbyterian Healthcare System, Inc.* - Patient, 64-year-old female, presented to Dr. Vigdorichik with right hip pain and he performed a right total hip replacement on 6/18/19. Following the surgery, patient woke with right sided foot drop that was attributed to stretch injury. Patient alleged nerve laceration caused foot drop.

8/20/2020 - *Puezant Yogumyan and Homira Yogumyan against Jonathan Vigdorichik, M.D., Kyle Alpaugh, M.D., Terry Lin, P.A., Joshua Goodfarb, P.A., and Hospital for Special Surgery* - Patient, 58-year-old male, presented to Dr. Vigdorichik with bilateral hip pain and underwent bilateral total hip replacement on 8/20/2020. Patient woke with left sided foot drop and was brought back to the OR for wound exploration and evacuation of hematoma; nerve was intact. Patient alleged delay in treating foot drop and direct injury to the sciatic nerve.

Dismissed

12/10/2015 - *Ramona Blash vs. Jonathan M. Vigdorichik, M.D., et al.* - Patient presented to Dr. Vigdorichik with bilateral hip and knee pain. On 4/2/15, Dr. Vigdorichik performed left hip replacement with right taking place on 12/10/15. 5 mm limb length discrepancy was identified. Patient advised discrepancy would improve with physical therapy and time. Matter discontinued after attorneys moved to be relieved.

**Robin Vince:** received a Bachelor of Arts from the University of Nottingham in the United Kingdom in 1994.

Robin is the CEO of Bank of New York Mellon since 2021 and was the Participating Managing Director of Goldman Sachs from 1994 – 2020.

Interest/Ownership: HSS Director since 9/2023 Board of Trustees at Hospital for Special Surgery.

Legal disclosure (disclosed after DOH inquiry). On October 22, 2020, The Goldman Sachs Group Inc. and certain of its subsidiaries reached coordinated resolution (including United States v. The Goldman Sachs Group, Inc., Docket No. 20-CR-00437-MKB) with criminal and civil authorities in the United States, the United Kingdom, Singapore, and elsewhere with respect to violations of law in connection with Goldman's role in underwriting three bond deals for 1Malaysia Development Bhd. (1MDB). Mr. Vince had no involvement in the underlying violations and was not named, or involved, in the criminal or civil investigations and settlements. Mr. Vince was named by Malaysian authorities in the 1MDB matter solely as a result of his service as a member of the Board of Directors of Goldman Sachs International, one of three Goldman Sachs entities charged by Malaysian authorities in December 2018. Further, as noted in the attached Goldman Sachs press release from July 2020, the government of Malaysia has withdrawn all charges against Goldman Sachs and its employees, including Mr. Vince, and no new charges will be

brought. The matter is now fully resolved. <https://www.goldmansachs.com/media-relations/press-releases/current/announcement-24-july-2020.htm>.

*Tante T. URBAN, Jr., Plaintiff, v. Jason Lee COTTON; Vincent Kruse; Peter Stone; TMLF LLLC; Shawn Nakoa; Rush Moore LLP; Wendy Deweese; BNY Mellon; Robin Vince; State of Hawai'i, Defendants.* The following is a summary of the lawsuit involving Robin Vince: Mr. Vince was not previously aware of the pro se lawsuit (*Tante T. Urban, Jr. v. Jason Lee Cotton, et al. (Civ. No. 23-00043)*), filed in January 2023, by an individual named Tante Urban, Jr. in federal court in Hawaii against 10 defendants, including the State of Hawaii, several state officials, The Bank of New York Mellon, and Robin Vince. The lawsuit alleged that the foreclosure of Mr. Urban's house due to failure to pay his mortgage loan was a violation of his civil rights. Mr. Urban argued that the state foreclosure statute was not a valid law and violated the Hawaii State Constitution. The Bank of New York Mellon was named a defendant because it was the trustee of a mortgage-backed security that owned Mr. Urban's mortgage loan, so the foreclosure was brought nominally in The Bank of New York Mellon's name, although a servicer for the mortgage-backed security was responsible for the foreclosure. Mr. Urban did not allege that Mr. Vince engaged in any wrongdoing but named him as a defendant because he is the CEO of The Bank of New York Mellon. Mr. Urban did not serve the lawsuit on either Mr. Vince or The Bank of New York Mellon, so neither was required to respond to it. In June 2023, the court dismissed the lawsuit against all defendants – including Mr. Vince – because it found the lawsuit was an improper attempt to attack a state court foreclosure judgment in federal court.

**John Wang:** Graduated in 2005 from Georgetown University with a medical degree. Dr. Wang is currently licensed in FL through 1/2025.

Employment for Dr. Wang is currently at the Hospital for Special Surgery Florida Orthopedic Surgery Practice since 2020 holding the position of attending orthopedic surgeon. Prior to Dr. Wang's current employment Dr. Wang was Attending orthopedic surgeon from 2016-2020 at Orthopedic Surgery Associates, Inc. and from 2011 – 2016 at Atlantis Orthopedics.

Ownership/Interests: Delray Beach Surgical Suites, LLC in Delray Beach FL 2017-2020 Medical Director, and investor. This facility is open and in compliance with regulations.

**Tony Wanich:** completed a medical education at Tufts University School of Medicine in 2002. Dr. Wanich completed an orthopedic residency at the Hospital for Special Surgery in 2008. Current licensure in NY through 6/2025, NJ through 6/2025, and MD through 9/2023.

Presently, Dr. Wanich is an Attending Surgeon at the Hospital for Special Surgery, since 2022. Previously, Dr. Wanich was employed by High Mountain Orthopedics from 2012 – 2022.

Interest/Ownership: Same Day Procedures, LLC (NJ) since 2016 (5%) and Board member.

Legal Disclosure:

11/17/2014 - *Kathleen Raftery against Montefiore Medical Center and Tony Wanich, M.D.* - Patient, 61-year-old female, underwent a surgery to repair comminuted left lateral and proximal tibia fracture. Six months later, patient underwent removal of hardware and meniscus repair due to chronic pain. Postoperatively, patient developed collapse of lateral tibial plateau and she required left total knee replacement that was complicated by CRPS. Patient claims that removal of hardware was premature and improperly performed. Settled

**Geoffrey Westrich:** Graduated with a medical degree from Tufts Medical College in 1990. Completed residency in orthopedic surgery at the Hospital for Special Surgery in 1995 and Fellowship for orthopedic trauma in Switzerland in 1996. Currently licensed in NY through 4/2024.

Present employment as Senior Scientist for Hospital for Special Surgery since 2015; Professor of Clinical Orthopedics Weill Cornell Medical College since 2014. Hospital positions are Attending orthopedic

Surgeon for NY Presbyterian and Hospital for Special Surgery since 2014 and prior to that from 2004-2014 held associate attending positions at those facilities.

Legal disclosures: Open

8/2/2022 - *Glenn Wollman against Geoffrey H. Westrich, M.D., Hospital for Special Surgery, John Does 1-10 and ABC Corporations* - Patient, 64-year-old male, presented to Dr. Westrich with right knee pain. On 2/13/2020, Dr. Westrich performed a right total knee replacement that was complicated by infection. On 7/27/2020, Dr. Westrich performed explant with placement of antibiotic spacer, with reimplantation on 9/17/2020. Patient alleged improper treatment of infection.

9/1/2016 - *Faye Kerins against Geoffrey H. Westrich, M.D., The Hospital for Special Surgery* - This case involves an alleged failure to properly perform a right total hip replacement in a 77-year-old female resulting in right quadriceps weakness and numbness to the right medial thigh and medial lower leg. Settled

**Riley Williams:** completed his education at Stanford University School of Medicine in 1992. Their residency in orthopedics was completed in 1997 at the Hospital for Special Surgery. Currently licensed in NY through 02/2026.

Dr. Williams is an attending surgeon at their own practice from 1998 to 2022, the practice was converted to a contracted hospital surgeon at the Hospital of Special Surgery and is still practicing there currently.

Interest/Ownership: 2017 – present, HSS West Side ASC (9%)

Legal Disclosure: Open

8/2/2021 - *Melissa Cardinal against Riley J. Williams, M.D., and Hospital for Special Surgery* - Patient, 50-year-old female, presented to Dr. Williams with complaints of left knee pain. Dr. Williams performed a medial compartment knee replacement with ACL reconstruction. During the surgery, plaintiff sustained intraoperative fracture that was secured with a screw. Patient reported continued pain and underwent 2 additional procedures. Patient sought care elsewhere. Patient claims staged procedure should have been performed due to instability related to ACL injury.

Settled/Dismissed:

(Disclosed after DOH inquiry) *Trevor C. Noah against Riley J. Williams, III, M.D. and Hospital for Special Surgery* (805381/2021), New York Supreme Court. It alleges that Patient, 37-year-old male, presented to Dr. Williams for left knee pain and stiffness following prior knee surgery. Dr. Williams performed left knee meniscectomy with lysis of adhesions on 11/23/2020. Following the surgery, the wound opened and was treated conservatively. Patient sought a second opinion in California and underwent I&D and received antibiotics. Patient claimed Dr. Williams failed to properly treat the infection, which defense contended was not present. It was settled by hospital for \$900,000.00.

7/22/2020 - *Jane Lederer & Harry Ansorge against Riley J. Williams, III, M.D. and Hospital for Special Surgery* - Missed diagnosis of heel fracture Settled.

7/22/2014 - *Peter J. Calandrella and Lucinda Calandrella against Riley J. Williams, III, M.D. and Hospital for Special Surgery* - Patient, 43-year-old male, presented to Dr. Williams with left knee pain after multiple knee surgeries. On 1/4/12, Dr. Williams performed left knee arthroscopic debridement and placed in a Bledsoe brace. On 1/12/12, patient developed pressure injuries which required wound care treatment. Patient alleged improper placement of the brace caused injury. Settled.

**Jeffrey Wilpon:** is the Chairman and CEO of Alta Vista Partners, a real estate investment and operating platform as well as a Founding Partner of Sterling Project Development, a complex real estate advisory and management firm since 2021. Jeffrey was part of the Ownership Group and COO for NY Mets Citi Field from 2002-2021. They have no infractions or legal disclosures currently.



Ownership/interest – HSS Director Board of Trustees for Hospital for Special Surgery since 2023.

**Scott Wolfe:** Graduated with a medical degree from Cornell University Medical College in 1984 and a Master of Arts Privatum from Yale University in 2000. Dr. Wolfe completed a residency in orthopedics in 1989 at the Hospital for Special Surgery. Current licensure with NY through 7/2024 and CT through 8/2024.

Dr. Wolfe is the Senior Scientist in the Research Division of the Hospital for Special Surgery since 2012. Dr. Wolfe is also an attending Orthopedic Surgeon and a professor of Orthopedic Surgery at Weill Cornell Medical College since 2000.

Interest/Ownership: Manhattan ASC since 2015 (1.98%)

(Disclosed after DOH inquiry) Dr. Wolfe has been named one infraction: *LEBOWITZ, LORIE. V. WOLFE, SCOTT, MD HSS, ERIC SCHOENFELD, MD, & ERIC SCHOENFELD, M.D., P.C., Nassau Supreme Court (614103/2017)*. Case alleges PAIN - S/P HAND, case is ongoing.

**Ellen Wright:** Graduate of Mill College in California with a bachelor's degree in 1961.

As a Board member of HSS Ellen Wright brings requisite fundraising and management skills based on experience with boards of various organizations over the course of many years.

Ownership/interest – HSS Director Board of Trustees for Hospital for Special Surgery. Has ownership in HSS Paramus Outpatient Center NJ.

**Robert Yaffa:** Graduated in 1990 from Muhlenberg College with a bachelor's degree. Licensed in NY for Real Estate through 12/2025.

Currently employed at RDY Advisors, LLC since 2019 as president and managing principal for a real estate investment and advisory firm. Prior employment includes Cushman & Wakefield as Executive Managing Director and Partner from 2015-2019 and Cassidy Turley as Executive Managing Director from 2012-2015.

Interest/Ownership: Director Board of Trustees Hospital for Special Surgery.

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

#### Integration with Community Resources

The Applicant will serve all patients needing care, regardless of their ability to pay or the source of payment. The procedures to be performed at the Center will be among those listed in 10 NYCRR, Section 86- 4.40, under the Products of Ambulatory Surgery groupings to be provided at the Center. These will be procedures that can safely be performed on an ambulatory basis, based on recognized standards of medical care. The Center will work with the transferring hospital to ensure there is backup emergency care coverage for any patient that is in need.

The Center plans to utilize an Electronic Medical Record (EMR) system and to fully integrate and exchange information with an established Regional Health Information Organization (RHIO) with the capability for clinical referral and event notification.

#### Conclusion

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

## Financial Analysis

### Total Project Cost and Financing

Total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at \$30,805,493, further broken down as follows:

Renovation and Demolition	\$15,927,920
Design Contingency	1,886,000
Construction Contingency	1,886,000
Architect/Engineering Fees	1,576,000
Construction Manager Fees	528,080
Other Fees (Consultant)	2,304,000
Moveable Equipment	4,880,000
Interim Interest Expense	1,647,000
CON Fee	2,000
Additional Processing Fee	<u>168,493</u>
Total Project Cost	\$30,805,493

The applicant's financing plan appears as follows:

Equity	\$383,118
Bank Loan (6% for a ten-year term)	\$27,571,000
Tenant improvement allowance (via equity from Hospital for Special Surgery)	\$2,851,375

### Operating Budget

The applicant has submitted an operating budget, in 2023 dollars, for the first and third years of operation, summarized below:

	<u>Year One</u> <u>(2025)</u>		<u>Year Three</u> <u>(2027)</u>	
	<u>Per Procedure</u>	<u>Total</u>	<u>Per Procedure</u>	<u>Total</u>
<b>Revenues:</b>				
Commercial Managed Care	\$21,687	\$18,152,399	\$23,567	\$34,479,007
Medicare Fee for Service	\$5,926	604,468	\$6,072	\$1,092,950
Medicare Managed Care	\$7,741	216,748	\$8,081	\$387,874
Medicaid Fee for Service	\$4,686	46,858	\$4,154	\$157,849
Medicaid Managed Care	\$2,834	31,178	\$2,900	\$118,915
Other	\$2,878	69,082	\$2,718	\$114,168
Bad Debt		<u>(290,504)</u>		<u>(545,261)</u>
Total Revenues		\$18,830,229		\$35,805,502
<b>Expenses:</b>				
Operating	\$13,476	\$13,920,974	\$10,998	\$20,334,473
Capital	<u>\$5,034</u>	<u>\$5,200,136</u>	<u>\$2,810</u>	<u>5,196,568</u>
Total Expenses	\$18,510	\$19,121,110	\$13,808	\$25,531,041
Net Income		(\$290,881)		\$10,274,461
Utilization: (Procedures)		1,033		1,849

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

- The increases and decreases in revenue rates between Year One and Year Three are due to varying reimbursement rates of sub-specialties that are decanting volume from HSS to the ASC, as well as the introduction of spine surgical volume starting in Year Three.

- Reimbursement rates are based off specific geographical rates and the experience of HSS and the applicant's individual members with commercial payers.
- Expense assumptions are based on the experience of the applicant and its members in providing ambulatory surgery services, as well as the projections and experience of other FASC's in New York State.

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

	<u>Year One</u> <u>(2025)</u>	<u>Year Three</u> <u>(2027)</u>
Commercial MC	81.03%	79.12%
Medicare FFS	9.87%	9.73%
Medicare MC	2.71%	2.60%
Medicaid FFS	.96%	2.06%
Medicaid MC	1.06%	2.21%
Charity Care	2.03%	2.00%
Other	<u>2.34%</u>	<u>2.28%</u>
Total	100%	100%

#### Development and Administrative Services Agreement

The applicant has submitted an executed development and administrative services agreement, which is summarized below:

Date	May 23, 2023
Owner	HSS Long Island ASC, LLC
Contractor	New York Society for the Relief of the Ruptured and Crippled, maintaining the Hospital for Special Surgery.
Services Provided	HSS will assist the Owner in overseeing the accounting, treasury and financial operations of Owner, provide ordinary billing and collection services for the Center's facility services, assist the Owner in preparation of budgets and financial planning, provide administrative support for the Owner's compliance with applicable laws, rules and regulations, provide contract negotiation and administrative services for third party payor contracts, will provide oversight of housekeeping personnel and provide assistance and services for the design, implementation and continued maintenance of the Center's internal control policies.
Fee	6.5% of ASC revenue and other add on services that are based on cost plus a fair market value markup.
Term	10-year term with a 5 year renewal period

This agreement is in compliance with 10 NYCRR Section 600.9c (An individual, partnership or corporation which has not received establishment approval may not participate in the total gross income or net revenue of a medical facility), it is allowable for entities that are established, such as Hospital for Special Surgery (HSS), which is the proposed consultant and is also an existing Article 28 entity and a proposed member of this Article 28 entity,

#### Sub Sublease Agreement

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

Premises	31,986 square feet located at 90 Merrick Avenue, East Meadow, New York.
Sublessor	HSS Properties Corporation
Sublessee	HSS Long Island ASC, LLC
Term	20 years
Rental	\$1,061,609 year one with a 2.25% increase each year thereafter.

The applicant has submitted letters from real estate brokers attesting to the reasonableness of the per square foot rental. The building of the site is owned by the County of Nassau and Mitnfield Properties, LLC then will lease it to FRO CLK 90 Merrick Owner, LLC (lessee). The lessee will sublease this property to HSS Properties Corporation (Sublessor) then the sublessor will sub sublease the property to the applicant. The applicant has submitted an affidavit that there is no relationship between them and the master landlord.

**Capability and Feasibility**

Total project cost of \$30,805,493 will be met with equity of \$383,118 from the owners of HSS Long Island ASC, LLC, a bank loan of \$27,571,000 at an interest rate of 6% for a ten-year term, and a tenant improvement allowance of \$2,851,375, of which the funds will come from Hospital for Special Surgery.

Working capital requirements are estimated at \$4,241,379, equivalent to two months of third-year expenses. The applicant will provide equity to meet the working capital requirement. Presented as BFA Attachment B is the 2022 Certified Financial Statements of the New York Society for the Relief of the Ruptured and Crippled, Maintaining the Hospital for Special Surgery, which indicates the availability of sufficient funds for the equity contribution.

The submitted budget indicates a net loss of \$290,881 in Year One and a net income of \$10,274,461 in Year Three. Revenues are based on current reimbursement methodologies for ambulatory surgery services. The submitted budget appears reasonable.

**Conclusion**

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

<b>Attachments</b>
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BHFP Attachment	Map
BFA Attachment A	Ownership structure of HSS Long Island ASC, LLC
BFA Attachment B	Financial Summary- 2022 Certified Financial Statements of New York Society for the Relief of the Ruptured and Crippled, Maintaining the Hospital for Special Surgery.



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

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

**Executive Summary**

**Description**

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

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

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

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

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

**OPCHSM Recommendation  
Contingent Approval**

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

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

### Financial Summary

The purchase price for the two (2) new members' membership interest will be met with a promissory note of \$1,777,542.

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

### Health Equity Impact Assessment

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

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a promissory note that is acceptable to the Department of Health. [BFA]

**Approval conditional upon:**

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

Council Action Date

June 20, 2024

## Program Analysis

### Project Description

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

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

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

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

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

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

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

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

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

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



The table details the proposed direct and indirect membership interests:

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

#### Character and Competence

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

#### Proposed Members:

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

**Dr. O’Ryan Baruch** is an attending physician at Downtown Physicians and Flushing Hospital Medical Center and is an associate physician at Advanced Medical Concepts. Dr. Baruch received accreditations in 2012 from Touro College of Osteopathic Medicine and completed a residency in 2017 at the Center for Advanced Pain Management and Rehabilitation in New Jersey.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Conclusion

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

## Financial Analysis

### Operating Budget

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

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

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

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

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

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

### Capability and Feasibility

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

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

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

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

### Conclusion

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

## Attachments

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



Project # 232243-E
Advanced Surgery Center

Program: Diagnostic and Treatment Center
Purpose: Establishment
County: Rockland
Acknowledged: January 16, 2024

Executive Summary

Description

Advanced Surgery Center, LLC (The Center), an existing Article 28 multi-specialty, freestanding ambulatory surgical center (FASC) at 150 South Pearl Street, Pearl River, NY (Rockland County), is seeking approval to transfer 100.00% ownership interest (100 shares) from the sole withdrawing member to two new members. The Center has been in operation since 2010 and obtained an indefinite life in 2018. The facility currently provides and will continue to provide plastic surgery and pain management services.

On June 5, 2023, the current sole shareholder Dr. Michael Fiorillo entered into a Membership Interest Purchase agreement to sell all outstanding shares in the Center to Dr. David Gamburg. Dr. Gamburg then assigned his interest in Advanced Surgical Center, LLC to J. Fire Ambulatory Holdings, LLC. On June 26, 2023, J. Fire Ambulatory Holdings, LLC, through a Membership Interest Purchase Agreement, agreed to sell 5% interest to Dr. Dmitry Rozin. Dr. Fiorillo will continue to operate with a reduced workload and eventually phasing out.

Ownership before and after the requested change is as follows:

Table with 2 columns: Current Operator, Member. Row 1: Advanced Surgery Center, LLC, Michael Fiorillo, M.D. 100%

Proposed Operator

Table with 2 columns: Members, Ownership %. Row 1: J. Fire Ambulatory Holdings, LLC\* 95%. Row 2: Dr. Dmitry Rozin 5%. Row 3: Total 100%

\*J Fire Ambulatory Holdings, LLC is comprised of 5 members listed below:

Table with 2 columns: Name, Ownership %. Row 1: Dr. David Gamburg 8.55%. Row 2: Alina Gamburg 15.2%. Row 3: Jordan Gamburg 9.5%. Row 4: Jacob Gamburg 9.5%. Row 5: Ludmila Superfin 52.25%. Row 6: Total 95.00%

Dr. Dmitry Rozin will serve as the medical director. The Center has an existing transfer and affiliation agreement for backup and emergency services with Good Samaritan Hospital of Suffern (11 miles and 18 minutes travel time from the Center) that will remain in effect.

OPCHSM Recommendation

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

Need Summary

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

### Program Summary

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

### Health Equity Impact Assessment

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

### Financial Summary

There are no project costs for this application. The total purchase price for the 100 outstanding shares of stock is \$2,000,000 plus the value of all pharmaceutical and medical inventory on hand as of the closing date. 20% of the total purchase price will be funded with equity from the proposed new members and 80% of the total purchase price will be funded with a 10-year loan at 11% interest.

<u>Budget:</u>	<u>Current Year (2022)</u>	<u>Years One and Three (2024 and 2026)</u>
Revenues:	\$929,986	\$1,762,629
Expenses:	<u>1,225,522</u>	<u>1,576,121</u>
Gain/(Loss):	(\$295,536)	\$186,508

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval with an expiration of the operating certificate three years from the date of its issuance, contingent upon:**

1. Submission of an executed loan document, acceptable to the Department of Health. [BFA]
2. Submission of a signed agreement with an outside, independent entity satisfactory to the Department to provide annual reports to DOH. Reports are due no later than April 1st for the prior year and are to be based upon the calendar year. Submission of annual reports will begin after the first full or, if greater or equal to six months after the date of certification, partial year of operation. Reports should include:
  - a. Data displaying actual utilization including procedures;
  - b. Data displaying the breakdown of visits by payor source;
  - c. Data displaying the number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
  - d. Data displaying the number of emergency transfers to a hospital;
  - e. Data displaying the percentage of charity care provided;
  - f. The number of nosocomial infections recorded during the year reported;
  - g. A list of all efforts made to secure charity cases; and
  - h. A description of the progress of contract negotiations with Medicaid managed care plans. [RNR]

**Approval conditional upon:**

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

Council Action Date

June 20, 2024



# Program Analysis

## Project Proposal

There are no programmatic changes because of this request.

Staffing will increase from 4.6 FTE in Year 1 to 6.4 FTE in Year 3.

The Center will be managed by its members: J Fire Ambulatory Holdings LLC (representative - David Gamburg, M.D. and Dmitry Rozin, M.D).

The table below details the proposed change in ownership:

MEMBER NAME	Membership Interest	Percentage Ownership
*J Fire Ambulatory Holdings LLC	95%	95%
*Dmitry, Rozin, M.D.	5%	5%
<b>TOTAL</b>	100%	100%
	<b>Direct Membership in J Fire Ambulatory Holding LLC</b>	<b>Indirect Membership in Advance Surgery Center, LLC</b>
Alina Gamburg	16.0%	15.2%
David Gamburg	9.0%	8.6%
Jacob Gamburg	10.0%	9.5%
Jordan Gamburg	10.0%	9.5%
Ludmila Superfin	55.0%	52.3%
<b>TOTAL</b>	100.0%	95%

*\*New members are subject to character and competence review.*

Dr. Dmitry Rozin will serve as Medical Director of the Center.

## Character and Competence

**Dr. David Gamburg / Manager** - is a pain management specialist in New York (NY) and New Jersey (NJ) and currently performs cases at the Center on a limited basis and has admitting privileges at Hudson Regional Medical Center. Dr. Gamburg completed a Pain Management Fellowship at Mount Sinai Medical Center in New York City (NYC); completed an Anesthesiology Residency at Mount Sinai Medical Center in NYC; received a Medical Doctor degree in NY and from the Sackler School of Medicine in Tel Aviv, Israel. As a Pain Management Specialist, Dr. Gamburg is registered to practice in NY until April 30, 2024; and in Pediatric Anesthesiology until December 31, 2025.

Dr. Gamburg is the founder and Medical Director (MD) of Cross River Pain Management PC which is a Pain Management practice providing outpatient services in the Hudson Valley region covering Albany, Greene, Columbia, Ulster, Dutchess, and Orange Counties; Founder/Medical Director of Hudson Pain Associate PC in Flushing, NY; and the Founder/Medical Director of Pain Treatment Center Outpatient Ambulatory Center facility affiliated with Kingston Hospital.

Past employment for Dr. Gamburg consisted of acting as the facility President at DG Pain Management PC, in Rockland County, NY; worked at Advanced Surgical Center in Pearl River, NY; Director of Pain Management Services at Benedictine Hospital in Kingston NY; Director of Pain Management Services at Kingston Hospital in Kingston NY; Director of Pain Management Services at Northern Dutchess Hospital in Rhinebeck, NY; Attending Physician Pain Management Services at Vassar Hospital in Poughkeepsie, NY; CEO at Montvale Surgical Center LLC; and was the Managing Partner at Saddle River Surgical Center in Ridgewood, NJ.

**Alina (Superfin) Gamburg / Member** - received a bachelor's degree from Syracuse, NY, and is currently employed with Cross River Pain Management PC as the Administrator overseeing staff, office, and facility operations since 1988.

**Jordan Gamburg / Member** - completed high school at Northern Highlands Regional High School in Allendale, NJ in June 2023 and was employed at Cross River Pain Management PC completing office work such as ordering supplies and staff scheduling for three (3) years.

**Jacob (Jake) Gamburg / Member** - earned a Bachelor of Science degree in Real Estate from Tulane College in New Orleans, LA in May 2022; and indicates enrollment in the LSU Master's Program for Healthcare Administration for 2024. Jacob is currently employed with Wells Fargo assisting individuals with vehicle funding.

**Ludmila (Lozansky) Superfin / Member** - received an Engineering Degree at the University of Kiev and currently operates a healthcare staff management company called AGM Services LLC in Ramsey, NJ since 2018.

**Dr. Dmitry Rozin /Manager and Medical Director** - is an anesthesiologist and will provide anesthesia services for the Center, as well as participate in the management of the Center. Dr. Rozin is registered in New York (NY) as an Anesthesiologist until July 31, 2025, and is licensed in New Jersey (NJ) until June 30, 2025. Dr. Rozin received an MD from St. Georges, University of Medicine in St. George, Grenada, WI, and has a BS from Michigan State University, East Lansing, MI.

Dr. Rozin completed a Pediatric Anesthesia Fellowship at Albert Einstein College of Medicine, Montefiore Medical Center in Bronx, NY; and is currently the Chief Medical Officer at Olena Medical, NJ; is an Anesthesiologist at Overlook Medical Center, St Joseph Hospital and Barnabas Hospital in NY; an Anesthesiologist (Pediatric, Adult, Cardiothoracic) at Mednax/NAPA in NJ and Illinois; and specializes in Pediatric Anesthesiology in NJ, NY and in IL.

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

#### Conclusion

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

## Financial Analysis

### Operating Budget

The applicant has provided the current year (2022) results and the first- and third-year operating budget, in 2024 dollars, after the change in ownership. The budget is summarized below:

	<u>Current Year</u>		<u>Years One and Three</u>	
	<u>(2022)</u>		<u>(2024 and 2026)</u>	
	Per Proc.	Total	Per Proc.	Total
<b>Revenues:</b>				
Commercial MC	\$2,649.06	\$341,729	\$989.56	\$376,032
Medicare FFS	\$388.08	\$10,090	\$498.20	\$30,390
Medicaid FFS	\$161.00	\$322	\$186.73	\$2,801
Medicaid MC			\$112.92	\$1,468
Private Pay	\$1,632.33	\$577,845	\$4,097.69	\$1,241,599
Total Oper. Rev.				
Other Oper. Rev.				<u>\$110,339</u>
Total Revenue		<u>\$929,986</u>		<u>\$1,762,629</u>
<b>Expenses:</b>				
Operating	\$1,919.38	\$1,015,351	\$1,445.26	\$1,396,121
Capital	<u>\$397.30</u>	<u>\$210,171</u>	<u>\$186.34</u>	<u>\$180,000</u>
Total Expenses	<u>\$2,316.68</u>	<u>\$1,225,522</u>	<u>\$1,631.60</u>	<u>\$1,576,121</u>
Gain/(Loss)		(\$295,536)		\$186,508
Procedures		529		966
Cost/Procedure		\$2,316		\$1,631

The following is noted with respect to the submitted budget:

- Revenues and expenses are based on 2022 Cost Report data, the experience of the applicant in providing the services outlined in this application and the impact of the additional cases that Dr. Gamburg will perform.
- Utilization in Year One and Year Three is based on the experience of the current operator and the additional cases performed by Dr. Gamburg.
- The applicant expects to sustain existing volume of procedures, revenues, and expenses with increases in Year One and Year Three based on the proposed physician shareholder's volume letters.
- Per the applicant, "All Other" includes Worker's Compensation and is showing a significant increase between Current Year and Year One and Year Three. Currently, most of the cases are Plastic, which is not covered under Worker's Compensation, but after approval, Pain Management surgeons will be using the Center and based on their current payer mix, they do cases covered by Workers Compensation at the projected level .  
As of February 1, 2024, the facility had no outstanding Medicaid overpayment liabilities.
- The facility has deemed to keep the revenue and expense projections for Year One and Year Three the same to be conservative in their overall assumptions of the project going forward with the addition of Dr. Gamburg's procedures.
- The reason for the significant swing in the Commercial MC s Private Pay rates is the addition of Dr. Gamburg's services, which changed the overall case mix for the facility. Prior to the addition of Dr. Gamburg, the Center performed plastic surgery that was paid through Commercial MC or Private Pay. The new service make up is now pain management and plastic surgery with the majority of the services coming under Commercial, Medicare, Medicaid, charity care and all other. Due to this change, the rate for Private Pay has increased while the rate for Commercial MC has decreased.

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

	<u>Current Year</u> <u>(2022)</u>	<u>Years One and</u> <u>Three (2024 &amp;</u> <u>2026)</u>
Commercial MC	24.39%	39.34%
Medicare FFS	4.91%	6.31%
Medicaid FFS	0.38%	1.55%
Medicaid MC	0%	1.35%
Private Pay	66.92%	31.37%
Charity Care	3.02%	4.55%
All Other	<u>0.38%</u>	<u>15.53%</u>
Total	100.0%	100.0%

#### Membership Interest Purchase Agreement

The applicant has submitted an executed Membership Interest Purchase Agreement, effectuated on June 5<sup>th</sup>, 2023, and summarized as follows:

Date:	June 5 <sup>th</sup> , 2023
Seller:	Dr. Michael Fiorillo
Buyer:	Dr. David Gamburg
Purchase and Sale of Shares	100% transfer of ownership through purchase of 100 shares in the LLC
Purchase Price:	\$2,000,000 plus the value of all pharmaceuticals and inventory on hand as of closing date. 20% equity of the total purchase price will come from the proposed new members and 80% of the total purchase price will come from a loan with a 10-year term at prime plus 2.5% interest. 2.5% plus prime of 8.5% as of 2/14/202, for an estimated interest rate of 11%. The total available amount of the loan is \$2.5 million, which can be used to cover the value of all pharmaceutical and inventory on hand as of closing date.
Seller's Deliverables	At the closing, seller shall assign and convey the shares to buyer (equally among them) by the execution and delivery of stock powers in a form agreed to by the parties along with any certificates evidencing the shares, which may be necessary to effectively convey all of seller's rights, title and interest in the shares to buyer (equally among them) and deliver to the buyer; resign as an officer and director of Advanced; deliver to buyer all other documents reasonably required by buyer to consummate the transactions contemplated hereunder and deliver a closing certificate to buyer certifying that seller has met all of its obligations.
Buyer's Deliverables	At the closing, the buyer shall deliver an amount equal to the purchase price via wire transfer of immediately available funds to an account designated in written wiring instructions delivered by seller, deliver to seller all other documents reasonably required by seller to consummate the transactions contemplated hereunder and deliver a closing certificate to seller certifying that buyer has met all its obligations.

#### Membership Interest Assignment

The applicant has submitted an executed membership interest assignment, effectuated on June 5<sup>th</sup>, 2023, and summarized as follows:

Date	June 5 <sup>th</sup> , 2023
Assignor:	Dr. David Gamburg
Assignee:	J. Fire Ambulatory Holdings, LLC
Assignment:	100% ownership interest in Advanced
Fee:	N/A

### Membership Interest Purchase Agreement

The applicant has submitted an executed Membership Interest Purchase Agreement, effectuated on June 5, 2023, and summarized as follows:

Date:	June 26 <sup>th</sup> , 2023
Seller:	J. Fire Ambulatory Holdings, LLC
Buyer:	Dr. Dmitry Rozin
Purchase and Sale of Shares	5% transfer of ownership through purchase of five shares in the LLC
Purchase Price:	\$100,000

### Lease Agreement

The applicant provided an executed Lease Agreement for the existing site, the terms of which are summarized below:

Premises:	150 South Pearl Street, Pearl River, NY
Landlord:	150 Route 304, LLC
Lessee:	Advanced Surgery Center, LLC
Term:	10 years with 3 (yr.) renewal periods
Rent:	180,000 annually
Provisions:	Triple Net

The applicant has submitted an affidavit stating that the lease arrangement is an arm's length agreement.

### Capability and Feasibility

There are no project costs associated with this application. The total purchase price is \$2,000,000 plus the value of all pharmaceuticals and inventory on hand as of the closing date. 20% of the purchase price will be funded with proposed members' equity and 80% of the purchase price from a loan with a 10-year term at 2.5% plus prime of 8.5% as of 2/14/2024, for an estimated interest rate of 11%. NBLease, LLC has provided J. Fire with a letter of interest for a maximum loan amount of \$2.5 million.

The working capital requirement is \$262,687 based on two months of the first year's expenses and will be funded through proposed member equity. BFA Attachment A, Proposed Member's Net Worth Statement, shows sufficient resources to cover the purchase price and working capital requirements. Dr. Gamburg has submitted an affidavit stating he will contribute a disproportionate share of the equity and working capital requirement.

BFA Attachment B, 2022 Certified Financial Summary of Advanced Surgery Center, LLC, shows a negative working capital position, a positive net asset position, and an operating loss of (\$295,536). BFA Attachment C, 1/1/23-11/30/23 Internal Financial Statements of Advanced Surgery Center, LLC, shows a positive working capital position, a positive net asset position, and a net income of \$107,592.

### Conclusion

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

## Attachments

BFA Attachment A	Proposed Members' Net Worth Statements for Advanced Surgery Center, LLC
BFA Attachment B	2022 Certified Financial Summary of Advanced Surgery Center, LLC
BFA Attachment C	1/1/23-11/30/23 Internal Financial Statements of Advanced Surgery Center, LLC
BFA Attachment D	Organizational Chart and proposed owners' ownership percentage



**Project # 241100-B  
Holistic Birth Center New York**

**Program:** Diagnostic and Treatment Center    **County:** Kings  
**Purpose:** Establishment and Construction    **Acknowledged:** March 13, 2024

**Executive Summary**

**Description**

Holistic Birth Center New York, LLC (The Center), a to-be-formed limited liability company, requests approval to establish and construct a new Article 28 Diagnostic and Treatment Center (D&TC) in Kings County. The Center will be in renovated space at 840 Lefferts Avenue, Brooklyn, New York, and certified as a Freestanding Birthing Center, a primary care provider, and provide other medical specialties. The intent is to provide a birthing center as a better alternative to in-hospital services, improve the health of residents, and reduce hospital admissions.

Judy Ribner, DNP, will be the sole member of Holistic Birth Center New York, LLC. Melinda Mann, MD, will be the medical director of the facility. The Center will enter into a Transfer and Affiliation Agreement with Maimonides Hospital.

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

The applicant projects 138 births and 35 primary care/other medical specialties visits in Year One and 331 births and 83 primary care/other medical specialties visits in Year Three. Medicaid is projected at 73.4% with 2.3% Charity Care in Year One and 73.9% Medicaid and 2.2% Charity Care in Year Three.

**Program Summary**

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

**Financial Summary**

The total project cost of \$1,684,799 will be met with landlord equity of \$1,072,000, \$61,280 in equity from the sole member, and a bank loan of \$551,519 at an interest rate of 6% for a ten-year term.

Budget:	<u>Year One</u>	<u>Year Three</u>
	<u>(2025)</u>	<u>(2027)</u>
Revenues	\$1,916,813	\$4,597,575
Expenses	<u>1,638,628</u>	<u>3,062,775</u>
Net Income	\$278,185	\$1,534,800

**Health Equity Impact Assessment**

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

# Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a 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 State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
3. Submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
4. Submission of an executed lease rental agreement that is acceptable to the Department of Health. [BFA]
5. Submission of a bank loan commitment that is acceptable to the Department of Health. [BFA]
6. Submission of a working capital loan commitment that is acceptable to the Department of Health. [BFA]
7. Submission of an executed Transfer and Affiliation Agreement acceptable to the Department with a local acute care hospital(s). Transfer agreements for mother and/or infant should include a list of indicators necessitating transfer and a written procedure for automatic acceptance of such transfers by the transfer hospital. [HSP]
8. Submission of a formal executed and approved collaborative agreement with a pediatric provider with a hospital. [HSP]

**Approval conditional upon:**

1. This project must be completed by **July 1, 2025**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **January 1, 2025**, and construction must be completed by **April 1, 2025**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. Apply for accreditation by the Commission for Accreditation of Birth Centers (CABC) and request a site visit of its facility at the time of its opening for a one-year certification and another site visit for the permanent certification of a three-year period. [HSP]
5. Provide formal arrangements for the provision of obstetrical care at the transfer hospital with a qualified physician for these services and for consultation and referral. [HSP]
6. Provide formal arrangements for the provision of pediatric care at the transfer hospital and for consultation and referral. [HSP]
7. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]

8. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:  
[https://www.health.ny.gov/facilities/hospitals/docs/hcs\\_access\\_forms\\_new\\_clinics.pdf](https://www.health.ny.gov/facilities/hospitals/docs/hcs_access_forms_new_clinics.pdf). Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: [hospinfo@health.ny.gov](mailto:hospinfo@health.ny.gov). [HSP]

Council Action Date  
June 20, 2024



# Need Analysis

## Project Description

Holistic Birth Center NY, LLC seeks approval for the establishment and construction of a new Article 28 Diagnostic and Treatment Center to be certified as a freestanding birthing center and a provider of primary care and other medical specialties. The center will be in a renovated space at 840 Lefferts Avenue, Brooklyn, New York 11203 (Kings County).

The facility will be a freestanding birth center, defined as "a facility where birth is planned to take place away from the hospital and away from the person's residence, where care is provided in the midwifery and wellness model, with birth center care integrated into the healthcare system." To minimize complications, Holistic Birth Center New York LLC will accept only those persons who present as low-risk childbearing individuals in accordance with accepted standards of practice for birth centers.

The facility will provide primary care services, birth center services, and other medical specialties. The establishment of this diagnostic and treatment center is part of an overall plan to provide care to individuals expecting a baby in an environment that promotes better deliveries and outcomes for the mother and babies, with particular emphasis on providing culturally and linguistically appropriate services to the underserved minority population in the county. Holistic Birth Center New York LLC seeks to reduce hospital admissions, free up hospital space by providing an alternate venue in which people can give birth safely, and reduce healthcare costs. The Center will also provide education and information to ensure greater access to prenatal visits and, ultimately, better outcomes. Holistic Birth Center will initiate programs that follow patients who have given birth for the first year postpartum.

## Background and Analysis

The service area is Kings County, with the primary service area in zip code 11203 and those neighboring in 11210, 11226, 11225, 11213, 11212, 11236, and 11234. The proposed location is in a Health Professional Shortage Area (HPSA) for Primary Care, Mental Health, and Dental Health. The population of Kings County is estimated to increase to 2,854,617 by 2029 per projection data from the Cornell Program on Applied Demographics, an increase of 6.5%. Demographics for the primary service area are noted below, including a comparison with New York State.

<b>Demographics</b>	<b>Primary Service Area</b>	<b>Kings County</b>	<b>New York State</b>
Total Population	644,656	2,679,620	19,994,379
Hispanic or Latino (of any race)	11.5%	18.9%	19.5%
White (non-Hispanic)	17.7%	36.1%	53.8%
Black or African American (non-Hispanic)	62.2%	28.3%	13.8%
Asian(non-Hispanic)	3.4%	11.7%	8.8%
Other (non-Hispanic)	5.2%	5.0%	4.1%

*Source: 2022 American Community Survey (5-Year Estimates Data Profiles)*

In 2021, 93.4% of the population of Kings County had health coverage as follows:

Employee plans	40.9%
Medicaid	32.5%
Medicare	8.13%
Non-group plans	11.7%
Military or VA plans	0.308%

*Source: Data USA*

<b>Applicant Projected Payor Mix</b>		
<b>Payor</b>	<b>Year One</b>	<b>Year Three</b>
Commercial	22.0%	21.7%
Medicare	0%	0%
Medicaid	73.4%	73.9%
Private Pay	2.3%	2.2%
Charity Care	2.3%	2.2%
Other	0%	0%

The applicant projects 138 births and 35 primary care/other medical specialties visits in Year One and 331 births and 83 primary care/other medical specialties visits in Year Three. Each projected birth recorded includes all the necessary prenatal and post-natal visits. The estimated 35 primary care/other medical specialty visits in the first year and 83 in the third will include services such as transfers out at pre-admission, family planning, well-women care, preventive care, OB/GYN care, lactation, education, ultrasounds, primary care, other medical specialties including endocrinology, and behavioral health.

The proposed location will serve Brooklyn Community District 17, including the neighborhoods of East Flatbush, Crown Heights, Flatlands, Brownsville, and Canarsie. Holistic Birth Center New York will adhere to standards established by the American Association of Birth Centers (AABC) and the Commission on the Accreditation of Birth Centers.

There are 12 providers of Maternity or Birthing Service O/P in Kings County, including two hospitals in the same zip code. CON 232217 The Birth Center at Fort Greene is another midwifery birthing center under review within 3 miles of the applicant.

The applicant is negotiating an Affiliation and Transfer Agreement with Maimonides Medical Center for backup hospital services located 4 miles and 14 minutes away.

#### Conclusion

Approval of this project will allow for expanded access to birthing and primary care services for the residents of Kings County.

Program Analysis

Project Proposal

<b>Proposed Operator</b>	Holistic Birth Center New York, LLC
<b>Doing Business As</b>	Holistic Birth Center New York, LLC
<b>Site Address</b>	840 Lefferts Avenue, Brooklyn, NY 11203
<b>Shift/Hours/Schedule</b>	Sunday through Thursday from 9 am to 8 pm and Friday from 9 am to 2 pm. Birth center services: 24 hours a day, 7 days a week.
<b>Approved Services</b>	Birthing Service O/P Medical Services - Primary Care Medical Services - Other Medical Specialties Endocrinology Diabetes Care Neurology Orthopedic Cardiology Pulmonology
<b>Staffing (1<sup>st</sup> Year/3<sup>rd</sup> Year)</b>	9.54 FTEs for the 1 <sup>st</sup> and 20.29 for the 3 <sup>rd</sup> year
<b>Medical Director(s)</b>	Dr. Melinda Mann
<b>Emergency, In-Patient, and Backup Support Services Agreement and Distance</b>	Maimonides Medical Center 4 miles and 14 minutes  The nearest hospital is Kings County Hospital Center 1 mile and 5 minutes

Recognizing the needs of the community, the Center proposes to provide a variety of integrated primary health care services, including assessment and diagnosis, outpatient primary care screening and monitoring of key health indicators, screenings for HIV and Hepatitis, pregnancy screenings, and prenatal care in addition to other medical specialty services. Cases that fall under Primary Care / Other Medical Specialties include clinic antepartum visits to patients who were risked out or transferred out pre-admission to the birth center. It also includes visits for family planning, well-women care, preventive care, OB/GYN care, lactation, education, ultrasounds, primary care, and other medical specialties, including endocrinology, behavioral health, etc.

The program will provide a variety of integrated primary health care services and other medical specialty services. Neurology, Orthopedics, Cardiology, Pulmonology/Asthma, and Behavioral Health will also be included.

Holistic Birth Center New York, LLC proposes to renovate approximately 5,360 square feet of a one-story building, which will include the mechanical, electrical, plumbing, fire alarm, and sprinkler systems. The birth center will provide a homelike environment, which will include three birthing rooms with birth pools, seven exam rooms, a classroom, and a midwife room.

The applicant anticipates entering into a Transfer and Affiliation Agreement with Maimonides Medical Center at 4802 Tenth Avenue, Brooklyn, NY 11219. Maimonides has maternity, neonatal, and pediatric capabilities. The nearest hospital is Kings County Hospital Center, which also has maternity, neonatal, and pediatric capabilities.

The applicant projects 138 births and 35 primary care/other medical specialties visits in Year One and 331 births and 83 primary care/other medical specialties visits in Year Three. Each projected birth recorded includes all the necessary prenatal and post-natal visits. The estimated 35 primary care/other medical specialty visits in the first year and 83 in the third will include services such as transfers out at pre-admission, family planning, well-women care, preventive care, OB/GYN care, lactation, education, ultrasounds, primary care, other medical specialties including endocrinology, and behavioral health.

The applicant has two midwives who will be employed full-time. The full-time midwives will be employed as part of the midwifery staff and rotate their on-call schedules to be available 24/7 for consultation, triage, admission, labor and delivery, and prompt response to clients for all inquiries.

The two senior midwives will rotate initially to accommodate several births per week. The regular professional staff of two full-time senior midwives will cover 24-hour shifts and work office hours at the clinic while on call or on other scheduled days. A 3rd midwife (the Applicant) will be available for backup and coverage of the two senior staff midwives in the event a midwife is unavailable due to scheduled vacation, sudden illness, or family leave time.

Staffing will increase by 10.75 FTEs from Year 1 & Year 3:

<b>Positions</b>	<b>First Year FTE</b>	<b>Third Year FTE</b>
Management & Supervision	1.82	3.09
Technicians and Specialists	1.25	2.50
Aides, Orderlies & Attendants	1.0	2.0
Nurse Midwife	2.0	4.0
Social Worker & Psychologist	0.20	0.50
Clinical and Patient Coordinators	0.77	3.00
Birth Assistant Manager / Nurse Manager	0.00	1.00
Birth Assistant / Fellows / CPM / RN	2.50	4.20
<b>Totals</b>	<b>9.54</b>	<b>20.29</b>

*\*Numbers and mix of staff based on volume projections as well as experience.*

In the event there is a transfer during labor and delivery, the senior midwife attending the birth, will notify the hospital of an incoming transfer as per mutually agreed upon protocols with the hospital as to whom to call and the process of transporting the patient. The midwives will go with the patient to the hospital but will not continue the client's care in the hospital as they are not presently applying for privileges. It is their intention to apply in the future and provide continuity of care in the hospital. Therefore, the hospital will accept the transfer and will either call the medical director as the covering physician or the hospital staff will attend to the patient as required.

There will be two senior midwives rotating initially to accommodate several births per week. The regular professional staff consists of midwives to take calls no less than every third day/night based on 24-hour shifts, work office hours at the clinic while on call or other scheduled days, and a 3<sup>rd</sup> midwife available for backup and coverage of midwives who are unavailable due to scheduled vacation, sudden illness, or family leave time.

Character and Competence:

The proposed membership of Holistic Birth Center New York LLC is as follows:

<b>Member Name/Title</b>	<b>Membership Interest</b>
Judy Ribner, Operator/Manager	100%
<b>Total</b>	<b>100%</b>

**Melinda Sue Mann (Medical Director):**

Dr. Mann is the proposed Medical Director (MD) and is currently registered as a Physician in Medicine and Surgery in New York State (license #171092) until January 31, 2026. Dr. Mann has been licensed since July 1987 and is a board-certified OB/GYN physician and will see OB/GYN patients face-to-face at Holistic Birth Center New York, LLC.

Dr. Mann graduated from the New York Medical College in Valhalla, New York, with an MD in June 1985 and from City College of NY in New York, New York, with a BS in June 1983.

Dr. Mann's employment history consists of working as the OB/GYN physician for ODA (FQHC), which has a facility in Brooklyn, New York, since October 2023 to present; creating a women's health facility for Parcare (OB/GYN) in Brooklyn, New York from January 2022 to September 2023; and in partnership with Dr. Rais (OB/GYN MD Midwifery) in Brooklyn, New York from January 2014 to November 2021.

Dr. Mann is an attending physician privileged at Maimonides Medical Center and Maimonides Medical Center for Dr. Mann's private patients, and the Holistic Birth Center patients admitted at the Hospital. The Medical Director will be available via phone and text for antepartum consultation, collaboration, or transfer of care.

There is a formal arrangement with the Medical Director to consult and collaboratively manage patients and accept patients in need of transfer of care during antepartum, intrapartum, and postpartum.

**Judy Ribner, DNP, CNM, RNM (100% Member):**

Dr. Ribner is currently a licensed Midwife in New York State (license #001983) until October 31, 2025. Dr. Ribner graduated from New York University in New York, New York, with a Doctor of Nursing degree in August 2021; from SUNY Downstate Medical Center in Brooklyn, New York, with a Masters in Midwifery in August 2014; from CUNY College of Staten Island in Staten Island, New York with an associate in nursing in May 2016; and from Excelsior College/Touro from Albany, New York with a BS in February 2011.

Dr. Ribner's employment history consists of working as the sole owner/midwifery director, as the administrator of Holistic Midwifery New York, Inc. since March 2020 to present, and as the chairperson with the New York City Homebirth Collective Committee for Safety, Quality Improvement, and Research from January 2022 to present.

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

**Conclusion**

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

## Financial Analysis

### Operating Budget

The applicant has submitted an operating budget in 2024 dollars during the first and third years, summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>(2025)</u>		<u>(2027)</u>	
	<u>Per Births</u>	<u>Total</u>	<u>Per Births</u>	<u>Total</u>
Commercial FFS	\$8,989	\$134,839	\$8,984	\$323,418
Commercial MC	\$12,177	\$182,656	\$12,170	\$438,110
Medicaid MC	\$11,423	\$1,165,105	\$11,406	\$2,794,565
Private Pay	\$16,950	\$50,850	\$17,424	\$121,967
Transfer Clinic Revenue		\$230,018		\$551,709
Other Clinic Visits Rev		<u>\$153,345</u>		<u>\$367,806</u>
Total Revenues		\$1,916,813		\$4,597,575
Expenses:				
Operating		\$1,319,015		\$2,737,611
Capital		<u>\$319,613</u>		<u>\$325,164</u>
Total Expenses		\$1,638,628		\$3,062,775
Net Income		\$278,185		\$1,534,800
Utilization: (Births)		138		331
Transfer Visits		21		50
Other Clinic Visits		14		33
Total Visits		173		414

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

- Revenues are based on current reimbursement methodologies.
- Expense assumptions are based on the historical experience of the provider. The applicant is projecting to hire 2 FTEs of nurse midwives during the first year and 4 FTEs in the third year. Additionally, the applicant plans to hire 2.5 FTEs of birth assistants/fellows/CPMs/RNs during the first year and 4.2 FTEs in the third year.
- Utilization assumptions are based on the historical experience of other providers in Kings County.

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

	<u>Year One</u>	<u>Year Three</u>
	<u>(2025)</u>	<u>(2027)</u>
Commercial FFS	11.0%	10.8%
Commercial MC	11.0%	10.9%
Medicaid MC	73.4%	73.9%
Private Pay	2.3%	2.2%
Charity Care	<u>2.3%</u>	<u>2.2%</u>
Total	100.00%	100.00%

### Total Project Cost and Financing

The total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at \$1,684,799, further broken down as follows:

Renovation and Demolition	\$1,072,000
Design Contingency	107,200
Construction Contingency	107,200
Planning Consultant Fees	15,000
Architect/Engineering Fees	85,760
Construction Manager Fees	60,000
Other Fees (Consultant)	35,000
Moveable Equipment	106,175
Telecommunications	44,500
Financing Costs	22,232
Interim Interest Expense	18,527
CON Fees	2,000
Additional Processing Fees	<u>9,205</u>
Total Project Cost	\$1,684,799

The applicant's financing plan appears as follows:

Landlord (Equity)	\$1,072,000
Equity (Member)	61,280
Bank Loan (6% for a ten-year term)	<u>551,519</u>
Total	\$1,684,799

### Lease Rental Agreement

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

Premises	5,360 square feet located at 840 Lefferts Avenue, Brooklyn, New York.
Lessor	The Leser Group
Lessee	Holistic Birth Center New York, LLC
Term	10-year term with a five-year renewal option.
Rental	\$268,000 year one with a 3% increase each thereafter.
Provisions	The lessee shall be responsible for real estate taxes, maintenance, and utilities.

The lease is arms-length as the applicant submitted an affidavit stating that there is no relationship between the landlord and tenant. The applicant has submitted two real estate letters attesting to the reasonableness of the rent.

### Capability and Feasibility

The total project cost of \$1,684,799 will be met with \$1,072,000 in landlord equity, \$61,280 in member equity, and a bank loan of \$551,519 at an interest rate of 6% for a ten-year term. The applicant has submitted documentation indicating the landlord has sufficient funds to cover their portion of the equity contribution and a letter of interest regarding the financing. BFA Attachment A, Personal Net Worth Statement of the Proposed Member of Holistic Birth Center, New York, LLC, indicating the availability of sufficient funds for the equity contribution. The funds will come from member's business interest in 74 Roanoke St, LLC.

Working capital requirements are estimated at \$510,462, which is equivalent to two months of third-year expenses. The applicant will finance \$255,231 at an interest rate of 6% for a three-year term. The remainder, \$255,231, will be provided as equity from the proposed member's personal resources. BFA Attachment A, Personal Net Worth Statement of the Proposed Member of Holistic Birth Center, New York, LLC, which indicates the availability of sufficient funds for the equity contribution. The funds will come from the member's business interest in 74 Roanoke St, LLC. BFA Attachment B, Pro Forma Balance

Sheet of Holistic Birth Center, New York, LLC, which indicates a positive net asset position of \$285,231 as of the first day of operation.

The submitted budget projects a net income of \$278,185 and \$1,534,800 during the first and third years of operations. Revenues are based on current reimbursement methodologies for birthing services and the other clinic visits they will provide. The submitted budget appears reasonable.

Conclusion

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

<h2>Attachments</h2>
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BHFP Attachment	Map
BFA Attachment A	Personal Net Worth Statement of the proposed member of Holistic Birth Center New York, LLC
BFA Attachment B	Pro Forma Balance Sheet





**Project # 241153-E**  
**Digestive Disease Center of Central New York, LLC**

**Program:** Diagnostic and Treatment Center    **County:** Onondaga  
**Purpose:** Establishment    **Acknowledged:** April 9, 2024

**Executive Summary**

**Description**

Digestive Disease Center of Central New York, LLC (the Center), an existing single-specialty Ambulatory Surgery Center (ASC) specializing in gastroenterology in Onondaga County, requests approval to transfer 37.50% membership interest from one withdrawing member to one new member. Thomas Romano, M.D. will sell his 37.5% membership interest to his son John Romano, M.D.

The current and proposed ownership of Digestive Disease Center of Central New York, LLC is as follows:

<u>Current Operator</u>	
Digestive Disease Center of Central New York LLC	
<u>Members:</u>	<u>%</u>
Thomas Romano, MD	37.50%
Borys Burnick, MD	37.50%
Sara Gosselin, MD	25.00%

<u>Proposed Operator</u>	
Digestive Disease Center of Central New York LLC	
<u>Members:</u>	<u>%</u>
John Romano, MD	37.50%
Borys Burnick, MD	37.50%
Sara Gosselin, MD	25.00%

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

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

**Program Summary**

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

**Financial Summary**

There are no project costs associated with this application. The purchase price for the 37.5% membership interest is \$3,000,000 and will be funded with a \$3,000,000 personal loan at an interest rate of 4.31% for a fifteen-year term. Since there are no changes to the facility or the services provided, operating budgets were not reviewed as a part of this review.

**Health Equity Impact Assessment**

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

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a personal loan commitment that is acceptable to the Department of Health. [BFA].

**Approval conditional upon:**

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

Council Action Date

June 20, 2024

# Program Analysis

## Program Description

Digestive Disease Center of Central New York, LLC is submitting this application to transfer 37.5% membership interest from Thomas Romano, MD to his son, Dr. John Romano, MD. Thomas Romano will continue to serve as the Medical Director. Digestive Disease Center of Central New York, LLC is current with all reporting and regulatory requirements and maintains its national accreditation.

The proposed members and ownership percentages of Digestive Disease Center of Central New York, LLC are as follows:

Members	Proposed Membership
John Romano, MD **	37.50%
Borys Buniak, MD	37.50%
Sara M. Gosselin, MD	25.00%
<b>Total</b>	<b>100.00%</b>

*\*\*All New Members are subject to character and competence background investigation.*

**John Romano, M.D.** received a master's in science education from Pace University in 2010 and received his medical credentials from The University of Queensland/Ochsner Clinic School in Australia in 2015. Dr. Romano is currently licensed to practice in the State of New York. Dr. Romano has been an attending Gastroenterologist at Gastroenterology & Hepatology of Central New York, PC, since 2022. Dr. Romano completed a residency and internship at the Tinsley Harrison Internal Medicine Residency Program University of Alabama in 2019 and a fellowship in gastroenterology at the Medical University of South Carolina, in 2022.

**Thomas J. Romano, M.D.** is the current medical director for this facility. Dr. Romano received a medical doctorate from Columbia University College of Physicians and Surgeons in 1984 and completed a clinical fellowship at Yale University Medical School, Division of Digestive Diseases in 1989. Dr. Romano has been affiliated with both St. Joseph's Hospital Health Center and Crouse Irving Memorial Hospital since 1989. Dr. Romano is currently licensed to practice in the State of New York.

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

## Conclusion

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

## Financial Analysis

### Membership Interest Transfer Agreement

The applicant has submitted an executed membership interest transfer agreement for the 37.5% transfer, which is summarized below:

Date:	March 14, 2024
Purpose	Transfer of 37.5% ownership interest in Digestive Disease Center of Central New York, LLC
Transferor	Thomas Romano, M.D.
Transferee	John Romano, M.D.
Purchase Price	\$3,000,000
Payment of Purchase Price	Transferee shall pay the respective purchase price to the Transferor at the Closing to be held within sixty days of DOH's approval of the transaction.

### Capability and Feasibility

The purchase price for the 37.50% ownership interest is \$3,000,000 and will be paid with a \$3,000,000 personal loan at an interest rate of 4.31% for a fifteen-year term. The purchaser, John Romano, M.D., will make monthly payments of \$22,660 using his salary income of \$825,000 and from distributions that may be made in 2024 and beyond by the Center subsequent to John Romano, M.D.'s ownership in the facility.

Presented as BFA Attachment A is the 2023 Internal Financial Statements of Digestive Disease Center of Central New York, LLC. As shown, the Center achieved a positive working capital position and a positive net asset position in 2023. Also, the Center generated a net income of \$3,484,414 in 2023.

### Conclusion

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

## Attachments

BFA Attachment A	Financial Summary- 2023 Internal Financial Statements of Digestive Disease Center of Central New York, LLC
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**Project # 241024-B  
WellMed**

**Program:** Diagnostic and Treatment Center    **County:** Kings  
**Purpose:** Establishment and Construction    **Acknowledged:** February 7, 2024

**Executive Summary**

**Description**

WellMed NY LLC d/b/a (WellMed), an existing limited liability company, requests approval to establish and construct a new Article 28 Diagnostic & Treatment Center (D&TC) for Primary Care and Other Medical Specialties to include Podiatry, Gastroenterology, Pediatrics, Pain Management, Orthopedics, Oncology, Endocrinology, Cardiology, and Ophthalmology. WellMed will be in leased space at 532 Neptune Avenue, Brooklyn (Kings County). The facility will have six (6) exam rooms and operate (5) five days per week, subject to change based on the community needs.

The members of WellMed NY LLC are Kristina Field (34%), Jacqueline Volman (33%), and Pavel Gozenput, M.D. (33%). Dr. Gozenput will serve as the Medical Director.

WellMed is negotiating a Transfer and Affiliation Agreement for emergency backup services with NYC Health & Hospitals/South Brooklyn Health, approximately one (1) mile away.

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

The applicant projects 6,435 visits in Year One and 11,349 in Year Three, with 60% Medicaid and 2% Charity Care in both years.

**Program Summary**

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

**Financial Summary**

The total project costs of \$465,891 will be met with \$46,589 from the proposed members' equity and a \$419,302 loan at 6% interest and a ten-year term.

<b>Budget:</b>	<u>Year One</u>	<u>Year Three</u>
	<u>2026</u>	<u>2028</u>
Revenues	\$1,091,227	\$1,924,547
Expenses	<u>836,056</u>	<u>1,256,749</u>
Net Income	\$255,171	\$667,798

**Health Equity Impact Assessment**

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

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

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

**Approval conditional upon:**

1. This project must be completed by **June 1, 2025**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **December 1, 2024**, and construction must be completed by **March 1, 2025**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:  
[https://www.health.ny.gov/facilities/hospital/docs/hcs\\_access\\_form\\_new\\_clinics.pdf](https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf). Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: [hospinfo@health.ny.gov](mailto:hospinfo@health.ny.gov). [HSP]

Council Action Date

June 20, 2024

# Need Analysis

## Project Description

WellMed NY LLC d/ b/a WellMed is seeking approval to establish and construct a new Diagnostic and Treatment Center (D&TC) at 532 Neptune Avenue, Brooklyn, New York (Kings County). The proposed services include Medical Services - Primary Care, Medical Services - Other Medical Specialties, and Podiatry O/P, specifically Gastroenterology, Pediatrics, Pain Management, Orthopedics, Oncology, Endocrinology, Cardiology and Ophthalmology. WellMed will provide a range of health care services, including assessment and diagnosis, outpatient primary care screening and monitoring of key health indicators, screenings for HIV and Hepatitis, vaccinations, pregnancy screenings, and prenatal care. The applicant states these services are in need for the community based on the high Prevention Quality Indicators (PQIs) for the area, low amount of prenatal care, number of communicable diseases, and potentially preventable hospitalizations.

## Background and Analysis

The service area is Kings County specifically zip code 11224 in Coney Island. The population of Kings County is estimated to increase to 2,854,617 by 2029 per projection data from the Cornell Program on Applied Demographics, an increase of 6.5%. Demographics for the primary service area are noted below, including a comparison with New York State.

Demographics	Zip Code 11224	Kings County	New York State
Total Population	47,893	2,679,620	19,994,379
Hispanic or Latino (of any race)	19.5%	18.9%	19.5%
White (non-Hispanic)	47.7%	36.1%	53.8%
Black or African American (non-Hispanic)	20.1%	28.3%	13.8%
Asian(non-Hispanic)	9.5%	11.7%	8.8%
Other (non-Hispanic)	3.2%	5.0%	4.1%

Source: 2022 American Community Survey (5-Year Estimates Data Profiles)

In 2021, 93.4% of the population of Kings County had health coverage as follows:

Employee plans	40.9%
Medicaid	32.5%
Medicare	8.13%
Non-group plans	11.7%
Military or VA plans	0.308%

Source: Data USA

The projected payor mix includes:

Applicant Projected Payor Mix		
Payor	Year One	Year Three
Commercial	14%	14%
Medicare	21%	21%
Medicaid	60%	60%
Private Pay	3%	3%
Charity Care	2%	2%
Other	0%	0%

The proposed site is in a Health Professional Shortage Area (HPSA) for Dental Health, Mental Health, and Primary Care. Wellmed NY LLC is committed to serving all patients needing care, regardless of their ability to pay or the source of payment.

The hours of operation of the new main site will be Monday through Friday, from 9 am to 6 pm, and on Saturdays from 9 am to 2 pm, subject to change depending on the changing needs of the community and patient base.

The applicant is negotiating an Affiliation and Transfer Agreement with NYC Health & Hospitals/South Brooklyn Health, located 1 mile and 3 minutes away.

Prevention Quality Indicators (PQIs) are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization or for which early intervention can prevent complications or more severe disease. The table below provides information on PQI rates for 2020 related to this application, which indicates that the service area has higher PQI rates than the county and New York State.

<b>Hospital Admissions per 100,000 Adults</b>			
<b>PQI Name</b>	<b>Zip Code 11224</b>	<b>Kings County</b>	<b>New York State</b>
Diabetes Short-Term Complications	122	80	71
Diabetes Long-Term Complications	230	122	106
Chronic Obstructive Pulmonary Disease or Asthma	396	251	244
Hypertension	124	67	63
Heart Failure	527	359	336
Bacterial Pneumonia	106	82	105
Uncontrolled Diabetes	99	59	45
Prevention Quality Overall Composite	1,669	1015	994

#### Conclusion

Approval of this project will allow for increased access to Medical Services - Primary Care, Medical Services - Other Medical Specialties, and Podiatry O/P services for the residents of Kings County.



## Program Analysis

### Project Proposal

<b>Proposed Operator</b>	WellMed NY, LLC.
<b>To Be Known As</b>	WellMed
<b>Site Address</b>	532 Neptune Avenue Brooklyn, NY 11224
<b>Specialties</b>	Medical Services - Primary Care Medical Services-Other Medical Specialties Podiatry O/P Other Medical Specialties Include: Gastroenterology Pediatrics Pain Management Orthopedics Oncology Endocrinology Cardiology Ophthalmology
<b>Hours of Operation</b>	Mon – Fri 9 AM to 6 PM and Sat 9 AM – 2 PM
<b>Medical Director(s)</b>	Dr. Pavel Gozenput
<b>Emergency, In-Patient, and Backup Support Services Agreement and Distance</b>	South Brooklyn Health, Ruth Bader Ginsburg Hospital for primary care, NYC Health + Hospital Network, 0.9 miles or 7 minutes driving.

With the establishment of an Article 28 facility, WellMed seeks to reduce preventable admissions for patients in the community, as well as improve overall health, prevent illness, and educate the community. Upon approval of this application, the site will be known as WellMed.

Wellmed NY LLC will enter into a Transfer and Affiliation Agreement with South Brooklyn Health, Ruth Bader Ginsburg Hospital, part of the NYC Health + Hospital network for primary care at the completion of this project. The address of the hospital is 2601 Ocean Pkwy, Brooklyn, NY 11235, and it is a 0.9-mile or 7-minute drive from Wellmed's proposed location.

Projected FTE totals for Year One and Year Three are as follows:

<b>Positions</b>	<b>FTEs Year One</b>	<b>FTEs Year Three</b>
Administrator	0.50	0.50
Medical Director	0.20	0.20
Registered Nurse	0.50	1.00
Medical Assistants	2.00	3.00
Physicians	1.75	3.08
Nurse Practitioner	0.50	1.00
Social Worker/Psychologist	0.25	0.50
Infection Control/Environment	1.00	2.00
Clerical and Other Administrative	1.00	2.00
<b>Totals</b>	<b>7.70</b>	<b>13.28</b>

## Character and Competence

The members of WellMed NY LLC are:

Members	Percent Interest	Eligible Votes
*Dr. Pavel Gozenput	33%	1
*Jacqueline Volman	33%	1
*Kristina Field	34%	1
<b>Total</b>	<b>100%</b>	<b>3</b>

*\*New members are subject to character and competence review.*

**Dr. Pavel Gozenput**, the proposed Medical Director of WellMed, received a medical degree at St. George's School of Medicine in 2008. Dr. Gozenput is licensed to practice in the state of New York and has board certifications in Critical Care Medicine and the American Board of Internal Medicine. In 2012, Dr. Gozenput completed their residency at Maimonides Medical Center. Currently, Dr. Gozenput is the Director of critical care at Mount Sinai South Nassau and an Intensivist at St. John's Episcopal Hospital since 2020. Prior, Dr. Gozenput was a physician at Maimonides Medical Center as an Infectious Diseases Fellow and a Critical Care fellow until 2019. There are no legal disclosures or infractions.

**Kristina Field** is currently employed as a pharmacy manager at Volfi, Inc. since 2006. Kristina manages the day-to-day operations of the pharmacy, including sales, insurance plans, inventory, budgeting, and staff management. Kristina completed a Master of Science in Physical Therapy in 2006 as well. There are no legal disclosures or infractions.

**Jacqueline Volman, Esq.** completed a juris doctorate at Hofstra University School of Law in 2003. Jacqueline has been functioning as legal counsel and pharmacy manager at S and K Pharmacy since 2016. Before that, Jacqueline was an attorney at Berkowitz-Ortiz & Volman PLLC from 2012 to 2016. There are no legal disclosures or infractions.

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

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

## Conclusion

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

## Financial Analysis

### Total Project Cost

The total project cost for the renovations and acquisition of movable equipment is \$465,891, presented in 2024 dollars and distributed as follows:

Renovation and Demolition	\$187,604
Design Contingency	18,760
Construction Contingency	18,760
Planning Consulting Fees	12,500
Architect/Engineer Fees	14,714
Other Fees	50,000
Moveable Equipment	146,166
Financing Costs	9,070
Interim Interest Expense	3,779
Application Fee	2,000
Processing Fee	<u>2,537</u>
Total Project Costs	\$465,891

The total project cost will be met with \$46,589 from the proposed members' equity and financing of \$419,302. The applicant has submitted a bank letter of interest in the amount of \$419,302 with a ten-year term at approximately 6% interest rate.

### Operating Budget

The applicant has submitted their first and third-year operating budgets. Summarized below:

Outpatient Rev.	<u>Per Visit</u>	<u>Dollars</u>	<u>Per Visit</u>	<u>Dollars</u>
Commercial FFS	\$180.00	\$115,920	\$180.00	\$204,300
Commercial MC	\$153.00	39,321	\$153.00	69,462
Medicare FFS	\$180.00	196,920	\$180.00	347,220
Medicare MC	\$153.00	39,321	\$153.00	69,462
Medicaid FFS	\$199.69	25,760	\$199.69	45,330
Medicaid MC	\$169.74	633,455	\$169.74	1,117,373
Private Pay	\$210.00	<u>40,530</u>	\$210.00	<u>71,400</u>
Total Revenue		\$1,091,227		\$1,924,547
 Expenses:				
Operating	\$94.65	\$609,071	\$91.13	\$1,034,231
Capital	<u>35.27</u>	<u>226,985</u>	<u>19.61</u>	<u>222,518</u>
Total Expenses	\$129.92	\$836,056	\$110.74	\$1,256,749
 Net Income				
		<u>\$255,171</u>		<u>\$667,798</u>
Visits		6,435		11,349
Cost/Visit		\$129.92		\$110.74

The following is noted with respect to the submitted budget:

- Revenues are based on APG rates and capital.
- Expenses are based on (PQI) Patient Quality Indicators for the zip codes in the area for delivery of services, interest, rent, and depreciation.
- Medicaid utilization is based on average volume for the area and Medicare and Commercial rates are based on similar D&TCs and their AHCF-1s in this location.
- Medicaid Utilization is approximately 60.00% in Years One and Year Three.
- The applicant plans to reach an underserved population with a growing minority population and ensure that services are sensitive to the needs of the population in a centralized location.

- Expenses are based on 7.70 FTEs and 13.28 FTEs in Year One and Year Three, respectively as well as rent, depreciation, and interest.

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

Payor Source	<u>Visits</u>	<u>Year One</u>	<u>Visits</u>	<u>Year Three</u>
	<u>2024</u>	<u>2024</u>	<u>2026</u>	<u>2026</u>
Commercial FFS	644	10.01%	1,135	10.00%
Commercial MC	257	3.99%	454	4.00%
Medicare FFS	1,094	17.00%	1,929	17.00%
Medicare MC	257	3.99%	454	4.00%
Medicaid FFS	129	2.00%	227	2.00%
Medicaid MC	3,732	58.00%	6,583	58.01%
Other/Private Pay	193	3.00%	340	3.00%
Charity Care	129	<u>2.00%</u>	227	<u>2.00%</u>
Total Visits	6,435	100.00%	11,349	100.00%

#### Lease Rental Agreement

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

Date:	January 18, 2024
Premises:	532 Neptune Avenue, Brooklyn (Kings County) – Approximately (2,600 sq. ft.)
Landlord:	532 Neptune Commercial, LLC – 45 Broadway, 25 <sup>th</sup> floor (New York, New York)
Tenant:	WellMed – 532 Neptune Ave. Brooklyn (Kings County)
Term:	10 years with a ten (10) year renewal option.
Rental:	Year (1) \$10,800 Year (2) \$11,124 Year (3) \$11,457 Year (4) \$11,801 Year (5) \$12,155 Year (6) \$12,520 Year (7) \$12,895 Year (8) \$13, 282 Year (9) \$13,681 Year (10) \$14,091
Provisions:	The lessee will pay all the expenses of the property, including utilities, taxes, and maintenance, per the agreement.

The above lease is an arm's length agreement. The landlord and tenant provided an affidavit indicating there is no existing relationship between the parties. The tenant has submitted two (2) real estate letters indicating rent reasonableness from NYS Licensed realtors.

#### Capability and Feasibility

Total project costs of \$465,891 will be met with \$46,589 in members' equity and a \$419,302 bank loan. The applicant has submitted a bank letter of interest for the loan at approximately 6% interest and a ten-year term. Working capital requirements are estimated at \$209,458 based on two (2) months of third-year expenses. Working capital will be funded with \$104,729 in members' equity and a working capital loan of \$104,729 for three years at approximately 6% interest. BFA attachment A, Net Worth Statements of the Proposed Members, shows sufficient resources to meet the equity requirements of this application.

The submitted budget indicates a net income of \$255,171 and \$667,798 during the first and third years of operation, respectively. Revenues and expenses are based on current reimbursement methodologies of other similar D&TCs. BFA Attachment B presents the Pro Forma Balance Sheet, LLC. The pro forma balance sheet indicates a positive members' equity position of \$153,444 on the first day of operations. The budget appears reasonable.

Conclusion

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

Attachments
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BHFP Attachment	Map
BFA Attachment A	Net worth Statements (Proposed Members of WellMed)
BFA Attachment B	Pro Forma Balance Sheet (WellMed)
BFA Attachment C	Organizational Chart of WellMed NY LC



**Project # 241028-B**  
**1771 Utica, LLC dba Care Plus Health Center**

**Program:** Diagnostic and Treatment Center    **County:** Kings  
**Purpose:** Establishment and Construction    **Acknowledged:** January 31, 2024

**Executive Summary**

**Description**

1771 Utica, LLC d/b/a Care Plus Health Center, an existing limited liability company, requests approval to establish and construct a diagnostic and treatment center (D&TC) at 1771 Utica Avenue, Brooklyn (Kings County). The proposed D&TC will be certified for Primary Care, Medical Services - Other Medical Specialties, and Podiatry O/P. More specifically, services will include internal medicine, family practice, gynecology, pediatrics, nutrition, behavioral health, pain management, cardiology, radiology, urology, and diagnostics.

Danil Shabatay and Zaur Yusufov will each have a 50% membership interest in 1771 Utica, LLC d/b/a Care Plus Health Center. Dr. Jude Ozuzu will serve as the Medical Director.

The Center will have a transfer and affiliation agreement with Maimonides Hospital 4.6 miles and 20 minutes travel time from the proposed D&TC.

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

The applicant projects 7,200 visits in Year One and 11,250 in Year Three with 75% Medicaid and 5% Charity Care.

**Program Summary**

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

**Financial Summary**

Total project costs of \$299,286 will be met with proposed members' equity.

<b>Budget:</b>	<u>Year One</u>	<u>Year Three</u>
	<u>(2025)</u>	<u>(2027)</u>
Revenues:	\$1,161,501	\$1,814,682
Expenses:	<u>1,141,482</u>	<u>1,742,842</u>
Net Income:	\$20,019	\$71,840

**Health Equity Impact Assessment**

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

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

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

**Approval conditional upon:**

1. This project must be completed by **May 1, 2025**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **December 1, 2024**, and construction must be completed by **February 1, 2025**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]

Council Action Date

June 20, 2024

# Need Analysis

## Project Description

1771 Utica, LLC dba Care Plus Health Center, a recently formed limited liability company, is seeking approval to establish and construct a diagnostic and treatment center at 1771 Utica Avenue, Brooklyn. The proposed services include Medical Services - Primary Care, Medical Services - Other Medical Specialties, and Podiatry O/P, specifically internal medicine, family practice, gynecology, pediatrics, nutrition, behavioral health, pain management, cardiology, radiology, urology, diagnostics (x-ray, sonogram, ABI, EKG, PFT).

## Background and Analysis

The service area is Kings County. The population of Kings County is estimated to increase to 2,854,617 by 2029 per projection data from the Cornell Program on Applied Demographics, an increase of 6.5%. Demographics for the primary service area are noted below including a comparison with New York State.

Demographics	Kings County	New York State
Total Population	2,679,620	19,994,379
Hispanic or Latino (of any race)	18.9%	19.5%
White (non-Hispanic)	36.1%	53.8%
Black or African American (non-Hispanic)	28.3%	13.8%
Asian(non-Hispanic)	11.7%	8.8%
Other (non-Hispanic)	5.0%	4.1%

Source: 2022 American Community Survey (5-Year Estimates Data Profiles)

In 2021, 93.4% of the population of Kings County had health coverage as follows:

Employee plans	40.9%
Medicaid	32.5%
Medicare	8.13%
Non-group plans	11.7%
Military or VA plans	0.308%

Source: Data USA

The projected payor mix includes:

Applicant Projected Payor Mix		
Payor	Year One	Year Three
Commercial	5%	5%
Medicare	15%	15%
Medicaid	75%	75%
Private Pay	0%	0%
Charity Care	5%	5%
Other	0%	0%

The proposed center is at the site of a former extension clinic of Brookdale Hospital that closed in 2009. The applicant plans to restore this health care resource serving residents of south/central and eastern Brooklyn. The Center will serve all patients without regard to race, sex, religion, creed, sexual orientation, ability to pay, source of payment, or other personal characteristics.



The hours of operation of the new main site will be Monday through Friday: 9 AM-10 PM and Saturday and Sunday: 10 AM-6 PM. The Center will extend its hours as necessary to accommodate patient needs.

The applicant is negotiating an Affiliation and Transfer Agreement with Maimonides Medical Center for backup hospital services. The closest Maimonides hospital to the proposed new main site is Maimonides Midwood Community Hospital located 1.7 miles and 6 minutes away.

Prevention Quality Indicators (PQIs) are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease. The table below provides information on PQI rates for 2020 related to this application which indicates that the county has higher PQI rates than New York State.

<b>Hospital Admissions per 100,000 Adults</b>		
<b>PQI Name</b>	<b>Kings County</b>	<b>New York State</b>
Diabetes Short-Term Complications	80	71
Diabetes Long-Term Complications	122	106
Chronic Obstructive Pulmonary Disease or Asthma	251	244
Hypertension	67	63
Heart Failure	359	336
Bacterial Pneumonia	82	105
Uncontrolled Diabetes	59	45
Prevention Quality Overall Composite	1015	994

#### Conclusion

Approval of this project will allow for increased access to Medical Services - Primary Care, Medical Services - Other Medical Specialties, and Podiatry O/P services for the residents of Kings County.

## Program Analysis

### Project Proposal

Proposed Operator	1771 Utica, LLC dba Care Plus Health Center
To Be Known As	1771 Utica, LLC dba Care Plus Health Center
Site Address	1771 Utica Avenue Brooklyn, NY 11234
Specialties	Medical Services – Primary Care Medical Services-Other Medical Specialties
Hours of Operation	Monday through Friday 9am - 10pm, Saturday and Sunday 10am – 6pm.
Staffing (1 <sup>st</sup> Year / 3 <sup>rd</sup> Year)	10.00 FTEs / 18.00 FTEs
Medical Director(s)	Jude Ozuzu, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Maimonides Medical Center 4.6 miles and 20 minutes travel time

### Character and Competence

The members and percent ownership of 1771 Utica Avenue LLC are as follows:

Member	Membership Interest
Danil Shabatay	50%
Zaur Yusuf ov	50%
<b>Total</b>	<b>100%</b>

*\*All Members are subject to character and competence background investigation.*

**Dr. Jude Ozuzu** will serve as the Medical Director of the Center. Dr. Ozuzu is a physician with over 40 years of clinical experience in both, hospital and international community-based family and emergency medicine. He trained for his medical degree in Nigeria and Philadelphia and received his Diplomate in General Surgery at the Royal College of Surgeons (Glasgow, UK). Dr. Ozuzu is the Chief Medical Officer at Kings Medical Family Practice, a partner at Stat Health Medical Center, and a staff physician at NYU Langone-Woodhull Emergency Department. He is board-certified in Emergency Medicine and Family Medicine. In his role as medical director, Dr. Ozuzu will oversee the clinical operations of the facility and serve as Chairman of the Quality Improvement Committee. An independent reviewer will visit the facility on a regular basis to conduct chart reviews and participate in the quality improvement program activities.

Dr. Ozuzu has one legal disclosure: Index Number: 511230/2018, Kings Supreme Court. Ballkisson Christina and Mandai Christina v. Jude Ozuzu, MD, Sean Keenan, MD, Dovid Herskowitz, PA, Kanwar Ruhila, MD, and Wycoff Heights Medical Center. 11/16/2019 - Ongoing case; 68-year-old male patient in emergency room for chest and abdominal pain and vomiting for 2 hours. All tests were ordered, and review of systems was completed. All labs came back negative, patient was discharged. Three days later patient was at the hospital again for cholecystitis diagnosis. The patient is suing for failure to diagnose and pain and suffering.

**Danil Shabatay** earned a Bachelor of Business Administration degree from CUNY Baruch College in 2006. Danil is currently the founder and CEO of both Wehealth Technologies and DME for DME LLC since 2019, patient care technology application companies, specializing in apps focused on providing healthcare information and telehealth to chronically ill patients. He is also the founder and CEO of Shabat Group, LLC, Amerihealth Group, LLC, Knapp Nutritional & Pharmacy, and the CEO of Alba International Trading Corp.

**Yusufov Zaur** received an associate degree from Globe Institute of Technology in 1998. Yusufov is the President & Certified Pedorthist (CPed) of Alba International Trading Corp, an orthotic and prosthetic medical supply since 2009. Yusufov is also the Founder and CTO of AmeriHealth Group LLC, WeHealth Technologies, and Agile Apps, healthcare technology firms.

The Center's goal is to improve access to primary and specialty care services for the residents of its service areas. The Center will serve all patients without regard to race, sex, religion, creed, sexual orientation, ability to pay, source of payment, or other personal characteristics. The proposed operating budget provides for charity care, self-pay, and a sliding fee scale.

The Center will have a transfer and affiliation agreement with Maimonides Hospital which is 4.6 miles and 20 minutes travel time from the proposed extension site. There are ample transportation options available for patients needing to access the center. The center is conveniently located close to the Belt Parkway and is between 2 major thoroughfares in the area (Kings Hwy and Flatlands Avenue). NYC-MTA Surface Bus Routes B7-8-46 and NYC Subway Lines 2 and 5 are also conveniently located near the proposed center. The proposed extension site's hours of operation will be Monday through Friday: 9 am – 10 pm Saturday and Sunday: 10 am – 6 pm. The Center will extend its hours as necessary to accommodate patient needs and NYSDOH community and public health priorities. An answering service is provided to address patient concerns during hours when mobile van services are not in operation.

Expected volume of the proposed extension site is 7,200 visits in Year 1, and 11,250 visits by Year 3.

The following table shows the projected number of FTEs for Year 1 and Year 3 after completion of this project:

Position	FTEs	FTEs
	Yr 1	Yr 3
Management	2.00	4.00
Aides, Orderlies & Attendants	2.00	4.00
Physicians	2.00	4.50
Clerical & Other Administrative	2.00	2.50
Other X-RAY TECH	1.00	1.50
Other SONOGRAPHY TECH	1.00	1.50
<b>Totals</b>	10.00	18.00

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

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

#### Conclusion

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

## Financial Analysis

### Total Project Cost and Financing

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

Renovation & Demolition	\$200,000
Architect /Engineering Fees	32,000
Moveable Equipment	63,660
CON Fee	2,000
Additional Processing Fee	<u>1,626</u>
Total Project Cost	\$299,286

Total project costs will be met with equity from the proposed members. BFA Attachment A Personal Net Worth Statements of the proposed members show sufficient resources to fund the costs.

### Operating Budget

The applicant has submitted their first and third-year operating budget, in 2024 dollars, as shown below:

	<u>Year One</u> <u>2025</u>		<u>Year Three</u> <u>2027</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Revenues:				
Commercial FFS	\$79.24	\$17,116	\$79.24	\$26,783
Commercial MC	\$63.86	9,197	\$63.86	14,370
Medicare FFS	\$136.73	49,223	\$136.73	76,979
Medicare MC	\$112.61	81,079	\$112.61	126,686
Medicaid FFS	\$223.66	161,035	\$223.66	251,617
Medicaid MC	\$180.31	<u>843,851</u>	\$180.31	<u>1,318,247</u>
Total Revenue		\$1,161,501		\$1,814,682
Expenses:				
Operating	\$132.30	\$952,550	\$138.13	\$1,553,910
Capital	<u>\$26.24</u>	<u>188,932</u>	<u>\$16.79</u>	<u>188,932</u>
Total Expenses	\$158.54	\$1,141,482	\$154.92	\$1,742,842
Net Income		<u>\$20,019</u>		<u>\$71,840</u>
Visits		7,200		11,250
Cost/Visit		\$158.54		\$154.92

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

	<u>Year One</u> <u>2025</u>		<u>Year Three</u> <u>2027</u>	
	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Commercial FFS	216	3%	338	3%
Commercial MC	144	2%	225	2%
Medicare FFS	360	5%	563	5%
Medicare MC	720	10%	1,125	10%
Medicaid FFS	720	10%	1,125	10%
Medicaid MC	4,680	65%	7,311	65%
Charity Care	<u>360</u>	<u>5%</u>	<u>563</u>	<u>5%</u>
Total	7,200	100%	11,250	100%

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

- Charity Care is projected at approximately 5% in Year 1 & Year 3.
- Medicaid Utilization is approximately 75% in Year 1 and Year 3.
- Commercial Rates are negotiated and Medicare FFS rates are based on the Part B fee schedule.
- Medicaid revenue rates are based on actual rates expected for services performed using the APG rates published by the Department for Freestanding Clinics.
- Expenses are based on ten (10) and eighteen (18) FTEs and administrative costs in Year One and Year Three.

#### Lease Agreement

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

Data:	3/31/2023
Premises:	273 Brooklyn, New York 11234 (Approximately 4,500 sq. ft.)
Landlord:	Lancaster Realty Mtg, Corp.
Assignor:	AmeriHealth Utica, LLC
Assignee:	1771 Utica, LLC
Term:	(10) Ten years- and a (10-year renewal option.)
Rent:	First five (5) years is \$153,000 annually Years six (6) through ten (10) is \$171,360 annually.
Provisions:	Security Deposit of \$25,000 guaranteed by Zaur Yusufov; If, in any year taxes increase on the Real Estate from the base year, then a pro-rata share will be applied via additional rent. Improvements and fixtures can only be made with the consent of the landlord.

The lease agreement is a non-arm's length agreement as stated in the landlord-tenant affidavit submitted. The affidavit states there is common ownership between AmeriHealth, LLC and 1771 Utica, LLC. The applicant has submitted two letters of rent reasonableness as they are related by family.

#### Capability and Feasibility

Total project costs of \$299,286 will be met with equity from the proposed members. Working capital requirements are estimated at \$290,274 based on two months of third-year expenses and will be met through ongoing operations. BFA Attachment A, shows sufficient resources to fund the working capital requirement as well as total project costs. Attachment B, Pro Forma Balance Sheet, indicates members' equity of \$859,320 as of the first day of operations

The submitted budget indicates the facility will generate a net operating income of \$20,019 and \$71,840, in Year 1 and Year 3, respectively. Revenues are based on prevailing reimbursement methodologies for D&TCs.

#### Conclusion

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

## Attachments

BHFP Attachment	Map
BFA Attachment A	Net Worth Statement (Proposed Members)
BFA Attachment B	Pro Forma – 1771 Utica, LLC
BFA Attachment C	Organizational Chart - 1771 Utica, LLC



**Project # 211102-E**  
**Rockville Holdings Operating LLC d/b/a**  
**Rockville Skilled Nursing and Rehabilitation Center**

**Program:** Residential Health Care Facility  
**Purpose:** Establishment

**County:** Nassau  
**Acknowledged:** May 5, 2021

**Executive Summary**

**Description**

Rockville Holdings Operating, LLC, d/b/a Rockville Skilled Nursing & Rehabilitation Center (Rockville), an existing 66-bed Residential Health Care Facility (RHCF) at 50 Maine Avenue, Rockville Centre, (Nassau County) requests approval to be established as the new operator of Rockville Skilled Nursing & Rehabilitation Center.

Rockville Skilled Nursing & Rehabilitation Center, LLC, the current operator of Rockville Skilled Nursing & Rehabilitation Center, entered into an Asset Purchase Agreement (APA) with Rockville Holdings Operating, LLC for the sale and acquisition of the operations and certain other assets of the RHCF. The current real property owner, Rockville Holdings Property, LLC, purchased the property from Rockville Skilled Nursing & Rehabilitation Center, LLC, for \$13,880,000 on December 26, 2020.

Ownership of the operations before and after the requested change in ownership is:

<u>Current Operator</u>	
Rockville Skilled Nursing & Rehabilitation Center, LLC	
<u>Members</u>	<u>Ownership %</u>
Teddy Lichtschein	50%
Benjamin Landa	45%
Mitchell Teller	5%

<u>Proposed Operator</u>	
Rockville Holdings Operating, LLC d/b/a Rockville Skilled Nursing & Rehabilitation Center	
<u>Members</u>	<u>Ownership %</u>
Akiva Rudner	50%
Steven Sax	50%

OALTC Recommendation  
Contingent Approval

**Need Summary**

There will be no changes to beds or services as a result of this application. Based upon weekly census data, current occupancy, as of April 17, 2024, was 92.4% for the facility and 89.8% for Nassau County.

**Program Summary**

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

**Financial Summary**

There are no project costs associated with this application. The purchase price for the assets is the assumption by Rockville Skilled Nursing & Rehabilitation Center's accounts receivable and accounts payable at the time of closing.

<u>Budget:</u>	<u>Current</u>	<u>Year</u>	<u>Year</u>
	<u>Year</u>	<u>One</u>	<u>Three</u>
Revenues	\$10,884,249	\$11,188,800	\$11,259,500
Expenses	<u>\$11,513,668</u>	<u>\$10,619,746</u>	<u>\$10,627,506</u>
Net			
Income	(\$629,419)	\$569,054	\$631,994
(Loss)			

Health Equity Impact Assessment  
There was no Health Equity Impact Assessment required for this project under Public Health Law §2802-B, as it was received by the Department on March 15, 2021.

## Recommendations

Long-Term Care Ombudsman Program  
The LTCOP recommends Approval. (See LTCOP Attachment A)

Health Systems Agency  
There will be no HSA recommendation for this project.

Office of Aging and Long-Term Care

**Approval contingent upon:**

1. Submission of an executed lease Agreement acceptable to the Department of Health. [BFA]
2. Submission of an executed Administrative Services Agreement for Operations, Acceptable to the Department of Health. [BFA]
3. Submission of an executed Administrative Services Agreement for Billing, Acceptable to the Department of Health. [BFA]
4. Submission of an executed Administrative Services Agreement for Accounting, Acceptable to the Department of Health. [BFA]
5. Submission of a photocopy of an executed Certificate of Amendment of the Articles of Organization of Rockville Holdings Operating LLC, acceptable to the Department. [CSL]
6. Submission of photocopy of an executed Operating Agreement of Rockville Holdings Operating LLC, acceptable to the Department. [CSL]
7. Submission of a photocopy of an executed and amended Administrative Services Agreement between Rockville Holdings Operating LLC and Carerite Centers, LLC, acceptable to the Department. [CSL]
8. Submission of a photocopy of an executed Attestation for Service Agreements with Carerite Center, LLC, acceptable to the Department. [CSL]
9. Submission of a photocopy of an executed and amended Accounts Management Agreement between Rockville Holdings Operating LLC and CareRite Services LLC, acceptable to the Department. [CSL]
10. Submission of a photocopy of an executed Attestation for Services Agreement for the Accounts Management Agreement with CareRite Services, LLC, acceptable to the Department. [CSL]
11. Submission of a photocopy of an executed and amended Billing and Support Services Agreement with Comprehensive Healthcare Solutions, LLC, acceptable to the Department. [CSL]
12. Submission of a photocopy of an executed Attestation for Services Agreement for the Billing and Support Services Agreement with Comprehensive Healthcare Solutions, LLC, acceptable to the Department. [CSL]
13. Submission of a photocopy of an executed Lease Assignment between Rockville Skilled Nursing & Rehabilitation Center, LLC and Rockville Holdings Operating LLC, acceptable to the Department. [CSL]
14. Submission of a photocopy of an executed and amended Lease between Rockville Holdings Operating LLC and Rockville Property Holdings LLC, acceptable to the Department. [CSL]
15. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR].

**Approval conditional upon:**

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

Council Action Date  
June 20, 2024



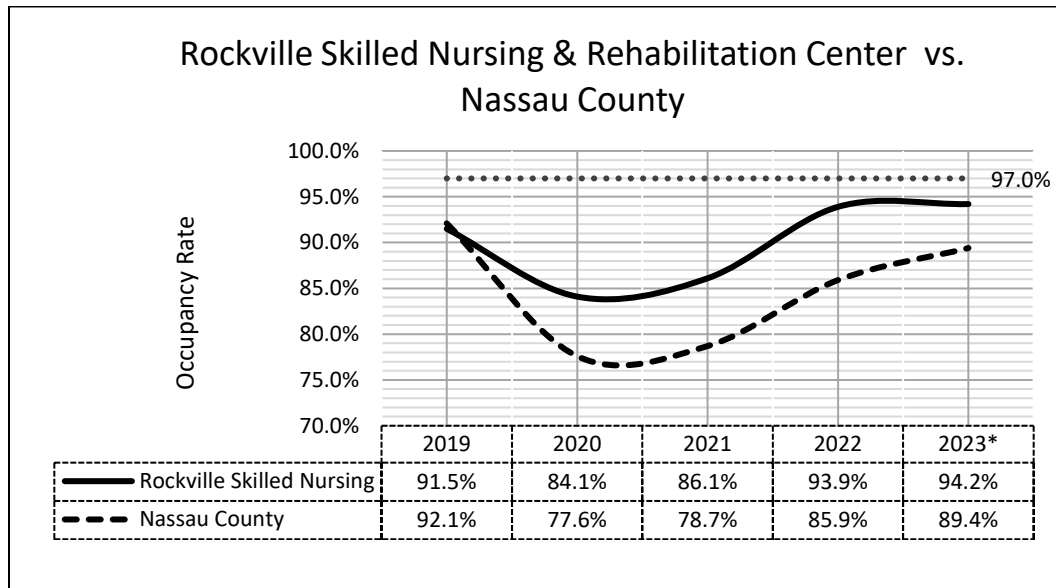
# Need Analysis

## Background and Analysis

The primary service area is Nassau County, which has a population projected to increase to 1,429,023 by 2029 based on Cornell Program of Applied Demographic estimates. Demographics for the primary service area are noted below, including a comparison with New York State.

Demographics	Nassau County	New York State
Total Population (2022 Estimate)	1,389,160	19,994,379
Hispanic or Latino (of any race)	17.5%	19.5%
White (non-Hispanic)	56.7%	53.8%
Black or African American (non-Hispanic)	11.1%	13.8%
Asian(non-Hispanic)	11.2%	8.8%
Other (non-Hispanic)	3.5%	4.1%

Source: 2022 American Community Survey (5-year Estimates Data Profiles)



\*2023 data is self-reported and not certified. Occupancy through 2022 is from the RHCf's cost reports.

Occupancy, as of April 17, 2024, was 92.4% for the facility and 89.8% for Nassau County.

The table below shows the CMS Rating and the utilization of the six closest RCHFs to Rockville Skilled Nursing & Rehabilitation Center.

Facility Name	CMS Overall Rating As of 1/2024	Number of Beds	Distance from other RCHFs Miles/Time	Occupancy			
				2020	2021	2022	2023*
Rockville Skilled Nursing	4	66	0 miles/0 mins	84.1%	86.1%	93.9%	94.2%
The Grand at Rockville	4	158	0.1 miles/2 mins	84.0%	92.8%	97.5%	97.1%
Lynbrook Restorative	5	100	1.7 miles/7 mins	82.2%	87.0%	90.4%	92.8%
Oceanside Care Center	3	100	1.9 miles/7 mins	81.8%	87.2%	92.8%	95.5%
North Shore-LIJ Orzac	5	120	3.1 miles/9 mins	62.7%	77.3%	80.0%	85.8%
Mayfair Care Center	2	200	3.5 miles/8 mins	76.1%	63.0%	53.1%	90.5%
Meadowbrook Care	4	280	3.5 miles/11 mins	79.9%	92.4%	91.9%	91.3%

\*2023 data is self-reported and not certified. Occupancy through 2022 is from the RHCf's cost reports.

The following table provides the Case Mix Index (CMI) for the facility and surrounding RCHFs, which reflects the relative resources predicted to provide care to a resident. The higher the case mix weight, the greater the resource requirement for the residents.

Case Mix Index	2021		2022		2023	
	All Payor Mix	Medicaid Only	All Payor Mix	Medicaid Only	All Payor Mix	Medicaid Only
Rockville Skilled Nursing & Rehabilitation Center	1.553	1.437	1.5443	1.4198	1.4488	1.3251
The Grand at Rockville	1.471	1.299	1.4605	1.3699	1.4859	1.3795
Lynbrook Restorative	1.456	1.013	1.6632	1.43	1.637	1.4865
Oceanside Care Center	1.241	1.146	1.4102	1.429	1.4254	1.4303
North Shore-LIJ Orzac	1.45	1.338	1.4831	1.2075	1.4402	1.1244
Mayfair Care Center	1.097	1.063	1.1507	1.1186	1.3384	1.3087
Meadowbrook Care	1.499	1.343	1.4987	1.3313	1.5575	1.3587

### Medicaid Access

To ensure that the Residential Health Care Facility needs of the Medicaid population are met, 10 NYCRR §670.3 requires applicants to accept and admit a reasonable percentage of Medicaid residents in their service area. The benchmark is 75% of the annual percentage of residential healthcare facility admissions that are Medicaid-eligible individuals in their planning area. This benchmark may be increased or decreased based on the following factors:

- The number of individuals within the planning area currently awaiting placement to a residential health care facility and the proportion of total individuals awaiting such placement that are Medicaid patients and/or alternate level of care patients in general hospitals.
- The proportion of the facility's total patient days that are Medicaid patient days and the length of time that the facility's patients who are admitted as private paying patients remain such before becoming Medicaid eligible.
- The proportion of the facility's admissions who are Medicare patients or patients whose services are paid for under provisions of the federal Veterans' Benefits Law.
- The facility's patient case mix is based on the intensity of care required by the facility's patients or the extent to which the facility provides services to patients with unique or specialized needs.
- The financial impact on the facility is due to an increase in Medicaid patient admissions.

An applicant will be required to make appropriate adjustments in its admission policies and practices to meet the resultant percentage. The facility's Medicaid admissions rate was above the threshold of 75% of the Nassau County rate for the years 2020 through 2022.

Medicaid Access	2020	2021	2022
Nassau County Total	16.9%	19.4%	20.2%
<i>Nassau Threshold Value</i>	12.7%	14.5%	15.2%
Rockville Skilled Nursing	27.4%	22.0%	20.5%

### Conclusion

There will be no changes to beds or services as a result of this application. Based upon weekly census data, current occupancy, as of April 17, 2024, was 92.4% for the facility and 89.8 for Nassau County.

## Program Analysis

### Project Proposal

	Existing	Proposed
<b>Facility Name</b>	Rockville Skilled Nursing & Rehabilitation Center, LLC	Same
<b>Address</b>	50 Maine Avenue Rockville Centre, NY 11570	Same
<b>RHCF Capacity</b>	66 beds	Same
<b>ADHCP Capacity</b>	N/A	N/A
<b>Type of Operator</b>	Limited Liability Corporation	Same
<b>Class of Operator</b>	Proprietary	Same
<b>Operator</b>	<b>Rockville Skilled Nursing &amp; Rehabilitation Center, LLC</b>  <u>Membership:</u> Benjamin Landa                      45% Teddy Lichtschein                      50% Mitchell Teller                              5%	<b>Rockville Holdings Operating LLC d/b/a Rockville Skilled Nursing &amp; Rehabilitation Center</b>  <u>Membership:</u> Akiva Rudner                              50% Steven Sax                                      50%

Rockville Holdings Operating LLC d/b/a Rockville Skilled Nursing & Rehabilitation Center has indicated there will be an administrative services agreement with CareRite Centers, LLC, Comprehensive Healthcare Solutions, LLC, and CareRite Services, LLC. The proposed operators, Steven Sax and Akiva Rudner have ownership interest in other business ventures, including skilled nursing facilities. Yossie Zucker of CareRite Services, LLC, and Mark Friedman and Neal Einhorn of CareRite Center LLC also have ownership interest in skilled nursing facilities, and in some cases, there is common ownership with the proposed operators.

CareRite Center, LLC will consult and assist the established operator with the following as noted in the consulting and services agreement: administrative services, HIPAA compliance services, and credentialing/re-credentialing services.

Comprehensive Healthcare Solutions, LLC will consult and assist the established operator with billing functions as noted in the consulting and services agreement.

CareRite Services, LLC will consult and assist the established operator with the following services as noted in the consulting and services agreement: accounts payable, cash management, payroll, financial statements, and purchasing.

### Character and Competence

**Akiva Rudner** is currently employed at CareRite LLC as the Chief Operating Officer. Akiva holds a master's degree in public administration from NYU Wagner, a nursing home administrator license in New York, and discloses the following health facility interests:

#### New York Nursing Homes

Glengariff Rehabilitation and Healthcare Center (4%)	03/2019 to Present
Waters Edge at Port Jefferson for Rehabilitation and Nursing (4%)	03/2019 to Present
St. James Rehabilitation and Healthcare Center (1%)	08/2012 to Present
The Emerald Peek Rehabilitation and Nursing Center (2%)	03/2016 to Present
The Enclave at Rye Rehabilitation and Nursing Center (2%)	07/2016 to Present
The Paramount at Somers Rehabilitation and Nursing Center (4%)	02/2018 to Present
The Chateau at Brooklyn Rehabilitation and Nursing Center (4%)	02/2017 to Present
The Hamlet Rehabilitation and Healthcare Center at Nesconset (4%)	02/2019 to Present

### Out-of-State Nursing Homes

Jupiter Rehabilitation and Healthcare Center (FL) (4%)	10/2016 to Present
The Encore at Boca Raton Rehabilitation and Nursing Center (FL) (4%)	01/2018 to Present
Palmetto Subacute Care Center (FL) (4%)	02/2018 to Present
Coral Reef Subacute Care Center (FL) (4%)	07/2021 to Present
Legacy at Boca Raton Rehabilitation and Nursing Center (FL) (4%)	11/2021 to Present
The Savoy at Fort Lauderdale Rehabilitation and Nursing Center (FL) (4%)	12/2022 to Present
The Pearl at Fort Lauderdale Rehabilitation and Nursing Center (FL) (4%)	12/2022 to Present
Gallatin Center for Rehabilitation and Healing (TN) (4%)	07/2016 to Present
Quality Center for Rehabilitation and Healing (TN) (4%)	07/2016 to Present
Bethany Center for Rehabilitation and Healing (TN) (4%)	03/2017 to Present
Trevecca Center for Rehabilitation and Healing (TN) (4%)	03/2017 to Present
Creekside Center for Rehabilitation and Healing (TN) (4%)	06/2018 to Present
Lebanon Center for Rehabilitation and Healing (TN) (4%)	08/2019 to Present
Manchester Center for Rehabilitation and Healing (TN) (4%)	08/2019 to Present
Green Hills Center for Rehabilitation and Healing (TN) (4%)	12/2019 to Present
Nashville Center for Rehabilitation and Healing (TN) (4%)	12/2017 to Present

### End Dated Ownership

Beeghly Oaks Center for Rehabilitation & Healing (OH) (4%)	10/2016 to 07/2018
Oasis Center for Rehabilitation & Healing (OH) (4%)	10/2016 to 07/2018
Heritage Center for Rehabilitation & Specialty Care (OH) (4%)	10/2016 to 04/2018
Hospitality Center for Rehabilitation and Healing (OH) (4%)	02/2014 to 04/2018
Harmony Center for Rehabilitation & Healing (OH) (4%)	07/2017 to 04/2018
The Bristol at Tampa Rehabilitation and Nursing Center (FL) (4%)	06/2017 to 06/2021

### Diagnostic and Treatment Center

Glengariff Dialysis Center (NY) (40%)	07/2022 to Present
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**Steven Sax** is currently employed at CareRite Centers LLC as the Director of Clinical Reimbursement and Development. Steven holds a bachelor's degree from Israel Toral Research Institute and discloses the following health facility interests:

### New York Nursing Homes

Glengariff Rehabilitation and Healthcare Center (4%)	03/2019 to Present
Waters Edge at Port Jefferson for Rehabilitation and Nursing (4%)	03/2019 to Present
St. James Rehabilitation and Healthcare Center (3%)	08/2012 to Present
The Emerald Peek Rehabilitation and Nursing Center (2%)	07/2016 to Present
The Enclave at Rye Rehabilitation and Nursing Center (2%)	07/2016 to Present
The Paramount at Somers Rehabilitation and Nursing Center (4%)	02/2018 to Present
The Chateau at Brooklyn Rehabilitation and Nursing Center (2%)	02/2017 to Present
The Hamlet Rehabilitation and Healthcare Center at Nesconset (4%)	02/2019 to Present
Cortlandt Healthcare (2%)	03/2014 to Present

### Out-of-State Ownership

Jupiter Rehabilitation and Healthcare Center (FL) (4%)	10/2016 to Present
The Encore at Boca Raton Rehabilitation and Nursing Center (FL) (4%)	01/2018 to Present
Palmetto Subacute Care Center (FL) (4%)	02/2018 to Present
Coral Reef Subacute Care Center (FL) (4%)	07/2021 to Present
Legacy at Boca Raton Rehabilitation (FL) (4%)	11/2021 to Present
The Savoy at Fort Lauderdale Rehabilitation and Nursing Center (FL) (4%)	12/2022 to Present
The Pearl at Fort Lauderdale Rehabilitation and Nursing Center (FL) (4%)	12/2022 to Present
Gallatin Center for Rehabilitation and Healing (TN) (4%)	07/2016 to Present
Quality Center for Rehabilitation and Healing (TN) (4%)	07/2016 to Present
Bethany Center for Rehabilitation and Healing (TN) (4%)	03/2017 to Present
Trevecca Center for Rehabilitation and Healing (TN) (4%)	03/2017 to Present
Creekside Center for Rehabilitation and Healing (TN) (4%)	06/2018 to Present
Lebanon Center for Rehabilitation and Healing (TN) (4%)	08/2019 to Present

Manchester Center for Rehabilitation and Healing (TN) (4%)	08/2019 to Present
Green Hills Center for Rehabilitation and Healing (TN) (4%)	12/2019 to Present
Nashville Center for Rehabilitation and Healing (TN) (4%)	12/2017 to Present

End Dated Ownership

Beeghly Oaks Center for Rehabilitation & Healing (OH) (4%)	10/2016 to 07/2018
Oasis Center for Rehabilitation & Healing (OH) (4%)	10/2016 to 07/2018
Heritage Center for Rehabilitation & Specialty Care (OH) (4%)	10/2016 to 04/2018
Hospitality Center for Rehabilitation and Healing (OH) (4%)	02/2014 to 04/2018
Harmony Center for Rehabilitation & Healing (OH) (4%)	07/2017 to 04/2018
The Bristol at Tampa Rehabilitation and Nursing Center (FL) (4%)	06/2017 to 06/2021

Diagnostic and Treatment Center

Glengariff Dialysis Center (NY) (4%)	07/2022 to Present
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Quality Review

The owners have been evaluated, in part, on the distribution of CMS Star ratings for their portfolios. For all proposed owners, the distribution of CMS Star ratings for their facilities meets the standard described in state regulations.

CMS Star Rating Criteria					
		Duration of Ownership*			
		< 48 Months		48 months or more	
Proposed Owner	Total Nursing Homes	Number of Nursing Homes	Percent of Nursing Homes With a Below-Average Rating	Number of Nursing Homes	Percent of Nursing Homes With a Below-Average Rating
Akiva Rudner	24	4	50%	20	20%
Steven Sax	25	4	50%	21	23.8%

\*Duration of Ownership as of 6/20/2024

Data date: 04/2024

**New York.** The proposed owner's portfolio includes ownership in nine New York facilities. Six of the facilities in the ownership portfolio have a CMS overall quality rating of average or higher. The remaining three facilities, The Chateau at Brooklyn Rehabilitation and Nursing Center, Glengariff Rehabilitation and Healthcare Center, and Cortlandt Healthcare, have a CMS overall quality rating of below average. When asked to explain what measures were being put into place to improve the low overall CMS ratings, the applicant indicated the following.

The Chateau at Brooklyn Rehabilitation and Nursing Center

*The Chateau at Brooklyn Rehabilitation & Nursing is currently a 2-star CMS-rated facility. The rating for each category is as follows:*

1. Quality Measures – 5
2. Health Inspection – 2
3. Staffing – 1

*Quality Measures: The facility is working to maintain its 5-star rating. For the upcoming second quarter, we are projected to maintain our 5-star standing with a total score of 1713. The facility reviews our quality indicator reports daily to ensure we are staying below national and state averages. The facility has a Quality Assurance team in place to review monthly performance standards and to establish interventions when necessary.*

*Health Inspections: The facility is preparing for our annual survey visit. Our last CMS annual survey was conducted on May 25th, 2022. The facility was cited for two tags during this time, 0821 and 0656. The facility has corrected these two deficient practices, and both are being monitored by our Quality Assurance team. Tag 0812 was a nutrition/dietary deficiency, and we have our corporate team on-site monthly to do a full walk-through of the kitchen to ensure all food items are stored, prepared, distributed, and served in accordance with professional standards. The Administrator, Director of Nursing, Assistant Director of Nursing, and the Dietary Leadership Team conduct a weekly walk-through to ensure the above is being maintained. Tag 0656 pertains to resident assessments and care planning deficiencies. All clinical departments meet on a daily basis to review resident information. Care plans are initiated upon admission to make sure we are capturing all focus areas and that interventions are in place to adhere to the resident goals. If there is a significant change or a need for a care plan to be updated, this is discussed during the morning report and during daily care plan meetings. Furthermore, all clinical departments are required to review their department-specific care plans when prompted to by the facility's EMR system. Any care plan that is newly implemented or changed is reviewed by the clinical team. Clinical departments are given a list of required care plans that need to be in place, depending on the resident clinical status.*

*The Administrator is currently working with each department to ensure all regulatory compliances are being followed as the CMS guidelines and weekly meetings are conducted to monitor progress and efficiency. Our clinical team reviews the charts of both long- and short-term residents, ensuring we are providing the highest standard of quality care. Additionally, due to the PHE, the facility's previous survey cycles that are being counted towards the star rating in the Health Inspection Rankings are from 2019 and 2018, respectively.*

*Staffing: The facility staffing star rating is significantly being impacted due to the Admin & Nurse Turnover Ratings. As we are navigating the PHE and staffing crisis in NY, the facility is working vigorously to recruit and hire all nursing positions. The facility has an in-house recruiting team as well as uses the website Applio to recruit staff along with in-person efforts, such as job fairs and visiting nursing schools. In the past three months, the facility has welcomed 7 RNs, 5 LPNs, and 24 CNAs to the Chateau team. We continue to also recruit through word of mouth and provide referral bonuses for our staff members who help with recruitment efforts.*

#### Glengariff Rehabilitation and Healthcare

*Glengariff Rehab and Healthcare is currently at a 2 Star for Overall performance, a 5 Star for Quality Measures, a 2 Star for Health Inspection, and a 1 Star for Staffing. Glengariff Rehab and Healthcare is constantly working on achieving the highest levels of quality care. We do this by continuing to provide a resident-centered approach to their care, encompassing all disciplines and ensuring that we are consistently meeting the needs of our patients. This encompasses a full IDT approach to the resident status as well as continued education and bringing up the competencies of our staff. In particular regarding the CMS 5-star rating.*

*Glengariff Rehab and Healthcare is constantly looking to maintain and improve the overall health and stability of the facility, its residents, and its staff. Currently, Glengariff Rehab and Healthcare is at a 2 Star Survey Rating. In Dec 2019 Aug of 2022 there was one citation with a value of 8 points on the rating system that has been the contributing factor to the current star rating score. We have put into place robust QAPI processes and constant "Mock Surveys" whereby we promote additional sets of eyes looking at the overall as well as specific areas that we can improve in the facility. Additionally, and specifically regarding those citations, we have weekly environmental rounds, including all directors and the Administrator, whereby we review items such as the room environment, any furniture damage, wardrobes, bathrooms, other physical environments, etc., as well as continued weekly audit on Med Passes to ensure that any past areas in need of improvement are kept to the highest standards as well as looking to improve any other areas that arise. With continued vigilance, we expect to be able to perform with even better survey outcomes which will further bring up our Overall CMS Star Rating.*

*Glengariff Rehab and Healthcare is currently at a Star for staffing. Our primary goal is to ensure that we are able to deliver the highest quality of care with the appropriate number of staff to meet the patient's goals. While we have been facing a staffing shortage as an industry, and we have been working diligently and successfully to continue to ensure we have the highest caliber staff, constantly recruiting, hosting job*

*fairs, providing continued incentives to our staff as well as making a tremendous effort to reducing our reliance on agency staff, which can cause fragmentation in staffing schedules as well as a higher turnover rate. We have successfully decreased our agency utilization in a significant way, as well as are about to engage in 2 exciting programs where we have a life cycle touch base with our staff in order to be able to learn from their experiences; both those who are long-term employees as well as those with quicker turnover rates. Additionally, we are beginning an Employee Champion Program, where we have a designated non-management staff member who was voted in by the staff to be able to bring any concerns or ideas so that we can be an even greater resource to our team. In fact, with the current submission of our Payroll Based Journal, our facility is expected to become a 2 Star for the staffing measures, which will bring the overall to a 3. We believe that by reducing the agency utilization, increasing staff satisfaction, and by ensuring we are providing a continuity of care by the staff who become familiar with their residents, we will be doing the greatest service to our patients and also bring up the Staffing Star ratings, which will further influence the Overall CMS Star Ratings for our Facility. Our expectation is to continue to improve our outcomes based on the Staffing/PBJ & QM. We will increase our ratings in the short term as well as once we have undergone our annual survey, and we expect our rating to increase even possibly a 4 Star Overall.*

### Cortlandt Healthcare

*Cortlandt Healthcare is currently at a 2 Star for Overall performance, a 4 Star for Quality Measures, and a 2 Star for Staffing. Cortlandt Healthcare is constantly working on achieving the highest levels of quality care. We do this by continuing to provide a resident-centered approach to their care, encompassing all disciplines and ensuring that we are consistently meeting the needs of our patients. This encompasses, a full IDT approach to the resident status as well as continued education and bringing up the competencies of our staff. In particular regarding the CMS 5-star ratings.*

*The facility has a very focused approach to learning from the areas that are trending below the State and national average – and improving on those measures, which leads to enhanced patient care as well as improved ranking with the CMS Star Rating System. We have identified and been able to show improvement in patients with 1+ falls, at risk for pressure ulcers, UTIs, as well as Locomotion & Improvements in function. We have addressed these and are now trending above the State and national average for these measures. These and other efforts are predicted to increase the Quality Measure Scores to 5 Stars, thereby bringing the Overall Quality Score by CMS to a 3 Star Rating.*

*Cortlandt Healthcare is constantly looking to maintain and improve the overall health and stability of the facility, its residents, and its staff. We have put into place robust QAPI processes and constant "Mock Surveys" whereby we promote additional sets of eyes looking at the overall as well as specific areas that we can improve in the facility. With continued vigilance, we expect to be able to perform with even better survey outcomes, which will further bring up our Overall CMS Star Rating.*

*Cortlandt Healthcare is currently at a 2-star for staffing. Our primary goal is to ensure that we are able to deliver the highest quality of care with the appropriate amount of staff to meet the patient's goals. While we have been facing a staffing shortage as an industry, we have been working diligently and successfully to continue to ensure we have the highest caliber staff, constantly recruiting, hosting job fairs, providing continued incentives to our staff as well as making a tremendous effort to reducing our reliance on agency staff, which can cause to fragmentation in staffing schedules as well as a higher turnover rate. We have successfully decreased our agency utilization in a significant way, as well as are about to engage in 2 exciting programs where we have a life cycle touch base with our staff in order to be able to learn from their experiences; both those who are long-term employees as well as those with quicker turnover rates. Additionally, we are beginning an Employee Champion Program, where we have a designated non-management staff member who was voted in by the staff to be able to bring any concerns or ideas so that we can be an even greater resource to our team. We believe that by reducing the agency utilization, increasing staff satisfaction, and by ensuring we are providing a continuity of care by the staff who become familiar with their residents, we will be doing the greatest service to our patients and also bring up the Staffing Star ratings, which will further influence the Overall CMS Star Ratings for our facility.*

**Florida.** The proposed owner's portfolio includes ownership in seven Florida facilities. Five of the Florida facilities have a CMS overall quality rating of average or higher. The remaining two facilities, Coral Reef Subacute Care Center LLC and The Pearl at Fort Lauderdale Rehabilitation and Nursing Center, have a CMS overall quality rating of below average to much below average. When asked to explain what measures were being put into place to improve the low overall CMS ratings, the applicant indicated the following.

#### The Pearl at Fort Lauderdale Rehabilitation and Nursing Center

*This is what The Pearl has implemented and/or is working on to improve the overall Star Rating for the facility:*

- *Hire a New Administrator and Stabilize the turnover position in this key leadership role (Hired 5/18/23)*
- *Implemented Electronic Health Record (PCC).*
- *Retain and fill key open Nurse Management positions.*
  - *Hire Unit Manager for Acute Rehab Unit (Hired in August 2023)*
  - *Hire Risk Manager (Hired in June 2023)*
- *Reduce Turnover Positions in RN and overall Nursing.*
- *HRD and Department Heads are working on creating a "welcoming culture" based on excellence in customer service.*
- *Retain Strong Nurses and fill open positions to reduce Agency usage.*
- *Daily Staffing Meetings implemented with the Administrator, Human Resources Director, DON, and Staffing (Started in June 2023).*
- *Implemented Monthly General Staff Meetings (all three shifts) to improve communication with front-line staff (Started in June 2023).*
- *Create a Culture of Caring by implementing recognition programs (Employee of the Month) and rewarding strong performances (Started in June 2023).*
- *Bring on a Full-Time Nurse Educator to help improve Nursing education. (Full Time Nurse Educator started on 9/19/23).*
- *Transition to new EHR program to help identify trends, areas for improvement, and real-time review of key nursing metrics (PCC Implementation June & July 2023).*
- *Monthly Medical Board meeting with physicians to discuss ways to reduce returns to acute (Started in 2023).*
- *Began using Telemedicine on New Admissions and Develop Treat in Place protocols to reduce Returns to Acute (July 2023).*
- *Hired on a full team of MDS Nurses (hired last MDS Nurse on 9/20/23).*
- *Completed Transmitting MDS assessments that were behind by close to 400 records.*
- *The next quarterly project is to work on Improving Quality Measures.*
- *Improve Clinical IDT Meeting to make it more critical thinking based on evidence from PCC (September 2023).*
- *Plan on bringing on Walking Rounds in October 2023 to help improve quarterly assessments of LTC patients.*
- *DON has monthly meetings with the Nurse Management team and Behavior services partners to help implement Gradual Dosage Reduction initiatives.*
- *The facility has monthly QAPI meetings with active PIPs the facility works weekly to help self-identify areas of deficient practices.*
- *The facility also attends twice-a-week Educational Seminars hosted by CareRite.*

#### Coral Reef Subacute Care Center LLC

*The low overall star rating is related to Health Inspections immediately after the facility underwent a Change in Ownership. Since then, the facility has implemented best practices and provided extensive education and training as well as employee competencies and other quality improvement initiatives. Additionally, the facility implemented Electronic Health Records and many clinical systems, including telemedicine, wound care software, risk management software, etc. Regarding "Staffing," we have implemented a new Nursing Orientation Program. Qualified and competent leadership staff have been hired. The facility is reflecting a 3-star rating in the staffing domain. A new Psychiatrist, Psychologist, and*



*Pharmacy consultant have been subcontracted. Monthly Medical board meetings have been implemented.*

**Tennessee.** The proposed owner's portfolio includes ownership in nine Tennessee facilities. Seven of the Tennessee facilities have a CMS overall quality rating of average or higher. The remaining two facilities, Trevecca Center for Rehabilitation and Healing and Green Hills Center for Rehabilitation and Healing, have a CMS overall quality rating of below average. When asked to explain what measures were being put into place to improve the low overall CMS ratings, the applicant indicated the following.

Trevecca Center for Rehabilitation and Healing

*The overall rating is based on a nursing home's performance on 3 sources:*

*Overall STAR Rating: 2*

*Health inspections: 3 STARS*

*Staffing: 1 STARS*

*Quality of resident care measures: 4 STARS*

*The facility has identified that staffing (PBJ) was submitted incorrectly for quarter three, making the overall star ranking decline to 2, and the inaccurate reporting of staffing made the staffing decline to one star. This error has been corrected, which will assist in bringing the facility to an overall ranking of three stars. The facility team has been working very closely on quality measures, and they are anticipating increasing to five stars in the next quarter. The facility will continue aggressively to work on recruiting, retention, TNA program, Medication Aid program, job fairs, customer service, and patient and family satisfaction. In addition, the facility has changed the clinical leadership team and added a QA role to enhance the QAPI process and clinical outcomes.*

Green Hills Center for Rehabilitation and Healing

*Green Hills Center Star Rating breakdown is as follows:*

*2 Overall Rating*

*1 Health Inspections*

*3 Staffing*

*5 QMs*

*Green Hills Center has a two overall star rating mostly due to our health inspections. Two IJs from early 2021 have affected the facility survey rating and the total points. IJs resulted from improper management of glucometers and ineffective wound programs. Both have been a major focus for GH. Proper policies for glucometer management are in place and the wound program is running at full speed with a dedicated wound nurse and regional support for wounds. Frequent audits and oversight are being provided by the facility leadership team members.*

*GH staffing is averaging in good status. Licensed and non-licensed staff is on par with national and state averages. We currently have 4.5 FT RNs and are constantly trying to recruit more to have close to 24-hour RN coverage on a daily basis and using agency services to help increase the RN hours.*

*Quality Measures have been a 5-star for a long time. A seasoned 29-year GreenHills MDS veteran helps to ensure facility stay at this level. Facility leadership members are confident that the QMs will remain in a good spot due to fantastic care programming.*

*The facility has advanced its orientation program to ensure staff onboarding and retention.*

*The biggest factor for the center will be time to allow their IJs to fall off the points system. Points should fall off from this last cycle this coming year, and it will do the same in 2023 until 3 years have passed. The facility has had many IC deficiency IC surveys and complaints surveys have reduced significantly. RN staffing could potentially help bump us up in 2022 when the facility maintains RN coverage levels. The facility will continue aggressively to work on recruiting, retention, job fairs, TNA programs, Medication Aid programs, customer service, and patient and family satisfaction.*

<b>Facility</b>	<b>Ownership Since</b>	<b>Overall</b>	<b>Health Inspection</b>	<b>Quality Measures</b>	<b>Staffing</b>
<b>New York</b>					
Rockville Skilled Nursing & Rehabilitation Center, LLC	Subject Facility	****	****	****	***
The Enclave at Port Chester Nursing & Rehabilitation Center	Current	*****	****	*****	**
	07/2016	***	****	**	*
Water's Edge at Port Jefferson for Rehabilitation and Nursing	Current	***	***	*****	*
	03/2019	****	***	*****	**
St. James Rehabilitation and Healthcare Center	Current	*****	****	*****	**
	08/2012	**	***	****	*
The Hamlet Rehabilitation and Healthcare Center at Nesconset	Current	****	***	*****	**
	02/2019	*	**	****	*
The Emerald Peek Rehabilitation and Nursing Center	Current	***	**	*****	**
	03/2016	**	***	****	*
The Paramount at Somers Rehabilitation and Nursing Center	Current	****	****	*****	*
	01/2018	****	****	****	****
The Chateau at Brooklyn Rehabilitation and Nursing Center	Current	**	**	*****	*
	02/2017	****	****	****	***
Glengariff Rehabilitation and Healthcare Center	Current	**	**	****	**
	03/2019	***	**	*****	***
Cortlandt Healthcare	Current	**	**	*****	*
	03/2014	***	***	****	***
<b>Florida</b>					
Palmetto Subacute Care Center	Current	*****	****	*****	*****
	02/2018	*****	*****	*****	****
The Encore at Boca Raton Rehabilitation and Nursing Center	Current	***	**	*****	***
	01/2018	**	*	*****	*****
Legacy at Boca Raton Rehabilitation and Nursing	Current	***	**	*****	***
	11/2021	**	*	****	****
Coral Reef Subacute Care Center LLC	Current	**	*	*****	***
	07/2021	*	*	*	**
Jupiter Rehabilitation and Healthcare Center	Current	***	**	*****	***
	10/2016	*****	***	*****	****
The Savoy at Fort Lauderdale Rehabilitation and Nursing Center	Current	****	***	*****	***
	12/2022	****	****	****	***

<b>Facility</b>	<b>Ownership Since</b>	<b>Overall</b>	<b>Health Inspection</b>	<b>Quality Measures</b>	<b>Staffing</b>
The Pearl at Fort Lauderdale Rehabilitation and Nursing Center	Current	**	**	****	****
	12/2022	**	**	****	****
<b>Tennessee</b>					
Lebanon Center for Rehabilitation and Healing	Current	*****	****	*****	**
	08/2019	***	**	*****	***
Quality Center for Rehabilitation and Healing	Current	***	**	*****	**
	07/2016	****	****	****	***
Manchester Center for Rehabilitation and Healing	Current	***	***	****	**
	08/2019	*	*	***	**
Trevecca Center for Rehabilitation and Healing	Current	*	**	****	*
	03/2017	*****	*****	*****	****
Creeside Center for Rehabilitation and Healing	Current	*****	****	*****	**
	06/2018	**	*	****	****
Gallatin Center for Rehabilitation and Healing	Current	***	**	*****	**
	07/2016	*****	*****	**	***
Bethany Center for Rehabilitation and Healing	Current	***	**	*****	**
	03/2017	*****	****	*****	*****
Green Hills Center for Rehabilitation and Healing	Current	**	*	*****	**
	12/2019	**	*	*****	****
Nashville Center for Rehabilitation and Healing	Current	***	**	*****	**
	12/2017	**	*	*****	****

Data date: 04/2024

<b>End Dated Ownership</b>					
<b>Ohio</b>					
Beeghly Oaks Center for Rehabilitation & Healing	07/2018	*	*	**	**
	10/2016	*	*	*	***
Oasis Center for Rehabilitation & Healing	07/2018	*	*	***	**
	10/2016	***	**	***	****
Heritage Center for Rehabilitation & Specialty Care	05/2018	**	**	**	***
	10/2016	****	****	***	***
Hospitality Center for Rehabilitation and Healing	04/2018	***	****	****	*
	02/2014	*****	*****	*****	****
Harmony Center for Rehabilitation & Healing	04/2018	****	****	**	**
	07/2017	**	**	*****	*

End Dated Ownership					
Florida					
The Bristol at Tampa Rehabilitation and Nursing Center	06/2021	**	*	****	****
	06/2017	****	***	**	****

Enforcement History

**New York**

A review of The Enclave at Port Chester Nursing & Rehabilitation Center for the period indicated above reveals the following:

- The facility was assessed a CMP of \$650.00 on 2/22/2021 for failure to report COVID-19 information.
- The facility was fined \$10,000 pursuant to Stipulation and Order (S&O number currently in process) for surveillance findings on 12/12/2023. Deficiencies were found under 10 NYCRR §412.12 (h)(2) Quality of Care Adequate supervision to prevent accidents. The facility was also assessed a CMP of \$63,210.00 under F689 for failure to ensure that a nursing home area is free from accident hazards and provides adequate supervision to prevent accidents.

A review of Waters Edge Rehab & Nursing Center at Port Jefferson for the period indicated above reveals the following:

- The facility was fined \$4,000.00 pursuant to Stipulation and Order NH-21-040 issued on 03/13/2021 for surveillance findings on 01/26/2021. Deficiencies were found under Executive Order 202.1 (9 NYCRR §8.202.1) and 10 NYCRR 400.2, resumption of construction without notice to the Department, construction in or adjacent to a functioning and occupied dedicated COVID-19 unit.
- The facility was fined \$2,000.00 pursuant to Stipulation and Order NH-22-008 issued on 01/13/2022 for surveillance findings on 11/29/2021. Deficiencies were found under 10 NYCRR §415.19(a)(2) for the failure of housekeeping staff to change gloves between resident rooms.

A review of St. James Rehabilitation & Healthcare Center for the period indicated above reveals no enforcements.

A review of The Hamlet Rehabilitation and Healthcare Center at Nesconset for the period indicated above reveals the following:

- The facility was fined \$10,000.00 pursuant to Stipulation and Order NH-24-010 issued on 01/18/2024 for surveillance findings on 09/08/2023. Deficiencies were found under 10 NYCRR §415.12 (a)(2). The facility failed to effectively implement a system to monitor a Resident's bowel movements, which resulted in the Resident's hospitalization and death from septic shock related to stercoral colitis with perforation.

A review of The Emerald Peek Rehabilitation and Nursing Center for the period indicated above reveals the following:

- The facility was fined \$2,000.00 pursuant to Stipulation and Order NH-22-050 issued on 03/25/2022 for surveillance findings on 12/22/2021. Deficiencies were found under 10 NYCRR §415.19(b)(4) for failure to perform hand hygiene appropriately during wound care.

A review of The Paramount at Somers Rehabilitation and Nursing Center for the period indicated above reveals no enforcements.

A review of The Chateau at Brooklyn Rehabilitation and Nursing Center for the period indicated above reveals no enforcements.

A review of Glengariff Rehabilitation and Healthcare Center for the period indicated above reveals the following:

- The facility was fined \$4,000.00 pursuant to Stipulation and Order NH-21-064 issued on 04/1/2021 for surveillance findings on 01/6/2021. Deficiencies were found under 10 NYCRR §415.19(a)(1-2)

for failure to don and doff a new gown each time staff entered and exited a resident room located on a unit placed on contact and droplet precautions.

- The facility was fined \$10,000.00 pursuant to Stipulation and Order NH-22-140 issued on 09/16/2022 for surveillance findings on 04/19/2022. Deficiencies were found under 10 NYCRR §415.4(b)(1)(i) for failure to ensure that residents were free from inappropriate physical contact by staff, for which no consent was given, and no medical or therapeutic justification was provided.

## **Florida**

A review of Palmetto Subacute Care Center for the period indicated above reveals no enforcements.

A review of The Encore at Boca Raton Rehabilitation and Nursing Center for the period indicated above reveals the following:

- The facility was assessed a CMP of \$650.00 on 9/13/2021 for failure to report COVID-19 information.

A review of Legacy at Boca Raton Rehabilitation and Nursing for the period indicated above reveals no enforcements.

A review of Coral Reef Subacute Care Center LLC for the period indicated above reveals the following:

- A federal CMP in the amount of \$249,618.00 was assessed for the surveillance findings on 10/22/2021. The facility was cited for immediate jeopardy under F600 for failure to protect each resident from all types of abuse such as physical, mental, sexual abuse, physical punishment, and neglect by anybody, F656 for failure to develop and implement a complete care plan that meets all the resident's needs, with timetables and actions that can be measured, and F742 for failure to provide the appropriate treatment and services to a resident who displays or is diagnosed with a mental disorder or psychosocial adjustment difficulty, or who has a history of trauma and/or post-traumatic stress disorder.

A review of Jupiter Rehabilitation and Healthcare Center for the period indicated above reveals the following:

- The facility was assessed a CMP of \$655.00 on 01/03/2022, \$983.00 on 01/10/2022, \$1,326.00 on 01/17/2022, \$1,657.00 on 01/31/2022, and \$1,988.00 on 03/28/2022 for failure to report COVID-19 information.
- A federal CMP in the amount of \$14,508.00 was assessed for the surveillance findings on 11/04/2020. The facility was cited for harm under F686 for failure to provide appropriate pressure ulcer care and prevent new ulcers from developing.

A review of The Savoy at Fort Lauderdale Rehabilitation and Nursing Center for the period indicated above revealed no enforcements.

A review of The Pearl at Fort Lauderdale Rehabilitation and Nursing Center for the period indicated above reveals the following:

- The facility was cited on 8/31/2023 for harm under F684 for failure to provide appropriate treatment and care according to orders, resident's preferences, and goals and for harm under F693 for failure to ensure that feeding tubes are not used unless there is a medical reason, and the resident agrees; and provide appropriate care for a resident with a feeding tube.

A review of The Bristol at Tampa Rehabilitation and Nursing Center for the period indicated above reveals the following:

- The facility was cited for immediate jeopardy on 10/25/2018 under F578 for failure to ensure residents have the right to request, refuse, and/or discontinue treatment, to participate in or refuse to participate in experimental research, and to formulate an advance directive, F600 for failure to protect each resident from all types of abuse such as physical, mental, sexual abuse, physical punishment, and neglect by anybody, and F835 for failure to administer the facility in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.

## Tennessee

A review of Lebanon Center for Rehabilitation and Healing for the period indicated above reveals the following:

- The facility was assessed a CMP of \$655.00 on 2/8/2021 for failure to report COVID-19 information.

A review of Quality Center for Rehabilitation and Healing for the period indicated above reveals the following:

- The facility was assessed a CMP of \$7901.00 on 3/22/2023 for harm under F688 for failure to ensure that a nursing home area is free from accident hazards and provides adequate supervision to prevent accidents.
- The facility was cited on 8/10/2023 for harm under F684 for failure to Provide appropriate treatment and care according to orders, resident's preferences, and goals.

A review of Manchester Center for Rehabilitation and Healing for the period indicated above reveals the following:

- The facility was assessed a CMP of \$5,000.00 based on surveillance findings on 01/6/2021 under F880 for failure to provide and implement an infection prevention and control program.
- The facility was assessed a CMP of \$37,500.00 based on surveillance findings on 9/13/2022 under F584 for failure to honor the resident's right to a safe, clean, comfortable and homelike environment, including but not limited to receiving treatment and support for daily living safely, F600 for failure to protect each resident from all types of abuse such as physical, mental, sexual abuse, physical punishment, and neglect by anybody, and F609 failure to timely report suspected abuse, neglect, or theft and report the results of the investigation to proper authorities.

A review of Trevecca Center for Rehabilitation and Healing for the period indicated above reveals no enforcements.

A review of Creekside Center for Rehabilitation and Healing for the period indicated above reveals the following:

- The facility was assessed a CMP of \$7,400.00 based on surveillance findings on 2/1/2021 under F760 for failure to ensure that residents are free from significant medication errors.

A review of Gallatin Center for Rehabilitation and Healing for the period indicated above reveals the following:

- The facility was assessed a CMP of \$13,042.00 based on surveillance findings on 9/1/2022 under F689 for failure to ensure that a nursing home area is free from accident hazards and provides adequate supervision to prevent accidents.
- The facility was assessed a CMP of \$11,180.00 based on surveillance findings on 7/22/2022 under F684 for failure to provide appropriate treatment and care according to orders, resident preferences, and goals.
- The facility was assessed a CMP of \$16,840.00 based on surveillance findings on 06/12/2019 under F550 for failure to honor the resident's right to a dignified existence, self-determination, communication, and to exercise their rights, F604 for failure to ensure that each resident is free from the use of physical restraints, unless needed for medical treatment, F609 for failure to timely report suspected abuse, neglect, or theft and report the results of the investigation to proper authorities, and F689 for failure to ensure that a nursing home area is free from accident hazards and provides adequate supervision to prevent accidents.
- The facility was assessed a CMP of \$3,318.00 based on surveillance findings on 9/25/2019 under F626 for failure to permit a resident to return to the nursing home after hospitalization or therapeutic leave that exceeds bed-hold policy.

A review of Bethany Center for Rehabilitation and Healing for the period indicated above reveals the following:

- The facility was assessed a CMP of \$11,703.00 based on surveillance findings on 10/23/2019 under F880 for failure to Provide and implement an infection prevention and control program.
- The facility was assessed a CMP of \$64,543.00 based on surveillance findings on 07/11/2018 under F600 for failure to protect each resident from all types of abuse, such as physical, mental, sexual abuse, physical punishment, and neglect by anybody.

A review of Green Hills Center for Rehabilitation and Healing for the period indicated above reveals the following:

- The facility was assessed a CMP of \$655.00 on 09/13/2021 for failure to report COVID-19 information.
- The facility was assessed a CMP of \$28,918.00 based on surveillance findings on 01/28/2021 under F867 for failure to set up an ongoing quality assessment and assurance group to review quality deficiencies and develop corrective plans of action.
- The facility was cited on 2/6/2024 for Immediate Jeopardy under F689 for failure to ensure that a nursing home area is free from accident hazards and provides adequate supervision to prevent accidents. The facility was also cited for harm at a G level for the following: F600 for failure to protect each resident from all types of abuse such as physical, mental, sexual abuse, physical punishment, and neglect by anybody, F656 for failure to develop and implement a complete care plan that meets all the resident's needs, with timetables and actions that can be measured, and 697 for failure to ensure that pain management is provided to residents who require such services, consistent with professional standards of practice, the comprehensive person-centered care plan, and the resident's goals and preferences.

A review of Nashville Center for Rehabilitation and Healing for the period indicated above reveals the following:

- The facility was assessed a CMP of \$655.00 on 8/30/2021 and \$994.00 on 4/18/2022 for failure to report COVID-19 information.

## **Ohio**

A review of Beeghly Oaks Center for Rehabilitation & Healing for the period indicated above reveals no enforcements.

A review of Oasis Center for Rehabilitation & Healing for the period indicated above reveals no enforcements.

A review of Heritage Center for Rehabilitation & Specialty Care for the period indicated above reveals the following:

- The facility was assessed a CMP of \$23,972.00 based on surveillance findings on 10/8/2017 under F309 for failure to provide necessary care and services to maintain or improve the highest well-being of each resident.

A review of Hospitality Center for Rehabilitation and Healing for the period indicated above reveals no enforcements.

A review of Harmony Center for Rehabilitation & Healing for the period indicated above reveals no enforcements.

## **Conclusion**

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

## Financial Analysis

### Operating Budget

The applicant provided the current year (2022) results and the first (2025) and third year (2027) operating budget, in 2024 dollars, after the change in ownership, summarized below:

Revenues	<u>Current</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
Medicaid FFS	\$314.49	\$3,599,693	\$340.92	\$3,561,590	\$340.92	\$3,561,590
Medicaid MC	\$300.00	\$586,200	\$340.92	\$729,910	\$340.92	\$729,910
Medicare FFS	\$733.23	\$4,092,153	\$822.93	\$4,268,540	\$831.46	\$4,312,788
Medicare MC	\$650.00	\$662,350	\$685.00	\$641,160	\$692.00	\$647,712
Comm. FFS	\$506.79	\$140,380	\$714.11	\$1,103,300	\$721.10	\$1,114,100
Private Pay	\$422.65	\$989,846	\$331.46	\$872,400	\$334.92	\$881,500
Medicare PtB		<u>\$349,714</u>				
Covid Grant		<u>\$433,885</u>				
All Other		<u>\$30,028</u>		<u>\$11,900</u>		<u>\$11,900</u>
<b>Total Revenues</b>		<b>\$10,884,249</b>		<b>\$11,188,800</b>		<b>\$11,259,500</b>
<b>Expenses</b>						
Operating	\$440.87	\$9,971,934	\$414.45	\$9,486,000	\$414.51	\$9,487,300
Capital	<u>\$68.16</u>	<u>\$1,541,734</u>	<u>\$49.53</u>	<u>\$1,133,746</u>	<u>\$49.82</u>	<u>\$1,140,206</u>
<b>Total Expenses:</b>	<b>\$509.03</b>	<b>\$11,513,668</b>	<b>\$463.98</b>	<b>\$10,619,746</b>	<b>\$464.33</b>	<b>\$10,627,506</b>
<b>Net Income/(Loss)</b>		<b><u>(\$629,419)</u></b>		<b><u>\$569,054</u></b>		<b><u>\$631,994</u></b>
Patient Days		22,619		22,888		22,888
Occupancy		93.89%		95.00%		95.00%

- Medicaid rates are projected based on the reimbursement methodology under statewide pricing.
- The Medicare rates are projected based on the full federal rates for the Medicare Prospective Payment System in effect for 2022 and are increased by 1% per annum for inflation to reflect 2024 dollars.
- The projections assume the Medicare Managed Care rates will increase over the current per diem when the buyer is able to utilize their existing contractual arrangements with the Managed Care companies. The applicant indicated the current Medicare Managed Care rates are lower than other regional facilities affiliated with the buyer.
- Private rates are projected based on similar facilities in the same geographical area and are increased by 1% per annum for inflation to reflect 2024 dollars.
- The proposed operator is assuming the current operator's Lease Agreement. Per the Lease Agreement, the tenant is responsible for real estate taxes and property insurance. Real estate taxes and property insurance are estimated to increase by 2% per year. This will lead to additional capital costs, as shown in Years One and Three.

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

<u>Payor</u>	<u>Current Year</u>	<u>Years One and Three</u>
Commercial FFS	1.22%	6.75%
Medicaid FFS	50.60%	45.64%
Medicaid MC	8.64%	9.35%
Medicare FFS	24.67%	22.66%
Medicare MC	4.51%	4.09%
Private	<u>10.35%</u>	<u>11.51%</u>
<b>Total</b>	<b>100.00%</b>	<b>100.00%</b>



- Breakeven utilization is projected at 87.48% or 21,074 patient days for Year One and 86.99% or 20,956 patient days for Year Three.
- The facility's Medicaid admissions of 27.4% in 2020, 22.0% in 2021, and 20.5% in 2022 exceed the County's 75% threshold rate of 12.7% in 2020, 14.5% in 2021, and 15.2% in 2022.

#### Asset Purchase Agreement

The applicant submitted an executed APA for the operating interests of the RHCF. The agreement will become effectuated upon PHHPC's approval of this CON. The terms are summarized below:

Date:	December 2020
Transferor	Rockville Skilled Nursing & Rehabilitation Center, LLC
Transferee:	Rockville Holdings Operating LLC
Transferred Assets:	All assets used in the operations of the facility. Facilities; equipment; supplies and inventory; prepaid expenses; documents and records; assignable leases, contracts, licenses, and permits; telephone numbers, fax numbers, and all logos; resident trust funds; deposits; accounts and notes receivable; cash, deposits, and cash equivalents. All rate increases and/or lump sum payments resulting from rate appeals, audits with respect to third-party payments from any source, which become effective or paid on or after the Contract Date for services rendered by the facility, including Universal Settlement payments.
Excluded Assets:	Any tax returns, tax records and financial statements of the sellers, excluded property of the seller and intellectual property rights to the name Rockville Skilled Nursing and Rehab and the Real Estate Asset Purchase Agreement purchase price.
Assumed Liabilities:	All accounts payable of seller, liabilities of seller arising under the assigned contracts, business assets, all liabilities not covered by insurance, all healthcare program liabilities, and accrued employee benefits.
Excluded Liabilities:	Any liabilities not disclosed by seller, unrelated to the operation or seller's failure to perform any covenant or breach of any of its representations.
Purchase Price:	Assumption of Accounts receivable and Accounts Payable at closing
Payment of Purchase Price:	Amount to be paid at closing

The applicant submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of 11/22/2023, the facility had no outstanding Medicaid overpayment liabilities.

#### Lease Agreement

The applicant submitted a draft lease agreement. The terms are summarized below:

Premises:	A 66-bed Skilled Nursing Facility located at 50 Maine Avenue, Rockville Centre, NY 11570
Landlord:	Rockville Holdings Property LLC
Tenant:	Rockville Skilled Nursing and Rehabilitation Center
Terms:	21 years with a termination date of December 31, 2043.
Rental:	\$1,119,746 annually for year one with an annual 2% increase from year 2 going forward
Provisions	Triple Net

The lease arrangement is an arm's length agreement. The applicant submitted an affidavit attesting to no relationship between the landlord and the operating entity. The applicant submitted two real estate letters attesting to the reasonableness of the per-square-foot rental.

### Operations Administrative Services Agreement

The applicant submitted a draft Operations Administrative and Services Agreement, summarized below:

Consultant	CareRite Centers, LLC
Facility	Rockville Holdings Operating, LLC
Term	5-years with unlimited automatic 2-year renewals
Services Provided	Administrative Services to include the following: Employee benefit and personal services, Oversee General maintenance and cleaning services for the facility, Clerical Services, Public relations services, Establish policies and procedures governing quality assurance, risk management and such other areas, Assistance with quality assurance activities to the extent permitted by Applicable law, Develop orientation and training plans to teach the policies and procedures of the company to all administrative personnel. CareRite shall also coordinate with third parties and the relevant government agencies to establish, update, and maintain policies, protocols, and procedures, HIPPA Compliance Services and Credentialing/Recredentialing Services
Compensation	\$20,000 a month or \$240,000 annually

Rockville Holdings Operating, LLC, d/b/a Rockville Skilled Nursing and Rehabilitation Center retains ultimate control in all financial decisions associated with the services provided. The applicant submitted an executed attestation stating that the applicant understands and acknowledges that there are powers that must not be delegated, that the applicant will not engage in any illegal delegation, and they understand that the Department will hold the applicant accountable.

### Billing Administrative Services Agreement

The applicant submitted a draft Billing Administrative and Services Agreement, summarized below:

Consultant	Comprehensive Healthcare Solutions, LLC
Facility	Rockville Holdings Operating, LLC
Term	Indefinite with a 90-day cancelation clause available to either party.
Services Provided	Billing Services
Compensation	\$13,500 per month plus \$4,620 per month for the lease of the software and hardware to perform the service or \$217,440 annually

Rockville Holdings Operating, LLC, d/b/a Rockville Skilled Nursing and Rehabilitation Center retains ultimate control in all financial decisions associated with the services provided. The applicant submitted an executed attestation stating that the applicant understands and acknowledges that there are powers that must not be delegated, that the applicant will not engage in any illegal delegation, and they understand that the Department will hold the applicant accountable.

### Accounting Administrative Services Agreement

The applicant submitted a draft Accounting Administrative and Services Agreement, summarized below:

Consultant	CareRite Services, LLC
Facility	Rockville Holdings Operating, LLC
Term	Indefinite with a 90-day cancelation clause available to either party.
Services Provided	Accounting Services which include the following: <ul style="list-style-type: none"> <li>• Accounts payable invoice services</li> <li>• Cash Management Services</li> <li>• Payroll Services</li> <li>• Preparation of Financial Statements</li> </ul>
Compensation	\$3,500 per month plus any software, postage, or any other cost that CareRite may incur while providing services.

Rockville Holdings Operating, LLC, d/b/a Rockville Skilled Nursing and Rehabilitation Center retains ultimate control in all financial decisions associated with the services provided. The applicant submitted an executed attestation stating that the applicant understands and acknowledges that there are powers

that must not be delegated, that the applicant will not engage in any illegal delegation, and they understand that the Department will hold the applicant accountable.

### Capability and Feasibility

There are no project costs associated with this application. The purchase price for the assets is the assumption by Rockville Nursing & Rehabilitation Center of accounts payable and accounts receivable at the time of closing. The most current Internal Financial Statements as of September 30, 2023, show accounts receivable of \$1,696,261 and accounts payable of \$899,713. These amounts are subject to change based on the most current accounts payable and accounts receivable at the time of closing.

The working capital requirement of \$1,769,958, based on two months of the first year's expenses, will be satisfied through the proposed members' equity. BFA Attachment A, the Proposed Members' Net Worth summaries, show the members have sufficient liquid assets to meet the acquisition and working capital equity requirements. BFA Attachment D provides the Pro-Forma Balance sheet as of the first day of operation, which indicates a positive members' equity of \$2,996,000.

The submitted budget indicates an excess of revenues over expenses of \$569,054 and \$631,994 during Years One and Three, respectively. Revenues are based on current reimbursement methodologies. The submitted budget appears reasonable.

BFA Attachment E presents the 2020-2022 Certified Financial Summary and the 1/1/23-12/31/23 Internal Financial Summary of Rockville Nursing and Rehabilitation Center, LLC. The 2020-2022 Certified Financial Summary shows the facility maintained both average positive working capital and net asset positions and generated an average net income of \$168,228. For the period ending December 31, 2023, the facility generated both positive working capital and net asset positions and generated a net income of \$318,160.

BFA Attachment C presents the 2020-2022 Certified Financial Statements and the 1/1/23-12/31/23 Internal Financial Summaries of the proposed owners-related facilities.

For 2020-2022 and the 1/1/23-12/31/23 period, all facilities had an average positive net asset position, working capital, and net income except for the following facilities:

- Glengariff Rehabilitation and Healthcare had an average net loss of \$664,480. These losses were primarily due to start-up costs and low occupancy related to COVID-19.
- Glengariff Rehabilitation and Healthcare, The Enclave at Rye Rehabilitation and Nursing Center, Emerald Peek Rehabilitation, The Hamlet Rehabilitation and Healthcare Center at Nesconset, The Chateau at Brooklyn Rehabilitation and Nursing Center, and Water's Edge Rehabilitation and Nursing Center all had average negative working capital positions.
- Glengariff Rehabilitation and Healthcare had an average net asset position.

### Conclusion

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

## Attachments

LTCOP Attachment	Long-Term Care Ombudsman Program Recommendation
BHFP Attachment	Map
BFA Attachment A	Net Worth Statements of Rockville Holdings Operating, LLC Members
BFA Attachment B	Organization Chart Rockville Holdings Operating, LLC
BFA Attachment C	Ownership Interest in Affiliated Nursing Homes for the proposed owners of Rockville Skilled Nursing & Rehabilitation Center and the 2019-2022 Certified and 1/1/23-12/31/23 Internal Financials Summary of the affiliated nursing home facilities
BFA Attachment D	Pro Forma Balance Sheet of Rockville Skilled Nursing and Rehabilitation Center
BFA Attachment E	2019-2022 Certified and the 1/1/23-12/31/23 Internal Financial Summary of Rockville Skilled Nursing and Rehabilitation Center



**Project # 232078-E  
Brooklyn-Queens Nursing Home**

**Program: Residential Health Care Facility  
Purpose: Establishment**

**County: Kings  
Acknowledged: September 11, 2023**

**Executive Summary**

**Description**

Brooklyn-Queens Nursing Home, Inc., an existing 140-bed Residential Health Care Facility (RHCF) at 2749 Linden Blvd, Brooklyn, New York, requests approval to transfer 50% ownership interest from Leopold Berkowitz to Yaakov Klein

The current and proposed ownership of Brooklyn Queens Nursing Home is as follows:

<u>Current Operator</u>	
Brooklyn-Queens Nursing Home, Inc.	
<u>Member</u>	<u>Ownership %</u>
Leopold Berkowitz	100%

<u>Proposed Operator</u>	
Brooklyn-Queens Nursing Home	
<u>Members</u>	<u>Ownership %</u>
Leopold Berkowitz	50%
Yaakov Klein	50%

There will be no changes to the facility or services provided.

**OALTC Recommendation  
Approval**

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

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

**Financial Summary**  
The purchase price of \$2,135,000 will be met with equity from the personal net worth of Yaakov Klein. Since there are no changes to the facility or the services provided, operating budgets were not reviewed as a part of this application.

**Health Equity Impact Assessment**  
This project does not meet the requirements for a Health Equity Impact Assessment under Public Health Law §2802-B.

## Recommendations

Long-Term Care Ombudsman Program  
The LTCOP recommends Approval. (See LTCOP Attachment)

Health Systems Agency  
There will be no HSA recommendation for this project.

Office of Aging and Long-Term Care

**Approval conditional upon:**

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

Council Action Date  
June 20, 2024

## Program Analysis

### Project Proposal

	Existing	Proposed
<b>Facility Name</b>	Brooklyn-Queens Nursing Home	Same
<b>Address</b>	2749 Linden Blvd, Brooklyn, New York 11208	Same
<b>RHCF Capacity</b>	140 beds	Same
<b>ADHCP Capacity</b>	N/A	N/A
<b>Type of Operator</b>	Business Corporation	Same
<b>Class of Operator</b>	Proprietary	Same
<b>Operator</b>	<b>Brooklyn-Queens Nursing Home, Inc.</b>  <u>Membership:</u> Leopold Berkowitz                      100%	<b>Brooklyn-Queens Nursing Home, Inc.</b>  <u>Membership:</u> Leopold Berkowitz*                      50% Yaakov Klein**                              50%  *President **Vice President

### Character and Competence

**Yaakov Klein** reports concurrent employment as the Director of Operations for Bensonhurst Center for Rehabilitation and Healthcare in Brooklyn, NY, and as the Director of Operations of Fairview Nursing Care Center, Inc. in Forest Hills, NY. Previously, Yaakov was employed as a teacher with Derech Institute in Jerusalem, Israel. Yaakov Klein holds a bachelor's degree in Talmudic Studies from Yeshiva Machzikei Hadas and discloses the following healthcare facility ownership interests:

#### New York Nursing Homes

Bensonhurst Center for Rehabilitation and Healthcare (40%)	01/2012 to Present
Fairview Nursing Care Center (99%)	08/2021 to Present
Mayfair Care Center	Pending
Central Queens Rehabilitation Nursing Center	Pending
Fulton Commons Care Center, Inc.	Pending
Bridge View Nursing Home	Pending

### Quality Review

The proposed owner has been evaluated, in part, on the distribution of CMS Star ratings for their portfolio. For the proposed owner, the distribution of CMS star ratings for their facilities meets the standard described in state regulations.

CMS Star Rating Criteria					
		Duration of Ownership*			
		< 48 Months		48 months or more	
Proposed Owner	Total Nursing Homes	Number of Nursing Homes	Percent of Nursing Homes With a Below Average Rating	Number of Nursing Homes	Percent of Nursing Homes With a Below Average Rating
Yaakov Klein	2	1	0%	1	0%

\*Duration of Ownership as of 06/20/2024

Data date: 04/2024

**New York.** The proposed owner's portfolio includes ownership in two New York facilities. Both facilities have a CMS overall quality rating of average or higher.

Facility	Ownership Since	Overall	Health Inspection	Quality Measures	Staffing
<b>New York</b>					
Brooklyn-Queens Nursing Home	Subject Facility	**	*	*****	*
Bensonhurst Center for Rehabilitation and Healthcare	Current	****	***	*****	**
	02/2012	***	***	****	***
Fairview Nursing Care Center	Current	***	**	*****	****
	08/2021	****	***	*****	**

Data date: 04/2024

### Enforcement History

#### New York

A review of the operations of Bensonhurst Center for Rehabilitation and Healthcare for the period indicated above reveals no enforcements.

A review of the operations of Fairview Nursing Care Center for the period indicated above reveals the following:

- The facility was fined \$18,000 pursuant to Stipulation and Order NH-24-027 for surveillance findings on 10/25/2021. Deficiencies were found under 10 NYCRR §415.19(a)(1), and (2) Infection Control. Specifically, the facility failed to establish and maintain an infection control program under which it investigates, controls, and takes action to prevent infections in the facility, and failed to implement appropriate universal precaution procedures for individual residents. This is evidenced by the facility's failure to cease indoor visitation during a COVID-19 outbreak at the facility; and failure to quarantine residents diagnosed with or exposed to someone diagnosed with COVID-19. A total of 9 violations. A federal CMP of payment denial was also assessed on 10/25/2021 for failure to provide and implement an infection prevention and control program under F880 at an F level.

### Conclusion

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



## Financial Analysis

### Stock Purchase Agreement

The applicant has submitted an executed stock purchase agreement, which is summarized below:

Date	November 16, 2020
Purpose	The sale of 50% stock ownership of Brooklyn-Queens Nursing Home
Seller	Leopold Berkowitz
Purchaser	Yaakov Klein
Purchase Price	\$2,135,000
Payment of Purchase Price	Cash at Closing

### Capability and Feasibility

The purchase price of \$2,135,000 will be covered by Yaakov Klein. There are no project costs associated with this application or changes to services provided. BFA Attachment A, Personal Net Worth Statement of Yaakov Klein, indicates the availability of sufficient funds to meet the purchase price.

BFA Attachment B, Financial Summary of Brooklyn-Queens Nursing Home's 2021-2022 Certified Financial Statements, shows an average positive working capital position and an average positive net asset position for the period shown. Also, the entity achieved an average net income of \$5,205,595 in 2021, and the facility incurred an operating loss of (\$315,210) in 2022. The applicant has indicated that the losses were due to increased nursing costs, and the facility has been under significant renovation over the past 16 months, with completion in January 2024. The applicant has indicated they've implemented steps to improve operations, such as making vendor payments within 90 days or less. As a result, the facility was able to lower added vendor interest and or late fees and payments. The facility plans to provide more sub-acute care, wound care, and short-term rehabilitation services to residents, which is a higher acuity and should improve operations.

BFA Attachment C, Financial Summaries of Affiliated Nursing Homes: Bensonhurst Center for Rehabilitation and Healthcare and Fairview Nursing Center, indicates both nursing homes had a positive working capital position, positive net asset position, and net incomes during the periods shown.

### Conclusion

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

## Attachments

LTCOP Attachment	Long-Term Care Ombudsman Program Recommendation
BFA Attachment A	Personal Net Worth Statement- new shareholder
BFA Attachment B	Financial Summary of Brooklyn-Queens Nursing Home
BFA Attachment C	Financial Summary of Affiliated Nursing Homes: Bensonhurst Center and Fairview Nursing



**Project # 222202-E  
Priority Cares Home Services, LLC**

**Program:** LHCSA  
**Purpose:** Establishment

**County:** Queens  
**Acknowledged:** December 9, 2022

**Executive Summary**

**Description**

Priority Care Home Services, LLC, a New York limited liability company is seeking to establish a licensed home care services agency (LHCSA) under Article 36 of New York State Public Health Law. Priority Care Home Services, LLC is a single-member LLC with no parent entity.

OALTC Recommendation  
Contingent Approval

**Need Summary**

In accordance with Title 10 NYCRR §765-1.16(c)1, this application is not exempt from a Public Need review as the agency is applying for one county with no presumed need (Monroe County). Pursuant to 10 NYCRR §765-1.16(c) 4 a rebuttal to the presumption of no need was submitted for Monroe County, which was

determined to be sufficient based on the criteria set forth in 10 NYCRR §765-1.16(d).

**Program Summary**

The individual background review indicates the proposed members have met the standard for approval as set forth in New York State Public Health Law §3605.

**Financial Summary**

In accordance with 10 NYCRR §765-1.2(b)3, the applicant has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating the financial feasibility of the agency.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Aging and Long-Term Care

**Approval contingent upon:**

1. A copy of the amended operating agreement by the applicant, acceptable to the Department. [CSL]

**Approval conditional upon:**

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

Council Action Date

June 20, 2024

# Program Analysis

## Project Description

Priority Care Home Services, LLC is seeking to establish a licensed home care services agency (LHCSA).

The applicant proposes to serve the residents of the following counties from an office located at 510 Clinton Square, Rochester, NY. 14060:

- Monroe
- Livingston
- Ontario
- Genesee
- Chemung

The applicant proposes to provide the following healthcare services:

- Nursing
- Home Health Aide
- Personal Care Aide
- Physical Therapy
- Occupational Therapy
- Respiratory Therapy
- Medical Social Work
- Nutrition
- Homemaker
- Housekeeper

## Character and Competence Review

Priority Cares Home Services, LLC is comprised of the following individual:

**Ezekiel Segun Olaniyi – Priority Cares Home Services, LLC; Owner and Chief Executive Officer  
ESO Consultants, LLC; Owner and Chief Executive Officer**

### Affiliations

- Priority Cares Home Services, LLC (Consumer Directed Personal Assistance Program) (April 2017 - Present)
- Priority Groups Services, LLC (New Jersey) (Consumer Directed Personal Assistance Program) (April 2022 - Present)

Ezekiel Segun Olaniyi has a strong interest in the position of operating a licensed home care services agency (LHCSA) in New York. He has over six years of extensive experience and an educational background in the social services field.

A review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

## Facility Compliance/Enforcement

Not applicable due to the applicant not having any NYS-licensed facilities at this time.

### Need Review

In accordance with Title 10 NYCRR §765-1.16(c)1, this application is not exempt from a Public Need review as the agency is applying for one county with no presumed need (Monroe County). If there are more than five LHCSAs actively serving patients in the county where the applicant is seeking licensure, then there is a determination that there is no public need for additional LHCSAs in that county. Pursuant to 10 NYCRR §765-1.16(c)(4), an application may still be submitted; however, it must contain a rebuttal and present data-driven evidence. A rebuttal to the presumption of no need was submitted for Monroe County, which was determined by the Department to be sufficient based on the criteria set forth in 10 NYCRR §765-1.16(d). Specifically, the applicant is committed to playing a crucial role in addressing the diverse needs of the demographic population of Monroe County for which they provided statistical data, including being responsive to sub-populations and the cultural needs of the patients. The applicant also spoke to the current waiting lists of individuals requiring licensed home care services, as well as, to the quality care that they will offer. Additionally, the applicant provided a strong case for dedicating the personnel and resources needed to recruit and train the workforce.

A rebuttal to the presumption of no need was not required for the other counties applied for Livingston, Ontario, Genesee, and Chemung counties, as they have been identified by the Department as counties with an existing need for LHCSA services.

### Financial Review

In accordance with 10 NYCRR §765-1.2(b)3 the applicant has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating financial feasibility of the agency.

### Workforce Summary

The applicant's response regarding the recruitment and retention of the workforce was adequately addressed. See Attachment A for the Workforce Summary.

### Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in New York State Public Health Law §3605.

<h2>Attachments</h2>	
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OALTC Attachment A	Workforce Summary
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**Project # 231058-E  
Excel Homecare Inc.**

**Program:** LHCSA  
**Purpose:** Establishment

**County:** Suffolk  
**Acknowledged:** February 17, 2023

**Executive Summary**

**Description**

Excel Homecare, Inc., a business corporation, requests approval to become the new operator of Companions Plus Inc., a Licensed Home Care Services Agency (LHCSA).

There will be no changes to the counties served or services provided as a result of this CON.

Upon approval of this application, the agency will be known as Excel Homecare, Inc. d/b/a Companions Plus.

OALTC Recommendation  
Approval

**Need Summary**

In accordance with 10 NYCRR §765- 1.16(c)2, this application is exempt from Public Need review as the agency is actively serving over 25 patients, as attested to by the current operator.

**Program Summary**

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3605.

**Financial Summary**

In accordance with 10 NYCRR §765-1(b)3, the applicant has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating the financial feasibility of the agency.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Aging and Long-Term Care

**Approval conditional upon:**

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

Council Action Date

June 20, 2024

# Program Analysis

## Program Description

Excel Homecare, Inc. requests approval to become the new operator of Companions Plus Inc., an existing LHCSA.

Companions Plus, Inc., the current operator of Companions Plus, Inc., entered into a management contract with Excel Homecare, Inc., which was approved by the Department on June 14, 2023.

Upon approval of this application, the agency will be known as Excel Homecare, Inc. d/b/a Companions Plus.

The applicant will continue to serve the residents of the following counties from an office located at 2100 Deer Park Avenue, Suite 1B, Deer Park, NY 11729:

- Nassau
- Queens
- Suffolk

The applicant will continue to provide the following healthcare services:

- Nursing
- Home Health Aide
- Personal Care
- Homemaker
- Housekeeper

## Character and Competence Review

The proposed membership interest and shareholders for Excel Homecare, Inc. is as follows:

### **Lekeisha Hall (50%)**

#### Employment

Administrator, Universacare (January 2022 – January 2023)

Administrator, Companions Plus, Inc. (June 2008 – December 2021)

#### Affiliations

No offices held or ownership interests in other health facilities.

### **Joy Gardener (50%)**

#### Employment

Registered Nurse, Long Island Community Hospital (April 2016 – Present)

Director of Patient's Care, Companions Plus, Inc. (January 2023 – Present)

#### Affiliations

No office held or ownership interests in other health facilities.

A review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a Licensed Home Care Services Agency.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.



Facility Compliance/Enforcement

Not applicable due to the applicant not having any NYS-licensed facilities at this time.

Need Review

In accordance with Title 10 NYCRR §765-1.16(c)2, this application is exempt from Public Need review as the agency is actively serving over 25 patients, as attested to by the current operator.

Financial Review

In accordance with 10 NYCRR §765-1.2(b)3, the applicant has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating the financial feasibility of the agency.

Workforce Summary

The applicant's response regarding the recruitment and retention of the workforce was adequately addressed. Please refer to Attachment A.

Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in New York State Public Health Law §3605.

Attachments
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OALTC Attachment A	Workforce Summary
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**Project # 222208-E  
Caregiver Pro Homecare, Inc.**

**Program:** LHCSA  
**Purpose:** Establishment

**County:** Queens  
**Acknowledged:** December 15, 2022

**Executive Summary**

**Description**

Caregiver Pro Homecare, Inc., an existing Licensed Home Care Services Agency (LHCSA) at 122-01 Liberty Avenue, 2<sup>nd</sup> Floor, Richmond Hill, NY 11419, is requesting a change in 90.1% ownership interest pursuant to a stock purchase agreement dated August 29, 2019.

OALTC Recommendation  
Contingent Approval

**Need Summary**

In accordance with 10 NYCRR §765-1.16(c)2, this application is exempt from Public Need review as the agency is actively serving over 25 patients, as attested to by the current operator.

**Program Summary**

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3605.

**Financial Summary**

In accordance with 10 NYCRR §765-1.2(b)3 the applicant has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating financial feasibility of the agency.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Aging and Long-Term Care

**Approval contingent upon:**

1. Submission of dated/executed copies of Stock Assignments that are acceptable to the Department. [CSL]
2. Submission of dated/executed copy of a Resignation that is acceptable to the Department. [CSL]

**Approval conditional upon:**

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

Council Action Date

June 20, 2024

# Program Analysis

## Program Description

Caregiver Pro Homecare, Inc. is requesting approval of a 90.1% change in ownership interest pursuant to a stock purchase agreement dated August 29, 2019.

The current principal stockholders of Caregiver Pro Homecare, Inc. are as follows:

- Marina Rabinovich (90.1%)
- Rushik Patel (3.3%)
- Mihir Patel (3.3%)
- Chintan Patel (3.3%)

Following the approval of this CON, the principal stockholders of Caregiver Pro Homecare, Inc. will be as follows:

- Rushik Patel (33.3%)
- Mihir Patel (33.3%)
- Chintan Patel (33.3%)

The applicant will continue to serve the residents of Kings, Bronx, New York, Queens, Richmond, and Nassau counties.

The applicant will continue to provide the following healthcare services:

- Nursing
- Home Health Aide
- Personal Care
- Physical Therapy
- Occupational Therapy
- Respiratory Therapy
- Speech- Language Pathology
- Audiology
- Medical Social Services
- Nutritional
- Homemaker
- Housekeeper
- Medical Supplies, Equipment, and Appliances

## Character and Competence Review

Caregiver Pro Homecare, Inc. will be comprised of the following individuals:

### **Rushik Patel (33.3%)**

#### Employment

- Minority Owner, Caregiver Pro Homecare, Inc. (August 2019 – Present)
- Manager, Unicare Adult Day Care Inc. (December 2019 – February 2022)
- Manager, Caregiver Pro Homecare, Inc. (February 2020 – December 2021)

#### Affiliations

- Caregiver Pro Homecare, Inc. (August 2019 – Present)
- Tradition Choice LLC (FI/CDPAP Agency) (January 2021 – Present)
- Unicare Adult Day Care, Inc (Social Adult Day Care Center) (January 2019 – Present)
- Great Direct Care, Inc. (FI/CDPAP Agency) (January 2016 – Present)
- Social Adult Day Care Centers of New York, LLC (Social Adult Day Care Center) (January 2016 – December 2020)

**Mihir Patel (33.3%)**

Employment

Manager, Freehold Montclair LLC (November 2017 – Present)

Affiliations

- Sunny Day Care (NJ) (Medical Adult Day Care Program) (2009 – Present)
- Caregiver Pro Homecare, Inc. (LHCSA) (January 2020 – Present)
- Unicare Adult Day Care, Inc (Social Adult Day Care Center) (January 2019 – Present)
- Great Direct Care, Inc (FI/CDPAP Agency) (2016 – Present)
- Social Adult Day Care Centers of New York, LLC (Social Adult Day Care Center) (2016 – December 2020)

**Chintan Patel (33.3%)**

Affiliation

- Tradition Choice, LLC (FI/CDPAP Agency) (January 2021 – Present)

A review of the Personal Qualifying Information indicates that the applicants have the required character and competence to operate a licensed home care services agency.

A search of the individuals and entities named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

Facility Compliance/Enforcement

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety, and welfare of patients and to prevent recurrent code violations.

The New Jersey Department of Health has submitted a Schedule 2D, Compliance Report Form for Sunny Day Program, located in Edison, New Jersey, and has confirmed that the agency is operational and is currently in compliance with all applicable codes, rules, and regulations; and is free of any enforcement or administrative actions.

Need Review

In accordance with 10 NYCRR §765-1.16(c)2, this application is exempt from Public Need review as the agency is actively serving over 25 patients, as attested to by the current operator.

Financial Review

In accordance with 10 NYCRR §765-1.2(b)3 the applicant has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating financial feasibility of the agency.

Workforce Review

Please refer to Attachment A for the agency’s Workforce Summary.

Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in New York State Public Health Law §3605.

<b>Attachments</b>
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OALTC Attachment A	Workforce Summary
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**Project # 222209-E  
Galaxy Home Care Inc.**

**Program:** LHCSA  
**Purpose:** Establishment

**County:** Kings  
**Acknowledged:** December 15, 2022

**Executive Summary**

**Description**

Galaxy Home Care, Inc., an existing Licensed Home Care Agency (LHCSA), requests approval for a 30.2 % change in ownership from one shareholder to two existing shareholders.

**OALTC Recommendation**  
Approval

**Need Summary**

In accordance with 10 NYCRR §765- 1.16(c)2, this application is exempt from Public Need review as the agency is actively serving over 25 patients, as attested to by the current operator.

**Program Summary**

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3605.

**Financial Summary**

In accordance with 10 NYCRR §765-1(b)3, the applicant has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating the financial feasibility of the agency.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Aging and Long-Term Care

**Approval conditional upon:**

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

Council Action Date

June 20, 2024

# Program Analysis

## Program Description

Galaxy Home Care, Inc. requests approval for a 30.2 % change in ownership from one shareholder to two existing shareholders.

The current ownership is as follows:

- Yelena Sokolsky (80.2%)
- Mila Verkhoglaz (9.9%)
- Luba Greenman (9.9%)

Following the approval of this CON, the proposed ownership will be as follows:

- Yelena Sokolsky (50%)
- Mila Verkhoglaz (25%)
- Luba Greenman (25%)

The applicant will continue to serve the residents of Kings, Bronx, New York, Queens, Richmond, and Nassau Counties from the address located at 224 Kings Highway, Brooklyn, NY 11223.

The applicant will continue to provide the following home care services:

- Audiology
- Home Health Aide
- Homemaker
- Housekeeper
- Medical Social Services
- Medical Supplies Equipment and Appliances
- Nursing
- Nutritional
- Personal Care
- Therapy- Occupational
- Therapy- Physical
- Therapy- Respiratory
- Therapy- Speech Language Pathology

## Character and Competence Review

Galaxy Home Care Inc. is comprised of the following individuals:

### **Yelena Sokolsky (50%)**

#### Employment

CEO, Galaxy Home Care Inc. (January 2020 – Present)

#### Affiliations

- Galaxy Home Care Inc. (June 2017 – Present)

### **Mila Verkhoglaz (25%)**

#### Employment

CEO, Executive Home Care (April 2003 – Present)

#### Affiliations

- Galaxy Home Care Inc. (June 2022 – Present)
- Executive Home Care, LLC d/b/a Executive Care (NJ) (April 2003 – June 2022)



**Luba Greenman (25%)**

Employment

Receptionist, KnK OBGYN (January 2023 – Present)

Affiliations

- Galaxy Home Care Inc. (June 2022 – Present)

A review of the Personal Qualifying Information indicates that the applicants have the required character and competence to operate a licensed home health agency.

A search of the individuals and entities named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

Facility Compliance/Enforcement

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety, and welfare of patients and to prevent recurrent code violations.

An attestation was provided by the applicant stating that Executive Home Care, LLC d/b/a Executive Home Care in the State of New Jersey is no longer operational and was free of any enforcements between 2017 and June 2022 when it closed. A Schedule 2D was provided by the State of New Jersey, which did not list any compliance issues, violations, enforcement, or administrative actions.

Need Review

In accordance with 10 NYCRR §765-1.16(c)2, this application is exempt from Public Need review as the agency is actively serving over 25 patients, as attested to by the current operator.

Financial Review

In accordance with 10 NYCRR §765-1.2(b)3 the applicant has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating financial feasibility of the agency.

Workforce Review

Please refer to Attachment A for the Workforce Summary.

Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in New York State Public Health Law §3605.

<h2>Attachments</h2>
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OALTC Attachment A	Workforce Summary
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**Project # 222110-E  
Pentec Infusions Of New York, LLC**

**Program:** LHCSA  
**Purpose:** Establishment

**County:** Nassau  
**Acknowledged:** November 23, 2022

**Executive Summary**

**Description**

Pentec Infusions of New York, LLC, an existing Licensed Home Care Services Agency (LHCSA), is requesting a change of ownership by transferring 100% ownership interest above the grandparent level.

Pentec Infusions of New York, LLC provides a specialized home nursing service to complex patients who suffer from chronic, severe pain, secondary to other conditions and from spasticity of various origins and rely on implanted drug delivery systems for their treatment.

The applicant reports this transaction will not result in any change to the name, location, or services provided.

OALTC Recommendation  
Approval

**Need Summary**

In accordance with 10 NYCRR §765- 1.16(c), this application is not exempt from Public Need review as the agency is not actively serving 25 patients as attested to by the current operator. Pursuant to 10 NYCRR §765-1.16(c)4 a rebuttal to the presumption of no need was submitted, which was determined to be sufficient based on the criteria set forth in 10 NYCRR §765-1.16(d).

**Program Summary**

The individual background review indicates the proposed members have met the standards for approval as set forth in Public Health Law §3605.

**Financial Summary**

In accordance with 10 NYCRR §765-1(b)3 the applicant has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating the financial feasibility of the agency.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Aging and Long-Term Care

Approval is recommended

Council Action Date

June 20, 2024

# Program Analysis

## Program Description

Pentec Infusions of New York, LLC requests approval of a transfer of 100% ownership interest above the grandparent level.

Pentec Infusions of New York, LLC provides a specialized home nursing service to complex patients who suffer from chronic, severe pain, secondary to other conditions and from spasticity of various origins and rely on implanted drug delivery systems for their treatment. This change of ownership will not result in any change to the name, location, or services provided.

An affidavit of no control has been implemented above the parent entity, Pentec Holdings, Inc. whereby Pentec Healthcare Infusions, Inc. and all organizations above this entity will refrain from exercising control over the licensed home care services agency by directing or causing the direction of the actions, management or policies of the agency, whether through voting securities or voting rights thereunder, electing or appointing directors, the direct and indirect determination of policies, or otherwise. Please refer to Attachment A for the post-closing organizational chart.

The applicant will continue to serve the residents of Nassau, Queens, and Suffolk counties from the address located at 100 Duffy Avenue, Suite 510, Hicksville, NY 11801.

The applicant will continue to provide the following healthcare services:

- Nursing
- Specialty – Infusion Company

## Character and Competence Review

Pentec Infusions of New York, LLC and Pentec Holdings, Inc. are comprised of the following individuals:

### **Matthew L. Deans – Director/Manager**

#### Employment

CEO/President, Pentec Health, Inc. (April 2023 - Present)

Executive Vice President Sales and Chief Strategy Officer, Pentec Health, Inc. (January 2022 -April 2023)

#### Affiliations:

Please refer to Attachment B.

### **Jeffery T. Baker, Esq. – Director/Manager**

#### Employment

Secretary, Pentec Health, Inc. (January 2017 - Present)

#### Affiliations:

Please refer to Attachment B.

### **Eric C. Mollman – Director/Manager**

#### Employment

Chief Financial Officer, Pentec Health, Inc. (March 2022 - Present)

#### Affiliations:

Please refer to Attachment B.

## Facility Compliance/Enforcement

The information provided by the Division of Home and Community Based Services indicates that the applicant has provided sufficient supervision to prevent harm to the health, safety, and welfare of patients and to prevent recurrent code violations.

Please refer to Attachment C for the summary of federal legal action and for regulatory actions by states.

## Need Review

In accordance with 10 NYCRR §765-1.16(c), this application is not exempt from the Public Need review as the agency is not actively serving over 25 patients, as attested to by the current operator. Pursuant to 10 NYCRR §765-1.16(c)(4), an application may still be submitted; however, it must contain a rebuttal and present data-driven evidence. A rebuttal to the presumption of no need was submitted to the Department, and due to the limited number of home care agencies providing in-home infusion services, the Department determined that the criteria in the rebuttal were sufficient. There is only one other infusion agency that is licensed to provide infusion services to Queens, Nassau, and Suffolk counties, and that agency's main site is located in Sullivan County. The following is information that the applicant provided in their rebuttal:

*Pentec provides a specialized home nursing service to complex patients who suffer from chronic, severe pain secondary to other conditions and from spasticity of various origins and rely on implanted drug delivery systems for their treatment. These patients have failed traditional therapy and now rely on a small, surgically implanted medical device called an intrathecal pump that delivers highly concentrated medication through a catheter directly into the intrathecal space surrounding the patient's spinal cord. They represent a very narrow, complex, and traditionally underserved patient population for which there is limited support by traditional home health care and home infusion providers. Pentec serves these patients in their places of residence with specially trained registered nurses. Because Pentec is focused on the provision of specialized services required by implanted pump patients, it is not comparable to traditional home health agencies.*

*Pentec received its Home Care Services Agency license on August 1, 2019, and thereafter initiated contacts with sources of patient referrals, primarily specialists in interventional pain and spasticity management. These activities were effectively suspended as a result of the COVID-19 pandemic, during which Pentec focused its attention on the provision of services to its existing patient census in other states. Pentec has resumed contact with its referral sources in the expectation of providing the services described above, including pain management physicians. Since the submission of the Change of Ownership application, Pentec has brought four (4) patients onto service and anticipates this census growing. Despite the delay in commencing services, the underlying facts and circumstances supporting Pentec's initial LHCSA application have not changed:*

- *Implanted pump patients represent a narrow, complex, and traditionally underserved patient population. There is limited support for this patient population by traditional home health care and home infusion providers. In the State of New York, there are over 3,870 patients with implanted pumps and over 185 of them reside within the Nassau, Suffolk, and Queens counties.*
- *Treatment of implanted pump patients requires specialized training. Pentec nurses are required to successfully complete an ANCC-accredited 90-day training program and examination prior to performing independent patient care. This training program requires completion of 460 hours of classroom and hands-on field training. In addition, all nurses are required to have at least 3 years of clinically relevant practice with ICU or ER experience preferred prior to hire. Pentec currently employs five (5) registered nurses who are available to treat patients in Nassau, Suffolk, and Queens counties.*
- *Effective management of a patient's care via the implanted pump requires both skilled nursing and pharmacy services. In addition to its team of registered nurses, Pentec operates a specialty closed-door pharmacy that is licensed in New York to fulfill its patients' prescriptive needs. Pentec is accredited by The Joint Commission in pharmacy as well as home health care.*

Financial Review

In accordance with 10 NYCRR §765-1.2(b)3, this application has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating the financial feasibility of the agency.

Workforce Review

The applicant's response regarding the recruitment and retention of the workforce was adequately addressed. Please refer to Attachment D.

Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in New York State Public Health Law §3605.

<h2>Attachments</h2>
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OALTC Attachment A	Organizational Chart
OALTC Attachment B	Ownership Interest in Health Care Facilities
OALTC Attachment C	Enforcement Actions
OALTC Attachment D	Workforce Summary



Project # 231012-E  
Long Life Home Care Inc

**Program:** LHCSA  
**Purpose:** Establishment

**County:** Queens  
**Acknowledged:** February 16, 2023

**Executive Summary**

**Description**

Long Life Home Care, Inc., an existing Licensed Home Care Services Agency (LHCSA) at 86-47 164<sup>th</sup> Street, Suite BD, Jamaica, is requesting a transfer of 80.2% ownership, pursuant to a Stock Purchase Agreement dated June 3, 2021.

OALTC Recommendation  
Approval

**Need Summary**

In accordance with 10 NYCRR §765- 1.16(c)2, this application is exempt from Public Need review as the agency is actively serving over 25 patients, as attested to by the current operator.

**Program Summary**

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3605.

**Financial Summary**

In accordance with 10 NYCRR §765-1(b)3, the applicant has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating the financial feasibility of the agency.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Aging and Long-Term Care

**Approval conditional upon:**

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

Council Action Date

June 20, 2024



# Program Analysis

## Program Description

Long Life Home Care, Inc. is requesting approval for a transfer of 80.2% ownership pursuant to a Stock Purchase Agreement dated June 3, 2021.

The current ownership is as follows:

- Elena Sapon (80.2%)
- Bracha Radziminiski (9.9%)
- Carol Shafir (9.9%)

Following the approval of this CON, the proposed ownership will be as follows:

- Bracha Radziminiski (90%)
- Carol Shafir (10%)

The applicant will continue to serve the residents of Bronx, Kings, Nassau, New York, Queens, and Richmond Counties.

The applicant will continue to provide the following healthcare services:

- Nursing
- Home Health Aide
- Medical Social Services
- Personal Care
- Physical Therapy
- Occupational Therapy
- Speech-Language Pathology
- Nutritional
- Homemaker
- Housekeeper

## Character and Competence Review

Long Life Home Care, Inc. is comprised of the following individuals:

### **Bracha Radziminiski (90%)**

#### Employment

Administrator, Long Life Home Care, Inc. (June 2021 – Present)

#### Affiliations

- Long Life Home Care Inc. (June 2021 - Present)

### **Carol Shafir (10%)**

#### Employment

Director of Patient Services, Long Life Home Care, Inc. (June 2021 – Present)

#### Affiliations

- Long Life Home Care Inc.; (June 2021 - Present)

A review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a Licensed Home Health Agency.

A search of the individuals and entities named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

Facility Compliance/Enforcement

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety, and welfare of patients and to prevent recurrent code violations.

Need Review

In accordance with 10 NYCRR §765-1.16(c)2, this application is exempt from Public Need review, as the agency is actively serving over 25 patients, as attested to by the current operator.

Financial Review

In accordance with 10 NYCRR §765-1(b)3 the applicant has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating financial feasibility of the agency.

Workforce Review

Please refer to Attachment A for the Workforce Summary.

Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in New York State Public Health Law §3605.

Attachments
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OALTC Attachment A	Workforce Summary
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Project # 231034-E  
Golden Age Home Care Inc.

**Program:** LHCSA  
**Purpose:** Establishment

**County:** Queens  
**Acknowledged:** February 16, 2023

## Executive Summary

### Description

Golden Age Home Care, Inc., d/b/a Golden Age Home Care, an existing Licensed Home Care Services Agency (LHCSA) requests approval for a change of ownership.

This change of ownership will not result in any change to the name, counties served, or services provided.

### OALTC Recommendation Approval

### Need Summary

In accordance with 10 NYCRR §765- 1.16(c)2, this application is exempt from Public Need review as the agency is actively serving over 25 patients, as attested to by the current operator.

### Program Summary

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3605.

### Financial Summary

In accordance with 10 NYCRR §765-1(b)3, the applicant has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating the financial feasibility of the agency.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Aging and Long-Term Care

**Approval conditional upon:**

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

Council Action Date

June 20, 2024

# Program Analysis

## Program Description

Golden Age Home Care, Inc., d/b/a Golden Age Home Care requests approval for a change ownership.

The applicant will continue to serve the residents of Bronx, Kings, New York, Queens, Richmond, and Westchester counties from an address at 71-24 35<sup>th</sup> Avenue, Jackson Heights, NY 11372.

The applicant will continue to provide the following healthcare services:

- Home Health Aide
- Nursing
- Personal Care

## Character and Competence Review

Golden Age Home Care, Inc. will be comprised of the following individual:

**Shah M. Nawaz (f/k/a Mohammad Shah Nawaz) – President 100%**

### Employment

Bengal Home Care, Inc. - President & CEO/Provider; (March 2020 – Present)

Golden Age Home Care, Inc. - Consultant (January 2017 – Present)

### Affiliations:

- No offices held or ownership interests in other health facilities.

A review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a Licensed Home Health Agency.

A search of the individuals and entities named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

## Facility Compliance/Enforcement

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety, and welfare of patients and to prevent recurrent code violations.

## Need Review

In accordance with 10 NYCRR Section §765- 1.16(c)2, this application is exempt from Public need as the agency is actively serving 25 patients, as attested to by the current operator.

## Financial Review

In accordance with 10 NYCRR §765-1.2(b)3, the application has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating the financial feasibility of the agency.

## Workforce Review

The applicant's response regarding the recruitment and retention of the workforce was adequately addressed. Please refer to Attachment A.

## Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in New York State Public Health Law §3605.

Attachments

OALTC Attachment A

Workforce Review



**Project # 231097-E  
Key To Life Homecare, Inc.**

**Program:** LHCSA  
**Purpose:** Establishment

**County:** Kings  
**Acknowledged:** March 30, 2023

**Executive Summary**

**Description**

Key to Life Homecare, Inc., an existing Licensed Home Care Services Agency (LHCSA) at 2657 East 14<sup>th</sup> Street, Brooklyn, is requesting approval for a change in 90.1% membership pursuant to a stock purchase agreement dated December 26, 2019.

**OALTC Recommendation  
Approval**

**Need Summary**

In accordance with 10 NYCRR §765- 1.16(c)2, this application is exempt from Public Need review as the agency is actively serving over 25 patients, as attested to by the current operator.

**Program Summary**

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3605.

**Financial Summary**

In accordance with 10 NYCRR §765-1(b)3, the applicant has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating the financial feasibility of the agency.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Aging and Long-Term Care

**Approval conditional upon:**

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

Council Action Date

June 20, 2024



# Program Analysis

## Project Description

Key to Life Homecare, Inc. is requesting approval of a change in 90.1% membership pursuant to a stock purchase agreement dated December 26, 2019.

The current ownership is as follows:

- Gvantsa Ramishvili (4.9%)
- Anthony Trochtchenkov (36.04%)
- Henrich Chigirinsky (54.06%)
- Tsisnami Gogilashvili (5.0%)

Following the approval of this CON, the proposed ownership will be as follows:

- Gvantsa Ramishvili (95.0%)
- Tsisnami Gogilashvili (5.0%)

The applicant will continue to serve the residents of Bronx, Kings, New York, Queens, Richmond, and Westchester Counties.

The applicant will continue to provide the following healthcare services:

- Nursing
- Home Health Aide
- Personal Care
- Speech-Language Pathology
- Medical Social Services
- Homemaker
- Respiratory Therapy
- Occupational Therapy
- Physical Therapy
- Audiology
- Nutritional
- Housekeeper

## Character and Competence Review

Key to Life Homecare, Inc. will be comprised of the following individuals:

### **Gvantsa Ramishvili (95.0%)**

#### Employment

Administrator, Key to Life Homecare, Inc. (January 2021 – Present)

#### Affiliations

- Key to Life Homecare, Inc. (December 2019 – Present)

### **Tsisnami Gogilashvili (5.0%)**

#### Employment

Case Management/Marketing Services, Home Family Care (July 2022 – Present)

#### Affiliations

- No offices held or ownership interests in other Health Facilities.

A review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a Licensed Home Health Agency.

A search of the individuals and entities named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

#### Facility Compliance/Enforcement

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety, and welfare of patients and to prevent recurrent code violations.

#### Need Review

In accordance with 10 NYCRR §765-1.16(c)2, this application is exempt from Public Need review as the agency is actively serving over 25 patients, as attested to by the current operator.

#### Financial Review

In accordance with 10 NYCRR §765-1(b)3 the applicant has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating financial feasibility of the agency.

#### Workforce Review

The following information was provided by the applicant to respond to the workforce questions.

#### Current availability of professional/paraprofessional staff:

Key to Life Homecare, Inc. (KTL) is an existing Licensed Home Care Services Agency (LHCSA). The operating entity will remain upon the completion of this transaction, which will reflect a change in stock interest, pursuant to a stock purchase agreement. KTL has 873 total employees and currently has approximately 511 existing and ongoing cases.

#### Training, recruitment, and workforce initiatives:

KTL provides ongoing training programs for staff including in-house in-service programs, refresher training as part of its quality assurance program, as well as specialized training to include Alzheimer's, dementia, TBI, and mental health services.

#### Measures to promote retention:

In order to promote the retention of specific categories of the workforce, KTL will:

- increase pay and/or benefits (holiday pay, competitive benefits packages, health insurance);
- increase communication with caregivers (mobile application, online training);
- provide caregiver recognition;
- improve schedule accommodations (availability search on HHA Exchange Mobile Application);
- improve recruitment (digital applications, include diverse and multilingual staff).

#### Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in New York State Public Health Law §3605.

## MEMORANDUM

**To:** Colleen Leonard, Executive Secretary  
Public Health and Health Planning Council

**From:** William Sacks, Associate Attorney  
Bureau of Program Counsel, Division of Legal Affairs

**Date:** March 21, 2024

**Subject:** Proposed Dissolution of Bridge Regional Health System, Inc.

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Please include this matter on the next Establishment and Project Review Committee and Public Health and Health Planning Council agendas.

The attachments relating to the matter include:

- 1) A Memorandum to the Public Health and Health Planning Council from Kathy Marks, General Counsel;
- 2) Letter from applicant's legal counsel requesting approval of the proposed Certificate of Dissolution of Bridge Regional Health System, Inc.;
- 3) A proposed verified petition seeking the Attorney General's approval of the filing of the Certificate of Dissolution of Bridge Regional Health System, Inc.;
- 4) Certificate of Incorporation of Bridge Regional Health System, Inc. dated July 5, 2006; Certificate of Amendment to Certificate of Incorporation dated August 30, 2006; and associated documents;
- 5) The Bylaws of Bridge Regional Health Systems, Inc.;
- 6) A proposed Plan of Dissolution for Bridge Regional Health System, Inc.;
- 7) A proposed Resolution of the Board of Directors approving dissolution;
- 8) A proposed Certificate of Dissolution for Bridge Regional Health System, Inc.; and
- 9) The executed Resolution of the Board of Directors approving dissolution.

Attachments

## MEMORANDUM

**To:** Public Health and Health Planning Council

**From:** Kathy Marks, General Counsel *KSM*

**Date:** March 18, 2024

**Subject:** Proposed Dissolution of Bridge Regional Health System, Inc, Inc.

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Bridge Regional Health System, Inc, Inc. requests Public Health and Health Planning Council (“PHHPC”) approval of its proposed dissolution in accordance with the requirements of Not-For-Profit Corporation Law §§ 1002(c) and 1003, as well as 10 NYCRR Part 650.

Bridge Regional Health System, Inc, Inc. (“Bridge Regional”) is a New York not-for-profit corporation formed in 2006. The original Certificate of Incorporation for “Bridge Regional System, Inc.” was executed on July 5, 2006, with a Certificate of Amendment for “Bridge Regional Health System, Inc.” executed on August 30, 2006. Between those dates, the company’s purposes changed as the Article 28 facilities they sought to acquire and operate changed, with the approval of a bankruptcy court, from St. Vincent’s Hospital Staten Island to Richmond University Medical Center (“RUMC”) and Bayonne Medical Center, the latter operating in Hudson County, NJ.

The Bridge Regional received approval from the NYS Department of Health and the Public Health Council (“PHC”) to file its Certificate of Amendment to the Certificate of Incorporation on December 22, 2006. No discrete PHC permission to file the original Certificate of Incorporation is extant.

The proposed Plan of Dissolution indicates that there are no longer any members of the Bridge Regional corporation whose authorization to dissolve is required by the Board of Trustees. The Plan also stipulates that Bridge Regional has no assets and no known liabilities. Additionally, the Resolutions of the Board of Directors issued pursuant to their approval of dissolution indicate that RUMC was “the only [New York-based] hospital that survived” the St. Vincent’s Health System bankruptcy proceeding, and that the Corporation’s only current activity involves ratification of decisions by the RUMC Board of Directors. The Resolutions further indicate that Bridge Regional is no longer the sole member of Bayonne Medical Center, which is now part of the CarePoint Health System.

Because PHC previously approved the filing of the Certificate of Amendment to the Certificate of Incorporation, its successor PHHPC must approve of this dissolution. The Department of Health expects that the submitted Petition and Certificate of Dissolution will then be executed/verified and addressed with the Attorney General’s Office Charities Bureau.

There is no legal objection to the proposed Verified Petition, Plan of Dissolution, and the Certificate of Dissolution. The required documents are attached.

Attachments.

Nixon Peabody LLP  
1300 Clinton Square  
Rochester, NY 14604-1792

**Anita Pelletier**  
Counsel

T / 585.263.1164  
F / 866.947.0499  
apelletier@nixonpeabody.com

August 29, 2023

**VIA FEDERAL EXPRESS**

Colleen M. Leonard  
Executive Secretary  
Public Health and Health Planning Council  
New York State Department of Health  
Center for Health Care Facility Planning, Licensure and Finance  
Corning Tower, Room 1805  
Albany, New York 12237

**RE: Bridge Regional Health System, Inc.  
Dissolution**

Dear Ms. Leonard:

We are writing to respectfully request the approval of the enclosed Certificate of Dissolution for **Bridge Regional Health System, Inc.**, (the "Corporation") by the Public Health and Health Planning Council ("PHHPC"). PHHPC consent is required in addition to consent of the New York State Attorney General.

The Corporation is no longer conducting activities and has no remaining assets or liabilities.

At this time, the Corporation requests consent from PHHPC to dissolve. Copies the following **proposed draft** materials in support of the Corporation's application for approval of its dissolution are enclosed:

1. Verified Petition, with all exhibits;
2. Plan of Dissolution and Distribution of Assets (Exhibit C of the Verified Petition); and
3. Certificate of Dissolution of the Corporation.

Thank you for your time and attention to this matter. Please contact me should you require any additional information.

Very truly yours,



Anita Pelletier  
Counsel

Enclosures

THE ATTORNEY GENERAL OF THE STATE OF NEW YORK  
28 LIBERTY STREET NEW YORK, NY 10005

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In the Matter of the Application of  
BRIDGE REGIONAL HEALTH SYSTEM, INC.

**VERIFIED PETITION**  
AG # \_\_\_\_\_

For Approval of Dissolution and Distribution of  
Assets pursuant to Section 1002 of the Not-for-Profit  
Corporation Law

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TO: THE ATTORNEY GENERAL OF THE STATE OF NEW YORK  
COUNTY OF RICHMOND

Petitioner, Bridge Regional Health System, Inc., by its attorneys, Nixon Peabody LLP, Anita L. Pelletier, Esq., for its Petition herein respectfully alleges:

1. Petitioner, whose principal office is located in the County of Richmond, was incorporated pursuant to New York's Not-for-Profit Corporation Law on July 2, 2006. Copies of Petitioner's Certificate of Incorporation, as amended as well as complete and current Bylaws are attached as **Exhibits A** and **B**, respectively.

2. The names and residence addresses of all remaining directors and officers of Petitioner are listed below.

NAME/TITLE	ADDRESS
Timothy Colton Harrison/Chair and Director	80 Benedict Road Staten Island, NY 10304
John C. Santora/Vice Chair and Director	220 Chelsea Street Staten Island, NY 10307
Daniel Messina, Ph.D./ President, CEO and <i>Ex Officio</i> Director	17 Coverly Place Staten Island, NY 10301
Francesco Rotatori, M.D./President of the Medical Staff and <i>Ex Officio</i> Director	227 92nd Street Brooklyn NY 11209
Jill O'Donnell-Tormey, Ph.D./ Secretary and Director	263 Howard Ave. Staten Island, NY 10301
Pankaj R. Patel, M.D./Assistant Secretary and Director	34 Amy Court Staten Island, NY 10314
David McGoy/Director	9 Davis Court Staten Island, NY 10310
Alan Bernikow, CPA/Director	207 Benedict Ave. Staten Island, NY 10314

Marcello Sciarrino/Director	9 Benedict Road Staten Island, NY 10304
Robert Urs/Director	14 Silver Ct Staten Island, NY 10301
Thomas Delmastro/Treasurer and Director	85 Dutchess Avenue Staten Island, NY 10304
Sara Warren Gardner, MPH/Director	47 Parkview Place Staten Island, NY 10310
Kenneth Corey/Director	66 Florence Place Staten Island, NY 10309
Steven M. Klein/ Director	11 Woodview Drive Howell, NJ 07731
Anita Laremont/Director	10 Overlook Drive Staten Island, NY 10304
Courtney Moore/Director	5 Scheffelin Ave, Staten Island, NY 10306
Wing Law/Director	120 McVeigh Ave Staten Island, NY
Hon. Rosemarie Maldonado/Director	26 Harbor View Court Staten Island, NY 10301
John Vincent Scalia, Sr./Director	28 Eltingville Blvd. Staten Island, NY 10312
Samala Swamy, M.D./Director	96 Benedict Road Staten Island, NY 10304
John Tapinis/Director	6 Twin Lakes Drive Colts Neck NJ 07722
Joe Torres/Director	199 Benedict Ave Staten Island, NY 10314

3. The purposes for which Petitioner was organized are:

"(a) To support the purposes, missions, objectives, operations and activities of Richmond University Medical Center and Bayonne Medical Center (each, a "Hospital Corporation" and jointly, the "Hospital Corporations"), which Hospital Corporations operate, or will operate upon receiving requisite regulatory approvals, the hospital in Richmond County in the State of New York and Hudson County in the State of New Jersey, respectively known as Richmond University Medical Center and Bayonne Medical Center, and may operate such other hospital and health care facilities as may be established or otherwise become part of the Hospital Corporations in the future;

(b) To provide strategic planning and coordination assistance to, act as the sole member of, and operate Richmond University Medical Center, a New York not-for-profit corporation;



(c) To provide strategic planning and coordination assistance to, as the sole member of, and operate Bayonne Medical Center, a New Jersey not-for-profit corporation;

(d) To solicit contributions for the purpose of supporting the Hospital Corporations;..."

4. Petitioner is a charitable corporation.

5. Petitioner plans to dissolve in accordance with the Plan of Dissolution attached hereto as **Exhibit C**.

6. In or around 2006, Richmond University Medical Center ("**RUMC**") was part of the St. Vincent's Health System and was the only hospital that survived a bankruptcy proceeding. Petitioner was formed at that time to facilitate the acquisition of RUMC assets from the bankruptcy proceeds. Petitioner has not conducted any activities since that time.

7. The Board of Directors approved the Plan and authorized the filing of a Certificate of Dissolution at a meeting duly noticed and held on July 26, 2023. At that time, Petitioner had twenty (20) directors, eighteen (18) of whom were present at the meeting and eighteen (18) of whom voted in favor of the Plan and proposed dissolution. A copy of the resolutions approved at the meeting is attached hereto as **Exhibit D**.

8. The Petitioner has no assets or liabilities as of the date hereof.

9. The New York State Attorney General and the New York State Department of Public Health and Health Planning Council must consent to the dissolution of the Corporation.

10. No previous application for approval of the dissolution and distribution of assets has been made.

*[SIGNATURE PAGE FOLLOWS]*

WHEREFORE, Petitioner requests that the Attorney General approve its Plan of Dissolution and consent to filing the Certificate of Dissolution with New York State, pursuant to the Not-for-Profit Corporation Law Section 1002.

Dated: \_\_\_\_\_, 2023

NIXON PEABODY LLP

By: \_\_\_\_\_

Anita L. Pelletier, Esq.

Anita L. Pelletier, Esq.  
Nixon Peabody LLP  
Counsel for Petitioner  
1300 Clinton Square  
Rochester, New York 14604

**VERIFICATION**

STATE OF NEW YORK    )  
  :SS  
COUNTY OF RICHMOND )

\_\_\_\_\_, individually, being duly sworn affirms and verifies that they have read the annexed Verified Petition, knows the contents thereof and the same is true to their knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters they believe them to be true. Their belief, as to those matters herein not stated upon knowledge, is based upon the files maintained by Petitioner.

\_\_\_\_\_  
Name:  
Title:

Sworn to before me this \_\_\_\_\_  
day of \_\_\_\_\_, 2023

\_\_\_\_\_  
Notary Public

# **Exhibit**

**A**

*State of New York }  
Department of State } ss:*

*I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.*

*Witness my hand and seal of the Department of State on*

**July 06, 2006**



A handwritten signature in black ink, appearing to read "D. J. ...", is written over the seal area.

*Special Deputy Secretary of State*

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CERTIFICATE OF INCORPORATION

OF

BRIDGE REGIONAL SYSTEM, INC.

Under Section 402 of the  
New York Not-for-Profit Corporation Law

The undersigned, for the purpose of forming a corporation under Section 402 of the Not-for-Profit Corporation Law of the State of New York (the "Not-for-Profit Corporation Law"), hereby certifies:

FIRST: The name of the Corporation is Bridge Regional System, Inc. (the "Corporation").

SECOND: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law. The Corporation shall be a Type C corporation under Section 201 of the Not-for-Profit Corporation Law.

THIRD: The purposes for which the Corporation is formed and operated are exclusively charitable, scientific and educational as defined in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). The purposes of the Corporation are limited to the following:

(a) Planning for, preparing, submitting and assisting Castleton Acquisition Corporation in the processing of, a certificate of need application with the Public Health Council of the New York State Department of Health to become the operator of a hospital in Richmond County currently known as St. Vincent's Hospital Staten Island, with the public objective of furthering the purposes, missions, objectives, operations and activities of such hospital, which will provide for the medical and surgical care and treatment of inpatients and outpatients and the provide a range of medical and associated services for the diagnosis and treatment of patients, including, outpatient care, home care and extended care, and the promotion and carrying on of scientific and medical research related to the care of the sick, injured or disabled, and related to the causes, origins, treatment and prevention of diseases, sickness, injuries and disabilities; and

(b) To engage in all other activities that relate to or are incidental to the achievement of such purposes.

FOURTH: In furtherance of the foregoing purposes, the Corporation shall have the power, subject to such limitations and conditions as are or may be prescribed by law, to exercise such other powers as are now, or hereafter may be, conferred by law upon a corporation organized for the purposes herein set forth, or necessary or incidental to the powers so conferred, or conducive to the furtherance thereof, subject to the further limitation and condition that, notwithstanding any other provision of this Certificate of Incorporation, the Corporation is organized exclusively for one or more of the following purposes: educational, literary, or charitable purposes, as specified in Section

501(c)(3) of the Code, and shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal taxation under Section 501(c)(3) of the Code; this shall include, without limitation, the powers to:

(a) receive and hold real and personal property in order to carry on the aims and purposes of the Corporation as expressed in this Certificate of Incorporation; to expend, contribute, disburse, develop and otherwise handle and dispose of the same for such aims and purposes, either directly or by contributions to other agencies, organizations or institutions organized for the same or similar aims and purposes, and otherwise to cooperate with and assist such other agencies, organizations and institutions in order to further the aims and purposes of the Corporation;

(b) receive and maintain a fund or funds of personal or real property and apply the whole or any part of the income and/or principal thereof exclusively for the charitable purposes of the Corporation, as shall from time to time be found appropriate in connection with the foregoing purposes, and as are lawful for a not-for-profit corporation; and

(c) by resolution of the Board of Trustees of the Corporation, to accept subventions from any member of the Corporation, or non-members, on terms and conditions not inconsistent with the by-laws of the Corporation and the Not-for-Profit Corporation Law, and to issue certificates therefor, and such subventions shall consist of money or other property, tangible or intangible, actually received by the Corporation or expended for its benefit or for its formation or reorganization, or a combination thereof, and shall be evidenced by the issuance of subvention certificates in accordance with the provisions of Section 505 of the Not-for-Profit Corporation Law.

FIFTH: (a) The Corporation is not formed for pecuniary profit or for financial gain, and no part of the net earnings of the organization shall inure to the benefit of any member, trustee, director or officer of the Corporation, or any private individual, firm or corporation (except that reasonable compensation may be paid for services rendered to or for the Corporation).

(b) No substantial part of the activities of the Corporation shall be devoted to carrying on propaganda, or otherwise attempting to influence legislation (except to the extent authorized by Section 501(h) of the Code, or the corresponding provision of any future United States Internal Revenue law, during any fiscal year or years in which the Corporation chooses to utilize the benefits authorized by that statutory provision), and the Corporation shall not participate or intervene (including by publishing or distributing statements) in any political campaign on behalf of any candidate for public office.

(c) Nothing herein shall authorize the Corporation, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in Section 404 of the Not-for-Profit Corporation Law or Section 460a of the Social Services Law of the State of New York. Specifically, nothing herein shall be construed as authorizing the Corporation to operate a nursery school, an elementary school, a secondary school, an institution of higher learning, a library, a museum, an historical society, a cable television facility or an educational television station.

(d) Nothing herein shall authorize the Corporation to establish, operate or



maintain a hospital or to provide hospital service or health-related services, or to operate a home care services agency, a hospice, a health maintenance organization, or a comprehensive health services plan, as provided for by Articles 28, 36, 40 and 44, respectively, of the Public Health Law of the State of New York, or to solicit, collect or otherwise raise or obtain any funds, contributions or grants, from any source, for the establishment, including the filing of a certificate of need application, or operation, of any hospital.

SIXTH: If at any time the Corporation is determined to be other than an organization described in Section 509(a)(1), (2) or (3) of the Code, it shall, to the extent applicable, comply with Section 508 of the Code, insofar as such provision:

(a) requires the Corporation to distribute such amounts for each taxable year allocated at such time and in such manner as not to subject the Corporation to tax on undistributed income under Section 4942 of the Code;

(b) prohibits the Corporation, its directors, trustees or members from engaging in any act of self-dealing which is subject to tax under Section 4941 of the Code;

(c) prohibits the Corporation from retaining any excess business holdings which are subject to tax under Section 4943 of the Code;

(d) prohibits the Corporation from making any investments in such manner as to subject the Corporation to tax under Section 4944 of the Code; and

(e) prohibits the Corporation from making any taxable expenditures which are subject to tax under Section 4945 of the Code.

SEVENTH: In the event of the dissolution of the Corporation, all the assets and property of the Corporation remaining after the payment or satisfaction of its liabilities shall be distributed to further the not-for-profit purposes of the Corporation to such one or more corporations, trusts, community trusts, funds or foundations organized and operating exclusively for scientific, charitable or educational purposes, no part of the net earnings, contributions or any other corporate funds of which shall inure to the benefit of any private member or individual, no substantial part of the activities of which shall consist in carrying on propaganda or otherwise attempting to influence legislation, and which shall not participate in or intervene in, including the publishing or distributing of statements, any political campaign on behalf of any candidate for public office, as selected by a two-thirds vote of the entire board of trustees of the Corporation and subject to the approval of a Justice of the Supreme Court of the State of New York.

EIGHTH: The office of the Corporation is to be located in Richmond County, State of New York.

NINTH: The names and addresses of the initial Trustees of the Corporation are as follows:



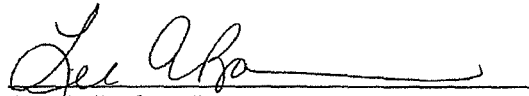
Robert Evans  
29 East 29<sup>th</sup> Street  
Bayonne, NJ 07002

Theodore Garelick  
31 Park View Terrace  
Bayonne, NJ 07002

Herman Brockman  
78 Avenue C  
Bayonne, NJ 07002

TENTH: The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him or her is: c/o Proskauer Rose LLP, 1585 Broadway, New York, NY 10036, Attention: Richard J. Zall, Esq.

IN WITNESS WHEREOF, this Certificate of Incorporation has been signed and the statements made herein are affirmed as true under the penalties of perjury this 5<sup>th</sup> day of July, 2006.



Lee A. Barkan, Incorporator  
c/o Proskauer Rose LLP  
1585 Broadway  
New York, NY 10036

F 060706000 283

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CERTIFICATE OF INCORPORATION  
OF  
BRIDGE REGIONAL SYSTEM, INC.

Under Section 402 of the  
New York Not-for-Profit Corporation Law

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Lee A. Barkan  
Proskauer Rose LLP  
1585 Broadway  
New York, NY 10036  
(212) 969-3115

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State of New York }  
Department of State } ss:

*I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.*

*Witness my hand and seal of the Department of State on* **December 28, 2006**



A handwritten signature in black ink, appearing to read "R. A. ...", is written over the seal area.

*Special Deputy Secretary of State*

F 061228001143

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
BRIDGE REGIONAL SYSTEM, INC.

Under Section 803 of the  
New York Not-for-Profit Corporation Law

The undersigned, being the President of Bridge Regional System, Inc., a Not-for-Profit corporation duly organized under the Not-for-Profit Corporation Law of the State of New York (hereinafter referred to as the "Corporation"), does hereby certify, pursuant to Section 803 of the Not-for-Profit Corporation Law:

FIRST: The name of the Corporation is Bridge Regional System, Inc.

SECOND: The Corporation was formed under the Not-for-Profit Corporation Law of the State of New York and the Certificate of Incorporation was filed by the Department of State on July 6, 2006.

THIRD: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law. The Corporation is a Type C corporation under Section 201 of the Not-for-Profit Corporation Law.

FOURTH: The amendment to the Certificate of Incorporation effected by this Certificate of Amendment (A) changes the name of the Corporation, (B) changes the purposes of the Corporation, and (C) changes the powers of the Corporation.

FIFTH: To accomplish the foregoing amendment to the Certificate of Incorporation,

(A) Article FIRST of the Certificate of Incorporation, which sets forth the name of the Corporation, is hereby amended to read in its entirety as follows:

"FIRST: The name of the corporation is Bridge Regional Health System (the "Corporation")."

(B) Article THIRD of the Certificate of Incorporation, which describes the purposes for which the Corporation is formed, is hereby amended to read in its entirety as follows:

"THIRD: As a Type C corporation, the purposes for which the Corporation is formed and operated are exclusively charitable, scientific and educational as defined in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). The purposes of the Corporation shall be the following:

(a) To support the purposes, missions, objectives, operations and activities of Richmond University Medical Center and Bayonne Medical Center (each, a "Hospital Corporation" and jointly, the "Hospital Corporations"), which Hospital Corporations operate, or will operate upon receiving requisite regulatory approvals, the hospitals in Richmond County in the State of New York and Hudson County in the State of New Jersey, respectively known as Richmond University Medical Center and Bayonne Medical Center, and may operate such other hospitals and health care facilities as may be established or otherwise become part of the Hospital Corporations in the future;

(b) To provide strategic planning and coordination assistance to, act as the sole member of, and operate Richmond University Medical Center, a New York not-for-profit corporation;

(c) To provide strategic planning and coordination assistance to, act as the sole member of, and operate Bayonne Medical Center, a New Jersey not-for-profit corporation;

(d) To solicit contributions for the purpose of supporting the Hospital Corporations;

(e) To engage in all other activities that relate to or are incidental to the achievement of such purposes; and

(f) The public objective of the Corporation is to help the Hospital Corporations run more efficiently so that they may provide better and more affordable care to the public."

(C) Article FOURTH of the Certificate of Incorporation, which describes the powers of the Corporation, is hereby amended to read in its entirety as follows:

"FOURTH: (a) In furtherance of the foregoing purposes, the Corporation shall have the power, subject to such limitations and conditions as are or may be prescribed by law, to exercise such other powers as are now, or hereafter may be, conferred by law upon a corporation organized for the purposes herein set forth, or necessary or incidental to the powers so conferred, or conducive to the furtherance thereof, subject to the further limitation and condition that,

notwithstanding any other provision of this Certificate of Incorporation, the Corporation is organized exclusively for one or more of the following purposes: educational, literary, or charitable purposes, as specified in Section 501(c)(3) of the Code, and shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal taxation under Section 501(c)(3) of the Code; this shall include, without limitation, the powers to:

(i) receive and hold real and personal property in order to carry on the aims and purposes of the Corporation as expressed in this Certificate of Incorporation; to expend, contribute, disburse, develop and otherwise handle and dispose of the same for such aims and purposes, either directly or by contributions to other agencies, organizations or institutions organized for the same or similar aims and purposes, and otherwise to cooperate with and assist such other agencies, organizations and institutions in order to further the aims and purposes of the Corporation;

(ii) receive and maintain a fund or funds of personal or real property and apply the whole or any part of the income and/or principal thereof exclusively for the charitable purposes of the Corporation, as shall from time to time be found appropriate in connection with the foregoing purposes, and as are lawful for a not-for-profit corporation; and

(iii) by resolution of the Board of Trustees of the Corporation, to accept subventions from any member of the Corporation, or non-members, on terms and conditions not inconsistent with the bylaws of the Corporation and the Not-for-Profit Corporation Law, and to issue certificates therefor, and such subventions shall consist of money or other property, tangible or intangible, actually received by the Corporation or expended for its benefit or for its formation or reorganization, or a combination thereof, and shall be evidenced by the issuance of subvention certificates in accordance with the provisions of Section 505 of the Not-for-Profit Corporation Law.

(b) As the sole member of the Hospital Corporations, the Corporation shall have the following reserved powers over each Hospital Corporation:

(i) The power to elect the Trustees of the Hospital Corporation and to remove the Trustees of the Hospital Corporation;

(ii) The power to authorize (A) the amendment and restatement of the Certificate of Incorporation and By-Laws of the Hospital Corporation; (B) the merger or consolidation of the Hospital Corporation with any other entity; (C) the sale, lease, exchange, mortgage, pledge or other disposition of all or substantially all the property and assets of the Hospital Corporation; and (D) the voluntary dissolution of the Hospital Corporation, and the plan of distribution of assets upon dissolution and the revocation of voluntary dissolution proceedings;

(iii) The power to approve affiliation agreements for education and research between academic institutions and the Hospital Corporation;

(iv) The power to approve (i) the Hospital Corporation's strategic and business plans and (ii) any proposed changes to the Hospital Corporation's mission statements;

(v) The power to approve the Hospital Corporation's (A) capital budgets, (B) operating budgets, and (C) non-budgeted material expenditures (classification of expenditures as "material" shall be established by the Corporation's Board of Trustees from time to time);

(vi) The power to approve the Hospital Corporation's investment policies;

(vii) The power to authorize the Hospital Corporation's participation in a joint venture, consolidation, affiliation, network, association, system or alliance of health care providers;

(viii) The power to authorize the Hospital Corporation's organization or formation of a new subsidiary or joint venture entity, arrangement or relationship in which the Hospital Corporation's ownership interest will be equal to or in excess of fifty percent (50%) of the net income or voting interests therein;

(ix) The power to authorize the Hospital Corporation's incurrence or guarantee of material indebtedness to any other person or entity (classification of an indebtedness as "material" shall be established by the Corporation's Board of Trustees from time to time) and a mortgage or pledge of, or grant

of a security interest in, property or assets of a hospital or related entity in connection with any such indebtedness;

(x) The power to approve the Hospital Corporation's human resource plans;

(xi) The power to approve accounting policies for the Hospital Corporation and approve the appointment of the Hospital Corporation's outside auditors;

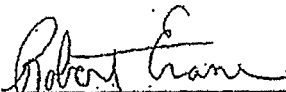
(xii) The power to authorize any vote by the Hospital Corporation of the capital stock, membership or partnership voting rights owned by the Hospital Corporation in any and all of its subsidiaries or affiliates with respect to any of the foregoing; and

(xiii) The power to hire and fire the President of the Hospital Corporation.

SIXTH: This amendment of the Certificate of Incorporation was authorized by the unanimous written consent of the board of Trustees of the Corporation. There are no members entitled to vote thereon.

SEVENTH: The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him or her is: c/o Proskauer Rose LLP, 1585 Broadway, New York, NY 10036, Attention: Richard J. Zall, Esq..

IN WITNESS WHEREOF, this Certificate of Amendment of the Certificate of Incorporation has been signed and the statements made herein are affirmed as true under the penalties of perjury this 30th day of August, 2006.



Robert Evans  
President, Bridge Regional System, Inc.

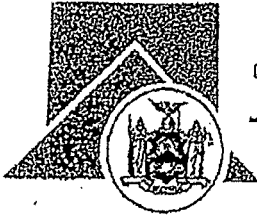


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STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

## PUBLIC HEALTH COUNCIL

December 22, 2006

Ms. Erin Petrosino  
Vice President, Mergers and Acquisitions  
Bayonne Medical Center  
29 East 29<sup>th</sup> Street  
Bayonne, New Jersey 07002

Re: Certificate of Amendment of the Certificate of Incorporation of Bridge Regional System, Inc.

Dear Ms. Petrosino:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 10th day of November, 2006, I hereby certify that the Public Health Council consents to the filing of the Certificate of Amendment of the Certificate of Incorporation of Bridge Regional System, Inc., dated August 30, 2006.

Sincerely,

Donna W. Peterson  
Executive Secretary

/cf

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The undersigned has no objection to the granting of Judicial approval hereon and waives statutory notice.

THE ATTORNEY GENERAL HAS NO OBJECTION TO THE GRANTING OF JUDICIAL APPROVAL HEREON, ACKNOWLEDGES RECEIPT OF STATUTORY NOTICE AND DEMANDS SERVICE OF THE FILED CERTIFICATE. SAID NO OBJECTION IS CONDITIONED ON SUBMISSION OF THE MATTER TO THE COURT WITHIN 30 DAYS HEREAFTER.

ELIOT SPITZER  
ATTORNEY GENERAL  
STATE OF NEW YORK

*Paula Spitzer* 12-27-06  
ASSISTANT ATTORNEY GENERAL DATE

by:

Date: \_\_\_\_\_

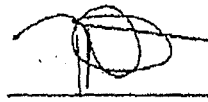
I, RACHEL A. ADAMS, a Justice of the Supreme Court of the State of

New York for the 2<sup>ND</sup> Judicial District do hereby approve of the foregoing

Certificate of Amendment of the Certificate of Incorporation of Bridge Regional Systems, Inc.

and consent that the same be filed.

Date: 12-28-06



J.S.C.

Rachel A. Adams,  
Acting Justice Supreme Court

I, RACHEL A. ADAMS, a Justice of the Supreme Court of the State of New York, 2<sup>ND</sup> Judicial District, do hereby approve the foregoing Certificate of Amendment of the Certificate of Incorporation of Bridge Regional System, Inc. and consent that the same be filed.

DEC 28 2005



Rachel A. Adams,  
Acting Justice Supreme Court

Justice of the Supreme Court  
of the State of New York,  
2<sup>ND</sup> Judicial District

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CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
BRIDGE REGIONAL SYSTEM, INC.

Under Section 803 of the  
New York Not-for-Profit Corporation Law

FILED  
2006 DEC 28 PM 4:09

*DES/NTS*

DRAWDOWN

Lee A. Barkan, Esq.  
Proskauer Rose LLP  
1585 Broadway  
New York, New York 10036  
212.969.3115

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED DEC 28 2006

TAX \$             
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*Ice*  
*Richmond*

# **Exhibit**

# **B**

**BYLAWS**

**OF**

**BRIDGE REGIONAL HEALTH SYSTEM**

**Dated: January 1, 2007**

**Amended: by unanimous written consent of The Board of Trustees**

**Revised December 12, 2008**

**Revised June 30, 2009**

**Revised June 26, 2018**

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**BYLAWS**  
**OF**  
**BRIDGE REGIONAL HEALTH SYSTEM**

**ARTICLE I**  
**THE CORPORATION**

1. Principal Office. Bridge Regional Health System (the “Corporation”) shall have its principal office in Richmond County, New York, or at such other place as may from time to time be determined by its Board of Trustees (herein the “Board”).

2. Powers. The Corporation shall have all of the powers enumerated in the New York Not-for-Profit Corporation Law, as such may be amended from time to time; *provided, however*, that the Corporation shall exercise its powers only in furtherance of its charitable purpose, as such term is defined in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”), and the Treasury Regulations promulgated thereunder.

3. Purposes.

- (a) The Corporation shall at all times be operated exclusively for charitable purposes, as defined in Section 501(c)(3) of the Code, as more specifically set forth in the Corporation’s Certificate of Incorporation, for the purpose of engaging in various activities that further, support, benefit or carry out the purposes, missions, objectives, operations and activities of Richmond Medical Center (the “Hospital Corporation”), which will operate a hospital in Richmond County in the State of New York, known as Richmond University Medical Center. In no event shall the Corporation engage in carrying on propaganda, attempt to influence legislation, or participate or intervene in any political campaign.
- (b) The Corporation shall serve as the sole member of the Hospital Corporation, and in that capacity shall have the following reserved powers over the Hospital Corporation:
  - (i) The power to elect the Trustees of the Hospital Corporation and to remove the Trustees of the Hospital Corporation;
  - (ii) The power to authorize (A) the amendment and restatement of the Certificate of Incorporation and By-Laws of the Hospital Corporation; (B) the merger or consolidation of the Hospital Corporation with any other entity; (C) the sale, lease, exchange, mortgage, pledge or other disposition of all or substantially all the property and assets of the Hospital Corporation; and (D) the voluntary dissolution of the Hospital Corporation, and the plan of

distribution of assets upon dissolution and the revocation of voluntary dissolution proceedings;

- (iii) The power to approve affiliation agreements for education and research between academic institutions and the Hospital Corporation;
- (iv) The power to approve (i) the Hospital Corporation's strategic and business plans and (ii) any proposed changes to the Hospital Corporation's mission statements;
- (v) The power to approve the Hospital Corporation's (A) capital budgets, (B) operating budgets, and (C) non-budgeted material expenditures (classification of expenditures as "material" shall be established by the Board from time to time);
- (vi) The power to approve the Hospital Corporation's investment policies;
- (vii) The power to authorize the Hospital Corporation's participation in a joint venture, consolidation, affiliation, network, association, system or alliance of health care providers;
- (viii) The power to authorize the Hospital Corporation's organization or formation of a new subsidiary or joint venture entity, arrangement or relationship in which the Hospital Corporation's ownership interest will be equal to or in excess of fifty percent (50%) of the net income or voting interests therein;
- (ix) The power to authorize the Hospital Corporation's incurrence or guarantee of material indebtedness to any other person or entity (classification of an indebtedness as "material" shall be established by the Board from time to time) and a mortgage or pledge of, or grant of a security interest in, property or assets of a hospital or related entity in connection with any such indebtedness;
- (x) The power to approve the Hospital Corporation's human resource plans;
- (xi) The power to approve accounting policies for the Hospital Corporation and approve the appointment of the Hospital Corporation's outside auditors;
- (xii) The power to authorize any vote by the Hospital Corporation of the capital stock, membership or partnership voting rights owned by the Hospital Corporation in any and all of its subsidiaries or affiliates with respect to any of the foregoing; and
- (xiii) The power to hire and fire the President of the Hospital Corporation.

**ARTICLE II**  
**BOARD OF TRUSTEES**

1. Powers and Number. The Board shall have general power to control and manage the affairs and property of the Corporation in accordance with the purposes and limitations set forth in the Certificate of Incorporation. The number of Trustees shall be at least three (3) but no more than twenty-four (24) and will include all members of the Executive Committee. The number may be increased or decreased, but no decrease shall shorten the term of any incumbent Trustee. The President of the Corporation and the President of the Medical Staff shall be *ex-officio* members of the Board with vote and shall be counted as a regular member of the Board for purposes of determining whether a quorum is present and for all other purposes.

2. Qualifications of Trustees. Any person over the age of twenty-one (21) years shall be eligible for membership on the Board. Trustees shall be selected for their ability to contribute to and effectively fulfill their responsibilities as Trustees of the Corporation.

3. Election and Term of Office.

(a) On the date these Bylaws are revised, the members of the Board shall be those individuals set forth in *Exhibit A* annexed hereto.

(b) Effective prior to June 26, 2018. At the first annual meeting of the Board following the adoption of these Bylaws, or as soon as practicable thereafter, the elected members of the Board shall be divided into three (3) classes, designated Class A, Class B and Class C, each class shall be as nearly equal in number as possible, having not less than three (3) nor more than nine (9) Trustees. The term of office of the initial Class A Trustees shall expire at the next annual meeting of the Board. The term of office of the initial Class B Trustees shall expire at the second succeeding annual meeting of the Board. The term of office of the initial Class C Trustees shall expire at the third succeeding annual meeting of the Board. At each annual meeting of the Board, Trustees to replace those whose terms expire shall be elected, after giving consideration to the recommendations of the Corporation's Governance Committee, to hold office until the third succeeding annual meeting. Each Trustee shall be elected to serve (subject to the provisions of this *Article II*) until such Trustee's respective successor has been elected and qualified. Trustees may be elected for a maximum of four (4) three (3) year terms each, after which they will be ineligible for further service on the Board, provided that after a one year absence from the Board, a former Trustee will again be eligible for election to the Board.

(c) Effective as of June 26, 2018. The practice of dividing the Board of Trustees into classes A, B and C shall be eliminated, and all incumbent Trustees (i.e., all Trustees who are members as of June 26, 2018) shall be viewed as a single group, identified individually by their service commencement date. At each annual meeting of the Board, Trustees to replace those whose terms expire shall be elected, after giving consideration to the recommendations of

the Corporation's Governance Committee, to hold office until their term expires (subject to the provisions of this Article II) and until such Trustee's respective successor has been elected and qualified. Trustees may be elected for a maximum term of fifteen (15) years. All incumbent Trustees shall be allowed to serve a maximum term of fifteen (15) years. The maximum number of years of continued service as a trustee will be fifteen (15) years, after which a Trustee will be ineligible for further service on the Board of Trustees, provided that after a one year absence from the Board of Trustees, a former Trustee will again be eligible for election to the Board of Trustees.

- (d) Prior to the annual meeting of the Board, the chair of the Governance Committee of the Corporation shall announce that recommendations of individuals to serve as members of the Board and officers of the Corporation must be submitted by any member of the Board, in writing, to the chair of the Governance Committee no later than June 1st of that year. Recommendations shall include a resume or curriculum vitae of the person being recommended. Annually, the Governance Committee shall report back to the full Board with its recommendations of officers and members of the Board. There shall be no floor nominations. The formal election of officers and members of the Board shall occur at the annual meeting of the Board in June.

4. Trustee Emeritus. The Board, in its discretion, may confer the title of Trustee Emeritus upon any Trustee who shall have served as a Trustee for a period of four (4) terms of three (3) years each.

5. Removal. Any Trustee may be removed from such position for cause by a two-thirds (2/3) vote of the entire Board.

6. Resignation. Any Trustee may resign from office at any time by delivering a resignation in writing to the Board or to the President and the acceptance of the resignation, unless required by its terms, shall not be necessary to make the resignation effective.

7. Vacancies. Vacancies on the Board may be filled by election by the Board upon recommendation of the Corporation's Governance Committee. A Trustee so elected shall hold office for the balance of the term of the vacancy and until the election and qualification of the Trustee's successor.

8. Regular Meetings. Unless otherwise provided by resolution of the Board, the Board shall hold a minimum of one regular meeting to be held in June on a date and at a time specified by the Board.

9. Special Meetings. Special meetings of the Board may be called at any time and place by the Chair, the Vice Chair, the President or by any six (6) members of the Board.

10. Annual Meetings. The regular meeting in the month of June shall also be the Annual meeting of the Board and will be held on a date and time specified by the Board.

11. Notice of Meetings. Notice of the time and place of each regular, special or annual meeting of the Board, and, to the extent possible, a written agenda stating all matters upon which action is proposed to be taken, shall be mailed to each Trustee, postage prepaid, addressed to such Trustee at the Trustee's residence or usual place of business (or at such other address as the Trustee may have designated in a written request filed with the Secretary), or shall be emailed to each Trustee at an email address designated by the Trustee, at least five (5) days before the day on which the meeting is to be held; *provided, however*, that notice of special meetings to discuss matters requiring prompt action may be sent to the Trustee at such address by hand delivery, facsimile, email or other electronic means, or by overnight or other courier service, no less than forty-eight (48) hours before the time at which such meeting is to be held. Notice of a meeting need not be given to any Trustee who submits a signed waiver of notice whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to him or her.

12. Quorum and Voting. At all meetings of the Board, a majority of the entire Board shall constitute a quorum for the transaction of business or of any specified item of business. Except as otherwise provided by law or these Bylaws, at any meeting of the Board at which a quorum is present, the vote of a majority of the Trustees present at the time of the vote shall be the act of the Board.

13. Organization of Meetings. Meetings of the Board shall be presided over by the Chair, or in the absence of the Chair, the Vice Chair, unless otherwise directed by the Chair.

14. Order of Business. The order of business at each regular meeting of the Board shall be as follows:

- Approval of Minutes
- Report of Officers:
  - Chair
  - Treasurer
  - President
- Committee Reports:
  - Standing Committees
  - Special Committees
- Unfinished Business
- New Business
- Adjournment

15. Attendance at Board Meetings. A Trustee who is absent from three (3) consecutive Board meetings shall automatically be deemed to have tendered his or her resignation from the Board. However, the Board may reinstate such Trustee in that position if it determines such retention is warranted.

16. Action by the Board. Any action required or permitted to be taken by the Board or by any committee thereof may be taken without a meeting if all members of the Board or the committee consent in writing to the adoption of a resolution authorizing the action which consent may be obtained by email or other electronic means. The resolution and the written consents shall

be inserted in the minute book of the Corporation with the minutes of the proceedings of the Board or committee. Participation of one or more Trustees by conference telephone allowing all persons participating in the meeting to hear each other at the same time shall constitute presence at a meeting.

17. Committees of the Board. The Board, by resolution adopted by a majority of the entire Board, shall establish and appoint an Executive Committee and a Governance Committee, and may establish and appoint any other Standing Committees. The Executive Committee shall consist of the Chair, the Vice-Chair, the President of the Hospital Corporation, the Secretary, the Treasurer and the Chair(s) of the Finance, Board Quality and Strategic Planning Committees. The immediate past Chair of the Board shall also be a member of the Executive Committee, *ex-officio*, with vote. Each committee so appointed shall consist of three (3) or more Trustees and, to the extent provided in the resolution establishing it, shall have all the authority of the Board, except as to the following matters:

- (b) the filling of vacancies on the Board or on any committee;
- (c) the amendment or repeal of these Bylaws or the adoption of new Bylaws; and
- (d) the amendment or repeal of any resolution of the Board which by its terms shall not be so amendable or repealable.

18. Committees of the Corporation. The Board may elect or appoint committees of the Corporation consisting of such persons who may, but need not be, Trustees, as the Board shall designate. These committees shall have such duties as permitted by law and as deemed appropriate by the Board.

19. Annual Report. At each annual meeting of the Board, the Treasurer shall present a verified report showing in appropriate detail the following or as otherwise may be required by law: (a) the assets and liabilities of the Corporation as of the end of a twelve (12) month fiscal period terminating not more than six (6) months prior to the meeting; (b) the principal changes in assets and liabilities during that fiscal period; (c) the revenues or receipts of the Corporation, both unrestricted and restricted to particular purposes, for that fiscal period; and (d) the expenses or disbursements of the Corporation, for both general and restricted purposes during said fiscal period. The foregoing report shall be filed with the records of the Corporation and a copy or an abstract thereof shall be entered in the minutes of the proceedings of the annual meeting.

### **ARTICLE III**

#### **OFFICERS, EMPLOYEES AND AGENTS**

1. Officers. The officers of the Corporation shall consist of a Chair, a Vice Chair, a President, a Secretary, a Treasurer, and such other officers, as the Board may from time to time elect. The Chair, Vice Chair, Secretary and Treasurer shall be elected by the Board from among the members of the Board. Any two or more offices may be held by the same person, except the offices of President and Secretary.

2. Election, Term of Office and Removal.

- (a) President. The President shall be appointed to such office by the Board and shall serve at the will of the Board, in accordance with the terms of a written employment agreement.
- (b) All Other Officers. Each other officer shall be elected by the Board after each annual meeting of the Board and shall hold office for one year or until his or her respective successor shall have been elected and duly qualified, or until his or her death, resignation or removal. The Governance Committee shall nominate a slate of candidates to stand for election and shall submit its written report to the Board at the March meeting.
- (c) Removal. Election of an officer shall not itself create any contract or employment rights in such person. Any officer of the Corporation may be removed, with or without cause, by a vote of a two-thirds (2/3) of the entire Board.

3. Other Agents and Employees. The Board may from time to time appoint such agents and employees as it shall deem necessary, each of whom shall hold such position at the pleasure of the Board and shall have such authority, perform such duties and receive such reasonable compensation, if any, as the Board may from time to time determine.

4. Vacancies. Any vacancy in any office may be filled by the Board upon recommendation of the Governance Committee. Any officer so elected shall hold office until the next annual meeting of the Board, or until the election and qualification of his or her successor.

5. Chair; Powers and Duties. The Chair shall:

- (a) preside at all meetings of the Board and shall appoint, with the advice and consent of the Board, where appropriate, all standing and special committees and their chairs;
- (b) be an *ex-officio* member with vote of all committees of the Board;
- (c) have the power to sign, on behalf of the Corporation, checks, contracts and other instruments pertinent to the Corporation;
- (d) have all powers and perform all duties normally incident to and vested in the office of the chairman of the board of a corporation; and
- (e) be chair of the Executive Committee of the Board, and shall perform such other duties as the Board shall designate from time to time.

6. Vice Chair; Powers and Duties. The Vice Chair shall:

- (a) perform the duties of and have the rights and powers of the Chair during the absence or disability of the Chair; and
- (b) perform such other duties and have such other powers as the Board or the Chair shall designate from time to time.

7. President; Powers and Duties. The President shall:

- (a) be the Chief Executive Officer of the Corporation and shall have complete charge of all administrative and fiscal activities of the Corporation, subject only to the restrictions of law, these Bylaws and the policies determined by the Board;
- (b) employ such Vice Presidents as shall be required to conduct the business and affairs of the Corporation;
- (c) attend all meetings of the Board, have the responsibility to participate in all discussions and be a regular member of the Board with vote;
- (d) be an *ex-officio* member with vote of all committees of the Board, except the Governance Committee, where he or she shall be an *ex-officio* member without vote;
- (e) have the power, on behalf of the Board, to perform all acts, execute and deliver all documents including checks, contracts and other instruments and take all steps that he or she may deem necessary or prudent in order to effectuate the actions and policies of the Board and the Executive Committee of the Board; however, the President shall not enter into any contracts, leases or other document relating to real estate, without the approval of the Board;
- (f) perform all other duties normally incident to the office of president of a corporation, including the following specific duties, the enumeration of which shall not be considered as any limitation upon the foregoing general powers and responsibilities:
  - (i) supervise all business affairs of the Corporation and assure that sound business and fiscal policies are established and followed;
  - (ii) select, employ, control and discharge all employees of the Corporation; and
  - (iii) establish effective lines of communication between the Board and the administration of the Corporation.

8. Secretary; Powers and Duties. The Secretary shall:



- (a) attend all meetings of the Board and keep and preserve minutes of the proceedings and actions taken at such meetings in books provided therefore by the Corporation;
  - (b) attest all documents executed on behalf of the Corporation;
  - (c) give all notices of meetings as required under these Bylaws, the Certificate of Incorporation or law;
  - (d) maintain a record of these Bylaws and all amendments thereto in a book provided therefore by the Corporation;
  - (e) have custody of the seal of the Corporation and authority to affix same to all instruments where its use is required;
  - (f) have custody of all documents of the Corporation;
  - (g) perform all duties normally incident to and vested in the office of the secretary of a corporation; and
  - (h) perform such other duties as the Board shall assign from time to time.
9. Treasurer; Powers and Duties. The Treasurer shall:
- (a) open accounts in the name of the Corporation in such banks, brokerages or depositories as the Board shall direct;
  - (b) keep or cause to be kept complete and accurate accounts of receipts and disbursements of the Corporation, and shall deposit all moneys and other valuable effects of the Corporation in the name and to the credit of the Corporation in such banks, brokerages or depositories;
  - (c) see to it that an accurate accounting system is maintained which shall reflect a true and accurate financial position of the Corporation;
  - (d) whenever required by the Board, at all reasonable times exhibit the books and accounts to any officer or Trustee of the Corporation;
  - (e) perform all duties incident to the office of the Treasurer and such other duties as shall from time to time be assigned by the Board; and
  - (f) if required by the Board, file such security for the faithful performance of his or her duties as the Board may require.

**ARTICLE IV**  
**CONTRACTS, CHECKS, BANK ACCOUNTS AND INVESTMENTS**

1. Checks, Notes and Contracts.

- (a) The Board is authorized to select the banks, brokerages or depositories it deems proper for the funds of the Corporation.
- (b) All checks, drafts and orders for payment of monies shall be signed in the name of the Corporation and in its behalf by the Chair, Vice Chair, President, Treasurer or by such other officers or agents as the Board shall designate from time to time.
- (c) The Board shall determine who shall be authorized from time to time on the Corporation's behalf to enter into contracts or to execute and deliver other documents and instruments. Contracts, conveyances or other instruments, when authorized by the Board without specification as to the executing officer, may be executed by the Chair, Vice President or the President of the Corporation in the name and on behalf of the Corporation, and the Secretary or any Assistant Secretary may affix the seal of the Corporation thereto.

2. Investments. The funds of the Corporation may be retained in whole or in part in cash or be invested and reinvested from time to time in such property, real, personal or otherwise, including stocks, bonds or other securities, as the Board may deem desirable.

#### **ARTICLE V** **BOOKS**

There shall be kept at an office of the Corporation correct books of account of the activities and transactions of the Corporation. The Corporation's minute book, which shall contain a copy of the certificate of incorporation, a copy of these Bylaws, and all minutes of meetings of the Board and the Executive Committee, shall be kept at an office of the Corporation or at the office of the Corporation's counsel, as determined by the Board.

#### **ARTICLE VI** **FISCAL YEAR**

The fiscal year of the Corporation shall be determined by the Board.

#### **ARTICLE VII** **INDEMNIFICATION**

1. Indemnification. The Corporation shall indemnify each Trustee and each officer, employee and agent (in cases of employees and agents, those employees and agents, and only those employees and agents, to whom the Board shall determine, before or after their engagement, shall be afforded the protection of these indemnification provisions) of the Corporation who is a natural person, such person's heirs, executors and administrators (whether or not natural persons) and all other natural persons whom the Corporation is authorized to indemnify under the provisions of the Not-for-Profit Corporation Law of the State of New York (including, without limitation, a person who is or was serving at the written request of the Corporation as a director, officer, partner, trustee, employee or agent (or in a like capacity) of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise), to the fullest extent that such indemnification may be lawful under the Not-for-Profit Corporation Law, (a) against all expenses (including, without

limitation, attorneys' and other experts' fees and disbursements), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with any actual or threatened action, suit or other proceeding, whether civil, criminal, administrative, investigative or an arbitration, or in connection with any appeal therein, or otherwise, and (b) against all expenses (including, without limitation, attorneys' and other experts' fees and disbursements) actually and reasonably incurred by such person in connection with the defense or settlement of any action, suit or other proceeding by or in the right of the Corporation or in connection with any appeal therein, or otherwise; and no provision of these Bylaws is intended to be construed as limiting, prohibiting, denying or abrogating any of the general or specific powers or rights conferred under the Not-for-Profit Corporation Law upon the Corporation to furnish, or upon any court to award, such indemnification, or such other indemnification as may otherwise be authorized pursuant to the Not-for-Profit Corporation Law or any other law now or hereafter in effect, including, without limitation, indemnification of any employees or agents of the Corporation or another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise. The indemnification provided for herein shall continue as to a person who has ceased to be a member of the Board or an officer, employee or agent of the Corporation and shall inure to the benefit of such person's heirs, executors and administrators.

2. Determinations. If and to the extent such indemnification shall require a determination whether the relevant person met the applicable standard of conduct set forth in the Not-for-Profit Corporation Law, such determination shall be made expeditiously at the cost of the Corporation after a request for the same from the person seeking indemnification. If indemnification is to be given or an advance of expenses is to be made upon a determination by independent legal counsel, such counsel may be the regular counsel to the Corporation. In rendering such opinion, such counsel shall be entitled to rely upon statements of fact furnished to them by persons reasonably believed by them to be credible, and such counsel shall have no liability or responsibility for the accuracy of the facts so relied upon, nor shall such counsel have any liability for the exercise of their own judgment as to matters of fact or law forming a part of the process of providing such opinion. The fees and disbursements of counsel engaged to render such opinion shall be paid by the Corporation whether or not such counsel ultimately are able to render the opinion that is the subject of their engagement.

3. Combinations. Unless the Board shall determine otherwise with reference to a particular merger or consolidation or other combination, for purposes of this *Article VII*, references to "the Corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a merger or consolidation or other combination which, if its separate existence had continued, would have had power and authority to indemnify its trustees, directors, officers, employees or agents, so that any person who is or was a trustee, director, officer, employee or agent of such constituent corporation, or is or was serving at the written request of such constituent corporation as a trustee, director, officer, partner, employee or agent (or in a like capacity) of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, shall stand in the same position under the provisions of this *Article VII* with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued.

4. Advances of Expenses. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit

or proceeding as authorized by the Board in the specific case upon receipt of an undertaking by or on behalf of the member of the Board or an officer, employee or agent of the Corporation to repay such amount unless it shall ultimately be determined that such person is entitled to be indemnified by the Corporation as authorized by the Not-for-Profit Corporation Law, and then, only to the extent such advances do not exceed the indemnification to which such person is entitled.

5. Insurance. Subject to Section 726 of the New York Not-for-Profit Corporation Law, the Corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was a member of the Board or an officer, employee or agent of the Corporation or is or was serving at the written request of the Corporation as a director, trustee, officer, partner, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power to indemnify such person against such liability under the provisions of these Bylaws or otherwise.

6. Employee Benefit Plans. References herein to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a corporate agent that imposes duties on, or involves services by, the corporate agent with respect to an employee benefit plan, its participants or beneficiaries. A person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner not opposed to the best interests of the Corporation.

## **ARTICLE VIII**

### **CONFLICTS OF INTEREST**

1. No Trustee, officer or salaried employee of the Corporation shall engage in any activity or relationship which shall in any way conflict or be incompatible with the performance of the functions and duties of the office or position held within the Corporation. No Trustee shall allow, at any time, a situation to arise which would place him in a position of conflict of interest or would jeopardize the Corporation's exempt status under the Code. The Corporation shall adopted a detailed Conflicts of Interest Policy which supplements these provisions and which shall be followed by all Trustees, officers and salaried employees.

2. No Trustee shall receive compensation or benefit of any kind for his or her service as a Trustee, except the compensation paid to the President for the performance of administrative and contractual duties and except for reimbursement of reasonable expenses incurred in connection with such service.

3. No transaction involving benefit or payment of any kind to a Trustee or to an organization of which a Trustee is a member, officer, director or ten percent 10% stockholder shall be entered into by the Corporation without full disclosure by the interested Trustee and the approval of the Board. No Trustee so involved may have a vote in such approval or be counted as part of a quorum in which such a vote is made.

4. No loans, other than through the purchase of bonds, debentures, or similar obligations of the type customarily sold in public offerings, or through ordinary deposit of funds in a bank, shall be made by the Corporation to any Trustee or officer, or to any other corporation, firm, association or other entity in which one or more of the Trustees or officers are directors or officers or hold a substantial financial interest, except, if the Corporation is a Type B corporation, to another Type B corporation.

5. Every Trustee, in a manner and form to be prescribed by the Governance Committee, shall annually make a full disclosure of any possible conflict of interest to the Board.

6. If the Board determines, in its sole discretion, the existence of a conflict or appearance of same, the Board shall resolve the matter as it determines appropriate. The procedure shall include, but not be limited to, disqualification of the affected member from voting on the question, making a quorum or continued appearance at the meeting.

#### **ARTICLE IX BONDING**

The Board may secure the fidelity of any or all officers or other agents of the Corporation by bond or otherwise, on such terms and with such surety or sureties, conditions, penalties or securities as the Board shall require.

#### **ARTICLE X EXEMPT PURPOSE**

1. Exempt Purpose. Notwithstanding any other provision of these Bylaws, no Trustee, officer, employee or representative of the Corporation shall take any action or carry on any activity by or on behalf of the Corporation not permitted to be taken or carried on by an organization exempt under Section 501(c)(3) of the Code, or by an organization contributions to which are deductible under Section 170(c)(2), Section 2055(a)(2), and Section 2522(a)(2) of the Code.

2. Prohibition on Sharing in Corporate Earnings. No Trustee, officer or employee, member of a committee, or person connected with the Corporation, or any other private individual, shall receive at any time any of the net earnings or pecuniary profit from the operations of the Corporation, provided, that this shall not prevent the payment to any such person of such reasonable compensation for services rendered to or for the Corporation in effecting any of its purposes as shall be fixed by the Board; and no such person or persons shall be entitled to share in the distribution of any of the corporate assets upon the dissolution of the Corporation.

#### **ARTICLE XI AMENDMENTS**

These Bylaws may be altered, amended or repealed solely by action of the Board.

*Exhibit A*  
*Current Trustees*  
[Attached]

# **Exhibit**

# **C**

**PLAN OF DISSOLUTION  
OF  
BRIDGE REGIONAL HEALTH SYSTEM, INC.**

The Board of Directors of Bridge Regional Health System, Inc. ("Corporation"), having considered the advisability of voluntarily dissolving the Corporation, and it being the opinion of the Board of Directors that dissolution is advisable and in the best interests of the Corporation, and the Board having approved a Plan for a voluntary dissolution of the Corporation, does hereby resolve, that the Corporation be dissolved in accordance with the following Plan:

**PROCEDURE FOR DISSOLUTION.**

1. There being no members of the Corporation, no vote of membership is required to approve this dissolution, and action of the Board of Directors is sufficient.
2. The New York State Attorney General and the New York State Department of Public Health and Health Planning Council must consent to the dissolution of the Corporation.
3. The Corporation has no assets and no known liabilities.
4. A Certificate of Dissolution shall be signed by an authorized director or officer and all required approvals shall be attached thereto.

Dated: \_\_\_\_\_, 2023

\_\_\_\_\_  
Name:

Title:



# **Exhibit**

# **D**

**RESOLUTIONS  
OF THE  
BOARD OF DIRECTORS  
OF  
BRIDGE REGIONAL HEALTH SYSTEM**

*Approving Dissolution of Bridge Regional Health System*

The Board of Directors of Bridge Regional Health System ("Corporation"), at a meeting duly noticed and held, discussed the following in connection with the proposed dissolution of the Corporation:

- The Corporation is a New York not-for-profit corporation formed to support the purposes, missions, objectives, operations and activities of Richmond University Medical Center ("RUMC") and Bayonne Medical Center.
- At the time the Corporation was formed, RUMC was part of the St. Vincent's Health System and was the only hospital that survived a bankruptcy proceeding. The Corporation was formed to facilitate the acquisition of RUMC assets from the bankruptcy proceeds.
- Currently, the only activity of the Corporation is ratifying decisions of the RUMC Board of Directors (there are mirror boards).
- The Corporation is no longer the sole member of Bayonne Medical Center which is now part of the CarePoint Health system.
- The Corporation never had any revenues and does not currently hold any assets or liabilities.
- Board of Directors has considered the advisability of voluntarily dissolving the Corporation.

Based on the foregoing, it is

RESOLVED: that the Board of Directors, after due consideration, has deemed it advisable and in the best interests of the Corporation to voluntarily dissolve because the purpose for this the Corporation was formed is no longer needed; and it is further

RESOLVED: that the Board of Directors does hereby adopt and approve the Plan of Dissolution, in the form attached hereto; and it is further

RESOLVED: that the Board of Directors hereby authorizes the filing of a Certificate of Dissolution with the New York State Department of State, subject to the consent of the Attorney General's Office and the New York State Department of Health Public Health and Planning Council; and it is further

RESOLVED: that the directors of the Corporation are hereby authorized and empowered to execute such documents, to make any necessary, non-material amendments to such documents and to do any and all acts necessary to effectuate the foregoing resolutions.

IN WITNESS WHEREOF, I certify that the foregoing resolutions were approved at a meeting duly noticed and held on June \_\_\_\_, 2023.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Name:

Title:

**ATTACHMENT:**

Plan of Dissolution

**VOTING INFORMATION**

Total # Directors: \_\_\_\_\_

Total # of Directors Present: \_\_\_\_\_

Votes Approving: \_\_\_\_\_

Votes Against: \_\_\_\_\_

Votes Abstained: \_\_\_\_\_

**PLAN OF DISSOLUTION  
OF  
BRIDGE REGIONAL HEALTH SYSTEM, INC.**

The Board of Directors of Bridge Regional Health System, Inc. ("Corporation"), having considered the advisability of voluntarily dissolving the Corporation, and it being the opinion of the Board of Directors that dissolution is advisable and in the best interests of the Corporation, and the Board having approved a Plan for a voluntary dissolution of the Corporation, does hereby resolve, that the Corporation be dissolved in accordance with the following Plan:

**PROCEDURE FOR DISSOLUTION**

1. There being no members of the Corporation, no vote of membership is required to approve this dissolution, and action of the Board of Directors is sufficient.
2. The New York State Attorney General and the New York State Department of Public Health and Health Planning Council must consent to the dissolution of the Corporation.
3. The Corporation has no assets and no known liabilities.
4. A Certificate of Dissolution shall be signed by an authorized director or officer and all required approvals shall be attached thereto.

Dated: \_\_\_\_\_, 2023

\_\_\_\_\_  
Name:

Title:

**CERTIFICATE OF DISSOLUTION**  
**OF**  
**BRIDGE REGIONAL HEALTH SYSTEM, INC.**  
**Under Section 1003 of the Not-for-Profit Corporation Law**

THE UNDERSIGNED, being the \_\_\_\_\_ of Bridge Regional Health System, Inc. ("Corporation"), does hereby certify:

1. The name of this Corporation is Bridge Regional Health System, Inc.
2. The Certificate of Incorporation of the Corporation was filed in the office of the Secretary of State of the State of New York on July 2, 2006, and amended by the filing of a Certificate of Amendment of the Certificate of Incorporation on August 30, 2006.
3. The names and addresses of the remaining directors and officers of the Corporation are as follows:

<b>NAME/TITLE</b>	<b>ADDRESS</b>
Timothy Colton Harrison/Chair and Director	80 Benedict Road Staten Island, NY 10304
John C. Santora/Vice Chair and Director	220 Chelsea Street Staten Island, NY 10307
Daniel Messina, Ph.D./ President, CEO and <i>Ex Officio</i> Director	17 Coverly Place Staten Island, NY 10301
Francesco Rotatori, M.D./President of the Medical Staff and <i>Ex Officio</i> Director	227 92nd Street Brooklyn NY 11209
Jill O'Donnell-Tormey, Ph.D./ Secretary and Director	263 Howard Ave. Staten Island, NY 10301
Pankaj R. Patel, M.D./Assistant Secretary and Director	34 Amy Court Staten Island, NY 10314
David McGoy/Director	9 Davis Court Staten Island, NY 10310
Alan Bernikow, CPA/Director	207 Benedict Ave. Staten Island, NY 10314
Marcello Sciarrino/Director	9 Benedict Road Staten Island, NY 10304
Robert Urs/Director	14 Silver Ct Staten Island, NY 10301
Thomas Delmastro/Treasurer and Director	85 Dutchess Avenue Staten Island, NY 10304
Sara Warren Gardner, MPH/Director	47 Parkview Place Staten Island, NY 10310

Kenneth Corey/Director	66 Florence Place Staten Island, NY 10309
Steven M. Klein/ Director	11 Woodview Drive Howell, NJ 07731
Anita Laremont/Director	10 Overlook Drive Staten Island, NY 10304
Courtney Moore/Director	5 Scheffelin Ave, Staten Island, NY 10306
Wing Law/Director	120 McVeigh Ave Staten Island, NY
Hon. Rosemarie Maldonado/Director	26 Harbor View Court Staten Island, NY 10301
John Vincent Scalia, Sr./Director	28 Eltingville Blvd. Staten Island, NY 10312
Samala Swamy, M.D./Director	96 Benedict Road Staten Island, NY 10304
John Tapinis/Director	6 Twin Lakes Drive Colts Neck NJ 07722
Joe Torres/Director	199 Benedict Ave Staten Island, NY 10314

4. The Corporation is a charitable corporation.
5. At the time of authorization of the Corporation's Plan of Dissolution as provided in Not-for-Profit Corporation Law Section 1002, the Corporation holds no assets which are legally required to be used for a particular purpose.
6. The Corporation elects to dissolve.
7. The dissolution was authorized by at least two-third vote of directors present at a meeting at which a quorum was present. The corporation has no members.
8. The Corporation is a charitable corporation with no assets. Prior to the delivery of the Certificate of Dissolution to the Department of State for filing, a copy of the Plan of Dissolution which contains the statement prescribed by paragraph (b) of Section 1001 of the Not-for-Profit Corporation Law, has been duly filed with the Attorney General.

IN WITNESS WHEREOF, the undersigned has signed this Certificate this \_\_\_\_ day of \_\_\_\_\_, 2023.

---

Name:  
Title:

**CERTIFICATE OF DISSOLUTION**  
**OF**  
**BRIDGE REGIONAL HEALTH SYSTEM**  
**Under Section 1003 of the Not-for-Profit Corporation Law**

**FILED BY:**

**Nixon Peabody LLP  
1300 Clinton Square  
Rochester, New York 14604**



**RESOLUTIONS  
OF THE  
BOARD OF DIRECTORS  
OF  
BRIDGE REGIONAL HEALTH SYSTEM**

*Approving Dissolution of Bridge Regional Health System*

The Board of Directors of Bridge Regional Health System ("Corporation"), at a meeting duly noticed and held, discussed the following in connection with the proposed dissolution of the Corporation:

- The Corporation is a New York not-for-profit corporation formed to support the purposes, missions, objectives, operations and activities of Richmond University Medical Center ("RUMC") and Bayonne Medical Center.
- At the time the Corporation was formed, RUMC was part of the St. Vincent's Health System and was the only hospital that survived a bankruptcy proceeding. The Corporation was formed to facilitate the acquisition of RUMC assets from the bankruptcy proceeds.
- Currently, the only activity of the Corporation is ratifying decisions of the RUMC Board of Directors (there are mirror boards).
- The Corporation is no longer the sole member of Bayonne Medical Center which is now part of the CarePoint Health system.
- The Corporation never had any revenues and does not currently hold any assets or liabilities.
- Board of Directors has considered the advisability of voluntarily dissolving the Corporation.

Based on the foregoing, it is

RESOLVED: that the Board of Directors, after due consideration, has deemed it advisable and in the best interests of the Corporation to voluntarily dissolve because the purpose for this the Corporation was formed is no longer needed; and it is further

RESOLVED: that the Board of Directors does hereby adopt and approve the Plan of Dissolution, in the form attached hereto; and it is further

RESOLVED: that the Board of Directors hereby authorizes the filing of a Certificate of Dissolution with the New York State Department of State, subject to the consent of the Attorney General's Office and the New York State Department of Health Public Health and Planning Council; and it is further

RESOLVED: that the directors of the Corporation are hereby authorized and empowered to execute such documents, to make any necessary, non-material amendments to such documents and to do any and all acts necessary to effectuate the foregoing resolutions.

IN WITNESS WHEREOF, I certify that the foregoing resolutions were approved at a meeting duly noticed and held on June 27, 2023.

Dated: July 26, 2023

Katherine A. Connors

Name: Katherine A. Connors  
Title: Secretary

ATTACHMENT:

Plan of Dissolution

VOTING INFORMATION

Total # Directors:	<u>20</u>
Total # of Directors Present:	<u>18</u>
Votes Approving:	<u>18</u>
Votes Against:	<u>0</u>
Votes Abstained:	<u>0</u>



## MEMORANDUM

**To:** Colleen Leonard, Executive Secretary  
Public Health and Health Planning Council

**From:** Alexa Nagy, Senior Attorney  
Bureau of Program Counsel  
Division of Legal Affairs

**Date:** May 20, 2024

**Subject:** Proposed Dissolution of Moses-Ludington Nursing Home Company, Inc.

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This is to request that the above matter be included on the agendas for the next Establishment and Project Review Committee and Public Health and Health Planning Council (PHHPC) meetings.

The attachments relating to this matter include the following:

- 1) Memorandum to the Public Health and Health Planning Council from Kathy Marks, General Counsel;
- 2) A photocopy of an email letter from Legal Counsel requesting approval of the proposed Verified Petition, with all exhibits, and Certificate of Dissolution of Moses-Ludington Nursing Home Company, Inc., dated March 20, 2024;
- 3) A proposed verified petition seeking the Attorney General's approval of the filing of the Certificate of Dissolution of Moses-Ludington Nursing Home Company, Inc., dated November 20, 2023;
- 4) A photocopy of the Certificate of Incorporation for Moses-Ludington Nursing Home Company, Inc., dated February 16, 1973, filed on May 4, 1973, consented to by the Commissioner of Health on April 13, 1973, and the Consent to File Letter of the Public Health Council for Moses-Ludington Nursing Home Company, Inc., dated April 17, 1973;
- 5) A photocopy of the Certificate of Amendment of the Certificate of Incorporation of Moses-Ludington Nursing Home Company, Inc., dated July 2, 1998, and filed on July 14, 1998;
- 6) A copy of the Corporate Bylaws of Moses-Ludington Nursing Home Company, Inc., amended and restated, adopted as of March 18, 2014;
- 7) A verified petition seeking the Attorney General's approval of the sale of assets of Moses-Ludington Nursing Home Company, Inc., dated March 12, 2018;
- 8) A copy of the Resolutions of the Board of Directors of Moses-Ludington Nursing Home Company, Inc., dated November 16, 2023, approving and authorizing the dissolution; and
- 9) An executed, proposed Certificate of Dissolution of Moses-Ludington Nursing Home Company, Inc.

Attachments

## MEMORANDUM

**To:** Public Health and Health Planning Council (PHHPC)

**From:** Kathy Marks *KSM*  
General Counsel

**Date:** May 20, 2024

**Subject:** Proposed Dissolution of Moses-Ludington Nursing Home Company, Inc.

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Moses-Ludington Nursing Home Company, Inc. requests Public Health and Health Planning Council (“PHHPC”) approval of its proposed dissolution in accordance with the requirements of Not-For-Profit Corporation Law §§ 1002(c) and 1003.

The Public Health Council consented to the filing of Moses-Ludington Nursing Home Company Inc.'s Certificate of Incorporation on April 17, 1973, which was subsequently filed with the New York State Department of State on May 4, 1973.

Moses-Ludington Nursing Home Company, Inc. was the licensed operator of a nursing home and adult home located at 1019 Wicker Street, in Ticonderoga, New York. Moses-Ludington Nursing Home Company, Inc. is dissolving because the Corporation experienced several years of losses and as a result, could not continue operating. Moses-Ludington Nursing Home Company, Inc. sold its facilities in 2018, which sale was approved by an Order of the Supreme Court entered on March 12, 2018. As such, Moses-Ludington Nursing Home Company, Inc. carried out the sale of its facilities and proceeded to wind down its activities, including payment of all outstanding liabilities. Moses-Ludington Nursing Home Company, Inc. has no current operations and will not undertake operations at any point in the future. Moses-Ludington Nursing Home Company, Inc. has no remaining assets or liabilities.

The Board of Directors of Moses-Ludington Nursing Home Company, Inc. approved and authorized dissolution and authorized the filing of the Certificate of Dissolution on November 16, 2023.

The enclosed documents include: a proposed Verified Petition to the Attorney General; a Plan of Dissolution; and a proposed Certificate of Dissolution with supporting organizational documents of Moses-Ludington Nursing Home Company, Inc.; and resolutions of the board of directors of Moses-Ludington Nursing Home Company, Inc. authorizing the dissolution. A letter from the legal counsel for Moses-Ludington Nursing Home Company, Inc. advocating for dissolution, is also enclosed.

There is no legal objection to the proposed Verified Petition, Plan of Dissolution, and Certificate of Dissolution of Moses-Ludington Nursing Home Company, Inc.

Attachments



Nixon Peabody LLP  
1300 Clinton Square  
Rochester, NY 14604-1792

**Laura N. Quant**  
Paralegal

Attorneys at Law  
nixonpeabody.com  
@NixonPeabodyLLP

T / 585.263.1766  
F / 585.263.1600  
lquant@nixonpeabody.com

March 20, 2024

**VIA FEDERAL EXPRESS**

New York Department of Health  
Division of Legal Affairs  
Corning Tower, Room 2464  
Empire State Plaza  
Albany, New York 12237

**RE: Moses-Ludington Nursing Home Company, Inc.  
Dissolution**

Dear Sir or Madam:

We are writing to respectfully request the approval of the enclosed Certificate of Dissolution for **Moses-Ludington Nursing Home Company, Inc.** ("Corporation") by the Public Health and Health Planning Council ("PHHPC").

The Corporation is no longer conducting activities and has no remaining assets or liabilities.

At this time, the Corporation requests consent from PHHPC to dissolve. Copies the following materials in support of the Corporation's application for approval of its dissolution are enclosed:

1. Verified Petition, with all exhibits; and
2. Certificate of Dissolution of the Corporation.

Thank you for your time and attention to this matter. Please contact me should you require any additional information.

Very truly yours,

A handwritten signature in cursive script that reads "Laura N. Quant".

Laura N. Quant  
Paralegal

Enclosures

THE ATTORNEY GENERAL OF THE STATE OF NEW YORK  
43 DURKEE STREET – SUITE 700, PLATTSBURGH, NEW YORK 12901

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In the Matter of the Application of

MOSES-LUDINGTON NURSING HOME COMPANY, INC.

For Approval of Certificate of Dissolution  
pursuant to Section 1003 of the Not-for-Profit  
Corporation Law

**VERIFIED PETITION**

AG # \_\_\_\_\_

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TO: THE ATTORNEY GENERAL OF THE STATE OF NEW YORK  
COUNTY OF ESSEX

Petitioner, Moses-Ludington Nursing Home Company, Inc., by its attorneys, Nixon Peabody LLP, Anita L. Pelletier, Esq., for its Petition herein respectfully alleges:

1. Petitioner, whose principal office is located in the County of Essex, was incorporated pursuant to New York's Not-for-Profit Corporation Law on May 4, 1973. Copies of Petitioner's Certificate of Incorporation, as amended as well as complete and current Bylaws are attached as **Exhibits A** and **B**, respectively.

2. The names and addresses of all remaining directors and officers of Petitioner are listed below.

<u>NAME &amp; ADDRESS</u>	<u>TITLE</u>
Roland Allen 1019 Wicker St. Ticonderoga, NY 12883	Director/Chairperson
Robert Dedrick 1019 Wicker St. Ticonderoga, NY 12883	Director/Vice-Chairperson
Ross Kelley 1019 Wicker St. Ticonderoga, NY 12883	Director/Treasurer
Chattie Van Wert 1019 Wicker St. Ticonderoga, NY 12883	Director/Secretary

<u>NAME &amp; ADDRESS</u>	<u>TITLE</u>
Matthew Nolan 1019 Wicker St. Ticonderoga, NY 12883	President
Alan Chardavotne 1019 Wicker St. Ticonderoga, NY 12883	Chief Financial Officer
Dr. Glen Chapman 1019 Wicker St. Ticonderoga, NY 12883	Director
Michael Diskin 1019 Wicker St. Ticonderoga, NY 12883	Director
Walter Lender 1019 Wicker St. Ticonderoga, NY 12883	Director
David Shelmidine 1019 Wicker St. Ticonderoga, NY 12883	Director

3. The purposes for which Petitioner was organized are:

"The purpose for which the Corporation is formed is to plan, construct, erect, build, acquire, alter, reconstruct, rehabilitate, own, maintain and operate a nursing home project pursuant to the terms and provisions of the Public Health Law."

4. Petitioner is a charitable corporation.

5. Inter-Lakes Health, Inc. ("ILH") is a New York not-for-profit and serves as sole corporate member of Petition.

6. Petitioner operated a nursing home and adult home for many years and operated at a deficit. Petitioner determined it could not survive as an independent nursing home and sold the nursing home and adult home and upon the sale determined it was in its best interest to dissolve.

7. Pursuant to an Order of the Supreme Court entered in the Essex County Clerk's Office on March 12, 2018, the Petitioner transferred all of its remaining assets to Post Acute Partners Acquisition, LLC and Elizabeth Community Hospital. A copy of the Order is attached hereto as Exhibit C.

8. Petitioner sold its assets and wound down its activities in preparation for dissolution.

9. Pursuant to Petitioner's Bylaws, the members of Petitioner's Board of Directors are the same members of the ILH Board of Directors.

10. Filing of the Certificate of Dissolution was authorized and approved by majority vote of the entire Board of Directors of both Petitioner and ILH at a duly called meeting on November at which a quorum of 6 directors out of 8 total directors was present, and approved by 6 votes in favor, 0 votes against. A copy of the resolutions is attached hereto as **Exhibits D**.

11. The Petitioner has no assets or liabilities as of the date hereof.

12. The Corporation has filed a final financial report on form CHAR500, with all required attachments, with the Charities Bureau showing no assets or liabilities.

13. Other than approval of the Attorney General, no other governmental approvals of the dissolution and distribution of assets are required.

14. No previous application for approval of the dissolution and distribution of assets has been made.


*[SIGNATURE PAGE FOLLOWS]*



WHEREFORE, Petitioner requests that the Attorney General approve the filing of the Certificate of Dissolution of Moses-Ludington Nursing Home Company, Inc., pursuant to the Not-for-Profit Corporation Law Section 1003.

Dated: November 20, 2023

NIXON PEABODY LLP

By:  \_\_\_\_\_

Anita L. Pelletier, Esq.

Anita L. Pelletier, Esq.  
Nixon Peabody LLP  
Counsel for Petitioner  
1300 Clinton Square  
Rochester, New York 14604



# **Exhibit**

# **A**

CERTIFICATE OF INCORPORATION

OF

MOSES-LUDINGTON NURSING HOME COMPANY, INC.

Under Section 402 of the Not-For-Profit Corporation Law and the Public Health Law

We, the undersigned, for the purpose of forming a Nursing Home Corporation pursuant to the Not-For-Profit Corporation Law and the Public Health Law of the State of New York, hereby certify:

The name of the proposed Corporation is MOSES-LUDINGTON NURSING HOME COMPANY, INC. (Hereinafter referred to as the "Corporation").

II

The Corporation is not formed for pecuniary profit or financial gain. All income and earnings of the Corporation shall be used exclusively for its corporate purposes.

The Corporation is a corporation as defined in subparagraph (A) (5) of Section 102 (Definitions) of the Not-For-Profit Corporation Law.

III

The purpose for which the Corporation is formed, is to plan, construct, erect, build, acquire, alter, reconstruct, rehabilitate, own, maintain and operate a nursing home project pursuant to the terms and provisions of the Public Health Law.

This Corporation, pursuant to Section 201 of the Not-For-Profit Corporation Law, shall be "Type D".

RECEIVED

APR 12 1973

DEPUTY COMMISSIONER  
HEALTH

IV

The territory in which the operation of the Corporation will be principally conducted is the State of New York.

V

The principal office of the Corporation is to be located in the Town and Village of Ticonderoga, Essex County, State of New York.

VI

The number of directors of the Corporation shall be not less than three nor more than fifteen. Directors shall be elected by the members of the Corporation. One additional director may be designated by the Commissioner of Health of the State of New York (hereinafter referred to as the "Commissioner"). In the absence of fraud or bad faith said additional director appointed by the Commissioner shall not be personally liable for the debts, obligations or liabilities of the Corporation.

VII

The names and addresses of the initial Directors are:

<u>Name</u>	<u>Address</u>
Kirby D. Wilcox	Ticonderoga, New York
John E. Lawson	Ticonderoga, New York
Lloyd Watts	Ticonderoga, New York
Robert V. Touchette	Georgetown, South Carolina
Ernest Tobin	Ticonderoga, New York
Gerald J. Lawson	Ticonderoga, New York
Perry Harding	Glens Falls, New York
Francis Malaney	Ticonderoga, New York
Dr. Thomas R. Cummins	Ticonderoga, New York
David M. Jones	Ticonderoga, New York

VIII

The duration of the Corporation shall be two years from the date of the filing of this Certificate by the Secretary of State.

2

IX

The real property of the Corporation shall not be sold, transferred, encumbered or assigned except as permitted by the provisions of the Public Health Law and the Not-For-Profit Corporation Law.

X

The Corporation has been organized exclusively to serve a public purpose and it shall be and remain subject to the supervision and control of the Commissioner pursuant to the provisions of the Public Health Law.

XI

The Corporation is organized and shall be operated as a non-profit organization, shall not have power to issue certificates of stock or to declare or pay dividends, and shall be operated exclusively for the purposes enumerated in Articles II and III hereof, thereby to lessen the burdens of government and promote social welfare. No part of the net income or net earnings of the Corporation shall inure to the benefit or profit of any private individual, firm or corporation. No officer or employee of the Corporation shall receive or be lawfully entitled to receive any pecuniary benefits from the operation thereof except as reasonable compensation for services. No member or director of the Corporation shall receive any salary, other compensation or pecuniary profit of any kind for services as such member or director other than reimbursement of actual and necessary expenses incurred in the performance of his duties.

Upon the dissolution of the Corporation the Board of Directors shall, after paying or making provisions for the payment of all of the liabilities of the Corporation, distribute all of the remaining assets of the corporation exclusively for the purposes of the corporation or for a similar public use or purpose, to such organization or organizations organized and operated exclusively for charitable purposes as shall at the time qualify as an exempt

organization or organizations under Section 501 (c) (3) of the Internal Revenue Code of 1954 as the same shall then be in force, or the corresponding provisions of any future United States Internal Revenue Law, or to the United States of America, the State of New York, or a local government with the State of New York, as the Board of Directors shall determine, or in the absence of such determination by the Board of Directors such assets shall be distributed by the Supreme Court of the State of New York to such other qualified exempt organization or organizations as in the judgment of the Court will best accomplish the general purposes or a similar public use or purpose of the Corporation. In no event shall the assets of this Corporation upon dissolution be distributed to a director, officer, employee or member of this Corporation.

The dissolution of this Corporation and any distribution of the assets of this Corporation incident thereto shall be subject to such laws, if any, then in force as may require the approval thereof or consent thereto by any court or judge thereof having jurisdiction or by any governmental department or agency or official thereof.

#### XII

All of the incorporators of this corporation are natural persons over the age of nineteen years.

#### XIII

The following consents and approvals are annexed hereto:

1. The consent of the Commissioner of Health to the filing of this Certificate of Incorporation with the Secretary of State.
2. The approval of the Justice of the Supreme Court, who serves in the district wherein the Corporation is to have an office, to the formation of this Corporation.
3. The approval of the Public Health Council.

4

XIV

The post office address to which the Secretary of State shall mail a copy of any notice required by law is Wicker Street, Ticonderoga, New York 12883.

IN WITNESS WHEREOF, we have made, subscribed and acknowledged this Certificate of Incorporation, in quadruplicate, this 16th day of February, 1973.

John F. Lawson  
Ticonderoga, New York

*John F. Lawson*

Kirby D. Wilcox  
Ticonderoga, New York

*Kirby D. Wilcox*

Lloyd H. Watts  
Ticonderoga, New York

*Lloyd H. Watts*



STATE OF NEW YORK )

COUNTY OF ESSEX )

ss.

On this 16<sup>th</sup> day of February, 1973, before me personally came JOHN F. LAWSON, KIRBY D. WILCOX, LLOYD WATTS to me known and known to me to be the persons described in and who executed the foregoing Certificate of Incorporation of MOSES-LUDINGTON NURSING HOME COMPANY, INC. and they duly acknowledged to me that they executed the same.

*Madeline M. Cardwell*  
Notary Public

6

CONSENT TO INCORPORATION BY  
COMMISSIONER OF HEALTH

I, HOLLIS S. INGRAHAM, M. D., Commissioner of Health of the State of New York, do this 13<sup>th</sup> day of April, 1973 pursuant to Article 28-A of the Public Health Law hereby certify that I consent to the filing of the foregoing Certificate of Incorporation of MOSES-LUDINGTON NURSING HOME COMPANY, INC. with the Secretary of State of the State of New York.

HOLLIS S. INGRAHAM  
Commissioner of Health

By Donald Decker  
Deputy Commissioner

The undersigned, a Justice of the Supreme Court of the State of New York, County of Essex, wherein is located the principal office of MOSES-LUDINGTON NURSING HOME COMPANY, INC., hereby approves the within Certificate of Incorporation of MOSES-LUDINGTON NURSING HOME COMPANY, INC., and the filing thereof.

Dated: April 30, 1973

John J. Brown  
Justice of the Supreme Court

2

7



STATE OF NEW YORK  
DEPARTMENT OF LAW

ALBANY, N. Y. 12224

Telephone: 474-7206

LOUIS J. LEFKOWITZ  
ATTORNEY GENERAL

April 17, 1973

John F. Lawson, Esq.  
Lawson & Lawson, Esqs.  
Montcalm Street  
Ticonderoga, New York 12883

Dear Mr. Lawson:

Re: Moses Luddington Nursing Home Co., Inc.

Due and timely service of the notice of application for the approval of the proposed certificate of incorporation of the above organization is hereby admitted.

The Attorney General does not intend to appear at the time of application.

Very truly yours,

LOUIS J. LEFKOWITZ  
Attorney General

BY:   
JOSEPH R. CASTELLANI  
Assistant Attorney General

STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
ALBANY

# PUBLIC HEALTH COUNCIL

April 17, 1973

KNOW ALL MEN BY THESE PRESENTS:

In accordance with action taken after inquiry and investigation at a meeting of the Public Health Council held on the 23rd day of March, 1973, I hereby certify that the Certificate of Incorporation of Moses-Ludington Nursing Home Company, Inc. is

APPROVED:

*Andrew Krieger*  
ANDREW KRIEGER  
Secretary

Sent to: John F. Lawson, Esq.  
Montcalm Street  
Ticonderoga, New York  
12883

COUNCIL

NORMAN S. MOORE, M.D.  
CHAIRMAN  
GEORGE BAHR, M.D.  
ELONORA P. BOND  
WILLIAM BRONX, M.D.  
GORDON C. BROWN

MORTON P. HYMAN  
CHARLES T. LANIGAN  
GERALD M. MANLEY, M.D.  
GEORGE H. McCALL  
W. KENNETH NIAND  
JOHN F. ROACH, M.D.

HOWARD A. ... M.D.  
JOHN M. ...

WILLIAM S. ... M.D.

9

Following is a true copy of a resolution duly adopted by the Board of Directors of Moses-Ludington Hospital at a meeting of said Board at Ticonderoga, New York on the 3rd day of May, 1973.

Whereas, there has been proposed the formation of a corporation pursuant of the laws of the State of New York under the name of Moses-Ludington Nursing Home Company and the Secretary of State has requested the expression of an opinion by this Board concerning the similarity of the proposed name to this corporation.

Now, therefore, be it resolved that in the opinion of this Board the mentioned proposed name does not so nearly resemble that of this Corporation as to be calculated to deceive and consent to the use therefore."

*John J. Purvis*  
President

Seal

*Margaret J. Haroff*  
Secretary

10

A 69479

CERTIFICATE OF INCORPORATION

OF

MOSES-LUDINGTON NURSING HOME  
COMPANY, INC.

Under Section 402 of the Not-For-Profit  
Corporation Law and the Public Health  
Law.

Original

LAW OFFICES OF  
LAWSON & LAWSON  
MONTCALM STREET,  
TICONDEROGA, NEW YORK

*Handwritten notes:*  
New York  
1/14

*Handwritten initials:*  
HA J. J. D.

STATE OF NEW YORK  
DEPARTMENT OF STATE

TAX \$ None  
FILING 30

FILED MAY 4 - 1973

*John B. ...*

Secretary of State

*1 to Esset  
Typed  
2 yr. duration*

CERTIFICATE OF AMENDMENT  
OF  
CERTIFICATE OF INCORPORATION  
OF

MOSES-LUDINGTON NURSING HOME COMPANY, INC.

Under Section 803 of the Not-For-Profit  
Corporation Law and the Public Health Law

A 90744

We, the undersigned, hereby certify:

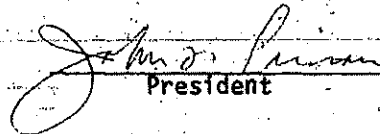
1. The name of the corporation is MOSES-LUDINGTON NURSING HOME COMPANY, INC. It was formed under that name and the name has not been changed.
2. The Certificate of Incorporation of said corporation was filed by the Department of State on May 4, 1973. The Corporation was formed under the Not-For-Profit Corporation Law and the Public Health Law.
3. The corporation is a corporation as defined in subparagraph (a) (5) of Section 102 (Definition) of the Not-For-Profit Corporation Law, and is a Type D corporation under Section 201 (Purposes).
4. The post office address to which the Secretary of State shall mail a copy of any notice required by Law is Wicker Street, Ticonderoga, New York, 12883.
5. Paragraph VIII of the Certificate of Incorporation relating to the two year duration of the Corporation is amended to read as follows:  
"VIII. The duration of the Corporation shall be perpetual."
6. The manner in which the Amendment of the Certificate of Incorporation was authorized was by consent of a majority of the entire Board of Directors, voting in person, at a meeting of the Board of Directors, duly called for that purpose upon due notice to all Directors of record given in the manner required for a special meeting of the Corporation; said meeting was held at the Moses-Ludington Hospital, Wicker Street, Ticonderoga, New York, at 2:00 P.M. on May 4, 1973; a majority of the entire Board of Directors was present; the

Certificate of Incorporation of the corporation does not require the consent of more than a majority of the entire Board of Directors to change the duration of the Corporation from two years to perpetual. There are no members entitled to vote.

7. The following approvals or consents were endorsed on or annexed to the Certificate of Incorporation and any Amendments thereto at the time they were filed with the Department of State: Commissioner of Health, Justice of the Supreme Court, Attorney General and Public Health Council; and the following approvals or consents will be endorsed upon or annexed to this Certificate of Amendment prior to its delivery to the Department of State: Commissioner of Health, Justice of the Supreme Court, Attorney General and Public Health Council.

IN WITNESS WHEREOF, we have executed this Certificate this 4<sup>th</sup> day of May, 1973.

John F. Lawson  
Ticonderoga, New York

  
\_\_\_\_\_  
President

Margaret T. Haroff  
Severance, New York

  
\_\_\_\_\_  
Secretary



STATE OF NEW YORK    |  
                                  |    ss.:  
COUNTY OF ESSEX     |

JOHN F. LAWSON and MARGARET T. HAROFF, being severally, duly sworn, depose and say that they are the President and Secretary, respectively, of MOSES-LUDINGTON NURSING HOME COMPANY, INC., and that they have read the foregoing Certificate of Amendment of Certificate of Incorporation of MOSES-LUDINGTON NURSING HOME COMPANY, INC., and know the contents thereof; that the same is true to their own knowledge, except as to those matters stated therein to be alleged on information and belief, and that as to those matters deponents believe them to be true.

John F. Lawson  
President  
Margaret T. Haroff  
Secretary

Subscribed and sworn to before me  
this 4<sup>th</sup> day of May, 1973.

Melvin M. Cardwell  
Notary Public

STATE OF NEW YORK |

COUNTY OF ESSEX |

ss.:

JOHN F. LAWSON and MARGARET T. HAROFF, being severally, duly sworn,  
depose and say:

1. That John F. Lawson is the President of MOSES-LUDINGTON NURSING HOME COMPANY, INC. mentioned in the foregoing Certificate and was such President at the time of the consent mentioned therein to change the duration of the Corporation from two years to perpetual.

2. That Margaret T. Haroff is the Secretary of MOSES-LUDINGTON NURSING HOME COMPANY, INC., mentioned in the foregoing Certificate and was such Secretary at the time of the consent mentioned therein to change the duration of the Corporation from two years to perpetual.

3. That they were duly authorized to execute and file the foregoing Certificate of Amendment by action of a majority of the entire Board of Directors at a special meeting.

4. Such consent was given by affirmative votes cast in person by a majority of the entire Board of Directors at a meeting of the Directors duly called for that purpose after due notice to the entire Board of Directors of the Corporation given in the manner required for a special meeting of the Corporation; said meeting was held at Ticonderoga, New York on May 4, 1973, at 2:00 P.M.; a majority of the entire Board of Directors was present. There are no members entitled to vote.

5. That the Certificate of Incorporation of this Corporation does not require a consent of more than a majority of the entire Board of Directors to change the duration of the Corporation from two years to perpetual.

*John F. Lawson*  
President

*Margaret T. Haroff*  
Secretary

Subscribed and sworn to before  
me this 4<sup>th</sup> day of May, 1973.

*Modeline M. Cordova*  
Notary Public

CONSENT TO AMENDMENT OF CERTIFICATE OF INCORPORATION  
BY COMMISSIONER OF HEALTH

I, HOLLIS S. INGRAHAM, M.D., Commissioner of Health of the State of New York, do this 1 day of August, 1973, pursuant to Article 28-A of the Public Health Law and Section 804 of the Not-For-Profit Corporation Law hereby certify that I consent to the filing of the foregoing Certificate to change the duration of the Corporation from two years to perpetual with the Secretary of State of the State of New York.

HOLLIS S. INGRAHAM, M.D.  
COMMISSIONER OF HEALTH

By *Robert A. Walcott*  
Deputy Commissioner

CONSENT TO AMENDMENT OF CERTIFICATE OF INCORPORATION  
BY A RESIDENT SUPREME COURT JUSTICE

I, Guy A. Graves, Justice of the Supreme Court of the State of New York for the Fourth Judicial District hereby approve the within Certificate to change the duration of the MOSES-LUDINGTON NURSING HOME COMPANY, INC. from two years to perpetual.

Dated: 10 May, 1973

*Guy A. Graves*  
Justice of the Supreme Court



STATE OF NEW YORK  
DEPARTMENT OF LAW

LOUIS J. LEFKOWITZ  
ATTORNEY GENERAL

ALBANY, N. Y. 12224

Telephone: 474-7206

May 4, 1973

John F. Lawson, Esq.  
Lawson & Lawson, Esqs.  
Montcalm Street  
Ticonderoga, New York 12883

Dear Mr. Lawson:

Re: Moses Luddington Nursing Home Company, Inc.

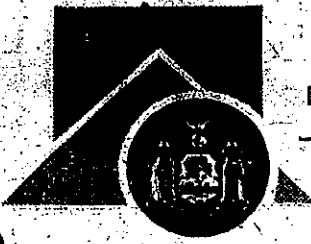
Due and timely service of the notice of application for the approval of the proposed certificate of amendment of the certificate of incorporation of the above organization is hereby admitted.

The Attorney General does not intend to appear at the time of application.

Very truly yours,

LOUIS J. LEFKOWITZ  
Attorney General

BY: *Joseph R. Castellani*  
JOSEPH R. CASTELLANI  
Assistant Attorney General



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
ALBANY  
**PUBLIC HEALTH COUNCIL**

July 30, 1973

KNOW ALL MEN BY THESE PRESENTS:

In accordance with action taken

after inquiry and investigation at a meeting of the Public Health Council held on the 27th day of July, 1973, I hereby certify that the Certificate of Amendment of the Certificate of Incorporation of Moses-Ludington Nursing Home Company, Inc., is APPROVED.

*Andrew Krieger*  
ANDREW KRIEGER  
Secretary

Sent to: John F. Lawson, Esq.  
President  
Moses-Ludington Hospital  
Wicker Street  
Ticonderoga, New York 12883

John Harty, Esq.  
Harty, Springer, Mattern and Symons  
Suite 921, The Fairfax  
4616 Fifth Avenue  
Pittsburgh, Pennsylvania 15213

COUNCIL

NORMAN S. MOORE, M.D.  
CHAIRMAN  
GEORGE BAEHR, M.D.  
BLONEVA P. BOND  
DETLEV BRONK, Ph. D.  
*Norman S. Moore, M.D.*

MORTON P. HYMAN  
CHARLES T. LANIGAN  
GERALD B. MANLEY, M.D.  
GEORGE R. METCALF  
W. KENNETH RILAND, D.O.  
*Morton P. Hyman*

HOWARD A. RUSK, M.D.  
JOHN N. WALSH

HOLLIS S. INGRAHAM, M.D.  
*Hollis S. Ingraham, M.D.*

A 90744

CERTIFICATE OF AMENDMENT

OF

CERTIFICATE OF INCORPORATION

MOSES-LUDINGTON NURSING HOME  
COMPANY, INC.

STATE OF NEW YORK  
DEPARTMENT OF STATE

TAX \$ None

FILING FEE \$ 30

FILED AUG-7 1973

*John P. ...*

Secretary of State

BY *M*

16 Exec  
typed

NFP  
Typed

5/4/73

Ticonderoga, Inc.

# A69479-11

not add. Wicken St, Ticonderoga

12803

LAW OFFICES OF

LAWSON & LAWSON

MONTCALM STREET

TICONDEROGA, NEW YORK

153 Montcalm

12883

F 980714000 721

CERTIFICATE OF AMENDMENT  
OF  
CERTIFICATE OF INCORPORATION  
OF

**MOSES-LUDINGTON NURSING HOME COMPANY, INC.**

Under Section 803 of the Not-For-Profit Corporation Law

We, the undersigned, President and Secretary of Moses-Ludington Nursing Home Company, Inc. hereby certify that:

1. The name of the corporation is Moses-Ludington Nursing Home Company, Inc. (hereinafter the "Corporation"). The name of the Corporation has not changed.
2. The Certificate of Incorporation of the Corporation was originally filed in the office of the Secretary of State on May 4, 1973, under the Not-For-Profit Corporation Law.
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law of the State of New York.
4. The Corporation is a Type D corporation under Section 201 of the Not-For-Profit Corporation Law of the State of New York, and it shall continue to be a Type D corporation.
5. The corporate purposes and powers of the Corporation are not enlarged, limited or otherwise changed by this Certificate of Amendment.
6. The Certificate of Incorporation of the Corporation is amended:
  - (a) to ADD a provision that identifies the Members of the Corporation and the powers reserved to the Members. A new Paragraph XV will be added as follows:

"The Corporation is a membership corporation. The sole Member of the Corporation is Moses-Ludington Corporation, a New York not-for-profit corporation. As such, Moses-Ludington Corporation shall be entitled to all rights and powers of a member under New York law (except as otherwise limited or provided in this certificate of incorporation or the bylaws of the Corporation), the certificate of incorporation of the Corporation and the bylaws of the Corporation.

Action by the Corporation shall not be taken until Moses-Ludington Corporation has exercised its reserved powers. The following powers are reserved to Moses-Ludington Corporation:

1. To approve, interpret and change the statement of mission and philosophy adopted by the Corporation and to require that the Corporation operate in conformance with its mission and philosophy;
2. To elect and remove, with or without cause, the President of the Corporation;
3. To approve and amend the bylaws and Certificate of Incorporation of the Corporation;
4. To approve any plan of merger, consolidation or dissolution of the Corporation;
5. To appoint, fix the number of, and remove, with or without cause, the directors of the Corporation;
6. To approve the debt of the Corporation, in excess of an amount to be fixed from time to time by the Member, except for debt necessary to finance the cost of compliance with operational or physical plant standards required by law;
7. To approve the sale, acquisition, lease, transfer, mortgage, pledge or other alienation of real or personal property of the Corporation in excess of an amount to be fixed from time to time by the Member;
8. To approve the capital and operating budgets of the Corporation to ensure that such budgets conform to the mission and philosophy of the Corporation;
9. To approve settlements of litigation when such settlements exceed applicable insurance coverage or the amount of any applicable self-insurance fund;
10. To approve any corporate reorganization of the Corporation and the development or dissolution of any subsidiary organizations of the Corporation; and
11. To approve the strategic plan of the Corporation, provided that such right of approval shall not permit the Member to exercise any of the governance authority under applicable regulations unless the Member has received establishment approval from the Public Health Council.

Should compliance with any of the restrictions in this provision require the Corporation to take any action which may contravene any law or regulation to which the Corporation may now or hereafter be subject, or require the licensure or

2



establishment of the Member under Article 28 of the Public Health Law, such restriction shall be null and void."

- (b) to DELETE Paragraph VI which specifies the number of directors of the Corporation and the method of appointment of certain directors to the Board;
- (c) to DELETE from Paragraph XI those portions of the Paragraph which describe how any remaining assets of the Corporation are to be distributed upon dissolution and to ADD a new Paragraph XVI as follows:

"In the event of the dissolution of the Corporation, the Board shall, after paying or making provision for the payment of all liabilities of the Corporation, transfer all of its assets to Moses-Ludington Corporation. If Moses-Ludington Corporation is not then in existence, all the assets of the Corporation shall be disposed of by the Board in a manner consistent with the purposes for which the Corporation was established. At no time shall any of the assets of the Corporation upon dissolution be distributed to any organization which is not organized and operated exclusively for charitable, educational or scientific purposes and qualified as an exempt organization under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended."

- 7. The Secretary of the State of New York<sup>2</sup> is hereby designated as the agent of the Corporation upon whom any process against the Corporation may be served, and the post office address to which the Secretary of State shall mail a copy of any process against the Corporation so served upon him is: c/o Moses-Ludington Nursing Home Company, Inc., Wicker Street, Ticonderoga, New York 12883
- 8. The foregoing amendments to the Certificate of Incorporation were authorized by unanimous written consent of all the members of the Corporation entitled to vote thereon and all the members of the Corporation's Board of Directors entitled to vote thereon.

IN WITNESS WHEREOF, the undersigned have executed this Certificate of Amendment and affirmed as true the statements made therein under penalties of perjury this 2<sup>nd</sup> day of July, 1998.

Joan W. Grishkoff  
Its President, Joan W. Grishkoff

Margaret R. Broadhead  
Its Secretary, Margaret R. Broadhead

F 980714000721

JUL 14 5 45 PM '98

FILED

CERTIFICATE OF AMENDMENT  
OF  
CERTIFICATE OF INCORPORATION  
OF

MOSES-LUDINGTON NURSING HOME COMPANY, INC.

Under Section 803 of the Not-For-Profit Corporation Law



JLW

2-cc

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED JUL 14 1998

TAX \$ 0

BY: JLW

ESSEX

Filed by:

Iseman, Cunningham, Riester & Hyde, L.L.P.  
9 Thurlow Terrace  
Albany, New York 12203

4

980714000753

# **Exhibit**

# **B**

**MOSES-LUDINGTON NURSING HOME  
COMPANY, INC.  
(DBA Heritage Commons Residential Healthcare)  
Ticonderoga, New York**

**AMENDED AND RESTATED  
BYLAWS  
Adopted as of March 18, 2014**

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**ARTICLE I  
NAME**

**Section 1.01. Name.** The name of the Corporation is Moses-Ludington Nursing Home Company, Inc. (herein called the "Corporation" or the "Nursing Home").

**ARTICLE II  
PRINCIPAL OFFICE**

**Section 2.01. Principal Office.** The principal office of the Corporation shall be located at 1019 Wicker Street in the Town of Ticonderoga, County of Essex, and State of New York.

**ARTICLE III  
PURPOSES AND POWERS**

**Section 3.01. Purposes and Powers.** The purposes for which the Corporation is formed and the powers which may be exercised by the Corporation, in addition to the general purpose and powers conferred by law, are those set forth in its Certificate of Incorporation, to wit:

to plan, construct, erect, build, acquire, alter, reconstruct, rehabilitate, own, maintain and operate a nursing home project pursuant to the Public Health Law and an adult care facility pursuant to the Social Services Law

**Section 3.02. Exempt Purposes.** The purposes of the Corporation are limited exclusively to charitable, educational or scientific purposes within the meaning of Section 501 (c)(3) of the Internal Revenue Code of 1986, as amended (or the corresponding provision of any future United States Internal Revenue Service law.

1. No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, any private shareholder or individual, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth herein.
2. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in or intervene in, including the publishing or distribution of statements, any political campaign on behalf of any candidate for public office, except as authorized under the Internal revenue Code.

**Section 3.03. Provisions Relating to Tax Exemption.** Notwithstanding any other provisions of the Bylaws, the Corporation shall not carry on any other activities not permitted to be carried on (i) by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (or the corresponding provision of any future United States Internal Revenue Law) or (b) by a corporation, contributions to which are

deductible under Section 170(c)(2) of the Internal Revenue Code of 1986, as amended (or the corresponding provisions of any future United States Internal Revenue Code Law).

**Section 3.04. Dissolution.** In the event of the dissolution of the Corporation, the Board shall after paying or making provision for the payment of all liabilities of the Corporation, transfer all of its assets to the Member. If the Member is not then in existence, all the assets of the Corporation shall be disposed of by the Board in a manner consistent with the purposes for which the Corporation was established. At no time shall any of the assets of the Corporation upon dissolution be distributed to any organization which is not organized and operated exclusively for charitable, educational or scientific purposes and qualified as an exempt organization under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

#### **ARTICLE IV MEMBER**

**Section 4.01. Member.** The Corporation is a membership corporation. The sole member of the Corporation is Inter-Lakes Health, Inc., a New York Not-For-Profit corporation (hereinafter referred to as the "Member") which shall be entitled to all the rights and powers of a member under New York law and under the Certificate of Incorporation and Bylaws of this Corporation.

**Section 4.02. Annual Meeting.** The Annual Meeting of the Member of the Corporation shall be held in May of each year. The Board of Directors of the Corporation shall designate by resolution the specific time, date and place of such Annual Meeting. The Annual Meeting shall be for the purpose of electing directors and transacting such other business as may properly come before the meeting.

**Section 4.03. Special Meetings.** Special Meetings of the Member of the Corporation may be called at any time by the Chairperson of the Corporation upon written request of the Member. Such request shall state the purpose of the requested meeting.

**Section 4.04. Place of Meetings.** All meetings, either annual or special, may be held either within or without the State of New York in such place as is chosen by the Board of Directors of the Corporation; provided, however, that in the absence of designation of a place for the meeting by the Board of Directors, the President or Secretary may fix a place for such meeting.

**Section 4.05. Notice of Meetings.** Notice of the date, time and place of all meetings shall be given in writing by the Secretary or any other officer designated to give notice by the Board of Directors not less than 20 days before the date of the meeting to the Member. The notice to the Member shall be hand delivered or mailed to the Member by certified mail, return receipt requested.

**Section 4.06. Waiver of Notice.** Notice of any meeting of the Member may be waived in writing by the Member by filing a written waiver with the Secretary of the Corporation, either before or after the meeting. Any waiver of notice need not specify the purpose of the meeting. Presence of the Member at any meeting shall constitute waiver of notice



of the meeting unless the Member attends the meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called or convened.

**Section 4.07. Written Consent.** Any action required or permitted to be taken by the Member of the Corporation may be taken without a meeting, without prior notice and without vote, if, before or after the action, the Member consents thereto in writing.

**Section 4.08. Actions Requiring Member Approval.** Anything herein to the contrary notwithstanding, the following actions of the Corporation shall become effective only upon written approval of the Member:

1. To approve, interpret and change the statement of mission and philosophy adopted by the Corporation and to require that the Corporation operate in conformance with its mission and philosophy;
2. To elect and remove, with or without cause, the Chief Executive Officer of the Corporation;
3. To approve and amend the Bylaws and Certificate of Incorporation of the Corporation.
4. To approve any plan of merger, consolidation, dissolution or reorganization of the Corporation or any sale, lease or other disposition of all or substantially all of its assets
5. To appoint, fix the number of, and remove, with or without cause, the directors of the Corporation;
6. To approve the debt of the Corporation, in excess of an amount to be fixed from time to time by the Member, except for debt necessary to finance the cost of compliance with operational or physical plant standards required by law;
7. To approve the sale, acquisition, lease, transfer, mortgage, pledge or other alienation of real or personal property of the Corporation in excess of an amount to be fixed from time to time by the Member;
8. To approve the capital and operating budgets of the Corporation to ensure that such budgets conform to the mission and philosophy of the Corporation;
9. To approve settlements of litigation when such settlements exceed applicable insurance coverage or the amount of any applicable self-insurance fund;
10. To approve any corporate reorganization of the Corporation and the development or dissolution of any subsidiary organizations of the Corporation;
11. To approve the strategic plan of the Corporation, provided that such right of approval shall not permit the Member to exercise any of the governance authority under applicable regulations unless the Member has received establishment approval from the Public Health and Health Planning Council.

12. to approve any application to the New York State Department of Health by the Corporation for a Certificate of Need;
13. to approve any final settlement by the Corporation related to Medicaid or any other payor audits; and
14. to approve any rate appeals to be initiated by the Corporation.

## ARTICLE V GOVERNING AUTHORITY

**Section 5.01. Board of Directors.** The property, affairs, business and concerns shall be managed by the Board of Directors of the Corporation in a manner consistent with the applicable statutes and regulations of the State of New York and the purposes and powers set forth in the Certificate of Incorporation and these Bylaws. Such duties shall include, but not be limited to, responsibility for the Corporation's organization, operation and quality of patient care, the preparation of such written policies and procedures as may be required; compliance with federal, state and local laws; monitoring, supervising and reviewing the performance of the Corporation's Chief Executive Officer; maintenance of a properly equipped and staffed facility and physical plant; preparing, reviewing and implementing the Nursing Home's institutional and strategic plan; protecting the Nursing Home's assets and insuring the financial viability of the Nursing Home; preparing and approving budgets for the allocation of corporate resources in a manner consistent with the Nursing Home's statement of mission and philosophy; appointing the members of the Medical Staff and approving the appointment of the Medical Director; and operating the Nursing Home in accordance with its mission and philosophy. No assignment, referral or delegation of authority by the Board shall relieve the Board of any of its responsibilities nor limit any of the Board's power.

**Section 5.02. Conflict of Interest.** The Board of Directors shall adopt a Conflict of Interest policy addressing possible conflicts between the interests of the Corporation, and/or any of its subsidiaries, and the interests of any person who is in the position to manage or to influence the management of the Corporation, and/or any of its Subsidiaries (hereinafter "Influential Person"). Influential Persons shall include all directors and officers of the Corporation or any of its Subsidiaries, members of a committee of the Board, and highly compensated employees of the Corporation (as defined in the Conflict of Interest policy). The conflict of interest policy adopted by the Board shall be included in the minutes of the proceeding of the Board.

**Section 5.03. Number.** The Board of Directors shall consist of such number of members, not less than 9 nor more than 13, as is designated from time to time by the Board of Directors which includes the President, or other elected representative, of the Medical staff of the Corporation.

**Section 5.04. Qualifications.** To facilitate an affiliation among the Corporation, Moses-Ludington Hospital, and Inter-Lakes Health, Inc. (hereinafter referred to as the "ML Corporations"), the ML Corporations have agreed that the boards of each such corporation shall

be composed of the same members. As such, each member of the Corporation's Board shall be a member of the Board of Directors of Moses-Ludington Hospital and a member of the Board of Directors of Inter-Lakes Health, Inc. (hereinafter "ILH"). If any member of the Corporation's Board ceases to be a member of the Board of Directors of Moses-Ludington Hospital or a member of the Board of Directors of ILH, his/her seat on the Corporation's Board shall be deemed vacant.

Candidates for the Board of Directors shall: (i) demonstrate basic qualities of honesty, integrity, justice, good judgment and sound moral character; (ii) be committed to uphold the mission, philosophy and general policies of the Corporation, as stated in its Certificate of Incorporation, as amended from time to time, and in these Bylaws; (iii) have the willingness and ability to devote necessary time to board activities; (iv) have particular expertise or experience deemed necessary or desirable by the Board; (v) be able to apply experience and expertise to Board decisions objectively and realistically; (vi) recognize and protect the confidential nature of the information discussed at Board meetings; and (vii) be able to fulfill the statement of responsibilities of individual board members as may be adopted by the Corporation.

**Section 5.05. Classification of Directors.** The Directors of the Corporation shall be elected at the Annual Meeting of Members for three (3) year terms.

At each Annual Meeting of Members, the successors to the class of Directors whose term shall then expire shall be elected to hold office until the third succeeding Annual Meeting and until their successors are elected and qualify.

**Section 5.06. Term of Office.** Directors shall serve regular terms of three (3) years and until their successors have been appointed. Directors may be appointed for successive terms, but in no event more than three consecutive three-year terms. Any director appointed to three consecutive three-year terms on the Board is ineligible for appointment to the Board for a period of one (1) year following the expiration of the third three-year term.

**Section 5.07. Resignation.** Any Director of the Corporation may resign at any time by giving his or her resignation in writing to the Chairperson of the Board or the Secretary, which resignation shall specify its effective date. A resignation shall take effect at the time specified therein, and unless otherwise specified therein, the acceptance of a resignation shall not be necessary to make it effective.

**Section 5.08. Removal of a Director.** Any Director may be removed from the Board at any time for any reason, or for no reason, with or without cause, by the affirmative vote of at least three-fourths (3/4) of the directors then in office.

**Section 5.09. Vacancies.** Vacancies among the Directors may be filled by the Board of Directors. A Director appointed to fill a vacancy shall serve the remainder of the term of the director being replaced and until his or her successor is appointed.

**Section 5.10. Compensation.** The directors shall not receive any compensation for their services as Directors, but they may be reimbursed for any reasonable expenses incurred on behalf of the Corporation. A Director may, however, serve the Corporation in another capacity and may receive compensation therefore.

## ARTICLE VI MEETINGS OF THE BOARD

**Section 6.01. Regular Meetings.** Regular meetings of the Board of Directors shall be held at least monthly and at such times and places as may be determined by the Board.

**Section 6.02. Annual Meeting.** The Annual Meeting of the Board of Directors of the Corporation shall be held in May of each year. The Board of Directors shall designate by resolution the specific time, date and place for the Annual Meeting. At such meeting, the Corporation may transact any business as may be necessary and proper.

**Section 6.03. Special Meetings.** Special meetings of the Board of Directors shall be held at such time and at such places within or without the State of New York as the Board of Directors may determine. Special meetings may be called by the Member, the Chairperson of the Board or by a majority of the directors.

**Section 6.04. Notice of Meetings of Board of Directors.** Notice of the time and place of each meeting of the Board of Directors shall be given by the Chairperson of the Board or the Secretary, or by the members of the Board calling the same, to each member of the Board not less than seven (7) days before the meeting by mailing the notice, postage prepaid, addressed to each member of the Board at his residence or usual place of business, or not less than three (3) days before the meeting by delivering the notice to each member of the Board personally, or by telephone. No notice of any meeting of directors need be given to, and no waiver of such notice need be given by, a director who attends a meeting without protesting the failure to give him notice of such meeting prior to or at the commencement of the meeting. The meeting shall be duly called and held if notice is given to, or is waived by, all absent directors.

**Section 6.05. Quorum and Voting.** At all meetings of the Board of Directors, except where otherwise provided by law or these Bylaws a quorum must be present to take action. A majority of the entire membership of the Board shall constitute a quorum. The affirmative vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board unless the act of a greater number of voting directors is required by the Certificate of Incorporation, these Bylaws, or applicable law. No director of the Corporation may act by proxy on any matter. A majority of the directors present at any meeting, although less than a quorum, may adjourn the meeting to another time and place, without notice other than announcement at the meeting.

**Section 6.06. Absences.** It is understood that each member of the Board is expected to attend every meeting of the Board. Should any member of the Board be absent from three consecutive meetings of the Board without previously in each case notifying the Chairperson of the Board (or such Chairperson's designee for such purpose) stating the reason for the absence, or should such member's excuse not be acceptable by the Chairperson, such member's seat on the board shall be deemed vacant and the Chairperson of the Board shall notify such member thereof. Special meetings shall be restricted to the purpose for which the meeting was called.

**Section 6.07. Annual Report.** The Board of Directors shall keep an accurate record of all of the transactions of the Corporation, a report of which, prepared in accordance with the

provisions of the Not-for-Profit Corporation Law, shall be presented in writing to the Member at each annual meeting of the Member executed by the Chairperson of the Board and Treasurer. The report shall be filed in the Corporation's records and a copy of the report shall be entered in the minutes of the proceedings of the Annual Meeting of the Member.

**Section 6.08. Action without Meeting.** Any action which the Board or a committee thereof is required or permitted to take may be taken without a meeting if all members of the Board or the committee consent in writing to the adoption of a resolution authorizing the action or subsequently confirm the action by resolution. The consent may be executed in one or more counterparts, all of which together will constitute one unanimous consent of the Board or the committee as the case may be. The authorizing resolutions and written consents, and/or the confirming resolutions, as the case may be, shall be filed with the minutes of the proceedings of the Board or the committee.

**Section 6.09. Use of Conference Telephone.** One or more of the members of the Board or any committee of the Board may participate in a meeting of the Board or of such committee by means of a conference telephone or similar communications equipment, allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

## ARTICLE VII OFFICERS OF THE CORPORATION

**Section 7.01. Officers.** The officers of the Corporation shall consist of a Chairperson, Vice Chairperson, Secretary and Treasurer. No person may hold the offices of Chairperson and Secretary simultaneously. The Board of Directors may elect such other officers as it may, from time to time, deem desirable, including, but without limiting the generality thereof, Assistant Secretaries and Assistant Treasurers. In the event of any such offices being created and officers being elected thereto they shall have such duties and responsibilities as the Board or the Chairperson may, from time to time, prescribe or as are normally attendant upon such offices.

**Section 7.02. Election of Officers.** The Chairperson, the Vice Chairperson, the Secretary, the Treasurer, and any other officers created by the Board shall be elected annually by the Board of Directors to serve during the ensuing year.

**Section 7.03. Vacancies.** Vacancies in any office elected by the Member may be filled by the Member and vacancies in any office elected by the Board may be filled by the Board. The person selected shall serve the unexpired term of the vacancy.

**Section 7.04. Term of Office.** The Vice Chairperson of the Board, the Secretary and the Treasurer shall be elected for one-year terms. Immediately after their election, those elected shall assume their responsibilities of their offices.

**Section 7.05. Removal of Officers.** The Chairperson or the CEO may be removed at any time with or without cause by the Member. All officers elected by the Board may be removed at any time with or without cause by the affirmative vote of a majority of the Board of Directors.

**Section 7.06. The Chairperson of the Board.** The Chairperson of the Board of Directors shall preside at all meetings of the Board of Directors. The Chairperson shall have the general powers and duties of supervision of the Corporation which usually pertain to his/her office, including but not limited to:

1. Being knowledgeable of Board issues, management effectiveness, community affairs, health care industry trends, legislative matters, and relative to State and Federal standards;
2. Conducting well organized, timely and effective meetings insuring that Board members are provided with needed information prior to the meeting;
3. Insuring agendas and presentations are carefully tailored to facilitate responsible decision making;
4. Insuring development of the overall goals and effective strategic plans for the organization;
5. Insuring that the Board and its committees are staffed with appropriate talent and that decision-making channels are clear;
6. Serving as an ex-officio member of all committees, with a vote on all matters coming before the committee;
7. Facilitating a positive relationship with the Member;
8. Insuring that Board members receive on-going education;
9. Taking a leadership role on the Board in setting performance objectives and evaluating the President in collaboration with the Member; and
10. Assuring that issues relating to board members are dealt with in a timely fashion.

The Chairperson shall also perform all such other duties as are properly required by the Board of Directors or the Member.

**Section 7.07. The Vice Chairperson of the Board.** The Vice Chairperson, in the absence or incapacity of the Chairperson, shall perform the duties of the Chairperson. The Vice Chairperson shall also have such powers and perform such duties as usually pertain to the office or as are properly required by the Board.

**Section 7.08. The Secretary and Assistant Secretaries.** The Secretary shall issue notice of all meetings of corporate members and directors where notices of such meetings are required by law or these Bylaws. The Secretary shall attend all meetings of the Board and keep the minutes thereof. The Secretary shall affix the corporate seal to and sign such instruments as require the seal or the signature of the Secretary, and shall perform such other duties as usually pertain to the office or as are properly required of the Secretary by the Board.

The Assistant Secretaries, if any (or any officer of the Corporation), may, in the absence, disability or request of the Secretary, perform the duties and exercise the powers of the Secretary, and shall perform such other duties as the Board shall prescribe.

**Section 7.09. Treasurer and Assistant Treasurers.** The Treasurer shall be responsible for the care and custody of all moneys and securities of the Corporation. The Treasurer shall be responsible for the keeping of full and accurate accounts of all the moneys received by the Corporation and paid by the Corporation. The Treasurer shall deliver such reports, statements and instruments as may be required of the Treasurer by the Board of Directors or by the laws of the United States or of the State of New York, and shall perform such other duties as usually pertain to this office or as are properly required by the Board. However actual custody and maintenance of the Corporation's records shall be entrusted to competent employees who shall make available all financial reports and other relevant data on day-to-day operations.

**Section 7.10. The Chief Executive Officer.** The CEO shall be an employee of the Corporation, appointed by the Member, and shall perform all such duties as usually pertain to this office. The CEO shall have the necessary authority and be held responsible for the general administration of the Nursing Home in all of its activities and departments in accordance with such policies as may be adopted and such orders as may be issued by the Board of Directors or by any of its committees to which the Board has delegated power for such action. The CEO shall act as the duly authorized representative of the Board unless the Board has specifically designated some other person for that specific purpose.

The CEO shall have authority to execute contracts, negotiable instruments, instruments of conveyance, and other documents, when such authority shall not specifically have been reserved to the Board of Directors, a committee thereof or delegated by the Board or such committee to some other person or persons.

1. The CEO shall have, but shall not be limited to, the following authority and duties:
2. To serve as chief executive officer of the Corporation and to oversee the day to day operation and administration of the Corporation.
3. To be responsible for carrying out all policies established by the Board of Directors.
4. To attend all meetings of the Board of Directors and appropriate meetings of its committees.
5. To supervise all business affairs of the Corporation.
6. To ensure that all funds are collected and expended to the best possible advantage of the Corporation.
7. To submit regularly to the Board of Directors or its authorized committee periodic reports detailing the financial activities of the Corporation.
8. To prepare and submit such special reports as are required by the Board of Directors.

9. To prepare or cause to be prepared an annual budget for the Corporation showing the expected receipts and expenditures and make recommendations to the Board relating to the operation of the Corporation and long-range planning.
10. To prepare and submit to the Board of Directors for approval a plan of organization of the personnel and other concerns with the operation of the Corporation.
11. To develop and maintain personnel policies and practices for the Corporation.
12. To work with the Medical Staff and with all those concerned with the rendering of professional services to the end that the best possible care may be rendered to all residents.
13. To serve as the liaison for all official communications between the Board of Directors or any of its committees and the Medical Staff.
14. To represent the Corporation in local, regional, state and national organizations and their activities.
15. To develop and direct planned programs of community relations to gain acceptance and support of the Corporation by the community it serves.
16. To ensure that all physical properties are kept in a good state of repair and sound operating condition.
17. To maintain an adequate insurance program to conserve the assets of the Corporation.
18. To prepare and submit such business plans, budgets and reports to the Member.
19. To report to the Board at least annually or at such other times as the Board may direct.
20. To perform any other duty that may be necessary in the best interest of the Corporation.

**Section 7.11. Officers Holding Two or More Offices.** The offices of Treasurer and Secretary may be held by the same person, but no corporate officer shall execute or verify any instrument in more than one capacity if such instrument is required by law or otherwise to be executed or verified by two or more officers.

**Section 7.12. Compensation.** The officers of the Corporation other than the CEO shall not receive compensation for fulfilling their duties as officers but shall be reimbursed for any reasonable expenses which they may incur on behalf of the Corporation in the conduct of its affairs.

## ARTICLE VIII COMMITTEES OF THE BOARD

**Section 8.01. Executive Committee.** By resolution adopted by a majority of the entire Board of Directors authorizing the same, the Board may designate from among its



members an Executive Committee of at least four (4) directors, including the Chairperson, which committee, to the extent permitted by law and by the authorizing resolution, shall have all the authority of the Board of Directors in the interim between meetings of the Board except as to matters set forth in Section 712 (a) of the Not-For-Profit Corporation Law. The Executive Committee shall keep minutes of its meetings and shall present those minutes at the next Board Meeting. The ML Corporations have agreed that the Executive Committee of each ML Corporation shall be composed of the same individuals. As such, each member of the Corporation's Executive Committee shall be (i) a member of the Executive Committee of Moses-Ludington Hospital (hereinafter the "Hospital") and (ii) a member of the Executive Committee of ILH. If any member of the Corporation's Executive Committee ceases to be a member of the Executive Committee of the Hospital or a member of the Executive Committee of ILH, his/her seat on the Corporation's Executive Committee shall be deemed vacant.

**Section 8.02. Other Committees.** The Board of Directors may, by resolution adopted by a majority of the entire Board, create such other committees as it deems necessary. The Chairperson of the Board shall appoint the committee chairpersons and committee members who shall serve in this capacity until the next annual meeting of the Board of Directors of the Nursing Home. All members of Committees of the Board shall be members of the Board or employees of the Nursing Home, except that an Advisory Committee, if any is appointed, may have members who are not members of the Board or employees of the Nursing Home.

**Section 8.03. Record of Proceedings.** Minutes shall be kept of all committee meetings which shall reflect all business conducted at the meeting, including findings, conclusions and recommendations. Copies of the minutes shall be supplied to each member of the Committee and to all Board members.

## ARTICLE IX MEDICAL DIRECTOR

**Section 9.01. Medical Director.** The CEO shall appoint a Medical Director with the approval of the Board. The Medical Director for the Corporation, Moses-Ludington Hospital, and Inter-Lakes Health, Inc. shall be the same person. The Medical Director has direct responsibilities to the CEO. The Medical Director shall have the general responsibility for assuring the adequacy and appropriateness of medical care rendered to residents. The specific responsibilities and the description of the Medical Director shall be set forth in a written agreement between the Medical Director and the Corporation. Such specific duties shall include but not be limited to: assisting in developing procedures to provide for continuous physician coverage and the emergency treatment of residents in the case of medical emergencies, assisting in the development of resident transfer procedures, serving as a member of the medical staff and helping to assure the preparation, review, revision and adherence to the medical staff Bylaws, rules and regulations, reviewing and advising the Board as to the quality of medical care being rendered to residents by members of the medical staff, monitoring the health status of employees and advising the administration on employee health policies, reviewing and evaluation incident reports, identifying hazards to health and safety and developing written Bylaws, rules and regulations which are approved by the governing body and include delineation of the responsibilities of attending physicians.

**ARTICLE X  
MEDICAL STAFF BYLAWS**

**Section 10.01. Medical Staff Bylaws.** The Medical Staff shall submit Bylaws, Rules and Regulations for its organization and governance for the approval of the Board. Such Bylaws, Rules and Regulations shall among other things, direct and insure that only licensed practitioners with the appropriate clinical privileges are directly responsible for a resident's diagnosis and treatment; provide for the discharge of the Medical Staff's responsibilities to the Board; establish a hearing procedure for dealing with grievances related to Medical Staff appointments and the granting of clinical privileges and require the members of the Medical Staff to abide by all of the terms and conditions of the Bylaws, Rules and Regulations as a condition of their Staff membership. The Bylaws of the Medical Staff shall be reviewed and approved by the Board and may not be adopted or amended without the approval of the board and constitute the policy of the Corporation governing its relationship with its Medical Staff.

**ARTICLE XI  
INDEMNIFICATION**

**Section 11.01. Right of Indemnity.** The Corporation shall indemnify to the full extent authorized or permitted by law any person made, or threatened to be made, a party to any action or proceeding (whether civil or criminal or otherwise) by reason of the fact that such person, or the testator or intestate of such person, is or was a director or officer of the Corporation.

**Section 11.02. Determination of Right to Indemnification.** Upon the request of any person who may be entitled to indemnification under this Article, the Board of Directors shall act promptly to determine whether the director or officer has met the standard of conduct required for such indemnification and, if such standard has been met, to authorize indemnification under this Section. Such determination may be made, in the discretion of the Board of Directors, (i) by the Board of Directors by majority vote of a quorum consisting of directors are parties to such action, suit or proceeding were not directors of the Corporation or (ii) if such a quorum is not obtainable, or, even if attainable, if a quorum of disinterested directors so directs, by the Member. For purposes of this Article, determination of any civil or criminal action or proceeding by judgment, settlement, conviction or upon a plea of *nolo contendere* or its equivalent, shall not itself create a presumption that a new director or officer did not act in good faith for the purpose which he or she reasonably believed to be in the best interests of the Corporation.

**Section 11.03. Expenses.** Expenses (including reasonable attorney's fees) incurred in defending a civil or criminal action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an express undertaking in writing by on behalf of the director or officer to replace such amount if it shall ultimately be determined that he or she is not entitled to such amount or, where indemnification is granted, to the extent the expenses so advanced by the Corporation exceed the indemnification to which he or she is entitled; provided, however, that no indemnification shall be made if a determination is made in the manner provided in Section 11.02 of this Article that

indemnification is not proper on the circumstances because he or she is not met the applicable standard of conduct.

**Section 11.04. Indemnification with Respect to Internal Investigations.** The Corporation shall indemnify to the full extent authorized or permitted by law, any director or officer made the subject of an internal investigation by the Corporation, and each heir or successor of any thereof, against all reasonable costs and expenses, including attorney's charges actually and necessarily incurred as a result of such investigation, unless it is determined that such person did not act in good faith, for a purpose which he or she believed to be in the best interests of the Corporation. Any such determination as to good faith which would prevent indemnification under this Section 11.04 must be made by the Board of Directors acting by a quorum consisting of directors are not the subject of the same internal investigation as if such directors who are the subject of such internal investigation were not directors of the Corporation, or if such a quorum is not obtainable with to due diligence, by the Member. Any determination made by the Board of Directors that indemnification under this Section is not permitted by law must be made on the basis of an opinion in writing of independent legal counsel. In addition, any indemnification under this Section shall be conditioned upon receipt or an agreement in form satisfactory to the Corporation and its legal counsel obligating the indemnified person to repay upon demand all or so much of any amount paid pursuant to this Section as may be determined not to have been paid in accordance with applicable law.

**Section 11.05. Non-Exclusivity of this Article XI.** The indemnification provided by this Article XI shall continue as to a person who has ceased to be a director or officer of the Corporation and shall inure to the benefit of the heirs, executors, administrators or successors of such a person. The right of indemnification herein provided shall not be deemed exclusive of any other rights to which any such director, officer or other person may now or hereafter be otherwise entitled and specifically, without limiting the generality of the foregoing, shall not be deemed exclusive of any other rights, pursuant to statute or otherwise, of any such director, officer or other person in any such action or proceeding to have awarded are allowed in his or her favor, against the Corporation or otherwise, his or her costs and expenses incurred in connection therewith or any part thereof.

**Section 11.06. Insurance.** The Board of Directors may authorize the Corporation to purchase and maintain insurance, at its expense, to protect itself and its directors and officers against such liability, cost and expense to the extent permitted by law.

## **ARTICLE XII CLERGY**

**Section 12.01. Clergy.** The Corporation shall be nonsectarian in regard to religious administration. Clergy and layman of all denominations and faiths are welcome whether their visits are sought or volunteered. Their attention to residents and occupants, however, must be subject to the house rules and regulations.

**ARTICLE XIII  
MISCELLANEOUS**

**Section 13.01. Corporate Seal.** The Seal of the Corporation shall be circular in form and shall bear the present name and year of the original organization of the Corporation as more particularly shown in the following impression.

**Section 13.02. Fiscal Year.** The fiscal year of the Corporation shall be the calendar year.

**Section 13.03. Audit.** At the end of each fiscal year and at such other times as the Board of Directors may authorize, the Board shall cause to be performed an independent audit of the accounts of the Corporation.

**Section 13.04. Biennial Review.** An ad hoc committee of the Board shall review these Bylaws at least every two years for the purpose of determining and recommending to the Board any necessary or desirable revisions. The Bylaws shall be dated to indicate the time they were last reviewed.

**Section 13.05. Amendment or Repeal.** Subject to the provisions of Article V, amendment or repeal of the Bylaws shall be by affirmative vote of two-thirds (2/3) of all of the voting members of the Board. Notice shall be mailed to each member of the Board at least thirty days prior to a meeting to consider such amendment or repeal of the Bylaws. Such notice shall fully present the current Bylaws and the proposed amendments thereof.

# **Exhibit C**

SUPREME COURT  
STATE OF NEW YORK COUNTY OF ESSEX

In the Matter of the Application of

MOSES-LUDINGTON NURSING HOME COMPANY, INC., ORDER

In a Proceeding pursuant to Section 510 and 511 of Not-For-Profit Corporation Law for an Order Approving the Sale of All or Substantially all of Petitioner's Assets.

Index No.: CV18-0068  
RJN No. 15-1-2018-0033

Upon reading and filing of the Verified Petition (the "Petition") of Moses Ludington Nursing Home Company, Inc. ("Petitioner"), verified on February 9, 2018 by John R. Remillard, the President of Petitioner, requesting an Order pursuant to Sections 510 and 511 of the Not-For-Profit Corporation Law, approving the sale of all or substantially all of the assets of Petitioner as described in the Petition herein, in particular the sale of: (i) Petitioner's real property located at 1019 Wicker Street, Ticonderoga, New York, more particularly described as Tax Map No. 150.42-1-1.100) (the "Real Property"), including three connected buildings located thereon (together with the Real Property, the "Premises"), to Elizabethtown Community Hospital (the "ECH"); and (ii) certain assets utilized in the operation of Petitioner's skilled nursing and adult care facilities located on the Premises (the "Operating Assets") to Post Acute Partners Acquisition, LLC ("PAPA"), Petitioner will sell the Premises to ECH for the purchase price of \$7,200,000 (the "Premises Purchase Price") pursuant to the terms of a Real Property Purchase Agreement, included as an Exhibit to the Petition, and will sell the Operating Assets to PAPA for the purchase price of \$50,000 (the "Assets Purchase Price") pursuant to the terms of an Asset Purchase Agreement, included as an Exhibit to the Petition, in accordance with Sections 510 and 511 of the Not-for-Profit Corporation Law.

NOW, THEREFORE, it is hereby

ORDERED, that Petitioner is hereby authorized to sell all or substantially all of its assets, including the Operating Assets to ECH for the Premises Purchase Price, and the Premises, to

4852-4341-8972.1

*and upon the New York State Attorney General's Waiver of Notice and Consent to Order Approving Sale of Assets, sworn to on February 13, 2018.*

PAPA for the Assets Purchase Price, as more fully set forth in the respective sale agreements, included as Exhibits to the Petition, and as more fully described in the Petition; and it is further

ORDERED, that Petitioner will use proceeds from the sale of the Operating Assets and the Premises to pay expenses relating to transitioning the operation of the skilled nursing and adult care facilities to PAPA, and to pay Petitioner's outstanding mortgages, debts and liabilities and the costs of winding-up of the affairs of Petitioner in anticipation of dissolution; and it is further

ORDERED, that a signed copy of this Order will be provided to the Attorney General; and it is further

ORDERED, that the Attorney General's office will be notified when the transaction has been completed, abandoned or is still pending after ninety (90) days of the date of this Order.

Dated: March 12, 2018

ENTER: Jessica Spruiell, NY

Glen T. Bruening  
J.S.C.

GLEN T. BRUENING, AJSC

# **Exhibit**

# **D**



**RESOLUTIONS  
APPROVING DISSOLUTION  
OF  
MOSES-LUDINGTON NURSING HOME COMPANY, INC.**

The dissolution of Moses-Ludington Nursing Home Company, Inc. ("MLNHC") was approved at a meeting duly called and held on Nov. 16<sup>th</sup>, 2023:

- MLNHC is a New York not-for-profit corporation, whose sole member is Inter-Lakes Health, Inc. ("ILH"), another New York not-for profit corporation.
- The individuals who serve as directors of MLNHC also serve as directors of ILH. Therefore, these resolutions document approval of both the MLNHC Board of Directors as well as the ILH Board of Directors, as sole member of MLNHC.
- MLNHC operated an 84-bed skilled nursing home ("Nursing Home") and 23-bed adult home ("Adult Home"; together with the Nursing Home, the "Facilities") for many years and operated at a deficit.
- MLNHC sold its Facilities in 2018, which sale was approved by an Order of the Supreme Court entered in the Essex County Clerk's Office on March 12, 2018.
- MLNHC carried out the sale of its Facilities and proceeded to wind down its activities, including payment of all outstanding liabilities.
- MLNHC has no remaining assets or liabilities and is ready to proceed with dissolving.

Based on the foregoing, it is

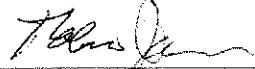
RESOLVED: that the MLNHC Board of Directors confirms that it is in the best interests of MLNHC to dissolve because it has sold the Facilities, paid all liabilities and has no remaining assets; and it is further

RESOLVED: that the MLNHC Board of Directors approves the dissolution of MLNHC and the ILH Board of Directors, as MLNHC's sole member, also approves MLNHC's dissolution; and it is further,

RESOLVED: that the dissolution must be approved by the New York State Department of Health and the New York State Attorney General; and it is further

RESOLVED: that the officers of MLNHC are hereby authorized and empowered to execute such documents, to make any necessary, non-material amendments to such documents and to do any and all acts necessary to effectuate the foregoing resolutions, including, but not limited to, filing a Certificate of Dissolution with New York State after all approvals are received.

I certify that the foregoing resolutions were adopted at a duly called and held meeting of the MLNHC on Nov. 16<sup>th</sup>, 2023.



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Name: Roland Allen  
Title: Chairperson

**Voting Information**

Total # of Directors:	<u>8</u>
# Directors Present:	<u>6</u>
# Approving Votes:	<u>6</u>
# Against Votes:	<u>0</u>
# Abstained Votes:	<u>0</u>



**Division of Corporations,  
State Records and  
Uniform Commercial Code**

New York State  
Department of State  
**DIVISION OF CORPORATIONS,  
STATE RECORDS AND  
UNIFORM COMMERCIAL CODE**  
One Commerce Plaza  
99 Washington Ave.  
Albany, NY 12231-0001  
www.dos.ny.gov

**CERTIFICATE OF DISSOLUTION  
OF  
MOSES-LUDINGTON NURSING HOME COMPANY, INC.**

*(Name of Corporation)*

Under Section 1003 of the Not-for-Profit Corporation Law

**FIRST:** The name of the corporation is:

Moses-Ludington Nursing Home Company, Inc.

If the name of the corporation has been changed, the name under which it was formed is:

**SECOND:** The certificate of incorporation was filed with the Department of State on:

May 4, 1973

**THIRD:** The name and address of each officer and director of the corporation is:

- Roland Allen, 101 Adirondack Drive, Ticonderoga, NY 12883
- Robert Dedrick, 101 Adirondack Drive, Ticonderoga, NY 12883
- Ross Kelley, 101 Adirondack Drive, Ticonderoga, NY 12883
- Chattie Van Wert, 101 Adirondack Drive, Ticonderoga, NY 12883
- Matthew Nolan, 101 Adirondack Drive, Ticonderoga, NY 12883
- Alan Chardavoine, 101 Adirondack Drive, Ticonderoga, NY 12883
- Dr. Glen Chapman, 101 Adirondack Drive, Ticonderoga, NY 12883
- Michael Diskin, 101 Adirondack Drive, Ticonderoga, NY 12883
- Walter Lender, 101 Adirondack Drive, Ticonderoga, NY 12883
- David Shelmidine, 101 Adirondack Drive, Ticonderoga, NY 12883

**FOURTH:** The corporation is a: *(check the appropriate box)*

- charitable corporation
- non-charitable corporation.

**FIFTH:** At the time of authorization of the corporation's Plan of Dissolution and Distribution of Assets as provided in Not-for-Profit Corporation Law §1002, the corporation holds:

*(Check the appropriate statement)*

- assets which are legally required to be used for a particular purpose.
- no assets which are legally required to be used for a particular purpose.

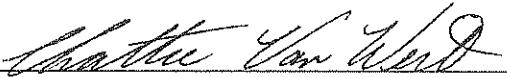
**SIXTH:** The corporation elects to dissolve.

**SEVENTH:** *(Check the appropriate statement)* The dissolution was authorized by:

- a vote of a majority of the board of directors. The corporation has no members.
- the majority vote of the board of directors, followed by two-thirds vote of the members.

**EIGHTH:** *(Check the appropriate statement)*

- Prior to the delivery of the Certificate of Dissolution to the Department of State for filing the Plan of Dissolution and Distribution of Assets was approved by the Attorney General. A copy of the approval of the Attorney General is attached.
- Prior to the delivery of the Certificate of Dissolution to the Department of State for filing the Plan of Dissolution and Distribution of Assets was approved by a Justice of the Supreme Court. A copy of the Court's Order is attached.
- The corporation is a charitable corporation with no assets. Prior to the delivery of the Certificate of Dissolution to the Department of State for filing a copy of the Plan of Dissolution which contains the statement prescribed by paragraph (b) of Section 1001 of the Not-for-Profit Corporation Law, has been duly filed with the Attorney General.
- The corporation is a non-charitable corporation with no assets. The corporation's Plan of Dissolution is not required to contain the statement prescribed by paragraph (b) of Section 1001 of the Not-for-Profit Corporation Law and is not required to be filed with Attorney General.

X   
(Signature)

Chattie Van Wert

(Print or Type Name of Signer)

Secretary

(Capacity of Signer)

**CERTIFICATE OF DISSOLUTION  
OF  
MOSES-LUDINGTON NURSING HOME COMPANY, INC.**

---

*(Name of Corporation)*

Under Section 1003 of the Not-for-Profit Corporation Law

Filer's Name: Laura N. Quant, Paralegal

Company, if applicable: Nixon Peabody LLP

Address: 1300 Clinton Square

City, State and Zip Code: Rochester, NY 14604

**NOTES:**

1. The name of the corporation and its date of incorporation provided on this certificate must exactly match the records of the Department of State. This information should be verified on the Department of State's website at [www.dos.ny.gov](http://www.dos.ny.gov).
2. This Certificate of Dissolution must be signed by an officer, director or duly authorized person.
3. Attach the consent of the New York State Department of Taxation and Finance.
4. Attach the consent of the New York City Department of Finance, if required.
5. Attach a copy of the approval of the Attorney General or Order of the Supreme Court, if required.
6. The Certificate of Dissolution must include the approval of the Attorney General if the corporation is a charitable corporation or if the corporation is a non-charitable corporation and holds assets at the time of dissolution legally required to be used for a particular purpose.
7. Attach any other consent or approval required by law.
8. The fee for filing this certificate is \$30, made payable to the Department of State.

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*For DOS Use Only*

## MEMORANDUM

**To:** Michael Stelluti  
Division of Health Facility Planning and Development  
  
Colleen Leonard, Executive Secretary  
Public Health and Health Planning Council

**From:** Vincent DiCocco, Senior Attorney  
Bureau of Program Counsel  
Division of Legal Affairs

**Date:** May 20, 2024

**Subject:** First Chinese Presbyterian Community Affairs Home Attendant Corp. - Amended and Restated Certificate of Incorporation

---

Please include this matter on the next Establishment and Project Review Public Health and Health Planning Council agenda.

The attachments relating to the matter include the following:

- 1) A Memorandum to the Public Health and Health Planning Council (PHHPC) from Kathy Marks, Department of Health General Counsel;
- 2) A December 13, 2022 e-mail to the PHHPC from Andy Gong, representing First Chinese Presbyterian Community Affairs Home Attendant Corp. requesting approval of the proposed Amended and Restated Certificate of Incorporation;
- 3) A copy of the Certificate of Incorporation of First Chinese Presbyterian Community Affairs Home Attendant Corp. dated December 3, 1979;
- 4) A copy of the Bylaws of First Chinese Presbyterian Community Affairs Home Attendant Corp.;
- 5) A copy of the December 4, 2022 resolution of the members of First Chinese Presbyterian Community Affairs Home Attendant Corp. approving the Amended and Restated Certificate of Incorporation; and
- 6) A copy of the proposed Amended and Restated Certificate of Incorporation of First Chinese Presbyterian Community Affairs Home Attendant Corp.

Attachments.

cc: J. Corvino

## MEMORANDUM

**To:** Public Health and Health Planning Council

**From:** Kathy Marks, General Counsel *KSM*

**Date:** May 20, 2024

**Subject:** First Chinese Presbyterian Community Affairs Home Attendant Corp. - Amended and Restated Certificate of Incorporation

---

First Chinese Presbyterian Community Affairs Home Attendant Corp. ('The Corporation' or 'FCP') requests Public Health and Health Planning Council ('PHHPC') approval of its proposed amendment and restatement of its Certificate of Incorporation.

The Corporation is a New York not-for-profit corporation incorporated on December 3, 1979. Its stated purpose is "[t]o provide personal care services to individuals designated exclusively by the New York State Department of Social Services as a result of said individuals being classified as qualifying for the receipt of services under the Social Security Act.... Persons classified as elderly, blind or disabled..."

FCP is requesting to amend its corporate purpose to include a broader range of social services offered to the population it serves, by providing "...social service programs (including personal care assistance, food assistance and education programs) to elderly people and people with disabilities of limited financial means in New York." The amendment was approved by vote at the Corporation's annual meeting of the Members on December 4, 2022, with a quorum present.

Attached is an e-mail dated December 13, 2022, from Andy Gong from Lowenstein Sandler, LLP representing FCP, requesting PHHPC approval of an amendment of the corporate purpose in the Certificate of Incorporation, and the reasons behind the proposed amendment. Also attached are the corporate documents of FCP, the vote of the members dated December 4, 2022 approving the amendment, as well as the proposed Amendment and Restatement of the Certificate of Incorporation.

There is no legal objection to the change in corporate purposes in the Certificate of Amendment of the Certificate of Incorporation of First Chinese Presbyterian Community Affairs Home Attendant Corp.

Attachments

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**From:** Gong, Andy <[AGong@lowenstein.com](mailto:AGong@lowenstein.com)>  
**Sent:** Tuesday, December 13, 2022 3:03 PM  
**To:** doh.sm.PHHPC <[p hhpc@health.ny.gov](mailto:p hhpc@health.ny.gov)>  
**Cc:** Repka, Kelsey <[KRepka@lowenstein.com](mailto:KRepka@lowenstein.com)>; Holder, Christina <[CHolder@lowenstein.com](mailto:CHolder@lowenstein.com)>  
**Subject:** Question re: DOH Approval for Restated Certificate of Incorporation

You don't often get email from [agong@lowenstein.com](mailto:agong@lowenstein.com). [Learn why this is important](#)

*ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.*

Hello,

We are representing the First Chinese Presbyterian Community Affairs Home Attendant Corp., an NY nonprofit corporation, on a pro bono basis. Our client's members recently approved a restated certificate of incorporation ("COI") to amend the COI purposes clause to include a broader range of social services. We don't think that DOH approved the COI when it was initially filed in the 1970s, but the client is a DOH licensed provider of personal care services now. Could you please confirm whether this change requires DOH approval?

I was unable to reach your office at the number (518) 402-0964, but would be happy to hop on a call to discuss. Please let us know (and please point us in the right direction if this is the wrong office to reach out to).

Thanks,  
Andy

**Andy Gong**  
Associate  
Lowenstein Sandler LLP

T: [\(212\) 419-6015](tel:(212)419-6015)



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CI

**STATE OF NEW YORK**

**DEPARTMENT OF STATE**

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the  
Department of State, at the City of Albany, on  
August 30, 2019.



*Brendan C. Hughes*

Brendan C. Hughes  
Executive Deputy Secretary of State

— 10  
A627638

(1)

CERTIFICATE OF INCORPORATION  
OF  
THE FIRST CHINESE PRESBYTERIAN  
COMMUNITY AFFAIRS HOME ATTENDANT CORP.

435317

*Obtained*

*4/1/81*

STATE OF NEW YORK  
DEPARTMENT OF STATE

PAID DEC 13 1979

AMT OF CHECK \$ 5.20  
FILING FEE \$ 3.00  
TAX \$ \_\_\_\_\_  
COPY \$ \_\_\_\_\_  
CERT \$ \_\_\_\_\_  
REFUND \$ \_\_\_\_\_

EXR

*PNY*  
*Type B*

H. SPENCER KUPPERMAN  
ATTORNEY AT LAW  
166 MONTAGUE STREET  
BROOKLYN, N. Y. 11201  
(212) 697-4211

CERTIFICATE OF INCORPORATION  
OF  
THE FIRST CHINESE PRESBYTERIAN  
COMMUNITY AFFAIRS HOME ATTENDANT CORP.  
UNDER SECTION 402 OF THE NOT-FOR-PROFIT CORPORATION LAW

I, THE UNDERSIGNED, am of the age of nineteen years or over, for the purpose of forming a corporation pursuant to Section 402 of the Not-for-Profit Corporation Law of New York, do hereby certify:

FIRST: The name of the corporation is THE FIRST CHINESE PRESBYTERIAN COMMUNITY AFFAIRS HOME ATTENDANT CORP. \*

SECOND: That the corporation is a corporation as defined in subparagraph (a)(5) of Section 102.

THIRD: The purposes for which the corporation is formed and the objects to be carried on and promoted by it, are as follows:

(a) To provide personal care services as mandated by Title XIX of the Social Security Act.

(b) To provide personal care services to individuals designated exclusively by the New York State Department of Social Services as a result of said individuals being classified as qualifying for the receipt of services under

A627638

the Social Security Act.

The individuals so designated by the Department of Social Services are persons classified as elderly, blind and/or disabled. The recipients of the services provided by the company receive the personal care services administered by trained employees of the company without fee or charges. The type of services provided is paid entirely by New York City, New York State and the United States Government.

Were it not for this type of service, the general public would have to incur great costs resulting from recipients of this program having to be hospitalized as opposed to being cared for in their own homes.

Besides providing the administration of this service at the lowest possible cost to the City of New York, the company directly assists the public by using funds it receives from the New York City Department of Social Services to employ individuals who would otherwise be on the welfare rolls or unemployed. The employment and personal care service training provided by the company allows people to join the ranks of the gainfully employed.

(c) In general, to do any and all things necessary or proper in connection with or incidental to the aforesaid purposes and to exercise any and all powers in connection therewith which may now or hereafter be lawful for the corporation to do and exercise under and in pursuance of the Not-for-Profit Corporation Law of the State of New York or

any law or laws of the State of New York or the United States of America that may be now or hereafter applicable to the corporation, provided the same shall not be inconsistent with the provisions of this certificate and further provided that no work shall be done and no institution shall be operated by this corporation for profit but solely for the purposes hereinbefore set forth and further provided that no part of the net earnings of this corporation shall inure to the benefit of any member thereof, and further provided that this corporation shall not disseminate or carry on propaganda or engage in any activity or activities for the purpose of influencing or attempting to influence any legislation.

(d) To apply for, obtain and contract with any Federal, State or City governmental agency in the implementation of providing services as a home attendant vendor.

(e) To engage in any kind of activity, and to enter into, perform, and carry out contracts of any kind, necessary or in connection with, or incidental to the accomplishment of any one or more of the non-profit purposes of the corporation.

(f) To do any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof, but not for the pecuniary profit or financial gain of its members, directors or officers, except as permitted under Article 5 of the Not-for-Profit Corporation Law.

(g) No part of the income of the corporation shall

IF HAC  
Closes -  
where does  
money go?

inure to the benefit of any member, trustee, director, officer of the corporation, or any private individual (except that reasonable compensation may be paid for services rendered to or for the corporation affecting one or more of its purposes), and no member, trustee, officer of the corporation, or any private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the corporation.

(h) No part of the activities of the corporation shall be carrying on propaganda, or otherwise attempting to influence legislation, or participating in, or intervening in (including the publication or distribution of statements), any political campaign on behalf of any candidate for public office.

(i) In the event of dissolution, all of the remaining assets and property of the corporation shall, after necessary expenses thereof, be distributed to such organizations as shall qualify under Section 501 (c)(3) of the Internal Revenue Code of 1954, as amended, subject to an order of a Justice of the Supreme Court of the State of New York.

(j) The corporation shall distribute its income for each taxable year at such time and in such manner as not to subject it to tax under Section 4942 of the Internal Revenue Code of 1954, as amended; and the corporation shall not (a) engage in any act of self-dealing as defined in Section

4941[d] of the Code; (b) retain any excess business holdings as defined in Section 4943[c] of the Code; (c) make any investments in such manner as to subject the corporation to tax under Section 4944 of the Code; or (d) make any taxable expenditures as defined in Section 4945[d] of the Code.

(k) The corporation shall not engage in any transaction described or defined as a "prohibited transaction" by Section 503 (c) of the Internal Revenue Code of 1954 (26 U.S.C.A. §503(c)), as the same may be amended from time to time; nor shall the income of the corporation be unreasonably accumulated or invested in such a manner as to jeopardize the carrying out of the purpose of the corporation within the intentment of Section 504 (a) of the Internal Revenue Code of 1954 (26 U.S.C.A. §504[a]), as the same may be amended from time to time.

(l) Notwithstanding any other provision of these articles, the corporation is organized exclusively for charitable, educational, religious, and scientific purposes as specified in Section 501 (c)(3) of the Internal Revenue Code of 1954 and shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal income tax under Section 501 (c)(3) of the Internal Revenue Code of 1954.

**FOURTH:** The type of corporation it shall be under Section 201 of its Not-for-Profit Corporation Law is Type B.

FIFTH: In furtherance of its corporate purposes, the corporation shall have all general powers enumerated in Section 202 N-PCL, together with the power to solicit grants and contributions for corporate purposes.

SIXTH: The office of the corporation is to be located in the City of New York, County of New York, State of New York.

SEVENTH: The territory in which the operations of the corporation will principally be conducted is New York County.

EIGHTH: The names and addresses of the persons constituting the initial Board of Directors of the corporation are:

WINNIE YOUNG	41-17 97th Place Corona, New York
JENNIFER CHENG	1016 E. 102nd Street Brooklyn, New York
KWOK KIT WU	105-24 63rd Avenue Forest Hills, New York
HO YIN TSUI	35 Montgomery Street Apt. 3E New York, New York
WYMAN WUN	20-22 150th Street Whitestone, New York
PHILLIP LAW	100-22 Avenue L Brooklyn, New York

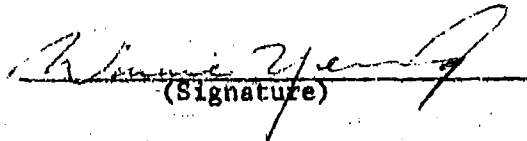


NINTH: The post office address to which the Secretary of State shall mail a copy of any notice required by law is: 61 Henry Street, New York, New York 10002.

TENTH: The name and address of the registered agent which is to be the agent of the corporation upon whom process against it may be served, is H. SPENCER KUPPERMAN, 166 Montague Street, Brooklyn, New York 11201.

ELEVENTH: That all approvals or consents required by the Not-for-Profit Corporation Law or any other statute are endorsed upon or attached to this Certificate of Incorporation.

IN WITNESS WHEREOF, I have made and signed this certificate this 3rd day of December A.D. 1979 and I affirm the statements contained therein are true under penalties of perjury.

  
(Signature)

WINNIE YOUNG  
(Name of Incorporator)

41-17 97th Place  
Corona, New York 11368  
(Address)

APPROVAL OF CERTIFICATE OF INCORPORATION

BY

SUPREME COURT JUSTICE

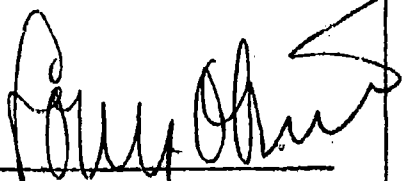
I, **LOUIS OKIN**, a Justice of the  
Supreme Court of the State of New York, *FIRST* Judicial  
District, do hereby approve the foregoing Certificate of  
Incorporation of **THE FIRST CHINESE PRESBYTERIAN  
COMMUNITY AFFAIRS HOME ASSOCIATION CORP.**  
and consent that the same be filed.

DATED: **DEC 6 - 1979**

Supreme Court, New York County

Special Term, Part 2

New York, New York

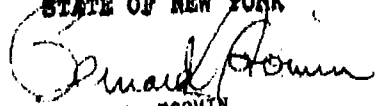


Justice of the Supreme Court  
*FIRST* Judicial District  
**LOUIS OKIN**

*December 5, 1979*

**THE UNDERSIGNED HAS NO  
OBJECTION TO THE GRANTING  
OF JUDICIAL APPROVAL  
HEREON AND WAIVES  
STATUTORY NOTICE**

**ROBERT ABRAMS  
ATTORNEY GENERAL  
STATE OF NEW YORK**



**BERNARD TOOMIN  
Assistant Attorney General**



RESOLUTION OF THE  
BOARD OF DIRECTORS OF  
THE FIRST CHINESE PRESBYTERIAN CHURCH  
COMMUNITY AFFAIRS CORP.

The following is a true copy of a resolution duly adopted by the Board of Directors of THE FIRST CHINESE PRESBYTERIAN CHURCH COMMUNITY AFFAIRS CORP. at a meeting of the said Board at 61 Henry Street, New York, N.Y. on December 3, 1979.

WHEREAS, there has been proposed the formation of a corporation pursuant to the laws of the State of New York under the name of THE FIRST CHINESE PRESBYTERIAN COMMUNITY AFFAIRS HOME ATTENDANT CORP. and the Secretary of State has requested the expression of an opinion of this Board concerning the similarity of the proposed name to that of this corporation.

NOW THEREFORE, be it resolved that in the opinion of this Board, the above-mentioned proposed name does not so nearly resemble that of this corporation as to tend to confuse or deceive and it consents to the use of such name.

  
WINNIE YOUNG  
Chairman of the Board

RESOLUTION OF THE  
BOARD OF DIRECTORS OF  
THE FIRST CHINESE PRESBYTERIAN CHURCH  
COMMUNITY AFFAIRS CORP.

The following is a true copy of a resolution duly adopted by the Board of Directors of THE FIRST CHINESE PRESBYTERIAN CHURCH COMMUNITY AFFAIRS CORP. at a meeting of the said Board at 67 Henry Street, New York, N.Y. on December 3, 1979.

WHEREAS, there has been proposed the formation of a corporation pursuant to the laws of the State of New York under the name of THE FIRST CHINESE PRESBYTERIAN COMMUNITY AFFAIRS HOME ATTENDANT CORP. and the Secretary of State has requested the expression of an opinion of this Board concerning the similarity of the proposed name to that of this corporation.

NOW THEREFORE, be it resolved that in the opinion of this Board, the above-mentioned proposed name does not so nearly resemble that of this corporation as to tend to confuse or deceive and it consents to the use of such name.

  
WINNIE YOUNG  
Chairman of the Board

9

BYLAWS  
OF  
THE FIRST CHINESE PRESBYTERIAN COMMUNITY AFFAIRS  
HOME ATTENDANT CORPORATION

This document is gender neutral. Any reference to “he” or “she” shall read “he/she”; “his” or “her” shall read “his/her”, etc.

Adopted on: November 16, 1980  
Revision 1: November 27, 1994  
Revision 2: November, 2001  
Revision 3: November, 2005  
Revision 4: November, 2011  
Revision 5: November, 2014

## **BYLAWS**

### ARTICLE I

#### OFFICES

The principal office of The First Chinese Presbyterian Community Affairs Home Attendant Corporation (the "Corporation") shall be in the City of New York, County of New York, State of New York. The Corporation may also have offices at such other places as the Board of Directors (the "Board") may from time to time determine or the business of the Corporation may require.

### ARTICLE II

#### MISSION

- (a) The mission of the Corporation is to provide social service programs (including personal care assistance, food assistance and education programs) to New Yorkers of limited financial means; and
- (b) The Corporation shall always be subject to the Constitution and laws of the United States of America, the constitution and laws of the State of New York, and also to the constitution of the Presbyterian Church (USA). The Corporation shall endeavor to improve and promote social services such as developing cultural education, health care and public welfare in the community. Members of the Board shall minister to those in need, to the sick, to the friendless and to any who may be in distress, in accordance with the Scriptural duties of Christian love and after the example of the Lord Jesus.

### ARTICLE III

#### MEMBERS

Section 1. Membership. Membership shall be open to the congregation members of the First Chinese Presbyterian Church (the "Church") that are:

- a) At least nineteen (19) years of age; and
- b) receive baptism in the First Chinese Presbyterian Church;

or

transferred from other churches to the First Chinese Presbyterian Church;

or

reaffirmed faith in the First Chinese Presbyterian Church.

Section 2. [RESERVED].

Section 3. Classes of Membership. The Corporation shall have only one class of Membership.

Section 4. Meetings. The annual meeting of the Members (the “Annual Meeting of the Members”) for the election of the Directors and for the transaction of such other business as may come before the Members, including the delivery of a financial statement (explicitly required pursuant to Section 519 of the NPCL) shall be held each year at the place (which may be either within or outside the State of New York), time and date, as may be fixed by the Board, or, if not so fixed, as may be determined by the Chairperson of the Board. Special Meetings shall be held whenever called by resolution of the Board, the Chairperson of the Board, or by a written demand to the Secretary of ten percent (10%) of the Members eligible to vote. The Secretary, upon receiving the written demand or resolution, shall promptly give notice of such meeting as provided below, or if the Secretary fails to do so within five (5) business days thereafter, any member signing such demand may give such notice. The Board may, in its sole discretion, determine that any meeting, which for the avoidance of doubt shall include the Annual Meeting of the Members, be held solely by means of electronic communication, as more fully set forth in Section 5 of this Article III.

Section 5. Electronic Communication. If the Board, in its sole discretion, determines that the Annual Meeting of the Members or any special meeting of the members be held solely by means of electronic communication, the platform or service of such meeting shall be the place of the meeting.

Section 6. Notice of Meetings. Written or electronic notice of each member meeting shall be given, personally or by mail or electronic transmission or notification through the Church’s weekly bulletin, to each Member entitled to vote at such meeting not less than ten (10) nor more than fifty (50) days before the date of the meeting; provided, however, that such notice may be given by any other class of mail not fewer than thirty (30) nor more than sixty (60) days before the date of the meeting. The notice shall state (i) the place, date, and hour of the meeting, (ii) the means of electronic communications, if any, by which members may participate in the proceedings of the meeting and vote at such meeting, and (iii) unless it is the Annual Meeting of the Members, the purpose or purposes for which the meeting is called and indicate that the notice is being issued by or at the direction of the person or persons calling the meeting.

Section 7. Quorum, Adjournments of Meetings. At all meetings of the Members, ten percent (10%) of the Members eligible to vote (or one hundred (100) Members eligible to vote, whichever is less), present in person, shall constitute a quorum for the transaction of business. In the absence of a quorum, the Members present in person shall adjourn the meeting from that time until a quorum is present. Notice of the new meeting is not required if the time and place for the new meeting is announced at the meeting at which the adjournment is taken, and at the new meeting any business may be transacted which might have been transacted at the meeting as originally called.

Section 8. Organization. The Chairperson of the Corporation shall preside at all meetings of the Members or, in the absence of the Chairperson, an acting Chairperson shall be chosen by the Members present. The Secretary of the Corporation shall act as Secretary at all meetings of the Members, but in the absence of the Secretary, the presiding Member may appoint any person to act as Secretary of the meeting.

Section 9. Voting. At any meeting of the Members, each Member present, in person, shall be entitled to one (1) vote. Upon demand of any Member, any vote for Directors or upon any question before the meeting shall be by ballot. The record eligibility of voting rights shall be set ten (10) days before the date of the meeting.

Section 10. Adoption of the Bylaws. The Board shall call for a Special Meeting of the Members to adopt the bylaws (or the bylaws may be adopted at the Annual Meeting of the Members). The proposed bylaws are to be circulated to the Members no later than ten (10) days prior to the Annual Meeting or Special Meeting of the Members to adopt the bylaws. A majority of the votes cast at the Annual Meeting or the Special Meeting of the Members to adopt the bylaws shall be the act of the Members.

Section 11. Special Actions Requiring Vote of Members: The following corporate actions may not be taken without approval of the Members:

- (a) a plurality of the votes cast at a meeting of the Members is required for the election of the Directors of the Corporation;
- (b) a majority of the votes cast at a meeting of the Members is required for (1) any amendment of the Certificate of Incorporation, (2) a petition for judicial dissolution or (3) any matter presented to the Members by the Board; and
- (c) two-thirds (2/3) of the votes cast at a meeting of the Members is required for (1) disposing of all, or substantially all, of the assets of the Corporation, (2) approval of a plan of merger, (3) authorization of a plan of non-judicial dissolution, or (4) revocation of a voluntary dissolution proceeding, provided, however, that the affirmative votes cast in favor of



any action described in this subsection (c) shall be at least equal to the minimum number of votes necessary to constitute a quorum.

Blank votes or abstentions shall not be counted in the number of votes cast.

Section 12. Continuity of Operations. In the event the Church dissolves or the number of Members falls below nine (9), the Member voting requirements of this ARTICLE III shall cease to apply and the Board shall have unfettered control to direct the affairs and operation of the Corporation, subject to applicable law.

#### ARTICLE IV BOARD OF DIRECTORS

Section 1. Powers and Duties. The Board shall have general power to control and manage the affairs and property of the Corporation subject to applicable law and in accordance with the purposes and limitations set forth in the Certificate of Incorporation and herein.

(a) The Board may:

- (i) Appoint and discharge advisors and consultants who have skills necessary or helpful to the Corporation.
- (ii) Employ and discharge persons for the furtherance of the purposes of the Corporation.
- (iii) Exercise all other powers necessary to manage the affairs and further the purposes of the Corporation in conformity with the Certificate of Incorporation and these Bylaws.

(b) The Board shall:

- (i) Direct the Chairperson and Treasurer of the Corporation to present at the Annual Meeting of the Board a financial report, verified by the Chairperson and Treasurer or a majority of the Directors, or certified by an independent public accountant or certified public accountant or a firm of such accountants selected by the Board. This report shall be filed with the records of the Corporation and a copy or abstract thereof entered in the minutes of the proceedings of the annual meeting of the Board. This report shall also be presented at the Annual Meeting of the Members in accordance with Article III, Section 4 of these Bylaws.
- (ii) Select all Officers for the Corporation and approve the members of any committee appointed by the Chairperson.

(c) Each Director shall:

- (i) Serve the Corporation with honesty and loyalty and not for their own interests or benefits;

- (ii) Establish a close relationship with the Church, its congregation and the employees of the Corporation;
- (iii) not participate in any activities that would or may conflict in any manner or degree with the Church or the Corporation, unless disclosed to the Corporation in accordance with the Corporation's Conflict of Interest Policy;
- (iv) make the effort to understand the contracts, commitments and obligations of the Corporation; and
- (v) attend monthly Board meetings regularly. Any Director absent from the monthly Board meetings for a total of four (4) times without any excuse within a calendar year shall be asked to resign from the Board.

Section 2. Number. The number of Directors constituting the entire Board shall be not less than three (3) and not more than nine (9). Subject to such minimum, the number of Directors may be increased or decreased from time to time, by resolution of the Board, but such action by the Board shall require a vote of a majority of the entire Board and no decrease shall shorten the term of any incumbent Director. The entire Board is currently comprised of nine (9) Directors.

Section 3. Election and Term of Office. The Directors shall hold office for three (3)-year terms, with three (3) Director elections at each Annual Meeting of the Members; provided, however, that any Director elected to fill an unexpired term (whether resulting from the death, resignation or removal or created by an increase in the number of Directors) shall hold office until the next Annual Meeting at which the election of such Director seat is in the regular order of business and until his or her successor is elected or appointed and qualified. Directors may be elected to any number of consecutive terms. To become a Director, a person shall be nominated by a Director and elected by a plurality of the Members.

Section 4. Qualification for Directors. Each Director shall (i) be an active Member (must meet the criteria for Membership set forth in Section 1 of Article III) of the Church, (ii) have worshipped at the Church for at least two (2) years and be willing to serve the Membership and (iii) not be an employee of the Corporation or an immediate family member (spouse, parent, children, sibling or in-law) of an employee of the Corporation.

Section 5. Classification of Directors. The Directors are divided into three equal as possible classes with three (3) Directors in the first class, three (3) Directors in the second class, and three (3) Directors in the third class. The term of office of the first class shall expire at the first Annual Meeting of the Corporation following the Annual Meeting at which the Directors are first designated into classes. The term of office of the second class shall expire at the following Annual Meeting and the third class at the third Annual Meeting after the annual meeting at which Directors are first designated into classes. At each Annual Meeting after Directors are first designated into classes, Directors shall be elected for a term of three (3) years to replace those whose terms shall expire.

Section 6. Removal. Any Director may be removed at any time for cause by (i) a vote of Directors then in office at a regular meeting or special meeting of the Board called for that purpose; provided that there is a quorum of not less than a majority of Directors present at such meeting or (ii) a vote of the Members in accordance with these Bylaws. For the avoidance of doubt, missing three consecutive meetings of the Board unless a majority of the Directors has excused such Director from attendance may constitute cause. In addition to the foregoing, any Director may be removed at any time without cause by a vote of the Members in accordance with these Bylaws.

Section 7. Resignation. Any Director may resign from the Board at any time. Such resignation shall be made in writing, and shall take effect at the time specified therein, and if no time be specified, at the time of its receipt by the Corporation or the Chairperson. The acceptance of a resignation by the Board shall not be necessary to make it effective, but no resignation shall discharge any accrued obligation or duty of a Director.

Section 8. Vacancies and Newly Created Directorships. Any newly created Directorships and any vacancies on the Board arising at any time and from any cause may be filled at any meeting of the Board by a majority of the Directors then in office, regardless of their number. The Directors so elected shall serve until the next Annual Meeting at which the election of Directors is the regular order of business and his successor is elected or appointed or qualified. A vacancy in the Board shall be deemed to exist on the occurrence of any of the following:

- (a) the death, resignation or removal of any Director;
- (b) an increase in the authorized number of Directors by resolution of the Board; or
- (c) the failure of the Members, at any Annual Meeting or other meeting of Members at which any one or more Directors are to be elected, to elect the full authorized number of Directors to be voted for at that meeting.

Section 9. Meetings. Meetings of the Board may be held at any place as the Board may from time to time fix. The annual meeting of the Board shall be held at a date, time and place fixed by the Board and at such time the Board shall receive an annual report. Special meetings of the Board shall be held whenever called by the Chairperson of the Board, the Executive Director or any Director upon written demand of not less than three (3) Directors of the Board, in each case at such time and place as shall be fixed by the person or persons calling the meeting.

Section 10. Notice of Meetings. Regular meetings may be held without notice of the time and place if such meetings are fixed by the Board. Notice of the time and place of the annual meeting, each regular meeting not fixed by the Board and each special meeting of the Board shall be (i) delivered to each Director by e-mail or facsimile at least five (5) days before the day on which the meeting is to be held; or (ii) mailed to each Director, postage prepaid, addressed to him or her at his or her residence or usual place of business (or at such other address as he or she may have designated in a written request filed with the Secretary at least seven (7) days before the day on which the meeting is to be held). To discuss matters requiring prompt action, notice of special meetings may be

sent to each Director by e-mail, facsimile, or telephone, or given personally, no less than forty-eight (48) hours before the time at which such meeting is to be held, unless the meeting must be held within forty-eight (48) hours. Notice of a meeting need not be given to any Director who submits a signed waiver of notice whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to him or her. Waivers of notice sent by e-mail must be able to be reasonably determined to be sent by the Director. No notice need be given of any adjourned meeting.

Section 11. Quorum. Unless a greater proportion is required by law, the quorum shall be a majority of the entire Board. The Board may appoint an Alternate to attend a Board meeting in place of an absent Director. The appointed Alternate shall have all rights and privileges of a regular Director for the duration of the appointment. There shall be no more than two (2) alternates appointed at any Board meeting. An “Alternate” means any formerly duly elected Director that currently meets the qualification requirements of Section 1 of Article III.

Section 12. Voting. Except as otherwise provided by law or these Bylaws, at any meeting of the Board at which a quorum is present, the affirmative vote of a majority of the Directors present at the time of the vote shall be the act of the Board. If at any meeting of the Board there shall be less than a quorum present, the Directors present may adjourn the meeting until a quorum is obtained. Any one or more Directors of the Board or any committee thereof may participate in a meeting of the Board or committee by means of telephone, video conference or similar communications equipment provided that all persons participating in the meeting can hear each other at the same time and can participate in all matters before the board. Participation by such means shall constitute presence in person at a meeting. The following acts of the Board require the affirmative vote of at least two-thirds (2/3) of the entire Board:

- (a) a purchase, sale, mortgage or lease of real property of the Corporation if the property constitutes all or substantially all of the assets of the Corporation;
- (b) a sale, lease, exchange or other disposition of all or substantially all of the assets of the Corporation; or
- (c) an alteration to these Bylaws or Certificate of Incorporation of the Corporation that would increase the quorum requirement to greater than a majority of the entire board or would increase the vote requirement to greater than a majority of the Board present at the time of the vote.

Section 13. Action by the Board. Any action required or permitted to be taken by the Board or any committee thereof may be taken without a meeting if all Directors of the Board or the committee consent in writing to the adoption of a resolution authorizing the action. Such consent may be written or electronic. If the consent is written, it must be signed by the Director. If the consent is electronic it must be able to be reasonably determined to have been sent by the director. The resolution and the written consents thereto by the Directors of the Board or committee shall be filed with the minutes of the proceedings of the Board or committee.

Section 14. Compensation. No compensation of any kind shall be paid to any Director for the performance of his or her duties as Director. This shall in no way limit (i) the reimbursement of reasonable expenses incurred in connection with board service or (ii) a Director's receipt of stipends from governmental agencies (e.g., the New York City Human Resources Administration) on accordance with applicable law. Subject to the Corporation's Conflicts of Interest Policy provided that there is full disclosure of the terms of such compensation and the arrangement has been determined to be fair and reasonable and approved by the Board, a Director may receive payment for services provided to the Corporation in any capacity separate from his or her responsibilities as a Director.

ARTICLE V  
OFFICERS, EMPLOYEES AND AGENTS

Section 1. Number and Qualifications. The Officers of the Corporation shall be a Chairperson, a President, a Secretary, a Treasurer and such other Officers, if any, including one or more Vice-Chairs, as the Board may from time to time appoint. One person may hold more than one office in the Corporation except that no one person may hold the offices of Chairperson and Secretary. The Chairperson shall be a Director of the Corporation and shall not be an employee of the Corporation. No instrument required to be signed by more than one Officer may be signed by one person in more than one capacity.

Section 2. Election and Term of Office. The Officers of the Corporation shall be elected for a **[one year term]** at the annual meeting of the Board, and each shall continue in office until his or her successor shall have been elected and qualified, or until his or her death, resignation or removal.

Section 3. Employees and Other Agents. The Board may from time to time appoint such employees and other agents as it shall deem necessary, each of whom shall hold office at the pleasure of the Board, and shall have such authority and perform such duties and shall receive such reasonable compensation, if any, as the Board may from time to time determine. To the fullest extent allowed by law, the Board may delegate to any employee or agent any powers possessed by the Board and may prescribe their respective title, terms of office, authorities and duties.

Section 4. Removal. Any Officer, employee or agent of the Corporation may be removed with or without cause by a vote of the majority of the Board.

Section 5. Vacancies. In case of any vacancy in any office, a successor to fill the unexpired portion of the term may be elected by the Board.

Section 6. Chairperson: Powers and Duties. The Chairperson shall preside at all meetings of the Board and the Executive Committee. The Chairperson shall have general supervision of the affairs of the Corporation and shall keep the Board fully informed about the activities of the Corporation. He or she has the power to sign and execute alone in the name of the Corporation all contracts authorized either generally or specifically by the Board, unless the Board shall specifically require an additional signature. The

Chairperson shall perform all the duties usually incident to the office of the Chairperson and shall perform such other duties as from time to time may be assigned by the Board.

Section 7. Vice-Chairs: Powers and Duties. Each Vice-Chair shall have such powers and duties as may be assigned to him or her by the Board. In the absence of the Chairperson, the Vice-Chair(s), in the order designated by the Board, shall perform the duties of the Chairperson.

Section 8. President: Powers and Duties. The President shall attend all meetings of the Board. He or she shall perform the duties prescribed by these Bylaws and those proper to the office, including responsibility to conduct and manage the business of the Corporation, and announce decisions when made. The President is responsible for assuring that an accurate set of minutes, properly dated and signed, showing all matters discussed and actions taken, are properly filed in the Corporation's books and records. The President carries out instructions of the Board and signs documents on behalf of the Corporation.

Section 9. Secretary: Powers and Duties. The Secretary shall keep the minutes of the annual meeting and all meetings of the Board in books provided for that purpose. He or she shall be responsible for the giving and serving of all notices of the Corporation, receiving the annual disclosure statements required by the Corporation's conflict of interest policy and shall perform all the duties customarily incident to the office of the Secretary, subject to the control of the Board, and shall perform such other duties as shall from time to time be assigned by the Board.

Section 10. Treasurer: Powers and Duties. The Treasurer shall have the care and custody of all the funds and securities of the Corporation, and shall deposit said funds in the name of the Corporation in such bank or trust company as the Board may elect; he/she shall, when duly authorized by the Board, sign and execute all contracts in the name of the Corporation, when countersigned by the Chairperson; he/she shall also sign all checks, drafts, notes, and orders for the payment of money, which shall be duly authorized by the Board and shall be countersigned by the Chairperson; he/she shall at all reasonable times exhibit his/her books and accounts to any Director of the corporation upon application at the office of the Corporation during ordinary business hours. At the end of each corporate year, he/she shall have an audit of the accounts of the Corporation made by a committee appointed by the Chairperson, and shall present such audit in writing to the Board.

Section 11. Compensation. Any Officer who is not a Director but is an employee or agent of the Corporation is authorized to receive a reasonable salary or other reasonable compensation for services rendered to the Corporation as an employee or agent when authorized by a majority of the entire Board, and only when so authorized.

Section 12. Sureties and Bonds. In case the Board shall so require, any Officer or agent of the Corporation shall execute for the Corporation a bond in such sum and with such surety or sureties as the Board may direct, conditioned upon the faithful performance of his or her duties to the Corporation and including responsibility for negligence and for the accounting for all property or funds of the Corporation that may come into his or her hands.

ARTICLE VI  
COMMITTEES

A committee of the Board is one that shall have authority to bind the Corporation and shall be comprised solely of Directors. There may be committees of the Board, as follows:

- (a) Executive Committee. An Executive Committee which shall consist of at least three (3) Directors, one of whom shall be the Chairperson of the Board, who shall also serve as chair of the Executive Committee. The other members of the Executive Committee shall be appointed by the Chairperson, subject to the approval of the entire Board. The Executive Committee shall have all the authority of the Board except as to the following matters:
  - (i) the filling of vacancies on the Board or on any committee;
  - (ii) the amendment or repeal of the Bylaws or the adoption of new Bylaws;
  - (iii) the amendment or repeal of any resolution of the Board which by its terms shall not be so amendable or repealable;
  - (iv) the fixing of compensation of the Directors for serving on the Board or any committee;
  - (v) the election or removal of officers and directors;
  - (vi) the approval of a merger or plan of dissolution;
  - (vii) the authorization of a transaction involving the sale, lease, exchange or other disposition of all or substantially all the assets of the corporation; and
  - (viii) the approval of amendments to the certificate of incorporation.
  
- (c) Finance Committee. A Finance Committee which shall consist of at least three (3) Directors, one of whom shall be the Treasurer. The other members of the Finance shall be appointed by the Chairperson of the Board, subject to the approval of the Board. The Finance Committee shall advise the Treasurer and the Board in regard to the investments and general fiscal policy of the Corporation.
  
- (d) Audit Committee. An Audit Committee comprised at least three (3) directors each of whom is an Independent Director as defined in Article XV, Section 3. The members of the Audit Committee shall be appointed by the Chairperson of the Board, subject to the approval of the Board.
  
- (e) Other Committees of the Board. By resolution of the Board at a meeting at which a quorum is present the Board may establish and appoint other

committees of the Board consisting of at least three (3) Directors with such powers and duties as the Board may prescribe. The members of such committees shall be appointed by the Chairperson of the Board, subject to the approval of the Board.

ARTICLE VII  
ADVISORS TO THE CORPORATION

Section 1. Powers. The Board by resolution may appoint from time to time any number of persons, including the Pastor of the Church and the chairperson of the Trustees of the Church, as advisors of the Corporation. No such advisors shall have the authority to bind the Board or the Corporation. Each advisor shall hold office during the pleasure of the Board and shall have only the obligations as the Board may from time to time determine. The advisors may be invited to attend the meetings of the Board or any committee of the Board.

Section 2. No Compensation. No advisor to the Corporation shall receive, directly or indirectly, any salary or compensation for any service rendered to the Corporation as a member of a committee of the Corporation, except that the Board may authorize reimbursement of expenditures reasonably incurred on behalf of activities for the benefit of the Corporation.

ARTICLE VIII  
CONTRACTS, CHECKS, BANK ACCOUNTS AND INVESTMENTS

Section 1. Checks, Notes and Contracts. The Board is authorized to select the banks or depositories it deems proper for the funds of the Corporation and shall determine who shall be authorized on the Corporation's behalf to sign checks, drafts or other orders for the payment of money, acceptances, notes or other evidences of indebtedness, to enter into contracts or to execute and deliver other documents and instruments.

Section 2. Investments. The funds of the Corporation may be retained in whole or in part in cash or be invested and reinvested from time to time in such property, real, personal or otherwise, including stocks, bonds or other securities, as the Board may deem desirable.

ARTICLE IX  
BOOKS

There shall be kept at the office of the Corporation correct books of account of the activities and transactions of the Corporation including the minute book, which shall contain a copy of the Certificate of Incorporation, a copy of these bylaws, and all minutes of meetings of the Board.



ARTICLE X  
FISCAL YEAR

The fiscal year of the Corporation shall be determined by the Board.

ARTICLE XI  
INDEMNIFICATION AND INSURANCE

Section 1. Indemnification. The Corporation shall, to the fullest extent now or hereafter permitted by law, indemnify any person made, or threatened to be made, a party to any action or proceeding by reason of the fact that he or she or his or her testator was a Director or officer of the Corporation (such person, an “Indemnitee”), against any expenses, judgments, fines, settlements and other amounts actually and reasonable incurred in connection with any liability, suit action, loss, or damage arising or resulting from the Indemnitee’s service as a Director or officer of the Corporation, subject to the limits on the indemnification described in this Article XI.

Section 2. Insurance. The Corporation shall have the power to purchase and maintain all insurance policies deemed to be in the best interest of the Corporation including insurance to indemnify the Corporation for any obligation which it incurs as a result of its indemnification of Directors, Officers and employees pursuant to Article XI, Section 1 above, or to indemnify such persons in instances in which they may be indemnified pursuant to Article XI, Section 1 above.

Section 3. Exceptions to Indemnification. The Indemnitee will not be entitled to indemnification if:

- (a) in the case of a civil claim, the Indemnitee did not act in good faith and in reasonable manner; provided, however, the termination of any claim or action by judgment, order, or settlement or its equivalent will not, of itself, create a presumption that the person did not act in good faith and in a reasonable manner;
- (b) the claim or action is of a criminal nature;
- (c) the actions or conduct of the Indemnitee constituted willful misconduct or was knowingly fraudulent or deliberately dishonest;
- (d) the Indemnitee will or has received payment under a valid and collectible insurance policy, except where payment under this insurance policy, clause, bylaw or agreement is not sufficient to fully indemnify the Indemnitee in which case the Corporation will be responsible for any shortfall in payment received; or
- (e) an action or proceeding was initiated in whole or in part by the Indemnitee whether alone or along with one or more other claimants, unless the action or proceeding has the written consent of the Corporation.

Section 4. Notice of Claim. In the event of any claim or action, the Indemnitee will promptly provide the Corporation with written notice of the claim or action and will notify the Corporation within five (5) business days of the commencement of any legal proceedings relating to the claim or action. The Indemnitee will provide the Corporation with all available information known to the Indemnitee relating to the claim or action.

Section 5. Authorization of Indemnification. In any case where the Indemnitee requires indemnification, the Corporation will make the determination of whether indemnification is appropriate having given consideration to the terms described in the Exceptions to Indemnification section, above. If the Indemnitee disagrees with the determination of the Corporation then the matter must be referred for review and determination to independent legal counsel reasonably satisfactory to the Indemnitee. In all cases the Corporation will bear all costs of any independent determination.

Section 6. Assumption of Defense. On being notified of any impending action or claim, the Corporation may, at its own expense, participate in the defense of any action or claim and may, alone or with any other indemnifying party, assume the defense against the action or claim using counsel that are reasonably satisfactory to the Indemnitee. Once the Corporation has notified the Indemnitee of the intention to assume the defense, the Corporation will no longer be liable to the Indemnitee for any further legal or other expense subsequently incurred by the Indemnitee in relation to the defense of the claim. Once the Corporation provides notice to the Indemnitee that the defense of claim has been assumed by the Corporation, the Indemnitee may employ or continue to employ its own legal counsel, however any fees or expenses incurred by the Indemnitee subsequent to the notice of assumption of defense by the Corporation will be the sole responsibility of the Indemnitee.

Section 7. Failure to Defend. If the Corporation elects not to assume the defense against the claim or action, then the Indemnitee may defend against the claim or action in any manner the Indemnitee deems appropriate.

Section 8. Settlement. The Indemnitee will not settle any claim or action without first obtaining the written consent of the Corporation. The Corporation will not be liable for any amounts paid in settlement of any claim or action where written consent of the Corporation was not first obtained.

## ARTICLE XII AMENDMENTS

These Bylaws may be amended or repealed by the Members of the Corporation at a meeting duly called for the purpose of altering these Bylaws. Any amendment or repeal of these Bylaws is authorized only at a duly called and held meeting of the Members for

which written notice of such meeting, setting forth the proposed alteration, is given in accordance with the notice provisions for special meetings set forth in Article III, Section 6 of these Bylaws.

ARTICLE XIII  
NON-DISCRIMINATION

In all of its dealings, neither the Corporation nor its duly authorized agents shall discriminate against any individual or group for reasons of race, color, creed, sex, age, ethnicity, national origin, marital status, sexual orientation, gender identity, mental or physical disability or any category protected by state or federal law.

ARTICLE XIV  
REFERENCE TO CERTIFICATE OF INCORPORATION

References in these Bylaws to the Certificate of Incorporation shall include all amendments thereto or changes thereof unless specifically excepted by these Bylaws. In the event of a conflict between the Certificate of Incorporation and these Bylaws, the Certificate of Incorporation shall govern.

ARTICLE XV  
DEFINITIONS

Section 1: Affiliate. An affiliate of the Corporation is a person or entity that is directly or indirectly through one or more intermediaries, controlled by, in control of, or under common control with the Corporation.

Section 2: Financial Interest. A person has a Financial Interest if such person would receive an economic benefit, directly or indirectly, from any transaction, agreement, compensation agreement (including direct or indirect remuneration as well as gifts or favors that are not insubstantial), or other arrangement involving the Corporation.

Section 3: Independent Director. A member of the Board of Directors who:

- is not and has not been an employee or a Key Person of the Corporation or an Affiliate of the Corporation within the last three years;
- does not have a Relative who is or has been a Key Person of the Corporation or an Affiliate of the Corporation within the last three years;
- has not received and does not have a Relative who has received more than \$10,000 in compensation directly from the Corporation or an Affiliate of the Corporation in any of the last three years (not including reasonable compensation for services or reimbursement for expenses reasonably incurred as a Director of the Corporation, as set by the Corporation);
- does not have a substantial Financial Interest in and is not an employee of, and does not have a Relative who has a substantial Financial Interest in or is an Officer (as defined below) of, any entity that has provided payments,

property or services to, or received payments, property or services from, the Corporation or an Affiliate of the Corporation in excess of the following, as applicable: (i) the lesser of \$10,000 or 2% of the entity's consolidated gross revenue in any of the last three fiscal years if such consolidated gross revenue was less than \$500,000; (ii) \$25,000 if the entity's consolidated gross revenue in any of the last three fiscal years was \$500,000 or more but less than \$10,000,000; or (iii) \$100,000 if the entity's consolidated gross revenue in any of the last three fiscal years was \$10,000,000 or more;

- is not and does not have a relative who is a current owner, whether wholly or partially, director, officer or employee of the Corporation's outside auditor or who has worked on the Corporation's audit at any time during the past three years;
- is not in an employment relationship under control or direction of any Related Party (as defined below) and does not receive payments subject to approval of a Related Party; or
- does not approve a transaction providing economic benefits to any Related Party who in turn has approved or will approve a transaction providing economic benefits to the Director.

Section 4: Key Person. A Key Person is a person, other than an Officer or Director of the Corporation, who:

- has responsibilities, or exercises powers or influence over the Corporation as a whole similar to the responsibilities, powers, or influence of directors and officers;
- manages the Corporation, or a segment of the Corporation that represents a substantial portion of the activities, assets, income or expenses of the Corporation; or
- alone or with others controls or determines a substantial portion of the Corporation's capital expenditures or operating budget.

Section 5: Related Party. Persons who may be considered a Related Party of the Corporation or an Affiliate of the Corporation under this Bylaws include:

- Directors, Officers, or Key Persons of the Corporation or an Affiliate of the Corporation;
- Relatives of Directors, Officers, or Key Persons;
- any entity in which a person in (i) or (ii) has a 35% or greater ownership or beneficial interest or, in the case of a partnership or professional corporation, a direct or indirect ownership interest in excess of 5%;
- Founders of the Corporation;
- substantial contributors to the Corporation (within the current fiscal year or the past five fiscal years);
- persons owning a controlling interest (through votes or value) in the Corporation;
- any non-stock entity controlled by one or more Key Persons; and

- any other person who is, or has within the last five years, been in a position to exercise substantial influence over the affairs of the Corporation

Section 6: Relative. A Relative is a spouse or domestic partner (as defined in section 2994-A of the New York Public Health Law), ancestor, child (whether natural or adopted), grandchild, great grandchild, sibling (whether whole or half blood), or spouse or domestic partner of a child (whether natural or adopted), grandchild, great grandchild or sibling (whether whole or half blood).

**First Chinese Presbyterian Church  
Community Affairs Corporation  
61 Henry Street  
New York, NY 10002**

**2022 Annual Meeting  
Minutes**

**Date & Time:** Sunday, Dec. 4, 2022, 12:30 PM

**Place:** 61 Henry St., Sanctuary and Zoom

**Attendance:**

**Board Member:** Tony Chan, Peng Leong, Milton Mui, Jimmy Shek, Elaine Tso (Zoom)  
Jeanne Yong, Winston Chin (Zoom), William Tsang

**Board Member Absent:** None

**FCPC Congregation:** 72 members (on-site and Zoom attendances)

**Minutes recorded by:** Milton Mui 

1. The Congregation Meeting was attended by 72 church members. The voting for the proposed changes to the Certificate of Incorporation (COI) and Bylaws was moved to the Congregation Meeting to preserve the quorum, since many members usually leaves right after the congregation meeting. Milton presented the proposed changes to the Congregation and fielded questions in Cantonese. The 4 major changes listed below were voted on and all approved by a majority of the congregation. One change was made during the discussions and is indicated below:
  - A. COI - Not limiting the Corporation to only personal healthcare, and other updates.
  - B. Bylaw:
    - 1) Minimum Quorum for Community Affairs Corporation Meeting set to 100 or 10% of membership, whichever is less.
    - 2) Allowing meeting through electronic means, such as Zoom
    - 3) Continuity of Operation – Language approved with exception of changing the minimum number to 9 instead of 12.

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

**RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
THE FIRST CHINESE PRESBYTERIAN  
COMMUNITY AFFAIRS HOME ATTENDANT CORP.  
UNDER SECTION 805 OF THE  
NOT-FOR-PROFIT CORPORATION LAW**

The undersigned, Winston Chin, being an authorized officer of First Chinese Presbyterian Community Affairs Home Attendant Corp., a corporation organized and existing under the Not-for-Profit Corporation Law of the State of New York, does hereby certify as follows:

- (1) The name of the corporation is the First Chinese Presbyterian Community Affairs Home Attendant Corp. (the “Corporation”).
- (2) The Corporation is a corporation as defined in subparagraph (a)(5) of Section 1 02 of the New York Not-for-Profit Corporation Law (the “N-PCL”).
- (3) The Certificate of Incorporation was filed with the New York State Department of State on December 3, 1979 pursuant to the Not-for-Profit Corporation Law.
- (4) The Certificate is hereby restated to effect the following changes authorized by the N-PCL:
  - (a) Amend Article SECOND, which sets forth the language indicating how the Corporation is defined under the N-PCL, by including language referencing Section 201 of the N-PCL, accordingly Article SECOND is amended to read in its entirety as follows:

“SECOND: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the New York Not-for-Profit Corporation Law (the “N-PCL”) and shall be a Charitable Corporation under Section 201 of the N-PCL.”
  - (b) Amend Article THIRD, which sets forth the purpose for which the Corporation was formed, by deleting such language in the Article in its entirety, replacing it with language indicating the name of the Corporation, accordingly Article THIRD is amended to read in its entirety as follows:

“THIRD: The Corporation is formed for charitable purposes within the meaning of section 102(3-B) of the N-PCL, including for the purposes of providing social service programs (including personal care assistance, food assistance and education programs) to elderly people and people with disabilities of limited financial means in New York.”
  - (c) Amend Article FOURTH, which sets forth the type of corporation under Section 201 of the N-PCL that the Corporation is, by deleting such language in its entirety, replacing it with language indicating that the Corporation is



formed to engage in an activity or purpose which requires consent or approval from any state official, department, board, agency or other body, and that such approval is attached, accordingly, Article FOURTH is amended to read in its entirety as follows:

“FOURTH: The Corporation is formed to engage in an activity or for a purpose requiring consent or approval of a state official, department, board, agency or other body. Such consent or approval is attached.”

- (d) Amend Article FIFTH, which sets forth the general power of the Corporation’s directors, by deleting such language in the Article in its entirety, replacing it with language indicating that the Corporation shall have all general rights, powers, and privileges enumerated in the N-PCL, accordingly, Article FIFTH is amended to read in its entirety as follows:

“FIFTH: In furtherance of the foregoing purposes, the Corporation shall have all the general powers enumerated in Section 202 of the N-PCL and such other powers as are now or hereafter permitted by law for a corporation organized for the foregoing purposes, including, without limitation, the power to solicit grants and contributions for any corporate purpose and the power to maintain a fund or funds of real and/or personal property in furtherance of such purposes.”

- (e) Amend Article SIXTH, which sets forth the location of the office of the Corporation, by deleting such language in the Article in its entirety, replacing it with language indicating that the Corporation is organized exclusively for charitable, religious and educational purposes, and intends at all times to qualify and remain qualified as exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, and that the Corporation is not formed for and shall not be conducted nor operated for pecuniary profit or financial gain, and no part of its assets, income or profit shall be distributed to or inure to the benefit of any private individual or individuals, and that no substantial part of the activities of the Corporation shall be devoted to the carrying on of propaganda or otherwise attempting to influence legislation, except to the extent permitted by the Code, and that no part of the activities of the Corporation shall be devoted to participating or intervening in any political campaign on behalf of or in opposition to any candidate for public office, and the Corporation shall not carry on any other activities not permitted to be carried on by a corporation exempt from federal income tax under Section 501(c)(3) of the Code or by a corporation contributions to which are deductible under section 170(c)(2) of the Code, accordingly, Article SIXTH is amended to read in its entirety as follows:

“SIXTH: Notwithstanding any other provision of these articles, the Corporation is organized exclusively for charitable, religious and educational purposes, and intends at all times to qualify and remain

qualified as exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code (and corresponding provisions of current and future United States Treasury rules and regulations) and, in connection therewith:

- (a) the Corporation is not formed for and shall not be conducted nor operated for pecuniary profit or financial gain, and no part of its assets, income or profit shall be distributed to or inure to the benefit of any private individual or individuals, provided that nothing herein shall prevent the Corporation from paying reasonable compensation to any person for services rendered to or for the Corporation in furtherance of one or more of its purposes;
- (b) no substantial part of the activities of the Corporation shall be devoted to the carrying on of propaganda or otherwise attempting to influence legislation, except to the extent permitted by the Code whether pursuant to an election under Section 501(h) or otherwise, and no part of the activities of the Corporation shall be devoted to participating or intervening in (including the publication or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office; and
- (c) the Corporation shall not carry on any other activities not permitted to be carried on (i) by a corporation exempt from federal income tax under Section 501(c)(3) of the Code (or the corresponding provision of any future U.S. Internal Revenue Law) or (ii) by a corporation contributions to which are deductible under section 170(c)(2) of the Code (or the corresponding provision of any future U.S. Internal Revenue Law).”
- (f) Amend Article EIGHTH, which sets forth the names and residences of the Corporation’s initial directors, by deleting such language in the Article in its entirety, replacing it with language indicating that the office of the Corporation shall be located in the County of New York, accordingly, Article EIGHTH is amended to read in its entirety as follows:

“EIGHTH: The office of the Corporation shall be located in the County of New York, State of New York.”
- (g) Amend Article NINTH, which sets forth the address for notice to the Corporation, by deleting such language in the Article in its entirety, replacing it with language designating the Secretary of the State of New York as the agent of the Corporation upon whom process against the Corporation may be served and setting forth the post office address to which

the Secretary shall mail a copy of any process against the Corporation served upon the Secretary, accordingly, Article NINTH is added to read in its entirety as follows:

“NINTH: The Secretary of State of the State of New York is hereby designated as agent of the Corporation upon whom process against the Corporation may be served. The post office address to which the Secretary shall mail a copy of any process against the Corporation served upon the Secretary is 100 East Broadway, Suite 401, New York, NY 10002.”

- (h) Amend Article TENTH, which sets forth the name and the address of the registered agent of the Corporation, by deleting such language in its entirety, replacing it with language regarding dissolution of the Corporation, accordingly, Article TENTH is added to read in its entirety as follows:

“TENTH: In the event of dissolution or other termination of the Corporation, the remaining assets and property of the Corporation shall, after payment of all necessary expenses thereof, be distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, or corresponding provisions of any future Federal tax code, or shall be distributed to the Federal government or State or local governments for a public purpose.”

- (i) Amend Article ELEVENTH, which confirms that required consents are attached, by deleting it in its entirety.
- (5) The provisions of this Restated Certificate of Incorporation (the “Restated Certificate”) were authorized in the manner of Friends by a consensus of all members of the Corporation present and authorized to take such action at a meeting duly called and held on November 27, 2022, said members constituting a quorum of the members of the Corporation.
- (6) The Secretary of State of the State of New York is hereby designated as agent of the Corporation upon whom process against the Corporation may be served. The post office address to which the Secretary shall mail a copy of any process against the Corporation served upon the Secretary 100 East Broadway, Suite 401, New York, NY 10002.
- (7) In accordance with Section 805(c) of the N-PCL, this Amended and Restated Certificate of Incorporation omits the prefatory language and Article SIXTH of the original Certificate, which set forth the names and places of the initial subscribers and directors of the Corporation.
- (8) The text of the Certificate of Incorporation as amended hereby is restated to read in its entirety as follows:

- FIRST: The name of the corporation is the First Chinese Presbyterian Community Affairs Home Attendant Corp. (the “Corporation”).
- SECOND: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the New York Not-for-Profit Corporation Law (the “N-PCL”) and shall be a Charitable Corporation under Section 201 of the N-PCL.
- THIRD: The Corporation is formed for charitable purposes within the meaning of section 102(3-B) of the N-PCL, including for the purposes of providing social service programs (including personal care assistance, food assistance and education programs) to elderly people and people with disabilities of limited financial means in New York.
- FOURTH: The Corporation is formed to engage in an activity or for a purpose requiring consent or approval of a state official, department, board, agency or other body. Such consent or approval is attached.
- FIFTH: In furtherance of the foregoing purposes, the Corporation shall have all the general powers enumerated in Section 202 of the N-PCL and such other powers as are now or hereafter permitted by law for a corporation organized for the foregoing purposes, including, without limitation, the power to solicit grants and contributions for any corporate purpose and the power to maintain a fund or funds of real and/or personal property in furtherance of such purposes.
- SIXTH: Notwithstanding any other provision of these articles, the Corporation is organized exclusively for charitable, religious and educational purposes, and intends at all times to qualify and remain qualified as exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code (and corresponding provisions of current and future United States Treasury rules and regulations) and, in connection therewith:
- (a) the Corporation is not formed for and shall not be conducted nor operated for pecuniary profit or financial gain, and no part of its assets, income or profit shall be distributed to or inure to the benefit of any private individual or individuals, provided that nothing herein shall prevent the Corporation from paying reasonable compensation to any person for services rendered to or for the Corporation in furtherance of one or more of its purposes;
  - (b) no substantial part of the activities of the Corporation shall be devoted to the carrying on of propaganda or otherwise attempting to influence legislation, except to the extent permitted by the Code whether pursuant to an election under Section 501(h) or otherwise, and no part of the activities of

the Corporation shall be devoted to participating or intervening in (including the publication or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office; and

- (c) the Corporation shall not carry on any other activities not permitted to be carried on (i) by a corporation exempt from federal income tax under Section 501(c)(3) of the Code (or the corresponding provision of any future U.S. Internal Revenue Law) or (ii) by a corporation contributions to which are deductible under section 170(c)(2) of the Code (or the corresponding provision of any future U.S. Internal Revenue Law).

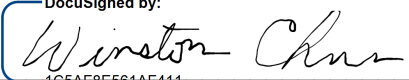
SEVENTH: The territory in which the operations of the corporation will principally be conducted is New York County.

EIGHTH: The office of the Corporation shall be located in the County of New York, State of New York.

NINTH: The Secretary of State of the State of New York is hereby designated as agent of the Corporation upon whom process against the Corporation may be served. The post office address to which the Secretary shall mail a copy of any process against the Corporation served upon the Secretary is 100 East Broadway, Suite 401, New York, NY 10002.

TENTH: In the event of dissolution or other termination of the Corporation, the remaining assets and property of the Corporation shall, after payment of all necessary expenses thereof, be distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, or corresponding provisions of any future Federal tax code, or shall be distributed to the Federal government or State or local governments for a public purpose.

**IN WITNESS WHEREOF** this certificate has been signed and the statements made herein affirmed as true under the penalties of perjury this fifth day of December, 2022.

DocuSigned by:  
  
1C5AF8E561AF411...  
**Incorporator**  
Winston Chin  
100 East Broadway  
Suite 401  
New York, NY 10002

**Amended and Restated**  
**Certificate of Incorporation**  
**of**  
**First Chinese Presbyterian Community Affairs Home Attendant Corp.**  
**Under Section 805 of the**  
**New York Not-for-Profit Corporation Law**

**Submitted by: Lowenstein Sandler LLP**



## MEMORANDUM

**To:** Colleen Leonard, Executive Secretary  
Public Health and Health Planning Council

**From:** Alexa Nagy, Senior Attorney  
Bureau of Program Counsel  
Division of Legal Affairs

**Date:** May 20, 2024

**Subject:** Seniors First Foundation, Inc. – Corporate Purpose Change

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This is to request that the above matter be included on the agendas for the next Establishment and Project Review Committee and Public Health and Health Planning Council (PHHPC) meetings.

The attachments relating to this matter include the following:

- 1) Memorandum to the Public Health and Health Planning Council from Kathy Marks, General Counsel;
- 2) A photocopy of an email letter from Legal Counsel for Seniors First Foundation, Inc., Bridget L. Kehm, dated April 15, 2024;
- 3) A copy of the certified resolutions of the Board of Directors of Seniors First Foundation, Inc., dated January 24, 2024, authorizing the change of corporate purpose and amendment of the Certificate of Incorporation, with a proposed Restated Certificate of Incorporation;
- 4) A copy of the Amended and Restated Corporate Bylaws of Seniors First Foundation, Inc.;
- 5) A photocopy of the original Certificate of Incorporation for Seniors First Foundation, Inc. (originally filed as Kirkhaven Foundation Inc.), dated February 23, 1990, and filed on April 6, 1990, and Consent to File Letter of the Public Health Council for Seniors First Foundation, Inc., dated March 26, 1990, and associated corporate documents and consents;
- 6) A photocopy of the Certificate of Amendment of Certificate of Incorporation for Seniors First Foundation, Inc. (to change the name of the Corporation from Kirkhaven Foundation, Inc. to Seniors First Foundation, Inc.), dated December 9 2003, and filed on September 15, 2004, and Consent to File Letter of the Public Health Council for Seniors First Foundation, Inc., dated August 3, 2004, and associated corporate documents and consents; and
- 7) An executed photocopy of the proposed Restated Certificate of Incorporation of Seniors First Foundation, Inc., signed by James DeVoe, as Chief Executive Officer, dated January 24, 2024.

Attachments

## MEMORANDUM

**To:** Public Health and Health Planning Council (PHHPC)

**From:** Kathy Marks *KSM*  
General Counsel

**Date:** May 20, 2024

**Subject:** Seniors First Foundation, Inc. – Corporate Purpose Change

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Seniors First Foundation, Inc. requests Public Health and Health Planning Council (“PHHPC”) approval to expand its corporate purpose. PHHPC consented to the filing of Seniors First Foundation, Inc.'s Certificate of Incorporation on March 26, 1990, and the Certificate of Incorporation was subsequently filed with the NYS Department of State on April 6, 1990. On August 3, 2004, PHHPC approved an amendment to the Certificate of Incorporation of Seniors First Foundation, Inc., which was filed with the NYS Department of State on September 15, 2004.

Seniors First Foundation, Inc. requests approval of the following amendment to modify the purposes of the corporation in its Restated Certificate of Incorporation. Article II, subsection (b) of the Certificate of Incorporation is amended to read in its entirety as follows:

"(b) The Corporation is a charitable corporation under Section 201 of the Not-For-Profit Corporation Law, formed exclusively for charitable purposes, specifically:

To receive, maintain and distribute funds and property to assist and support other organizations serving seniors within the Greater Rochester area in furtherance of their corporate purposes. Nothing contained in this Certificate shall authorize the Corporation to establish, operate, construct, lease, or maintain a hospital, or to provide hospital service or health related service, or to operate a drug maintenance program, or a certified home health agency, or hospice, or a health maintenance organization, or to provide a comprehensive health service plan, as defined in and covered by Articles 28, 33, 36, 40 and 44, respectively of the Public Health Law.

To sponsor and promote social and supportive programs, scholarships and projects related to the field of geriatrics. Nothing contained in this Certificate shall authorize the Corporation to conduct any activity which might be chartered by the Regents of the University of the State of New York.

To solicit grants and contributions for any corporate purpose and the power to maintain a fund or funds of real and/or personal property in furtherance of such purposes."

Pursuant to NY N-PCL § 804(a)(i) and 10 NYCRR § 600.11, PHHPC must consent to the requested changes prior to the filing of any amended certificate.

There is no legal objection to the change in corporate purpose and the Restated Certificate of Incorporation of Seniors First Foundation, Inc. is in legally acceptable form.

Attachments



LAW OFFICES OF  
**Pullano & Farrow**  
PLLC

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[www.lawpf.com](http://www.lawpf.com)

Name: Bridget L. Kehm Esq.  
Phone: 585-730-4773  
Email: [bkehm@lawpf.com](mailto:bkehm@lawpf.com)

April 15, 2024

VIA ELECTRONIC MAIL  
[colleen.leonard@health.ny.gov](mailto:colleen.leonard@health.ny.gov)

Colleen Leonard, Executive Secretary  
Public Health and Health Planning Council  
NYS Department of Health  
Corning Tower, Room 1805  
Albany, New York 12237

Re: Certificate of Amendment of the Certificate of Incorporation  
SeniorsFirst Foundation, Inc.

Dear Ms. Leonard:

Enclosed is the proposed Certificate of Amendment of the Certificate of Incorporation of SeniorsFirst Foundation, Inc. for your review. SeniorsFirst Foundation, Inc. is not an operator of a facility, however, it originally received PHHPC consent when its Certificate of Incorporation, and prior Certificate of Amendment were filed (a copy of those filings are enclosed, along with the certified resolutions of action taken at a meeting). The corporation seeks your consent to file the Certificate with the New York State Division of Corporations to expand the organization's purpose.

Please feel free to contact our office with any questions.

Very truly yours,

PULLANO & FARROW

*Bridget L. Kehm*

Bridget L. Kehm, Esq.

Encls

CERTIFIED RESOLUTIONS OF THE  
BOARD OF DIRECTORS  
OF  
PRESBYTERIAN HOMES AND SERVICES OF GENESEE VALLEY, INC. AND  
SENIORSFIRST FOUNDATION, INC.

WHEREAS, at a regular meeting of the Board of Directors of Presbyterian Homes and Services of Genesee Valley, Inc. (“Parent Organization”) and Seniorsfirst Foundation, Inc., a New York Not-for-profit corporation with its primary offices at 254 Alexander Street, Rochester, New York 14607 (“Corporation”), duly held on January 24, 2024, with all due notice properly given, the following resolutions were reviewed and approved by the Board:

WHEREAS, the affairs of the Corporation are managed by or under the direction of the Board of Directors of Corporation (“Board”), which is a mirror board to the board of directors of Parent Organization; and

WHEREAS, the Board desires to amend its corporate purposes and bylaws to expand the purposes for which the Corporation is formed; and

WHEREAS, a proposed Certificate of Amendment to the Certificate of Incorporation of the Corporation, and a proposed Amended and Restated Bylaws of the Corporation, are attached hereto as Exhibit A and B; and

WHEREAS, the Board deems it desirable and in the best interest of the Corporation to submit to the Attorney General of the State of New York and/or Justice of the Supreme Court, a Verified Petition for approval to amend its corporate purposes; and

WHEREAS, 5 of the 7 Directors were present at the meeting and voted in favor of the adoption of the resolutions.

NOW, THEREFORE, BE IT RESOLVED, that Corporation hereby adopted and approved the following actions at its January 24, 2024 meeting:

RESOLVED, that the Corporation and Parent Organization approved the amended purposes of the Corporation, as contained in the attached proposed Certificate of Amendment to the Certificate of Incorporation attached as Exhibit A.

RESOLVED, that the Corporation and Parent Organization approved the proposed Amended and Restated Bylaws of the Corporation, as contained in the attached Exhibit B.

RESOLVED, that the Corporation authorized and further authorizes the officers of the Corporation to work with the Law Offices of Pullano & Farrow PLLC to finalize all necessary documents to submit to the Attorney General’s Office/Justice of the Supreme Court for review and approval.

RESOLVED, that the Corporation authorized and further authorizes the officers of the Corporation to work with the Law Offices of Pullano & Farrow PLLC to finalize all necessary documents to request consent to the filing of the Certificate of Amendment to the Certificate of Incorporation.

RESOLVED, that James DeVoe, as Chief Executive Officer, (and such other persons designated by him), be and hereby is, authorized and directed to take such actions as is necessary to implement the foregoing resolutions, including, but not limited to, verifying the Verified Petition.

RESOLVED, that any and all prior actions taken by the Board and officers, were hereby ratified, confirmed and approved in all respects.

[Remainder of Page Intentionally Left Blank. Signature Page to Follow.]

IN WITNESS WHEREOF, the Chair of the Board of Directors of the Corporation certifies that the foregoing resolutions were duly adopted by the Board of Directors of the Corporation and that such resolutions have not been modified or rescinded as of the date thereof.

Dated: January 24, 2024

PRESBYTERIAN HOMES AND SERVICES OF  
GENESEE VALLEY, INC



A handwritten signature in black ink, appearing to read 'Mark Muthig', is written over a horizontal line.

By: Mark Muthig  
Title: Chair of the Board of Directors

SENIORSFIRST FOUNDATION, INC.



A handwritten signature in black ink, appearing to read 'Mark Muthig', is written over a horizontal line.

By: Mark Muthig  
Title: Chair of the Board of Directors

EXHIBIT A  
SEE NEXT PAGE

CERTIFICATE OF AMENDMENT  
OF  
THE CERTIFICATE OF INCORPORATION  
OF  
SENIORSFIRST FOUNDATION, INC.

Under Section 803 of the Not-For-Profit Corporation Law

**FIRST:** The name of the corporation is: Seniorsfirst Foundation, Inc. The name under which the corporation was formed is Kirkhaven Foundation, Inc.

**SECOND:** The certificate of incorporation was filed by the Department of State on April 6, 1990.

**THIRD:** The corporation was formed under the Not-for-Profit Corporation Law.

**FOURTH:** The corporation is a corporation as defined in subparagraph (5) of paragraph (a) of Section 102 of the Not-for-Profit Corporation Law.

**FIFTH:** The Certificate of Incorporation is amended as follows: Article II, subsection (b) of the Certificate of Incorporation is hereby amended to modify the purposes of the corporation. Article II, subsection (b) is amended to read in its entirety as follows:

(b) The corporation is a charitable corporation under Section 201 of the Not-For-Profit Corporation Law, formed exclusively for charitable purposes, specifically:

To receive, maintain and distribute funds and property to assist and support other organizations serving seniors within the Greater Rochester area in furtherance of their corporate purposes. Nothing contained in this Certificate shall authorize the Corporation to establish, operate, construct, lease, or maintain a hospital, or to provide hospital service or health related service, or to operate a drug maintenance program, or a certified home health agency, or hospice, or a health maintenance organization, or to provide a comprehensive health service plan, as defined in and covered by Articles 28, 33, 36, 40 and 44, respectively of the Public Health Law.

To sponsor and promote social and supportive programs, scholarships and projects related to the field of geriatrics. Nothing contained in this Certificate shall authorize the Corporation to conduct any activity which might be chartered by the Regents of the University of the State of New York.

To solicit grants and contributions for any corporate purpose and the power to maintain a fund or funds of real and/or personal property in furtherance of such purposes.

**SIXTH:** The Secretary of State is designated as agent of the corporation upon whom process against the corporation may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon the Secretary of State by personal delivery is: 254 Alexander Street, Rochester, New York 14607.

**SEVENTH:** The certificate of amendment was authorized by vote of a majority of the entire board of directors. The corporation has no members.

**EIGHTH:** Prior to the delivery of this certificate of amendment to the Department of State for filing, all approvals or consents required by the Not-for-Profit Corporation Law or by any other statute of the State of New York will be endorsed upon or annexed to this certificate.

[Remainder of Page Intentionally Remains Blank. Signature Page Follows]

IN WITNESS WHEREOF, this certificate has been subscribed to this \_\_\_\_ day of \_\_\_\_\_, 2024 by the undersigned.

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James DeVoe, Chief Executive Officer



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CERTIFICATE OF AMENDMENT  
OF  
THE CERTIFICATE OF INCORPORATION  
OF  
SENIORSFIRST FOUNDATION, INC.

Under Section 803 of the Not-For-Profit Corporation Law

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FILED BY:

**Pullano & Farrow**  
— 401 Main Street —  
East Rochester, New York 14445

EXHIBIT B  
SEE NEXT PAGE

Certified to be a true and correct copy of the  
By-laws of the Corporation adopted on  
January 24, 2024.

## **AMENDED AND RESTATED BY-LAWS**

**of**

## **SENIORSFIRST FOUNDATION, INC.**

### **ARTICLE I**

#### **MEMBERS**

The Corporation has no members and all powers and duties of members shall be vested in the Board (defined below) as permitted by applicable law.

### **ARTICLE II**

#### **BOARD OF GOVERNORS**

Section 2.1. Number. The board of governors of Presbyterian Homes and Services of Genesee Valley, Inc. ("Seniorsfirst") shall nominate and elect the board of governors of the Corporation (the "Board"). The number of the Board shall be at least five (5) and no more than ten (10). Governors shall serve a term of three (3) years and may not serve more than two (2) consecutive terms.

Section 2.2. Meetings. An annual meeting of the Board shall be held for elections and the transaction of other business at such time as may be fixed by the Board. Regular meetings of the Board shall be held at such times as the Board may from time to time determine. Special meetings of the Board shall be held at any time, upon call from the Chairperson or by any member of the Board upon written demand of not less than one-fifth (1/5) of the entire Board.

Section 2.3. Place of Meetings. Regular and special meetings of the Board shall be held at the principal office of the Corporation, or at such other place, within or without the State of New York as may from time to time be determined by the Board or the person or persons authorized to call the meeting.

Section 2.4. Notice of Meeting. No notice need be given of a regular meeting of the Board. Notice of the place, day and hour of every special meeting shall be given to each member of the Board by delivering the same to him or her personally or sending the same to him or her by electronic means or leaving the same at his or her residence or usual place of business, at least one (1) day before the meeting, or shall be mailed to each member of the Board, postage prepaid and addressed to him or her at his or her last known address according to the records of the Corporation, at least three (3) days before the meeting. No notice of any adjourned meeting of the Board need be given other than by announcement at the meeting.

Section 2.5. Waiver of Notice. Notice of a meeting need not be given to any member of the Board who submits a signed written waiver thereof whether before, during or after the meeting nor to any such member who attends the meetings without protesting, prior thereto or at its commencement, the lack of notice to him or her.

Section 2.6. Quorum. One-half (1/2) of the entire Board shall be necessary to constitute a quorum for the transaction of business at each meeting of the Board. If the number of the members of the entire Board shall be eighteen (18) or more, the quorum shall be one-third (1/3) of the entire Board. However, if at any meeting there is less than a quorum present, a majority of those present may adjourn the meeting from time to time without notice other than by announcement at the meeting, until a quorum shall attend.

Section 2.7. Action by the Board.

(a) Each member of the Board shall be entitled to one (1) vote on each matter properly submitted to the Board for action at all meetings of the Board. Unless otherwise required by law or these By-laws, the vote of a majority of the members of the Board present at a meeting at which a quorum has been established at the time of the vote shall be the act of the Board.

(b) The Certificate of Incorporation or the By-laws of the Corporation may be amended, repealed or adopted by an affirmative vote of two-thirds (2/3) of the entire Board. The text of any proposed amendment of the Certificate of Incorporation or the By-laws shall be included with notice of any meeting at which action will be taken.

(c) The merger, consolidation, voluntary (non-judicial) dissolution or sale of all or substantially all the assets of the Corporation shall be approved by two thirds (2/3) of the entire Board.

(d) Any action required or permitted to be taken by the Board or any committee thereof may be taken without a meeting if all members of the Board or the committee thereof consent in writing or by electronic means to the adoption of a resolution authorizing the action. The resolution and written or electronic consent thereto

by the members of the Board or committee shall be filed with the minutes of the proceedings of the Board or committee.

(e) Any one or more members of the Board, or of any committee thereof, may participate in a meeting of such Board or committee by means of a conference telephone or other electronic means that allows all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at such a meeting.

Section 2.8. Compensation. Members of the Board as such shall not receive any compensation for their services. Nothing in this section shall prevent compensation to a person for services rendered to the Corporation as an employee or as otherwise engaged by the Corporation.

Section 2.9. Annual Report. The appropriate officers shall present at a designated meeting of the Board each year a report, verified by the appropriate officers or certified by an independent public or certified accountant or a firm of such accountants selected by the Board, showing in appropriate detail the following:

(a) the assets and liabilities, including the trust funds, of the Corporation as of the end of a twelve (12) month fiscal period of the Corporation prior to said meeting;

(b) the principal changes in assets and liabilities, including trust funds, during said fiscal period;

(c) the revenue or receipts of the Corporation, both unrestricted and restricted to particular purposes, during said fiscal period; and

(d) the expenses or disbursements of the Corporation, for both general and restricted purposes, during said fiscal period.

Each such report shall be filed with the records of the Corporation and a copy or an abstract thereof shall be entered in the minutes of the proceedings of the annual meeting at which the report is presented.

## ARTICLE III

### COMMITTEES

Section 3.1. Committees of the Corporation. The Board may, in its discretion, by an affirmative vote of a majority of the entire Board, appoint an Executive Committee, Audit & Finance Committee or any other committee of the board, to consist of any three (3) or more independent governors as the Board may from time to time determine. The Executive Committee shall have and may exercise between meetings of the Board all the powers of the Board in the management of the business and affairs of the Corporation. All other committees shall have those powers conferred upon them by the Board, except that no committee shall have power:

- (a) to fill vacancies in the Board or in any committee thereof;
- (b) to fix compensation of governors for service on the Board or any committee thereof;
- (c) to repeal, amend or adopt bylaws;
- (d) to amend or repeal any Board resolution which does not, by its terms, make it amendable or repealable by such committee; or
- (e) to remove or fix the compensation of officers who are elected or appointed by the Board.

In the absence of any member of the Executive Committee or of any other committee, the members thereof present at any meeting may appoint a member of the Board previously designated by the Board as a committee alternate to act in place of such absent member. The Board shall have the power at any time to change the membership of any committee, to fill vacancies in it, or dissolve it. The Executive Committee and any other committee may make rules for the conduct of its business, and may appoint such committees and assistants as may from time to time be necessary, unless the Board shall provide otherwise. A majority of the members of the Executive Committee and of any other committee shall constitute a quorum, and vote of a majority of the members at meeting at which a quorum is present, shall be sufficient to constitute the act of such committee.

Section 3.2. Committees of the Corporation. The Board may, in its discretion, by an affirmative vote of a majority of the entire Board, designate such other committees of the corporation to consist of any three (3) or more individuals (including at least one (1) Board member) from the staff of the Corporation or its affiliates or the community as the Board may from time to time determine. The resolution creating such committee shall state the specific purpose(s), duration, membership and reporting procedure to the Board for each such committee. Upon the completion of the stated purpose(s) or upon reaching the end of the time limitation as

set forth in the enabling resolution, such committee shall automatically disband without further action of the Board.

## ARTICLE IV

### OFFICERS

Section 4.1. Election of Officers. The elected officers of the Corporation shall consist of a Chairperson, a Vice Chairperson and a Secretary/Treasurer, and any other officers as the Board may deem necessary. Officers shall be elected at a duly held meeting of the Board from among its membership. Each such officer shall serve at the pleasure of the Board for a term determined thereby until his or her successor shall have been duly elected or appointed and qualified, or until he or she shall have resigned, died, or been removed in the manner provided in this Article. Any two (2) offices may be held by the same person, except that no person shall hold the office of Chairperson and Secretary/Treasurer concurrently. Any vacancies in the above offices shall be filled in the same manner. Officers shall fill their positions as of the annual meeting of each year unless fulfilling an unexpired term.

Section 4.2. Removal. Any officer of the Corporation may be removed with or without cause by a vote of a majority of the entire Board.

Section 4.3. Compensation. Elected officers as such shall not receive compensation for their services. Nothing in this Section shall prevent a person from receiving compensation for services rendered to the Corporation as an employee or as otherwise engaged by the Corporation.

Section 4.4. Chairperson. The Chairperson shall preside over all meetings of the Board and shall, subject to the direction of the Board, supervise the operation of the Corporation and shall perform such other duties and exercise such other functions as may be designated by the Board. The Chairperson shall be chairperson of the Executive Committee and an ex-officio member of all other committees. Subject to confirmation of the Board, the Chairperson shall appoint all committee members and chairpersons of committees and shall recommend to the Board the creation of committees.

Section 4.5. Vice Chairperson. At the request of the Chairperson or when the Chairperson is absent or unable to perform his or her duties, the Vice Chairperson shall perform the duties and exercise the functions of the Chairperson. The Vice Chairperson shall have such other powers and duties as may be designated by the Board or the Chairperson.

Section 4.6. Secretary/Treasurer. The Secretary/Treasurer shall ensure that full minutes of all meetings of the Board are kept in the Corporation's books and records. The Secretary/Treasurer shall see that all notices are duly given in accordance with the provisions of the By-laws or as required by applicable law and shall be the custodian of the records and of the seal of the Corporation. The Secretary/Treasurer shall affix the seal to all documents, the affixation of

which on behalf of the Corporation is duly authorized by the Board or otherwise necessary required, and when so affixed may attest the same. The Secretary/Treasurer shall ensure that correct and complete books and records of account for the Corporation are kept. The Secretary/Treasurer shall have such other powers and duties as may be designated by the Board and the Chairperson.

## **ARTICLE V**

### **FINANCES**

Section 5.1. Bills and Notes. All checks or demands for money and notes or other instruments evidencing indebtedness or obligations of the Corporation shall be made in the name of the Corporation and shall be signed by such officer or officers or such other person as the Board may from time to time designate. No loans shall be contracted on behalf of the Corporation unless specifically authorized by the Board.

Section 5.2. Dividends. No part of the assets or net earnings of the Corporation shall be distributed to or inure to the benefit of any individual by means of dividends or otherwise except that reasonable compensation may be paid for services rendered to the Corporation.

Section 5.3. Fiscal Year. The fiscal year of the Corporation shall be the period commencing January 1st and ending December 31st.

## **ARTICLE VI**

### **PROPERTY AND INVESTMENTS**

Section 6.1. Property. All real or personal property received by the Corporation by bequest, devise, gift, grant or otherwise, unless otherwise specified within the terms of such bequest, devise, gift, grant, or other instrument, shall be held or disposed of by the Corporation according to such terms and conditions, not inconsistent with the objectives and purposes of the Corporation, as the Board shall determine. Unless otherwise designated by the Board, the Chairperson of the Corporation is hereby designated as the officer of the Corporation authorized to vote any and all shares of stock held by the Corporation and he or she shall have the power and authority to vote such shares in person or by proxy, or by written consents in lieu of formal meetings.



Section 6.2. Investments. Unless otherwise specified by the terms of a particular bequest, devise, gift, grant or other instrument, the funds of the Corporation may be invested from time to time in such manner as the Board may determine, whether or not the investments are of the character which would be required by law for similar funds if held by trustees.

Section 6.3. Investment Advisor or Agent. The Board may contract with any independent investment advisor, investment counsel or manager or other financial agent or agents as the Board shall deem advisable to represent and to advise it in the investment or reinvestment of funds of the Corporation or to provide security custodial services. The Board is further authorized to pay reasonable compensation for such services. The Board shall be relieved of all liability for the investment and reinvestment of corporate funds by, and for the other acts or omissions of, persons to whom authority is so delegated or with whom contracts are so made.

## ARTICLE VII

### INDEMNIFICATION

Section 7.1. Indemnification. The Corporation shall indemnify and hold harmless any person made or threatened to be made a party to any action or proceeding by reason of the fact that he or she or his or her testator or intestate (i) is or was a member of the Board or officer of the Corporation or (ii) is or was a member of the Board or officer of the Corporation who serves or served, in any capacity, any other entity at the request of the Corporation (hereinafter an "Indemnitee"), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by the Indemnitee in connection therewith. Notwithstanding the foregoing, no indemnification may be made to or on behalf of any member of the Board or officer if a judgment or other final adjudication adverse to the member of the Board or officer establishes that his or her acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated, or that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled.

Section 7.2. Advancement of Expenses. All expenses reasonably incurred by an Indemnitee in connection with an actual or threatened action or proceeding with respect to which such Indemnitee is or may be entitled to indemnification under this Article shall be advanced to him or her or promptly reimbursed by the Corporation in advance of the final disposition of such action or proceeding, upon receipt of an undertaking by him or her or on his or her behalf to repay the amount of such advances, if any, as to which he or she is ultimately found not to be entitled to indemnification or, where indemnification is granted, to the extent such advances exceed the indemnification to which he or she is entitled.

Section 7.3. Indemnification of Employees and Agents. The Corporation may, to the extent authorized from time to time by the Board, grant rights to indemnification and advancement of

expenses to any employee or agent of the Corporation with the same scope and effect as provided in this Article to members of the Board and officers of the Corporation.

## **ARTICLE VIII**

### **ADVISORY BOARD**

The Board may appoint an Advisory Board to be comprised of former Board members, consultants, experts in field helpful to the Corporation, consultants or other key individuals determined by the Board to be of continuing benefit to the Corporation. There shall be no set number of members nor shall there be specific terms or term limitations. The members of the Advisory Board shall be recognized at the annual meeting. The members of the Advisory Board shall have no vote and shall not be required to attend any Board meetings. Their role shall be to lend their wisdom, time and talents to the benefit of the Corporation and to carrying out its purposes.

## **ARTICLE IX**

### **AMENDMENTS**

Subject to applicable law and the other provisions set forth herein, the Board shall have the power to adopt, amend or repeal the By-laws of the Corporation by a two-thirds (2/3) vote of the entire Board at any meeting of the Board. The text of any proposed By-laws amendment shall be included in the notice of the meeting at which such amendment is presented for action.

## **ARTICLE X**

### **MISCELLANEOUS PROVISIONS**

Section 10.1. Procedure. Except as otherwise authorized by the Board, all meetings of the Board and of any committee designated by the Board shall be conducted in conformity with Roberts Rules of Order, as amended from time to time.

Section 10.2. Number. All nouns and pronouns herein, and any variations thereof, shall be deemed to refer to the singular or plural as the identity of the person or persons may require.

Section 10.3. Headings. All headings contained in the By-laws are inserted only as a convenience and for reference, and do not define, limit or extend the intent or meaning of any section hereof.



0127508

CERTIFICATE OF INCORPORATION  
OF  
KIRKHAVEN FOUNDATION, INC.

Under Section 402 of the Not-for-Profit Corporation Law

The undersigned, for the purpose of forming a corporation under Section 402 of the Not-for-Profit Corporation Law, hereby certifies:

ARTICLE I

The name of the Corporation is Kirkhaven Foundation, Inc.

ARTICLE II

(a) The Corporation is a corporation as defined in subparagraph (a)(5) of section 102 of the Not-for-Profit Corporation Law.

(b) The Corporation is a type B corporation under section 201 of the Not-for-Profit Corporation Law, formed exclusively for charitable purposes; specifically:

To solicit, receive, maintain and distribute funds and property to assist the Genesee Valley Presbyterian Nursing Center, Inc. doing business as Kirkhaven (hereafter "Kirkhaven") in the City of Rochester, New York, in the furtherance of its corporate purposes.

To provide, conduct, sponsor and promote programs and projects to assist Kirkhaven and to provide materials, services, property and other goods to Kirkhaven as may be deemed appropriate in the discretion of the Board of Directors of this Corporation. Nothing contained in this Certificate shall authorize the Corporation to establish, operate, construct, lease or maintain a hospital, or to provide hospital service or health related service, or to operate a drug maintenance program, or a certified home

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health agency, or hospice, or a health maintenance organization, or to provide a comprehensive health service plan, as defined in and covered by Articles 28, 33, 36, 40 and 44, respectively, of the Public Health Law.

To provide, conduct, sponsor and promote instructional, social and supportive programs and projects related to the field of geriatrics. Nothing contained in this Certificate shall authorize the Corporation to conduct any activity which might be chartered by the Regents of the University of the State of New York.

(c) The Corporation shall do lawfully all and everything necessary, suitable and proper for the attainment of any of these purposes, the accomplishment of any of these objects, or the furtherance of any of the powers hereinabove set forth; and have, enjoy and exercise any and all rights, powers, privileges, and exemptions which are now or which may hereinafter be conferred upon not-for-profit corporations organized under the laws of the State of New York.

(d) The foregoing clauses shall be construed both as objects and powers, in furtherance, and not in limitation, of the general powers conferred by the laws of the State of New York, and the enumeration herein of specific objects and powers shall not be held to limit or restrict in any way the general powers of the Corporation.

### ARTICLE III

The office of the corporation is to be located in the County of Monroe, State of New York.

ARTICLE IV

The names and addresses of the initial directors of the Corporation are:

Carol L. Adler	16 South Pittsford Hill Lane Pittsford, New York 14534
Grace J. Bonnar	40 Indian Spring Lane Rochester, New York 14518
Neal D. Madden	10 Park Place Rochester, New York 14610

ARTICLE V

(a) The Secretary of State of the State of New York is hereby designated as the agent of the Corporation upon whom process in any action or proceeding against it may be served.

(b) The post office address to which the Secretary of State shall mail a copy of process against the Corporation which may be served upon him or her is:

Kirkhaven Foundation, Inc.  
254 Alexander Street  
Rochester, New York 14607

ARTICLE VI

(a) Notwithstanding any other provision of this Certificate, the Corporation is organized exclusively for one or more of the purposes specified in section 501(c)(3) of the Internal Revenue Code of 1986 (the "Code"), and shall not carry on any activities not permitted to be carried on by a

corporation exempt from federal income tax under such section or corresponding provisions of any subsequent federal tax law.

(b) No part of the net earnings of the Corporation shall inure to the benefit of any member, trustee, director, officer of the Corporation or any private individual (except that reasonable compensation may be paid for services rendered to or for the Corporation), and no member, trustee, officer of the corporation or any private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the corporation.

(c) No substantial part of the activities of the corporation shall be carrying on propaganda or otherwise attempting to influence legislation, except as otherwise provided by section 501(h) of the Code. The Corporation shall not participate in or intervene in any political campaign on behalf of any candidate for public office in any manner, including the publishing or distributing of statements.

(d) In the event of dissolution, all of the remaining assets and property of the Corporation shall, after payment of necessary expenses thereof, be distributed to another organization or organizations exempt under section 501(c)(3) of the Code, or corresponding provisions of any subsequent federal tax laws, giving first preference (if it then qualifies as such

organizations) to Kirkhaven, subject to the approval of a Justice of the Supreme Court of the State of New York.

(e) In any taxable year in which the corporation is a private foundation as described in section 509(a) of the Code, the Corporation shall distribute its income for said period at such time and manner as not to subject it to tax under section 4942 of the Code, and the Corporation shall not (1) engage in any act of self-dealing as defined in section 4941(d) of the Code, (2) retain any excess business holdings as defined in section 4943(c) of the Code, (3) make any investments in such manner as to subject the corporation to tax under section 4944 of the Code, or (4) made any taxable expenditures as defined in section 4945(d) of the Code or corresponding provisions of any subsequent federal tax laws.

#### ARTICLE VII

(a) The governing body of the Corporation shall be the Board of Trustees.

(b) The Corporation shall have no members.

IN WITNESS WHEREOF, this Certificate has been signed by the subscriber, being at least eighteen years of age, this 23<sup>rd</sup> day of February, 1990 and the subscriber does by his signature hereto affirm the truth of the statements contained herein under penalty of perjury.

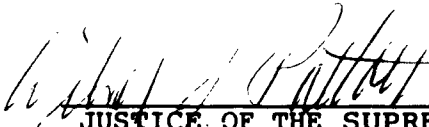


Neal D. Madden

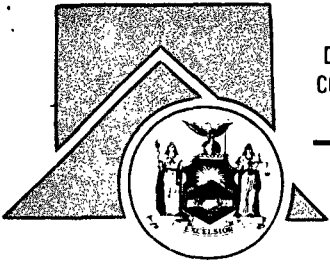
Neal D. Madden  
700 Midtown Tower  
Rochester, New York 14604

The undersigned, a Justice of the Supreme Court of the State of New York, Seventh Judicial District, does hereby approve the foregoing Certificate of Incorporation.

Dated: 24 April 30, 1990



JUSTICE OF THE SUPREME COURT



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

RECEIVED

March 26, 1990

MAR 28 1990

MER

Ms. Mary E. Ross  
Harter, Secrest & Emery  
Attorneys at Law  
700 Midtown Tower  
Rochester, NY 14604-2070

Re: Certificate of Incorporation of Kirkhaven Foundation, Inc.

Dear Ms. Ross:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 23rd day of March, 1990, I hereby certify that the Public Health Council consents to the filing of the Certificate of Incorporation of Kirkhaven Foundation, Inc., dated February 23, 1990.

Sincerely,

*Karen S. Westervelt*

Karen S. Westervelt  
Executive Secretary

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RESOLUTION

RESOLVED, that the Public Health Council, on this 23rd day of March, 1990, approves the filing of the Certificate of Incorporation of Kirkhaven Foundation, Inc., dated February 23, 1990.

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STATE OF NEW YORK  
DEPARTMENT OF LAW  
ALBANY 12224

ROBERT ABRAMS  
ATTORNEY GENERAL

JAMES G. McSPARRON  
DEPUTY FIRST ASSISTANT  
ATTORNEY GENERAL

Telephone: (518) 473-3683

March 14, 1990

Gina Carney  
Colby Attorneys Service, Co., Inc.  
53 Howard Street  
P.O. Box 737  
Albany, NY 12201-0737

Dear Ms. Carney:

RE: KIRKHAVEN FOUNDATION, INC.

Due and timely service of the notice of application for the approval of the proposed certificate of incorporation of the above-entitled organization is hereby admitted.

The Attorney General does not intend to appear at the time of application.

Very truly yours,

ROBERT ABRAMS  
Attorney General

By:

  
RICHARD S. REDLO  
Assistant Attorney General

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CERTIFICATE OF INCORPORATION  
OF  
KIRKHAVEN FOUNDATION, INC.

Under Section 402 of the Not-for-Profit Corporation Law

912750g

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED APR 06 1990

AMT. OF CHECK \$

FILING FEE \$

TAX \$

COUNTY FEE \$

COPY \$

CERT \$

REFUND \$

SPEC HANDLE \$

BY:

ALL TYPE B

*[Signature]*  
Type B

593817

9127508

040915000956

**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
KIRKHAVEN FOUNDATION, INC.**

Under Section 803 of the Not-for-Profit Corporation Law

1. The name of the Corporation is Kirkhaven Foundation, Inc.
2. The date of the filing of the Certificate of Incorporation with the Department of State is April 6, 1990. The Corporation was formed under the Not-for-Profit Corporation Law.
3. The Corporation is a corporation as defined in Section 102(a)(5) of the Not-for-Profit Corporation Law. The Corporation is a Type B corporation. The Corporation will remain a Type B corporation following filing of this Certificate of Amendment.
4. The amendments effected by this Certificate of Amendment are as follows:

Article I of the Certificate of Incorporation is amended to read in its entirety as follows:

The name of the Corporation is Seniorsfirst Foundation, Inc.

Article II, subsection (b) of the Certificate of Incorporation is amended to read in its entirety as follows:

(b) The Corporation is a Type B corporation under Section 201 of the Not-for-Profit Corporation Law, formed exclusively for charitable purposes, specifically:

To solicit, receive, maintain and distribute funds and property to assist Presbyterian Homes and Services of Genesee Valley, Inc., Genesee Valley Presbyterian Nursing Center, Presbyterian Residence Center Corporation and PRESCOR Inc., or any future affiliates of the foregoing (the "Affiliates"), in furtherance of their corporate purposes.

To provide, conduct, sponsor and promote programs and projects to assist the Affiliates and to provide materials, services, property and other goods to them as may be deemed appropriate in the discretion of the Board of Directors of this Corporation. Nothing contained in this Certificate shall authorize the Corporation to establish, operate, construct, lease or maintain a hospital, or to provide hospital service or health related service, or to operate a drug maintenance program, or a certified home health agency, or hospice, or a health maintenance organization, or to provide a comprehensive health service plan, as defined in and covered by Articles 28, 33, 36, 40 and 44, respectively, of the Public Health Law.

To provide, conduct, sponsor and promote instructional, social and supportive programs and projects related to the field of geriatrics. Nothing contained in this

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Certificate shall authorize the Corporation to conduct any activity which might be chartered by the Regents of the University of the State of New York.

5. This Certificate of Amendment was authorized by the unanimous vote of the Board of Directors at a meeting on December 9, 2003.

6. The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the Corporation is 254 Alexander Street, Rochester, New York 14607.

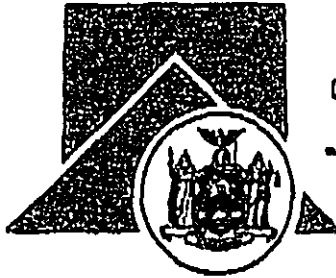
7. Prior to the delivery of this Certificate of Amendment to the Department of State for filing, all approvals or consents required by the Not-for-Profit Corporation Law or by any other statute of the State of New York will be endorsed upon or annexed to this Certificate.

Dated: December 9, 2003



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James E. DeVoe, President



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

'AUG 0 9 2004

MER

August 3, 2004

Ms. Mary E. Ross, Partner  
Hartner, Secrest & Emery LLP  
1600 Bausch & Lomb Place  
Rochester, New York 14604-2711

Re: Certificate of Amendment of the Certificate of Incorporation of Kirkhaven Foundation, Inc.

Dear Ms. Ross:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 30<sup>th</sup> day of July, 2004, I hereby certify that the Public Health Council consents to the filing of the Certificate of Amendment of the Certificate of Incorporation of Kirkhaven Foundation, Inc., dated December 9, 2003.

Sincerely,

*Donna Peterson*  
Karen S. Westervelt  
Executive Secretary

/md

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**JGC**  
AUG 23 2004

STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

ELIOT SPITZER  
Attorney General

REGIONAL OFFICE DIVISION  
Rochester Regional Office

August 24, 2004

Joseph G. Casion, Jr., Esq.  
Harter, Secrest & Emery LLP  
1600 Bausch & Lomb Place  
Rochester, New York 14604-2711


Re: Kirkhaven Foundation, Inc.  
Certificate of Amendment

Dear Mr. Casion:

The Attorney General has no objection to the filing of the proposed certificate of amendment with the Secretary of State, and will not appear at time of application.

Please provide a copy of the filing receipt and judicial approval so I may close the Attorney General's file on the matter.

Very truly yours,

  
Audrey Cooper  
Assistant Attorney General

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At an Ex-Parte, Part \_\_\_\_\_, of  
the Supreme Court of the  
State of New York, held in  
and for the County of Monroe, at  
\_\_\_\_\_, on the \_\_\_ day of  
\_\_\_\_\_, 2004

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF MONROE

PRESENT:

HON: **DAVID MICHAEL BARRY**

Justice.

\_\_\_\_\_  
In the Matter of the Application )  
of )  
Kirkhaven Foundation, Inc. )  
For approval and authorization of the filing of a )  
Certificate of Amendment under )  
Section 803 of the Not-for-Profit Corporation Law )  
\_\_\_\_\_

ORDER  
Index No. \_\_\_\_\_

Kirkhaven Foundation, Inc., having duly made an application for an order, pursuant to Section 803 of the Not-for-Profit Corporation Law, approving the Certificate of Amendment of said corporation and authorizing the filing thereof, and said application having regularly come on to be heard, and it appearing that the interest of the corporation and the public interest will not be adversely affected by thereby, and that the Attorney General and the Public Health Council having no objection thereto, and that the approval of no other governmental agency is required.

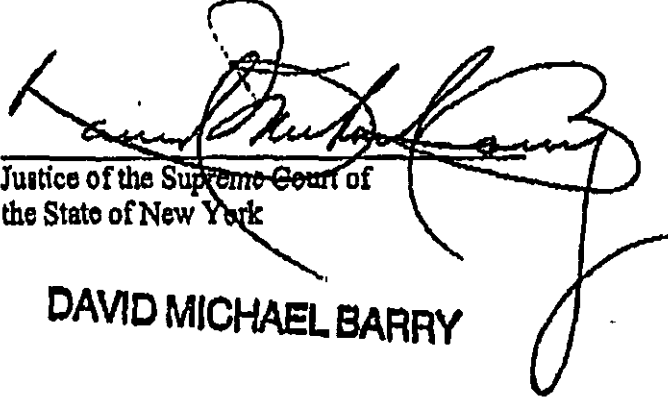
NOW THEREFORE, it is

ORDERED, that the Certificate of Amendment of the Certificate of Incorporation of Kirkhaven Foundation, Inc. in the form presented in the application, be and the same hereby is approved, and it is further

ORDERED, that the aforesaid Certificate of Amendment is authorized to be filed by the Department of State in accordance with Section 803 of the Not-for-Profit Corporation Law, to which certificate a certified copy of this order shall be annexed.

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Dated: 9-8-2004  
Rochester, New York

  
Justice of the Supreme Court of  
the State of New York  
**DAVID MICHAEL BARRY**

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040915000 956

CERTIFICATE OF AMENDMENT

OF

THE CERTIFICATE OF INCORPORATION

OF

KIRKHAVEN FOUNDATION, INC.

Under Section 803 of the Not for Profit Corporation Law

*Munroe*

FILED

2004 SEP 15 PM 3:52

2004 SEP 15 11:03

Filer:  
Harter, Secrest & Emery  
1600 Bausch & Lomb Place  
Rochester, NY 14604-2711

STATE OF NEW YORK  
DEPARTMENT OF STATE  
FILED SEP. 15 2004  
TAX \$ \_\_\_\_\_  
BY:                       
*Munroe*

Customer Reference #2115

**LCS**

**DRAWDOWN - #AL**

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040915000 992

CERTIFICATE OF AMENDMENT  
OF  
THE CERTIFICATE OF INCORPORATION  
OF  
SENIORSFIRST FOUNDATION, INC.

Under Section 803 of the Not-For-Profit Corporation Law

FIRST: The name of the corporation is: Seniorsfirst Foundation, Inc. The name under which the corporation was formed is Kirkhaven Foundation, Inc.

SECOND: The certificate of incorporation was filed by the Department of State on April 6, 1990.

THIRD: The corporation was formed under the Not-for-Profit Corporation Law.

FOURTH: The corporation is a corporation as defined in subparagraph (5) of paragraph (a) of Section 102 of the Not-for-Profit Corporation Law.

FIFTH: The Certificate of Incorporation is amended as follows: Article II, subsection (b) of the Certificate of Incorporation is hereby amended to modify the purposes of the corporation. Article II, subsection (b) is amended to read in its entirety as follows:

(b) The corporation is a charitable corporation under Section 201 of the Not-For-Profit Corporation Law, formed exclusively for charitable purposes, specifically:

To receive, maintain and distribute funds and property to assist and support other organizations serving seniors within the Greater Rochester area in furtherance of their corporate purposes. Nothing contained in this Certificate shall authorize the Corporation to establish, operate, construct, lease, or maintain a hospital, or to provide hospital service or health related service, or to operate a drug maintenance program, or a certified home health agency, or hospice, or a health maintenance organization, or to provide a comprehensive health service plan, as defined in and covered by Articles 28, 33, 36, 40 and 44, respectively of the Public Health Law.

To sponsor and promote social and supportive programs, scholarships and projects related to the field of geriatrics. Nothing contained in this Certificate shall authorize the Corporation to conduct any activity which might be chartered by the Regents of the University of the State of New York.

To solicit grants and contributions for any corporate purpose and the power to maintain a fund or funds of real and/or personal property in furtherance of such purposes.

SIXTH: The Secretary of State is designated as agent of the corporation upon whom process against the corporation may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon the Secretary of State by personal delivery is: 254 Alexander Street, Rochester, New York 14607.

SEVENTH: The certificate of amendment was authorized by vote of a majority of the entire board of directors. The corporation has no members.

EIGHTH: Prior to the delivery of this certificate of amendment to the Department of State for filing, all approvals or consents required by the Not-for-Profit Corporation Law or by any other statute of the State of New York will be endorsed upon or annexed to this certificate.

[Remainder of Page Intentionally Remains Blank. Signature Page Follows]

IN WITNESS WHEREOF, this certificate has been subscribed to this 24<sup>th</sup> day of January, 2024 by the undersigned.

  
\_\_\_\_\_  
James DeVoe, CEO  
James DeVoe, Chief Executive Officer

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CERTIFICATE OF AMENDMENT  
OF  
THE CERTIFICATE OF INCORPORATION  
OF  
SENIORSFIRST FOUNDATION, INC.

Under Section 803 of the Not-For-Profit Corporation Law

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FILED BY:

Pullano & Farrow  
— 401 Main Street —  
East Rochester, New York 14445